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# Spanish Civil Code

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# SPANISH CIVIL CODE

## PRELIMINARY TITLE

### On legal rules, their application and effectiveness

#### CHAPTER ONE

##### *Sources of law*

#### **Article 1.**

1. The sources of the Spanish legal system are statutes, customs and general legal principles.
2. Any provisions which contradict another of higher rank shall be invalid.
3. Customs shall only apply in the absence of applicable statutes, provided that they are not contrary to morals or public policy, and that it is proven. Legal uses which are not merely for the interpretation of a declaration of will shall be considered customs.
4. General legal principles shall apply in the absence of applicable statute or custom, without prejudice to the fact that they contribute to shape the legal system.
5. Legal rules contained in international treaties shall have no direct application in Spain until they have become part of the domestic legal system by full publication thereof in the Spanish Official State Gazette.
6. Case law shall complement the legal system by means of the doctrine repeatedly upheld by the Supreme Court in its interpretation and application of statutes, customs and general legal principles.
7. Judges and Courts shall have the inexcusable duty to resolve in any event on the issues brought before them, abiding by system of sources set forth herein.

#### **Article 2.**

1. Statutes shall enter into force twenty days after their full publication in the Official State Gazette, unless otherwise provided therein.
2. Statutes may only be repealed by subsequent statutes. Such repeal shall have the scope expressly provided therein, and shall always extend to any provisions of the new statute on the same matter which are incompatible with the prior statute. Mere abrogation of a statute shall not entail recovery of the force and effect of any provisions repealed thereby.
3. Statutes shall not have retroactive effect, unless otherwise provided therein.

#### CHAPTER 2º

##### *Application of legal rules*

#### **Article 3.**

1. Rules shall be construed according to the proper meaning of their wording and in connection with the context, with their historical and legislative background and with the social reality of the time in which they are to be applied, mainly attending to their spirit and purpose.
2. Equity must be taken into account in applying rules, but the resolutions of the Courts may only be based exclusively on equity when the law expressly allows this.

#### **Article 4.**

1. Where the relevant rules fail to contemplate a specific case, but do regulate another similar one in which the same *ratio* is perceived, the latter rule shall be applied by analogy.

2. Criminal statutes, exceptional statutes and statutes of temporary nature shall not be applied in cases or times other than as expressly provided therein.
3. The provisions of this Code shall be of subsidiary application in matters governed by other statutes.

#### **Article 5.**

1. Unless otherwise provided, for periods stated in number of days, counting from a particular date, the latter shall be excluded from the calculation, which shall begin on the following day; and periods set in number of months or years shall be calculated from date to date. Where on the month of the expiration date there should be no date equivalent to the initial date of the period, the period shall be deemed to expire on the last day of the month.
2. Calculation of periods according to civil law shall not exclude non-business days.

### CHAPTER 3º

#### *General effectiveness of legal rules.*

#### **Article 6.**

1. Ignorance of the law does not excuse from compliance thereof. Error in law shall only have the effects provided in the law.
2. The voluntary exclusion of applicable law and the waiver of any rights acknowledged therein shall only be valid when they do not contradict the public interest or public policy or cause a detriment to third parties.
3. Acts contrary to mandatory and prohibitive rules shall be null and void by operation of law, save where such rules should provide for a different effect in the event of violation.
4. Acts performed pursuant to the text of a legal rule, which pursue a result forbidden by the legal system or contrary thereto shall be considered to be in fraud of the law and shall not prevent the due application of the rule which they purported to avoid.

#### **Article 7.**

1. Rights must be exercised in accordance with the requirements of good faith.
2. The law does not support abuse of rights or antisocial exercise thereof. Any act or omission which, as a result of the author's intention, its purpose or the circumstances in which it is performed manifestly exceeds the normal limits to exercise a right, with damage to a third party, shall give rise to the corresponding compensation and the adoption of judicial or administrative measures preventing persistence in such abuse.

### CHAPTER 4º

#### *Rules of private international law*

#### **Article 8.**

1. Criminal, police and public security statutes shall be binding on all persons within Spanish territory.
2. (repealed).

#### **Article 9.**

1. The personal law applicable to an individual shall be determined by his nationality. Such law shall govern capacity and civil status, family rights and duties and *mortis causa* succession. A change in personal law shall not affect the coming of age acquired in accordance with the former personal law.

**2.** The effects of marriage shall be governed by the personal law common to the spouses at the time of the marriage; in the absence thereof, by the personal law or the law of the place of residence of any of them, chosen by both in an authentic instrument executed prior to the marriage ceremony; in the absence of such election, by the law of the place of habitual residence common to both immediately after the ceremony and, in the absence of such residence, by that of the place of the marriage ceremony.

Legal separation and divorce shall be governed by the law provided in article 107.

**3.** Covenants or marriage articles stipulating, amending or replacing the property regime of the marriage shall be valid when they are in accordance with either the law governing the effects of the marriage, or the law of the nationality or habitual residence of either party at the time of execution thereof.

**4.** The nature and content of filiation, including filiation by adoption, and the relations between parents and their children, shall be governed by the personal law of the child and, if this cannot be determined, the law of his habitual residence.

**5.** International adoption shall be governed by the provisions of the International Adoption Law. Likewise, adoptions decreed by foreign authorities shall be effective in Spain in accordance with the provisions of the aforementioned International Adoption Law.

**6.** Guardianship and other institutions to protect incapable persons shall be regulated by the latter's national law. Notwithstanding the foregoing, provisional or urgent protection measures shall be governed by the law of his habitual residence.

The formalities to constitute guardianship and other protection institutions in which Spanish judicial or administrative authorities should participate shall in any event be performed in accordance with Spanish law.

Spanish law shall apply to the taking of protective and educational measures relating to abandoned minors or incapable persons within Spanish territory.

**7.** The right to support between relatives shall be governed by the common national law of the giver and the recipient of such support. Notwithstanding the foregoing, the law of the habitual residence of the person claiming such support shall apply where the latter cannot obtain it in accordance with the common national law. In the absence of both such laws, or where neither allows to obtain support, the domestic law of the authority hearing the claim shall apply.

In the event of a change in the common nationality or habitual residence of the recipient of support, the new law shall apply from the time of such change.

**8.** Succession *mortis causa* shall be governed by the national law of the decedent at the time of his death, whatever the nature of the property and the country in which it is located. However, testamentary provisions and covenants relating to future succession executed in accordance with the national law of the testator or bequeather at the time of execution thereof shall remain valid even if another law is to govern the succession. Rights attributed by operation of law to the surviving spouse shall be governed by the same law which governs the effects of marriage, respecting at all times the forced share allocated to the descendants.

**9.** For the purposes of the present chapter, the provisions of the international treaties shall apply to situations of dual nationality provided under Spanish law, and, in the absence of such provisions, the nationality of the last place of habitual residence and, in the absence thereof, the last nationality acquired shall be preferred.

In any event, Spanish nationality shall prevail for persons who also hold another nationality that is not provided for in Spanish statutes or international treaties. If such person should hold two or more nationalities, and none should be Spanish, the provisions of the following section shall apply.

**10.** The law of the place of habitual residence shall be deemed to be the personal law of persons without nationality or with indeterminate nationality.

**11.** The personal law corresponding to legal entities shall be determined by their nationality, and shall apply in all matters relating to their capacity, incorporation, representation, operation, transformation, dissolution and termination.

In mergers between companies of different nationalities their respective personal laws shall be taken into account.

## **Article 10.**

**1.** Possession, ownership and other rights over immovable property and publicity thereof shall be governed by the law of the place where such property located.

The same law shall apply to movable property.

For the purposes of creating or assigning rights over goods in transit, the latter shall be deemed to be located at their place of dispatch, unless the sender and the recipient should have expressly or implicitly agreed to deem them to be located at their place of destination.

**2.** Vessels, aircraft and railway transport vehicles, and all rights created thereon, shall be subject to the law of their flag, matriculation or registration. Automobiles and other road transport vehicles shall be subject to the law of the place where they are located.

**3.** The issuance of securities shall be subject to the law of the place where it takes place.

**4.** Intellectual and industrial property rights shall be protected within Spanish territory in accordance with Spanish law, without prejudice to the provisions of international treaties and conventions to which Spain is a party.

**5.** The law to which the parties have expressly submitted shall apply to contractual obligations, provided that it has some connection with the transaction in question; in the absence thereof, the national law common to the parties shall apply; in the absence thereof, that of their common habitual residence and, lastly, the law of the place where the contract has been entered into.

Notwithstanding the provisions of the preceding paragraph, in the absence of express submission, contracts relating to immovable property shall be governed by the law of the place of their location, and sale and purchases of material movable property in commercial establishments by the law of the location of such establishments.

**6.** In the absence of express submission by the parties and without prejudice to the provisions of section 1 article 8, obligations resulting from a labour contract shall be governed by the law of the place where the services are provided.

**7.** Gifts shall in any event be governed by the national law of the donor.

**8.** Contracts for valuable consideration entered into in Spain by a foreigner without sufficient capacity according to his national law shall be valid for the purposes of Spanish law if the cause of his lack of capacity should not be recognised under Spanish law. This rule shall not apply to contracts relating to immovable property located abroad.

**9.** Non-contractual obligations shall be governed by the law of the place where the event from which they result took place.

The management of another's business shall be governed by the law of the place of the manager's main activity. Unjust enrichment shall be governed by the law pursuant to which the transfer of assets in favour of the enriched person took place.

**10.** The law applicable to an obligation shall also govern the requirements for its performance and the consequences of its breach, and the extinction thereof. Notwithstanding the foregoing, the law of the place of performance shall apply to modes of enforcement which require judicial or administrative intervention.

**11.** Legal representation shall be governed by the law regulating the legal relationship from which result the representative's powers, voluntary representation, in the absence of express submission, by the law of the country where the powers conferred are to be exercised.

## **Article 11.**

**1.** Forms and solemnities of contracts, wills and other legal acts shall be governed by the law of the country in which they are executed. Notwithstanding the foregoing, those entered into according to the forms and solemnities required by the law applicable to their content, and those entered into in accordance with the personal law of the grantor or the law common to the parties shall also be valid. Likewise, acts and contracts relating to immovable property executed in accordance with the forms and solemnities of the place where the property is located shall also be valid.

If such acts should be executed on board vessels or aircraft during navigation or flight, they shall be deemed entered into in the country of their flag, matriculation or registration. Military vessels and aircraft shall be deemed a part of the territory of the State to which they belong.

**2.** If the law regulating the content of acts and contracts should require a particular form or solemnity for the validity thereof, this shall always apply, even if they are executed abroad.

**3.** Spanish law shall apply to contracts, wills and other legal acts authorised by Spanish diplomatic or consular officers abroad.

#### **Article 12.**

**1.** Classification to determine the applicable conflict of laws rule shall always be made in accordance with Spanish law.

**2.** Referral to foreign law shall be deemed made to its material law, without taking into account any renvoi made by its conflict of laws rules to another law other than Spanish law

**3.** In no event shall foreign law apply where it is contrary to public policy.

**4.** The use of a conflict of laws rule to elude a mandatory Spanish law shall be deemed to constitute fraud of the law.

**5.** Where a conflict of laws rule should refer to the legislation of a State in which different legislative systems should coexist, the determination of which one is applicable shall be made in accordance with the legislation of such State.

**6.** The Courts and authorities shall apply Spanish conflict of laws rules ex officio.

### CHAPTER 5°

#### *Scope of application of coexisting civil law regulations within national territory*

#### **Article 13.**

**1.** The provisions of this preliminary title, to the extent that they determine the effects of laws and the general rules governing their application, and those of title IV book I, with the exception of the rules in the latter relating to marriage property regime, shall be of general and direct application in all of Spain.

**2.** For the rest, fully respecting any specific or regional law of any provinces or territories in which such law should apply, the provisions of the Civil Code shall apply on a subsidiary basis, in the absence of a subsidiary law in each of them, according to their specific rules.

#### **Article 14.**

**1.** Submission to common civil law or to specific or regional law is determined by civil residence.

**2.** Persons born from parents with civil residence within common law territory or in specific or regional law territories shall have the same civil residence as their parents.

The non-emancipated adoptee shall acquire the adoptive parents' civil residence pursuant to the adoption.

**3.** If the parents should have different civil residence upon the birth or adoption of their child, the child shall have the civil residence corresponding to the parent in respect of whom the child's filiation should have been determined first; in the absence thereof, that of his place of birth and, lastly, the civil residence of common law.

Notwithstanding the foregoing, the parents, or the parent who exercises or has been attributed parental authority, may attribute to the child the civil residence of either within six months following the birth or adoption. Deprivation or suspension in the exercise of parental authority, or a change of civil residence of the parents shall not affect the civil residence of their children.

In any event, the child, from his fourteenth birthday and until one year after his emancipation, may either opt for the civil residence of his place of birth or the last civil residence of either parent. If he should not have been emancipated, he must be assisted in his choice by his legal representative.



**4.** Marriage does not alter civil residence. Notwithstanding the foregoing, either of the spouses who is not legally or de facto separated may at any time opt for the civil residence of the other.

**5.** Civil residence is acquired:

1. By two years' continued residence, provided that the interested party declares that such is his intention.
2. By ten years' continued residence, without declaration to the contrary during such period.

Both declarations shall be noted in the Civil Registry and shall not require to be repeated.

**6.** In case of doubt, the civil residence corresponding to the place of birth shall prevail.

#### **Article 15.**

**1.** The foreigner who acquires Spanish nationality must, upon registration of the acquisition of such nationality, opt for any of the following civil residences:

- a) The one corresponding to the place of residence.
- b) The one corresponding to the place of birth.
- c) The last civil residence of any of his parents or adoptive parents.
- d) The spouse's.

Depending on the capacity of the interested party to acquire said nationality, such election shall be made by the relevant person himself or assisted by his legal representative, or by the representative. If nationality should be acquired as a result of a declaration or request by the legal representative, the necessary authorisation must determine which civil residence is to be chosen.

**2.** The foreigner who acquires Spanish nationality by naturalisation shall have the civil residence determined in the Royal Decree granting such naturalisation, taking into account his choice, in accordance with the provisions of the preceding section or other circumstances present in the applicant.

**3.** Recovery of Spanish nationality shall entail recovery of the civil residence held by the interested party at the time of its loss.

**4.** Personal dependence in respect of a region or locality with a proprietary or different civil specialty, within specific or regional legislation applicable to the relevant territory shall be governed by the provisions of the present and of the preceding article.

#### **Article 16.**

**1.** Conflicts of laws which may arise as a result of the coexistence of different civil legislations within national territories shall be resolved according to the rules provided in chapter IV, with the following particularities:

1. Personal law shall be as determined by civil residence.
2. The provisions of sections 1, 2 and 3 article 12 on classification, referral and public policy shall not apply.

**2.** The widowhood rights provided in the Compilation of Aragon shall correspond to spouses subject to the marriage property regime provided in such Compilation, even if they should later change their civil residence, excluding, in this case, the forced share set forth in the applicable succession law.

Expectant widowhood rights shall not be effective against an acquirer for valuable consideration in good faith of any properties not located within the territory where such right is recognised, if the contract should have been entered into outside such territory without noting the transferor's marriage property regime.

The widow's usufruct shall also correspond to the surviving spouse where the predeceased spouse should have civil residence in Aragon at the time of his death.

**3.** The effects of marriage between Spaniards shall be governed by the applicable Spanish law according to the criteria provided in article 9 and, in the absence thereof, by the Civil Code.

In this last case the separation of estates regime provided in the Civil Code shall apply if such kind of regime must apply according to the personal law of both of the spouses.



## BOOK I

### On persons

#### TITLE ONE

#### On Spaniards and foreigners

##### Article 17.

1. The following persons are Spaniards by birth:
  - a) Those born of a Spanish mother or father.
  - b) Those born in Spain of foreign parents if at least one of them should also have been born in Spain. The children of a diplomatic or consular officer credentialed in Spain shall be excepted from this rule.
  - c) Those born in Spain of foreign parents if both of them should be without nationality or if the legislation of neither should grant a nationality to the child.
  - d) Those born in Spain of uncertain filiation. For these purposes, minors whose first known place of existence is in Spanish territory shall be presumed born within Spanish territory.
2. Filiation or birth in Spain determined after the person is eighteen shall not by themselves constitute grounds to acquire Spanish nationality. The interested party shall then be entitled to opt for Spanish nationality by birth within two years counting from such determination.

**Article 18.** The possession and continued use of Spanish nationality for ten years, in good faith and based on a title registered in the Civil Registry shall constitute grounds for the consolidation of Spanish nationality, even if the title which originated should be annulled.

##### Article 19.

1. A foreigner younger than eighteen adopted by a Spaniard shall acquire Spanish nationality by birth as of the adoption.
2. If the adoptee should be older than eighteen, he may opt for Spanish nationality by birth within two years following the adoption.

##### Article 20.

1. Persons who are or have been subject to the parental authority of a Spaniard, and those comprised within the last section of articles 17 and 19 shall be entitled to opt for the Spanish nationality.
2. The declaration of option shall be formulated:
  - a) By the legal representative of the person who makes the option where the latter should be younger than fourteen or incapacitated. In this case the option shall require the authorisation of the officer in charge of the Civil Registry of the domicile of the person who makes the declaration, after issuance of an opinion by the Public Prosecutor. Such authorisation shall be granted in the interests of the minor or incapacitated person.
  - b) By the interested party, assisted by his legal representative, if he is older than fourteen or when, in spite of his incapacity, he should be allowed to do so by the incapacitation judgement.
  - c) By the interested party, by himself, if he is emancipated or older than eighteen. The right to exercise the option will expire when he turns twenty, but if he should not be emancipated according to his personal law upon turning eighteen, the period to exercise the option shall be extended until two years after his emancipation.
  - d) By the interested party, by himself, within two years following recovery of full legal capacity. The case where the right to exercise the option should have expired in accordance with section c) shall be excepted therefrom.

## **Article 21.**

- 1.** Spanish nationality shall be acquired by naturalisation, granted discretionally pursuant to Royal Decree, when special circumstances concur in the interested party.
- 2.** Spanish nationality shall also be acquired by residence in Spain, in the conditions provided in the following article, and shall be granted by the Minister of Justice, who may refuse it on reasoned grounds of public policy or national interest.
- 3.** In both cases, the application may be formulated by:
  - a) The interested party who is emancipated or older than eighteen.
  - b) The person older than fourteen assisted by his legal representative.
  - c) The legal representative of a person younger than fourteen.
  - d) The legal representative of the incapacitated person, or the incapacitated person by himself or duly assisted, as results from the incapacitation judgement. In this case and in the former, the legal representative may only formulate the application if he previously obtains an authorisation in accordance with the provisions of letter a) section 2 of the preceding article.
- 4.** The granting of nationality pursuant to naturalisation or residence shall expire after one hundred and eighty days if the interested party does not within such period appear before a competent officer to comply with the requirements provided in article 23.

## **Article 22.**

- 1.** Granting of nationality pursuant to residence shall require ten years' residence. Five years shall be sufficient for persons who have obtained asylum or refugees, and two years for citizens by birth of Latin-American countries, Andorra, the Philippines, Equatorial Guinea or Portugal, or for Sephardic Jews.
- 2.** One year's residence shall be sufficient for:
  - a) A person born within Spanish territory.
  - b) A person who has not exercised his option right in due time.
  - c) A person who has been legally subject to guardianship, custody or care by a Spanish citizen or institution for two consecutive years, even if such situation should persist at the time of the application.
  - d) The person who, at the time of the application, has been married to a Spaniard for one year and is not legally or de facto separated.
  - e) The widow or widower of a Spaniard if, upon the death of the spouse they should not be legally or de facto separated.
  - f) The person born outside of Spain from a father or mother who were originally Spanish.
- 3.** In all cases residence must be legal, ongoing and immediately prior to the application.  
For the purposes of the provisions of letter d) of the preceding section, the spouse cohabiting with a Spanish diplomatic or consular officer credentialed abroad shall be deemed to have legal residence in Spain.
- 4.** The interested party must evidence good civic conduct and a sufficient degree of integration in Spanish society in the proceedings regulated by the Civil Registry legislation.
- 5.** The granting or refusal of nationality pursuant to residence shall be open to contentious administrative appeal.

**Article 23.** The following are common requirements for the validity of the acquisition of Spanish nationality by option, naturalisation or residence:

- a) For the person older than fourteen and capable of issuing a statement by himself to swear or promise fidelity to the King and obedience to the Constitution and the law.
- b) For the same person to declare that he renounces his prior nationality. Nationals of the countries mentioned in section 2 article 24 shall be excepted from this requirement.
- c) For the acquisition to be registered with the Spanish Civil Registry.

#### **Article 24.**

**1.** Emancipated persons habitually resident abroad who voluntarily acquire another nationality or who exclusively use their foreign nationality attributed prior to their emancipation shall lose their Spanish nationality.

**2.** Such loss shall take place after the lapse of three years, counting, respectively, from the acquisition of the foreign nationality or from the emancipation.

Acquisition of the nationality of Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal shall not be sufficient to cause the loss of Spanish nationality by birth.

**3.** In any event, emancipated Spaniards who expressly renounce their Spanish nationality shall lose it if they have another nationality and have their residence abroad.

**4.** Loss of Spanish nationality shall not take place pursuant to the provisions of this rule if Spain should be at war.

#### **Article 25.**

**1.** Spaniards who are not Spanish by birth shall lose their nationality:

a) When for a period of three years they should exclusively use the nationality which they should have declared to have renounced upon acquiring Spanish nationality.

b) When they should voluntarily enter the armed forces or exercise public office in a foreign State against the Government's express prohibition.

**2.** A final judgement holding that the relevant party has incurred in misrepresentation, concealment or fraud in the acquisition of Spanish nationality shall cause such acquisition's being null and void, although no prejudicial effects shall result for third parties in good faith. The action for annulment must be exercised by the Public Prosecutor ex officio or pursuant to a complaint, within a period of fifteen years.

#### **Article 26.**

**1.** A person who has lost his Spanish nationality may recover it by meeting the following requirements:

a) Being a legal resident in Spain. This requirement shall not apply to emigrants or to the children of emigrants. In the remaining cases, it may be waived by the Minister of Justice in the event of exceptional circumstances.

b) Declaring before the officer in charge of the Civil Registry his intention to recover Spanish nationality, and

c) Registering the recovery in the Civil Registry.

**2.** Persons incurring in any of the grounds provided in the preceding article may not recover or acquire, as the case may be, Spanish nationality, without the Government's prior authorisation, to be granted discretionally:

**Article 27.** Foreigners shall enjoy in Spain the same civil rights as Spaniards, save as provided in specific statutes and Treaties.

**Article 28.** Corporations, foundations and associations recognised by the law and domiciled in Spain shall have Spanish nationality, provided that they are legal entities in accordance with the provisions of the present Code.

Associations domiciled abroad shall have in Spain the consideration and rights determined in the treaties or specific statutes.

## TITLE II

### On the birth and extinguishing of civil personality

#### CHAPTER ONE

##### *On natural persons*

**Article 29.** Birth determines personality; but the child conceived shall be deemed already born for all purposes favourable to him, provided that he should be born meeting the conditions expressed in the following article.

**Article 30.** For civil purposes, only the foetus with human appearance that lives for twenty four hours fully separated from the mother's womb shall be deemed to have been born.

**Article 31.** In the event of double births, priority in birth shall entitle the first child born to the rights recognised in the law to the firstborn.

**Article 32.** Civil personality shall be extinguished as a result of death.

**Article 33.** Between two persons called to succeed each other, in the event of doubt as to which of them died first, the person holding that one or the other died first must prove it; in the absence of evidence, they shall be presumed to have died at the same time, and no transfer of rights from one to the other shall take place.

**Article 34.** The provisions of title VIII of the present book shall apply to the presumption of the death of the absentee and its effects.

#### CHAPTER 2°

##### *On legal entities*

**Article 35.** The following shall be legal entities:

**1.** Corporations, associations and foundations of public interest recognised by the law.

Their personality shall begin from the very moment in which they should have been validly incorporated in accordance with the law.

**2.** Associations of private interest, whether civil, commercial or industrial, to which the law grants legal personality independent of that of each member.

**Article 36.** Associations mentioned in number 2 of the preceding article shall be governed by the provisions relating to the partnership contract, depending on the nature thereof.

**Article 37.** The civil capacity of corporations shall be governed by the laws which have created or recognised them; that of associations, by their articles, and that of foundations by their regulations, duly approved by an administrative resolution, where this requirement should be necessary.

**Article 38.** Legal entities may acquire and possess property of all kinds, and contract obligations and exercise civil and criminal actions, in accordance with the laws and internal regulations.

The Church shall be governed in this matter by the provisions of the concordat between both powers, and educational and charitable establishments by the provisions of specific statutes.

**Article 39.** If, as a result of expiration of their legal term, or as a result of the fulfilment of the purpose for which they were created, or of the impossibility of applying to the former the activity and the means available to them, corporations, associations and foundations should cease to operate, their property shall be allocated as provided in the laws, articles of association or foundational articles. In the absence of any prior provision, such property shall be allocated to the performance of analogous purposes in the interests of the region, province or Municipality principally entitled to receive the benefits of the extinguished institutions.

### TITLE III

#### On domicile

**Article 40.** The domicile of natural persons for the purposes of the exercise of civil rights and the performance of civil obligations shall be their place of habitual residence and, as the case may be, their domicile as determined by the Civil Procedural Law.

The domicile of diplomats resident abroad as a result of their post, who enjoy the right of extraterritoriality shall be their last domicile in Spanish territory.

**Article 41.** Where neither the law which created or recognised them or the articles of association or foundational articles should establish the domicile of legal entities, it shall be deemed to be in the place where their legal representation is located, or where they exercise their main institutional functions.

### TITLE IV

#### On marriage

##### CHAPTER ONE

##### *On the promise of marriage*

**Article 42.** The promise of marriage does not give rise to the obligation to marry or to comply with the provisions thereof in the event of failure to perform the marriage.

Any claim purporting compliance thereof shall not be granted leave to proceed.

##### **Article 43.**

Breach of a certain promise of marriage made by a person of legal age or by an emancipated minor, without cause, shall only give rise to the obligation to compensate the other party for expenses made and obligations contracted in consideration of the promised marriage.

This action shall lapse by peremption after one year counting from the date of the refusal to enter into the marriage.

##### CHAPTER 2º

##### *On the requirements of marriage*

##### **Article 44.**

Men and women are entitled to marry in accordance with the provisions of this Code.

Marriage shall have the same requirements and effects when both prospective spouses are of the same or different genders.

**Article 45.** There shall be no marriage without matrimonial consent.  
Any condition, term or mode limiting consent shall be deemed not to have been written.

**Article 46.** The following persons may not marry:

1. Non-emancipated minors.
2. Persons who are already joined in marriage.

**Article 47.** The following persons may also not marry each other:

1. Direct line relatives by consanguinity or adoption.
2. Collateral relatives by consanguinity up to the third degree.
3. Persons sentenced as authors of or accomplices in the murder of the spouse of either of them.

**Article 48.** The Minister of Justice may waive the impediment of murder of the former spouse at the request of one of the parties.

The First Instance Judge may waive, with just cause and at the request of one of the parties, impediments relating to third degree collateral consanguinity and the age impediment for persons older than fourteen. The minor and his parents or carers must be heard in proceedings to waive the age impediment.

A subsequent waiver shall validate the marriage from the date of its performance, where neither party has applied to the court to have it declared null and void.

## CHAPTER 3<sup>o</sup>

### *On the form of performing the marriage*

#### SECTION ONE

##### *General provisions*

**Article 49.** Any Spaniard may marry inside or outside of Spain:

1. Before the Judge, Mayor or public officer provided in this Code.
2. According to the religious form provided in the law.

He may also marry outside of Spain according to the form provided in the law of the place of the marriage ceremony.

**Article 50.** If both prospective spouses should be foreigners, the marriage may be performed in Spain in accordance to the form provided for Spaniards, or in compliance with the form set forth in the personal law applicable to either of them.

#### SECTION 2<sup>a</sup>

##### *On marriage performed before a Judge, Mayor or public officer in their stead*

**Article 51.** The following persons shall be competent to authorise the marriage:

1. The Judge in charge of the Civil Registry and the Mayor of the municipality where the marriage is performed, or the councillor in favour of whom the latter should have delegated.
2. In municipalities where such a Judge should not be in residence, the delegate designated pursuant to applicable regulations.
3. The diplomatic or consular officer in charge of the Civil Registry abroad.

**Article 52.** The following persons may authorise the marriage of persons in danger of death:

- 1.** The Judge in charge of the Civil Registry, the delegate or the Mayor, even if the prospective spouses do not reside in the relevant court district.
- 2.** In the absence of a Judge, for members of the military in military campaigns, the immediate superior Officer or Chief.
- 3.** For marriages performed on board a vessel or aircraft, the Captain or Commander thereof.

Such marriage shall not require the prior creation of a record of the proceedings, but shall require the presence of two witnesses of legal age at the ceremony, save in the event of proven impossibility.

**Article 53.** The validity of the marriage shall not be affected by the incompetence or lack of legitimate appointment of the Judge, Mayor or officer who authorises it, provided that at least one of the spouses should have acted in good faith and the former should exercise their duties publicly.

**Article 54.** In the event of sufficiently proven serious grounds, the Minister of Justice may authorise a secret marriage. In such case, the record of proceedings shall be processed confidentially, without the publication of edicts or bans.

**Article 55.** The record of the marriage may authorise that the prospective spouse who does not reside in the district or district of the authorising Judge, Mayor or officer may enter into the marriage by means of an attorney who has been granted a special power of attorney in an authentic instrument, but the personal attendance of the other spouse shall always be required.

The power of attorney shall determine the person with whom the marriage is to be performed, expressing the personal circumstances necessary to establish his identity.

The power of attorney shall be terminated as a result of revocation by the grantor, resignation of the attorney or the death of either of them. In the event of revocation by the grantor, his statement in an authentic instrument prior to the performance of the marriage shall be sufficient for these purposes. Notice of such revocation shall be immediately given to the authorising Judge, Mayor or officer.

**Article 56.** Persons wishing to marry must previously evidence, in a record of proceedings processed in accordance with the Civil Registry legislation, that they meet the capacity requirements set forth in this Code. If either of the prospective spouses should be affected by mental deficiencies or anomalies, a medical opinion on his ability to give consent shall be required.

**Article 57.** The marriage must be performed before the Judge, Mayor or officer corresponding to the domicile of either prospective spouse, and two witnesses of legal age.

Consent may also be given, by delegation of the officer in charge of the record of the proceedings, either at the request of the prospective spouses or ex officio, before the Judge, Mayor or officer of another location.

**Article 58.** The Judge, Mayor or officer, after reading articles 66, 67 and 68 hereof, shall ask each of the prospective spouses whether they consent to marry and effectively marry in such act, and, both of them answering in the affirmative, shall declare them joined in matrimony and shall extend the relevant entry or certificate.

## SECTION 3<sup>a</sup>

### *On marriage performed in religious form*

**Article 59.** Matrimonial consent may be given in the form provided by a registered religious confession, in the terms agreed with the State or, in the absence thereof, in the terms provided by State legislation.



**Article 60.** A marriage performed in accordance with the provisions of Canon Law or in any of the religious forms provided in the preceding article shall have civil effect. The provisions of the following chapter shall apply as relates to the full recognition of such effects.

#### CHAPTER 4°

##### *On registration of the marriage in the Civil Registry*

**Article 61.** Marriage shall have civil effects from the time of its performance.

The full recognition thereof shall require registration of the marriage in the Civil Registry.

A marriage which has not been registered shall not be prejudicial to the rights acquired in good faith by third parties.

**Article 62.** The Judge, Mayor or officer before whom the marriage is performed shall, immediately after its performance, make the corresponding entry or certificate, with his signature and that of the spouses and witnesses.

Likewise, after having made the entry or issued the certificate, the Judge, Mayor or officer shall deliver to each spouse a document evidencing the performance of the marriage.

**Article 63.** Registration of the marriage performed in Spain in religious form shall take place by the mere filing of the certification issued by the respective Church or confession, which must express the circumstances required by the Civil Registry legislation.

Registration shall be refused where the documents submitted or the entries in the Registry should show that the marriage does not meet the requirements for its validity provided in this title.

**Article 64.** Registration in the special book carried by the Central Civil Registry shall suffice to recognise a secret marriage, but such marriage shall not be prejudicial to rights acquired by third parties in good faith until publication thereof in the ordinary Civil Registry.

**Article 65.** Save for the provisions of article 63, in all other cases where the marriage should have been performed without processing the relevant record of the proceedings, the Judge or officer in charge of the Registry must ascertain whether the legal requirements for its performance are met prior to registration thereof.

#### CHAPTER 5°

##### *On the rights and duties of the spouses*

**Article 66.** The spouses are equal in rights and duties.

**Article 67.** The spouses must respect and assist each other and act in the family interest.

**Article 68.** The spouses are obliged to live together, to be faithful to one another and to come to one another's aid. They must, furthermore, share domestic responsibilities and the care and attendance of parents and descendants and other dependents in their charge.

**Article 69.** It shall be presumed, unless there is evidence to the contrary, that the spouses live together.

**Article 70.** The spouses shall set the marital domicile by common consent and any discrepancy shall be resolved by the Judge, taking into account the family interest.

**Article 71.** Neither spouse may attribute to himself the representation of the other unless it is conferred.

**Article 72.** (No content)

## CHAPTER 6°

### *On the nullity of the marriage*

**Article 73.** The marriage shall be null and void, whatever the form of its performance:

- 1.** Marriage performed without matrimonial consent.
- 2.** Marriage performed between the persons mentioned in articles 46 and 47, save in the event of waiver in accordance with article 48.
- 3.** Marriage performed without the intervention of the Judge, Mayor or officer before whom it is to be performed, or without the presence of witnesses.
- 4.** Marriage performed as a result of error as to the identity of the other spouse, or such personal qualities which, as a result of their importance, should have been decisive in the giving of consent.
- 5.** Marriage performed under duress or serious fear.

**Article 74.** The action for annulment of the marriage shall correspond to the spouses, to the Public Prosecutor or to any person with a direct and legitimate interest therein, save as provided in the following articles.

**Article 75.** If the grounds for nullity should be age, while the spouse remains underage the action may only be exercised by his parents, guardians or carers and, in any case, by the Public Prosecutor.

On coming of age, the action may only be exercised by the spouse who was underage at the time, unless the spouses should have lived together during one year after he came of age.

**Article 76.** In cases of error, duress or serious fear, the action for annulment may only be exercised by the spouse who suffered the defect of consent.

The action shall lapse by peremption and the marriage shall be validated if the spouses should have lived together for a year after the error should have disappeared, or the duress or the grounds for fear should have ceased.

**Article 77.** (No content)

**Article 78.** The judge shall not decree the annulment of a marriage as a result of a defect of form, where at least one of the spouses entered into it in good faith, save for the provisions of article 73 number 3.

**Article 79.** The declaration of the marriage being null and void shall not invalidate any effects already occurred in respect of the children and the spouse or spouses who acted in good faith.

Good faith is presumed.

**Article 80**

Resolutions issued by Ecclesiastical Courts relating to the annulment of a canonical marriage, or the Pope's decisions relating to ratified and non-consummated marriages shall be effective under Civil law, at the request of either party, if they are declared to adjust to the Law of the State in a resolution issued by the competent civil Judge in accordance with the conditions mentioned in article 954 of the Civil Procedural Law.

## CHAPTER 7°

### *On separation*

**Article 81.** Whatever the form of performance of the marriage, judicial separation shall be decreed:

**1.** At the request of both spouses or of one with the consent of the other, after the lapse of three months from the performance of the marriage. The claimant must necessarily attach the proposal of settlement agreement, in accordance with article 90 of this Code.

**2.** At the request of one of the spouses, after the lapse of three months from the performance of the marriage. The lapse of this period shall not be required to file the claim when there is evidence of the existence of risk to the life, physical integrity, freedom, moral integrity or sexual liberty and integrity of the spouse filing the claim or the children in common or any member of the marriage.

The claim shall attach a reasoned proposal of the measures which are to regulate the effects of the separation.

**Article 82.** (No content)

**Article 83.** The separation judgement gives rise to suspension of the life in common of the married spouses, and ends the possibility of binding the property of the other spouse in the exercise of domestic authority.

**Article 84.** Reconciliation shall end separation proceedings, and shall render without subsequent force and effect the matters resolved therein, but both spouses must separately make the Judge who hears or has heard the case aware of such reconciliation.

Notwithstanding the foregoing, any measures adopted in connection with the children shall be maintained or amended by court resolution, in the event of a just cause which justifies them.

## CHAPTER 8°

### *On the dissolution of the marriage*

**Article 85.** The marriage shall be dissolved, whatever the form and time of its performance, by the death or the declaration of death of one of the spouses, and by divorce.

**Article 86.** Divorce shall be decreed by the court, whatever the form of performance of the marriage, at the request of one of the spouses, of both or of one with the consent of the other, when the requirements and circumstances of article 81 are met.

**Article 87.** (No content)

**Article 88.** The divorce action shall be extinguished as a result of the death of either spouse and by reconciliation, which must be express if it takes place after filing the claim.

Reconciliation subsequent to the divorce shall have no legal effect, although the divorcees may marry again.

**Article 89.** Dissolution of the marriage by divorce may only take place by means of judgement declaring the divorce and shall be effective from the judgement's becoming final. It shall not be prejudicial to third parties in good faith until after registration thereof with the Civil Registry.

## CHAPTER 9°

### *On effects common to annulment, separation and divorce*

**Article 90.** The settlement agreement mentioned in articles 81 and 86 of this Code must contain, at least the following items:

- a) Care of the children subject to the parental authority of both spouses, the exercise thereof and, as the case may be, the schedule of communications and stays of the children with the parent who does not usually live with them.
- b) If deemed necessary, the schedule of visits and communications between grandchildren and grandparents, always taking into account the interests of the former.
- c) Attribution of the use of the family home and appurtenances.
- d) Contribution to the expenses of the marriage and support, and the basis on which it is to be updated, and security thereof, the case may be.
- e) Liquidation, where applicable, of the marriage property regime.
- f) Allowance to be paid, as the case may be, in accordance with article 97, by one of the spouses.

Agreements between the spouses adopted to regulate the consequences of the annulment, separation or divorce shall be approved by the judge, unless they are detrimental to the children or seriously prejudicial to one of the spouses. If the parties propose a visit and communications schedule between grandchildren and grandparents, the judge may approve it after hearing the grandparents, at which hearing the grandparents must give their consent thereto. Rejection of the agreements must be made by a reasoned resolution, and, in this case, the spouses must submit a new proposal for the judge's consideration, for his approval, where applicable. The agreements may be enforced by summary proceedings as of their judicial approval.

The measures adopted by the Judge in the absence of an agreement, or those agreed between the spouses, may be amended by the Judge or by a new settlement agreement, in the event of a substantial alteration of the circumstances.

The Judge may set any real or personal security required for the performance of the agreement.

**Article 91.** In annulment, separation or divorce judgements or the enforcement thereof, the Judge, in the absence of an agreement between the spouses or non-approval thereof, shall determine, in accordance with the provisions of the following articles, any measures which are to replace those already adopted previously in connection with the children, the family home, marital expenses e, liquidation of the marriage property regime and any respective precautions or security, establishing applicable measures if none should have been adopted in respect thereof. These measures may be amended in the event of substantial alteration of the circumstances.

### **Article 92**

- 1.** Separation, annulment and divorce shall not exonerate parents from their obligations to their children.
- 2.** When the Judge is to adopt any measure relating to custody, care and education of underage children, he shall ensure compliance with their right to be heard.
- 3.** The judgement shall order the deprivation of parental authority when grounds for this should be revealed in the proceedings.
- 4.** The parents may agree in the settlement agreement, or the Judge may decide, for the benefit of the children, that parental authority be exercised in whole or in part by one of the spouses.
- 5.** Shared care and custody of the children shall be decreed where the parents should request it in the settlement agreement proposal or where both of them should agree on this during the proceedings. The Judge, in decreeing joint custody and after duly motivating his resolution, shall adopt the necessary precautions for the effective compliance of the agreed custody regime, trying not to separate siblings.

**6.** In any event, after decreeing the care and custody regime, the Judge must ask the opinion of the Public Prosecutor and hear minors who have sufficient judgement, where this is deemed necessary *ex officio* or at the request of the Public Prosecutor, the parties or members of the Court Technical Team, or the minor himself, and evaluate the parties' allegations at the hearing and the evidence practised therein, and the relationship between the parents themselves and with their children to determine the suitability of the custody regime.

**7.** No joint custody shall be granted when either parent should be subject to criminal proceedings as a result of an attempt against the life, physical integrity, freedom, moral integrity or sexual liberty and integrity of the other spouse or the children who live with both of them. Neither shall it apply where the Judge should observe, from the parties' allegations and the evidenced practiced, that there is well-founded circumstantial evidence of domestic violence.

**8.** Exceptionally, even in the absence of the circumstances provided in section five of this article, the Judge, at the request of one of the parties, with the favourable report of the Public Prosecutor, may decree the shared care and custody based on the argument that only thus is the minor's higher interest suitably protected.

**9.** The Judge, before adopting any of the decisions mentioned in the preceding paragraphs, *ex officio* or *ex parte*, may ask for the opinion of duly qualified specialists relating to the suitability of the form of exercise of parental authority and the minors' custody regime.

**Article 93.** The Judge shall in any event determine each parent's contribution to pay child support and shall adopt convenient measures to ensure the effectiveness and suitability of the payments to economic circumstances and to the needs of the children from time to time.

If children who are of legal age or emancipated but have no own resources should live in the family home, the Judge, in the same resolution, shall set any support which may be due in accordance with articles 142 et seq. of this Code.

**Article 94.** The parent who does not live with his underage or incapacitated children shall be entitled to visit them, communicate with them and have them in his company. The Judge shall determine the time, manner and place to exercise visitation rights, which may be limited or suspended in the event that serious circumstances should advise it or of serious and repeated breach of the duties imposed by the judicial resolution.

Likewise, the Judge may determine, after hearing the parents and grandparents, who must give their consent, rights of communication and visitation between grandparents and grandchildren, in accordance with article 160 of this Code, always keeping in mind the interests of the minor.

**Article 95.** The final judgement shall give rise to the dissolution of the marriage property regime, as relates to the marriage property.

If the judgement of annulment should declare the bad faith of one spouse only, the spouse who has acted in good faith may choose to apply the provisions relating to the participation regime to the liquidation of the marriage property regime, and the spouse acting in bad faith shall not be entitled to participate in the gains obtained by his consort.

**Article 96.** In the absence of an agreement between the spouses approved by the Judge, use of the family home and the objects of ordinary use therein shall correspond to the children and to the spouse in whose company they remain.

Where some children remain in the company of one spouse and the rest with the other, the Judge shall resolve as deemed fit.

In the absence of children, it may be resolved that the use of such property for the prudential time thus provided, shall correspond to the non-owner spouse, provided that, under the circumstances, this should be advisable, and that such spouse's interest should in greater need of protection.

The consent of both parties or, as the case may be, judicial authorisation shall be required to dispose of the home and property mentioned above when their use should correspond to the non-owner spouse.

**Article 97.** The spouse for whom the separation or divorce should give rise to an economic imbalance in relation with the other's position, involving a deterioration of his situation prior to the marriage, shall be entitled to compensation, which may consist of a temporary or indefinite allowance or a lump sum settlement, as determined in the settlement agreement or in the judgement

In the absence of an agreement between the spouses, the Judge shall determine, pursuant to a judgement, the amount thereof, taking into account the following circumstances:

1. Agreements reached by the spouses.
2. Age and state of health.
3. Professional qualifications and likelihood of getting a job.
4. Past and future dedication to the family.
5. Collaboration by working in the other spouse's commercial, industrial or professional activities.
6. The duration of the marriage and of their marital cohabitation.
7. The possible loss of pension rights.
8. Economic wealth and resources and the needs of each spouse.

The judicial resolution shall set the bases to update the allowance and any guarantees to ensure its effectiveness.

**Article 98.** The spouse in good faith whose marriage has been declared null and void shall be entitled to compensation if there has been marital cohabitation, attending to the circumstances provided in article 97.

**Article 99.** At any time the parties may agree to replace the allowance set by the Judge in accordance with article 97 by the constitution of a life annuity, usufruct over certain property or payment of a capital sum in the form of property or cash.

**Article 100.** After the setting of the allowance and the bases to update it in the separation or divorce judgement, it may only be amended as a result of material alterations in the fortune of one or the other spouse.

**Article 101.** The right to receive the allowance shall be extinguished as a result of the removal of the cause which motivated it, or as a result of the creditor's marrying again or living with another person in a situation akin to marriage. The right to receive the allowance shall not be extinguished by the mere fact of the debtor's death. Notwithstanding the foregoing, the latter's heirs may request the Judge to reduce or suppress it if the estate cannot satisfy the requirements of the debt or if it should affect their right to a forced share.

## CHAPTER 10º

### *On interim measures as a result of the claim for annulment, separation or divorce*

**Article 102.** Upon admission of the claim for annulment, separation or divorce, the following effects take place by operation of law:

1. The spouses may live separately and the presumption of marital cohabitation shall cease.
2. Consents and powers of attorney granted by either spouse to the other are revoked.

Likewise, save as otherwise agreed, the possibility of binding the exclusive property of the other spouse in the exercise of domestic powers shall cease.

For these purposes, either party may request the relevant note to be made in the Civil Registry and, as the case may be, in the Property and Commercial Registries.

**Article 103.** Upon admission of the claim, the Judge, in the absence of a judicially approved agreement between both spouses shall adopt, after hearing the latter, the following measures:

**1.** To determine, in the interests of the children, with which spouse the children subject to the parental authority of both of them are to remain, and to make the appropriate decisions in accordance with the provisions of this Code and, in particular, the manner in which the spouse who does not exercise the custody and care of the children may comply with his obligation of watching over them, and the time, form and place in which he may communicate with them and have them in his company.

Exceptionally, children may be entrusted to grandparents, relatives or other persons who consent to it, and, in the absence thereof, to a suitable institution, conferring on the latter the relevant guardianship duties, which they shall exercise under the judge's authority.

Where there should be a risk of abduction of the minor by one of the spouses or by third parties, the necessary measures may be adopted and, in particular, the following:

- a) Prohibition to exit national territory, save with a prior judicial authorisation.
- b) Prohibition to issue a passport to the minor, or removal thereof if one should already have been issued.
- c) Submission of any change of domicile of the minor to prior judicial authorisation.

**2.** To determine, taking into account the family interest most requiring protection, which of the spouses shall continue using the family home and, likewise, after making an inventory thereof, which goods or objects pertaining to the appurtenances are to continue in the home and which are to be taken away by the other spouse, and the appropriate precautionary measures to preserve the rights of each of them.

**3.** To set the contribution of each spouse to the marital expenses, including, if applicable, court costs, setting the basis to update any amounts and set any security, deposits, with holdings or other convenient precautionary measures, to ensure the enforcement of the amounts payable as a result by one spouse to the other.

The work performed by one of the spouses to attend to the children in common subject to parental authority shall be considered a contribution to such expenses.

**4.** To determine, attending to the circumstances, any common property which, after making an inventory, is to be delivered to one spouse or the other, and the rules to be observed in the Administration and disposal thereof, and in the mandatory rendering of accounts relating to common property or the part thereof received thereby, and any required thereafter.

**5.** To determine, as the case may be, the arrangements for the administration and disposal of any exclusive property which, as a result of marriage articles or pursuant to a public deed, should be especially earmarked to pay the marital expenses.

**Article 104.** The spouse proposing to file a claim for annulment, separation or divorce may request the effects and measures mentioned in the two preceding articles.

Such effects and measures shall only subsist if, within the following 30 days counting from initial adoption thereof, the relevant claim should be filed before the competent Judge or Court.

**Article 105.** The spouse who leaves the marital home for a just cause and within 30 days files the claim or request mentioned in the preceding articles shall not be in breach of the duty to cohabit.

**Article 106.** The effects and measures provided in this chapter shall terminate, in any event, upon replacement thereof by those provided in the judgement or in the event of termination of the proceedings in any other way.

Revocation of any consents and powers of attorney shall be deemed to be final.



## CHAPTER 11°

### *Law applicable to nullity, separation and divorce*

#### **Article 107.**

**1.** The nullity of the marriage and its effects shall be determined in accordance with the law applicable to its performance.

**2.** Separation and divorce shall be governed either by the common national law of the spouses at the time of filing the claim; in the absence of a common nationality, by the law of the common habitual residence of the spouses at such time and, in the absence thereof, by the law of the last common habitual residence of the spouses, if one of the spouses should still be a resident in such State.

In any event, Spanish law shall apply when one of the spouses is Spanish or a habitual resident in Spain:

- a) If none of the laws mentioned above should apply.
- b) If both spouses, or one with the consent of the other, should request separation or divorce in the claim submitted before a Spanish court.
- c) If the laws mentioned in the first paragraph of this section should not acknowledge separation or divorce, or should do it in a manner which is discriminatory or contrary to public policy.

## TITLE V

### **On paternity and filiation**

#### CHAPTER ONE

##### *On filiation and its effects*

**Article 108.** Filiation may be by birth and by adoption. Filiation by birth may be matrimonial and non-matrimonial. It is matrimonial when the mother and father are married to each other.

Matrimonial and non-matrimonial filiation, and adoptive filiation, shall have the same effects, in accordance with the provisions of the present Code.

**Article 109.** Filiation determines surnames, in accordance with the provisions of the law.

Filiation is determined by both lines, the father and mother may decide by common consent the order of transfer of their respective first surname, prior to registration. If this option is not exercised, the provisions of the law shall apply. The order of surnames registered for the oldest child shall govern subsequent registrations of the birth of his siblings from the same union.

The child, upon coming of age, may request to alter the order of the surnames.

**Article 110.** The father and mother, even if they do not hold parental authority, are obliged to care for their underage children and to provide them with support.

**Article 111.** The parent who fulfils the following circumstances shall be excluded from parental authority and other guardianship duties, and shall not be entitled to any rights by operation of Law in respect of the child or his descendants, or to their estates:

- 1.** If he has been sentenced as a result of the relations resulting in the conception, according to a final criminal judgement.
- 2.** If filiation was determined judicially against his opposition.

In both cases, the child shall not bear the surname of the parent in question unless he or his legal representative should request it.

These restrictions shall cease to have effect by determination of the child's legal representative, approved by the court, or by the will of the child himself upon reaching full legal capacity. Obligations to look after children and to support them shall subsist notwithstanding the foregoing.

## CHAPTER 2°

### *On determination and evidence of filiation*

#### SECTION ONE

##### *General provisions*

**Article 112.** Filiation shall be effective from the moment on which it takes place. Its legal determination shall have retroactive effect, provided that such retroactivity is compatible with the nature of such effects and that the Law does not provide otherwise. In any event, acts executed on behalf of the underage or incapable child by his legal representative before determination of filiation shall remain valid.

**Article 113.** Filiation shall be evidenced by registration in the Civil Registry, by the document or judgement which legally determines it, by the matrimonial presumption of paternity and, in the absence of the preceding means, by possession of status. The provisions of the Civil Registry Law shall apply to the admission of evidence contrary to the registered entry. The determination of filiation shall not be effective where another contradictory filiation should be on record.

**Article 114.** Filiation entries may be rectified in accordance with the Civil Registry Law, without prejudice to the specific provisions in the present title on actions to challenge filiation. Likewise, entries which contradict the facts declared proven by a criminal judgement may also be rectified at any time.

#### SECTION 2<sup>a</sup>

##### *On determination of matrimonial filiation*

**Article 115.** Maternal and paternal matrimonial filiation shall be legally determined:

1. By registration of the birth together with that of the parents' marriage.
2. By a final judgement.

**Article 116.** Children born after the marriage is performed and before three hundred days after the dissolution thereof, or after the legal or de facto separation of the spouses, shall be presumed to be children of the husband.

**Article 117.** If the child should be born within 180 days following performance of the marriage, the husband may destroy the presumption by declaring otherwise in a public instrument executed within six months of his becoming aware of the birth. The cases where he should have expressly or implicitly acknowledged his paternity, or should have been aware of the woman's pregnancy prior to performing the marriage shall be excepted from the foregoing, save when, in the latter case, such declaration in a public instrument should have been executed, with the consent of both spouses, prior to the marriage or subsequently thereto, within six months following the birth of the child.

**Article 118.** Even in the absence of the presumption of paternity of her husband as a result of the spouses' legal or de facto separation, filiation may be registered as matrimonial with the consent of both.

**Article 119.** Filiation shall become matrimonial from the date of the marriage of the parents, when the latter should take place subsequently to the birth of the child, provided that the fact of the filiation should be legally determined in accordance with the provisions of the following section.

The provisions of the preceding paragraph shall, as the case may be, benefit the descendants of the deceased child.

### SECTION 3<sup>a</sup>

#### *On the determination of non-matrimonial filiation*

**Article 120.** Non-matrimonial filiation shall be legally determined:

- 1.** By recognition before the officer in charge of the Civil Registry, in a will or in another public document.
- 2.** By resolution issued in proceedings processed in accordance with the Civil Registry legislation.
- 3.** By final judgement.
- 4.** In respect of the mother, where maternal filiation should be provided in the registration of birth performed within the requisite period, in accordance with the provisions of the Civil Registry Law.

**Article 121.** Recognition made by incapable persons or persons who cannot marry by reason of their age shall require judicial approval, after hearing the Public Prosecutor, to be valid.

**Article 122.** When a parent should recognise a child separately, he shall not be entitled to declare the identity of the other parent therein, unless this should already be legally determined.

**Article 123.** Recognition of a child who is of legal age shall not be effective unless the latter's express or implied consent is obtained.

**Article 124.** The effectiveness of recognition by a minor or incapable person shall require the express consent of his legal representative or judicial approval, after hearing the Public Prosecutor, and of the legally recognised parent.

No consent or approval shall be necessary if recognition should have been made by will or within the period provided to register the birth. The registration of paternity thus practised may be suspended at the mere request of the mother during the year following the birth. If the father should request confirmation of the entry, judicial approval, after hearing the Public Prosecutor, will be required.

**Article 125.** When the minor's or incapable person's parents should be siblings or consanguineous relatives in direct line, upon legal determination of filiation in respect of one, such filiation may only be legally determined in respect of the other prior judicial authorisation, which shall be granted, after hearing the Public Prosecutor, when it should be in the interest of the minor or incapable person.

When the latter should reach full capacity, he may, pursuant to statement in a public instrument, invalidate this last determination if he should not have consented to it.

**Article 126.** Recognition of a child already deceased shall only be effective if his descendants should consent to it, by themselves or by means of their legal representatives.

## CHAPTER 3°

### *On filiation actions*

#### SECTION ONE

##### *General provisions*

**Article 127 to 130.** (Repealed)

#### SECTION 2<sup>a</sup>

##### *On claims*

**Article 131.** Any person with a legitimate interest shall be entitled to claim declaration of a filiation manifested by constant possession of status.

The case where the claimed filiation should contradict another filiation legally determined shall be excepted therefrom.

**Article 132.** In the absence of the corresponding possession of status, the claim of matrimonial filiation, which shall not be subject to a statute of limitations, corresponds to the father, the mother or the child.

If the child should die before the lapse of four years from his reaching full capacity, or during the year following discovery of the evidence on which the claim should be based, the action shall pass to his heirs for the time required to complete such periods.

**Article 133.** *The action to claim non-matrimonial filiation, in the absence of the respective possession of status, shall correspond to the child during his whole life.*

If the child should die before the lapse of four years from his reaching full capacity, or during the year following discovery of the evidence on which the claim should be based, the action shall pass to his heirs for the time required to complete such periods.

**Article 134.** Exercise of the claim by the child or the parent, in accordance with the preceding articles, shall in any event allow the challenging of contradictory filiation.

**Article 135.** (abrogated)

#### SECTION 3<sup>a</sup>

##### *On contesting paternity*

**Article 136.** *The husband may exercise the action to contest paternity within one year counting from registration of the filiation with the Civil Registry. Notwithstanding the foregoing, such periods shall not begin to count while the husband is unawares the birth.*

If the husband should die before the lapse of the period provided in the preceding paragraph, the action shall correspond to each heir for the time remaining to complete such period.

If the husband should die without being aware of the birth, the year shall count from the date on which the heir becomes aware of it.

**Article 137.** Paternity may be contested by the child during the year following registration of the filiation. If he should be underage or incapable, the period shall count from his coming of age or reaching full legal capacity. Exercise of the action on behalf of the child who is underage or incapacitated shall likewise correspond, during the year following registration of the filiation, to the mother holding parental authority, or to the Public Prosecutor

If possession of status of matrimonial filiation should be absent from family relations, the claim may be filed at any time by the child or his heirs.

**Article 138.** The recognitions which determine matrimonial filiation in accordance with the Law may be contested as a result of a defect of consent, in accordance with the provisions of article 141. The contest of paternity for other causes shall be governed by the rules contained in this section.

**Article 139.** A woman may contest her maternity by justifying the simulation of the birth, or that the child's identity is false.

**Article 140.** If possession of status should be absent from family relations, non-matrimonial paternal or maternal filiation may be contested by those to whom it is prejudicial.

In the event of existence of possession of status, the contesting action shall correspond to the person who appears as child or parent, and to those who may be affected by the filiation as forced heirs. The action shall lapse by peremption after four years from the date on which the child, after registration of the filiation, should have the corresponding possession of status.

Children shall in any event be entitled to exercise the action for one year after having reached full legal capacity.

**Article 141.** The action to contest the recognition of a child made under error, duress or intimidation shall correspond to the person who granted such recognition. The action shall lapse by peremption after one year from such recognition or from the time in which the defect of consent ceased, and may be exercised or continued by the latter's heirs, if he should have deceased, before the lapse of one year.

## TITLE VI

### On support between relatives

**Article 142.** Support shall be deemed to mean everything which is indispensable for food, shelter, dress and medical assistance.

Support shall also comprise education and instruction of the recipient of support while he is underage and even thereafter, when he has not finished his training for a cause not attributable to him.

Support shall include pregnancy and delivery expenses, if not otherwise covered.

**Article 143.** The following persons shall be mutually obliged to give each other support with the scope provided in the preceding article:

1. Spouses.
2. Ascendants and descendants.

Siblings shall only owe one another basic living needs, when needed for any reason not attributable to the recipient of support; these shall extend, as the case may be, to the support required for their education.

**Article 144.** The claim for support, where applicable and where two or more persons should be obliged to provide it shall be made in the following order:

1. To the spouse.
2. To descendants in the nearest degree.
3. To ascendants, also in the nearest degree.
4. To siblings, provided that uterine or consanguine siblings shall be obliged in the last place.

Degree between descendants and ascendants shall be regulated by the order in which they are called to intestate succession of the person entitled to support.

**Article 145.** Where the obligation to provide support should fall on two or more persons, payment of the allowance shall be shared between them in proportion to their respective wealth.

Notwithstanding the foregoing, in case of urgent need and as a result of special circumstances, the Judge may oblige a single one of them to provide it provisionally, without prejudice to his rights to claim from the remaining obligors the part which corresponds to them.

When two or more recipient of supports should claim support at the same time from the same person legally obliged to provide them, and such person should not have sufficient wealth to attend to all of them, the order provided in the preceding article shall be followed, unless the recipient of supports should be the spouse and a child subject to parental authority, in which case the latter shall be preferred over the former.

**Article 146.** The amount of the support shall be proportional to the estate or resources of the person who provides it and the needs of the person receiving it.

**Article 147.** Support, in the cases mentioned in the preceding article, shall be proportionally reduced or increased according to the increase or reduction in the needs of the recipient of support and the wealth of the person obliged to satisfy it.

**Article 148.** The obligation to provide support shall be payable from the time on which the person entitled to receive them should need them to subsist; but they shall not be paid until after the date on which the relevant claim should be filed.

Payment shall be verified monthly in advance and, upon the death of the recipient of support, his heirs shall not be obliged to return any amounts received by the latter in advance.

The Judge, at the request of the recipient of support or of the Public Prosecutor, shall issue, on an urgent basis, the relevant precautionary measures to ensure payment of the advances made by a public Entity or by another person, and to provide for future needs.

**Article 149.** The person obliged to provide support may, at his discretion, satisfy it either by paying the allowance set, or receiving and keeping in his own home the person entitled to receive it.

This choice shall not be possible to the extent that it contradicts the cohabitation arrangements provided under applicable law or by judicial resolution for the recipient of support. It may also be rejected in the event of just cause or where it should be prejudicial to the interests of the underage recipient of support.

**Article 150.** The obligation to provide support shall cease with the death of the obligor, even if he should provide it in compliance with a final judgement.

**Article 151.** The right to receive support cannot be waived or transferred to a third party. Neither may it be offset against the amounts owed by the recipient of support to the person obliged to provide it.

However, outstanding support allowances may be subject to set-off and waived, and the right to claim them may be transferred for valuable consideration or as a gift.

**Article 152.** The obligation to provide support shall also cease:

1. By the death of the recipient of support.

- 2.** When the wealth of the person obliged to provide it should have been reduced to a point where he is unable to satisfy it without neglecting his own needs and those of his family
- 3.** When the recipient of support is able to carry out a trade, profession or industry, or has obtained a position or improved in wealth, so that the support allowance is no longer necessary for his subsistence.
- 4.** When the recipient of support, whether or not a forced heir, should have committed any offence giving rise to disinheritance.
- 5.** Where the recipient of support is a descendant of the person obliged to provide support, and the latter's need should arise from his bad conduct or lack of application at work, while this cause subsists.

**Article 153.** The preceding provisions shall apply to the remaining cases where, pursuant to this Code, to a will or to an agreement, a person should be entitled to receive support, save as otherwise agreed, ordered by the testator or provided by the law for the relevant special case.

## TITLE VII

### On parent-child relations

#### CHAPTER ONE

##### *General provisions*

**Article 154.** Non-emancipated children shall be under the parents' parental authority. Parental authority shall be exercised always for the benefit of the children, according to their personality, and respecting their physical and psychological integrity.

This authority comprises the following duties and powers:

- 1.** To look after them, to have them in their company, feed them, educate them and provide them with a comprehensive upbringing.
- 2.** To represent them and to manage their property.

If the children should have sufficient judgement, they must be heard always before adopting decisions that affect them.

Parents may, in the exercise of their powers, request the assistance of the authorities.

**Article 155.** Children must:

- 1.** Obey their parents while they remain under their parental authority and always respect them.
- 2.** Equitably contribute, according to their possibilities, to the discharge of family expenses while they live with them.

**Article 156.** Parental authority shall be exercised jointly by both parents, or by one of them with the express or implied consent of the other. Acts performed by one of them according to social practice and circumstances or in situations of urgent need shall be valid.

In the event of disagreement, either of them may appear before the Judge, who, after hearing both of them and the child, if he should have sufficient judgement and, as the case may be, if he should be older than twelve, shall confer without further recourse the ability to decide to the father or the mother. In the event of repeated disagreement, or if there should be any other cause which severely hinders the exercise of parental authority, he may confer it in whole or in part to one of the parents, or distribute duties between them. This measure shall remain in force during the period provided, which may never exceed two years.

In the cases provided in the preceding paragraphs, in respect of third parties in good faith, each parent shall be presumed to act in the ordinary exercise parental authority with the consent of the other.



In the absence thereof, or as a result of the absence, incapacity or impossibility of one of the parents, parental authority shall be exclusively exercised by the other.

If the parents should live separately, parental authority shall be exercised by the parent with whom the child lives. Notwithstanding the foregoing, the Judge, at the duly justified request of the other parent, may, in the interests of the child, confer parental authority to the applicant, to be exercised jointly with the other parent, or distribute between the father and the mother the duties inherent to its exercise.

**Article 157.** The non-emancipated minor shall exercise parental authority over his children with the assistance of his parents and, in the absence thereof, his guardian; in the event of disagreement or impossibility, with that of the Judge.

**Article 158.** The Judge, ex officio or at the request of the child, of any relative or of the Public Prosecutor, shall order:

1. Suitable measures to ensure the provision of support, and to provide for the future needs of the child by his parents, in the event of breach of such duty.
2. Adequate provisions to prevent harmful disturbance to the children in cases of change of the holder of custody.
3. Necessary measures to prevent the abduction of underage children by one of the parents or by third parties and, in particular, the following:
  - a) Prohibition to exit national territory, save with a prior judicial authorisation.
  - b) Prohibition to issue a passport to the minor, or removal thereof if one should already have been issued.
  - c) Submission to prior judicial authorisation of any change of domicile of the minor.
4. Generally, other provisions deemed suitable, to remove the minor from danger or to prevent any damages to him.

All these measures may be adopted within any civil or criminal proceedings, or in voluntary jurisdiction proceedings.

**Article 159.** If the parents live separately and are unable to decide by common consent, the Judge shall decide, always for the benefit of the children, in the custody of which parent the underage children are to remain. The Judge, before taking this measure, shall hear the children who have sufficient judgement and, in any event, those older than twelve.

**Article 160.** The parents, even if they do not exercise parental authority, are entitled to a relationship with their underage children, except with those adopted by another, in accordance with the provisions of the judicial resolution.

Personal relationships between the child and his grandparents and other relatives and close friends may not be prevented without just cause.

In the event of opposition, the Judge, at the request of the minor, his grandparents, relatives or close friends, shall decide, attending to the circumstances. He must especially ensure that the measures which may be set to favour relations between grandparents and grandchildren do not enable the infringement of judicial resolutions restricting or suspending relations between the minors and one of the parents.

**Article 161.** In the case of a minor in foster care, the right of his parents, grandparents and other relatives to visit him and have a relationship with him may be regulated or suspended by the Judge, attending to the circumstances and in the interests of the minor.

## CHAPTER 2°

### *Legal representation of children*

**Article 162.** Parents who hold parental authority shall have the legal representation of their underage non-emancipated children.

The following cases shall be excepted:

- 1.** Acts relating to rights of personality or others which the child, in accordance with the Law and to his maturity, may perform by himself.
- 2.** Those where there is a conflict of interest between the parent and the child.
- 3.** Those relating to property which is excluded from the parents' administration.

Entering into contracts which oblige the child to perform personal services shall require the child's consent, if he should have sufficient judgement, without prejudice to the provisions of article 158.

**Article 163.** Whenever, in any affair, the father's and mother's interest should be opposed to that of their non-emancipated children, the latter shall be appointed a defender who shall represent them in court and out of court. This appointment shall also take place when the parents' interest is opposed to that of the underage emancipated child whose capacity they are required to supplement.

If the conflict of interest should exist only in respect of one of the parents, the other shall be entitled to represent the minor or supplement his capacity by operation of Law and without the need for a specific appointment.

## CHAPTER 3°

### *On children's property and its administration*

**Article 164.** Parents shall administer their children's property with the same diligence as they do their own, in compliance with the general obligations applicable to any administrator, and with the specific obligations set forth in the Mortgage Law.

The following property shall be excepted from parental administration:

- 1.** Property acquired as a gift, where the grantor should have ordered it expressly. The will of the transferor on the administration of this property and the destination of its fruits shall be strictly complied with.
- 2.** Property acquired by succession when one or both of the persons exercising parental authority should have been justly disinherited or should have been unable to inherit as a result of being unworthy, which shall be administered by the person designated by the decedent and, in the absence thereof, successively, by the other parent or by a specially appointed judicial administrator.
- 3.** Property acquired by the child older than sixteen by his work or industry. Ordinary acts of administration shall be performed by the child, who shall need the parents' consent for acts exceeding the former.

**Article 165.** The fruits of the property of the non-emancipated child, and anything acquired by his work or industry shall always belong to him.

Notwithstanding the foregoing, the parents may destine the property of the minor who lives with both or with one of them, in the corresponding part, to the discharge of family expenses, and they shall not be obliged to render accounts of any property consumed for such purposes.

For these purposes, the fruits of the property not administered by the parents shall be delivered to them. Fruits of property mentioned in numbers one and two of the preceding article and those gifted or left to children especially for their education or career shall be excepted from the above, but, if the parents should lack of means, they may request the Judge to have an equitable part delivered to them.

**Article 166.** Parents may not waive the rights held by the children, nor dispose of or encumber any real estate properties, commercial or industrial establishments, precious objects and securities, except for preferred subscription right over shares, save for a just cause of utility or necessity, prior authorisation of the Judge of their domicile, after hearing the Public Prosecutor.

Parents must obtain judicial authorisation to reject an inheritance or legacy left to the child. If the Judge should refuse the authorisation, the inheritance may only be accepted under the benefit of inventory.

No judicial authorisation shall be required if the minor should be sixteen years of age and should consent in a public document, nor to dispose of securities, provided that the proceeds are reinvested in safe goods or securities.

**Article 167.** Where the parents' administration should endanger the net assets of the child, the Judge, at the request of the child himself, of the Public Prosecutor or of any relative of the minor, may issue any orders deemed necessary for the safety and safekeeping of the property, require security or a bond for their continuation in the administration thereof or even appoint an Administrator.

**Article 168.** Upon termination of parental authority, the children may require the parents to render accounts of the administration performed over the property until then. The action to enforce this obligation shall be statute barred after three years.

In the event of loss or impairment of the property as a result of wilful misconduct or gross negligence, the parents shall be liable for any damages suffered.

## CHAPTER 4°

### *On termination of parental authority*

**Article 169.** Parental authority shall end:

1. By the death or declaration of death of the parents or the child.
2. By emancipation.
3. By the adoption of the child.

**Article 170.** The father or the mother may be deprived in whole or in part of their authority pursuant to a judgement on grounds of the breach of the duties inherent thereto, or issued in criminal or matrimonial proceedings.

The Courts may, for the benefit and in the interest of the child, decide the recovery of parental authority when the cause which motivated the deprivation should have ceased.

**Article 171.** Parental authority over children who should have been incapacitated shall be extended, by operation of Law, upon their coming of age. If a child who is of legal age, unmarried, and lives in the company of his parents or of any of them should be incapacitated, parental authority shall be restored, and shall be exercised by the person who would be entitled to do so if the child were underage. Extended parental authority in any of these two forms shall be exercised subject to the specific provisions of the incapacitation resolution and, on a subsidiary basis, to the rules of the present Title.

Extended parental authority shall terminate:

1. By the death or declaration of death of both parents or the child.
2. By adoption of the child.
3. By declaration of the incapacity having ceased.
4. By marriage of the incapacitated person.

If, upon termination of the extended parental authority, the incapacitation should subsist, guardianship or conservatorship shall be appointed, as applicable.

## CHAPTER 5°

### *On adoption and other forms of protection of minors*

#### SECTION ONE

##### *On custody and foster care of minors*

###### **Article 172.**

**1.** When the public entity entrusted with the protection of minors in the respective territory should become aware that a minor is in a situation of neglect, it shall have by operation of Law the guardianship of such minor, and must adopt the necessary protection measures for his custody, making the Public Prosecutor aware of this, and giving notice to the parents, guardians or carers in due legal form, within forty eight hours. Whenever possible, at the time of giving such notice, they shall be informed in their presence and in a clear and comprehensible manner of the causes which have given rise to the Administration's intervention and the possible effects of the decision adopted.

A situation of neglect shall be deemed to exist de facto as a result of the breach or the impossible or inadequate exercise of the protection duties set forth by the laws for the custody of minors, when they should be deprived of the necessary moral or material assistance.

The assumption of guardianship by the public entity shall entail the suspension of parental authority or ordinary guardianship. Notwithstanding the foregoing, acts of patrimonial content performed by the parents or guardians on behalf of the minor which are beneficial to the latter shall be valid.

**2.** When the parents or guardians, as a result of serious circumstances, cannot take care of the minor, they may request the competent public entity to assume his custody for the necessary period of time.

The transfer of custody shall be set forth in writing, expressly noting that the parents or guardians have been informed of their responsibilities they continue to hold in respect of the child, and the manner in which such custody will be exercised by the Administration.

Any subsequent variation in the form of exercise shall be duly grounded and communicated to the former, and to the Public Prosecutor.

Likewise, the public entity shall assume custody when so resolved by the Judge in cases where it is legally applicable.

**3.** Custody assumed at the request of parents or guardians or as a result of guardianship assumed by operation of law shall be performed by means of family foster care or residential care. Family foster care shall be exercised by the person or persons determined by the public entity. Residential care shall be exercised by the Director of the centre where the minor is taken in.

Within two months, the parents or guardians of the minor may challenge the administrative resolution deciding the foster care if they consider that the form of care decided is not the most convenient for the minor, or if there should exist other persons within the family circle more suitable to those designated.

**4.** The interest of the minor shall always be sought, and the Administration shall try to achieve his reintegration into his own family, if not contrary to such interest, and to have siblings entrusted to the custody of the same institution or person.

**5.** If serious problems should arise in the cohabitation between the minor and the person or persons who have been entrusted with his custody, the minor or an interested party may request his removal therefrom.

**6.** Resolutions which acknowledge the existence of neglect and declare the assumption of guardianship by operation of law may be appealed before the civil jurisdiction, within the period and subject to the conditions set forth in the Civil Procedural Law, without the need to file a prior administrative claim.

**7.** During a period of two years as from notice of the administrative resolution declaring the existence of neglect, parents who continue to hold parental authority but have been suspended in the exercise thereof in accordance with the provisions of number one of this article shall be entitled to request termination of such suspension, and revocation of the declaration of the minor's neglect, if, as a result of a change in the circumstances which motivated it, they should understand that they are in a condition to assuming parental authority once again. They shall likewise be entitled to challenge any decisions adopted in respect of the minor's protection during the same period.

After such period has elapsed, their right to request or challenge decisions or measures adopted for the protection of the minor will lapse. Notwithstanding the foregoing, they may inform the public entity and the Public Prosecutor of any change in the circumstances which gave rise to the declaration of neglect.

**8.** The public entity, ex officio, or at the request of the Public Prosecutor or of an interested person or entity, may at all times revoke the declaration of neglect and decide the return of the minor to his family, if he is not integrated in a stable manner in another family, or if it should understand that it is in the best interests of the minor. Such decision shall be notified to the Public Prosecutor.

### **Article 173.**

**1.** Family foster care produces the full participation of the minor in family life and imposes on the foster parent the obligations of taking care of him, having him in his company, feeding him, educating him and providing him with a comprehensive upbringing.

This foster care may be exercised by the person or persons who replace the minor's nuclear family or by the person responsible for the home.

**2.** Foster care shall be executed in writing, with the consent of the public entity, whether or not it holds the guardianship or custody, of the persons who take the minor in, and of the minor if he should be older than twelve years old. When the parents who have not been deprived of parental authority or the guardian should be known, they shall also be required to give or to have given their consent, save in the event of provisional family foster care referred to in section 3 of this article.

The document executing the family foster care mentioned in the preceding paragraph shall include the following items:

1. The necessary consents.
2. Form of the foster care and expected duration thereof.
3. Rights and duties of each of the parties and, in particular:
  - a) Regularity of any visits by the family of the minor taken into foster care.
  - b) Coverage of the damage suffered by the minor or any damage which he may cause to third parties by the public entity or other persons liable from a civil standpoint.
  - c) Assumption of food and board, education and health care expenses.
4. The content of any monitoring to be performed by the public entity, depending on the purpose of the foster care, and the foster family's undertaking to cooperate.
5. Economic compensation to be received by the foster parents, as the case may be.
6. It shall be expressly noted whether the foster parents act as professionals or if the foster care is to take place in a functional home.
7. Report by the childcare services.

Such document shall be forwarded to Public Prosecutor.

**3.** If the parents or guardians should not consent or should challenge the foster care, such care may only be decided by the Judge, in the interests of the minor, in accordance with the formalities of the Civil Procedural Law. The proposal of the public entity shall contain the same items mentioned in the preceding number.

Notwithstanding the foregoing, the public entity may decide, in the interests of the minor, a provisional family foster care, which will subsist until the relevant judicial resolution is passed.

The public entity, after performing the requisite formalities and upon completion of the proceedings, must submit a proposal to the Judge immediately and, in any event, within fifteen days.

**4.** The foster care of the minor shall cease:

1. By judicial resolution.
2. By decision of the foster parents, prior notice thereof to the public entity.
3. At the request of the guardian or the parents with parental authority wishing to have him in their company.
4. By decision of the public entity who holds the guardianship or custody of the minor, when it deems it necessary to safeguard the interests of the latter, after hearing the foster parents.

A judicial resolution of cessation shall be required when the foster care should have been decided by the Judge.

**5.** All actions of execution and cessation of the foster care shall be practised with mandatory secrecy.

**Article 173 bis.** Family foster care may adopt the following forms, depending on its purpose:

**1.** Simple family foster care, which shall be provisional, either because, as a result of the minor's situation, he is expected to be reintegrated in his own family, or until a more stable protection measure is adopted.

**2.** Permanent family foster care, when the age or other circumstances of the minor and his family advise it, and the child care services should have reported favourably on it. In such case, the public entity may request the Judge to confer on the foster parents those faculties of guardianship which facilitate the performance of their responsibilities, attending in any event to the higher interest of the minor.

**3.** Pre-adoptive family foster care, which shall be executed by the public entity upon making the proposal for the adoption of the minor, prior report by the childcare services, to the judicial authority, provided that the foster parents meet the necessary requirements to adopt, have been selected and have given their consent to the adoption before the public entity, and that the minor is in a suitable legal situation to be adopted.

The public entity may likewise execute pre-adoptive family foster care when it considers, prior to submitting the adoption proposal, that it is necessary to set a period for the minor to adapt to the family. This period shall be as brief as possible and, in any event, may not exceed one year.

**Article 174.**

**1.** The Public Prosecutor shall be in charge of the higher supervision of the guardianship, foster care or custody of the minors mentioned in this Section.

**2.** For such purposes, the public entity shall give immediate notice of any new entries of minors and shall forward a copy of the administrative resolutions and execution documents relating to the constitution, variation and cessation of any guardianship, custody and foster care. Likewise it will inform it of any interesting developments in the minor's circumstances.

The Public Prosecutor must check the situation of the minor at least every semester and shall propose to the Judge any protection measures deemed necessary.

**3.** The Public Prosecutor's vigilance shall not exempt the public entity from its responsibility vis-a-vis the minor and from its obligation to make the Public Prosecutor aware of any anomalies observed.

## SECTION 2<sup>a</sup>

### *On adoption*

**Article 175.**

**1.** Adoption shall require that the prospective adoptive parent is older than 25. In an adoption by both spouses, it will be sufficient for one of them to have reached such age. In any event, the prospective adoptive parents must be at least fourteen years older than the adoptee.

**2.** Only non-emancipated minors may be adopted. As an exception, it will be possible to adopt a person of legal age or an emancipated minor when, immediately prior to the emancipation, there should have existed an uninterrupted situation of foster care or of cohabitation, initiated before the prospective adoptee became fourteen.

**3.** One may not adopt:

1. A descendant.
2. A relative in the second degree in the collateral line by consanguinity or affinity.
3. A ward by his guardian until final approval of the accounts of the guardianship.

**4.** Nobody may be adopted by more than one person, unless the adoption is performed jointly or successively by both spouses. Marriage performed subsequently to the adoption shall allow the spouse to adopt the children of his consort. In the event of death of the adoptive parent, or when the adoptive parent should incur in the grounds for exclusion provided in article 179, a new adoption of the adoptee shall be possible.

#### **Article 176.**

**1.** The adoption shall be constituted by judicial resolution, which shall take into account always the interests of the prospective adoptee and the suitability of the prospective adoptive parent or parents for the exercise of parental authority.

**2.** To initiate the adoption proceedings, a prior proposal of the public entity shall be required in favour of the prospective adoptive parent or parents who have been declared suitable to exercise parental authority by the public entity. The declaration of suitability may be prior to the proposal.

Notwithstanding the foregoing, no proposal shall be required when the prospective adoptee meets any of the following circumstances:

1. Being an orphan and a relative of the prospective adoptive parent in the third degree by consanguinity or affinity.
2. Being a child of the consort of the prospective adoptive parent.
3. Having been in legal foster care under a measure of a pre-adoptive foster care, or having been under his guardianship for the same time.
4. Being of legal age or an emancipated minor.

**3.** In the first three cases of the preceding section, the adoption may be constituted even if the prospective adoptive parent should have deceased, if the latter should already have given his consent before the Judge. In this case, the judicial resolution shall have retroactive effect to the date of such consent.

#### **Article 177.**

**1.** The prospective adoptive parent or parents and the adoptee older than twelve must consent to the adoption in the presence of the Judge.

**2.** The following persons must consent to the adoption in the manner set forth in the Civil Procedural Law:

1. The spouse of the prospective adoptive parent, save in the event of legal separation pursuant to a final judgement or de facto separation by mutual consent set forth in a public instrument.
2. The parents of the prospective adoptee who is not emancipated, unless they should be deprived of parental authority by final judgement or they should incur in a legal cause for such deprivation. Such situation may only be appreciated in contradictory judicial proceedings, which may be processed as provided in article 1827 of the Civil Procedural Law.

Such consent shall not be required when it is impossible for those who must provide it to do so, which impossibility shall be duly grounded in the judicial resolution constituting the adoption.

The consent of the mother may not be given until after 30 days have elapsed from the birth.

**3.** The following persons must simply be heard by the Judge:

1. Parents who have not been deprived of parental authority where their consent should not be necessary for the adoption.



2. The guardian and, as the case may be, the carer or carers.
3. The adoptee who is younger than twelve, if he should have sufficient judgement.
4. The public entity, in order to appreciate the suitability of the prospective adoptive parent, when the adoptee should have been legally under the former's foster care for more than one year.

#### **Article 178.**

1. The adoption gives rise to the extinction of any legal relations between the adoptee and his former family.
2. As an exception, legal relations with the family of the parent shall subsist, as applicable, in the following cases:
  1. When the adoptee should be the child of the spouse of the prospective adoptive parent, even if the consort should have died.
  2. When only one of the parents has been legally determined, provided that it should have been requested by the prospective adoptive parent, the adoptee older than twelve and the parent whose relation therewith is to persist.
3. The provisions of the preceding sections shall be understood to be without prejudice to the provisions relating to matrimonial impediments.

#### **Article 179.**

1. The Judge, at the request of the Public Prosecutor, of the adoptee or of his legal representative, shall resolve that the adoptive parent who incurs in a cause for deprivation of parental authority shall be excluded from guardianship duties and from the rights to which he is entitled pursuant to the Law in respect of the adoptee or his descendants, or to their estates.
2. Upon reaching full capacity, such exclusion may only be requested by the adoptee, within the following two years.
3. These restrictions shall cease to be effective by determination of the child himself upon reaching full capacity.

#### **Article 180.**

1. Adoption is irrevocable.
2. The Judge shall resolve the extinction of adoption at the request of the father or the mother who, without fault on their part, should not have taken part in the proceedings in the terms expressed in article 177. The claim shall also be required to be filed within two years following the adoption, and that the requested extinction does not cause serious harm to the minor.
3. Termination of the adoption shall not be a cause of loss of nationality or civil residence acquired, nor shall it affect any patrimonial effects which should have taken place before.
4. Determination of the filiation corresponding to the adoptee by birth shall not affect adoption.
5. Adopted persons, after reaching legal age or while being underage, represented by their parents, shall be entitled to know any data relating to their biological origin. Spanish childcare Public Entities, prior notice to any affected persons, shall provide, through their specialised services, the advice and assistance required by any applicants to bring this right to effect.

## **TITLE VIII**

### **On absence**

#### **CHAPTER ONE**

##### *Declaration of absence and its effects*

**Article 181.** In any event, upon the disappearance of the person from his domicile or from his last place of residence, without having any further news of him, the Judge may, at the request of the interested party or of



the Public Prosecutor, appoint a defender to protect and represent the disappeared person in court or in any business which does not admit delay without serious detriment. Those cases where the former should already have legal or voluntary representation in accordance with article 183 shall be excepted.

The present spouse who is of legal age and not legally separated shall be the ex officio defender and representative of the disappeared person; and, in the absence thereof, the nearest relative up to the fourth degree, also of legal age. In the absence of relatives, lack of presence thereof or notorious urgency, the Judge shall appoint a solvent person with good background, after hearing the Public Prosecutor.

He may also adopt, at his proof discretion, any necessary orders for the preservation of the assets.

**Article 182.** The following persons shall have the obligation to promote and request the legal declaration of absence, without order of preference:

1. The spouse of the absentee who is not legally separated from him.
2. Consanguineous relatives up to the fourth degree.
3. The Public Prosecutor, ex officio or pursuant to a complaint.

Any person who rationally deems to have any right over the property of the disappeared person exercisable during his life or dependent on his death shall also be entitled to request such declaration.

**Article 183.** A person who has disappeared from his domicile or last place of residence shall be deemed to be under a situation of legal absence:

1. After one year has elapsed from the last news of him, or, in the absence thereof, from his disappearance, if he should not have left an attorney with powers of administration over all his property.
2. After three years have elapsed, if he should have empowered someone to the administration of all his property.

The death or justified resignation of the attorney, or the expiration of the mandate, shall determine legal absence, if, upon occurrence thereof, the whereabouts of the disappeared person should be unknown and one year should have elapsed from the last news of him or, in the absence thereof, from his disappearance. Upon registration of the declaration of absence in the Central Registry, all general or special mandates executed by the absentee shall be terminated by operation of law.

**Article 184.** Save in the event of a serious reason appreciated by the Judge, the representation of the person declared an absentee, the investigation of his whereabouts, the protection and administration of his property and the performance of his obligations shall correspond to:

1. The present spouse of legal age not legally or de facto separated from him.
2. His child of legal age; if there should be several, those who lived with the absentee shall be preferred, and an older child shall be preferred over a younger child.
3. The nearest youngest ascendant of either line.
4. Siblings of legal age who have cohabited as a family with the absentee, with preference of older siblings over younger ones.

In the absence of the aforementioned persons, such representation shall correspond, in all its scope, to the solvent person of good background designated by the Judge at his prudent discretion, after hearing the Public Prosecutor.

**Article 185.** The representative of the person declared an absentee shall be subject to the following obligations:

1. To make an inventory of movable property and to describe any immovable property of his principal.
2. To provide the bond prudentially set by the Judge. The representatives included in numbers 1, 2 and 3 of the preceding article shall be excepted.
3. To preserve and defend the assets of the absentee and obtain from his property any normal returns of which it is capable.

**4.** To comply with the rules provided in the Civil Procedural Law relating to possession and administration of the absentee's property.

The provisions governing the exercise of guardianship and grounds for ineligibility, removal and excuse of guardians shall apply to the appointed representatives of the absentee, to the extent that they are adapted to their special representation.

**Article 186.** The legitimate representatives of the person declared an absentee included in numbers 1, 2 and 3 of article 184 shall enjoy the temporary possession of the assets of the absentee and shall be entitled to the liquid products thereof in the amount set forth by the Judge, taking into account the amount of any fruits, rents and benefits, the number of children of the absentee and the obligations to support them, the care and actions required by the representation, any earmarks which encumber the assets and other circumstances of the kind. The legitimate representatives included in number 4 of the aforementioned article shall also enjoy the temporary possession of the assets and shall be entitled to their fruits, rent and benefits in the amount set forth by the Judge, without in any event being entitled to retain more than two thirds of any liquid products, and the remaining third shall be reserved for the absentees or, as the case may be, for his heirs or successors.

Temporary possessors of the property of the absentee may not sell, encumber, mortgage or pledge, save in the event of evident need or utility, acknowledged and declared by the Judge, who, in authorising such acts, shall determine the destination to be given to the amount obtained therefrom.

**Article 187.** If, during the enjoyment of temporary possession or the exercise of the appointed representation, anyone should prove his preferential right to such possession, the current possessor shall be excluded, but the former shall not be entitled to the products but from the date of the filing of the claim. In the event of appearance of the absentee, his assets must be restored to him, but not the products received, save in the event of bad faith, in which case such restitution shall also comprise any fruits received and those which ought to have been received counting from the date on which the absence took place, according to the judicial declaration.

**Article 188.** If, during the course of the temporary possession or the exercise of the appointed representation, the death of the person declared an absentee should be proved, his succession shall be opened for the benefit of those who, at the time of his death, should have been his voluntary or legitimate successors, and the temporary possessor must deliver the estate of the decedent to them, retaining as his own the products received in the amount provided herein.

If a third party should appear, evidencing by means of a public instrument having acquired, pursuant to purchase or by another title, property from the absentee, the representations shall cease in respect of such property, which shall be made available to its legitimate titleholders.

**Article 189.** The spouse of the absentee shall be entitled to separation of estates.

**Article 190.** In order to claim a right on behalf of the absentee it is necessary to evidence that this person existed at the time in which his existence was necessary to acquire it.

**Article 191.** Without prejudice to the provisions of the preceding article, upon opening of a succession to which an absentee should be called, his part shall accrue in favour of his co-heirs, if there is no person entitled to claim it. All of them, as the case may be, must make an inventory of such property, with the intervention of the Public Prosecutor, which shall be reserved until the declaration of death.

**Article 192.** The provisions of the preceding article shall be understood to be without prejudice of any actions to claim an inheritance or any rights to which the absentee, his representatives or his successors should be entitled. Such rights shall only be extinguished by the passage of the time provided as statute of limitations. Any

entry in the Registry of any immovable property accruing in favour of any co-heirs shall express the circumstance that they remain subject to the provisions of this article and the preceding one.

## CHAPTER 2°

### *On the declaration of death*

**Article 193.** The declaration of death shall apply:

**1.** After ten years have elapsed since the last news of the absentee or, in the absence thereof, since his disappearance.

**2.** After five years have elapsed since the last news of him or, in the absence thereof, since his disappearance, if, upon expiration of such period, the absentee should have reached seventy five.

The aforementioned periods shall be calculated from the expiration of the calendar year on which the last news of him was received or, in the absence thereof, from the year of his disappearance.

**3.** After two years have elapsed, counted from date to date, from an imminent risk of death as a result of accident or violence, suffered by a person without receiving any news of him subsequently to the accident or the violence.

Violence shall be presumed if, in a state of political or social unrest, a person should have disappeared without receiving any news of him during the aforementioned period, provided that six months should have elapsed from the end of such unrest.

**Article 194.** The declaration of death shall also apply:

**1.** In respect of persons who, belonging to an armed contingent or linked thereto as voluntary ancillary offices of, or as reporters, should have taken part in campaign operations and should have disappeared in them, after the lapse of two years, counted from the date of the peace treaty and, in the absence thereof, from the official declaration of the end of the war.

**2.** In respect of those persons who should be on board a shipwreck or who should have disappeared as a result of immersion in the sea, after the lapse of three months from the ascertainment of the shipwreck or disappearance without having news of them.

The shipwreck shall be presumed to have occurred if the vessel does not reach its destination or, if, lacking a fixed destination, it should not return, in both cases after the lapse of six months counting from the last news received of it or, in the absence thereof, from the date of departure of the vessel from the initial port of the journey.

**3.** Of those persons who should be on board an aeroplane crash, after the lapse of three months from the ascertainment of the crash, without having had news of them or, in the event that human remains should have been found, if they should have been unable to be identified.

An aeroplane crash shall be deemed to have occurred if, in a flight over the sea, or desert or uninhabited areas, six months should have elapsed from the last news received from the persons or from the aircraft and, in the absence thereof, from the date on which the journey should have begun. If the flight should be in stages, the aforementioned period shall be computed from the point of takeoff from which the last news should have been received.

**Article 195.** The declaration of death shall put an end to the situation of legal absence, but until such declaration takes place, the absentee shall be presumed to have lived until the time on which he must be reputed to have died, save as otherwise determined in an investigation.

Any declaration of death shall express the date from which the death is deemed to have occurred, in accordance with the provisions of the preceding articles, unless there is evidence to the contrary.

**Article 196.** Upon the declaration of death of the absentee's becoming final, succession to his estate shall be opened, and such estate shall be adjudicated pursuant to the formalities of testamentary or intestate proceedings, or out of court.

The heirs may not dispose of the inheritance pursuant to gift until five years after the declaration of death.

Until the lapse of this same period, no legacies, if any, shall be handed over, and the legatees shall not be entitled to request them, save for pious donations for the soul of the deceased, or legacies in favour of Charitable Institutions.

The successors shall have the inescapable obligation, even if, there only being one of them, no partition should be necessary, to write a detailed inventory of movable property and a description of any real estate property before a notary public.

**Article 197.** If, after the declaration of death, the absentee should appear or his existence should be proved, he shall recover his property in its current condition, and shall be entitled to the price of any properties sold, or to any properties acquired with such price, but may not claim from his successors any rents, fruits or products obtained from the properties of his estate, until the day of his presence or of the declaration of not having died.

## CHAPTER 3°

### *On the Central Registry of absentees*

**Article 198.** The Central and public absentee registry shall register:

1. Judicial declarations of legal absence.
2. Judicial declarations of death.
3. Legitimate and appointed representations resolved by the courts and termination thereof.
4. A mention, including all circumstances thereof, of the place, date, executors and authorising Notary Public of the inventories of movable property and description of immovable properties provided in this title.
5. A mention, including all circumstances thereof, of the order conferring such representation, and of the place, date, executors and authorising Notary Public of any public deeds of transfer and encumbrance made, with judicial authorisation, by absentees' legitimate or appointed representatives; and
6. A mention, including all circumstances thereof, of the place, date, executors and authorising Notary Public, of the public deed of description or inventory of properties, and of the public deeds of partition and adjudication executed pursuant to the declaration of death, or the deeds of validation of the partitional papers, as the case may be.

## TITLE IX

### **On incapacitation**

**Article 199.** No one may be declared incapable save pursuant to a court judgement pursuant to the causes set forth in the Law.

**Article 200.** Persistent physical or mental illnesses or deficiencies which prevent a person from governing himself shall be causes for incapacitation.

**Article 201.** Minors may be incapacitated if a cause for incapacitation should apply to them and is reasonably expected to persist after they come of age.

**Article 202 to 214.** (Abrogated)

## TITLE X

### On guardianship, conservatorship and custody of minors and incapacitated persons

#### CHAPTER ONE

##### *General provisions*

**Article 215.** The custody and protection of the person and property, or only of the person or the property of minors or incapacitated persons shall be performed, where applicable, by means of the following:

1. Guardianship.
2. Conservatorship.
3. The judicial defender.

**Article 216.** Guardianship duties constitute an obligation, shall be exercised for the benefit of the ward and shall be subject to the supervision of the judicial authority.

The Judge, ex officio or at the request of any interested party, may also decree the measures and provisions provided in article 158 of this Code in all cases of guardianship or custody, de facto or pursuant to the law, of minors and incapable persons, to the extent that the latter's interest should require it.

**Article 217.** One may only be excused from accepting guardianship positions in the cases provided in the Law.

**Article 218.** Court resolutions relating to guardianship and conservatorship positions must be registered with the Civil Registry.

Such resolutions shall not be enforceable against third parties until the relevant entries have been registered.

**Article 219.** Registration of the resolutions mentioned in the preceding article shall be made pursuant to the notice served by the judicial authority forthwith to the Officer in charge of the Civil Registry.

**Article 220.** A person who, in the exercise of a guardianship duty, should suffer any damages without fault on his part shall be entitled to be compensated for such damages with charge to the property of the ward, if he should be unable to obtain compensation otherwise.

**Article 221.** Persons exercising any guardianship positions are forbidden from:

1. Receiving gifts from the ward or his successors, until final approval of his management.
2. Representing the ward when acting in his own name or on behalf of a third party in the transaction, there being a conflict of interest.
3. Acquiring for valuable consideration property belonging to the ward or transferring property to the latter for valuable consideration.

#### CHAPTER 2°

##### *On guardianship*

#### SECTION ONE

##### *On guardianship in general*

**Article 222.** The following persons shall be subject to guardianship:

1. Non-emancipated minors not subject to parental authority.
2. Incapacitated persons when the judgement has ruled it.
3. Persons subject to extended parental authority, upon termination thereof, save in the event that conservatorship should apply.
4. Minors who are in a situation of neglect.

**Article 223.** Parents may, pursuant to a will or in a notarial public document, appoint a guardian, establish the guardian's supervision bodies, and designate the persons who are to propose them or order any provision relating to the person or property of their underage or incapacitated children.

Likewise, any person with sufficient civil capacity, expecting to be judicially incapacitated in the future may, in a public notarial document, adopt any disposition relating to his person or property, including the designation of a guardian.

The public documents mentioned in the present article shall be communicated ex officio by the authorising Notary Public to the Civil Registry, to be registered in the entry corresponding to the birth of the interested party.

In incapacitation proceedings, the judge shall request a certificate from the Civil Registry and, as the case may be, from the registry of last wills, in order to ascertain the existence of any dispositions mentioned in this article.

**Article 224.** The provisions mentioned in the preceding article shall be binding on the Judge upon constituting the guardianship, unless the benefit of the minor or incapacitated person should require otherwise, in which case he shall issue a reasoned ruling.

**Article 225.** In the event of the existence of testamentary dispositions or provisions set forth in a notarial public document executed by the father and by the mother, respectively, both shall apply jointly, to the extent that they should be compatible. If they are not, the Judge shall adopt, in a reasoned ruling, those which he considers most convenient for the ward.

**Article 226.** Dispositions made in a will or notarial public document concerning guardianship shall be ineffective if, at the time of their adoption, the executor thereof should have been deprived of parental authority.

**Article 227.** A person disposing of property as a gift in favour of a minor or incapacitated person may establish the rules governing the administration thereof and designate the person or persons who are to exercise it. Duties not conferred upon the administrator shall correspond to the guardian.

**Article 228.** If the Public Prosecutor or the competent Judge should become aware of any person in the territory of their jurisdiction who ought to be subject to guardianship, the former shall request and the latter shall rule, even ex officio, the constitution of the guardianship.

**Article 229.** Relatives called to exercise guardianship and the person in whose custody the minor or incapacitated person should live shall be obliged to promote the constitution of the guardianship and, if they should fail to do so, they shall be joint and severally liable for any damages caused.

**Article 230.** Any person may make the Public Prosecutor or the judicial authority aware of the fact which determines the necessity of the guardianship.

**Article 231.** The Judge shall constitute the guardianship, after hearing the nearest relatives, any persons deemed convenient and, in any event, the ward, if he should have sufficient judgement, and always if he should be older than twelve.

**Article 232.** Guardianship shall be exercised under the supervision of the Public Prosecutor, who shall act ex officio or at the request of any interested party.

He may require the guardian to inform him of the situation of the minor or incapacitated person and of the state of administration of the guardianship at any time.

**Article 233.** The Judge may establish, in the resolution constituting the guardianship or in another subsequent resolution, any supervision and control measures deemed suitable for the benefit of the ward. Likewise, he may at any time require the tutor to inform him on the situation of the minor or incapacitated person and the state of administration of the guardianship.

## SECTION 2<sup>a</sup>

### *On designation of the guardianship and appointment of the guardian*

**Article 234.** The following persons shall be preferred to appoint a guardian:

- 1.** The person designated by the ward himself, in accordance with the second paragraph of article 223.
- 2.** The spouse who lives with the ward.
- 3.** The parents.
- 4.** The person or persons designated by the latter in their testamentary dispositions.
- 5.** The descendant, ascendant or sibling designated by the judge.

Exceptionally, the Judge, in a reasoned resolution, may alter the order of the preceding paragraph or dispense with all persons mentioned therein, if the benefit of the minor or incapacitated person should require it.

Integration in the family life of the guardian shall be deemed beneficial for the minor.

**Article 235.** In the absence of the persons mentioned in the preceding article, the Judge shall designate as guardian the person he considers to be most suitable, as a result of his relations with the ward and for the benefit of the latter.

**Article 236.** Guardianship shall be exercised by single guardian, except:

- 1.** Where, as a result of special circumstances in the person of the ward or his property, it should be convenient to separate into different positions a guardian for his person and a guardian for his property, each of whom shall act independently within the scope of his competence, although decisions concerning both must be taken jointly.
- 2.** Where guardianship corresponds to the father and mother, it shall be exercised by both jointly in an analogous manner to parental authority.
- 3.** If a person should be designated guardian of his sibling's children and it should be considered convenient that the spouse of the guardian should also exercise such guardianship.
- 4.** Where the Judge should appoint as guardians the persons designated by the parents of the ward in a will or notarial public document to exercise the guardianship jointly.

**Article 237.** In the case of number 4 of the preceding article, if the testator should have expressly provided it, and, in the case of number 2, if the parents should request it, the Judge may, upon appointing the guardians, rule that they may exercise the powers inherent to the guardianship joint and severally.

In the absence of such kind of appointment, in all remaining cases and without prejudice to the provisions of numbers 1 and 2, the powers of the guardianship entrusted to several guardians must be exercised by them acting jointly, but any acts performed with the agreement of the largest number shall be valid. In the absence of such agreement, the Judge, after hearing the guardians and the ward if he should have sufficient judgement, shall rule, without further appeal, whatever he deems convenient. In the event that disagreements should be



repeated and should seriously hinder the exercise of the guardianship, the Judge may reorganise the operation thereof and even appoint a new guardian.

**Article 237 bis.** If the guardians should have been granted powers to act jointly and any of them should incur in an incompatibility or conflict of interest in respect of any acts or contracts, these may be performed by the other guardian or, if there should be several, by the rest of them jointly.

**Article 238.** In cases where, for any reason, any of the guardians should be removed, the guardianship shall subsist with the remaining guardians, unless otherwise expressly provided upon making the appointment.

**Article 239.** The guardianship of neglected minors shall correspond by operation of Law to the entity mentioned in article 172.

Notwithstanding the foregoing, a guardian shall be appointed in accordance with the ordinary rules in the event of existence of persons who, as a result of their relations with the minor or other circumstances, may assume the guardianship for the benefit of the former.

The public entity entrusted with the guardianship of incapable persons in the respective territory when none of the persons provided in article 234 should be appointed guardian, shall assume by operation of law the guardianship of the incapable person when the latter should be in a situation of neglect. A de facto situation of neglect shall be deemed to exist as a result of the breach or of the impossible or inadequate exercise of the duties attributed in accordance with the laws, when such incapable persons are deprived of the necessary moral or material assistance.

**Article 240.** If it should be necessary to designate a guardian for several siblings, the Judge shall try to appoint a single person.

**Article 241.** All persons who are in full possession of their civil rights and who do not incur in any of the grounds for ineligibility set forth in the following articles may be guardians.

**Article 242.** Likewise, not-for-profit legal entities whose purposes include the protection of minors and incapacitated persons may also be guardians.

**Article 243.** The following persons may not be guardians:

- 1.** Persons deprived or suspended from the exercise of parental authority or from the rights of providing custody and education, in whole or in part, pursuant to a judicial resolution.
- 2.** Persons who have been legally removed from a prior guardianship.
- 3.** Persons sentenced to a term of imprisonment, while they are serving their sentence.
- 4.** Persons sentenced for any crime which makes one justifiably suppose that they shall not perform the guardianship properly.

**Article 244.** The following persons may also not be guardians:

- 1.** Persons who incur in absolute de facto impossibility.
- 2.** Persons who have a manifest enmity with the minor or incapacitated person.
- 3.** Persons of bad conduct or those with no known way of making a living.
- 4.** Persons with a major conflict of interest with the minor or incapacitated person, who are currently in litigation against him or in an action concerning civil status or title to property, or those who should owe him considerable sums.
- 5.** Bankrupt persons who have not been discharged, save in the event that the guardianship should only be over the ward's person.



**Article 245.** Likewise, persons expressly excluded by the father or the mother in their testamentary dispositions or those provided in a notarial document may also not be guardians, unless the Judge, in a motivated resolution, should rule otherwise for the benefit of the minor or the incapacitated person.

**Article 246.** The grounds for ineligibility contemplated in articles 243.4 and 244.4 shall not apply to guardians designated pursuant to the testamentary dispositions of the parents when the latter should have been aware of them at the time of making the designation, unless the Judge, in a reasoned resolution, should rule otherwise for the benefit of the minor or the incapacitated person.

**Article 247.** Persons who, after their designation, should incur in a legal ground for ineligibility, or should conduct themselves ill in the exercise of the guardianship, by breaching the duties inherent to their position or notorious ineptitude in the exercise thereof, or when serious and ongoing problems should arise in their life together with the ward, shall be removed from the guardianship.

**Article 248.** The Judge, ex officio or at the request of the Public Prosecutor, of the ward or of another interested person, shall rule the removal of the guardian, after hearing the latter if, being summoned, he should appear in court. Likewise, the ward shall be heard if he should have sufficient judgement.

**Article 249.** During the processing of the removal proceedings, the Judge may suspend the guardian from his duties and appoint a judicial defender for the ward.

**Article 250.** After the judicial declaration of removal, a new guardian shall be appointed as provided in this Code.

**Article 251.** The performance of guardianship duties may be excused when, for reasons of age, illness, personal or professional occupations, as a result of the absence of any kind of tie between the guardian and the ward or for any other reason, the exercise of the position should be exceedingly burdensome. Legal entities may be excused where they lack sufficient resources for the proper performance of the guardianship.

**Article 252.** The interested party who alleges an excuse must do so within fifteen days counting from the date on which he became aware of the appointment.

**Article 253.** The guardian may be excused from continuing to exercise the guardianship, provided that there should be a person meeting similar conditions to replace him, when, during the exercise thereof, any of the excuses contemplated in article 251 should arise.

**Article 254.** The provisions of the preceding article shall not apply to guardianship entrusted to legal entities.

**Article 255.** If the excuse should arise subsequently, it may be alleged at any time.

**Article 256.** While the resolution relating to the excuse is pending, the person who has alleged it shall be obliged to exercise his duties. If he should fail to do so, the Judge shall appoint a defender to replace him, and the replaced guardian shall be liable for any expenses caused by the excuse proceedings if the excuse should be rejected.

**Article 257.** The guardian designated pursuant to a will who should be excused from the guardianship at the time of his appointment shall lose any property left by the testator in consideration of the appointment.

**Article 258.** Upon admission of the excuse, a new guardian shall be appointed.

## SECTION 3<sup>a</sup>

### *On the exercise of the guardianshi*

**Article 259.** The judicial authority shall vest the appointed guardian in his duties.

**Article 260.** The Judge may require the guardian to provide a bond securing the performance of his obligations and shall determine the form and amount thereof.

Notwithstanding the foregoing, the public entity that undertakes the guardianship of a minor by operation of law or performs such guardianship as a result of a judicial resolution shall not be required to provide a bond.

**Article 261.** The Judge may also, at any time and for a just cause, render ineffective or amend in whole or in part any security provided.

**Article 262.** The guardian shall be obliged to make an inventory of the property of the ward within sixty days, counting from the date on which he should have taken possession of his duties.

**Article 263.** The judicial authority may extend this period in a reasoned resolution if there are grounds to do so.

**Article 264.** The inventory shall be made in court with the intervention of the Public Prosecutor, summoning any persons which the Judge deems convenient.

**Article 265.** Any money, jewellery, precious objects and securities or documents which, in the opinion of the judicial authority, should not remain in the guardian's possession, shall be consigned in an establishment destined for such purposes.

Any expenses resulting from the foregoing measures shall be borne by the ward's property.

**Article 266.** The guardian who does not include in the inventory any credits held against the ward shall be deemed to waive his right thereto.

**Article 267.** The guardian is the representative of the minor or incapacitated person, save for such acts which the latter may perform by himself, pursuant to the express provision of the Law or of the incapacitation judgement.

**Article 268.** Guardians shall exercise their position in accordance with the personality of their wards, respecting their physical and psychological integrity.

When it should be necessary they may request the assistance of the authority for the exercise of their guardianship.

**Article 269.** The guardian shall be obliged to watch over his ward and, in particular:

- 1.** To provide him with support.
- 2.** To educate the minor and provide him with a comprehensive upbringing.
- 3.** To promote the ward's acquisition or recovery of civil capacity, and his insertion into society.
- 4.** To inform the Judge on an annual basis on the minor's or incapacitated person's situation and to render accounts of his administration on an annual basis.

**Article 270.** The single guardian and, as the case may be, the guardian of the ward's property, is the legal administrator of the patrimony of the ward and is obliged to exercise such administration with the diligence of an orderly *paterfamilias*.

**Article 271.** The guardian shall require judicial authorisation:

1. To confine the ward in a mental health or special education or training establishment.
2. To dispose of or encumber real estate properties, commercial or industrial undertakings, precious objects and securities belonging to minors or incapacitated persons, or to enter into contracts or perform acts which are acts of disposal and are capable of registration. The sale of preferred subscription rights relating to shares shall be excepted from the above.
3. To waive rights, and to settle or submit to arbitration any matters in which the ward should have an interest.
4. To accept any inheritance without the benefit of inventory, or to reject the inheritance or liberalities.
5. To make extraordinary expenses in property.
6. To file a claim in the name of the ward, save for urgent matters or those involving a small amount.
7. To lease property for a period exceeding six years.
8. To lend and borrow money.
9. To dispose as a gift of property or rights belonging to the ward.
10. To assign to third parties any credits held by the ward against him, or to acquire for valuable consideration any credits against the ward held by third parties.

**Article 272.** Partition of the estate or the division of common property performed by the guardian shall not require judicial authorisation, but, once practised, shall require judicial approval.

**Article 273.** Before authorising or approving any of the acts included in the two preceding articles, the Judge shall hear the Public Prosecutor and the ward, if he should be older than twelve or if the Judge should deem it convenient, and shall commission any reports requested or any he deems suitable.

**Article 274.** The guardian shall be entitled to remuneration, provided that the assets of the ward should allow it. The Judge shall be in charge of setting the amount thereof and the manner of perceiving it, for which he shall take into account the work to be performed and the value and returns of the property, to the extent possible attempting to achieve an amount of the remuneration not lower than 4% or higher than 20% of the net yield of the property.

**Article 275.** Only parents, in their testamentary dispositions, may establish that the guardian is entitled to appropriate the fruits of the ward's property in exchange for providing support, save if the Judge, in a duly reasoned resolution, should rule otherwise.

## SECTION 4<sup>a</sup>

### *On termination of the guardianship and final rendering of accounts*

**Article 276.** Guardianship shall terminate:

1. When the minor turns eighteen, unless he should have been judicially incapacitated previously.
2. By adoption of the underage ward.
3. By the death of the ward.
4. By the granting of the benefit of legal age to the minor.

**Article 277.** Guardianship shall also terminate:

1. If it should have arisen as a result of deprivation or suspension parental authority, when the holder of such authority should recover it.
2. Upon issuance of the judicial resolution ending the incapacitation or amending the incapacitation judgement, replacing the guardianship by a conservatorship.

**Article 278.** The guardian shall continue in the exercise of his position if the underage ward should have been incapacitated before coming of age, in accordance with the provisions of the incapacitation judgement.

**Article 279.** Upon ceasing in his duties, the guardian must render general justified accounts of his administration to the judicial authority, within three months, which period may be extended by any period required if there is a just cause for it.

The action to require the rendering of accounts shall be subject to statute of limitations after five years from expiration of the period to perform it.

**Article 280.** Before issuing its resolution approving the accounts, the Judge shall hear the new guardian or, as the case may be the conservator or the judicial defender, and the ward or his heirs.

**Article 281.** Necessary expenses pertaining to the rendering of accounts shall be borne by the ward.

**Article 282.** The balance of the general account shall accrue legal interest, in favour or against the guardian.

**Article 283.** If the balance should be in favour of the guardian, it shall accrue legal interest from the date on which payment should be demanded of the ward, after delivering his property to him.

**Article 284.** If the balance should be against the guardian, it shall accrue legal interest as from the approval of the account.

**Article 285.** Judicial approval shall not prevent the exercise of any legal remedies to which the guardian and the ward or their successors may be reciprocally entitled as a result of the guardianship.

## CHAPTER 3°

### *On conservatorship*

#### SECTION ONE

##### *General provisions*

**Article 286.** The following persons shall be subject to conservatorship:

- 1.** Emancipated minors whose parents should have died or become unable to exercise the assistance provided in the Law.
- 2.** Persons who have obtained the benefit of legal age.
- 3.** Persons declared to be prodigal.

**Article 287.** Likewise a conservator shall be appointed for persons whose incapacitation judgement or, as the case may be, judicial resolution amending the former, should place them under this form of protection, based on their degree of discernment.

**Article 288.** In the cases mentioned in article 286, conservatorship shall have no other purpose than the participation of the conservator in the act which the minors or prodigal persons cannot perform by themselves.

**Article 289.** Conservatorship over incapacitated persons shall have as its purpose the conservator's assisting in those acts expressly provided in the judgement which established it.

**Article 290.** If the incapacitation judgement should not have specified those acts in which the intervention of the conservator should be necessary, such intervention shall be deemed to extend to the same acts for which guardians require judicial authorisation, according to this Code.

**Article 291.** The rules governing appointment, ineligibility, excuse and removal applicable to guardians shall apply to conservators.

Bankrupt persons who have not been discharged may not be conservators.

**Article 292.** If the person subject to conservatorship should have previously been subject to guardianship, the same person who was his guardian shall hold the position of conservator, unless otherwise provided by the Judge.

**Article 293.** Legal acts performed without the intervention of the conservator, where the latter is required, shall be voidable at the request of the conservator himself or of the ward, in accordance with articles 1301 et seq. of this Code.

## SECTION 2<sup>a</sup>

### *On conservatorship over prodigal persons*

**Article 294 -296.** [Abrogated]

**Article 297.** The acts of the person declared to be prodigal performed prior to the claim requesting declaration of prodigality may not be challenged on these grounds.

**Article 298.** [Abrogated]

## CHAPTER 4<sup>o</sup>

### *On the judicial defender*

**Article 299.** The judicial defender shall be appointed to represent and protect the interests of persons who are in any of the following cases:

- 1.** In the event of a conflict of interest on any matter between the minors or incapacitated persons and their legal representatives or the conservator. In the event of joint guardianship exercised by both parents, when a conflict of interest should exist only with one of them, the other, by operation of law and without the need for a special appointment, shall be entitled to represent and protect the minor or incapacitated person.
- 2.** In the event that, for any reason, the guardian or conservator should fail to perform his duties, until termination of the cause of such failure or designation of another person for the position.
- 3.** In all other cases provided in this Code.

**Article 299 bis.** From the time of the awareness that a person ought to be subject to guardianship and until the issuance of the judicial resolution ending the proceedings, the Public Prosecutor shall assume his representation and defence. In such case, where, as well as the care of his person, such person's property must also be administered, the Judge may designate an administrator thereof, who must render account of his management upon termination thereof.

**Article 300.** The Judge shall, in voluntary jurisdiction proceedings, ex officio or at the request of the Public Prosecutor, of the minor himself or of any person capable of appearing at court, shall appoint as defender whoever he deems most suitable for the position.

**Article 301.** The same grounds for ineligibility, excuses and causes for removal applicable to guardians and conservators shall apply to the defender.

**Article 302.** The judicial defender shall have the powers granted by the Judge, to whom he must render account of his management upon termination thereof.

## CHAPTER 5°

### *On de facto custody*

**Article 303.** Without prejudice to the provisions of articles 203 and 228, when the judicial authority should become aware of the existence of a de facto carer, it may request him to inform on the situation of the person and property of the minor or the allegedly incapable person and his actions in connection therewith, and may also set any control and supervision measures deemed suitable.

**Article 304.** Acts performed by the de facto carer in the interest of the minor or allegedly incapable person may not be challenged if they are to his benefit.

**Article 305.** (No content)

**Article 306.** The provisions of article 220 concerning the guardian shall apply to the de facto carer.

**Article 307 -313.** (No content)

## TITLE XI

### **On legal age and emancipation**

**Article 314.** Emancipation takes place:

- 1.** By coming of age.
- 2.** By marriage of the minor.
- 3.** By concession granted by persons exercising parental authority.
- 4.** By concession granted by the court.

**Article 315.** Legal age begins upon turning eighteen.

The date of birth shall be included in full for the calculation of legal age.

**Article 316.** Marriage shall result in emancipation by operation of law.

**Article 317.** Emancipation by concession granted by the persons exercising parental authority shall require that the minor has turned sixteen and consents to the emancipation. Such emancipation shall be executed pursuant to public deed, or by appearing before the Judge in charge of the Registry.

**Article 318.** The granting of emancipation must be registered in the Civil Registry, and until then shall not be effective vis-à-vis third parties.

Emancipation may not be revoked once granted.

**Article 319.** A child older than sixteen who should live independently of his parents with their consent shall be deemed emancipated for all purposes. The parents may revoke this consent.

**Article 320.** The Judge may grant the emancipation of children older than sixteen if they should request it, after hearing the parents:

- 1.** When the person exercising parental authority should marry or live together in marital fashion with a person other than the other parent.
- 2.** When the parents should be separated.
- 3.** In the event of any cause which seriously hinders the exercise of parental authority.

**Article 321.** The Judge, after receiving the Public Prosecutor's report, may also grant the benefit of legal age to the person subject to guardianship who is older than sixteen and who should request it.

**Article 322.** A person who is of legal age has capacity for all acts of civil life, save for the exceptions set forth in this Code for special cases.

**Article 323.** Emancipation qualifies the minor to govern his person and property as if he were of legal age, but until he comes of age the emancipated minor may not borrow money, encumber or dispose of immovable properties and commercial or industrial undertakings or objects of extraordinary value without his parents' consent and, in the absence of both, without his conservator's consent.

The emancipated minor may appear in court by himself.

The provisions of this article shall also apply to the minor who has judicially obtained the benefit of legal age.

**Article 324.** For the married minor to dispose of or encumber immovable properties, commercial or industrial undertakings or objects of extraordinary value which are common to both spouses, the consent of both spouses shall suffice if the other spouse should be of legal age; if the other spouse should also be underage, the consent of the parents or conservators of both shall also be required.

## TITLE XII

### On the Registry of Civil Status

**Article 325.** Acts relating to the civil status of persons shall be registered in the Registry destined for such purposes.

**Article 326.** The Registry of Civil Status shall comprise all registrations or entries of births, marriages, emancipations, recognitions and legalisations, deaths, naturalisations and civil residence, and shall be entrusted to the municipal Judges or other officers of the civil jurisdiction in Spain, and consular or diplomatic Agents abroad.

**Article 327.** The Registry records shall constitute proof of civil status, which may only be supported by other evidence in the event that the former should never have existed, or if the Registry books should have disappeared, or if they should be challenged before the Courts.

**Article 328.** It shall not be necessary to physically present the newborn before the officer in charge of the Registry to register the birth, a statement by the person obliged to register the birth being sufficient. This statement shall include all circumstances required by the law; and shall be signed by the author, or two witnesses at his request, if he should be unable to sign.

**Article 329.** In canonical marriages, the spouses shall be obliged to provide to the Public officer attending the wedding all necessary information for the registration thereof with the Civil Registry. Data relating to banns, impediments and dispensation thereof shall be excepted therefrom, and shall not be included in the entry.

**Article 330.** Naturalisations shall have no legal effect whatsoever until registration thereof with the Registry, whatever the supporting evidence and the date on which they should have been granted.

**Article 331.** Municipal and first instance Judges, as the case may be, may punish any infringements of the provisions relating to the Civil Registry which do not constitute a crime or misdemeanour with a 20 to 100 peseta fine.

**Article 332.** Law of June 17, 1870 shall continue to apply to the extent that it has not been amended by the preceding articles.

## BOOK II

### On property, ownership and its modifications

#### TITLE ONE

##### On the classification of property

###### PRELIMINARY PROVISION

**Article 333.** All things which are or may be subject to appropriation are considered movable or immovable property.

###### CHAPTER ONE

###### *On immovable property*

**Article 334.** The following are immovable property:

- 1.** Land, buildings, roads and constructions of all kinds which are joined to the ground.
- 2.** Trees and plants and pending fruits, while they are joined to the earth or form integral part of an immovable property.
- 3.** Anything which is joined to an immovable property on a fixed basis, so that it cannot be separated therefrom without breaking the material or impairing the object.
- 4.** Statues, reliefs, paintings or other objects of use or ornamentation, placed on buildings or on land by the owner of the immovable property, in such a way that reveals the purpose of uniting them to the land on a permanent basis.
- 5.** Machines, vessels, instruments or utensils destined by the owner of the property to the industry or undertaking performed in the building or landed property, and which are directly destined to satisfy the needs of the undertaking itself.
- 6.** Animal farms, dovecotes, beehives, fish tanks or analogous hatcheries, when the owner has placed or preserved them for the purpose of keeping them joined to the property or forming part thereof on a permanent basis.
- 7.** Fertilisers destined for the cultivation of landed property, located in the land where it is to be used.
- 8.** Mines, quarries and dumps, while their matter remains joined to the source, and flowing or stagnant waters.
- 9.** Docks and constructions which, even if they float, are destined, as a result of their purpose and conditions, to remain in a fixed point of the river, lake or coast.
- 10.** Administrative concessions to perform public works, and easements and other rights *in rem* pertaining to immovable property.



## CHAPTER 2°

### *On movable property*

**Article 335.** Property capable of appropriation not included in the preceding chapter and, generally, all property which may be transported from one point to another without impairment of the immovable object to which it is joined shall be deemed to movable property.

**Article 336.** Income or pensions, whether life or hereditary annuities, attached to a person or family, provided that they do not encumber with a real lien an immovable object, positions subject to disposal, contracts relating to public services and certificates and securities representing mortgage loans shall also be considered movable property.

**Article 337.** Movable property shall be fungible or non-fungible. Property which cannot be properly used according to its nature without being consumed shall belong to the first species; other property shall belong to the second species.

## CHAPTER 3°

### *On property based on the persons to which it belongs*

**Article 338.** Property is either of public domain or private property.

**Article 339.** The following property is of public domain:

- 1.** Property destined for public use, such as roads, canals, rivers, torrents, ports and bridges built by the State, riverbanks, shores, bays and other analogous property.
- 2.** Property exclusively owned by the State, which is not for public use, and which is destined to any public services or to the fostering of national wealth, such as city walls, fortresses and other civil works for the defence of the territory, and mines, until the granting of a concession thereon.

**Article 340.** All other property belonging to the State in which the circumstances expressed in the preceding article do not concur shall be deemed to private property.

**Article 341.** When property of public domain ceases to be destined to general use or to the requirements of the defence of the territory, it shall become part of the property owned by the State.

**Article 342.** Property belonging to the Royal Patrimony shall be governed by a specific statute, and, for all matters not provided therein, by the general provisions governing private property set forth in this Code.

**Article 343.** Property belonging to provinces and towns is divided into property for public use and patrimonial property.

**Article 344.** In provinces and villages, provincial and neighbourhood parks, squares, streets, public fountains and waters, promenades and general service public works paid by the same villages or provinces shall be deemed property for public use.

All remaining property held by one or the other shall be patrimonial property and shall be governed by the provisions of this Code, save as otherwise provided in specific statutes.

**Article 345.** Besides the patrimonial property of the State, the Province and the Municipality, property individually or jointly belonging to individuals shall be private property.

## ***Provisions common to the three preceding chapters***

**Article 346.** When, in a provision of law, or pursuant to an individual statement, the expression immovable property or things, or movable property or things should be used, the property listed in Chapter 1 and in Chapter 2, respectively, shall be deemed comprised therein.

When only the word “movables” should be used, money, credits, commercial paper, securities, jewellery, scientific or artistic collections, books, medals, weapons, clothing, horses or carriages and their harness, grain, stock and merchandise, or other things the principal destination whereof is not to furnish or adorn rooms shall not be deemed comprised therein, save in the event that the context of the law or individual provision clearly provides otherwise.

**Article 347.** Where in any sale, legacy, gift or other disposition in which there is a reference to movable or immovable property, possession or ownership thereof should be transferred with everything located therein, any cash, securities, credits and shares whose documents are located within the transferred property shall not be deemed comprised therein, unless the intention to extend the transfer to such securities and rights should be clearly expressed.

## **TITLE II**

### **On ownership**

#### CHAPTER ONE

##### *On ownership in general*

**Article 348.** Ownership is the right to enjoy and dispose of a thing, without greater limitations than those set forth in the laws.

The owner shall have an action against the holder and the possessor of the property to claim it.

**Article 349.** Nobody may be deprived of his property save by the competent Authority and for on justified grounds of public utility, always after the relevant compensation.

In the absence of this requirement, Judges shall protect and, as the case may be, restore such person's possessions.

**Article 350.** The owner of a plot of land is the owner of the surface and of what is underneath it, and may perform therein any building works, plantations and excavations which may be convenient, save for any easements, and subject to the provisions of the laws relating to mining and waters and police regulations.

**Article 351.** Hidden treasure shall belong to the owner of the land in which it is found.

Notwithstanding the foregoing, when the discovery should be made by chance in another's property, or in State property, half shall correspond to the discoverer.

If the objects discovered should be of interest to science or art, the State may acquire them for their fair value, which shall be distributed in accordance with the above provisions.

**Article 352.** For the purposes provided in the law, treasure shall be deemed to mean the hidden and ignored deposit of money, jewellery or other precious objects, whose legitimate ownership is unknown.

## CHAPTER 2°

### *On the right of accession*

#### GENERAL PROVISION

**Article 353.** Ownership of the property shall, pursuant to the right of accession, entitle the owner to everything produced thereby, or naturally or artificially joined or incorporated thereto.

#### SECTION ONE

##### *On the right of accession in respect of the products of the property*

**Article 354.** The following shall belong to the owner:

1. Natural fruits.
2. Industrial fruits.
3. Civil fruits.

**Article 355.** Natural fruits are the spontaneous produce of the land, and the brood and other products of animals.

Industrial fruits are those produced by plots of land of any kind as a result of cultivation or work.

Civil fruits are the rent on buildings, the lease on land and the amount of perpetual or life annuities or other analogous income.

**Article 356.** The person who receives the fruits has the obligation of paying the expenses made by a third party for their production, collection and preservation.

**Article 357.** Only fruits which are manifest or born shall be deemed natural or industrial fruits.

As relates to animals, it will suffice if they are in their mother's womb, even if they are not yet born.

#### SECTION 2<sup>a</sup>

##### *On the right of accession in respect of immovable property*

**Article 358.** Anything built, planted or sown on another's plot of land and any improvements or repairs made therein shall belong to the owner thereof, subject to the provisions of the following articles.

**Article 359.** Any works, sowings and plantations shall be presumed made by the owner at his expense, unless there is evidence to the contrary.

**Article 360.** The owner of the land who performs therein, by himself or by another, plantations, constructions or works with another's materials, must pay the value thereof; and, if he should have acted in bad faith, he shall also be obliged to compensate any damages. The owner of the materials shall be entitled to remove them only if he can do so without impairment of the construction, or without destroying the plantations, constructions or works performed.

**Article 361.** The owner of the land on which another should build, sow or plant in good faith shall be entitled to appropriate the works, sowings or plantations, after paying the compensation set forth in articles 453 and 454, or to make the person who manufactured or planted it pay the price of the land, and the person who sowed it, the corresponding rent.

**Article 362.** The person who builds, plants or sows in bad faith on another's land shall lose what he has built, planted or sown without being entitled to compensation.

**Article 363.** The owner of the land on which another has built, planted or sown in bad faith may request the demolition of the works or the uprooting of the plantation and sowing, returning things to their original condition at the expense of the person who built, planted or sowed.

**Article 364.** In the event of bad faith not only on the part of the person who builds, sows or plants on another's land, but also on the part of the owner of the latter, the rights of one and the other shall be the same as if both had acted in good faith.

The owner shall be deemed to have acted in bad faith whenever the deed should have been performed in his full sight, with his awareness and forbearance, and without opposition.

**Article 365.** If the materials, plants or seeds should belong to a third party who has not acted in bad faith, the owner of the land must be liable for their value on a subsidiary basis, only in the event that the person who used them does not have sufficient property to pay.

This provision shall not apply if the owner should exercise the right provided in article 363.

**Article 366.** The accretion gradually obtained by riverbanks as a result of the water currents shall belong to the owners of the land and properties adjoining such banks.

**Article 367.** The owners of landed properties adjoining ponds or lagoons do not acquire the land uncovered by the natural decrease of the waters, nor lose the land flooded by the waters in extraordinary rises.

**Article 368.** Where the current of a river, stream or torrent should segregate from the bank of a landed property a known portion of land and should transport it to another property, the owner of the property to which the segregated part belonged shall remain the owner thereof.

**Article 369.** Trees which are uprooted and transported by the current of the waters shall belong to the owner of the land to which they are taken, if the former owners should not claim them within one month. If they should claim them, they must pay any expenses incurred in gathering them in or putting them in a safe place.

**Article 370.** Riverbeds which are abandoned as a result of natural variations in the course of the waters shall belong to the owners of the lands of the riverbanks, in their respective lengths. If the abandoned riverbeds should have separated plots of land belonging to different owners, the new dividing line shall be equidistant from such properties.

**Article 371.** Islands formed in the seas adjacent to the coasts of Spain and in navigable and floatable rivers belong to the State.

**Article 372.** Where a navigable and floatable river should vary its direction naturally, and open a new course in a private landed property, this course shall become part of the public domain. The owner of the property shall recover it when the waters should leave it dry again, either naturally or as a result of any legally authorised works for such purposes.

**Article 373.** Islands which are formed in rivers by successive accumulation of debris belong to the owners of the nearest banks or shores, or to those of both banks if the island should be in the middle of the river, and the island shall then be divided longitudinally in half. If a single island thus formed should be further away from one bank than from the other, the owner of the nearest bank shall own all of it.

**Article 374.** When the river current should divide it into two branches, leaving a plot of land or part of it isolated, its owner shall remain owner thereof. He shall likewise keep it if a portion of land is separated from the property by the current.

### SECTION 3<sup>a</sup>

#### *On the right of accession in respect of movable property*

**Article 375.** When two movable things belonging to different owners are joined in such a manner that they form a single thing, without bad faith, the owner of the principal thing shall acquire the accessory thing, compensating the former owner for its value.

**Article 376.** Between two things which have been incorporated together, the thing to which the other has been joined as an adornment, or for its use or perfection shall be deemed the principal thing.

**Article 377.** If, pursuant to the rule of the preceding article, it should be impossible to determine which of two things incorporated together is the principal thing, the thing of greater value shall be deemed principal, and, between two things of equal value, the one with the greater volume. In paintings and sculpture, in writings, printed documents, engravings and lithographs, the table, the metal, the stone, the canvas, the paper or the parchment shall be deemed accessory.

**Article 378.** When the things joined together can be separated without impairment, the respective owners may demand their separation. However, when the thing joined for the use, embellishment or perfection of another is much more precious than the principal thing, the owner of the former may demand separation thereof, even if the thing to which it was incorporated suffers any impairment.

**Article 379.** When the owner of the accessory things has incorporated it in bad faith, he shall lose the incorporated thing and shall be obliged to compensate the owner of the principal thing for any damages suffered. If the owner of the principal thing should have acted in bad faith, the owner of the accessory thing shall be entitled to choose between the former paying its value or the separation of the thing belonging to him, even if it should be necessary to destroy the principal thing; in both cases, compensation of damages shall also apply. If either owner should have performed the incorporation in the other's sight, with his awareness and forbearance, and without opposition, their respective rights shall be determined as if they had acted in good faith.

**Article 380.** Whenever the owner of the materials employed without his consent should be entitled to compensation, he may request that this consist of delivery of a thing equal to the one employed in species and value, and all circumstances thereof, or the price thereof, according to expert appraisal.

**Article 381.** If, at the will of their owners, two things of the same or different species should be mixed, or if the mix should take place by chance, and in this last case the things should not be capable of separation without impairment, each owner shall acquire a proportional right to the part which corresponds to it based on the value of the things mixed or commingled.

**Article 382.** If, at the will of one owner only, but in good faith, two things of equal or different species should be mixed or commingled, the rights of the owners shall be determined according to the provisions of the preceding article.

If the person who performed the mix or commingling acted in bad faith, he shall lose the thing belonging to him which was mixed or commingled, and shall also be obliged to compensate any damages caused to the owner of the thing with which he performed the mix.

**Article 383.** The person who, acting in good faith, has used another's materials in whole or in part to create a new work, shall be entitled to appropriate the work, compensating the owner of the materials for their value. If the materials should be more precious or of greater value than the work for which it was used, the owner of the former may, at his discretion, keep the new species, after compensating the value of the work, or request compensation for the materials.

If bad faith should have intervened in the creation of a new species, the owner of the materials shall be entitled to keep the work without paying the author anything, or to request the latter to compensate him for the value of the materials and any damages caused.

## CHAPTER 3°

### *On survey and marking of boundaries*

**Article 384.** Every owner shall be entitled to mark the boundaries of his property, summoning the owners of the adjoining plots.

Holders of rights *in rem* shall have the same right.

**Article 385.** The marking of boundaries shall be performed in accordance with the deeds held by each owner and, in the absence of sufficient title, as results from the possession of the adjoining owners.

**Article 386.** If the deeds should fail to determine the limits or area belonged to each owner, and the matter should not be capable of resolution in reference to possession or by another means of evidence, the marking of boundaries shall be performed by distributing in equal parts the land subject to dispute.

**Article 387.** If the deeds of the adjoining owners should indicate a greater or lower area than that which comprises the whole of the land, the excess or shortfall shall be distributed proportionally.

## CHAPTER 4°

### *On the right to enclose rural properties*

**Article 388.** Any owner may enclose or fence his landed properties by means of walls, ditches, live or dead hedges, or in any other way, without prejudice to any easements constituted thereon.

## CHAPTER 5°

### *On ruinous buildings and trees which threaten to fall down*

**Article 389.** If a building, wall, column or any other construction should threaten to collapse, its owner shall be obliged to undertake its demolition or perform the necessary works to prevent its collapse.

If the owner of the ruinous building should not perform this, the Authorities may have it demolished at his expense.

**Article 390.** Where a sturdy tree should threaten to fall down in such a manner that it may cause damage to another's landed property or to any passersby on a public or private road, the owner of the tree shall be obliged to uproot and remove it; and, if he should fail to do so, it shall be done at his expense by order of the Authorities.

**Article 391.** In the case of the two preceding articles, if the building or tree should fall down, the provisions of articles 1907 and 1908 shall apply.

### TITLE III

#### On joint ownership

**Article 392.** There is joint ownership where ownership of a thing or right belongs *pro indiviso* to several persons.

In the absence of a contract or of specific regulations, joint ownership shall be governed by the provisions of this title.

**Article 393.** The participants' share in both benefits and charges shall be proportional to their respective interest.

Portions corresponding to the participants of the community shall be presumed equal, unless evidence to the contrary is provided.

**Article 394.** Each participant may use the things owned in common, provided that he does so in accordance with their destination and in a manner which does not damage the interests of the community, or prevent co-participants from using them according to their right.

**Article 395.** Every co-owner shall be entitled to oblige the participants to contribute to preservation expenses of the common thing or right. Only the person who renounces his part of the property shall be exempt from this obligation.

**Article 396.** The different flats or premises in a building, or the parts thereof capable of independent use, as a result of having their own exit to communal elements of the former or to the public road, may be subject to separate ownership, which shall carry an inherent co-ownership right over the communal elements of the building, which are all those necessary for its suitable use and enjoyment, such as the land, surface, foundations and roofs; structural elements, among them pillars, beams, frameworks and load-bearing walls; facades, with the external adornments of terraces, balconies and windows, including their look or configuration, the closing elements which form them and their external coatings; the foyer, stairs, caretaker's cubicles, corridors, passageways, walls, pits, patios, wells and the spaces destined for lift shafts, tanks, meters, telephone or other communal services or facilities, even those which should be of exclusive use; lifts and facilities, conduits and pipes for drainage purposes and for the supply of water, gas or electricity, even for solar energy; and for hot water, heating, air conditioning, ventilation or smoke extraction; for fire detection and prevention purposes; for entry-phones and other security facilities of the buildings, and shared aerials and other facilities for audiovisual or telecommunications services, until they reach private spaces; easements and any other material or legal elements which are indivisible as a result of their nature or destination.

The parts which are co-owned shall in no event to be capable of division, and may only be disposed of, encumbered or attached together with the exclusively owned specific portion to which they are inseparably attached.

In the event of disposal of a flat or premises, the owners of the rest shall not be entitled to rights of pre-emption or first refusal.

This form of ownership shall be governed by specific statutory provisions and, to the extent that they should permit, by the will of the interested parties.

**Article 397.** None of the co-owners may make alterations in the thing owned in common without the others' consent, even though advantages for all of them should be had as a result thereof.

**Article 398.** The agreement of the majority of the participants shall be required for the administration and better enjoyment of the thing owned in common.

There shall be no majority unless the resolution is passed by participants representing the majority of the interests constituting the subject matter of the joint ownership.

In the absence of a majority, or if the resolution passed thereby should be seriously detrimental to the persons interested in the thing owned in common, the Judge shall provide what he deems suitable, at the request of any party, even by appointing an Administrator.

When a part of the thing should belong exclusively to a participant or to some of them, and another should be owned in common, the provisions of the preceding paragraph shall only apply to the latter.

**Article 399.** Each co-owner shall have full ownership of his part and of the fruits and benefits corresponding to him, and may, as a result thereof, dispose of it, assign it or mortgage it and even delegate its use to another, save if they should be personal rights.

However, the effect of the disposal or the mortgage in relation with the co-owners shall be limited to the portion awarded thereto in the division upon termination of the joint ownership.

**Article 400.** No co-owner shall be obliged to remain in the joint ownership. Each of them may request any time the division of the thing owned in common.

Notwithstanding the foregoing, the covenant to preserve the thing undivided for a specific period, which shall not exceed ten years, shall be valid. This period may be extended by a new covenant.

**Article 401.** Notwithstanding the provisions of the preceding article, the co-owners may not request the division of the thing owned in common when, if they should do so, it should become useless for its intended destination.

If it should be a building whose characteristics should allow it, at the request of any of the co-owners, the division may take place by awarding separate flats or premises, with their attached communal elements, in the manner provided in article 396.

**Article 402.** The division of the thing owned in common may be performed by the interested parties, or by arbitrators or amicable compounders appointed at the will of the participants.

If it should be performed by arbitrators or amicable compounders, they must create portions which are proportional to the rights of each of them, avoiding to the extent possible any supplements in cash.

**Article 403.** Creditors or assignees of the participants may attend the division of the thing owned in common and challenge any division performed without their attendance. However, they may not challenge the division which has already been completed, save in the event of fraud, or in the event that it should have taken place notwithstanding their formally filed opposition to prevent it, and always excepting the rights of the debtor or of the assignor to uphold its validity.

**Article 404.** Where the thing should be in essence indivisible, and the co-owners should not agree on its being awarded to one of them, compensating the rest, it shall be sold, and its price shall be distributed among them.

**Article 405.** The division of the thing owned in common shall not prejudice a third party, who shall retain any mortgage rights, easements or other rights *in rem* belonging to him prior to the division. Personal rights belonging to a third party against the joint ownership shall likewise remain in force notwithstanding the division.

**Article 406.** The rules concerning the partition of the estate shall apply to division between the participants in the joint ownership.



## TITLE IV

### On certain special properties

#### CHAPTER ONE

##### *On water*

#### SECTION ONE

##### *On ownership of water*

**Article 407.** The following waters are of public domain:

1. Rivers and their natural courses.
2. Continuous or discontinuous waters of springs and streams flowing in their natural courses, and the riverbeds.
3. Waters which spring in a continuous or discontinuous manner in land which is of public domain.
4. Lakes and lagoons created by nature in public land, and their rivulets.
5. Rainwater which flows on cliffs or watercourses, where the course is also of public domain.
6. Underground waters in public land.
7. Water found in areas where public engineering works are taking place, even if performed by a concessionaire.
8. Waters which spring in a continuous or discontinuous manner from the private property of individuals, of the State, the province or villages, from the time they exit such properties.
9. Any excess from fountains, drains and public establishments.

**Article 408.** The following waters are private property:

1. Continuous or discontinuous waters which spring from privately owned plots of land, while they remain in such land.
2. Lakes and lagoons and their rivulets, created by nature in such plots of land.
3. Underground waters located in such plots of land.
4. Rainwater which falls therein, while it does not exit their boundaries.
5. The beds of continuous or discontinuous running waters formed by rainwater, and those of any streams which flow through land and properties which are not public domain.

In any irrigation channel or aqueduct, the water, the bed, the boxes and the banks shall be considered an integral part of the plot of land or the building for which the waters are destined. The owners of the plots of land through which or through whose boundaries the aqueduct should pass may not allege ownership thereof, nor any right to use its bed or banks, unless it is based on deeds of ownership which express the right or ownership claimed thereby.

#### SECTION 2<sup>a</sup>

##### *On the use of public waters*

**Article 409.** The use of public waters is acquired:

1. By administrative concession.
2. By twenty years' prescription.

The limits of the rights and obligations of such uses shall be, in the first case, as results from the terms of the concession and, in the second, from the manner and form in which the waters have been used.

**Article 410.** Any concession to use waters is understood without prejudice to the rights of third parties.

**Article 411.** The right to use public waters shall terminate as a result of expiration of the concession and by lack of use for twenty years.

#### SECTION 3<sup>a</sup>

##### *On the use of private waters*

**Article 412.** The owner of a plot of land in which a continuous or discontinuous spring or stream should be born may use its waters while they pass through it; but the remaining waters shall become public, and their use shall be governed by the special Law of Waters.

**Article 413.** Private property over rivulets of rainwater shall not authorise to perform tasks or works to change their course to the detriment of a third party, nor such works whose destruction may cause such detriment by the force of the current.

**Article 414.** Nobody may enter private property to search for waters or use them without licence from the owners.

**Article 415.** The ownership rights held by the owner of a plot of land over the waters which spring from it shall not prejudice any rights legitimately acquired to use them by the owners of lower plots.

**Article 416.** Any owner of a plot of land shall be entitled to build within his property deposits to preserve rainwater, provided that he does not cause any detriment to the public or to a third party.

#### SECTION 4<sup>a</sup>

##### *On underground waters*

**Article 417.** Only the owner of a plot of land or another person with his licence may investigate underground waters therein.

The investigation of underground waters in land belonging to the public domain may only be done with an administrative licence.

**Article 418.** Waters surfaced in accordance with the special Law of Waters belong to the person who brought them to the surface.

**Article 419.** If the owner of the waters surfaced should abandon them to their natural course, they shall become part of the public domain.

#### SECTION 5<sup>a</sup>

##### *General provisions*

**Article 420.** The owner of a plot of land in which defensive works have been performed to contain the water or where, as a result of the variation of their course, it should be necessary to build them again, shall be obliged, at his discretion, to make any necessary repairs or constructions or to tolerate the performance thereof, without detriment to him, by the owners of the plots of land which may experience or be manifestly exposed to damage.

**Article 421.** The provisions of the preceding article shall apply to the case where it is necessary to clear any plot of land from materials whose accumulation or collapse should prevent the course of the waters with damage or danger to a third party.

**Article 422.** All owners who participate in the benefit resulting from the works mentioned in the two preceding articles shall be obliged to contribute to the expenses thereof in proportion to their interest. Those who should have caused the damage by their fault shall be liable for any expenses.

**Article 423.** Ownership and use of waters belonging to corporations or individuals shall be subject to the Expropriation Law for reasons of public utility.

**Article 424.** The provisions of this title shall not prejudice rights acquired prior hereto, or the private ownership of the owners of waters, irrigation canals, springs or streams pursuant to which they use, sell or exchange them as private property.

**Article 425.** For all that is not expressly provided in this chapter, the provisions of the special Law on Waters shall apply.

## CHAPTER 2º

### *On minerals*

**Article 426.** Any Spaniard or foreigner may freely perform in land of public domain samplings or excavations not exceeding 10 m in breadth or depth for the purpose of discovering minerals; but he must give prior notice thereof to the local Authorities. On private property no sampling may be performed without the authorisation of the owner or his representative.

**Article 427.** The limits of the rights mentioned in the preceding article, prior formalities and conditions for the exercise thereof, designation of materials to be considered minerals and determination of the rights corresponding to the owner of the land and to the discoverers of the minerals in the event of a concession, shall be governed by the special Mining Law.

## CHAPTER 3º

### *On intellectual property*

**Article 428.** The owner of a literary, scientific or artistic work shall be entitled to exploit it and dispose of it at will.

**Article 429.** The intellectual property law sets forth the persons to whom this right belongs, the manner of its exercise and its duration. In cases not provided or resolved by such specific statute, the general rules provided in this Code relating to property shall apply.

## TITLE V

### On possession

#### CHAPTER ONE

##### *On possession and its species*

**Article 430.** Natural possession is the holding of a thing or the enjoyment of a right by a person. Simple possession is that same holding or enjoyment joined with the intention of having the thing or right as one's own.

**Article 431.** Possession is exercised on things or rights by the same person who holds and enjoys them, or by another in his name.

**Article 432.** Possession of property and rights may be held in one of two capacities: either as owner, or as holder of the thing or right, to preserve or enjoy them, while ownership belongs to another person.

**Article 433.** The person who is unaware that there is a defect which invalidates his title or manner of acquisition shall be deemed a possessor in good faith. Otherwise he shall be deemed a possessor in bad faith.

**Article 434.** Good faith is always presumed, and the person asserting a possessor's bad faith shall have the burden of proving it.

**Article 435.** Possession acquired in good faith shall not lose this nature save if and when there are acts which evidence that the possessor is not unaware that he possesses the thing improperly.

**Article 436.** It shall be presumed that possession continues to be enjoyed in the same capacity in which it was acquired, unless there is evidence to the contrary.

**Article 437.** Only things and rights which are capable of appropriation may be subject to possession.

#### CHAPTER 2°

##### *On acquisition of possession*

**Article 438.** Possession is acquired by material occupation of the thing or right possessed, or by the latter becoming subject to our will, or pursuant to the acts and legal formalities set forth to acquire such right.

**Article 439.** Possession may be acquired by the same person who is to enjoy it, his legal representative, his attorney or by a third party without mandate; but this last case possession shall not be deemed to have been acquired until the person in whose name the act of possession has been verified should ratify it.

**Article 440.** Possession of hereditary property shall be deemed transferred to the heir without interruption from the time of death of the decedent, in the event that the former should finally accept the inheritance. The person who validly rejects an inheritance shall be deemed never to have possessed it.

**Article 441.** In no event may possession be acquired violently where there is a possessor who opposes this. A person who believes he has an action or right to deprive another of holding a thing, if the holder refuse to deliver it, must request the assistance of the competent Authority.

**Article 442.** A person succeeding by inheritance shall not suffer the consequences of his principal's defective possession, if it is not proven that he was aware of the defects which affected it; however, the effects of possession in good faith shall only benefit him from the date of his decedent's death.

**Article 443.** Minors and incapacitated persons may acquire possession over things; but they shall require the assistance of their legitimate representatives to use the rights arisen in their favour as a result of such possession.

**Article 444.** Acts which are merely tolerated, and those which are performed in a clandestine fashion and without the possessor of the thing being aware of them, or with violence, shall not affect possession.

**Article 445.** Possession, as a fact, may not be acknowledged in favour of two different persons, other than in cases of pro indiviso. If a dispute should arise on the fact of possession, the current possessor shall be preferred; if there should be two possessors, the oldest shall be preferred; if the dates of possession should be the same, the possessor who presents a title shall be preferred; and, all these conditions being equal, the thing shall be deposited or consigned with the court, until the possession or ownership thereof is determined pursuant to the corresponding proceedings.

## CHAPTER 3°

### *On the effects of possession*

**Article 446.** Any possessor is entitled to be respected in his possession; and, if he should be disturbed in it, he must be protected or such possession must be restored to him by the means set forth in procedural laws.

**Article 447.** Only possession acquired and enjoyed in the capacity of owner may serve as title to acquire ownership.

**Article 448.** The possessor in the capacity of owner has a legal presumption of possessing based on just title, and cannot be obliged to exhibit it.

**Article 449.** Possession of a real property shall involve possession of the furniture and objects located therein, unless it should be expressed or evidenced that they are to be excluded.

**Article 450.** Each participant of thing possessed in common shall be deemed to have possessed exclusively the part which, upon dividing the thing, should be allocated to him, during the whole period during which it remained undivided. Interruption in the possession of the whole or part of the thing possessed in common shall be to the equal detriment of all.

**Article 451.** The possessor in good faith shall make any fruits received his own unless he is legally interrupted in his possession.

Natural and industrial fruits shall be deemed received from the time on which they arise or are separated.

Civil fruits shall be deemed accrued on a daily basis, and shall belong to the possessor in good faith in such proportion.

**Article 452.** If at the time on which good faith should cease, any natural or industrial fruits should be pending, the possessor shall be entitled to recover any expenses made for their production, and also to the part of the liquid product of the harvest proportional to the time of his possession.

Charges shall be allocated pro rata in the same manner among two possessors.

The owner of the thing may, if he wishes to, grant the possessor in good faith the power to finish cultivation and gathering of any fruits which are pending, as compensation for the part of the cultivation expenses and the liquid proceeds which belong to him; the possessor in good faith who for any reason does not wish to accept this grant, shall forfeit the right to be compensated in another manner.

**Article 453.** Necessary expenses shall be paid to every possessor; but only the possessor in good faith may retain the thing until satisfaction thereof.

Useful expenses shall be paid to the possessor in good faith, who shall be entitled to the same right of retention, and the person who should have prevailed in the dispute over possession may choose to satisfy the amount of the expenses, or pay the increase in value of the thing as a result thereof.

**Article 454.** Purely luxurious or merely recreational expenses shall not be payable to the possessor in good faith; but he may take away any adornments with which he has embellished the principal thing if it should not suffer any impairment, and if his successor in possession does not prefer to pay the amount of the relevant expenses.

**Article 455.** The possessor in bad faith shall pay any fruits received and those which the legitimate possessor could have received, and shall only be entitled to be repaid any necessary expenses made for the preservation of the thing. Expenses made for luxurious and recreational improvements shall not be paid to the possessor in bad faith; but he may take the objects in which such expenses have been invested, provided that the thing suffers no impairment, and that the legitimate possessor does not prefer to keep them by paying their value at the time of becoming their possessor.

**Article 456.** Improvements resulting from nature or from time shall always inure to the benefit of the person who has won possession.

**Article 457.** The possessor in good faith shall not be liable for the impairment or loss of thing possessed, outside cases where he should be proved to have acted with malice. The possessor in bad faith shall be liable for impairment or loss in any case, and even for those caused by force majeure when he should have maliciously delayed delivery of the thing to its legitimate possessor.

**Article 458.** The person who obtains possession is not obliged to pay improvements which have ceased to exist upon acquiring the thing.

**Article 459.** The current possessor who proves having previously possessed the thing shall be presumed to have possessed it also during the time in between, unless evidence to the contrary is provided.

**Article 460.** The possessor may lose his possession:

1. By abandonment of the thing.
2. By assignment made in favour of another for valuable consideration or as a gift.
3. By total destruction or loss of the thing, or as a result of its becoming beyond the bounds of commerce.
4. By another's possession, even against the will of the former possessor, if such new possession should have lasted more than one year.

**Article 461.** Possession of movable property shall not be deemed lost while it remains in the power of the possessor, even if the latter should accidentally be unaware of its whereabouts.

**Article 462.** Possession of immovable property and rights *in rem* shall only be deemed to have been lost or transferred, for the purposes of prescription to the detriment of a third-party, subject to the provisions of the Mortgage Law.

**Article 463.** Acts relating to possession, performed or consented by the person possessing a thing belonging to another as mere holder, to enjoy it or retain it in any capacity, shall not bind the owner nor inure to his detriment, unless the latter should have expressly granted to the former powers to perform them or should subsequently ratify them.

**Article 464.** Possession of movable property, acquired in good faith, is equivalent to title. Notwithstanding the foregoing, any person who has lost movable property or has been deprived of it illegally may claim it from its possessor.

If the possessor of the lost or stolen movable property should have acquired it in good faith at a public sale, the owner may not have it restored to him without reimbursing the price paid for it.

The owner of things pawned in Pawnshops created with governmental authorisation may not recover them, irrespective of who pawned them, without first reimbursing the Establishment the amount of the pledge and any interest payable.

As relates to things acquired in an Exchange, fair or market, or from a legally established trader who regularly trades in analogous objects, the provisions of the Commercial Code shall apply.

**Article 465.** Wild animals are only possessed while they are in one's power; domesticated or tamed animals shall be deemed tame or domestic pets, if they are in the habit of returning to the home of their possessor.

**Article 466.** A person who lawfully recovers the possession improperly lost shall be deemed for all purposes which may inure to his benefit to have enjoyed it without interruption.

## TITLE VI

### On usufruct, on use and on habitation

#### CHAPTER ONE

##### *On usufruct*

#### SECTION ONE

##### *On usufruct in general*

**Article 467.** Usufruct entitles one to enjoy another's property with the obligation to preserve its form and substance, unless otherwise authorised by the deed pursuant to which it was created or the law.

**Article 468.** Usufruct is created by law, by the will of individuals expressed in acts *inter vivos* or in a last will and testament and by prescription.

**Article 469.** Usufruct may be created in respect of all or part of the fruits of the thing, in favour of one or several persons, simultaneously or successively, and in any event from or until a certain day, absolutely or subject to a condition. It may also be created over a right, provided that it is not a strictly personal or a non-transferable right.

**Article 470.** The rights and obligations of the usufructuary shall be as determined in the deed constituting the usufruct; in the event of absence or insufficiency thereof, the provisions contained in the two following sections shall be observed.

## SECTION 2<sup>a</sup>

### *On the rights of the usufructuary*

**Article 471.** The usufructuary shall be entitled to receive all natural, industrial and civil fruits of the property subject to the usufruct. He shall be considered a stranger in respect of any treasures found on the property.

**Article 472.** Natural or industrial fruits which are pending at the start of the usufruct shall belong to the usufructuary.

Those which are pending at end of the usufruct shall belong to the owner.

In the above cases, the usufructuary, at the start of the usufruct, shall have no obligation to pay the owner any expenses made; but the owner shall be obliged to pay at the end of the usufruct, with the proceeds of the pending fruits, ordinary expenses incurred for cultivation, sowing and other similar expenses made by the usufructuary.

The provisions of this article shall not prejudice the rights of a third party acquired at the start or at the end of the usufruct.

**Article 473.** If the usufructuary should have leased the land or properties given in usufruct and the latter should end prior to the end of the lease, he or his heirs and successors shall only receive the proportional part of the rent payable by the lessee.

**Article 474.** Civil fruits shall be deemed perceived per day, and shall belong to the usufructuary in proportion to the duration of the usufruct.

**Article 475.** If the usufruct is created over the right to receive a regular income or allowance, either in cash, or in fruits, or the interest on bearer notes or securities, each instalment shall be deemed products or fruits of the former right

If it should consist of the enjoyment of the profits of a share in an industrial or commercial undertaking, without a fixed distribution date, such profit shall have the same consideration.

In both cases the products shall be distributed as civil fruits, and shall be allocated as provided in the preceding article.

**Article 476.** In a plot of land which contains mines, the product of any mines discovered, granted or exploited at the start of the usufruct shall not correspond to the usufructuary unless expressly granted in the deed which created it, or unless the usufruct is universal.

The usufructuary may, however, extract stones, lime and plaster from quarries for any repairs or works which he should be obliged to perform or which should be necessary.

**Article 477.** Notwithstanding the provisions of the preceding article, in a legal usufruct the usufructuary may exploit any mines discovered, granted or exploited existing in the property, keeping half of the resulting profits after deducting any expenses, which shall be paid by halves with the owner.

**Article 478.** The condition of usufructuary shall not deprive the person who holds it from the right granted to every person by the Mining Law to discover and obtain the concession of any mines existing in plots of land subject to usufruct, in the manner and under the conditions set forth in the same Law.

**Article 479.** The usufructuary shall be entitled to enjoy any increase in the thing subject to usufruct by accretion, any easements in its favour and generally all benefits inherent thereto.

**Article 480.** The usufructuary may use himself the thing subject to usufruct, lease it to another and dispose of his right of usufruct, even as a gift, but all contracts entered into as such usufructuary shall be terminated at



the end of the usufruct, save the lease of rural properties, which shall be deemed to subsist during the agricultural year.

**Article 481.** If the usufruct should comprise things which, although not consumed, are slowly impaired pursuant to wear and tear, the usufructuary shall be entitled to avail himself of them, using them in accordance with their purpose, and shall only be obliged to return them at the end of the usufruct in their current condition; but with the obligation to compensate the owner for any impairment suffered as a result of his wilful misconduct or negligence.

**Article 482.** If the usufruct should comprise things which cannot be used without consuming them, the usufructuary shall be entitled to avail himself of them with the obligation to pay their value upon expiration of the usufruct, if it should have been estimated. If it should not have been estimated, he shall be entitled to return them in the same amount or quality or to pay their current price at the end of the usufruct.

**Article 483.** The usufructuary of vineyards, olive groves or other trees or bushes may avail himself of any dead stumps and even of any which should be broken or uprooted by accident, with the obligation to replace them with others.

**Article 484.** If, as a result of an extraordinary accident or event, the vines, olive groves or other trees or bushes should have disappeared in such a considerable number that their replacement should be impossible or excessively burdensome, the usufructuary may leave the dead, fallen or broken stumps at the owner's disposal and require the latter to remove them and leave the land bare.

**Article 485.** The usufructuary of woodland shall enjoy all the benefits produced thereby according to its nature. In timber or construction timber woodland, the usufructuary may perform any ordinary cutting or felling usually performed by the owner and, in the absence thereof, shall perform it in accordance with local custom as relates to manner, portions and season.

In any event any felling or cutting shall be performed so as not to cause a detriment to the preservation of the property.

In timber nurseries the usufructuary may perform the necessary selective felling so that the timber which remains may develop conveniently.

Other than as provided in the preceding paragraphs, the usufructuary may not fell trees by the root other than to replace or improve any of the things subject to usufruct, and in this case, he shall give the owner prior notice of the need to perform such works.

**Article 486.** The usufructuary of an action to claim a plot of land or a right *in rem* or movable property shall be entitled to exercise it and to force the owner of the action to grant him powers of representation for such purpose and to provide any available means of evidence. If, as a result of the exercise of the action, he should acquire the thing subject to claim, the usufruct shall only be limited to the fruits, and the ownership shall be vested in the owner.

**Article 487.** The usufructuary may perform in the property constituting the subject matter of the usufruct any useful or recreational improvements deemed convenient, provided that he does not alter its form or substance; however, he shall not be entitled to compensation for this purpose. He may, notwithstanding the foregoing, remove such improvements, if it should be possible to do so without detriment to the property.

**Article 488.** The usufructuary may offset any damages to the property against any improvements performed therein.

**Article 489.** The owner of property held by another pursuant to usufruct may dispose of it, but not alter its form or substance, nor perform anything in it which may be to the detriment of the usufructuary.

**Article 490.** The usufructuary of part of the thing possessed in common shall exercise all rights corresponding to the owner thereof relating to its administration and to the perception of fruits or interest. If the joint ownership should cease as a result of division of the thing possessed in common, the usufructuary shall hold the usufruct of the part awarded to the owner or co-owner.

### SECTION 3<sup>a</sup>

#### *On the obligations of the usufructuary*

**Article 491.** The usufructuary, prior to beginning his enjoyment of the property, shall be obliged to do the following:

- 1.** To make an inventory of the property, summoning the owner or his legitimate representative for such purposes, obtaining appraisals of movable property and describing the condition of immovable property.
- 2.** To provide a bond, undertaking to comply with the obligations provided in this section.

**Article 492.** The provisions of number 2 of the preceding article shall not apply to the seller or donor who has reserved usufruct over the property sold or given, nor to parents who are usufructuaries of property belonging to their children, nor to the surviving spouse in respect of his legal share in usufruct, unless the parents or the spouse should subsequently marry.

**Article 493.** The usufructuary, whatever his title to the usufruct, may be excused of the obligation to make an inventory or provide a bond, where no detriment to anybody should result therefrom.

**Article 494.** If the usufructuary should fail to provide a bond in those cases where it is obliged to do so, the owner may request that any immovable property be placed under administration, that any movable property be sold, that any commercial paper, nominative or bearer credit facilities be registered in as account entries or be deposited in a Bank or public establishment and that any equity or cash sums and the price of disposal of any movable property be invested in blue-chip securities.

The interest on the price of movable property and of commercial paper and securities and the products of the property placed under administration shall belong to the usufructuary.

If the owner should prefer it, he may also, while the usufructuary does not provide a bond or if he is excused from doing so, retain in his possession the property subject to usufruct as administrator thereof, with the obligation to deliver to the usufructuary the liquid products thereof, after deducting the sum agreed or judicially decreed in consideration of such administration.

**Article 495.** If the usufructuary who has not provided a bond should demand, under oath, delivery of any furniture necessary for his use, and that he be provided with habitation for himself and his family in a house included in the usufruct, the Judge may assent to this request, after consulting the circumstances of the case. The same shall be understood in respect of any instruments, tools and other movable property necessary for the business he conducts.

If the owner should wish that certain movable property not be sold because of its artistic merit or sentimental value, he may request delivery thereof, securing payment of the legal interest on its appraisal value.

**Article 496.** Upon delivery of the bond by the usufructuary, he shall be entitled to all products from the date on which he ought to have begun to receive them, in accordance with the deed which created the usufruct.

**Article 497.** The usufructuary must care for the things given in usufruct as an orderly *paterfamilias*.

**Article 498.** The usufructuary who disposes of or leases his usufruct right shall be liable for the impairment suffered by the things subject to usufruct as a result of the fault or negligence of the person replacing him.

**Article 499.** If the usufruct should be constituted over a herd or drove of livestock, the usufructuary shall be obliged to replace with the calves the heads of cattle which ordinarily die on an annual basis, or which should be missing as a result of harmful rapacious animals.

If the livestock over which the usufruct should have been constituted should perish completely, without fault by the usufructuary, as a result of contagion or another uncommon event, the usufructuary shall meet his obligations by delivering to the owner any remains which should have been saved from this misfortune.

If the herd should perish in part, also by accident and without fault by the usufructuary, the usufruct shall continue over the part which is preserved.

If the usufruct should relate to sterile cattle, it shall be considered, as regards its effects, as if it had been constituted over a fungible thing.

**Article 500.** The usufructuary shall be obliged to make ordinary repairs required by the things given in usufruct. Ordinary repairs shall be deemed to mean those required as a result of any impairments or damage resulting from the natural use of things which are indispensable for their preservation. If he should fail to perform them after being demanded to do so by the owner, the latter may perform them by himself at the usufructuary's expense.

**Article 501.** Extraordinary repairs shall be borne by the owner. The usufructuary is obliged to give the latter notice thereof in case of urgent need to perform them.

**Article 502.** If the owner should perform extraordinary repairs, he shall be entitled to request the usufructuary to pay legal interest on the amount invested therein for the duration of the usufruct.

If he should fail to perform them when they should be indispensable for the subsistence of the thing, the usufructuary may perform them; but he shall be entitled to demand the owner, upon expiration of the usufruct, to pay the increase in value of the property as a result of such works.

If the owner should refuse to satisfy such amount, the usufructuary shall be entitled to retain the thing until he is reimbursed with its products.

**Article 503.** The owner may perform any works and improvements of which the property subject to usufruct is capable, or new plantations therein if it should be a rural property, provided that the value of the usufruct should not be reduced or the right of the usufructuary damaged as a result of such acts.

**Article 504 .** Payment of charges and annual contributions and of those which are deemed to tax the fruits shall be borne by the usufructuary for the duration of the usufruct.

**Article 505.** Contributions imposed during the usufruct directly over the capital shall be borne by the owner. If the latter should have paid them, the usufructuary must pay interest corresponding to the sums paid for such purpose and, if the usufructuary should have advanced payment thereof, he must receive the amount thereof at the end of the usufruct.

**Article 506.** If the usufruct should be constituted over a whole patrimony, and, upon its creation the owner should have debts, the provisions of articles 642 and 643 in respect of gifts shall apply, both as relates to the subsistence of the usufruct and to the usufructuary's obligation to pay them.

The same provision shall apply in the event that the owner should be obliged, upon creation of the usufruct, to pay regular amounts, even if the principal thereof should be unknown.

**Article 507.** The usufructuary may claim by himself any matured credits which form part of the usufruct if he should have provided or should provide the corresponding bond. If he should be excused from providing a bond or should have been unable to provide it, or if the bond provided should not be sufficient, he shall require the owner's authorisation to collect such credits, or that of the Judge in the absence of the former.

The usufructuary who has provided a bond may give the capital any destination he deems convenient. The usufructuary who has not provided a bond must place such capital so as to generate interest by common consent with the owner; in the absence of an agreement between both, with judicial authorisation; and, in any event, with sufficient guarantees to preserve the integrity of the capital subject to usufruct.

**Article 508.** The universal usufructuary must pay in full the legacy consisting of a life annuity or support allowance.

The usufructuary of a proportional share of the inheritance shall pay it in proportion to his share.

In neither of these two cases shall the owner be obliged to reimburse him.

The usufructuary of one or more specific things shall only pay the legacy when the annuity or allowance should be specifically created over the former.

**Article 509.** The usufructuary of a mortgaged property shall not be obliged to pay the debts for the security whereof the mortgage was established.

If the property should be attached or judicially sold for the payment of the debt, the owner shall be liable to the usufructuary for the latter's losses by reason thereof.

**Article 510.** If the usufruct should be for the whole or a proportional share of an inheritance, the usufructuary may anticipate the sums corresponding to the property subject to usufruct for the payment of the debts of the estate: and shall be entitled to require the return thereof, without interest, from the owner, upon expiration of the usufruct. If the usufructuary should refuse to make such an advance, the owner may request that the part of the property subject to usufruct necessary to pay such sums be sold, or pay them out of his own money, and in this last case shall be entitled to request from the usufructuary the corresponding interest.

**Article 511.** The usufructuary shall be obliged to give the owner notice of any third-party acts of which it should become aware capable of injuring the rights of ownership, and, if he should fail to do so, shall be liable for any damages, as if they had been caused by his fault.

**Article 512.** The usufructuary shall bear the expenses, costs and rulings of any litigation relating to the usufruct.

## SECTION 4<sup>a</sup>

### *On ways of extinguishing the usufruct*

**Article 513.** The usufruct shall be extinguished:

- 1.** By the death of the usufructuary.
- 2.** By expiration of the period for which it was constituted, or performance of the condition subsequent set forth in the deed creating the usufruct.
- 3.** By the coincidence of the usufruct and ownership in the same person.
- 4.** By the renunciation of the usufructuary.
- 5.** By total loss of the thing constituting the subject matter of the usufruct.
- 6.** By termination of the right of the person who constituted the usufruct.
- 7.** By prescription.

**Article 514.** If the thing given in usufruct should be lost only in part, such right shall continue in the remaining part.

**Article 515.** A usufruct may not be created in favour of a village or Corporation or Company for more than 30 years. If one should have been created, and before such time the village should be abandoned, or the Corporation or the Company dissolved, the usufruct shall be extinguished by reason thereof.

**Article 516.** The usufruct granted for the time it takes a third party to reach a certain age shall subsist for the preset number of years, even if the third party should die beforehand, unless such usufruct should have been expressly granted only on the basis of the existence of such person.

**Article 517.** If the usufruct should be created over a property of which a building forms part and such building should be destroyed in any way, the usufructuary shall be entitled to enjoy the land and materials. The same shall happen when the usufruct should be created only over a building and the latter should be destroyed. However, in such case, if the owner should wish to build another building, he shall be entitled to occupy the land and to avail himself of the materials, being obliged to pay the usufructuary, for the duration of the usufruct, the interest on the sums corresponding to the value of the land and materials.

**Article 518.** If the usufructuary should purchase with the owner insurance over a plot of land given in usufruct, in the event of loss, the former shall continue in the enjoyment of the new building if it should be built, or shall receive the interest on the insurance indemnity if it should not be in the owner's interest to rebuild. If the owner should have refused to contribute to the insurance on the plot of land, and the usufructuary should have purchased it by himself, the latter shall be entitled to receive the insurance indemnity in full in the event of loss, but with the obligation to invest it in rebuilding the property. If the usufructuary should have refused to contribute to the insurance, and the owner should have purchased it by himself, the latter shall receive the insurance indemnity in full in the event of loss, always excepting the right granted to the usufructuary in the preceding article.

**Article 519.** If the thing subject to usufruct were expropriated for public use, the owner shall be obliged either to replace it with another of equal value and under analogous conditions, or to pay the usufructuary the legal interest on the amount of the indemnity for the duration of the usufruct. If the owner should choose the latter option, he must guarantee payment thereof.

**Article 520.** The usufruct shall not be extinguished as a result of misuse of the thing subject to usufruct; however, if such abuse should cause considerable damage to the owner, the latter may request delivery of the thing, undertaking to pay the usufructuary on an annual basis the net product thereof, after deducting any expenses and the fee set for the performance of his administration duties.

**Article 521.** The usufruct created in favour of several persons alive at the time of its creation shall not be extinguished until the death of the last surviving person.

**Article 522.** Upon expiration of the usufruct, the thing subject to usufruct shall be delivered to the owner, save for the right of retention assisting the usufructuary or his heirs for any disbursements to be repaid. Upon verification of such delivery, the bond or mortgage shall be cancelled.

## CHAPTER 2°

### *On use and habitation*

**Article 523.** The rights and obligations of the usuary and of the person entitled to habitation shall be regulated by the deed constituting these rights; and, in the absence thereof, by the following provisions.

**Article 524.** Use entitles a person to receive, out of the fruits of a thing belonging to another, those which are sufficient for the needs of the usuary and his family, even if the latter should increase in size. Habitation entitles a person to occupy in another's house the necessary rooms for himself and the persons in his family.

**Article 525.** The rights of use and habitation may not be leased or transferred to another pursuant to any kind of title.

**Article 526.** A person entitled to use of a livestock flock or drove may benefit from the young, milk and wool thereof to the extent sufficient for consumption by himself and his family, and of the manure necessary to fertilise the land cultivated by him.

**Article 527.** If the usuary should consume all fruits of a thing belonging to another, or the person entitled to habitation should occupy the whole house, he shall be obliged to pay cultivation expenses, ordinary repairs for the purposes of preserving the thing and to pay contributions, in the same way as the usufructuary. If he should only receive a part of the fruits or live in part of the house, he must not contribute anything, provided that the owner is left with a part of the fruits or benefits sufficient to cover expenses and charges. If they should not be sufficient, the former shall pay the shortfall.

**Article 528.** The provisions governing usufruct shall apply to the rights of use and habitation to the extent that they do not oppose the provisions of the present chapter.

**Article 529.** The rights of use and habitation shall be extinguished on the same grounds as usufruct, and also as a result of serious abuse of the thing and the rooms.

## TITLE VII

### **On easements**

#### CHAPTER ONE

##### *On easements in general*

#### SECTION ONE

##### *On the different kind of easements which may be established over properties*

**Article 530.** An easement is an encumbrance imposed on an immovable property for the benefit of another belonging to a different owner.

The immovable property in whose favour the easement is constituted is called dominant tenement; the property suffering it is the servient tenement.

**Article 531.** Easements may also be established for the benefit of one or several persons or a community to whom the encumbered property does not belong.

**Article 532.** Easements may be continuous or discontinuous, apparent or non-apparent.

Continuous easements are those the use whereof is or may be incessant, without intervention of any human act. Discontinuous easements are those which are used in longer or shorter intervals, and which depend on human acts. Apparent easements are those which are publicly announced and are continuously in sight by external signs which reveal the use and benefit thereof.

Non-apparent easements are those which present no external indication whatsoever of their existence.

**Article 533.** Easements can also be positive or negative.

A positive easement is that which imposes on the owner of the servient tenement the obligation to allow something to be done or to do it himself, and a negative easement is that which forbids the owner of the servient tenement to do something which would be lawful without the easement.

**Article 534.** Easements are inseparable from the property to which they actively or passively belong.

**Article 535.** Easements are indivisible. If the servient tenement is divided between two or more persons, the easement shall not be amended, and each of them shall be obliged to tolerate it in the part which corresponds to him.

If the dominant tenement is divided between two or more persons, the titleholder of each portion may use the easement in full, not altering the place of its use, or otherwise making it more burdensome.

**Article 536.** Easements are established pursuant to the law or to the will of the owners. The former shall be called statutory easements and the latter voluntary easements.

## SECTION 2<sup>a</sup>

### *On the ways of acquiring easements*

**Article 537.** Continuous and apparent easements are required pursuant to title, or by 20 years' prescription.

**Article 538.** In order to acquire by prescription the easements mentioned the preceding article, possession shall be counted: for positive easements from the date on which the owner of the dominant tenement or the person who has taken advantage of the easement should have begun to exercise it over the servient tenement; and in negative easements, from the date on which the owner of the dominant tenement should have forbidden, pursuant to a formal act, the owner of the servient tenement to perform the deed which would be lawful without the easement.

**Article 539.** Continuous and non-apparent and discontinuous easements, whether or not apparent, may only be acquired pursuant to title.

**Article 540.** Only a public deed of acknowledgement by the owner of the servient tenement, or a final judgement may compensate for the lack of a deed constituting the easement which cannot be acquired by prescription.

**Article 541.** The existence of an apparent sign of the easement between two properties, established by the owner of both, shall be considered, in the event of disposal of one of them, to constitute title for the easement to continue on an active and passive basis, unless, at the time of the split in ownership of both properties, the

owner should express otherwise in the deed of disposal of either of them, or if such sign should be removed before execution of the public deed.

**Article 542.** When an easement is established, all rights necessary for its use are deemed to have been granted.

## SECTION 3<sup>a</sup>

### *Rights and obligations of the owners of the dominant tenement and the servient tenement*

**Article 543.** The owner of the dominant tenement may perform, at his expense, in the servient tenement the necessary works for the use and preservation of the easement, but without altering it or making it more burdensome.

He must choose for such purposes the most convenient time and manner in order to cause the least possible inconvenience to the owner of the servient tenement.

**Article 544.** If there should be several dominant tenements, the owners of all of them shall be obliged to contribute to the expenses mentioned in the preceding article, in proportion to the benefit derived by each of them from the works. The owner who does not wish to contribute may be exonerated by renouncing the easement for the benefit of the rest.

If the owner of the servient tenement should in any way use the easement, he shall be obliged to contribute to such expenses in the aforementioned proportion, unless otherwise agreed.

**Article 545.** The owner of the servient tenement may not in any way impair the use of an existing easement. However, if, as a result of the place originally allocated, or the manner initially established to use the easement, it should become very inconvenient for the owner of the servient tenement or should prevent him from performing therein important works, repairs or improvements, it may be altered at his expense, provided that he offers another place or manner which is equally convenient, and which does not result in any detriment to the owner of the dominant tenement or to those who are entitled to use the easement.

## SECTION 4<sup>a</sup>

### *On the ways of extinguishing easements*

**Article 546.** Easements are extinguished:

**1.** By coincidence in the same person of ownership of the dominant tenement and the servient tenement.

**2.** By failure to use it for 20 years.

This period shall begin to count, for discontinuous easements, from the date on which the easement should have ceased to be used; and, for continuous easements, from the date on which an act contrary to the easement should have taken place.

**3.** Where the properties should be in such a condition that the easement cannot be used; but the latter shall revive if, thereafter, the condition of the properties should allow its use, unless, when such use should again be possible, sufficient time should have elapsed for prescription purposes, in accordance with the provisions of the preceding number.

**4.** Upon arrival of the relevant date or the performance of the condition, if the easement should be temporary or conditional.

**5.** By renunciation of the owner of the dominant tenement.

**6.** By redemption agreed between the owner of the dominant tenement and the servient tenement.



**Article 547.** The manner in which the easement is performed may be subject to prescription just as the easement itself, and in the same way.

**Article 548.** If the dominant tenement should belong to several persons in common, use of the easement by one of them shall prevent prescription in respect of the rest.

## CHAPTER 2°

### *On statutory easements*

#### SECTION ONE

##### *General provisions*

**Article 549.** Easements imposed by the law are for purposes of public benefit or in the interest of individuals.

**Article 550.** All matters concerning easements established for public or communal utility shall be governed by the specific statutes and regulations which establish them and, in the absence thereof, by the provisions of the present title.

**Article 551.** Easements imposed by the law in the interest of individuals or for reasons of private benefit shall be governed by the provisions of the present title, without prejudice to the provisions of any statutes, regulations and general or local urban or rural policing ordinances.

These easements may be amended by agreement between the interested parties where this is not forbidden by the law or results in detriment to a third party.

#### SECTION 2<sup>a</sup>

##### *On easements relating to waters*

**Article 552.** Lower plots are subject to receiving the waters which naturally descend, without human intervention, from higher plots, and the soil or stones dragged in their wake.

The owner of the lower plot may not perform works which prevent the easement, nor may the owner of the higher property perform works which make it more burdensome.

**Article 553.** Riverbanks, even if they are private property, are subject to the easement of public use in an area amounting to three metres of their whole length and margins for the general interests of navigation, flotation, fishing and salvage.

Plots of land adjoining the banks of navigable or floatable rivers are also subject to the easement of providing a tow path exclusively for river navigation and flotation purposes.

If it should be necessary to occupy private land for such purpose, the corresponding compensation shall be paid.

**Article 554.** Where the diversion or taking of waters from a river or stream, or the use of other continuous or discontinuous currents should require building a dam, and the person who is to construct it does not own the banks or land on which he needs to support it, he may establish an easement to set up a dam support bracket, after paying the corresponding compensation.

**Article 555.** Mandatory easements for the drawing of waters or water troughs for animals may only be imposed on grounds of public benefit in favour of any village or hamlet, after paying the corresponding compensation.

**Article 556.** Mandatory easements for the drawing of waters or water troughs for animals entail the obligation by the servient tenements to give a right of way to persons and cattle after the point where they are to be used, and the compensation must extend to this service.

**Article 557.** Any person who wishes to avail himself of the water available to him for a property belonging to him is entitled to make it pass through intermediate plots of land, with the obligation to compensate their owners, and also the owners of the lower plots to which the waters may be filtered or may fall.

**Article 558.** A person who purports to use the rights granted in the preceding article shall be obliged:

1. To evidence that he can avail himself of the water and that it is sufficient for the use to which it is destined.
2. To demonstrate that the right of way required is the most convenient and least burdensome for third parties.
3. To compensate the owner of the servient tenement in the manner determined by statutes and regulations.

**Article 559.** Aqueduct easements cannot be imposed for reasons of private interest over buildings, their patios or rooms, or over existing gardens or vegetable gardens.

**Article 560.** The aqueduct easement shall not prevent the owner of the servient tenement from closing and fencing it, or from building over the same aqueduct in a manner which does not prejudice the latter or make it impossible to effect the necessary repairs and cleaning thereof.

**Article 561.** For the purposes provided in the law, the aqueduct easement shall be deemed continuous and apparent, even if the passage of water is not constant, or if its use depends on the needs of the dominant tenement, or of watering turns set in terms of days or hours.

**Article 562.** A person who, in order to water or improve his property, should need to build a lock or divider in the channel where he is to receive the water, may require the owners of the margins to allow construction thereof, after paying any damages, including damages suffered by such owners and other farmers as a result of the new easement.

**Article 563.** The creation, scope, form and conditions of the water easements mentioned in this section shall be governed by the specific statute on this issue in all matters not provided in this Code.

## SECTION 3<sup>a</sup>

### *On the right of way*

**Article 564.** The owner of the property or land located between others belonging to third parties without exit to a public road is entitled to demand a right of way through the neighbouring properties, after paying the corresponding compensation.

If this easement should be created so that its use may be continuous to serve all of the dominant tenement's needs by establishing a permanent path, the compensation shall consist of the value of the land occupied, and of the damage caused to the servient tenement.

When it should be limited to the right of way necessary for the cultivation of a property located between others and to collect its harvest through the servient tenement without a permanent path, the compensation shall consist of paying the damages caused by the encumbrance.

**Article 565.** The right of way must be given through the point which is least detrimental to the servient tenement and, to the extent that it can be conciliated with the preceding rule, through the shortest distance from the dominant tenement to the public road.

**Article 566.** The width of the right of way shall be sufficient to meet the needs of the dominant tenement.

**Article 567.** If, after acquisition of property as a result of sale, exchange or partition, such property should be enclosed between others belonging to the seller, exchanger or co-participant, the latter shall be obliged to give right of way without compensation, unless otherwise agreed.

**Article 568.** If the right of way granted to a property should cease to be necessary as a result of its owner's having joined it to another which is adjacent to the public road, the owner of the servient tenement may request termination of the easement, returning what he received as compensation.

The same shall be understood in the event that a new path should be opened giving access to the property.

**Article 569.** If it should be indispensable to pass materials through another's plot of land or to place scaffolding or other objects pertaining to building works in order to build or repair any buildings, the owner of the latter plot shall be obliged to consent, receiving compensation corresponding to any damage suffered.

**Article 570.** Existing rights of way for farm animals, known as passages for sheep, trails for cattle or footpaths or any others, as well as water trough, resting place and shelter easements, shall be governed by the ordinances and regulations of the industry and, in the absence thereof, by the uses and customs of the land.

Without prejudice to any rights legitimately acquired, the sheep passage cannot in any event exceed the width of 75 m, the cattle trail 37 m 50 cm and the footpath 20 m.

Where it should be necessary to establish a mandatory right of way or water trough easement for livestock, the provisions of this section and of articles 555 and 556 shall apply. In this case its width may not exceed 10 m.

#### SECTION 4<sup>a</sup>

##### *On party wall easements*

**Article 571.** Party wall easements shall be governed by the provisions of this title and by local ordinances and uses to the extent that they do not oppose them, or where nothing is provided herein.

**Article 572.** A party wall easement shall be presumed to exist, unless there is title, external sign or evidence to the contrary:

1. In the walls dividing two adjoining buildings up to the common point of elevation.
2. In the dividing walls of gardens or yards within a village or in the country.
3. In the walls, fences and live hedges that divide rural properties.

**Article 573.** An external sign contrary to the party wall easement shall be deemed to exist:

1. Where the dividing walls of buildings have windows or openings.
2. Where the dividing wall is on one side plumb and square in the whole of its facing, and on the other has the same appearance in its higher end, edging outwards in its lower part.
3. Where the whole wall is built on land belonging to one of the properties, and not halfway between the two adjacent properties.
4. Where it bears the load of the beams, floors and structures of one of the properties and not of the adjacent one.
5. Where the dividing wall between patios, gardens and properties is built so that the coping pours water into one of the properties only.
6. Where the dividing wall, built of masonry, should have stones, called passing stones, which from distance to distance should protrude from the surface only on one side and not on the other.
7. Where properties adjacent to others that are defended by live hedges or fences are not enclosed.

In all these cases, ownership over the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or land in whose favour the presumption has been established based on any of the aforementioned signs.

**Article 574.** Ditches or irrigation channels opened between properties are also presumed to be party walls, unless a otherwise evidenced pursuant to title or sign.

There is a sign contrary to the existence of a party wall where the soil or brush taken to dig the ditch or to clean it is on one side only, in which case ownership of the ditch shall belong exclusively to the owner of the property in whose favour this external sign appears.

**Article 575.** The reparation and construction of party walls and maintenance of party wall fences, live hedges, ditches and channels shall be borne by all owners of the properties in whose favour the party wall is deemed to exist, in proportion to the rights pertaining to each of them.

Notwithstanding the foregoing, any owner may be dispensed from contributing to this burden by renouncing the party wall easement, save in the event that the party wall should support a building belonging to him.

**Article 576.** If the owner of the building supported by a party wall should wish to demolish it, he may likewise renounce the party wall easement, but he shall bear all repairs and building works necessary to prevent, in this particular instance only, any damage which the demolition may cause to the party wall.

**Article 577.** Any owner may raise the party wall at his expense, compensating any damages caused by the building works, even if they are temporary.

He shall also bear the wall's preservation expenses, to the extent that it has increased in height, or its foundations have been deepened compared to its previous condition; likewise, he must pay a compensation for the increase in the expense of preserving the party wall as a result of the increase in height or depth.

If the party wall should not withstand the higher elevation, the owner who wishes to raise it shall have the obligation to reconstruct it at his expense; and, if it should be necessary to make it thicker for such purposes, he must provide the space from his own land.

**Article 578.** The remaining owners who have not contributed to increase the wall's height, depth or thickness, may, however, acquire party wall rights therein, by paying proportionally the amount of the building works and half of the value of the land on which the increased thickness was built.

**Article 579.** Each owner of a party wall may use it in proportion to his right in the joint ownership; he may, therefore, support his building on the party wall, or introduce beams up to half of its width, without, however, preventing the communal and respective use of the remaining party wall owners.

In order to use this right, the party wall owner must previously obtain the consent of the other parties with an interest in the party wall; and, if he should fail to obtain it, the necessary conditions required for the new building not to harm the rights of such other parties shall be set by experts.

## SECTION 5<sup>a</sup>

### *On the easement of light and view*

**Article 580.** No owner may make in a party wall any window or opening without the other's consent.

**Article 581.** The owner of a non-party wall adjacent to another's property may open therein windows or make openings to receive light at the height of the top joists or immediately next to the roof, of the size of a 30 centimetre square and in any event with an inset iron grille on the wall and a wire net.

Notwithstanding the foregoing, the owner of the land or property adjacent to the wall on which the openings should have been made may close them if he acquires the party wall, unless otherwise agreed.

He may also cover them by building on his land or by building a wall adjacent to the one on which such opening should have been made or window opened.

**Article 582.** It is forbidden to open windows with straight-line views, or balconies or other similar outcroppings over a neighbouring property, unless there is two metres distance between the wall on which they are built and such property.

It is also forbidden to have sideways or oblique views over the same property unless there is a 60 centimetre distance.

**Article 583.** The distance is mentioned in the preceding article shall be counted, for straight-line views, from the exterior line of the wall for openings which do not include outcroppings, from the line of such outcroppings, if there should be any, and, for oblique views, from the line of separation between both properties.

**Article 584.** The provisions of article 582 shall not apply to buildings separated by a public road.

**Article 585.** In the event of acquisition, pursuant to any title, of the right to have direct views, balconies or windowed balconies over the adjoining property, the owner of the servient tenement may not built at less than three metres' distance, which measurement shall be taken as indicated in article 583.

## SECTION 6<sup>a</sup>

### *On drainage of buildings*

**Article 586.** The owner of the building shall be obliged to build his roofs or covering so that rainwater falls on his own land, or on the street or a public place, and not on his neighbour's land. Even if it should fall on his own land, the owner shall be obliged to collect the waters so that they do not cause detriment to the adjoining property.

**Article 587.** The owner of the property which bears the easement of receiving rainwater from the roofs may build receiving the waters on his own roof or providing them with another way out, in accordance with local ordinances or customs, in a manner which does not result in any encumbrance or detriment for the dominant tenement.

**Article 588.** Where the yard or patio of a house is located between others and it should not be possible to find a way out for rainwater collected in such house through the same, the establishment of a drainage easement may be demanded, letting the waters pass through the point of the adjoining plots of land where its exit is easiest, and building the drain conducts in the manner which causes least detriment to the servient tenement, after paying the corresponding compensation.

## SECTION 7<sup>a</sup>

### *On distances and intermediate works for certain constructions and plantations*

**Article 589.** It is forbidden to build or plant near strongholds or fortresses without submitting to the conditions required by the specific statutes, ordinances and regulations on the matter.

**Article 590.** Nobody may build near a wall belonging to another or a party wall wells, drains, aqueducts, ovens, forges, chimneys, stables, deposits of corrosive materials, artefacts which moved by steam engine, or

machines which, by themselves, or as a result of their products are dangerous or harmful, without keeping the distances provided in applicable regulations and local customs, and without performing the necessary protective works, subject to the conditions provided by the same regulations as to the manner of performing them.

In the absence of regulations, the precautions deemed necessary to prevent any damage to the neighbouring properties or buildings shall be taken, after the issuance of an expert report.

**Article 591.** No trees may be planted near another's land but at the distance authorised by local ordinances or local custom and, in the absence thereof, at a distance of two metres from the line dividing the properties, if the plantation concerns tall trees, and at a distance of 50 centimetres if the plantation is of bushes or small trees. Any owner is entitled to request the uprooting of any trees which hereinafter should be planted at a shorter distance from his property.

**Article 592.** If the branches of certain trees should extend over a neighbouring property, gardens or patios, the owner of the latter shall be entitled to claim that they be cut, to the extent that they extend over his property and, if the roots of neighbouring trees should extend into land belonging to another, the owner of the land into which they have been introduced may cut them himself within his property.

**Article 593.** Trees existing in a live hedge constituting a party wall are also presumed to constitute a party wall, and either owner is entitled to request their removal.

Trees which serve as landmarks shall be excepted from the foregoing, and may not be uprooted unless it is with the common consent of the neighbouring owners.

## CHAPTER 3°

### *On voluntary easements*

**Article 594.** Any owner of a property may establish therein any easements he deems convenient, in the manner and form he deems fit, provided that he does not infringe the laws or public policy.

**Article 595.** The owner of the property whose usufruct belongs to another may impose on it, without the usufructuary's consent, any easements which do not detriment the usufruct's rights.

**Article 596.** Where one person holds direct ownership over a property and the other its useful ownership, no perpetual voluntary easement may be created upon it without the consent of both owners.

**Article 597.** The consent of all co-owners shall be required to impose an easement over a pro indiviso property.

The granting of easement made only by some of them shall be suspended until the last of all participants or co-owners should grant it.

However, the granting made by one of the co-owners separately from the others bind the grantor and his successors, even if they should be legatees, not to prevent the exercise of the right granted.

**Article 598.** The deed of the easement and, as the case may be, possession of an easement acquired by prescription, shall determine the rights of the dominant tenement and the obligations of the servient tenement. In the absence thereof, the easement shall be governed by the provisions of the present title which apply to it.

**Article 599.** If the owner of the servient tenement should have undertaken, upon creation of the easement, to bear the expense of the necessary works for the use and preservation thereof, he may be released from this encumbrance by abandoning his plot of land to the owner of the dominant tenement.

**Article 600.** Communal grazing easements may hereinafter only be created by express granting on the part of the owners, resulting from a contract or a last will and testament, and not in favour of universal group of individuals or over a universal group of properties, but in favour of specific individuals and over landed properties which are also specific and determined.

The easement created in accordance with this article shall be governed by its deed of creation.

**Article 601.** Communal grazing on public land, whether belonging to Municipalities or to the State, shall be governed by administrative laws.

**Article 602.** If there should be communal grazing rights between the neighbours of one or several villages, the owner who fences a property with a wall or hedge shall release it from the easement. However, the remaining easements constituted on the property shall remain in force.

The owner who fences his property shall keep his communal grazing rights over other properties which have not been fenced.

**Article 603.** The owner of land encumbered with a grazing easement may redeem this encumbrance by paying its value to those entitled to the easement.

In the absence of an agreement, the capital required to redeem the easement shall be set at 4% of the annual value of the grazing, as determined by expert appraisal.

**Article 604.** The provisions of the preceding articles shall apply to easements for the use of firewood and other products of privately owned woodland.

## TITLE VIII

### On the Property Registry

#### SOLE CHAPTER

**Article 605.** The purpose of the property Registry is the registration or entry of acts and contracts relating to ownership and other rights *in rem* over immovable properties.

**Article 606.** Deeds of ownership or other rights *in rem* over immovable properties which are not duly registered or entered in the Property Registry shall not prejudice third parties.

**Article 607.** The Property Registry shall be public for anyone who has a known interest in finding out the condition of the immovable properties or rights *in rem* registered or entered therein.

**Article 608.** The provisions of the Mortgage Law shall apply to determine which deeds are subject to registration or entry, the form, effects and termination thereof, the manner of managing the Registry and the value of its book entries.

## BOOK III

### On the different ways of acquiring ownership

#### PRELIMINARY PROVISION

**Article 609.** Ownership is acquired by occupancy.

Ownership and other rights over property are acquired by law, by gift, by testate and intestate succession and as a result of certain contracts by tradition.

They may also be acquired by prescription.

#### TITLE ONE

##### On occupancy

**Article 610.** Property capable of appropriation without an owner, such as game or wild fish, hidden treasure and abandoned movable things are acquired by occupancy.

**Article 611.** Hunting and fishing law is governed by specific statutes.

**Article 612.** The owner of a swarm of bees shall be entitled to pursue it over another's property, compensating the possessor of the latter for any damage caused. If the property should be fenced, he shall require the owner's consent to enter it.

When the owner should fails to pursue the swarm or should cease doing so for two consecutive days, the possessor of the property may take or retain it.

The owner of tame animals may also claim them within twenty days, counting from their being taken by another. After the lapse of this period, they shall belong to the person who has taken and kept them.

**Article 613.** Doves, rabbits and fish that pass from their respective breeding place to another belonging to a different owner shall become the property of the latter, provided that they have not been attracted by an artifice or fraud.

**Article 614.** A person who by chance discovers a hidden treasure in another's property, shall have the right granted pursuant to article 351 of this Code.

**Article 615.** A person who finds a movable thing, which is not a treasure, must return it to its former possessor. If such possessor should be unknown, he must immediately consign it in the possession of the Mayor of the village where it was found.

The Mayor shall publish the finding as per local custom, on two consecutive Sundays.

If the movable thing cannot be preserved without impairment or without making expenses which considerably reduce its value, it shall be sold in a public auction after the lapse of eight days from the second announcement without the owner having appeared, and the proceeds shall be deposited.

After two years counting from the second publication without the owner having appeared, the thing found or its value shall be awarded to the person who found it.

Both such person and the owner shall be obliged, each as applicable, to pay any expenses.

**Article 616.** If the owner should appear in time, he shall be obliged to pay, as a prize to the person who found it, one tenth of the amount or the price of the thing found. Where the value of the finding should exceed 2000 pesetas, the prize shall be reduced to one twentieth in respect of the excess.



**Article 617.** Rights over objects thrown into the sea or objects which the waves should bring to the beach, of whatever nature or over the plants and grasses which grow on its shores shall be determined by specific statutes.

## TITLE II

### On gifts

#### CHAPTER ONE

##### *On the nature of gifts*

**Article 618.** A gift is an active liberality whereby a person gratuitously disposes of the thing in favour of another person, who accepts it.

**Article 619.** Likewise, the gift made to a person for his merits or for services rendered to the donor shall also be deemed such, provided that they do not constitute payable debts, as also gifts where the donee is imposed an encumbrance of lesser value than the thing given.

**Article 620.** Gifts which are to be effective at the death of the donor shall have the same nature as testamentary dispositions, and shall be governed by the rules set forth in the chapter on testamentary succession.

**Article 621.** Gifts which are to be effective *entre vivos* shall be governed by the general provisions on contracts and obligations in all matters not provided for in this title.

**Article 622.** Gifts made for valuable consideration shall be governed by the rules relating to contracts, and remuneratory gifts by the provisions of the present title, as relates to the part exceeding the value of the burden imposed.

**Article 623.** Gifts are perfected from the time when the donor becomes aware of the donee's acceptance.

#### CHAPTER 2°

##### *On persons entitled to make or receive gifts*

**Article 624.** All persons with the capacity to contract and dispose of their property may make gifts.

**Article 625.** All persons who are not especially incapacitated by the law for such purposes may accept gifts.

**Article 626.** Persons without the capacity to contract may not accept conditional gifts or gifts made for valuable consideration without the intervention of their legitimate representatives.

**Article 627.** Gifts made to conceived but unborn infants may be accepted by the persons who would legitimately represent them if they had already been born.

**Article 628.** Gifts made to ineligible persons are null and void, even if they have been simulated under the appearance of another contract by using a trustee.

**Article 629.** The gift is not binding on the donor, or effective, until acceptance thereof.

**Article 630.** The donee must accept the donation by himself, or by means of an authorised person with a special power of attorney, or with a general and sufficient power of attorney, under penalty of nullity of the gift.

**Article 631.** Persons who accept a gift on behalf of others who cannot accept it by themselves shall be obliged to give the notice and make the entry mentioned in article 633.

**Article 632.** The gift of a movable thing may be made orally or in writing.  
An oral gift shall require simultaneous delivery of the thing given. In the absence of this requirement, it shall not be effective unless it is both made and accepted in writing.

**Article 633.** For the gift of an immovable property to be valid, it must be performed in a public deed, individually expressing the properties given and the value of any charges to be paid by the donee.  
Acceptance may be given on the same public deed of gift or in another separate public deed; but it shall not be effective if it does not take place during the life of the donor.  
If it should be given in a separate public deed, the acceptance must be notified to the donor in an authentic instrument, and this formality shall be noted in both public deeds.

## CHAPTER 3°

### *On the effects and limitations of gifts*

**Article 634.** The gift may comprise all current properties of the donor, or parts of them, as long as the donor reserves, pursuant to full ownership or usufruct, whatever he requires to live in a condition corresponding to his circumstances.

**Article 635.** The gift may not comprise future property.  
Future property shall be deemed to mean property which the donor cannot dispose of at the time of making the gift.

**Article 636.** Notwithstanding the provisions of article 634, nobody may give or receive pursuant to gift more than he may give or receive pursuant to testament.  
The gift shall be deemed ineffective to the extent that it exceeds this measure.

**Article 637.** When the gift should have been made to several persons jointly, it shall be deemed to have been given in equal parts; and no right of accretion shall exist between them, unless otherwise provided by the donor.  
Gifts made jointly to husband and wife shall be excepted from the foregoing provision, and such right of accretion shall exist between them, unless otherwise provided by the donor.

**Article 638.** The donee shall be subrogated in all rights and remedies corresponding to the donor in the event of dispossession. Notwithstanding the foregoing, the latter shall not be obliged to clear the title of the things given, save if the gift should have been for valuable consideration, in which case the donor shall be liable for dispossession up to the amount of the encumbrance.

**Article 639.** The donor may reserve to himself the power to dispose of some of the properties given, or of an amount charged thereto; but, if he should die without having exercised this right, the reserved properties or amounts shall belong to the donee.

**Article 640.** The donor may also give the ownership of the property to one person and the usufruct thereon to another or others, with the limitations set forth in article 781 of this Code.

**Article 641.** The reversion of the gift only in favour of the donor may be provided for any events and circumstances, but the reversion in favour of other persons may only be provided in the same cases and with the same limitations as provided in this Code for testamentary substitutions.

A reversion provided by the donor in favour of a third party contrary to the provisions of the preceding paragraph shall be null and void; but it shall not result in the nullity of the gift.

**Article 642.** If the gift should have been made imposing on the donee the obligation to pay the donor's debts, the former shall only be deemed obliged to pay debts contracted beforehand, unless otherwise provided in the relevant clause.

**Article 643.** In the absence of stipulation in respect of the payment of debts, the donee shall only be liable for them where the gift should have been made in fraud of creditors.

The gift shall always be presumed to have been made in fraud of creditors when the donor, in making it, has not reserved sufficient property to pay prior debts.

## CHAPTER 4°

### *On the revocation and reduction of gifts*

**Article 644.** Any gift made *inter vivos* by a person who has no children or descendants shall be revocable in the event of the mere occurrence of any of the following:

1. The donor's having children, even if they should be posthumous, after making the gift.
2. That the donor's child thought dead at the time of making the gift should turn out to be alive.

**Article 645.** After rescission of the gift as a result of any surviving children, the gifted properties, or their value, if the donee should have sold them, shall be returned to the donor.

If the property should be mortgaged, the donor may release the mortgage by paying the amount secured thereby, and shall be entitled to claim such amount from the donee.

When the property should be unable to be returned, it shall be appraised according to its value at the time of making the gift.

**Article 646.** The remedy of revocation as a result of subsequently born or surviving children shall be statute barred after five years, counting from the time of learning of the birth of the last child or of the existence of the child believed dead.

This remedy cannot be waived and is transferred, by the death of the donor, to his children and descendants.

**Article 647.** The gift shall be revoked at the request of the donor, when the donee has failed to comply with any of the conditions imposed by the former.

In this case, the gifted property shall be returned to the donor, and any disposals thereof made by the donee and any mortgages executed thereon shall be null and void, with the limitation set forth in the Mortgage Law as relates to third parties.

**Article 648.** The gift may also be revoked, at the request of the donor, on grounds of ingratitude in the following cases:

1. If the donee should commit any crime against the donor's person, honour or property.
2. If the donee should attribute to the donor any of the crimes which give rise to ex officio proceedings or public charges, even if he should provide proof; unless the crime should have been committed against the donee, his spouse, or children under his authority.
3. If he should unduly refuse to give the donor support.

**Article 649.** Upon revocation of the gift by reason of ingratitude, any prior disposals and mortgages prior to the entry of the claim for revocation in the Property Registry shall subsist. Subsequent ones shall be null and void.

**Article 650.** In the case provided in the first paragraph of the preceding article, the donor shall be entitled to request from the donee the value of the property disposed of which cannot be claimed from third parties, or the amount by which they should have been mortgaged. The time of the gift shall be taken into account to establish the value of such property.

**Article 651.** In the event of revocation on any of the grounds expressed in article 644, or on grounds of ingratitude, and in the event of reduction thereof as a result of its being inofficious, the donee shall not return the fruits obtained prior to the filing of the claim. If the revocation should be based on having failed to comply with any of the conditions imposed by the gift, the donee shall return, as well as the gifted properties, the fruits which it should have received after ceasing to meet the condition.

**Article 652.** The remedy granted to the donor on grounds of ingratitude may not be waived in advance. This remedy shall be statute barred after one year counting from the date on which the donor became aware of the fact and of the possibility to exercise the remedy.

**Article 653.** This remedy shall not be transferred to the donor's heirs if the latter, being able to do so, should not have exercised it. Neither may it be exercised against the donee's heir, unless, upon the death of the former, the claim should already have been filed.

**Article 654.** Gifts which, in accordance with the provisions of article 636, should be found to be inofficious after calculating the net value of the donor's property at the time of his death, must be reduced by the excess; but this reduction shall not prevent their effectiveness during the life of the donor, or the donee from appropriating the fruits. The provisions of this chapter and of articles 820 and 821 of the present Code shall apply to the reduction of gifts.

**Article 655.** Only persons entitled to a forced share or to a proportional share in the inheritance and their heirs or successors shall be entitled to request the reduction of gifts. Persons comprised in the preceding paragraph may not waive their rights during the life of the donor, by express statement or by giving their consent to the gift. Donees, legatees of a thing other than a proportional share in the inheritance and the deceased's creditors may not request the reduction or benefit from it.

**Article 656.** If, in the event of there being two or more gifts, the disposable part of the inheritance should not be sufficient to cover them, the most recent gifts shall be cancelled or reduced to cover the excess.

### TITLE III

#### On successions

**Article 657.** The rights to a person's succession are transferred from the time of his death.

**Article 658.** Succession takes place pursuant to the will of a person expressed in a testament and, in the absence thereof, by operation of law. The first is called testamentary succession, and the second legal succession. Succession may also take place in one part pursuant to the will of a person and in the other by operation of law.

**Article 659.** The estate comprises all properties, rights and obligations belonging to a person, unless they are extinguished as a result of his death.

**Article 660.** The person who succeeds pursuant to universal title shall be called heir, and the person who succeeds pursuant to specific title shall be called legatee.

**Article 661.** Heirs succeed the deceased pursuant to the sole fact of his death in all his rights and obligations.

**Article 662.** All persons who are not expressly forbidden to do so by the law may make a will.

## CHAPTER ONE

### *On wills*

#### SECTION ONE

##### *On the capacity to dispose of property pursuant to will*

**Article 663.** The following persons are incapable of making a will:

1. Persons under fourteen years of age of both sexes.
2. Any person who usually or accidentally is not of sound mind.

**Article 664.** The will made before the person's insanity shall be valid.

**Article 665.** Whenever a person incapacitated pursuant to a judgement which does not contain a ruling concerning his capacity to make a will should wish to do so, the Notary Public shall designate two physicians to previously examine him, and shall not authorise it unless they vouch for his capacity.

**Article 666.** The only factor which shall be taken into account to assess the testator's capacity is his condition at the time of making the will.

#### SECTION 2<sup>a</sup>

##### *On wills in general*

**Article 667.** The act whereby a person disposes of all his property or part of it for after his death is called a will.

**Article 668.** The testator may dispose of his property by inheritance or by legacy.

If there should be any doubt, the disposition shall be valid as inheritance even if the testator did not materially use the word heir, if his intention on this issue should be clear.

**Article 669.** Two or more persons may not make a will jointly or in the same instrument, irrespective of whether they do so for their reciprocal benefit, or for the benefit of a third party.

**Article 670.** Making a will is a strictly personal: it may not be left, in whole or in part, to the discretion of a third party, nor may it be made by means of an attorney or proxy.

The subsistence of the appointment of heirs or legatees may also not be left at the discretion of a third party, and neither may the designation of the portions in which they are to succeed, when they should have been called by name.

**Article 671.** The testator may entrust to a third party the distribution of the amounts left generally to specific classes, such as relatives, the poor or charitable establishments, and the election of the persons or establishments to which they are to be allocated.

**Article 672.** Any disposition made by the testator relating to the appointment of an heir, bequests or legacies, with reference to private instruments or papers which after his death should appear within or outside his domicile, shall be null and void if such instruments or papers do not meet the requirements provided for holographic wills.

**Article 673.** A will made under violence, fraudulent misrepresentation or fraud shall be null and void.

**Article 674.** A person who, by fraudulent misrepresentation or fraud or with violence, should prevent another person, of whom he is the intestate heir, from freely making a testamentary disposition, shall be deprived of his inheritance rights, without prejudice to any criminal liability in which he may have incurred.

**Article 675.** Any testamentary disposition must be understood according to the literal meaning of its words, unless it should clearly appear that the testator's intention was another. In the event of doubt, what seems better to conform to the testator's intention, according to the wording of the will, shall be observed. The testator may not forbid the contesting of the will in cases where it is null and void as provided in the law.

## SECTION 3<sup>a</sup>

### *On the form of wills*

**Article 676.** A will may be common or special. The common will may be holographic, open or closed.

**Article 677.** The military will, the maritime will and the will made in a foreign country shall be deemed special wills.

**Article 678.** A will shall be called holographic when the testator writes it by himself in the form and with the prerequisites set forth in article 688.

**Article 679.** A will shall be open whenever the testator should declare his last will in the presence of the persons who are to authorise the act, who are made aware of the dispositions made therein.

**Article 680.** A will shall be closed when the testator, without revealing his last will, declares that it is contained in the document presented to the persons who are to authorise the act.

**Article 681.** The following persons may not act as witnesses in wills:

1. Minors, save as provided in article 701.
2. Blind persons and wholly deaf or mute persons.
3. Persons who do not understand the language of the testator.
4. Persons who are of unsound mind.
5. The spouse or relatives within the fourth degree of consanguinity or the second degree of affinity of the authorising Notary Public, and persons who have an employment relationship with the latter.

**Article 682.** In an open testament, heirs and legatees named therein, their spouses, or the relatives of the former within the fourth degree of consanguinity or the second degree of affinity may also not be witnesses. This prohibition does not include legatees or their spouses or relatives where the legacy is of a movable object or an amount of scarce importance in relation to the estate.

**Article 683.** For a witness to be declared ineligible, it is necessary that the cause of his incapacity should exist at the time of making the will.

**Article 684.** Where the testator should express his will in a language not known to the Notary Public, the presence of an interpreter chosen by the former shall be required to translate the testamentary disposition to the official language used by the Notary Public in the place of execution. The instrument shall be written in both languages, with indication of which language was employed by the testator.

The open will and the deed of the closed will shall be written in the foreign language in which the testator has expressed himself and in the official language used by the Notary Public, even if the latter should know the former language.

**Article 685.** The Notary Public must know the testator and, if he does not know him, he shall identify his person by means of two witnesses who know him and who are known to the same Notary Public, or by means of documents issued by the public authorities for the purpose of identifying persons. The Notary Public must also ensure that, in his opinion, the testator has the necessary legal capacity to make a will.

In the cases of article 700 and 701, the witnesses shall have the obligation of knowing the testator, and shall attempt to ascertain his capacity.

**Article 686.** If it should not be possible to identify the person of the testator as provided in the preceding article, the Notary Public, or the witnesses, as the case may be, shall declare such circumstance, with mention of the documents submitted by the testator for such purpose and his personal characteristics.

If the will should be challenged on such grounds, the person upholding its validity shall have the burden of proving the testator's identity.

**Article 687.** The will in whose execution the formalities respectively established in this chapter have not been observed shall be null and void.

## SECTION 4<sup>a</sup>

### *On the holographic will*

**Article 688.** The holographic will may only be made by persons who are of legal age.

In order to be valid, this will must be written out in full and signed by the testator, with expression of the year, month and day on which it is made.

If it should contain words which have been crossed out, amended or written between the lines, the testator shall save such changes underneath his signature.

Foreigners may make a holographic will in their own language.

**Article 689.** The holographic will must be legalised, and shall be submitted for these purposes to the Judge of first instance of the last domicile of the testator, or of the place of his death, within five years counting from the date of his death. It shall not be valid without this prerequisite.

**Article 690.** The person in whose possession such will has been consigned must submit it to the Court as soon as he has news of the testator's death and, if he should fail to do so within the following 10 days, shall be liable for any damages caused by such delay.

Any person with an interest in the will as heir, legatee, executor or in any other capacity may also submit it.

**Article 691.** After the holographic will has been submitted, and the death of the testator has been evidenced, the Judge shall open it, if it should be in a closed envelope, shall initial all pages thereof together with his clerk,

and shall ascertain its identity by means of three witnesses who know the handwriting and signature of the testator and who declare that they have no rational doubts that this is a will written and signed by the testator's own hand. In the absence of suitable witnesses, or in the event that the witnesses who are examined should show doubts, and provided that the Judge deems it convenient, the handwriting may be appraised by experts.

**Article 692.** The surviving spouse, if any, the descendants and ascendants of the testator and, in the absence of both, his siblings, shall be summoned to practice the formalities expressed in the preceding article. If these persons should not reside within the court district, or if their existence should be ignored, or if, being minors or incapacitated persons, they should have no legitimate representatives, the Public Prosecutor shall be summoned. The persons summoned may be present in the practice of such formalities and make any relevant observations orally on the authenticity of the will at such time.

**Article 693.** If the Judge deems the identity of the will to have been proven, he shall resolve on its legalisation, including any formalities practised therein, in the files of the corresponding Notary Public, who shall give the interested parties any copies or extracts which may apply. Otherwise, he shall refuse its legalisation. Whatever the Judge's resolution, it shall be enforced, notwithstanding any opposition, saving the right of the interested parties to challenge it in the relevant proceedings.

## SECTION 5<sup>a</sup>

### *On the open will*

**Article 694.** The open will must be made before a Notary Public qualified to act in the place where it is made. Only the cases expressly determined in the same Section shall be excepted from this rule.

**Article 695.** The testator shall express, orally or in writing, his last will to the Notary Public. Upon the Notary's drafting the will in accordance with such statements, and with expression of the place, year, month, day and time of its execution, and after warning the testator of his right to read it by himself, the Notary Public shall read it out loud for the testator to declare whether it conforms to his intentions. If so, it shall be signed in the same act by the testator who is able to do so and, as the case may be, by the witnesses and other persons required to appear. If the testator declares that he does not know how to or is unable to sign, one of the two witnesses shall do it for him at his request.

**Article 696.** The Notary Public shall witness knowing the testator or having duly identified him and, otherwise, shall make the statement provided in article 686. He shall also note that, in his opinion, the testator has the necessary legal capacity to make a will.

**Article 697.** Two suitable witnesses must be present in the act of making the will:

- 1.** When the testator declares that he does not know how to or is unable to sign the will.
- 2.** When the testator, although he is able to sign it, is blind, or declares that he does not know how to or is unable to read the will by himself.

If the testator who does not know how to or is unable to read should be entirely deaf, the witnesses shall read the testament in the presence of the Notary Public, and must declare that it coincides with the declared intention.

- 3.** When the testator or the Notary Public should request it.

**Article 698.** The following persons must be present at the act of making the will:

- 1.** The witnesses of the testator's identity, if any, who may also act as instrumental witnesses.
- 2.** The physicians who have examined the incapacitated testator.
- 3.** The interpreter who has translated the will of the testator to the official language employed by the Notary Public.



**Article 699.** All formalities expressed on this Section shall be performed in a single act, which shall begin with the reading of the will, without any interruption being allowed, unless it is motivated by a fleeting incident.

**Article 700.** If the testator should be in imminent danger of death, the will may be executed before five suitable witnesses, without the need for a Notary Public.

**Article 701.** In the event of an epidemic, the will may also be executed without intervention of a Notary Public, before three witnesses older than sixteen.

**Article 702.** In the cases of the two preceding articles, the will shall be written down, if possible; if not, the will shall be valid even if the witnesses do not know how to write.

**Article 703.** A will made in accordance with the provisions of the three preceding articles shall be ineffective if two months should elapse from the time when the testator is no longer in danger of death, or the epidemic has ceased. Where the testator should die within such period, the testament shall also be ineffective if, within three months following the death, the interested parties do not appear before the competent Court to raise it to public deed, irrespective of whether it was executed in writing, or orally.

**Article 704.** Wills made without the authorisation of a Notary Public shall be ineffective if not raised public deed and legalised as provided in the Civil Procedural Law.

**Article 705.** Upon an open will's being declared null and void as a result of not observing the solemnities set forth for each specific case, the Notary Public who has authorised it shall be liable for any damages incurred, if the fault should result from his malice, inexcusable negligence or ignorance.

## SECTION 6<sup>a</sup>

### *On the closed will*

**Article 706.** The closed will must be executed in writing.

If the testator should write it in his own hand, he shall put his signature at the end.

If it should be written by any mechanical means or by another person at the testator's request, the latter shall sign in all pages thereof and at the end of the will.

Where the testator does not know how to or is unable to sign, another person shall do so at his request at the end and in all pages thereof, expressing the cause of the impossibility.

In any event, prior to his signature, any words amended, crossed out or written between the lines shall be validated.

**Article 707.** The following solemnities shall be observed in the execution of the closed will:

**1.** The paper which contains the will shall be put inside the closed and sealed envelope, so that the former may not be taken out without breaking the latter.

**2.** The testator shall appear with the closed and sealed will, or shall close it and seal it in the act, before the Notary Public who is to authorise it.

**3.** The testator shall represent, in the presence of the Notary Public, by himself or by means of the interpreter provided in article 684, that the envelope which he submits contains his will, expressing whether it is written and signed by him, or whether it is written in another's hand or by any mechanical means and signed at the end and in all pages thereof by him or by another person at his request.

**4.** On the envelope of the will, the Notary Public shall extend the corresponding deed of execution, expressing the number and mark of the seals with which it has been closed, and witnessing that he knows the testator or

has identified his person in the manner provided in article since 685 and 686, and that the testator, in his opinion, has the necessary legal capacity to make a will.

**5.** Having issued and read the deed, the testator who is able to do so and, as the case may be, the persons who must be present shall sign it, and the Notary Public shall authorise it with his stamp and signature.

If the testator should declare that he does not know how to or is unable to sign, one of the two suitable witnesses who must be present in this case shall do so for him and at his request.

**6.** The deed shall also express this circumstance, as well as the place, time, date, month and year of execution thereof.

**7.** Two suitable witnesses shall be present in the act of execution, if the testator or the Notary Public should request it.

**Article 708.** Blind persons and persons who do not know how to or are unable to read may not make a closed will.

**Article 709.** Persons who cannot express themselves orally, but who are able to write, may make a closed will, observing the following formalities:

**1.** The will must be signed by the testator. As concerns the remaining requirements, the provisions of article 706 shall apply.

**2.** Upon submitting it, the testator shall write on the upper part of the envelope, in the presence of the Notary Public, that inside it is his will, expressing how it is written and that it has been signed by him.

**3.** The deed of execution shall be extended below the words written by the testator, and the Notary Public shall witness having complied with the provisions of the preceding number and the remaining provisions of article 707 which apply to the case at hand.

**Article 710.** After authorisation of the closed will, the Notary Public shall deliver it to the testator, after including in his ordinary official files an authorised copy of the deed of execution.

**Article 711.** The testator may keep in his possession the closed will, or entrust it to the care of a trusted person, or consign it in the possession of the authorising Notary Public, to be kept in his files.

In this last case, the Notary Public shall give the testator a receipt and shall enter in his ordinary files, in the margin or below the copy of the deed of execution, that the will is in his possession. If the testator should subsequently withdraw it, he shall sign a receipt below such note.

**Article 712.** The Notary Public or the person who holds in his possession a closed will must submit it to the competent Judge when he becomes aware of the death of the testator.

If he should fail to do so within ten days, he shall be liable for any damages resulting from his negligence.

**Article 713.** A person who, by wilful misconduct, should fail to submit the closed will in his possession within the period provided in the second paragraph of the preceding article, as well as the liability provided therein, shall lose any right to the inheritance, if he should have any as intestate heir or as testamentary heir or legatee. This same penalty shall be incurred by the person who by wilful misconduct should remove the closed will from the testator's domicile or that of the person in whose custody or deposit it has been left, and the person who hides it, breaks it or otherwise renders it useless, without prejudice to any applicable criminal liability.

**Article 714.** The provisions of the Civil Procedural Law shall be observed for the opening and legalisation of the closed will.

**Article 715.** The closed will shall be null and void if the formalities set forth in this section should not have been observed in its execution; and the Notary Public who authorises it shall be liable for any damages arisen, if it

should be proved that the fault resulted from his malice, inexcusable negligence or ignorance. However, it shall be valid as a holographic will if it should be entirely written and signed by the testator and if it should meet the remaining conditions inherent to this kind will.

## SECTION 7<sup>a</sup>

### *On the military will*

**Article 716.** In time of war, any members of the military in campaign, volunteers, hostages, prisoners and other individuals employed in the Army, or following it, may make a will before an Official who has at least, the category of Captain.

This provision shall apply to individuals in an army which is in a foreign country.

If the testator should be ill or wounded, he may make the will before the Chaplain or Physician who attends him.

If he should be with a detachment, he may make the will before his superior, even if he is a subaltern.

In all cases mentioned in this article, the presence of two suitable witnesses shall always be necessary.

**Article 717.** The persons mentioned in the preceding article may also make a closed will before a War commissary, who shall in this case perform the duties of a Notary Public, observing the provisions of articles 706 et seq.

**Article 718.** Wills made in accordance with the two preceding articles must be forwarded as soon as possible to the general headquarters, and by the latter to the Minister of War.

The Minister, if the testator should have died, shall forward the will to the Judge of the deceased's last domicile, and, if he should not know such domicile, to the Dean of the Judges of Madrid, to summon ex officio the heirs and other parties interested in the succession. These persons must request to raise the will to public deed and to legalise it, in the manner provided in the Civil Procedural Law.

If the will should be closed, the Judge shall proceed to open it ex officio in the manner provided in such Law, with the summons and intervention of the Public Prosecutor, and, after it has been opened, he shall give notice thereof to the heirs and other interested parties.

**Article 719.** Wills mentioned in article 716 shall become void four months after the testator ceases to be part of the campaign.

**Article 720.** During a battle, assault, combat and, generally, in any imminent danger of warlike actions, a military will may be executed orally before two witnesses.

However, this will shall become ineffective if the testator should be saved from the danger in consideration of which he made the will.

Even if he should not be saved, the will shall be ineffective if it is not legalised by the witnesses before the War auditor or officer of the Ministry of Justice following the Army, subsequently proceeding in the manner provided in article 718.

**Article 721.** If the military will should be a closed will, the provisions of article 706 and 707 shall be observed; however, it shall be executed before the Officer and the two witnesses required for the open will pursuant to article 716, and all of them must sign the deed of execution, as well as the testator, if he should be able to.

## SECTION 8<sup>a</sup>

### *On the maritime will*

**Article 722.** Open or closed wills made by persons on board in a maritime journey, shall be executed in the following manner:

If the vessel should be a warship, before the Paymaster or the person performing his duties, in the presence of two suitable witnesses, who can see and understand the testator. The Commander of the vessel, or the person acting in his stead, shall, further, give his approval.

In merchant ships, the will shall be authorised by the Captain, or the person acting in his stead, with the attendance of two suitable witnesses.

In both cases, the witnesses shall be chosen among the passengers, if any; but one of them, at least, must be able to sign, and shall do so for himself and for the testator, if the latter does not know how to or is unable to do so.

If the will should be an open will, the provisions of article 695 shall likewise be observed, and, if it should be a closed will, the provisions of the sixth section of this chapter shall be observed, excluding the provisions relating to the number of witnesses and the intervention of the Notary Public.

**Article 723.** The will of the Paymaster of a warship and of the Captain of a merchant ship shall be authorised by the person who is to replace them in their position, observing, for all else, the provisions of the preceding article.

**Article 724.** Open wills made in the open sea shall be kept in the Commander's or Captain's custody, and a mention thereof shall be made in the Logbook.

The same mention shall be made of holographic and closed wills.

**Article 725.** If the vessel should arrive at a foreign port where there is a Diplomatic or consular agent of Spain, the Commander of the warship, or the Captain of the merchant ship, shall deliver to such Agent a copy of the open will, or the deed of execution of the closed will, and the note taken in the Logbook.

The copy of the will or the deed must include the same signatures as the original, if the persons who signed it are alive and on board; otherwise, it shall be authorised by the Paymaster or Captain who received the will, or the person acting in their stead, and shall also be signed by those of the persons who took part in the will who are currently on board.

The Diplomatic or consular agent shall procure that the formality of delivery is laid down in writing and, having closed and sealed the copy of the will or that of the deed of execution in the event of a closed will, shall forward it, together with the note taken in the Logbook, to the Minister of the Navy by the corresponding channels, and the Minister shall order its deposit in the Files of his Ministry.

The Commander or Captain who delivers the copy shall receive from the Diplomatic or consular agent a certificate of having performed such delivery, and shall make a note thereof in the Logbook.

**Article 726.** When the vessel, whether a warship or a merchant ship, arrives to the first port in the Kingdom, the Commander or Captain shall deliver the original will, closed and sealed, to the local naval Authority, with a copy of the note taken in the Logbook; and, if the testator should have died, a certificate evidencing the death. Delivery shall be evidenced in the manner provided in the preceding article, and the naval Authority shall forward it all without delay to the Minister of the Navy.

**Article 727.** If the testator should have died and the will should be an open will, the Minister of the Navy shall perform the actions provided in article 718.

**Article 728.** Where the will has been executed by a foreigner on board a Spanish vessel, the Minister of the Navy shall forward the will to the Minister of the State, to forward it as applicable by diplomatic channels.

**Article 729.** If the will should be holographic, and the testator should have died during the journey, the Commander or Captain shall keep the will in his custody, making a mention thereof in the Logbook, and shall deliver it to the local naval Authority, in the manner and for the purposes provided in the preceding article, when the vessel should arrive to the first port in the Kingdom.

The same shall be done when the will is a closed will, if the testator had it in his possession at the time of his death.

**Article 730.** Open and closed wills made in accordance with the provisions of this section shall become void after four months, counting from the time where the testator should disembark at a point where he is able to make a will in an ordinary manner.

**Article 731.** If there should be danger of shipwreck, the provisions of article 720 shall apply to the crew and passengers of warships or merchant ships.

## SECTION 9<sup>a</sup>

### *On the will made in a foreign country*

**Article 732.** Spaniards may make a will outside national territory, subject to the forms set forth by the laws of the country in which they are located.

They may also make a will in the open sea during their journey in a foreign vessel, subject to the laws of the Nation to which the vessel belongs.

They may also make a holographic will, in accordance with article 688, even in countries whose laws do not admit such a will.

**Article 733.** The joint will, forbidden by article 669, made by Spaniards in a foreign country shall not be valid, even if authorised by the laws of the Nation where it should have been executed.

**Article 734.** Spaniards who are in a foreign country may also make an open or closed will in a foreign country before the diplomatic or consular office of Spain who performs notarial duties at the place where it is executed. In these cases, all formalities set forth in Sections five and six of this chapter shall be respectively observed.

**Article 735.** The diplomatic or consular Agent shall forward a copy of the open will or of the deed of execution of the closed will, authorised with his signature and seal, to the Ministry of the State, to be consigned in his Files.

**Article 736.** The diplomatic or consular Agent in whose possession a Spaniard should have consigned his holographic or closed will, shall forward it to the Ministry of the State upon the death of the testator, together with the death certificate.

The Ministry of the State shall publish in the “Madrid Gazette” news of the death, so that parties interested in the estate may collect the will and legalise it in the manner provided.

## SECTION 10<sup>a</sup>

### *On the revocation and ineffectiveness of wills*

**Article 737.** All testamentary dispositions are essentially revocable, even if the testator should express in the will his intention or resolution not to revoke them.

Clauses which cancel future dispositions and those where the testator should order the invalidity of the revocation of the will unless it should be performed using certain words or signs shall be deemed not written.

**Article 738.** The will may not be revoked in the whole or in part unless the solemnities required to make a will are observed.

**Article 739.** The prior will shall be revoked by operation of law by a subsequent perfect will, if the testator does not express in the latter his intention to have the former subsist in whole or in part.  
Notwithstanding the foregoing, the prior will shall recover its legal force if the testator should subsequently revoke the subsequent will, and should expressly declare his intention that the former will be valid.

**Article 740.** The revocation shall be effective even if the second will should become void as a result of the incapacity of the heir or legatees appointed therein, or as a result of waiver by the former or the latter.

**Article 741.** The recognition of a child shall not lose its legal force even if the will in which it was made should be revoked, or it should not contain other dispositions, or the other dispositions contained in the will should be null and void.

**Article 742.** The closed will which appears at the testator's domicile with the cover or seals broken, or with the signatures authorising it erased, scratched out or amended shall be deemed revoked.

Notwithstanding the foregoing, this will shall be valid if it should be evidenced that the damage should have taken place without intention or awareness on the part of the testator, or upon the latter's being of unsound mind; however, if the cover or the seals should be broken, for the will to be valid, it shall also be necessary to prove its authenticity.

If the will should be in the possession of another person, if the cover or the seals should be broken the defect shall be deemed to be such person's fault, and the will shall not be valid unless its authenticity is proved; and, if both should be unharmed, but the signatures should have been erased, scratched out or amended, the will shall be valid unless it should be evidenced that the document was delivered by the testator in such condition.

**Article 743.** Wills shall become void and testamentary dispositions shall be ineffective, in whole or in part, only in the cases expressly provided in this Code.

## CHAPTER 2°

### *On inheritance*

#### SECTION ONE

##### *On capacity to succeed by testament or ab intestato*

**Article 744.** Persons who are not incapacitated by the law may succeed by testament or *ab intestato*.

**Article 745.** The following persons are incapable of succeeding:

1. Abortive creatures, understanding as such those which do not meet the circumstances expressed in article 30.
2. Associations or corporations which are not permitted under the law.

**Article 746.** Churches and church councils, provincial governments and provinces, town councils and municipalities, hospitals, charitable and public instruction establishments, associations authorised or recognised by the law and other legal entities may acquire by testament subject to the provisions of article 38.

**Article 747.** If the testator should dispose of all or part of his property for religious services or charitable works for the benefit of his soul, in an indeterminate manner and without specifying the allocation thereof, the executors

shall sell his property and shall distribute the amount thereof, giving half to the local Bishop so that he may allocate it to the aforementioned services and to the requirements and needs of the Church, and the other half to the relevant Civil Governor to give to the charitable establishments of the deceased's domicile, and, in the absence thereof, those of the province.

**Article 748.** The disposition made in favour of a public establishment subject to a condition or imposing an encumbrance shall only be valid with the Government's approval.

**Article 749.** Dispositions made in favour of the poor in general, without designating specific persons or locations, shall be deemed limited to the poor of the domicile of the testator at the time of his death, unless it should clearly result that his intention was another.

The qualification of who are the poor and the distribution of the property shall be made by the person designated by the testator or, in the absence thereof, by the executors and, in the absence thereof, by the parish priest, the mayor and the municipal judge, who will resolve by majority vote any doubts which may arise.

The same shall be done where the testator has disposed of his property in favour of the poor of a specific parish or village.

**Article 750.** Any disposition in favour of an unidentified person shall be null and void, unless such person may become identified as a result of any event.

**Article 751.** A disposition made generally in favour of the testator's relatives shall be deemed made in favour of those nearest in degree.

**Article 752.** Testamentary dispositions made by the testator during his last illness in favour of the priest who confessed him, the latter's relatives to the fourth degree, or his church, diocese, community or institution shall have no force or effect.

**Article 753.** A testamentary disposition in favour of the guardian or conservator of the testator shall have no force or effect, unless it has been made after final approval of the accounts or, if it should not be necessary to render accounts, after termination of the guardianship or conservatorship.

Notwithstanding the foregoing, dispositions made in favour of the guardian or conservator who is an ascendant, descendant, brother, sister or spouse of the testator shall be valid.

**Article 754.** The testator may not dispose of all or part of his estate in favour of the Notary Public authorising his will, or the spouse, relatives or relatives by marriage of the latter up to the fourth degree, with the exception provided in article 682.

This prohibition shall apply to witnesses of an open will, executed with or without a Notary Public.

The provisions hereof shall also apply to witnesses and persons before whom special wills are executed.

**Article 755.** A testamentary disposition in favour of an incapable person shall be null and void, even if it should be disguised in the form of a contract for valuable consideration, or should be made on behalf of a trustee.

**Article 756.** The following persons are incapable of succeeding on grounds of unworthiness:

- 1.** Parents who should abandon, prostitute or corrupt their children.
- 2.** A person who is sentenced in court for an attempt to take the life of the testator, his spouse, descendants or ascendants.

If the offender should be a forced heir, he shall forfeit his right to his forced share.

- 3.** A person who has accused the testator of a crime for which the law provides a sentence of long-term jail or imprisonment (*presidio o prisión mayor*), where the accusation is declared to be a calumny.



**4.** The overage heir who, being aware of the testator's violent death, should not have reported it within one month to the authorities, unless the authorities should have already acted *ex officio*.

This prohibition shall cease in cases where, according to the law, there is no obligation to make an accusation.

**5.** A person who, by threats, fraud or violence, should force the testator to make a will or to change it.

**6.** A person who, with the same means, should prevent another from making a will, or from revoking a will previously made, or should replace, hide or alter another subsequent will.

**Article 757.** The grounds of unworthiness shall cease to be effective if the testator was aware of them at the time of making the will or if, having become aware of them later, he should forgive them in a public document.

**Article 758.** The time of death of the person whose succession is in question shall be taken into account to qualify the capacity of the heir or legatee.

Cases 2 and 3 of article 756 shall require waiting for a final judgement, and number 4 shall require waiting until the month provided to report the violent death has elapsed.

If the appointment of the heir or the legacy should be conditional, the time on which the condition is met shall also be taken into account.

**Article 759.** The heir or legatee who should die before fulfilling the condition, even if he should survive the testator, shall not transfer any rights to his heirs.

**Article 760.** A person incapable of succeeding who, against the prohibition provided in the preceding articles, should have taken the property of the estate into his possession, shall be obliged to return it with any accretions and any fruits and rents received.

**Article 761.** If the person excluded from the inheritance as a result of incapacity should be a child or descendant of the testator and should have children or descendants, the latter shall acquire his right to a forced share of the estate.

**Article 762.** No action to declare incapacity may be brought after five years from the time when the incapable person should have taken possession of the inheritance or legacy.

## SECTION 2<sup>a</sup>

### *On the appointment of an heir*

**Article 763.** A person who has no forced heirs may dispose by a will of all his property or a part thereof in favour of any person with the capacity to acquire it.

A person who has forced heirs may only dispose of his property in the manner and subject to the limitations set forth in section 5 of this chapter.

**Article 764.** The will shall be valid even if it does not contain the appointment of an heir, or if such appointment does not comprise all of the property, and even if the person thus appointed should not accept the inheritance or should be incapable of inheriting.

In such cases the testamentary dispositions made in accordance with the law shall be complied with, and the remainder of the property shall pass to the intestate heirs.

**Article 765.** Heirs appointed without designation of shares shall inherit in equal shares.

**Article 766.** The voluntary heir who dies before the testator, the person incapable of inheriting and the person who waives the inheritance do not transfer any rights to their heirs, save as provided in articles 761 and 857.



**Article 767.** The expression of a false reason for appointing an heir or legatee shall be deemed not written, unless it should result from the will that the testator would not have made such appointment or legacy if he should have been aware that such reason was false.

The expression of a reason which is against the law, even if it should be true, shall also be deemed not written.

**Article 768.** The heir appointed to inherit a certain and specific thing shall be deemed a legatee.

**Article 769.** Where the testator should appoint certain heirs individually and others jointly, for example if he says: "I hereby appoint as my heirs N and N, and the children of N", those appointed jointly shall be deemed to have been appointed individually, unless it should clearly result that the intention of the testator was another.

**Article 770.** If the testator should appoint his siblings, and he should have full siblings and half siblings, the inheritance shall be divided as if he had died intestate.

**Article 771.** Where the testator should call to succession a person and his children, they shall all be deemed to have been appointed simultaneously and not successively.

**Article 772.** The testator shall designate the heir by his name and surnames, and, if there should be two persons with the same name, he must provide a circumstance by which the appointed heir may be identified. Even if the testator should have omitted the name of the heir, if the heir has designated so that there cannot be any doubt of who has been appointed, the appointment shall be valid.

In the will of an adoptive parent, the generic expression child or children shall include adopted children.

**Article 773.** An error in the name, surname or qualities of the heir shall not vitiate the appointment, where the appointed person's identity can be known for certain in another way.

If there should be equal circumstances between persons of the same name and surname, and these are such that they do not allow identifying the appointed heir, neither shall be heir.

## SECTION 3<sup>a</sup>

### *On substitution*

**Article 774.** The testator may substitute one or more persons instead of the appointed heir or heirs for the event that they should die before him, or should not wish to or be unable to accept the inheritance.

Simple substitution, without expressing the specific case, comprises all three cases expressed in the preceding paragraph, unless the testator provides otherwise.

**Article 775.** Parents and other ascendants may appoint substitutes for their descendants who are under fourteen, of both sexes, for the event that they should die before reaching such age.

**Article 776.** The ascendant may appoint a substitute for his descendant older than fourteen who, in accordance with the law, has been declared incapable as a result of insanity.

The substitution mentioned in the preceding paragraph shall become ineffective if the incapacitated person should make a will during a lucid interval or after having recovered his reason.

**Article 777.** The substitution cases mentioned in the two preceding articles, where the substituted person should have forced heirs, shall only be valid to the extent that they are not detrimental to the rights of such heirs to their forced share.

**Article 778.** A single person may be substituted by two or more persons; and, likewise, two or more persons may be substituted by a single person.

**Article 779.** If heirs appointed to unequal portions should be reciprocally substituted, they shall have the same portions in the substitution as they did in the appointment, unless the intention of the testator should clearly appear to be otherwise.

**Article 780.** The substitute shall be subject to the same liens and conditions imposed on the appointed heir, unless the testator should have expressly provided otherwise, or unless the liens or conditions are personal to the appointed heir.

**Article 781.** Fiduciary substitutions pursuant to which the heir is charged to preserve and transfer all or part of the estate to a third party shall be valid and effective provided that they do not go beyond the second degree of kinship, or are made in favour of persons who were alive at the time of the testator's death.

**Article 782.** Fiduciary substitutions may never encumber the forced share of the estate, unless they should encumber the "strict" forced share, [the third of the estate to be divided equally among heirs] for the benefit of a child or descendant who has been judicially incapacitated in the terms provided in article 808. If they apply to the third of the estate destined to betterments, they may only be made in favour of descendants.

**Article 783.** Fiduciary substitutions must be express in order to be valid.

The fiduciary trustee shall be obliged to deliver the estate to the beneficiary, without other deductions than those which correspond to legitimate expenses, credits and improvements, save as otherwise provided by the testator.

**Article 784.** The beneficiary shall acquire rights to the succession as of the testator's death, even if he should die before the trustee. The rights of the beneficiary shall pass to his heirs.

**Article 785.** The following substitutions shall be without force and effect:

- 1.** Fiduciary substitutions which are not provided expressly, either by calling them by this name, or by imposing on the substitute the strict obligation to deliver the property to a second heir.
- 2.** Dispositions which contain a perpetual prohibition to dispose of the property, or even a temporary prohibition beyond the limits set in article 781.
- 3.** Those which impose on the heir the mandate to pay to several persons successively, beyond the second degree, a certain income or allowance.
- 4.** Those whose purpose is to leave to a person all or part of the estate to be applied or invested according to reserved instructions communicated by the testator.

**Article 786.** The nullity of the fiduciary substitution shall not prejudice the validity of the appointment to the heirs first called; only the fiduciary clause shall be deemed not written.

**Article 787.** The disposition whereby the testator should leave to one person all or part of the estate, and to another its usufruct, shall be valid. If several persons should be called to the usufruct not simultaneously but successively, the provisions of article 781 shall apply.

**Article 788.** The disposition imposing on the heir the obligation regularly to invest a certain amount on charitable works, such as dowries for poor maidens, allowances for students or in favour of the poor or of any charitable or public instruction establishment shall be valid subject to the following conditions:

If the lien should be imposed on immovable property and should be temporary, the heir or heirs may dispose of the encumbered property, and the encumbrance shall not be lifted until its registration is cancelled.

If the lien should be perpetual, the heir may capitalise it and invest the capital to generate interest with a first and sufficient mortgage.

Such capitalisation and investment of the capital shall be performed with the intervention of the Civil governor of the province, after hearing the Public Prosecutor.

In any event, when the testator should not have set an order for the administration and application of the charitable bequest, this shall be done by the corresponding administrative authority in accordance with the laws.

**Article 789.** All of the provisions in this chapter concerning heirs shall also be deemed to apply to legatees.

#### SECTION 4<sup>a</sup>

##### *On the appointment of an heir or legacy subject to condition or term*

**Article 790.** Both universal and particular testamentary dispositions may be subject to a condition.

**Article 791.** Conditions imposed on heirs and legatees, as relates to matters not provided for in this section, shall be governed by the rules set forth for conditional obligations.

**Article 792.** Impossible conditions and those contrary to the law or to good customs shall be deemed not written and shall in no way prejudice the heir or legatees, even if the testator should provide otherwise.

**Article 793.** The absolute condition of not making a first or subsequent marriage shall be deemed not written, unless it is imposed on the widow or widower by the deceased spouse, or by the ascendants or descendants of the latter.

However, the usufruct, use or habitation, or a personal allowance or benefit may be bequeathed by legacy to any person for the time during which he remains single or widowed.

**Article 794.** The disposition made under the condition that the heir or legatee should make any disposition in his will in favour of the testator or another person shall be null and void.

**Article 795.** The purely discretionary condition imposed on the heir or legatee must be fulfilled by the latter, after becoming aware of it, after the testator's death.

The case where the condition has already been fulfilled and cannot be repeated shall be an exception to the foregoing.

**Article 796.** Where the condition should be casual or mixed, it shall be sufficient for it to be performed or fulfilled at any time, whether the testator is alive or dead, unless otherwise provided by the latter.

If it should already have existed or been fulfilled at the time of making the will, and the testator should have been unaware of it, it shall be deemed to have been fulfilled.

If he was aware of it, it shall only be deemed to have been fulfilled when its nature is such that it cannot exist or be fulfilled once again.

**Article 797.** The expression of the purpose of the appointment as heir or legacy, or the application to be given to the property left by the testator, or the liens imposed by the latter, shall not be deemed to be a condition, unless this should appear to have been the testator's intention.

Any property left in this manner may be claimed from the beginning, and is transferrable to any heirs who provide a bond securing their compliance of the testator's mandate, with the obligation to return the property received, together with any fruits and interest, if they should fail to perform this obligation.

**Article 798.** Where, without fault or act performed personally by the heir or legatee, the appointment as heir or the legacy mentioned in the preceding article cannot take effect in the same terms ordered by the testator, it must be complied with in others, as closely analogous and adjusted to his intentions as possible.

Where the party interested in the fulfilment or non- fulfilment of such condition should prevent the fulfilment thereof without fault or act performed personally by the heir or legatee, the condition shall be deemed to have been fulfilled.

**Article 799.** A condition precedent shall not prevent the heir or legatee from acquiring his respective rights and transferring them to his heirs, even before verification of its fulfilment.

**Article 800.** If the discretionary condition imposed on the heir or legatee should be negative, or should consist of an obligation not to do or not to give something, it shall be fulfilled by providing a bond guaranteeing that they shall not do or give that which was forbidden by the testator and that, in the event of violation, they shall return the property received, together with its fruits and interest.

**Article 801.** If the heir should be appointed subject to a condition precedent, the property of the estate shall be placed under administration, until fulfilment of the condition or until there is a certainty that it cannot be fulfilled.

The same shall apply when the heir or legatee should fail to provide the bond in the case of the preceding article.

**Article 802.** The administration mentioned in the preceding article shall be entrusted to the appointed heir or heirs without condition, when between them and the conditional heir there should exist a right of accretion. The same shall be understood in respect of legatees.

**Article 803.** If the conditional heir should have no co-heirs, or, having them, there should be no right of accretion between them, the former shall be entrusted the administration of the estate, providing a bond.

If he should fail to provide it, the administration shall be conferred upon the presumptive heir, also with a bond; and if neither one nor the other should provide a bond, the Courts shall appoint a third party, who shall take charge of the estate, also providing a bond with the intervention of the heir.

**Article 804.** The administrators shall have the same rights and obligations as the administrators of the absentee's property.

**Article 805.** The designation of a date or time on which the effect of the appointment of the heir or the legacy is to begin or cease shall be valid.

In both cases, until arrival of the term, or upon completion thereof, the intestate successor shall be deemed to have been called. However, in the first case, he shall not come into possession of the property until he has provided a sufficient bond, with the intervention of the appointed heir.

## SECTION 5<sup>a</sup>

### *On the forced shares of the estate*

**Article 806.** The forced share of the estate is the portion of property which the testator cannot dispose of, because the law has reserved it to certain heirs, who are as a result called forced heirs.

**Article 807.** The following persons are forced heirs:

- 1.** Children and descendants in respect of their parents and ascendants.
- 2.** In the absence of the foregoing, the parents and ascendants in respect of their children and descendants.
- 3.** The widower or widow in the manner and to the extent set forth in this Code.

**Article 808.** Two thirds of the estate of the father and mother constitute the forced share corresponding to children and descendants.

However, the parents may dispose of one of the two thirds which form the forced share, to apply it as betterment in favour of their children or descendants.

The remaining third shall be freely disposed of.

**Article 809.** One half of the estate of children and descendants constitutes the forced share corresponding to parents or ascendants, save in the case where they should concur with the widowed spouse of the deceased descendant, in which case it shall be one third of the estate.

**Article 810.** The forced share reserved to parents shall be divided between both of them equally; if one of them should have died, all of it shall correspond to the surviving parent.

Where the testator should not leave a father or mother, but does leave ascendants, in the same degree, from the paternal and maternal lines, the estate shall be divided in half between both lines. If the ascendants should be of different degree, the estate shall correspond in full to the nearest ascendants of one line or the other.

**Article 811.** The ascendant who inherits from his descendant property acquired by the latter as a gift from another ascendant, or from a sibling, shall be obliged to reserve the property acquired by operation of law in favour of relatives within the third degree, and who belong to the line where the property comes from.

**Article 812.** Ascendants shall succeed, to the exclusion of other persons, to things given by them to their children or descendants who have died without issue, where the same objects which were given should exist in the succession. If they should have been disposed of, they shall succeed to all actions held by the donee in connection therewith, and to the proceeds obtained if they should have been sold, or to the property for which they were exchanged, if they should have been exchanged or bartered.

**Article 813.** The testator may not deprive his heirs of their forced share even in the cases expressly provided in the law.

Neither may he impose over such share any encumbrance, condition or substitution of any kind, save as provided in connection with the widow's usufruct and excepting the provisions of article 808 in respect of judicially incapacitated children or descendants.

**Article 814.** The preterition of the forced heir shall not prejudice the forced share. The appointment of the heir shall be reduced prior to any legacies, betterments and other testamentary dispositions.

However, the unintentional preterition of children or descendants shall have the following effect:

- 1.** If all heirs should be passed over, all patrimonial testamentary dispositions shall be annulled.
- 2.** Otherwise, the appointment of heirs shall be annulled, but any bequests and betterments ordered pursuant to any title shall be valid, to the extent that they are not inofficious. Notwithstanding the foregoing, the appointment of the spouse as heir shall only be annulled to the extent that it is prejudicial to the forced shares of the estate.

Descendants of another descendant who has not been passed over shall represent the latter in the ascendant's inheritance and shall not be deemed to have been passed over.

If the forced heirs who have been passed over should die before the testator, the will shall have full force and effect.

Except for the forced shares, the dispositions ordered by the testator shall have preference in any event.

**Article 815.** The forced heir who has been left less than the forced share which corresponds to him by the testator, , pursuant to any title, may demand that his share be supplemented.

**Article 816.** Any waiver or settlement regarding the future forced share between the person obliged to give it and his forced heirs shall be null and void, and the heirs may claim their share upon the decedent's death; but they must bring to collation what they received in exchange for the waiver or settlement.

**Article 817.** Testamentary dispositions which reduce the forced share of the forced heirs shall be reduced, at the request of the heirs, to the extent that they are inofficious or excessive.

**Article 818.** In order to set the value of the forced share, the value of the property remaining at the time of the testator's death shall be calculated, deducting any debts and liens, without including therein any which are imposed by the will.

The value of any gifts capable of collation shall be added to the net value of the estate.

**Article 819.** Gifts made to children, which are not betterments, shall be attributed to their forced share. Gifts made to strangers shall be attributed to the part of the estate of which the testator would have been freely able to dispose by testamentary disposition.

To the extent that they should be inofficious or should exceed the available share, they shall be reduced in accordance with the rules provided in the following articles.

**Article 820.** After establishing the forced share in accordance with the two preceding articles, the reduction shall be made as follows:

**1.** Gifts shall be respected to the extent that the forced share is covered, reducing or annulling, if necessary, any bequests made in the will.

**2.** The reduction of bequests shall be pro rata, without any distinction whatsoever.

If the testator should have provided that a certain legacy must be paid with preference to the rest, the former shall suffer no reduction until after having applied the latter in full for the payment of the forced share.

**3.** If the bequest should consist of a usufruct or life annuity, whose value is considered greater than the available portion, the forced heirs may choose between complying with the testamentary disposition or delivering to the legatee the part of the estate of which the testator could freely dispose.

**Article 821.** When the legacy is subject to reduction should consist of a property which cannot be divided easily, the property shall be left to the legatee if the reduction does not reach half of its value; otherwise, it shall be for the forced heirs; but the both must pay the other the respective value in money.

The legatee entitled to a forced share may retain the whole property, as long as its value does not exceed the amount of the available portion and the share corresponding to him as forced share.

**Article 822.** If the heirs or legatees should not wish to exercise the right conferred in this article, the property shall be sold at a public auction, at the request of any of the interested parties.

## SECTION 6<sup>a</sup>

### *On betterments*

**Article 823.** The mother or father may dispose, as betterment, in favour of one or several of their children or descendants, whether by birth or adoption, of one of the two thirds of the estate destined to the forced share.

**Article 824.** No encumbrances may be imposed over the betterment portion other than those set forth in favour of the forced heirs or their descendants.

**Article 825.** No gift pursuant to a contract *inter vivos*, whether a simple gift or a gift for valuable consideration, made in favour of children or descendants who are forced heirs shall be deemed a betterment, unless the donor has expressly declared his intention in this regard.

**Article 826.** The promised to make or not to make a betterment, made by public deed in marriage articles, shall be valid.

The testator's disposition contrary to this promise shall be without force or effect.

**Article 827.** Betterments, even if evidenced by delivery of property, shall be revocable, unless made pursuant to marriage articles or to a contract for valuable consideration entered into with a third party.

**Article 828.** A bequest or legacy made by the testator to one of the children or descendants shall not be reputed a betterment unless the testator has expressly declared this to be his intention, or when it should exceed the freely disposable portion.

**Article 829.** The betterment may refer to a specific thing. If the thing's value should exceed the third of the estate destined to betterment and the part of the forced share corresponding to the heir who has received the betterment, the latter must pay the difference in cash to the remaining interested parties.

**Article 830.** The power to better may not be entrusted to another person.

**Article 831.**

**1.** Notwithstanding the provisions of the preceding article, the spouse may be granted powers in the will so that, upon the death of the testator, he may make betterments in favour of common children or descendants, even charged to the freely disposable third of the estate and, generally, adjudications or allocations of specific property pursuant to any title or in any capacity, or partitions, including those relating to property belonging to the marriage property community which has been dissolved and is pending liquidation.

These betterments, adjudications or allocations may be performed by the spouse in one or several simultaneous or successive acts. If the deceased should not have conferred the power to do so in his will or should not have set a term to perform the, the spouse shall have two years counting from the opening of the succession or, as the case may be, from the emancipation of the last of the children had in common.

Dispositions made by the spouse relating to specific and determined property, as well as granting ownership rights in favour of the child or descendant favoured with the betterment, shall also confer possession as a result of the latter's acceptance, save as otherwise provided therein.

**2.** The surviving spouse shall administer the property in respect which the powers mentioned in the preceding paragraph are pending.

**3.** The spouse, upon exercising the powers entrusted to him, must respect the strict forced shares of any descendants had in common and any betterments and other dispositions made by the decedent in favour of the latter.

If the strict forced share of any descendant had in common or the share in the estate provided in his favour by the decedent should not be respected, the aggrieved person may request the rescission of the act of the spouse to the extent necessary to satisfy the injured interest.

The decedent's dispositions in favour of children or descendants had in common and forced shares shall be deemed to have been respected when both are sufficiently satisfied, even if, in whole or in part, this has been done with property belonging only to the spouse who exercises the powers.

**4.** The granting of the aforementioned powers to the spouse shall not alter the regime governing the forced shares or the decedent's dispositions, when the person favoured by one or the other is not a descendant had in common. In such event, the spouse who is not a straight line relative of the person favoured by the betterment shall have powers, as relates to the property earmarked for the exercise of such powers, to act on behalf of

descendants in common in any acts of performance or adjudication relating to such forced shares or dispositions.

When any descendant who is not a descendant of the surviving spouse should have been unintentionally passed over in the deceased's inheritance, the exercise of the powers entrusted to the spouse may not prejudice the share corresponding to the person who was passed over.

**5.** The powers bestowed on the spouse shall cease from the time such spouse should marry again or begin de facto a relationship akin to marriage, or have a child who is not a child had in common with the deceased, save as otherwise provided by the testator.

**6.** The provisions of the preceding paragraphs shall also apply when persons with descendants in common are not married to each other.

**Article 832.** Where the betterment should not have been set in respect of a specific date, it shall be paid with the property belonging to the estate, observing, to the extent possible, the rules provided in articles 1061 and 1062 to ensure the equality of the heirs in the partition of the estate.

**Article 833.** The child or descendant who has been granted a betterment may waive the inheritance and accept the betterment.

## SECTION 7<sup>a</sup>

### *Rights of the widowed spouse*

**Article 834.** The spouse who, upon the death of his consort, should not be judicially or de facto separated, if he takes part in the inheritance with children or descendants, shall be entitled to the usufruct of the third of the estate destined for betterment.

**Article 835.** If there should have been a reconciliation between separated spouses, notified to the Court who heard the separation proceedings in accordance with article 84 of this Code, the surviving spouse shall keep his rights.

**Article 836.** (No content)

**Article 837.** If there are no descendants but there are ascendants, the surviving spouse shall be entitled to usufruct over one half of the estate.

**Article 838.** In the absence of descendants or ascendants, the surviving spouse shall be entitled to the usufruct over two thirds of the estate.

**Article 839.** The heirs may pay the spouse his part of the usufruct by allocating to him a life annuity, the products of certain property or a sum of capital in cash, by mutual arrangement and, in the absence thereof, pursuant to a court order.

Until this is performed, all property in the estate shall be earmarked to pay the part of the usufruct corresponding to the spouse.

**Article 840.** Where the widowed spouse should concur with children only of the decedent, the former may request that his right of usufruct be satisfied, at the children's discretion, by allocating a capital sum in cash or a batch of property belonging to the estate.



## SECTION 8<sup>a</sup>

### *Payment of the hereditary portion in special cases*

**Article 841.** The testator, or the partitioner expressly authorised by the former, may adjudicate all property in the estate or part of it to one of the children or descendants, ordering him to pay in cash the portion of the estate corresponding to the remaining forced heirs.

The appointed partitioner mentioned in article 1057 of the Civil Code shall also have the ability to pay in cash in the same case as the preceding paragraph.

**Article 842.** Notwithstanding the provisions of the preceding article, any of the children or descendants obliged to pay in cash the share of the estate belonging to their siblings may request that such share be paid in property belonging to the estate, with the obligation to observe, in such case, the provisions of articles 1058 to 1063 of this Code.

**Article 843.** Save in the event of express confirmation thereof by all children or descendants, the partition mentioned in the two preceding articles shall require judicial approval.

**Article 844.** The decision to pay in cash shall not be effective unless it is communicated to the recipients within one year from the opening of the succession. Payment must be made within another year, save as otherwise agreed. The recipient of the amount shall be entitled to the legal warranties provided in favour of the legatee of a specific amount.

After the lapse of such period without the payment having been made, the rights conferred by the testator or the partitioner to the children or descendants shall become void, and the estate shall be distributed according to the general provisions relating to partition.

**Article 845.** The option mentioned in the preceding articles shall not affect legacies of a specific thing.

**Article 846.** Such option shall not affect either the partitional provisions made by the testator referring to specific things.

**Article 847.** For the purpose of setting the sum to be paid to the children or descendants, the value of the property at the time of settling the corresponding portion shall be considered, taking into account any fruits or yields accrued until such time. As of such settlement, credits in cash shall accrue legal interest.

## SECTION 9<sup>a</sup>

### *On disinheritance*

**Article 848.** Disinheritance may only take place on one of the grounds expressly set forth in the law.

**Article 849.** Disinheritance may only be made in a will, expressing therein the legal ground on which it is based.

**Article 850.** The burden of proof of the truth of the ground for disinheritance shall correspond to the testator's heirs, if the disinherited heir should deny it.

**Article 851.** Disinheritance performed without expressing any ground, or on a ground whose certainty, if contradicted, should not be proven, or which is not included among those listed in the four following articles,

shall annul the appointment of heir to the extent that it prejudices the disinherited heir; however, legacies, betterments and other testamentary dispositions shall be valid to the extent that they do not prejudice such forced share.

**Article 852.** Grounds of incapacity to succeed as a result of unworthiness set forth in article 756 under numbers 1, 2, 3, 5 and 6 shall be just grounds for disinheritance, in the terms specifically determined in articles 853, 854 and 855.

**Article 853.** The following grounds shall also be just grounds to disinherit children and descendants, as well as those provided in article 756 under numbers 2, 3, 5 and 6:

1. Having refused, without legitimate reason, to support the parent or ascendant who disinherits him.
2. Having mistreated him in deed or seriously insulted him in speech.

**Article 854.** The following grounds shall be just grounds to disinherit parents and ascendants, as well as those provided in article 756 under numbers 1, 2, 3, 5 and 6:

1. Having forfeited parental authority on the grounds expressed in article 170.
2. Having refused maintenance to his children or descendants without legitimate reason.
3. An attempt by one of the parents against the other's life, if no reconciliation between them has taken place.

**Article 855.** The following grounds shall also be just grounds to disinherit the spouse, as well as those provided in article 756 under numbers 2, 3, 5 and 6:

1. Having seriously or repeatedly breached marital duties.
2. Causes which entail forfeiting parental authority, in accordance with article 170.
3. Having refused support to his children or to the other spouse.
4. Having attempted to take the life of the testator spouse, if no reconciliation between them has taken place.

**Article 856.** The subsequent reconciliation between offender and offended shall deprive the latter of the right to disinherit, and shall render the disinheritance already performed without force and effect.

**Article 857.** The children or descendants of the disinherited heir shall occupy his place, and shall retain the rights pertaining to forced heirs in respect of the forced share.

## SECTION 10<sup>a</sup>

### *On bequests and legacies*

**Article 858.** The testator may encumber with bequests and legacies, not only his heir, but also the legatees. The legatees shall only be liable for the encumbrance up to the value of the legacy.

**Article 859.** When the testator should encumber one of the heirs with the legacy, only such heir shall be obliged to perform it.

If the legacy should not encumber any of them in particular, all of them shall be obliged in the same proportion in which they are heirs.

**Article 860.** The person obliged to deliver the legacy shall be liable for dispossession, if the thing should be indeterminate and should only be mentioned by type or species.

**Article 861.** The legacy of a thing belonging to another shall be valid if the testator, in making the legacy, should have been aware of the fact. The heir shall be obliged to acquire it and deliver it to the legatee; and, if this should not be possible, to give to the latter a fair estimate thereof.

The burden of proof that the testator knew that the thing belonged to another corresponds to the legatee.

**Article 862.** If the testator was unaware that the thing bequeathed belonged to another, the legacy shall be null and void.

However, it shall be valid if he should acquire it after making the will.

**Article 863.** The legacy made to a third party of things belonging to the heir or legatee shall be valid, and the latter, in accepting the succession, must deliver the thing subject to the legacy or a fair estimate thereof, with the limitation provided in the following article.

The provisions of the preceding paragraph shall be understood without prejudice to the forced share corresponding to forced heirs.

**Article 864.** When the testator, heir or legatee should only hold one part of or a right in the thing bequeathed, the legacy shall be deemed limited to such part or right, unless the testator should expressly declare that he bequeaths the whole thing.

**Article 865.** The legacy of things which are beyond the bounds of commerce shall be null and void.

**Article 866.** The legacy of a thing which, at the time of making the will, should already belong to the legatee, shall be without force and effect, even if any other person should hold a right over it.

If the testator expressly provides that the thing is to be released of this right or encumbrance, the legacy shall be valid in this respect.

**Article 867.** When the testator should bequeath a thing which was pledged or mortgages as security for any payable debts, the heir shall be in charge of paying such debt.

If, as a result of the heir's failure to pay, the legatee should pay it, the latter shall become subrogated to the position and rights of the creditor to claim it from the heir.

Any other perpetual or temporary lien to which the thing bequeathed should be earmarked shall pass to the legatee; but in both cases the income and interest or yield accrued until the testator's death shall constitute a lien of the estate.

**Article 868.** If the thing bequeathed should be subject to usufruct, use or habitation, the legatee must respect these rights until they are legally extinguished.

**Article 869.** The legacy shall be rendered without force and effect:

- 1.** If the testator should transform the thing bequeathed, so that it does not keep the form or the name it had before.
- 2.** If the testator should dispose, pursuant to any title or for any reason, of the thing bequeathed or a part of it, understanding in this last case that the legacy shall only be rendered ineffective in respect of the part which has been disposed of. If, after such disposal, the thing should return to the testator's ownership, even if this should be as a result of the nullity of the relevant contract, the legacy shall subsequently still be ineffective, unless the re-acquisition should result from a sell-back covenant.
- 3.** If the thing bequeathed should wholly perish during the life of the testator, or after his death without fault by the heir. However, the person obliged to pay the legacy shall be liable for dispossession if the thing bequeathed should not have been determined as to its species, according to the provisions of article 860.

**Article 870.** The legacy of a credit held against a third party, or the forgiveness or release of the legatee's debt shall only be effective in the part of the credit or debt which subsists at the time of the testator's death.

In the first case, the heir shall fulfil his obligations by assigning to the legatee all remedies to which it is entitled against the debtor.

In the second, he shall fulfil his obligations by giving the legatee a receipt of payment, if so requested.

In both cases, the legacy shall include any interest owed on the credit or debt at the time of the testator's death.

**Article 871.** The legacy mentioned in the preceding article shall become void if the testator, after having made it, should claim his debt from the debtor in court, even the debtor should not have paid at the time of the former's death.

The legacy of a thing which has been pledged made to the debtor shall only be deemed to comprise a waiver of the pledge.

**Article 872.** The generic legacy of release or forgiveness of debts comprises debts outstanding at the time of making the will, not any subsequent debts.

**Article 873.** The legacy made to a creditor shall not be allocated to the payment of his credit, unless expressly so provided by the testator.

In this last case, the creditor shall be entitled to receive the excess of the credit or the legacy.

**Article 874.** In alternative legacies, the provisions hereof concerning obligations of the same kind shall be observed, except for any modifications resulting from the testator's express intention.

**Article 875.** The legacy of a generic movable thing shall be valid even if the estate includes no things of such type.

The legacy of an indeterminate immovable thing shall only be valid if a thing of this type exists in the estate.

The choice shall correspond to the heir, who shall fulfil his obligation by giving a thing which is not of the lowest or of the highest quality.

**Article 876.** Whenever the testator should expressly leave the choice to the heir or the legatee, the former may give or the latter choose what they think best.

**Article 877.** If the heir or legatee should be unable to make the choice, if it should have been given to him, his right shall pass to the heirs; however, once made, such choice shall be irrevocable.

**Article 878.** If the thing bequeathed belonged to the legatee on the date of the will, the legacy shall be invalid, even if it should have been disposed of subsequently.

If the legatee should have acquired it as a gift subsequently to such date, it may not request any amount as a result; however, if the acquisition should have been made for valuable consideration, he may request the heir to compensate him for the amount given to acquire it.

**Article 879.** The legacy consisting of paying for someone's education shall last until the legatee comes of age. The legacy consisting of support shall subsist during the life of the legatee, unless otherwise provided by the testator.

If the testator should not have provided a specific amount for such legacies, it shall be set according to the status and condition of the legatee and the amount of the estate.

If the testator during his life used to give the legatee a certain amount of money or other things as support, the same amount shall be deemed to have been bequeathed, unless it is notably disproportionate in respect of the amount of the estate.

**Article 880.** In the event of a legacy of a regular allowance or a specific annual, monthly or weekly amount, the legatee may demand the amount corresponding to the first period from the time of the testator's death, and for the following periods at the start of each of them, without any obligation to return such amounts even if the legatee should die before the end of the relevant period.

**Article 881.** The legatee shall be entitled to pure and simple legacies as of the testator's death, and shall transfer this right to his heirs.

**Article 882.** When the legacy consists of a specific and determined thing owned by the testator, the legatee shall acquire ownership thereof as of the testator's death, and shall be entitled to pending fruits or income, but not to income accrued and unpaid prior to such death.

The thing bequeathed shall from such time be at the legatee's own risk and venture, and the legatee shall therefore bear its loss or impairment, and shall benefit from any accretion or improvement thereof.

**Article 883.** The thing bequeathed must be delivered with all its fittings and in its current condition at the time of the testator's death.

**Article 884.** If the legacy should not consist of a specific and determined thing, but of a generic thing or amount, the fruits and interest thereof from the testator's death shall correspond to the legatee when the testator should have expressly so provided.

**Article 885.** The legatee may not take possession of the thing bequeathed by his own authority, but must request delivery and possession thereof to the heir or to the executor, where the latter is authorised to do so.

**Article 886.** The heir must give the exact thing bequeathed, if he is able to do so, and shall not fulfil his obligation by paying its estimated value.

Legacies consisting of money must be paid in this species, even if there is none in the estate.

Expenses necessary to deliver the thing bequeathed shall be borne by the estate, but without prejudice to the forced share.

**Article 887.** If the property of the estate should not be sufficient to cover all legacies, payment thereof shall be made in the following order:

1. Remuneratory legacies.
2. Legacies of a certain and specific thing which forms part of the estate.
3. Legacies declared to be preferential by the testator.
4. Legacies of support.
5. Legacies of education.
6. The rest shall be paid pro rata.

**Article 888.** Where the legatee is unable to or does not wish to honour the legacy, or where the latter should be without force and effect for any reason, it shall be return to the estate, save in the event of substitution or right of accretion.

**Article 889.** The legatee cannot accept one part of the legacy and reject another if the latter should be burdensome.

If he should die before accepting the legacy, leaving several heirs, one of them may accept and the other reject their corresponding share in the legacy.

**Article 890.** The legatee of two legacies, one of which is burdensome, may not waive the latter and accept the former. If both of them are burdensome or gratuitous, he shall be free to accept them all or reject whichever one he wants.

The heir who is at the same time a legatee may waive the inheritance and accept the legacy, or waive the latter and accept the former.

**Article 891.** If the whole estate is distributed in legacies, any debts and encumbrances thereof shall be distributed pro rata between the legatees in proportion to their shares, unless otherwise provided by the testator.

## SECTION 11<sup>a</sup>

### *On executors or administrators*

**Article 892.** The testator may appoint one or more executors.

**Article 893.** A person incapable of contracting obligations may not be an executor. A minor may not be an executor, even with his parent's or guardian's authorisation.

**Article 894.** The executor may be a general or a specific executor. In any event, executors may be appointed jointly, successively or joint and severally.

**Article 895.** In the case of executors appointed jointly, only actions performed by all of them in agreement, or those performed by one of them with the legal authorisation of the rest or, in the event of disagreement, the actions agreed by the majority of them shall be valid.

**Article 896.** In cases of serious urgency, one of the joint executors may perform, under his personal responsibility, any actions which may be necessary, giving immediate account thereof to the rest.

**Article 897.** If the testator does not clearly provide that the executors are to act joint and severally, or set the order in which they are to fulfil their commission, they shall be deemed to have been appointed jointly and shall perform their duties as provided in the two preceding articles.

**Article 898.** Executorship is a voluntary appointment, and shall be deemed accepted by the appointee if he does not excuse himself within six days following that on which he becomes aware of his appointment or, if he should already be aware of it, within six days of his becoming aware of the testator's death.

**Article 899.** The executor who accepts this position assumes the obligation to perform its duties; but may resign from it by alleging a just cause, at the Judge's prudent discretion.

**Article 900.** The executor who does not accept the position or resigns from it without just cause shall forfeit anything which the testator has left him, always excepting his right to a forced share.

**Article 901.** Executors shall have all powers expressly conferred upon them by the testators which are not contrary to the law.

**Article 902.** In the absence of specific determination thereof by the testator, the executors shall have the following powers:

- 1.** To decide and pay for any religious services and for the testator's funeral as provided by the latter in his will and, in the absence of any provision, according to local custom.
- 2.** To pay legacies consisting of cash, with the knowledge and approval of the heir.
- 3.** To supervise the performance of all other mandates contained in the will, and to uphold its validity, if this is just, in and out of court.
- 4.** To take the necessary precautions for the preservation and custody of the property, with the intervention of the heirs who are present.

**Article 903.** If the estate should not include sufficient money to pay funerals and legacies, and the heirs should not contribute from their own property, the executors shall promote the sale of any movable property; and, if such property should not be enough, immovable property, with intervention of the heirs.

If any minor, absentee, corporation or public establishment should have an interest in the estate, the sale of the property shall be performed with the formalities provided in the law for such cases.

**Article 904.** The executor who has not been set a specific deadline by the testator, must fulfil his commission within one year counting from his acceptance, or from the end of any litigation initiated concerning the validity or nullity of the will or any provision thereof.

**Article 905.** If the testator should wish to extend the legal deadline, he must expressly determine the duration of the extension. If he fails to do so, such deadline shall be deemed extended for one year. If, after this extension, the testator's intentions should still not have been fulfilled, the Judge may grant another extension for the period which is necessary, attending to the circumstances of the case.

**Article 906.** The heirs and legatees may, by common consent, extend the term of the executorship for the time they believe to be necessary; but, if the agreement should only have been adopted by a majority, the extension may not exceed one year.

**Article 907.** The executors must give account of the fulfilment of their commission to the heirs. If they should have been appointed not to deliver the property to specific heirs, but to invest or distribute it as provided by the testator in the cases permitted under the law, they shall render account to the Judge. Any disposition by the testator contrary to this article shall be null and void.

**Article 908.** Executorship is a gratuitous position. However, the testator may provide a remuneration for the executors deemed convenient; without prejudice to their right to charge any amount for any partition tasks or other optional tasks.

If the testator should jointly bequeath or provide any remuneration to the executors, the part corresponding to those who do not accept the position shall accrue in favour of those who do exercise it.

**Article 909.** The executor may not delegate his position unless he has the testator's express authorisation.

**Article 910.** Executorship shall terminate as a result of the death, impossibility, resignation or removal of the executor, and by expiration of the deadline provided by the testator, by the law and, as the case may be, by the interested parties.

**Article 911.** In the cases provided in the preceding article, and in the event that the executor has not accepted the position, the heirs shall be in charge of executing the testator's intentions.

## CHAPTER 3°

### *On intestate succession*

#### SECTION ONE

##### *General provisions*

**Article 912.** Intestate succession shall occur:

- 1.** Where a person dies without having made a will, or his will is null and void or has subsequently become invalid.
- 2.** Where the will does not contain the appointment of an heir for the whole or part of the property, or does not dispose of the testator's entire property.  
In this event, intestate succession shall only take place in respect of the property which has not been disposed of.
- 3.** In the event of non-fulfilment of a condition imposed on the appointment of the heir, or if the latter should die before the testator, or should reject the inheritance and have no substitute, and there is no right of accretion.
- 4.** Where the appointed heir is incapable of succeeding.

**Article 913.** In the absence of testamentary heirs, the law passes the estate on to the deceased's relatives, the widower or widow and to the State.

**Article 914.** The provisions relating to incapacity to succeed pursuant to will shall likewise apply to intestate succession.

## SECTION 2<sup>a</sup>

### *On kinship*

**Article 915.** Nearness of kin is determined by the number of generations. Each generation constitutes a degree.

**Article 916.** The series of degrees forms the line, which may be direct or collateral. The direct line is the line consisting of the series of degrees between persons who descend one from the other. The collateral line consists of the series of degrees between persons who do not descend one from the other, but who descend from common stock.

**Article 917.** The straight line distinguishes between descending and ascending lines. The first unites the head of the family with the persons who descend from him. The second links a person with those from whom he descends.

**Article 918.** In the different lines, as many degrees as there are generations or persons are counted, discounting that of the parent. In the direct line, one must only go up to the common stock. Thus, the child is one degree away from the parent, two from the grandparent and three from the great-grandparent. In the collateral line one must go up to the common stock, and then down to the persons in respect of whom kinship is calculated. Thus, the sibling is two degrees away from his sibling, three from his uncle who is the sibling of his father or mother, four from his first cousin and so forth.

**Article 919.** The calculation referred to in the preceding article shall apply for all matters.

**Article 920.** Kinship on the father's and on the mother's side is called full kinship.

**Article 921.** For inheritance purposes, the relative of nearest degree excludes the more distant relative, save for the right of representation, where applicable. Relatives of the same degree shall inherit in equal shares, save as provided in article 949 concerning full kinship.

**Article 922.** If there should be several relatives of the same degree, and one or some should not want to or should be unable to inherit, their part shall accrue in favour of the others of the same degree, save for the right of representation, where applicable.

**Article 923.** When the nearest relative, if there should only be one, or, if there should be several, all nearest relatives called by operation of law should reject the inheritance, the relatives of the next degree shall inherit in their own right without being entitled to represent the person who rejected the inheritance.



## SECTION 3<sup>a</sup>

### *On representation*

**Article 924.** The right of representation is the right of the relatives of a person to succeed in all rights he would have had if he had lived or been able to inherit.

**Article 925.** The right of representation shall always take place in the descending direct line, but never in the ascending line.

In the collateral line it shall only exist in favour of the issue of siblings, whether they are full or half-siblings.

**Article 926.** Whenever a person inherits by right of representation, distribution of the estate shall be made per stirpes, so that the person or persons acquiring by right of representation do not inherit more than their principal would inherit were he alive.

**Article 927.** If one or several siblings of the deceased should have left issue, the latter shall inherit from the former by right of representation if they stand to inherit in concurrence with their uncles. However, if they are alone, they shall inherit in equal shares.

**Article 928.** The right to represent a person is not be forfeited as a result of having waived his inheritance.

**Article 929.** One cannot represent a person who is alive except in the event of disinheritance or incapacity.

## CHAPTER 4<sup>o</sup>

### *On the order of succession according to the different lines*

## SECTION ONE

### *On the descending direct line*

**Article 930.** Succession corresponds in the first place to the descending direct line.

**Article 931.** Children and descendants succeed their parents and other ascendants, without any distinctions resulting from gender, age or filiation.

**Article 932.** The deceased's children shall always inherit from him in their own right, dividing the estate into equal shares.

**Article 933.** Grandchildren and other descendants shall inherit by right of representation and, if any of them should have died leaving several heirs, the portion which corresponds to him shall be divided between the latter in equal shares.

**Article 934.** If there should be children and descendants of other predeceased children, the former shall inherit in their own right and the latter by right of representation.

SECTION 2<sup>a</sup>

*On the ascending direct line*

**Article 935.** In the absence of children and descendants of the deceased, his ascendants shall inherit.

**Article 936.** The father and the mother shall inherit in equal shares.

**Article 937.** In the event that only one parent should survive, he shall inherit the whole estate from his child.

**Article 938.** In the absence of both father and mother, the ascendants nearest in degree shall inherit.

**Article 939.** If there are several ascendants of the same degree belonging to the same line, they shall divide the estate per capita.

**Article 940.** If the ascendants should belong to different lines, but be of the same degree, half shall correspond to the paternal ascendants and the other half to the maternal ascendants.

**Article 941.** Within each line, the distribution shall be made per capita.

**Article 942.** The provisions of this Section shall be deemed to be without prejudice to the provisions of articles 811 and 812, which apply to both intestate and testamentary succession.

SECTION 3<sup>a</sup>

*On succession by the spouse and collateral relatives*

**Article 943.** In the absence of the persons comprised in the two preceding Sections, the spouse and collateral relatives shall inherit, in the order set forth in the following articles.

**Article 944.** In the absence of ascendants and descendants, and before any collateral relatives, the surviving spouse shall inherit all of the deceased's property.

**Article 945.** The spouse shall not be called to inherit as mentioned in the preceding article if he should be judicially or de facto separated.

**Article 946.** Siblings and children of siblings shall succeed with preference to other collateral relatives.

**Article 947.** If only full siblings exist, they shall inherit in equal shares.

**Article 948.** If both siblings and nephews who are children of full siblings should stand to inherit, the former shall inherit per capita and the latter per stirpes.

**Article 949.** If both full siblings and half siblings should stand to inherit, the former shall take double the share of the latter in the estate.

**Article 950.** If only half-siblings should exist, some on the father's side and some on the mother's, they shall all inherit in equal shares, without any distinction between properties.

**Article 951.** Children of half-siblings shall inherit per capita or per stirpes, according to the rules set forth for full siblings.

**Article 952.** (No content)

**Article 953.** (No content)

**Article 954.** In the absence of a surviving spouse or siblings or children of siblings, the remaining relatives in the collateral line up to the fourth degree shall inherit, beyond which the right to inherit *ab intestato* shall not extend.

**Article 955.** Succession by these collateral relatives shall be verified without any distinction between lines, or preference between them as a result of any full kinship.

#### SECTION 4<sup>a</sup>

##### *On succession by the State*

**Article 956.** In the absence of persons entitled to inherit in accordance with the provisions of the preceding Sections, the State shall inherit, and shall allocate one third of the estate to public or private municipal, charitable, instruction, social activism or professional institutions of the deceased's domicile, and another third to provincial institutions of the same characteristics of the deceased's province, with preference in both one and the others in favour of those to which the deceased should have belonged as a result of his profession and to which he dedicated the most activity, even if they are of a general nature. The other third shall be allocated to the Public Debt Redemption Reserve, unless, as a result of the nature of the inherited property, the Council of Ministers should resolve to give it another application, in whole or in part.

**Article 957.** The rights and obligations of the State and of the Institutions or entities to whom two thirds of the estate should be allocated pursuant to article 956 shall be the same as for other heirs, but the inheritance shall always be deemed to have been accepted under the benefit of inventory, without the need to make any statement in this respect, for the purposes listed in article 1,023.

**Article 958.** The appropriation of the estate by the State must be preceded by a judicial declaration of heirship, adjudicating the property in the absence of heirs at law.

#### CHAPTER 5<sup>o</sup>

##### *Provisions common to testamentary and intestate inheritances*

#### SECTION ONE

##### *On the precautions which must be adopted when the widow is pregnant*

**Article 959.** Where the widow believes that she has become pregnant, she must report this fact to the persons who hold a right of such nature that it must disappear or be diminished as a result of the birth of the posthumous child.

**Article 960.** The interested persons mentioned in the preceding article may request the municipal Judge or first instance Judge, if there is one, to issue any orders convenient to prevent the birth from being faked, or to prevent passing off the creature that is born as viable when in fact it isn't. The Judge shall take care that any measures adopted do not assault the widow's modesty or freedom.

**Article 961.** Whether or not the notice mentioned in article 959 has been given, as the time of the birth approaches, the widow must report the fact to the same interested persons. Such persons shall be entitled to designate a trusted person to ascertain the fact of the delivery.

If the designated person should be rejected by the patient, the Judge shall make the appointment, which must be of a physician or a woman.

**Article 962.** The omission of these formalities shall not by itself be sufficient to evidence the faking of the delivery or the newborn's lack of viability.

**Article 963.** Where the husband should have acknowledged in a public or private document his certainty of his wife's pregnancy, she shall be dispensed from the obligation to give notice as provided in article 959, but must comply with the provisions of article 961.

**Article 964.** The widow who is pregnant, even if she should be rich in her own right, must be supported by the property of the estate, taking into consideration the share to which the posthumous child shall be entitled, if he should be born and be viable.

**Article 965.** During the time until the delivery is verified, or it becomes certain that such delivery will not take place, either as a result of miscarriage or after exceeding the maximum gestational term, the necessary formalities shall be performed to have the estate secured and administered according to the provisions governing mandatory testamentary execution proceedings.

**Article 966.** The partition of the estate shall be suspended until verification of the delivery or the miscarriage, or until it results from the passage of time that the widow was not pregnant. However, the administrator may pay creditors, after obtaining a judicial order.

**Article 967.** After verifying the delivery or miscarriage or after expiration of the term of the pregnancy, the administrator of the estate shall be removed from his position and shall give account of his performance to the heirs or their legitimate representatives.

## SECTION 2<sup>a</sup>

### *On properties subject to reservation*

**Article 968.** As well as the reservation provided in article 811, the widower or widow who marries again shall be obliged to reserve in favour of the children and descendants of the first spouse the ownership of all property acquired from his deceased spouse by will, by intestate succession, by gift or by another title for no consideration; but not his half of the marriage property community.

**Article 969.** The provisions of the preceding article shall apply to property which, pursuant to the title expressed therein, has been acquired by the widower or widow from any of the children of his first marriage and those received from the deceased's relatives on account of the former.

**Article 970.** The obligation to reserve property shall cease where the children of the marriage, being of legal age, who are entitled to the property should expressly waive their rights to it, or in the event of things given of left by the children to their father or mother knowing that they had married again.

**Article 971.** Such reservation shall likewise cease if, upon the death of the father or the mother who married again,, there are no children or descendants from the first marriage.

**Article 972.** Notwithstanding the obligation to reserve, the father or mother who has married a second time may better any of the children or descendants of the first marriage with the property to be reserved, in accordance with the provisions of article 823.

**Article 973.** If the father or mother should not have used in whole or in part the power granted by the preceding article, the children and descendants of the first marriage shall inherit the property subject to reservation in accordance with the rules provided for succession in the descending line, even if, pursuant to the predeceased parent's will, they should have inherited his estate unequally, or if they should have rejected the inheritance.

The child who has been justly disinherited by the father or the mother shall forfeit all right to the reserve, but, if he should have children or descendants, the provisions of 857 and article 164 number 2 shall apply.

**Article 974.** Any disposals of immovable property made by the surviving spouse before marrying a second time shall be valid, with the obligation, as of such marriage, to provide security for the value thereof in favour of the children and descendants of the first marriage.

**Article 975.** Any disposal of the immovable property subject to reservation by the widower or widow after marrying a second time shall be valid only if, at the time of his death, there should be no children or descendants from the first marriage, without prejudice to the provisions of the Mortgage Law.

**Article 976.** Disposals of movable property made prior or subsequently to marrying a second time shall be valid, always except for the relevant obligation to compensate.

**Article 977.** The widower or widow, upon marrying again, shall order an inventory to be made of all the property subject to reservation, shall make an entry in the Property Registry noting the fact that any immovable property is subject to reservation in accordance with the provisions of the Mortgage Law and shall order an appraisal of any movable property to be made.

**Article 978.** The widower or widow shall likewise be obliged, upon marrying again, to secure by mortgage:

- 1.** The restitution of the movable property which has not been disposed of in its condition at the time of his death.
- 2.** Compensation for any impairments caused or which may have been caused as a result of his fault or negligence.
- 3.** Return of the price obtained for any movable property disposed of or of the price which would have been obtained at the time of their disposal, if it should have been disposed of by gift.
- 4.** The value of immovable property validly disposed of.

**Article 979.** The provisions of the preceding articles for the event of a second marriage shall likewise apply for third and subsequent marriages.

**Article 980.** The reservation obligation imposed in the preceding articles shall also apply:

- 1.** To the widower who, during the marriage or during his widowhood should have had a non-matrimonial child.
- 2.** To the widower who adopts another person. The case where the adoptee is a child of the spouse from whom the persons entitled to the reservation are descended shall be excepted.

Such obligation to reserve shall be effective, respectively, from the birth or adoption of the child.

## SECTION 3<sup>a</sup>

### *On the right of accretion*

**Article 981.** In intestate successions, the share of the heir who rejects the inheritance shall always accrue in favour of his co-heirs.

**Article 982.** The following is required for the right of accretion to occur in testamentary successions:

- 1.** Two or more persons must be called to inherit the same estate, or the same portion of the same, without specific designation of shares.
- 2.** One of the persons called must die before the testator, or reject the inheritance, or be incapable of receiving it.

**Article 983.** The designation shall be deemed made by parts only in the event that the testator should expressly have determined a share for each heir.

The sentence “by halves or in equal shares” or others which, even if they should designate a proportional share do not set it numerically or by signs which make each heir the owner of a separate body of property shall not exclude the right of accretion.

**Article 984.** The heirs in favour of whom the inheritance accrues shall inherit all rights and obligations which would have been had by the heir who did not want to or was unable to receive it.

**Article 985.** Among forced heirs, the right of accretion shall only take place where the share of the estate subject to free disposal is left to two or more of them, or to some of them and a stranger.

If the rejected share should be the forced share, the co-heirs shall inherit it in their own right, and not pursuant to a right of accretion.

**Article 986.** In testamentary successions, when the right of accretion does not apply, the vacant share pertaining to the appointed person for whom no substitute has been designated shall pass to the testator’s intestate heirs, who shall receive it with the same liens and obligations.

**Article 987.** The right of accretion shall also exist among legatees and usufructuaries in the same terms set forth for the heirs.

## SECTION 4<sup>a</sup>

### *On acceptance and rejection of the inheritance*

**Article 988.** Acceptance and rejection of the inheritance are entirely voluntary and free acts.

**Article 989.** Acceptance and rejection of the inheritance shall always have retroactive effect to the time of the death of the decedent.

**Article 990.** Acceptance and rejection of the inheritance may not be done partially, or be subject to term or condition.

**Article 991.** No one may accept nor reject an inheritance without being certain of the death of the decedent and of his right to the inheritance.

**Article 992.** All persons who can freely dispose of their property may accept or reject an inheritance.

The acceptance of an estate left to the poor shall correspond to the persons designated by the testator to qualify such group and to distribute the property and, in the absence thereof, to the persons provided in article 749, and shall be deemed to have been accepted under the benefit of inventory.

**Article 993.** The legitimate representatives of associations, corporations and foundations capable of acquiring property may accept the inheritance bequeathed to them, but shall require judicial approval, after hearing the Public Prosecutor, to reject it.

**Article 994.** Official public establishments may neither accept nor reject an inheritance without the Government's approval.

**Article 995.** Where the inheritance should be accepted without the benefit of inventory by a married person, and the other spouse should not also accept and give his consent to the acceptance, the property pertaining to the marriage property community shall not be liable for the debts of the estate.

**Article 996.** If the judgement decreeing incapacitation as a result of physical or mental illness should not provide otherwise, the person subject to conservatorship may accept the inheritance absolutely or under the benefit of inventory.

**Article 997.** Acceptance and rejection of the inheritance, once made, are irrevocable, and may not be challenged unless they are afflicted by one of the defects which render consent null and void, or in the event that a hitherto unknown will should appear.

**Article 998.** The inheritance may be accepted absolutely or under the benefit of inventory.

**Article 999.** Absolute acceptance may be express or implied.

Express acceptance is that which is given in a public or private document.

Implied acceptance is that which takes place as a result of acts which necessarily entail the will to accept, or which the person would not be entitled to perform without the condition of heir.

Acts of mere preservation or provisional administration shall not imply acceptance of the inheritance if they do not entail taking the title or condition of heir.

**Article 1,000.** The inheritance is deemed to have been accepted:

- 1.** When the heir sells, gives or assigns his rights to a stranger, to all his co-heirs or to one of them.
- 2.** When the heir waives the inheritance, even if he does so gratuitously, for the benefit of one or more of his co-heirs.
- 3.** When he waives it in exchange for a price in favour of all his co-heirs indistinctly; however, if such waiver should be gratuitous and the co-heirs in whose favour it is made should be those in favour of whom the waived share is to accrue, the inheritance shall not be deemed to have been accepted.

**Article 1,001.** If the heir rejects the inheritance to the detriment of his own creditors, the latter may request the Judge to authorise them to accept it on behalf of the former.

The acceptance shall only benefit of the creditors to the extent sufficient to cover the amount of their credits. The excess, if any, shall in no event belong to the heir who has waived it, but shall be adjudicated to the relevant persons according to the rules set forth in this Code.

**Article 1,002.** Heirs who have purloined or concealed any property of the estate shall forfeit the power to waive the inheritance, and shall become absolute heirs, without prejudice to any penalties in which they may have incurred.

**Article 1,003.** Absolute acceptance, without the benefit of inventory, shall make the heir liable for all liens of the estate, not just with the property pertaining to the estate, but also with his own property.

**Article 1,004.** No action may be initiated against the heir to force him to accept or waive the inheritance until nine days after the death of the deceased.

**Article 1,005.** Where an interested third party should demand in court that the heir accept or reject the inheritance, the Judge must set a deadline, not exceeding 30 days, for the former to make his statement; with the warning that, if he should fail to do so, the inheritance shall be deemed to have been accepted.

**Article 1,006.** If the heir should die without accepting or rejecting the inheritance, the same right held by him shall pass to his heirs.

**Article 1,007.** Where several heirs should be called to the inheritance, some of them may accept it and others reject it. Each heir shall have the same freedom to accept it absolutely or under the benefit of inventory.

**Article 1,008.** Rejection of the inheritance must be made in a public or authentic instrument or in a document submitted before the Judge who is competent to hear the testamentary or intestate proceedings.

**Article 1,009.** The person who is called to the same inheritance by testament and by intestate succession and rejects it pursuant to the former title shall be deemed to have rejected it pursuant to both. Having rejected it as intestate heir without having received notice of his testamentary title, he may still accept it pursuant to the latter.

#### SECTION 5<sup>a</sup>

##### *On the benefit of inventory and the right to deliberate*

**Article 1,010.** Any heir may accept the inheritance under the benefit of inventory, even if the testator has forbidden it.

He may also request the drawing up of an inventory before accepting or rejecting the inheritance, in order to deliberate on this issue.

**Article 1,011.** Acceptance of the inheritance under the benefit of inventory may be made before a Notary Public or in writing before any of the Judges who are competent to hear testamentary or intestate proceedings.

**Article 1,012.** If the heir mentioned in the preceding article should be in a foreign country, he may make such declaration before the Spanish diplomatic or consular Agent empowered to exercise the duties of a Notary Public at the place of execution.

**Article 1,013.** The declaration mentioned in the preceding articles shall have no force or effect if it is not preceded or followed by a true and accurate inventory of all the property of the estate, made with the formalities and within the periods expressed in the following articles.

**Article 1,014.** The heir who has in his possession the property pertaining to the estate or part of it, and wishes to avail himself of the benefit of inventory or of the right to deliberate, must declare it to the Judge who is competent to hear the testamentary or intestate proceedings, within 10 days following the date on which he should become aware of his condition of heir, if he should reside in the place where the decedent should have died. If he resides outside such place, the period shall be 30 days.



In both cases, the heir must request at the same time the drawing up of the inventory and the summons of any creditors and legatees, so that they may be present if it is to their interest.

**Article 1,015.** Where the heir does not have in his possession the estate or a part of it, nor has performed any formality in the capacity of heir, the periods expressed in the preceding article shall be counted from the date following expiration of the deadline set by the Judge to accept or reject the inheritance in accordance with article 1005, or from the day on which he should have accepted the inheritance or managed the estate in the capacity of heir.

**Article 1,016.** Outside the cases mentioned in the two preceding articles, if no claim should have been filed against the heir, the latter may accept the inheritance under the benefit of inventory, or with the right to deliberate, until the action to claim the inheritance should become barred by statute of limitations.

**Article 1,017.** The inventory shall begin to be drawn up within thirty days following the summons of the creditors and legatees, and shall be completed within another sixty days.

If, as a result of the property being at a long distance, or being very substantial, or another just cause, such sixty day period should seem insufficient, the Judge may extend this term for the time deemed necessary, which may not exceed one year.

**Article 1,018.** If, as a result of the fault or negligence of the heir, the inventory should not begin to be drawn up or should not be completed within the periods and with the solemnities provided in the preceding articles, he shall be deemed to accept the inheritance absolutely.

**Article 1,019.** The heir who has reserved the right to deliberate must declare to the Court within thirty days counting from the date following completion of the inventory whether he accepts or rejects the inheritance.

After the lapse of thirty days without having made such declaration, he shall be deemed to have accepted it absolutely.

**Article 1,020.** In any event, the Judge may provide for the administration and custody of the estate, at the request of an interested party, during the drawing up of the inventory and until acceptance of the inheritance, in accordance with the provisions applicable to testamentary proceedings of the Civil Procedural Law.

**Article 1,021.** A person who claims in court an inheritance of which another has been in possession for more than one year, if the court should find in his favour, shall have no obligation to make an inventory to enjoy this benefit, and shall only be liable for the liens of the estate with the property delivered to him.

**Article 1,022.** The inventory made by the heir who subsequently rejects the inheritance shall benefit any substitutes and intestate heirs thereof, in respect of whom the thirty day period provided to deliberate and to make the declaration provided in article 1019 shall be counted from the day following the date on which they should become aware of the rejection.

**Article 1,023.** The benefit of inventory generates the following effects in favour of the heir:

- 1.** The heir is only obliged to pay the debts and other liens of the estate to the extent that they are covered by the property of such estate.
- 2.** He shall keep all rights and remedies he may have held against the deceased against the estate.
- 3.** His own property shall not be commingled with the property pertaining to the estate for any purpose to the detriment of the heir.

**Article 1,024.** The heir shall forfeit the benefit of inventory:

- 1.** If he should knowingly fail to include in the inventory any of the property, rights or remedies of the estate.

**2.** If, prior to completing the payment of debts and legacies, he should dispose of any property of the estate without judicial authorisation or the authorisation of all interested parties, or if he should fail to give to the sales price the application provided upon granting such authorisation.

**Article 1,025.** During the drawing up of the inventory and the period to deliberate, the legatees may not claim payment of their legacies.

**Article 1,026.** The estates shall be deemed to be under administration until all known creditors and legatees are paid.

The administrator, whether the heir himself or any other person, shall have, in this capacity, the right to represent the estate to exercise any actions to which it is entitled and to respond to any claims lodged against the same.

**Article 1,027.** The administrator may only pay the legacies after having paid all creditors.

**Article 1,028.** If proceedings between the creditors are pending regarding the preference of their credits, such credits shall be paid in the order and according to the degree provided in the final judgement ruling on the graduation of the credits.

In the absence of any pending proceedings between the creditors, the first creditors to appear shall be the first to be paid; however, if any of the credits should a preferential credit, no payment shall be made without first providing a surety bond in favour of the creditor with the better right.

**Article 1,029.** If, after paying the legacies, other creditors should appear, the latter may only claim against the legatees in the event that the estate does not have sufficient property to pay them.

**Article 1,030.** When it should be necessary to sell the property of the estate to pay the credits and legacies, this shall be done as provided in the Civil Procedural Law in respect of intestate and testamentary proceedings, unless all heirs, creditors and legatees should agree otherwise.

**Article 1,031.** If the property of the estate should not be sufficient to pay the debts and legacies, the administrator shall give account of his administration to the creditors and legatees who have been paid in full and shall be liable for any detriment to the estate as a result of his fault or negligence.

**Article 1,032.** After paying creditors and legatees, the heir shall have the full enjoyment of the residue of the estate.

If the estate should have been administered by another person, the latter shall give account of his administration to the heir subject to the liability provided in the preceding article.

**Article 1,033.** The costs of drawing up the inventory and other expenses involved in the administration of the estate accepted under the benefit of inventory and the defence of its rights shall be borne by the same estate. Costs incurred by the heir personally as a result of his wilful misconduct or bad faith shall be excepted from the foregoing.

The same shall be understood in respect of expenses incurred in the exercise of the right to deliberate, if the heir should reject the inheritance.

**Article 1,034.** The heir's personal creditors may not be mixed in the transactions of the estate accepted by the former under the benefit of inventory until payment of the creditors of the estate and the legatees; however, they may demand the retention or attachment of the residue which may result in favour of the heir.

## CHAPTER 6°

### *On collation and partition*

#### SECTION ONE

##### *On collation*

**Article 1,035.** The forced heir who stands to inherit an estate together with other heirs, must bring to the estate any property or securities received from the decedent during the latter's life, as dowry, gift or pursuant to any other gratuitous title, to account for it in the regulation of any forced shares and in the partition account.

**Article 1,036.** Collation shall not take place between forced heirs if the donor should have expressly provided it, or if the donee should reject the inheritance, save in the event that the donation is to be reduced as a result of being inofficious.

**Article 1,037.** Any property left by testament shall not be deemed subject to collation unless otherwise provided by the testator, in any event respecting any forced shares.

**Article 1,038.** When grandchildren inherit from their grandparents in representation of the parent, and stand to inherit together with their uncles or cousins, they shall bring to collation all which the parent ought to have collated if he had been alive, even if they should not have inherited it.

They shall also bring to collation what they received from the decedent during his life, unless otherwise provided by the testator, in which case the latter's intentions must be respected unless it should prejudice the co-heirs' forced share.

**Article 1,039.** Parents shall not be obliged to bring to collation the inheritance of their ascendants the property given by the latter to their children.

**Article 1,040.** Gifts made to the child's spouse shall also not be brought to collation; however, if they should have been made by the parent jointly to both of them, the child shall be obliged to bring to collation half of the thing given.

**Article 1,041.** Expenses relating to support, education, illness, even extraordinary illness, learning or ordinary equipment, or the usual presents, shall not be subject to collation.

Neither shall expenses incurred by parents and ascendants to cover the special needs of their children or descendants with disabilities be subject to collation.

**Article 1,042.** Expenses incurred by the parent to give his children a professional or artistic career shall not be brought to collation unless the parent should provide it or they should prejudice the forced share; however, if they are to be brought to collation, the amount which the child would have spent living in the home and in the company of his parents shall be deducted therefrom.

**Article 1,043.** Amounts paid by the parent to prevent his children being drafted into the military, to pay their debts, obtain an honorific title and other similar expenses shall be subject to collation.

**Article 1,044.** Wedding presents consisting of jewellery, dress and equipment shall not be reduced as inofficious save in the part exceeding one tenth or more of the amount available by testament.

**Article 1,045.** It is not required to bring to collation or to the partition the things which were given themselves, but their value at the time of appraisal of the estate.

Any physical accretion or impairment subsequent to the gift, and even its total loss by accident or negligence shall be at the donee's account and risk or benefit.

**Article 1,046.** The dowry or gift made by both spouses shall be brought to collation by halves to the estate of each of them. The gift made by only one of them shall be brought to collation in his inheritance.

**Article 1,047.** The donee shall reduce his share in the estate to the extent that he has already received property, and his co-heirs shall receive the equivalent, if possible, in property of the same nature, species and quality.

**Article 1,048.** If the provisions of the preceding article cannot be verified, if the property given should be immovable property, the co-heirs shall be entitled to receive the same amount in cash or securities at their listed price; and, in the absence of money or listed securities in the estate, other properties shall be sold in a public auction to obtain the necessary amount.

Where the property subject to gift should be immovable property, the co-heirs shall only be entitled to receive the same amount in other movable property of the estate at its fair value, at their discretion.

**Article 1,049.** Fruits and interest of the property subject to collation shall not be owed to the estate until the date on which the succession is opened.

The income and interest of the property in the estate of the same species as the property brought to collation shall be taken into account in its regulation.

**Article 1,050.** If any dispute should arise among the co-heirs regarding the obligation to bring to collation or the objects which must be brought to collation, the partition shall not be interrupted for this reason, with the obligation to provide the corresponding bond.

## SECTION 2<sup>a</sup>

### *On partition*

**Article 1,051.** No co-heir will be obliged to remain in a situation of indivision of the estate, unless the testator should have expressly forbidden division.

Notwithstanding the foregoing, even if he should have forbidden it, the estate may always be divided based on the grounds of dissolution of companies.

**Article 1,052.** Every co-heir who has the free administration and disposal of his property may at any time request the partition of the estate.

The legitimate representatives of incapacitated persons and absentees must request it on their behalf.

**Article 1,053.** Either spouse may request partition of the estate without intervention of the other.

**Article 1,054.** Heirs subject to a condition may not request partition until such condition is fulfilled. However, the other co-heirs may request it, properly securing the right of the former in the event that the condition should be fulfilled; and, until it is known that it has not been or can no longer be fulfilled, the partition shall be deemed to be provisional.

**Article 1,055.** If, prior to the partition, one of the co-heirs should die, leaving two or more heirs, it will be sufficient for one of the latter to request it; however, all those who take part in the partition in this last capacity must appear under a single representation.

**Article 1,056.** Where the testator should perform the partition of his estate *inter vivos* or in his will, such partition shall be applied to the extent that it does not prejudice the forced share of the forced heirs. The testator who, for the conservation of the business or in the interests of his family, wishes to preserve undivided an economic undertaking, or keep control of a capital corporation or a group of them may use the power granted in this article, providing for the payment in cash of the forced share to the remaining interested persons. For such purposes, it will not be necessary to have sufficient cash in the estate for such payment, it being possible to perform such payment with cash taken from outside the estate, and for the testator or the partitioner designated thereby to defer such payment, provided that such period does not exceed five years from the death of the testator; any other manner of extinguishing obligations may also be applied. If the form of payment should not have been set, any forced heir may request his forced share in property belonging to the estate. The provisions of article 843 and paragraph 1 of article 844 shall not apply to the partition thus performed.

**Article 1,057.** The testator may entrust, by way of an *inter vivos* or *mortis causa* act, for the event of his death, the mere power of making the partition to any person who is not one of the co-heirs. In the absence of a will or of a partitioner designated therein, or in the event that the position should be vacant, the Judge, at the request of heirs and legatees representing at least 50% of the estate, and summoning all other interested parties, if their domicile should be known, may appoint a court-appointed partitioner, according to the rules set forth in the Civil Procedural Law for the designation of experts. The partition thus performed shall require judicial approval, save in the event of express confirmation thereof by all heirs and legatees. The provisions of this article and of the preceding article shall be observed even if any of the co-heirs should be subject to parental authority or guardianship, or to conservatorship as a result of prodigality or physical or mental illnesses or deficiencies; but the partitioner must in these cases make an inventory of the properties of the estate, summoning the legal representatives or conservators of such persons.

**Article 1,058.** Where the testator should not have performed the partition, or entrusted this power to another, if the heirs should be of legal age and should have the free administration of their property, they may distribute the estate as they deem fit.

**Article 1,059.** Where the heirs who are of legal age should not agree on the manner of making the partition, they shall be free to exercise their rights as provided in the Civil Procedural Law.

**Article 1,060.** When minors or incapacitated persons are legally represented in the partition, no judicial intervention or approval shall be required. The judicial defender designated to represent a minor or incapacitated person in the partition must obtain the Judge's approval, unless otherwise provided by the latter at the time of making the appointment.

**Article 1,061.** Equality must be maintained in the partition of the estate, by making lots or by adjudicating to each of the co-heirs things of the same nature, quality or species.

**Article 1,062.** Where a thing should be indivisible or would be seriously impaired by its division, it may be adjudicated to one of them, with the condition of paying the others the excess in cash. However, it will be sufficient for a single co-heir to request its sale in public auction, with admission of third party bidders, for this to be done.

**Article 1,063.** The co-heirs must pay one another in the partition the income and fruits received by each of them from the estate, useful and necessary expenses made therein, and any damages caused by their malice or negligence.

**Article 1,064.** The expenses of the partition, incurred in the common interest of all co-heirs, shall be deducted from the estate; those made for the particular interest of one of them shall be borne by the same.

**Article 1,065.** The deeds of acquisition or ownership shall be delivered to the coheir that was adjudicated the property or properties to which they refer.

**Article 1,066.** Where the same deed should comprise several properties adjudicated to different co-heirs, or a single one which has been divided between two or more of them, the deed shall remain in the possession of the co-heir with the largest interest in the property or properties, and the others shall be provided with authentic copies thereof, at the expense of the estate. If their interests should be the same, the deed shall be delivered, in the absence of an agreement, by lot.

If it is an original deed, the person in whose possession remains must also show it to other interested parties at their request.

**Article 1,067.** If one of the heirs should sell to a stranger his right to the inheritance before the partition, any or all of the co-heirs may become subrogated to the position of the purchaser, reimbursing the purchase price, provided that they do so within one month, counting from the time when they are given notice thereof.

### SECTION 3<sup>a</sup>

#### *On the effects of partition*

**Article 1,068.** The partition legally performed confers upon each heir the exclusive ownership of the property adjudicated thereto.

**Article 1,069.** After performance of the partition, the co-heirs are reciprocally liable to each another for dispossession and warranty of the adjudicated property.

**Article 1,070.** The obligation mentioned in the preceding article shall only cease in the following cases:

- 1.** When the testator should have performed the partition himself, unless he should appear or may rationally be presumed to have wished otherwise, always respecting the forced share.
- 2.** When this should have been expressly agreed upon making the partition.
- 3.** When the dispossession should result from a cause subsequent to the partition, or should be the fault of the heir who was adjudicated the property.

**Article 1,071.** The co-heirs' reciprocal obligation to be liable for dispossession is proportional to their respective share in the estate; however, if one of them should be insolvent, the remaining co-heirs shall be liable for his share in the same proportion, after deducting the share corresponding to the heir who is to be compensated.

Those who pay on behalf of the insolvent heir shall maintain their action against him for the time when his fortunes should improve.

**Article 1,072.** If a credit should be adjudicated as a performing credit, the co-heirs shall not be liable for the subsequent insolvency of the debtor of the estate, and shall only be liable for his insolvency at the time of making the partition.

There is no liability for credits classified as bad debts; however, if they should be recovered in whole or in part, the amount received shall be distributed proportionally between the co-heirs.

## SECTION 4<sup>a</sup>

### *On rescission of the partition*

**Article 1,073.** Partitions may be rescinded on the same grounds as obligations.

**Article 1,074.** Partitions may also be rescinded on grounds of injury in excess of one fourth of the estate, attending to the value of the things when they were adjudicated.

**Article 1,075.** The partition made by the deceased may not be challenged on grounds of injury, save in the event that it should prejudice the forced share pertaining to the forced heirs, or if it the intention of the testator should appear or be rationally presumed to have been another.

**Article 1,076.** The action for rescission on grounds of injury shall last for years, counting from the performance of the partition.

**Article 1,077.** The heir against whom the claim was made may choose between compensating the damage or consenting to proceed to a new partition.

Damages may be paid in cash or in the same things which resulted in the detriment.

In the event of a new partition, it shall not affect those who have not been prejudiced or received more than their fair share.

**Article 1,078.** The heir who should have disposed of the whole or a considerable part of the immovable property which was adjudicated to him may not exercise the action for rescission on grounds of injury.

**Article 1,079.** The omission of one or several objects or securities of the estate shall not give rise to the rescission of the partition on grounds of injury, but to completion or addition to the estate of the omitted object or securities.

**Article 1,080.** A partition performed passing over one of the heirs shall not be rescinded unless it is proved that there was bad faith or wilful misconduct on the part of other interested parties; however, the others shall have the obligation to pay the heir who was passed over his proportional share.

**Article 1,081.** The partition made including a person who was wrongly believed to be an heir shall be null and void.

## SECTION 5<sup>a</sup>

### *On payment of the debts of the estate*

**Article 1,082.** Creditors acknowledged as such may object to the partition of the estate until the amount of their credits is paid or secured.

**Article 1,083.** The creditors of one or several co-heirs may, at their expense, take part in the partition to prevent it being made in fraud or prejudice of their rights.

**Article 1,084.** After the partition is performed, creditors may request payment of their debts in full by any heir who has not accepted the inheritance under the benefit of inventory, or up to their share in the estate, if they should have admitted it under such benefit.

In both cases, the defendant shall be entitled to summon and call his co-heirs, unless, as a result of the testator's dispositions or of the partition, he should be the only one obliged to pay the debt.

**Article 1,085.** The coheir who should have paid more than his share in the estate may claim his proportional share from the remaining heirs.

This shall also be observed when he should have paid it in full because the debt was secured by a mortgage or consisted of a specific object. The heir adjudicated the property may in such case claim only the proportional part from his co-heirs, even if the creditor should have assigned his actions in this favour and he should have become subrogated to the latter's position.

**Article 1,086.** If any of the properties of the estate should be encumbered with an annuity or perpetual real lien, such lien shall not be terminated, even if it should be redeemable, unless the majority of the co-heirs agree. If they should not agree, or if the lien should be irredeemable, its value or capital shall be deducted from the value of the property, and the latter shall pass, together with the lien, to the person who wins it by lot or by adjudication.

**Article 1,087.** The co-heir who is creditor of the deceased may claim from the others the payment of his credit, after deducting the proportional share which corresponds to him in his capacity as heir, and without prejudice to the provisions of section five chapter V of this title.

## BOOK IV

### On obligations and contracts

#### TITLE ONE

#### On obligations

#### CHAPTER ONE

#### *General provisions*

**Article 1,088.** All obligations consist of giving, doing or refraining from doing something.

**Article 1,089.** Obligations arise from the law, from contracts and quasi-contracts and from unlawful acts or omissions or those in which there is any kind of fault or negligence.

**Article 1,090.** Obligations arising from the law are not presumed. Only those expressly determined in this Code or in special statutes shall be enforceable, and they shall be governed by the provisions of the statute which created them; and, for matters not provided therein, by the provisions of the present book.

**Article 1,091.** Obligations arising from contracts have the force of law between the contracting parties and must be complied with in accordance with the provisions thereof.

**Article 1,092.** Civil obligations arising from crimes or misdemeanours shall be governed by the provisions of the Criminal Code.

**Article 1,093.** Those which arise from acts or omissions in which there has been fault or negligence, for which there is no criminal punishment under the law, shall be subject to the provisions of chapter 2 title XVI of this book.



## CHAPTER 2°

### *On the nature and effects of obligations*

**Article 1,094.** The person obliged to give something is also obliged to preserve it with the diligence of an orderly *paterfamilias*.

**Article 1,095.** The creditor is entitled to the fruits of the thing from the time when the obligation to deliver it should arise. Notwithstanding the foregoing, he shall not acquire a right *in rem* over it until it is delivered to him.

**Article 1,096.** Where a specific thing is to be delivered, the creditor may compel the debtor to perform delivery, irrespective of the rights granted to him under article 1101.

If the thing should be indeterminate or generic he may request the performance of the obligation at the debtor's expense.

If the obligor should default on his obligation, or should have undertaken to deliver the same thing to two or more different persons, he shall be liable for any fortuitous events until delivery thereof.

**Article 1,097.** The obligation to give a specific thing comprises that of delivering all its fittings, even if they have not been mentioned.

**Article 1,098.** If the person obliged to do something should fail to do it, it shall be ordered to be done at his expense.

The same shall also be observed if he should perform contravening the content of the obligation. Likewise, he may be ordered to undo anything which was done badly.

**Article 1,099.** The provisions of the second paragraph of the preceding article shall also be observed where the obligation consists of not doing something and the debtor should do what he was forbidden to do.

**Article 1,100.** Persons obliged to deliver or to do something shall incur in default from the time on which the creditor judicially or extra-judicially demands performance of their obligation.

However, the creditor's intimation shall not be necessary for the existence of default:

1. Where the obligation or the law should expressly provide it.
2. Where it should result from the nature and circumstances of the obligation that the designation of the time in which the thing was to be delivered or the service to be performed was a decisive factor to establish the obligation. In reciprocal obligations, neither of the obligors shall incur in default if the other does not perform or does not agree to duly perform of his obligation. Default shall begin for the other obligor from the time that one of the obligors performs his obligation.

**Article 1,101.** Persons who, in the performance of their obligations, should incur in wilful misconduct, negligence or default, and those who in any way should contravene the content of the obligation shall be subject to compensation of any damages caused.

**Article 1,102.** Liability arising from wilful misconduct is enforceable for all obligations. Waiver of the action to enforce it shall be null and void.

**Article 1,103.** Liability arising from negligence is equally enforceable in the performance of all kinds of obligations; but may be moderated by the Courts on a case-by-case basis.

#### **Article 1,104**

The debtor's fault or negligence consists of the omission of the diligence required by the nature of the obligation that corresponds to the circumstances of the persons, the time and the place.

Where the obligation should not express the diligence to be used in its performance, the diligence of an orderly *paterfamilias* shall be required.

**Article 1,105.** Outside the cases expressly mentioned in the law, and those in which the obligation should require it, no one shall be liable for events which cannot be foreseen or which, being foreseen, should be inevitable.

**Article 1,106.** Damage compensation comprises not just the value of the loss suffered, but also that of the gain which the creditor has failed to obtain, save for the provisions of the following articles.

**Article 1,107.** The damages for which the debtor in good faith shall be liable are those which are foreseen or which could have been foreseen at the time of contracting the obligation and which are a necessary consequence of his failure to perform.

In the event of wilful misconduct the debtor shall be liable for all damages which are known to have arisen from the failure to perform the obligation.

**Article 1,108.** If the obligation should consist of the payment of an amount of money, and the debtor should incur in default, unless otherwise agreed damages shall consist of paying the agreed interest and, in the absence of an agreement, the legal interest.

**Article 1,109.** Interest outstanding shall accrue the legal interest from the time that it is judicially demanded, even if the obligation is silent on this point.

For commercial transactions the provisions of the Commercial Code shall apply.

Pawnshops and Savings Banks shall be governed by their special regulations.

**Article 1,110.** Receipt by the creditor of the capital amount, without any reservation as to interest, shall extinguish the debtor's obligations in respect of the latter.

Receipt of the last instalment of the debt, where the creditor should also fail to make reservations, shall extinguish the obligation in respect of prior instalments.

**Article 1,111.** After pursuing all property in the debtor's possession to enforce their debts, creditors may exercise all rights and remedies of the debtor for the same purpose, excepting those which are inherent to his person; they may also challenge any acts which the debtor has performed in fraud of their right.

**Article 1,112.** All rights acquired pursuant to an obligation are transferable subject to the laws, unless otherwise agreed.

## CHAPTER 3°

### *On the different kinds of obligations*

#### SECTION ONE

### *On pure and conditional obligations*

**Article 1,113.** Any obligation whose performance does not depend on a future or uncertain event, or on a past event of which the interested parties are unaware, shall be enforceable from the present.

Likewise, any obligation containing a condition subsequent shall be enforceable, without prejudice to the effects of termination thereof.

**Article 1,114.** In conditional obligations the acquisition of rights, and the termination or loss of rights already acquired, shall depend on the event constituting the condition.

**Article 1,115.** Where the performance of the condition should depend on the exclusive will of the debtor, the conditional obligation shall be null and void. It should depend on chance or on the will of the third party, the obligation shall have full force and effect in accordance with the provisions of this Code.

**Article 1,116.** Impossible conditions, those contrary to good customs and those forbidden by the law shall annul the obligation which depends on them.

The condition of not doing an impossible thing shall be deemed not written.

**Article 1,117.** The condition that an event is to take place within a specific period shall extinguish the obligation upon the lapse of such period, or when it becomes evident that the event is not going to take place.

**Article 1,118.** The condition that a certain event does not take place within a specific time shall make the obligation become effective after the lapse of the period provided, or when it becomes evident that the event cannot occur.

If no specific period should have been set, the condition must be deemed to have been fulfilled within the time which plausibly would have been set, attending to the nature of the obligation.

**Article 1,119.** The condition shall be deemed fulfilled when the obligor should voluntarily prevent its fulfilment.

**Article 1,120.** The effects of the conditional obligation to give, after fulfilment of the condition, shall retroact to the date of constitution of the obligation. Notwithstanding the foregoing, where the obligation should impose reciprocal obligations to the interested parties, the fruits and interest of the time in which the condition should have remained pending fulfilment shall be deemed offset against one another. If the obligation should be unilateral, the debtor shall be entitled to the fruits and interest received, unless, as a result of the nature and circumstances of the obligation, it should be inferred that the intention of the person who constituted it was another.

In obligations to do and not to do something, the Court shall determine, on a case-by-case basis, the retroactive effect of the fulfilled condition.

**Article 1,121.** The creditor may exercise the relevant actions for the conservation of his right before fulfilment of the conditions.

The debtor may recover anything he has paid during the same time.

**Article 1,122.** Where the conditions should have been set with the intention to suspend the effectiveness of the obligation to give, the following rules shall be observed, in the event that the thing should be improved, lost or impaired while the condition remains pending:

- 1.** If the thing was lost with no fault on the part of the debtor, the obligation shall be extinguished.
- 2.** If the thing was lost by the debtor's fault, the latter shall be obliged to compensate any damages. The thing shall be deemed to have been lost when it should perish, become beyond the bounds of commerce or disappear in such a way that the parties are unaware of its existence or it cannot be recovered.
- 3.** Where the thing should be impaired with no fault on the part of the debtor, the impairment shall be borne by the creditor.
- 4.** If it should be lost by the debtor's fault, the creditor may choose between termination of the obligation and performance thereof, with compensation of damages in both cases.
- 5.** If the thing should improve as a result of its nature or time, the improvements shall inure to the benefit of the creditor.

6. It should be improved at the debtor's expense, he shall have no other right than that which is granted to the usufructuary.

**Article 1,123.** Where the purpose of the conditions is to terminate the obligation to give, the interested parties, upon fulfilment of the condition, must return to each other what they have received.

In the event of loss, impairment or improvement of the thing, the provisions contained in the preceding article relating to the debtor shall be applied to the person who is to return the thing.

As relates to obligations to do and not to do, the provisions of the second paragraph of article 1120 shall be observed as concerns the effects of termination.

**Article 1,124.** The power to terminate obligations is deemed to be implied in reciprocal obligations, where one of the obligor's should not perform his obligation.

The aggrieved party may choose between demanding performance or termination of the obligation, with compensation of damages and payment of interest in both cases. He may also request termination, even after having chosen specific performance, where the latter should be impossible.

The Court shall order the requested termination, unless there are justified grounds which authorise him to set a term.

The foregoing is understood without prejudice to the rights of third party acquirers, in accordance with articles 1295 and 1298 and with the provisions of the Mortgage Law.

## SECTION 2<sup>a</sup>

### *On obligations subject to a forward term*

**Article 1,125.** Obligations for whose performance a certain day has been set shall only be enforceable upon arrival of such date.

Certain day shall be deemed to mean a date which must necessarily arrive, even though it is uncertain when it will do so.

If the uncertainty consists on whether the day will arrive or not, the obligation is conditional, and shall be governed by the rules of the preceding section.

**Article 1,126.** Anything paid in advance in obligations subject to a forward term may not be recovered.

If the person who paid, when he did so, was unaware of the existence of the forward term, he shall be entitled to claim from the creditor any interest or fruits which the latter has received from the thing.

**Article 1,127.** Whenever a forward term is designated in obligations, it shall be presumed to have been established for the benefit of both creditor and debtor, unless it should result from the provisions of such obligations or from other circumstances that it has been set in favour of one or the other.

**Article 1,128.** If the obligation should not set a forward term, but it can be inferred from its nature and circumstances that the parties intended to grant a term to the debtor, the Courts shall set the duration thereof. The Courts shall also set the duration of the term where it has been left to the will of the debtor.

**Article 1,129.** The debtor shall lose any right to make use of the term:

1. Where, after contracting the obligation, he should become insolvent, save if he should secure the debt.
2. Where he should fail to provide the creditor with the security which he has undertaken to provide.
3. Where, by his own acts, he should have reduced such security after having provided it, and when, as a result of a fortuitous event, such security should disappear, unless it is immediately replaced by other new equally safe security.

**Article 1,130.** If the term of the obligation is set by days counting from specific date, such date shall be excluded from the calculation, which must begin on the following day.

## SECTION 3<sup>a</sup>

### *On alternative obligations*

**Article 1,131.** The obligor alternatively obliged to perform several undertakings must perform in full one of them.

The creditor cannot be compelled to receive part of one part of the other.

**Article 1,132.** The choice corresponds to the debtor, unless expressly granted to the creditor.

The debtor shall not be entitled to choose impossible or unlawful services, or those which could not have been the subject matter of the obligation.

**Article 1,133.** The choice shall only be effective as from notice thereof.

**Article 1,134.** The debtor shall lose his right to choose when, out of the undertakings which he is alternatively obliged to perform, only one should be capable of being performed.

**Article 1,135.** The creditor shall be entitled to damage compensation where, by the debtor's fault, all things which alternatively constituted the subject matter of the obligation should have disappeared, or the performance thereof should have become impossible.

The compensation shall be set taking as basis the value of the last thing which disappeared, or the undertaking which last became impossible.

**Article 1,136.** Where the choice should have been expressly attributed to the creditor, the obligation shall cease to be alternative from the date on which such choice is notified to the debtor.

Until then, the debtor's liabilities shall be governed by the following rules:

- 1.** If one of the things should have been lost by a fortuitous event, he shall perform his obligation by delivering the thing chosen by the creditor among the remainder, or the one left, if only one should remain.
- 2.** If the loss of one of the things should have occurred by the debtor's fault, the creditor may claim any of the things which subsist, or the price of that which should have disappeared by the debtor's fault.
- 3.** If all things should have been lost by the debtor's fault, the creditor's choice shall relate to the value of the things. The same rules shall apply to obligations to do or not do, in the event that one or all of the undertakings should become impossible.

## SECTION 4<sup>a</sup>

### *On joint and joint and several obligations*

**Article 1,137.** The coincidence of two or more creditors or two or more debtors in a single obligation shall not imply that each of them is entitled to request or that each of them must perform in full the things constituting the subject matter thereof. This shall only take place where the obligation expressly determines it, being created as a joint and several obligation.

**Article 1,138.** Unless it should result otherwise from the text of the obligations mentioned in the preceding article, the credit or debit shall be presumed divided in as many equal shares as there are creditors or debtors, and they shall be deemed to be different credits or debits.

**Article 1,139.** If the division should be impossible, only a collective act of the creditors shall prejudice their rights, and the debt may only be enforced by acting against all debtors. If one of them should be insolvent, the others shall not be obliged to make up for his failure.

**Article 1,140.** Joint and severability may exist even if the creditors and debtors are not bound in the same manner and by the same terms and conditions.

**Article 1,141.** Each of the joint and several creditors may do what is useful to the rest, but not what is prejudicial to them.

Actions exercised against any of the joint and several debtors shall prejudice all of them.

**Article 1,142.** The debtor may pay the debt to any of the joint and several creditors; but, if any of them should have filed a judicial claim against him, he must make his payment to such creditor.

**Article 1,143.** Novation, setoff, confusion or forgiveness of the debt made by any of the joint and several creditors or with any of the debtors of the same class shall extinguish the obligation, without prejudice to the provisions of article 1146.

The creditor who has performed any of these acts and the creditor who collects the debt shall be liable to the others for their share of the obligation.

#### **Article 1,144**

The creditor may go against any of the joint and several debtors or against all of them simultaneously. Claims initiated against one of them shall not be an obstacle for any which may be subsequently filed against the rest, until the debt is collected in full.

**Article 1,145.** Payment made by one of the joint and several debtors shall extinguish the obligation. The debtor who made such payment may only claim against his co-debtors the part corresponding to each of them, plus the interest accrued on the advance.

The failure by a joint and several debtor to perform his obligations as a result of insolvency shall be compensated by his co-debtors, pro rata to the debt of each of them.

**Article 1,146.** Acquittal or forgiveness by the creditor of the share affecting one of the joint and several debtors shall not release him from his liability to his co-debtors, in the event that the debt should have been paid in full by any of them.

**Article 1,147.** If the thing should have perished or the undertaking should have become impossible without fault by the joint and several debtors, the obligation shall be extinguished.

If it should be the fault of any of them, they shall all be liable to the creditor for the price, and for compensation of any damages and payment of interest, without prejudice to the creditor's action against the party who was negligent or at fault.

**Article 1,148.** The joint and several debtor may use against the creditor all exceptions resulting from the nature of the obligation and those which are personal to him. He may only avail himself of those which personally correspond to the rest in respect of the share of the debt for which they are liable.

## SECTION 5<sup>a</sup>

### *On divisible and indivisible obligations*

**Article 1,149.** The divisibility or indivisibility of the things constituting the subject matter of obligations in which there is a single debtor and a single creditor does not alter or modify the provisions of chapter II of this title.

**Article 1,150.** Joint indivisible obligations shall be terminated with compensation of damages from the time that either debtor defaults on his undertaking. Debtors who were ready to perform theirs shall not contribute to the compensation with an amount higher than their corresponding share of the price of the thing or the service of which the obligation should consist.

**Article 1,151.** For the purposes of the preceding articles, obligations to give a specific thing “*ad corpus*” (*cuero po cierto*) and all those which are not capable of partial performance shall be deemed to be indivisible. Obligations to do something shall be divisible when their subject matter is the provision of a number of days’ work, the performance of works by metric units, or other analogous things which, by their nature, are capable of partial performance.

The divisibility or indivisibility of obligations not to do something shall be decided pursuant to the nature of the undertaking in each specific case.

## SECTION 6<sup>a</sup>

### *On obligations with a penalty clause*

**Article 1,152.** In obligations with a penalty clause, the penalty shall replace damage compensation and payment of interest in the event of breach, unless otherwise agreed.

The penalty may only be enforced when it should be enforceable in accordance with the provisions of the present Code.

**Article 1,153.** The debtor may not be released from performing the obligation by paying the penalty, unless such right should have been expressly reserved. Neither may the creditor request jointly the performance of the obligation and the payment of the penalty, unless this power has been clearly granted.

**Article 1,154.** The Judge shall equitably modify the penalty where the principal obligation should have been performed partially or irregularly by the debtor.

**Article 1,155.** The nullity of the penalty clause shall not entail the nullity of the principal obligation. The nullity of the principal obligation shall entail the nullity of the penalty clause.

## CHAPTER 4<sup>o</sup>

### *On the extinguishing of obligations*

#### GENERAL PROVISIONS

**Article 1,156.** Obligations are extinguished:

By their payment or performance.

By the loss of the thing owed.

By forgiveness of the debt.

By confusion of the rights of creditor and debtor.

By setoff.

By novation.

## SECTION ONE

### *On payment*

**Article 1,157.** A debt shall not be deemed to have been paid until complete delivery of the things or performance of the undertaking of which the obligation consisted.

**Article 1,158.** Any person may perform payment, whether or not he has an interest in the performance of the obligation and irrespective of whether the debtor knows and approves or is unaware of it.

A person who pays on behalf of another may claim against the debtor what he has paid, unless he has done so against the debtor's express will.

In this last case, he may only recover from the debtor the part in which such payment should have been useful to the latter.

**Article 1,159.** A person who pays in the debtor's name where the latter is unaware of it may not compel the creditor to become subrogated to his rights.

**Article 1,160.** In obligations to give something, payment made by a person who did not have the free disposal of the thing owed and capacity to dispose of it shall not be valid. Notwithstanding the foregoing, if the payment should have consisted in an amount of money or fungible thing, there shall be no claim may be brought against the creditor who has spent or consumed it in good faith.

**Article 1,161.** In obligations to do, the creditor may not be compelled to receive the benefit or service from a third party, when the conditions and circumstances of the debtor's person should have been taken into account in establishing the obligation.

**Article 1,162.** Payment must be made to the person in whose favour the obligation should have been created, or to another authorised to receive it in his name.

**Article 1,163.** Payment made to a person incapable of administering his property shall be valid to the extent that it is to his benefit.

Likewise, payment made to a third party, to the extent that it is to the benefit of the creditor shall also be valid.

**Article 1,164.** Payment made in good faith to the person who is in possession of the credit shall release the debtor.

**Article 1,165.** Payment made to the creditor by the debtor after having been ordered by the court to retain the debt shall not be valid.

#### **Article 1,166**

The debtor of the thing may not oblige his creditor to receive a different thing, even if it should have equal or greater value than the thing owed.

Likewise, in obligations to do something, one act may not be replaced by another against the will of the creditor.

**Article 1,167.** Where the obligation consists of delivering an indeterminate or generic thing, whose condition and circumstances have not been expressed, the creditor may not demand that it be of the highest quality, nor the debtor deliver it of the lowest.

**Article 1,168.** Out-of-court expenses arisen on occasion of the payment shall be borne by the debtor. As regards court costs, the Court shall decide in accordance with the Civil Procedural Law.



**Article 1,169.** Unless the contract should expressly authorise it, the creditor cannot be compelled to receive partially the undertakings of which the obligation consists.

However, when the debt should have a liquid and an illiquid part, the creditor may demand and the debtor may make payment of the former without waiting for the settlement of the latter.

**Article 1,170.** Payment of money debts must be made in the agreed species and, if it should not be possible to deliver such species, in the silver or gold coin which is accepted as legal tender in Spain.

Delivery of negotiable promissory notes or bills of exchange or other commercial instruments shall only be effective as payment upon realisation thereof, or if they should have become impaired by the creditor's fault.

Meanwhile, the remedy resulting from the primitive obligation shall remain in suspense.

**Article 1,171.** Payment must be made at the place designated in the obligation.

In the absence thereof, and if the obligation should consist of delivering a specific thing, payment must be made at the place where such thing existed at the time of creating the obligation.

In any other case, the place of payment shall be the debtor's domicile.

#### ***On the allocation of payments***

**Article 1,172.** A person who has several debts of the same species in favour of a single creditor, may declare, at the time of making payment, to which of them it must be applied.

If he should accept a receipt from the creditor applying the payment, he may not claim against such application, unless there is a cause which invalidates the contract.

**Article 1,173.** If the debt accrues interest, a payment cannot be deemed to have been made to pay the capital while the interest remains unpaid.

**Article 1,174.** When the payment cannot be allocated according to the preceding rules, the debtor shall be deemed to have discharged the debt which is most burdensome to him among those which are outstanding.

If the latter should be of the same nature and be similarly burdensome, the payment shall be allocated to all of them pro rata.

#### ***On payment by assignment of property***

**Article 1,175.** The debtor may assign his property to the creditors as payment for his debts. This assignment, unless otherwise agreed, shall release the debtor from liability up to the net amount of the assigned property.

Any arrangements regarding the effect of the assignment entered into between the debtor and his creditors shall comply with the provisions of title VII of this book and with the provisions of the Civil Procedural Law.

#### ***On tender of payment and on deposit***

**Article 1,176.** If the creditor to whom the tender of payment is made should unreasonably refuse to admit it, the debtor shall be released of liability by depositing the thing owed.

The deposit by itself shall have the same effect where it is performed when the creditor is absent or incapacitated to receive payment when it becomes due, and when several persons purport to have the right to receive it, or when the deed of the obligation has been mislaid.

**Article 1,177.** In order for it to release the obligor, the deposit of the thing owed must be previously announced to the persons interested in the performance of the obligation.

The deposit shall be ineffective if it does not strictly adjust to the provisions governing payments.

**Article 1,178.** The deposit shall take place by placing the things owed at the disposal of the judicial authority, before whom the tender of payment, where applicable, and the announcement of the deposit in other cases, shall be evidenced.

After making the deposit, the interested persons must also be notified.

**Article 1,179.** The expenses of the deposit, where applicable, shall be borne by the creditor.

**Article 1,180.** If the deposit has been duly performed, the debtor may request the Judge to order the cancellation of the obligation.

While the creditor has not accepted the deposit, or the judicial declaration of its having been properly performed has not been issued, the debtor may withdraw the thing or amount deposited, leaving the obligation to subsist.

**Article 1,181.** If, after performance of the deposit, the creditors should authorise the debtor to withdraw it, he shall lose any preference he should have over the thing. Co-debtors and co-guarantors shall be released.

## SECTION 2<sup>a</sup>

### *On the loss of the thing owed*

**Article 1,182.** The obligation consisting of delivering a specific thing shall be extinguished when the thing should be lost or destroyed without fault on the part of the debtor and before the debtor has incurred in default.

**Article 1,183.** When the thing has been lost while in the debtor's possession, the loss shall be presumed to have occurred by his fault and not by a fortuitous event unless there is evidence to the contrary, without prejudice to the provisions of article 1096.

**Article 1,184.** In obligations to do something, the debtor shall also be released when the undertaking should be legally or physically impossible.

**Article 1,185.** When the debt of a certain and specific thing should arise as a result of a crime or misdemeanour, the debtor shall not be released from paying its price, whatever the reason for its loss, unless, having offered the thing to the person who was to receive it, the latter should have unreasonably refused to accept it.

**Article 1,186.** After the obligation has been extinguished as a result of the loss of the thing, the creditor shall hold all actions held by the debtor against third parties as a result thereof.

## SECTION 3<sup>a</sup>

### *On remission of the debt*

**Article 1,187.** Remission may be expressed or implied.

Both shall be subject to the provisions governing inofficious gifts. Express remission must, furthermore, adjust to the forms governing gifts.

**Article 1,188.** The delivery of the private document evidencing the credit, made voluntarily by the creditor to the debtor, shall imply waiver of the action held by the former against the latter.

If such waiver should be purported to be inofficious in order to invalidate it, the debtor and his heirs may uphold it by proving that the delivery of the document was made as a result of payment of the debt.

**Article 1,189.** Whenever the private document from which the debt results should be in the debtor's possession, it shall be presumed that the creditor gave it voluntarily, unless there is evidence to the contrary.

**Article 1,190.** Remission of the principal debt shall extinguish ancillary obligations thereof; but in the event of remission of the latter, the former shall subsist.

**Article 1,191.** The ancillary pledge obligation shall be presumed to have been remitted where the thing which has been pledged should be in the debtor's possession, after having been delivered to the creditor.

#### SECTION 4<sup>a</sup>

##### *On confusion of rights*

**Article 1,192.** The obligation shall be extinguished from the moment when the condition of creditor and debtor are united in a single person.

The case where this confusion should occur pursuant to an inheritance shall be excepted from the foregoing, if the inheritance should have been accepted under the benefit of inventory.

**Article 1,193.** The confusion in the person of the debtor or the principal creditor shall inure to the benefit of the guarantors. The confusion which takes place in the person of any of the guarantors shall not extinguish the obligation.

**Article 1,194.** Confusion does not extinguish the joint debt, save in the portion corresponding to the debtor or creditor in whom both conditions concur.

#### SECTION 5<sup>a</sup>

##### *On setoff*

**Article 1,195.** Setoff shall take place when two persons, in their own right, are reciprocally creditors and debtors of one another.

**Article 1,196.** For setoff to apply, the following is required:

1. That each obligor is a principal obligor and in his turn is the principal creditor of the other.
2. That both debts consist of an amount of money or, if the things owed are fungible, that they are of the same species and also of the same quality, if the latter should have been designated.
3. That both debts are outstanding.
4. That they are due and payable.
5. That there is no attachment or dispute initiated over any of them by third parties and duly notified to the debtor.

##### **Article 1,197**

Notwithstanding the provisions of the preceding article, the guarantor may allege setoff as defence in respect of what the creditor should owe his principal debtor.

##### **Article 1,198**

The debtor who has consented to the assignment of rights by the creditor in favour of a third party may not use as defence against the assignee the setoff to which he would be entitled against the assignor.

If the creditor made the debtor aware of the assignment and the latter did not consent to it, he may use as defence the setoff of debts prior to such assignment, but not of subsequent debts.

If the assignment should take place without the debtor being aware of it, the latter may use as defence the setoff of credits which are prior to such assignment, and subsequent credits until he became aware of it.

**Article 1,199.** Debts payable in different places may be set off by compensating any freight or movement expenses to the place of payment.

**Article 1,200.** Setoff shall not apply where one of the debts should result from a deposit or from the obligations of the depositary or borrower under *commodatum*.

Neither may it be used as a defence against a person entitled to support owed pursuant to gratuitous title.

**Article 1,201.** If several debts capable of setoff should exist against the same person, the order of setoff shall observe the provisions relating to allocation of payments.

**Article 1,202.** The effect of setoff is to extinguish both debts in the coinciding amount, even if creditors and debtors should be unaware of it.

## SECTION 6<sup>a</sup>

### *On novation*

**Article 1,203.** Obligations may be amended:

1. By changing their subject matter or main terms.
2. By replacing the person of the debtor.
3. By subrogating a third party to the creditor's rights.

**Article 1,204.** For an obligation to be extinguished by another which replaces it, it is necessary that this be stated categorically, or for the old and new obligation to be wholly incompatible.

**Article 1,205.** Novation, which consists of replacing the original debtor with a new debtor, may take place without the former's being aware of it, but not without the creditor's consent.

**Article 1,206.** The insolvency of the new debtor who was accepted by the creditor shall not revive the creditor's action against the original debtor, unless such insolvency should have been prior to the novation and public or known by the debtor upon delegating his debt.

**Article 1,207.** Where the principal obligation should be extinguished as a result of novation, ancillary obligations may only subsist to the extent that they benefit third parties who have not given their consent.

**Article 1,208.** Novation shall be null and void when the primitive obligation is null and void, unless the ground for nullity may only be claimed by the debtor, or if acts which are null and void at their source should be validated by ratification.

**Article 1,209.** Subrogation of a third party to the creditor's rights cannot be presumed outside the cases expressly mentioned in this Code.  
For the rest, it will require clear evidence thereof to be effective.

**Article 1,210.** Subrogation shall be presumed to exist:

1. When a creditor should pay another preferred creditor.
2. When a third party who has no interest in the obligation should pay with the debtor's express or implied approval.

**3.** When a person with an interest in the performance of the obligation should pay, except for the effects of confusion as concerns his corresponding share.

**Article 1,211.** The debtor may perform the subrogation without the creditor's consent when, in order to pay the debt, he has taken the money on loan pursuant to a public deed, setting forth therein his purpose, and expressing in the payment receipt the origin of the amount paid.

**Article 1,212.** Subrogation transfers the credit to the subrogated person, with all rights ancillary thereto, either against the debtor or against third parties, whether guarantors or holders of a mortgage.

**Article 1,213.** The creditor to whom partial payment has been made may exercise his right to the remainder with preference to the person who has become subrogated in his position as a result of his partial payment of the same credit.

## CHAPTER 5°

### *On the evidence of obligations*

#### GENERAL PROVISIONS

**Article 1,214.** [repealed]

**Article 1,215.** [repealed]

#### SECTION ONE

##### *On public instruments*

**Article 1,216.** Public instruments are those authorised by a Notary Public or competent public employee, with the solemnities required by the law.

**Article 1,217.** Documents intervened by a Notary Public shall be governed by the notarial legislation.

**Article 1,218.** Public instruments constitute evidence, effective even against third parties, of the fact which motivates their execution and of the date thereof.

They shall also constitute evidence effective against the contracting parties and their successors, as concerns the statements made therein by the former.

**Article 1,219.** Public deeds executed to invalidate another prior public deed between the same interested parties shall only be effective against third parties where the content of the former should be noted in the competent public registry or on the margin of the original public deed and of the extract or copy pursuant to which the third party should have acted.

**Article 1,220.** Copies of public instruments of which there is an original or an official file, challenged by those to whom they prejudice, shall only have evidentiary force when they have been duly collated.

If there should be any difference between the original and the copy, the provisions of the former shall prevail.

**Article 1,221.** In the event of disappearance of the original public deed, the official files, or the original records, the following shall constitute evidence:

1. First copies made by the public officer which authorised them.
2. Subsequent copies issued pursuant to a court order, with summons of the interested parties.
3. Those which, without a court order, should have been taken in the presence of the interested parties and with their consent.

In the absence of the aforementioned copies, any others which are thirty or more years old shall constitute evidence, provided that they should have been taken from the original by the officer who authorised them or another person in charge of their custody.

Copies which are less than thirty years old or those which were authorised by a public officer who does not meet the circumstances mentioned in the preceding paragraph shall only serve as prima facie documentary evidence. The Courts shall weigh the evidentiary force of copies depending on the circumstances.

**Article 1,222.** The registration of a document which has disappeared with any public registry shall be weighed according to the rules set forth in the last two paragraphs of the preceding article.

**Article 1,223.** A public deed which is defective as a result of the Notary Public's incompetence or another formal defect shall be deemed a private document, if it should be signed by the executors.

**Article 1,224.** Public deeds of acknowledgement of an act or contract do not prove anything against the instrument in which such act or contract is set forth, if they should differ from it by excess or by omission, unless the novation of the former should be expressly set forth therein.

#### **On private documents**

**Article 1,225.** A legally recognised private document shall have the same value as a public deed between those who executed it and their successors.

**Article 1,226.** [repealed]

**Article 1,227.** The date of a private document shall only be effective against third parties from the day on which it should have been entered in or registered with a public registry, from the death of any of the persons who signed it, or from the day on which it should be delivered to a public officer in an official capacity.

**Article 1,228.** Private entries, records and papers only constitute evidence against the person who has written them in all matters which are clearly provided, but any person who wishes to benefit from them must accept them in the part which is prejudicial to him.

**Article 1,229.** A note written or signed by the creditor at the foot, in the margin or on the other side of a public deed which was in his possession shall constitute evidence for all matters favourable to the debtor. The same shall be understood of the note written or signed by the creditor on the other side, in the margin or at the foot of the duplicate of a document or receipt which is in possession of the debtor. In both cases, the debtor who wishes to benefit from the provisions which are favourable to him must also accept those which are prejudicial.

#### **Article 1,230**

Private documents executed to alter the covenants of a public deed shall not be effective against third parties.

SECTION 2<sup>a</sup>

*On confession*

**Article 1,231 to Article 1,239.** [repealed]

SECTION 3<sup>a</sup>

*On personal inspection by the Judge*

**Article 1,240 to 1,241.** [repealed]

SECTION 4<sup>a</sup>

*On expert evidence*

**Article 1,242 to 1,243.** [repealed]

SECTION 5<sup>a</sup>

*On witness evidence*

**Article 1,244 to 1,248.** [repealed]

SECTION 6<sup>a</sup>

*On presumptions*

**Article 1,249 to 1,253.** [repealed]

**TITLE II**

**On contracts**

CHAPTER ONE

*General provisions*

**Article 1,254.** The contract exists from the time where one or several persons consent to bind themselves vis-à-vis another or others to give something or to provide a service.

**Article 1,255.** The contracting parties may establish any covenants, clauses and conditions deemed convenient, provided that they are not contrary to the laws, to morals or to public policy.

**Article 1,256.** The validity and performance of contracts cannot be left to the discretion of one of the contracting parties.

**Article 1,257.** Contracts shall only be effective between the parties who execute them, and their heirs; except, in respect of the latter, in the event that the rights and obligations arising from the contract should not be transferable, either by nature, by covenant or by the provisions of the law.

If the contract should contain any stipulation in favour of a third party, the latter may demand performance thereof, provided that he should have made known his acceptance to the obligor before it is revoked.

**Article 1,258.** Contracts are perfected by mere consent, and since then bind the parties, not just to the performance of the matters expressly agreed therein, but also to all consequences which, according to their nature, are in accordance with good faith, custom and the law.

**Article 1,259.** No one may contract in the name of another without being authorised by the latter or without having his legal representation pursuant to the law.

A contract entered into in the name of another by someone who does not have the latter's authorisation or legal representations shall be null and void, unless it is ratified by the person in whose name it is executed before being revoked by the other contracting party.

**Article 1,260.** No oath shall be admitted in contracts. If it should be given it shall be deemed not written.

## CHAPTER 2°

### *On the essential requirements for the validity of contracts*

#### GENERAL PROVISION

**Article 1,261.** There is no contract unless the following requirements are present:

1. Consent of the contracting parties.
2. A certain object which is the subject matter of the agreement.
3. Cause of the obligation established.

#### SECTION ONE

##### *On consent*

**Article 1,262.** Consent is manifested by the coincidence between the offer and the acceptance over the thing and the cause which are to constitute the contract.

If the person who made the offer and the person who accepted it are in different places, there is consent from the time that the offeror becomes aware of the acceptance, or from the time when, after the recipient has sent his acceptance, the offeror cannot be unaware of it without lacking in good faith. The contract shall, in such case, be presumed to have been entered into at the place where the offer was made.

In contracts entered into by means of automatic devices, there is consent from the time when acceptance is manifested.

**Article 1,263.** The following persons cannot give their consent:

1. Non-emancipated minors.
2. Incapacitated persons.

**Article 1,264.** Incapacity, as provided in the preceding article, is subject to the modifications provided in the law, and is understood without prejudice to any special incapacity set forth therein.

**Article 1,265.** Consent given pursuant to error, duress, intimidation or fraudulent misrepresentation shall be null and void.



**Article 1,266.** For error to invalidate consent, it must be about the substance of the thing which constituted the subject matter of the contract, or about the conditions thereof which should have been the main reason to enter into it.

Error concerning the person shall only invalidate the contract where consideration for such person should have been the main cause thereof.

A simple error in counting shall give rise only to its correction.

**Article 1,267.** There is duress when an irresistible force is applied to extract consent.

There is intimidation where one of the contracting parties is induced a rational and founded fear of suffering an imminent and serious harm to his person or property, or to the person or property of his spouse, descendants or ascendants.

In order to rate the existence of intimidation, the age and condition of the person must be taken into account.

The fear of displeasing persons to whom one owes submission and respect shall not annul the contract.

**Article 1,268.** Duress and intimidation shall annul the obligation, even if they should have been used by third party who does not take part in the contract.

**Article 1,269.** Fraudulent misrepresentation exists where, with insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which he would not have done without them.

**Article 1,270.** For fraudulent misrepresentation to render a contract null and void, it must be serious and must not have been used by the both contracting parties.

Incidental malice shall only oblige the person who used it to compensate damages.

## SECTION 2<sup>a</sup>

### *On the subject matter of contracts*

**Article 1,271.** All things which are not beyond the bounds of commerce between men may be the subject matter of a contract, even future things.

Notwithstanding the foregoing, no contracts may be entered into regarding the future inheritance other than those whose purpose is to perform the division of an estate *inter vivos* and other partitional dispositions, in accordance with the provisions of article 1056.

Likewise all services which are not contrary to the laws or to good customs may constitute the subject matter of a contract.

**Article 1,272.** Impossible things or services may not be the subject matter of a contract.

**Article 1,273.** The subject matter of any contract must be a thing determined as to its species. Indetermination as to amount shall not prevent the existence of a contract, provided that it is possible to determine it without the need for a new agreement with the contracting parties.

## SECTION 3<sup>a</sup>

### *On the cause of contracts*

**Article 1,274.** In contracts for valuable consideration, the supply or promise of a thing or service by the other party shall be deemed to constitute the cause applicable to each contracting party; *in remunerative* contracts,

the service or benefit which is remunerated, and in contracts for pure beneficence, the mere liberality of the benefactor.

**Article 1,275.** Contracts without cause or with unlawful cause shall have no effect whatsoever. The cause is unlawful when it is against the law or good morals.

**Article 1,276.** In contracts, the statement of a false cause shall entail the nullity thereof, unless it should be proved that they were based on another true and lawful cause.

**Article 1,277.** Even if the cause is not expressed in the contract, it is presumed to exist and to be lawful, unless the debtor should prove otherwise.

## CHAPTER 3°

### *On the effectiveness of contracts*

**Article 1,278.** Contracts shall be binding, whatever the form under which they have been entered into, provided that they meet the essential conditions for their validity.

**Article 1,279.** If the law should require execution of a public deed or another special form for the obligations inherent to a contract to be effective, the contracting parties may compel each other reciprocally to fulfil such form from the moment when consent has been given and the remaining requirements necessary for its validity are present.

**Article 1,280.** The following must be set forth in a public instrument:

- 1.** Acts and contracts whose purpose is the creation, transfer, amendment or extinguishing of rights *in rem* over immovable property.
  - 2.** Leases over the same property for six or more years, provided that they are effective against third parties.
  - 3.** Marriage articles and amendments thereof.
  - 4.** The assignment, rejection and waiver of inheritance rights or those pertaining to the marriage property community.
  - 5.** The power of attorney to marry, the general litigation power of attorney and any special powers of attorney which are to be submitted to a court; the power attorney to administer property, and any other whose purpose is an act drafted or which must be drafted in a public deed, or which is to be effective against third party.
  - 6.** The assignment of actions or rights arising from an act which is set forth in a public deed.
- Likewise, other contracts where the amount of one of the undertakings to be provided by one or both contracting parties exceeds 1,500 pesetas must be set forth in writing, even in a private document.

## CHAPTER 4°

### *On the interpretation of contracts*

**Article 1,281.** If the terms of a contract are clear and do not leave any doubt as to the intention of the contracting parties, they shall abide by the literal meaning of its clauses.  
If the words seem contrary to the evident intention of the contracting parties, the latter shall prevail over the former.

**Article 1,282.** In order to judge the intention of the contracting parties, their acts at the time of and subsequently to the contract shall be mainly taken into account.

**Article 1,283.** However general the terms of the contract are, they must not be deemed to comprise things and cases different from those in respect of which the interested parties proposed to contract.

**Article 1,284.** If any clause of the contract should admit several meanings, it must be understood to have the meaning most suitable for it to be effective.

**Article 1,285.** Clauses in contracts must be interpreted in connection with each other, attributing to any doubtful clauses the meaning resulting from the whole.

**Article 1,286.** Words which may have different meanings shall be understood in the meaning which is most in accordance with the nature and subject matter of the agreement.

**Article 1,287.** Uses or customs of the country shall be taken into account to interpret any ambiguities in contracts, standing in for the omission of clauses which are usually set forth therein.

**Article 1,288.** The interpretation of obscure clauses in the contract must not favour the party who caused the obscurity.

**Article 1,289.** When it should be absolutely impossible to resolve any doubts pursuant to the rules set forth in the preceding articles, if the such doubts should be about accidental circumstances of the contract, and the contract is gratuitous, they shall be resolved in favour of the least transfer of rights and interests. If the contract is for valuable consideration, the doubt shall be resolved in favour of the greatest reciprocity of interests. If the doubts whose resolution is dealt with in the present article should be about the main subject matter of the contract, so that it the intention or will of the contracting parties cannot be known, the contract shall be null and void.

## CHAPTER 5°

### *On the rescission of contracts*

**Article 1,290.** Contracts which have been validly entered into may be rescinded in the cases set forth in the law.

**Article 1,291.** The following contracts are capable of rescission:

- 1.** Contracts entered into by guardians without judicial authorisation, provided that the persons who they represent have suffered an injury in more than one fourth of the value of the things which constituted the subject matter thereof.
- 2.** Contracts entered into on behalf of absentees, provided that the absentee has suffered the injury mentioned in the preceding number.
- 3.** Contracts entered into in fraud of creditors, when the creditors cannot otherwise recover what is owed to them.
- 4.** Contracts referring to litigious things, when they have been entered into by the defendant without the awareness and approval of the litigators or the competent judicial Authority.
- 5.** Any others in respect of which the law should especially provide it.

**Article 1,292.** Payments made in a state of insolvency on account of obligations which the debtor could not be compelled to fulfil at the time of making them shall also be capable of rescission.

**Article 1,293.** No contract shall be rescinded as a result of injury, outside the cases mentioned in numbers one and two of article 1,291.

**Article 1,294.** The action for rescission is subsidiary; it may not be exercised unless the aggrieved party lacks any other legal recourse to obtain reparation of the injury.

**Article 1,295.** Rescission shall oblige to return the things which constituted the subject matter of the contract, together with their fruits, and the price thereof with interest; consequently, it may only take place when the person who demands rescission may return what he is bound in its turn.

Rescission shall also not take place when the things constituting the subject matter of the agreement should be legally in the power of third parties who have not acted in bad faith.

In this case, it will be possible to claim for damages against the person who caused the injury.

**Article 1,296.** Rescission mentioned in number 2 article 1291 shall not take place in respect of contracts entered into with judicial authorisation.

**Article 1,297.** All contracts pursuant to which the debtor should dispose of property pursuant to gratuitous title are presumed to have been entered into in fraud of creditors.

Likewise, disposals for valuable consideration made by persons sentenced in a judgement in any instance or an against which an order to attach property has been issued shall also be presumed to be fraudulent.

**Article 1,298.** The person who acquired in bad faith the things disposed of in fraud of creditors must compensate the creditors for any damages caused by the disposal, whenever, for any reason, it should be impossible for him to return them.

**Article 1,299.** The action to claim for rescission must be initiated within four years.

For persons subject to guardianship and for absentees, these four years shall not begin to count until the incapacity of the former has ceased, or the domicile of the latter becomes known.

## CHAPTER 6°

### *On the nullity of contracts*

**Article 1,300.** Contracts which meet the requirements expressed in article 1261 may be annulled, even if there is no injury to the contracting parties, provided that they suffer from any defects which invalidate them in accordance with the law.

**Article 1,301.** The action for annulment must be initiated within four years.

This period shall begin to count:

In cases of duress or intimidation, from the date on which the latter should have ceased.

In those of error, fraudulent misrepresentation, or falseness of the cause, the period shall count from the consummation of the contract.

When the action refers to contracts entered into by minors and incapacitated persons, from the time when they cease to be under guardianship.

If the action purports to invalidate acts or contracts performed by one of the spouses without the other's consent, when this consent should be necessary, the period shall count from the date of dissolution of marriage property estate or the marriage, unless the spouse should have been sufficiently aware of such act or contract before that.

**Article 1,302.** The action for annulment of contracts may be exercised by those who are bound thereby on a principal or on a subsidiary basis. Capable persons may not, however, allege the incapacity of those with whom they contracted; neither may those who caused the duress or intimidation, or acted with fraudulent misrepresentation or provoked the error base their action in these defects of the contract.

**Article 1,303.** Upon an obligation's being declared null and void, the contracting parties must reciprocally return to one another the things which constituted the subject matter of the contract, with their fruits, and the price, with interest, save as provided in the following articles.

**Article 1,304.** When the nullity should arise from the incapacity of one of the contracting parties, the incapable person is only obliged to return to the extent that he was enriched by the thing or price he received.

**Article 1,305.** Where the nullity should arise from the unlawfulness of the cause or subject matter of the contract, if such fact constitutes a crime or misdemeanour common to both contracting parties, they shall have no action against each other, and a criminal action shall be brought against them, and, further, the things or price which constituted the subject matter of the contract shall have the application provided in the Criminal Code as relates to the proceeds or instruments of the crime or misdemeanour.

This provision shall apply to the case where there should only be a crime or misdemeanour on the part of one of the contracting parties; however, the party who was not guilty may claim what he has given, and shall not be obliged to perform what he should have promised.

**Article 1,306.** If the deed which constitutes the unlawful cause should not constitute a crime or misdemeanour, the following rules shall be observed:

**1.** Where both contracting parties are at fault, none of them may recover what he has given pursuant to the contract, or claim the performance of what the other should have offered.

**2.** Where only one contracting party is at fault, he may not recover what he has given pursuant to the contract, or demand the performance of what he should have been offered. The other, who was a stranger to the unlawful cause, may claim what he has given, without the obligation to perform what he should have offered.

**Article 1,307.** Whenever the person who is obliged pursuant to the declaration of nullity to return the thing cannot return it because it has been lost, he must return any fruits received and the value of the thing at the time of its loss, plus interest from the same date.

**Article 1,308.** While one of the contracting parties does not return that which he is obliged to return pursuant to the declaration of nullity, the other cannot be compelled to perform in his turn what is incumbent upon him.

**Article 1,309.** The action for annulment shall be extinguished from the moment where the contract is validly confirmed.

**Article 1,310.** Only contracts which meet the requirements expressed in article 1261 are capable of confirmation.

**Article 1,311.** Confirmation may be express or implied.

Implied confirmation shall be deemed to exist where, knowing the grounds for nullity and after such grounds have ceased, the person entitled to invoke them should perform an act which necessarily implies the intention to waive them.

**Article 1,312.** Confirmation does not require the agreement of the contracting party who is not entitled to exercise the action for annulment.

**Article 1,313.** Confirmation purifies the contract from the defects from which it suffered from the time of its execution.

**Article 1,314.** The action for the annulment of contracts shall also be extinguished when the thing constituting their subject matter should have been lost pursuant to the wilful misconduct or negligence of the person entitled to exercise it.

If the ground for the action is the incapacity of one of the contracting parties, the loss of the thing shall not be an obstacle for the action to prevail, unless it should have taken place as a result of the wilful misconduct or negligence of the claimant, after having acquired full capacity.

### TITLE III

#### On the marriage property regime

##### CHAPTER ONE

###### *General provisions*

**Article 1,315.** The property regime of the marriage shall be as stipulated by the spouses in marriage articles, without other limitations than as provided in this Code.

**Article 1,316.** In the absence of marriage articles, or if these should be ineffective, the regime shall be the community of joint assets (*sociedad de gananciales*).

**Article 1,317.** The amendments of the marriage property regime performed during the marriage shall in no event prejudice rights already acquired by third parties.

**Article 1,318.** The property of the spouses is subject to the payment of household expenses. Where one of the spouse is should breach his duty to contribute to the payment of these expenses, the Judge, at the request of the other, shall issue any precautionary measures deemed convenient, to ensure payment thereof, and the necessary advances, or to provide for future needs. When a spouse should lack sufficient property of his own, the necessary expenses caused in litigation against the other spouse, without bad faith or temerity, or against a third party if they inure to the benefit of the family, shall be charged to the common property and, in the absence thereof, shall be debited to the other spouse's own property, when the latter's economic position prevents the former from obtaining legal aid, pursuant to the provisions of the Civil Procedural Law.

**Article 1,319.** Either spouse may perform acts addressed to attending the ordinary needs of the family entrusted to his care, in accordance with local custom and with the circumstances of the family. The common property, the property belonging to the spouse who contracts the debt and, on a subsidiary basis, the property of the other spouse shall be liable for debts contracted in the exercise of this power. The spouse who should have contributed his own property for the discharge of such needs shall be entitled to reimbursement in accordance with his marriage property regime.

**Article 1,320.** The consent of both spouses or, as the case may be, judicial authorisation shall be required to dispose of rights over the marital home and the furniture ordinarily used by the family, even if such rights should belong to a single spouse.

The erroneous or false declaration concerning the nature of the home by the person who disposes of it shall not prejudice the acquirer in good faith.

**Article 1,321.** Upon the death of one of the spouses, the clothes, furniture and fittings constituting the appurtenances of the common marital home of the spouses shall be delivered to the surviving spouse, without counting it as part of his assets.

The appurtenances shall not be deemed to comprise any jewellery, artistic and historic objects and others of extraordinary value.

**Article 1,322.** Where the Law should require that one of the spouses must act with the other's consent for an act of administration or disposal, acts performed without it and which are not confirmed in an express or implied manner, may be annulled at the request of the spouse whose consent was lacking, or of his heirs. Notwithstanding the foregoing, acts pursuant to gratuitous title over common property shall be null and void in the absence of the consent of the other spouse.

**Article 1,323.** The husband and wife may transfer to one another property and rights pursuant to any title and enter into all kinds of contracts with each other.

**Article 1,324.** In order to prove between spouses that certain property is the property of one of them, the confession of the other shall be sufficient, but such confession in itself shall not prejudice the forced heirs of the spouse who makes the confession, or creditors, whether they are creditors of the community or of each of the spouses.

## CHAPTER 2°

### *On marriage articles*

**Article 1,325.** In marriage articles the executors may stipulate, amend or replace the property regime of their marriage or any other provisions as a result thereof.

**Article 1,326.** Marriage articles may be executed before or after performing the marriage.

**Article 1,327.** Marriage articles must be set forth in a public deed to be valid.

**Article 1,328.** Any stipulation contrary to the Laws or to good customs, or which limits the equal rights of each spouse shall be null and void.

**Article 1,329.** The non-emancipated minor who, in accordance with the Law, is able to marry, may execute marriage articles, but he shall need the agreement and consent of his parents or guardian, unless he merely agrees to the separation or participation regime.

**Article 1,330.** The person who has been judicially incapacitated may only execute marriage articles with the assistance of his parents, guardian or conservator.

**Article 1,331.** The amendment of marriage articles shall require, to be valid, to have been performed with the attendance and agreement of the persons who took part therein as executors, if they should be alive and the amendment should affect rights granted by such persons.

**Article 1,332.** The existence of covenants which constitute amendments of prior marriage articles shall be indicated by means of a note in the public deed containing the prior stipulations, and the Notary Public shall include it in any copies he may issue.

**Article 1,333.** In any entry of a marriage in the Civil Registry, a mention shall be made, as the case may be, of any marriage articles executed, and of any covenants, judicial resolutions and other facts which amend the marriage property regime. If the former or the latter should affect immovable property, a note thereof shall be entered in the Property Registry, in the form and for the purposes provided in the Mortgage Law.

**Article 1,334.** All provisions of marriage articles for the event of a future marriage shall become without force and effect in the event that such marriage should not take place within one year.

**Article 1,335.** The invalidity of marriage articles shall be governed by the general rules governing contracts. The consequences of annulment shall not prejudice third parties in good faith.

## CHAPTER 3°

### *On gifts by reason of marriage*

**Article 1,336.** Gifts made by any person in favour of one or both spouses, before the marriage and in consideration thereof are gifts by reason of marriage.

**Article 1,337.** These gifts are governed by the ordinary rules to the extent that they are not amended by the following articles.

**Article 1,338.** The non-emancipated minor who is able to marry in accordance with the Law may also, in marriage articles or outside of them, make gifts by reason of his marriage, with the authorisation of his parent or guardian. To accept them, the provisions of title II of book III of this Code shall apply.

**Article 1,339.** Property donated jointly to the spouses shall belong to both of them on an ordinary *pro indiviso* basis and in equal shares, unless the donor has provided otherwise.

**Article 1,340.** A person who gives or promises by reason marriage shall only be liable for dispossession or hidden defects if he has acted in bad faith.

**Article 1,341.** The future spouses may give to each other their existing property by reason of marriage. Likewise, they may, in marriage articles, prior to the marriage, give each other future property, only for the event of death, and to the extent provided in the provisions concerning testamentary succession.

**Article 1,342.** Gifts pursuant to marriage shall be rendered without force and effect if the marriage should not take place within one year.

**Article 1,343.** These gifts shall be revocable on the grounds common to all gifts, except in the event of any surviving or subsequently born children.

In gifts granted by third parties, the annulment of the marriage for any reason, and separation and divorce if the events which caused it are attributable to the donee spouse according to the judgement, shall be deemed breach of conditions, as well as any other specific conditions to which the gift may have been subject.

In gifts granted by the prospective spouses, the annulment of the marriage if the donee should have acted in bad faith shall be deemed a breach of conditions, as well as any other specific conditions to which the gift may have been subject. The donee's incurring in grounds for disinheritance pursuant to article 855 or where, according to the judgement, the grounds for separation or divorce should be attributable to him shall likewise be deemed to constitute ingratitude.



## CHAPTER 4°

### *On the community of joint assets*

#### SECTION ONE

##### *General provisions*

**Article 1,344.** The community of joint assets makes any gains or profits obtained indistinctly by either spouse common to the spouses, and shall be allocated by halves upon dissolution thereof.

**Article 1,345.** The community of joint assets shall begin upon entering the marriage or, subsequently, upon agreement thereof in marriage articles.

#### SECTION 2<sup>a</sup>

##### *On exclusive property and property held in common*

**Article 1,346.** The following property is exclusive to each of the spouses:

1. Property and rights which belonged to him at the start of the community.
2. Those which he acquires subsequently pursuant to gratuitous title.
3. Those acquired at the cost of or as a replacement for exclusive property.
4. Those acquired pursuant to a right of pre-emption pertaining to a single spouse.
5. Patrimonial property rights inherent to the person and which are not transferable *inter vivos*.
6. Compensation and damages to the person of one of the spouses or to his exclusive property.
7. Clothes and objects for personal use which are not of extraordinary value.
8. The instruments necessary for the conduct of his profession or work, unless they form integral part of or are appurtenances of an establishment or undertaking held in common.

Property mentioned in sections 4 and 8 shall not lose its nature as exclusive property if its acquisition was made with common funds; however, in this case, the community shall be the creditor of the spouse who owns it for the value paid for it.

**Article 1,347.** The following property is property held in common:

1. Property obtained pursuant to the work or industry of either spouse.
2. Fruits, income or interest generated by exclusive and common property.
3. Property is acquired for valuable consideration charged to the assets held in common, irrespective of whether the acquisition is made to the community or for only one of the spouses.
4. That which is acquired pursuant to a right of pre-emption held in common, even if it should be acquired with funds held on an exclusive basis, in which case the community shall owe the spouse for the value paid.
5. Undertakings and establishments founded during the life of the community by either spouse at the expense of common property. If, at the time of creation of the Undertaking or establishment both exclusive and common capital should be used, the provisions of article 1354 shall apply.

**Article 1,348.** Whenever an amount or credit payable in a certain number of years belongs exclusively to one of the spouses, any sums collected for any instalments payable during the marriage shall not be common property, but shall be deemed to be capital of the husband or wife depending on who the credit belongs to.

**Article 1,349.** The right of usufruct or to an allowance belonging to one of the spouse is shall form part of his exclusive property; however, the fruits, allowances or interest accrued during the marriage shall be common property.

**Article 1,350.** The heads of livestock which, upon dissolution of the community, should exceed from the number contributed by each of the spouses on an exclusive basis shall be deemed property held in common.

**Article 1,351.** Profits obtained by either spouse from gambling or those resulting from other causes which are exempt from the obligation to return them shall belong to the community of joint assets.

**Article 1,352.** New shares or other securities or participations subscribed as a result of the holding of other securities held on an exclusive basis shall also be exclusive property. Likewise, amounts obtained as a result of the disposal of subscription rights shall also be exclusive property.

If common funds should be used to pay the subscription or if the shares should be issued against profits, the value paid for them shall be reimbursed.

**Article 1,353.** Property given or left by will to the spouses jointly and without special designation of shares shall be deemed to be property held in common, if the community subsists, provided that the liberality was accepted by both of them and that the donor or testator has not provided otherwise.

**Article 1,354.** Property acquired in exchange for a price or for valuable consideration, which is in part held in common and in part exclusive property, shall correspond *pro indiviso* to the community of joint assets, and to the spouse or spouse is in proportion to the value of their respective contributions.

**Article 1,355.** The spouses may, by common consent, give the condition of common property to property acquired for valuable consideration during the marriage, whatever the origin of the price or consideration and the form and instalments in which it is paid.

If the acquisition is made jointly and without allocation of shares, their intention shall be presumed favourable to the common nature of such property.

**Article 1,356.** Property acquired by one of the spouses, while the community remains in force, in instalments, shall be property held in common if the first payment should be of such nature, even if the remaining instalments are paid with money held on an exclusive basis. If the first payment should be made with exclusive property, the property shall have this nature.

**Article 1,357.** Property purchased in instalments by one of the spouses before the community begins shall always be exclusive property, even if the whole or part of the forward price is paid with money held in common. The family home and appurtenances shall be excepted from the foregoing, in respect of which article 1354 shall apply.

**Article 1,358.** Where, in accordance with this Code, the property is considered to be held exclusively or in common, irrespective of the origin of the funds with which the acquisition is performed, the value paid and charged, respectively, to the community property or to exclusive property must be reimbursed, by returning the amount thereof, updated as of the date of liquidation of the community.

**Article 1,359.** Buildings, plantations in any other improvements made to common property and to exclusive property shall have the nature corresponding to the property which they affect, without prejudice to the reimbursement of the value paid for them.

Notwithstanding the foregoing, if the improvement made in exclusive property should be due to the investment of common funds or to the activities of either spouse, the community shall be owed the increase in value experienced by the property as a result of the improvement, at the time of dissolution of the community or disposal of the improved property.

**Article 1,360.** The same rules of the preceding article shall apply to patrimonial gains of a business, commercial establishment or other kind of undertaking.

**Article 1,361.** Property existing in the marriage shall be deemed to be held in common unless it is proved that it belongs exclusively to one of both spouses.

### SECTION 3<sup>a</sup>

#### *On the expenses and obligations of the community of joint assets*

**Article 1,362.** Expenses originated by any of the following causes shall be borne by the community of joint assets:

**1.** Maintenance of the family, food and education of children in common and insurance expenses adjusted to custom and to family circumstances.

Food and education for the children of only one of the spouses shall be borne by the community of joint assets when they should live in the family home. Otherwise, expenses resulting from these items shall be paid by the community of joint assets, but shall give rise to reimbursement at the time of liquidation thereof.

**2.** The acquisition, holding and enjoyment of common property.

**3.** The ordinary administration of the exclusive property of either spouse.

**4.** The regular exploitation of businesses or the conduct of the profession, art or trade of each spouse.

**Article 1,363.** Amounts given or promised by both spouses by common consent shall also be borne by the community, unless it should have been agreed that they are to be paid with the exclusive property of one of them in whole or in part.

**Article 1,364.** The spouse who has contributed exclusive property for expenses or payments to be borne by the community shall be entitled to reimbursement of their value, charged to the common property.

**Article 1,365.** The common property shall be directly liable to the creditor for debts contracted by a spouse:

**1.** In the exercise of domestic powers or the management or disposal of common property to which he is entitled pursuant to the law or to marriage articles.

**2.** In the ordinary practice of his profession, art or trade or in the ordinary administration of the property itself. If one of the spouses should be a merchant, the provisions of the Commercial Code shall apply.

**Article 1,366.** The marriage property community shall be liable for and shall bear the expense of any non-contractual obligations pertaining to a spouse as a result of his actions for the benefit of the community or within the scope of the administration of the property, unless they are due to wilful misconduct or gross negligence on the part of the debtor spouse.

**Article 1,367.** Common property shall in any event be liable for obligations entered into by both spouses jointly or by one of them with the express consent of the other.

**Article 1,368.** Common property shall also be liable for obligations entered into by only one of the spouses, in the event of de facto separation, to attend to maintenance, insurance and education expenses of the children for whom the community of joint assets is responsible.

**Article 1,369.** The property belonging to the community shall also be joint and severally liable for the debts of a spouse which are likewise debts of the community.

**Article 1,370.** Without prejudice to the liability of any other property according to the rules of this Code, the common property acquired by a spouse without the other's consent shall always be liable for its forward price.

**Article 1,371.** Amounts lost and paid during the marriage by either spouse in any kind of gambling shall not reduce their respective part of the common property, provided that the amount of such loss may be considered moderate in accordance with custom and family circumstances.

**Article 1,372.** Where the law provides an action to claim what has been won by gambling, the exclusive property of the debtor shall be exclusively liable for amounts lost and not paid by either of the spouses.

**Article 1,373.** Each spouse shall be liable with his personal property for his own debts and, if his exclusive property should not be sufficient to repay them, the creditor may request the attachment of common property, which shall be immediately notified to the other spouse, and the latter may request that in the attachment the common property be replaced by the part held by the debtor spouse in the community of joint assets, in which case the attachment shall entail dissolution of the community.

If the attachment should affect common property, the debtor spouse shall be deemed to have received the value thereof on account of his share when he should pay with other funds of his own or at the time of liquidation of the community of joint assets.

**Article 1,374.** After the dissolution mentioned in the preceding article, the property separation regime shall apply, save if, within three months, the debtor's spouse should choose in a public instrument to start a new community of joint assets.

#### SECTION 4<sup>a</sup>

##### *On the administration of the community of joint assets*

**Article 1,375.** In the absence of an agreement made pursuant to marriage articles, the management and disposal of common property shall correspond jointly to the spouses, without prejudice to the provisions of the following articles.

**Article 1,376.** Where the consent of both spouses should be necessary for the performance of acts of administration, and one of them should be unable to give it or should unreasonably refused to do so, the Judge may give it in his stead if he should find the request to be well founded.

**Article 1,377.** The performance of acts of disposal for valuable consideration over common property shall require the consent of both spouses.

Of one of them should refuse or should be unable to give it, the Judge, after summary information proceedings, may authorise one or several acts of disposal when he should consider it to be in the interest of the family. Exceptionally, he shall provide any limitations or precautions deemed convenient.

**Article 1,378.** Acts pursuant to gratuitous title shall be null and void unless both spouses consent to them. However, each of them may perform the accustomed liberalities with common property.

**Article 1,379.** Each of the spouses may dispose of half of the common property by testament.

**Article 1,380.** The testamentary disposition of a piece of common property shall have full force and effect if the property is adjudicated to the estate of the testator. Otherwise, the bequest shall be deemed to refer to its value at the time of his death.

**Article 1,381.** Fruits and gains of exclusive property and the gains obtained by any of the spouses shall form part of the assets of the community and shall be subject to the payment of the expenses and liabilities of the

community of joint assets. Notwithstanding the foregoing, each spouse, as administrator of his exclusive property, may for this sole purpose dispose of the fruits and products of his property.

**Article 1,382.** Each spouse may, without the other's consent, but always with his knowledge, take in advance any common money which he needs, in accordance with custom and family circumstances, for the practice of his profession or the ordinary administration of his property.

**Article 1,383.** The spouses must inform each other on a regular basis on the status and returns of any economic activity they undertake.

**Article 1,384.** Acts of administration of property and acts of disposal of money or securities performed by the spouse in whose name they appear or who has them in his possession shall be valid.

**Article 1,385.** Credit rights, whatever their nature, shall be exercised by the spouse in whose name they appear.

Either spouse may exercise the defence of common property and rights by bringing actions or opposing them.

**Article 1,386.** The consent of only one of the spouses shall be sufficient to make necessary urgent expenses, even if they are extraordinary expenses.

**Article 1,387.** The administration and disposal of the property pertaining to the community of joint assets shall be transferred by operation of law to the spouse who is the guardian or legal representative of his consort.

**Article 1,388.** The Courts may confer the power of administration to only one of the spouses where the other should be unable to give his consent or should have abandoned the family, or in the event of de facto separation.

**Article 1,389.** The spouse responsible for administration pursuant to the provisions of the two preceding articles shall have full powers for such purposes, unless the Judge, if he considers it to be in the interest of the family, and after summary information proceedings, should establish any precautions or limitations.

In any event, he shall require judicial authorisation to perform acts of disposal over immovable property, commercial establishments, precious objects or securities, save for preferred subscription rights.

**Article 1,390.** If, as a result of an act of administration or disposal performed by only one of the spouses the latter should have obtained a benefit or profit of an exclusive nature, or should have caused, by wilful misconduct, damage to the community, he shall owe the community the amount thereof, even if the other spouse should not challenge the effectiveness of the act within the applicable period.

**Article 1,391.** Where a spouse should have performed an act in fraud of the rights of his consort, the provisions of the preceding article shall in any event apply and, likewise, if the acquirer should have acted in bad faith, the act shall be capable of rescission.

## SECTION 5<sup>a</sup>

### *On the dissolution and liquidation of the community of joint assets*

**Article 1,392.** The community of joint assets shall end by operation of law:

1. When the marriage is dissolved.
2. When the marriage is declared null and void.
3. When the separation of the spouses is judicially decreed.
4. When the spouses agree upon a different marriage property regime in the manner provided in this Code.

**Article 1,393.** The community of joint assets shall also end by judicial decree, at the request of one of the spouses, in one of the following cases:

**1.** Where the other spouse has been judicially incapacitated, or has been declared a prodigal, an absentee or bankrupt pursuant to civil or commercial law, or found guilty of abandoning his family.

For the Judge to decree the dissolution it shall be sufficient for the spouse who requests it to present the corresponding judicial resolution.

**2.** Where the other spouse has been performing by himself acts of disposal or management of assets which involve fraud, damage or danger to the rights of the other spouse in the community.

**3.** To have been separated de facto of more than one year by mutual consent or as a result of abandonment.

**4.** To have seriously and repeatedly breached the duty of informing of the results and returns of his economic activities.

As regards the dissolution of the community as a result of the attachment of the share of one of the spouses as a result of his own debts, the special provisions of this Code shall apply.

**Article 1,394.** The effects of dissolution as provided in the preceding article shall take place from the date on which it is decreed. If there should be litigation concerning the existence of grounds for dissolution, after initiation of the proceedings, an inventory shall be drafted, and the Judge shall adopt the necessary measures to administer the property, and all acts which exceed ordinary administration shall require judicial authorisation.

**Article 1,395.** When the community of joint assets should be dissolved as a result of the marriage being null and void and with declaration that one of the spouses has acted in bad faith, the other may choose to liquidate the marriage property regime according to the rules of this Section or to the provisions relating to the participation regime, and the spouse in bad faith shall not be entitled to participate in the gains obtained by his consort.

**Article 1,396.** After its dissolution, the community shall be liquidated, beginning by drafting an inventory of the assets and liabilities thereof.

**Article 1,397.** The following must be included as assets:

**1.** Common property existing at the time of dissolution.

**2.** The updated amount of the value of the property at the time of its disposal as a result of an illegal or fraudulent transaction, if it should not have been recovered.

**3.** The updated amount of the amounts paid by the community which are to be borne by only one spouse and, generally, amounts constituting credits held by the community against such spouse.

**Article 1,398.** The liabilities of the community shall consist of the following items:

**1.** Outstanding debts borne by the community.

**2.** The updated amount of the value of exclusive property, when such amount must be returned in cash, because such value has been spent in the interest of the community.

The same rules shall apply to impairments suffered by such property as a result of its use for the benefit of the community.

**3.** The updated amount of any sums which, having been paid by only one of the spouses, should be required to be borne by the community and, generally, those which constitute credits held by the spouses against the community.

**Article 1,399.** Upon completion of the inventory, the debts of the community shall be paid in the first place, starting with maintenance debts which, in any case, shall have preference.

In respect of the rest, if the property subject to inventory should not be sufficient to pay them, the provisions relating to concurrence and order of priority of credits shall apply.

**Article 1,400.** When there should not be sufficient cash to pay the debts, allocations of common property may be offered in lieu of payment, but, if any participant or creditor should request it, they shall be disposed of and payment shall be made with the proceeds.

**Article 1,401.** Until the debts of the community have been paid in full, the creditors shall keep their credits against the debtor spouse. The non-debtor spouse shall be liable with the property adjudicated to him, if an inventory should have been duly drafted in or out of court.

If, as a result thereof, one of the spouses should have paid an amount exceeding the amount attributable to him, he may recover it from the other.

**Article 1,402.** The creditors of the community of joint assets shall have upon its liquidation the same rights acknowledged by the Laws in respect of the partition and liquidation of estates.

**Article 1,403.** After paying the community's debts and expenses, any compensations and reimbursement owed to each spouse shall be paid, up to the amount of the property that has been subject to inventory, performing any applicable setoffs when the spouse owes any debts to the community.

**Article 1,404.** After making any deductions to the property subject to inventory as provided in the preceding articles, the residue shall constitute the net assets of the community of joint assets, which shall be divided by halves between the spouses or their respective heirs.

**Article 1,405.** If one of the spouses should be, at the time of liquidation, a personal creditor of the other, he may demand satisfaction of his credit by being adjudicated common property, unless the debtor should pay voluntarily.

**Article 1,406.** Each spouse shall be entitled to request the inclusion as part of his assets, on a preferential basis and up to the full amount thereof:

1. Property of personal use not included in number 7 of article 1,346.
2. The economic undertaking he effectively manages.
3. The premises where he has been conducting his profession.
4. In the event of death of the other spouse, the dwelling which where he has his habitual residence.

**Article 1,407.** In the cases provided in numbers 3 and 4 of the preceding article, the spouse may, at its discretion, request to be allocated the ownership of property or to have constituted in his favour a right of use or habitation. If the value of the property or the right should exceed the assets corresponding to the spouse who is allocated the property, he must pay the difference in money.

**Article 1,408.** The spouses or, as the case may be to the surviving spouse and children, shall be provided with support from the common property while the liquidation of the property subject to inventory takes place and until they are given their assets; however, such support shall be deducted from their assets in the part exceeding the amounts which would have corresponded to them as fruits and rents.

**Article 1,409.** Whenever liquidation of the joint community of assets of two or more marriages entered into by the same person is to be performed simultaneously, in order to determine the capital corresponding to each estate all kinds of evidence shall be admitted in the absence of inventories. In the event of doubt, common property shall be allocated to the different communities proportionally, attending to their duration and to the property and income of the respective spouses.

**Article 1,410.** For matters not provided in this chapter concerning the drafting of the inventory, the rules regarding appraisal and sales of property, division of the property, adjudications to the participants and others



which are not expressly determined herein, the provisions regarding partition and liquidation of estates shall be observed.

## CHAPTER 5°

### *On the participation regime*

**Article 1,411.** In the participation regime each spouse acquires a right to participate in the gains obtained by his consort during the time that such regime has remained in force.

**Article 1,412.** Each spouse shall have the administration, the enjoyment and the free disposal of both the property which belonged to him at the time of marrying and of any which he may acquire subsequently pursuant to any title.

**Article 1,413.** For all matters not provided in this chapter, the rules relating to separation of property shall apply during the term of the participation regime.

**Article 1,414.** If persons married pursuant to the participation regime should jointly acquire any property or right, it shall belong to them pursuant to the ordinary *pro indiviso* regime.

**Article 1,415.** The participation regime shall be extinguished in the same cases provided for the community of joint assets, applying the provisions of articles 1,394 and 1,395.

**Article 1,416.** One spouse may request termination of the participation regime when the irregular administration performed by the other should seriously compromise his interests.

**Article 1,417.** Upon termination, any gains shall be calculated by the difference between the initial and final net assets of each spouse.

**Article 1,418.** The initial net assets of each spouse shall be deemed to consist of:

- 1.** The property and rights belonging to him at the start of the regime.
- 2.** Those acquired subsequently as inheritance, gift or legacy.

**Article 1,419.** The obligations of the spouse at the start of the regime and, as the case may be, obligations inherent to the inheritance or encumbrances inherent to the gift or legacy, to the extent that they do not exceed the amount of the property bequeathed or given.

**Article 1,420.** If the liabilities should exceed the assets, there shall be no initial net assets.

**Article 1,421.** The property constituting the initial net assets shall be estimated according to its condition and value at the start of the regime or, as the case may be, at the time of its acquisition. The amount of the appraisal must be updated to the date on which the regime should cease.

**Article 1,422.** The final net assets of each spouse shall comprise the property rights of which he is the titleholder at the time of termination of the regime, deducting any outstanding obligations.

**Article 1,423.** The value of the property disposed of by one of the spouses pursuant to gratuitous title without his consort's consent shall be included in the final net assets, unless it should refer to accustomed liberalities.

**Article 1,424.** The same rules shall apply in respect of acts performed by one of the spouses in fraud of the rights of the other.



**Article 1,425.** The property constituting the final net assets shall be estimated according to its condition and value at the time of termination of the regime, and property disposed of as gifts or fraudulently, according to its condition on the date of its disposal and for the value it would have had if it had been kept until the date of termination.

**Article 1,426.** Credits held by one of the spouses against the other, pursuant to any title, even as a result of having attended to or performed obligations of the former, shall be computed also as final net assets of the creditor's spouse, and shall be deducted from the estate of the debtor spouse.

**Article 1,427.** Where the difference between the final and initial net assets of both spouses should show a positive result, the spouse whose net assets have experienced a lower increase shall receive half of the difference between his own increase and that of the other spouse.

**Article 1,428.** Where only one set of net assets should show positive results, the rights of participation shall consist of half of such increase in favour of the spouse who is not the titleholder of such net assets.

**Article 1,429.** At the time of constitution of the regime, the spouses may agree on a different participation than the one provided in the two preceding articles, but it must apply similarly and in the same proportion in respect of both sets of net assets and in favour of both spouses.

**Article 1,430.** If there are descendants who are not common to both, the only participation that may be agreed upon shall be by halves.

**Article 1,431.** The participation credit must be paid in money. If there are serious difficulties to make an immediate payment, the Judge may grant a deferral, provided that it does not exceed three years, and that the debt and its legal interest are sufficiently secured.

**Article 1,432.** The participation credit may be paid by adjudication of specific property, by agreement between the interested parties or if the Judge should allow it, upon duly grounded request by the debtor.

**Article 1,433.** If there should not be sufficient property in the debtor's net assets to realise the right of participation in his gains, the creditor spouse may challenge any disposals he has made pursuant to gratuitous title without his consent and those which should have been made in fraud of his rights.

**Article 1,434.** The actions to challenge mentioned in the preceding article shall be lapsed by peremption two years after the participation regime is extinguished, and may not be initiated against third party acquirers for valuable consideration in good faith.

## CHAPTER 6°

### *On the property separation regime*

**Article 1,435.** There shall be property separation between the spouses:

- 1.** Where they should have agreed it.
- 2.** Where the spouses should have agreed in marriage articles that the community of joint assets shall not apply between them, without expressing the rules pursuant to which their property shall be governed.
- 3.** Upon termination of the community of joint assets or the participation regime while the marriage subsists, unless the regime should be replaced by another different one pursuant to the will of the interested parties.

**Article 1,436.** The claim requesting property separation and the final judgement declaring it must be entered and registered, respectively, in the relevant Property Registry, if it should refer to immovable property. The final judgement shall also be entered in the Civil Registry.

**Article 1,437.** In the property separation regime, the property held by each spouse at the start and any which he may subsequently acquire pursuant to any title shall belong to such spouse. Likewise, each spouse shall have the administration, enjoyment and free disposal of such property.

**Article 1,438.** The spouses shall contribute to the household expenses. In the absence of an agreement, they shall do so proportionally to their respective resources. Housework shall be computed as a contribution to household expenses and shall entitle the spouse to obtain a compensation, to be set by the Judge in the absence of an agreement, upon termination of the separation regime.

**Article 1,439.** If one of the spouses should have administered or managed property or interests of the other, he shall have the same obligations and liabilities as an attorney, but shall not have the obligation to give account of fruits received and consumed, unless should be proved that he invested them in items other than the discharge of household expenses.

**Article 1,440.** Each spouse shall be exclusively liable for obligations contracted by him. As relates to obligations contracted in the exercise of ordinary domestic powers, both spouses shall be liable as provided in article 1,319 and 1,438 of this Code.

**Article 1,441.** Where it should not be possible to evidence to which of the spouses any property or rights belong, they shall correspond to both by halves.

**Article 1,442.** Upon declaration of civil or commercial bankruptcy of one spouse, the other spouse shall be presumed to have given him a half share of the property acquired for valuable consideration by him during the year prior to the declaration or during the period in respect of which the bankruptcy has retroactive effect, for the benefit of the creditors, unless evidence to the contrary is provided. This presumption shall not apply if the spouses are judicially or de facto separated.

**Article 1,443.** The property separation regime, once decreed, shall not be altered by the reconciliation of the spouses in the event of personal separation or as a result of the disappearance of any of the other grounds which should have motivated it.

**Article 1,444.** Notwithstanding the provisions of the preceding article, the spouses may agree in marriage articles that the same rules which applied prior to the property separation regime shall apply again. Such marriage articles shall set forth the property contributed by each of them once again, and these shall be considered exclusive property even if, in whole or in part, they should have been common property prior to the liquidation performed as a result of the separation.

## TITLE IV

### On the contract of sale and purchase

#### CHAPTER ONE

##### *On the nature and form of this contract*

**Article 1,445.** Pursuant to the contract of sale and purchase, one of the contracting parties undertakes to deliver a specific thing and the other to pay a certain price for it, in money or something which represents it.

**Article 1,446.** If the sale price should consist in part in money and in part in something else, the contract shall be classified according to the manifest intention of the contracting parties. If such intention is not expressed, the contract shall be deemed to be barter, if the value of the thing given as part of the price exceeds the amount of money or its equivalent; and a sale if otherwise.

**Article 1,447.** For the price to be considered certain, it will be sufficient that it be certain by reference to another certain thing, or that its determination is left to the discretion of a specific person. If such person should not be able to or should not want to set the price, the contract become without force and effect.

**Article 1,448.** Likewise, the price shall be deemed certain in the sale of securities, grains, liquids and other fungible things, where the value set should be the value which the things sold should have on a specific date, Exchange or market, or where an amount higher or lower than the price on the date, Exchange or market should be set, as long as it is certain.

**Article 1,449.** The setting of the price may never be left at the discretion of one of the contracting parties.

**Article 1,450.** The sale shall be perfected between the purchaser and the seller, and shall be binding on both, if they should have agreed on the thing constituting the subject matter of the contract and on the price, even if neither one or the other has been delivered yet.

**Article 1,451.** A promise to sell or purchase, if there is agreement as to the thing and the price, shall entitle the contracting parties to reciprocally claim the performance of the contract.

Whenever the promise of sale and purchase cannot be kept, the provisions concerning obligations and contracts provided in the present Book shall apply to seller and purchaser, as the case may be.

**Article 1,452.** Damages or improvements in the things sold after perfecting the contract shall be regulated by the provisions of articles 1,096 and 1,182.

This rule shall apply to the isolated sale of fungible things for a lump sum price, or without considering their weight, number or measurement.

If the fungible things should be sold for a price set in relation to their weight, number or measurement, the risk shall not be transferred to the purchaser until they have been weighed, counted or measured, unless the latter has incurred in default.

**Article 1,453.** The sale made on trial or to test the things sold, and the sale of things which it is usual to taste or sample before receiving them shall always be presumed to have been made subject to a condition precedent.

**Article 1,454.** If earnest money or a deposit should have been provided in a contract of sale and purchase, the contract may be rescinded by the purchaser by agreeing to forfeit the earnest money or deposit, or the seller to return it in duplicate.

**Article 1,455.** The expenses of executing a public deed shall be borne by the seller, and those of the first copy and any other copies subsequent to the sale shall be borne by the purchaser, unless otherwise agreed.

**Article 1,456.** Forced sales for causes of public utility (*eminent domain*) shall be governed by the provisions of special laws.

## CHAPTER 2°

### *On the capacity to purchase or sell*

**Article 1,457.** All persons authorised by this Code to bind themselves may enter into the contract of sale and purchase, save for the modifications contained in the following articles.

**Article 1,458.** The spouses may reciprocally sell property to one another.

**Article 1,459.** The following persons may not acquire things by purchase, even if it is in a public or judicial auction, by themselves or using any intermediary:

**1.** Persons who exercise any position of guardianship, in respect of the property of the person or persons who are under their custody or protection.

**2.** Attorneys, in respect of the property whose administration or disposal is entrusted to them.

**3.** Executors, in respect of the property entrusted to their care.

**4.** Public employees, in respect of property belonging to the State, Municipalities, villages and public establishments, whereof they should be in charge of the administration.

This provision shall apply for Judges and experts who in any way take part in the sale.

**5.** Magistrates, Judges, Public Prosecutors, Secretaries of Courts and Court Officials, in respect of the property and rights subject to litigation before the Court in whose jurisdiction or territory they should perform their respective duties; this prohibition shall extend to the act of acquiring pursuant to assignment.

The case of hereditary actions between co-heirs, or assignment in payment of credits, or to secure the property they possess shall be excepted from this rule.

The prohibition contained in this number 5 shall comprise Solicitors and Court Representatives in respect of the properties and rights which should constitute the subject matter of the litigation in which they take part as a result of their profession and work.

## CHAPTER 3°

### *On the effects of the contract of sale and purchase when the thing sold is lost*

**Article 1,460.** If, at that time of entering into the sale, the thing constituting the subject matter thereof should have been lost in its entirety, the contract shall become without force and effect.

Notwithstanding the foregoing, if it should have been lost only in part, the purchaser may choose between withdrawing from the contract or claiming the existing part, paying its price proportionally to the agreed total sum.

## CHAPTER 4°

### *On the seller's obligations*

#### SECTION ONE

##### *General provision*

**Article 1,461.** The seller is bound to perform delivery of and provide warranty over the thing constituting the subject matter of the sale.

## SECTION 2<sup>a</sup>

### *On delivery of the thing sold*

**Article 1,462.** The thing sold shall be deemed to have been delivered when it is put in the power and possession of the purchaser.

Where the sale has been made pursuant to a public deed, the execution thereof shall be equivalent to the delivery of the thing constituting the subject matter of the contract, unless it should result or it should clearly be deduced otherwise from the public deed.

**Article 1,463.** Outside the cases expressed in the preceding article, delivery of movable property shall take place: by delivery of the keys of the place or location where they are stored or kept; and by mere agreement or conformity between the contracting parties, if the thing sold cannot be moved to the possession of the purchaser at the time of the sale, or if the latter already had it in its power for some other reason.

**Article 1,464.** In respect of incorporeal things, the provisions of the second paragraph of article 1462 shall apply. In any other case in which such provision does not apply, delivery shall be deemed to mean the fact of putting the deeds of ownership in the purchaser's power, or the use of the right by the purchaser with the consent of the seller.

**Article 1,465.** Delivery expenses of the things sold shall be borne by the seller, and those relating to transport or freight shall be borne by the purchaser, unless there is a special stipulation.

**Article 1,466.** The seller shall not be obliged to deliver the thing sold if the purchaser has not paid the price or the contract has provided no period to pay.

**Article 1,467.** The seller shall also not be obliged to deliver the thing sold if a forward period or term for the payment has been agreed if, after the sale, it is discovered that the purchaser is insolvent, so that the seller runs an imminent risk of losing the price.

The case where the purchaser should secure all his payment in the period provided shall be excepted from this rule.

**Article 1,468.** The seller must deliver the thing sold in its condition at the time of perfecting the contract. All fruits shall belong to the purchaser from the day on which the contract was perfected.

**Article 1,469.** The obligation to deliver the thing sold comprises the obligation of putting in the purchaser's power anything expressed in the contract, according to the following rules:

If a sale of immovable property should have taken place expressing its capacity, as a price per unit of measurement or number, the seller shall be obliged to deliver to the purchaser, at the latter's request, all that has been expressed in the contract; however, if this should not be possible, the purchaser may choose between a proportional reduction of the price or the rescission of the contract, provided that, in this last case, the reduction should not be lower than one tenth of the capacity attributed to the property.

The same shall be done, even if the capacity is the same, if a part of it is not of the quality expressed in the contract.

In this case, rescission shall only take place at the will of the purchaser, when the reduction in value of the thing sold should exceed one tenth of the agreed price.

**Article 1,470.** If, in the case of the preceding article, the immovable property should have greater capacity or number than that which was expressed in the contract, the purchaser shall have the obligation to pay the

excess price if the greater capacity or number does not exceed one twentieth of the amount set forth in the same contract; however, it should exceed such one twentieth, the purchaser may choose between paying the higher value of the immovable property, or withdrawing from the contract.

**Article 1,471.** In the sale of an immovable property made for a lump sum and not at a rate per unit or number, no increase or reduction thereof shall take place, even if it should have greater or lower capacity or number than those expressed in the contract.

This shall also occur where two or more properties are sold for a single price; however if, as well as expressing the boundaries, which is indispensable in any disposal of immovable properties, the contract should designate their capacity or number, the seller shall be obliged to deliver all that is comprised within the same boundaries, even if it should exceed the capacity or number expressed in the contract; and, if he is unable to, he shall suffer a reduction in the price, proportional to the shortfall in capacity or number, unless the contract should be annulled because the purchaser is not resigned to accepting the failure to deliver what was stipulated.

**Article 1,472.** Actions arisen as a result of the three preceding articles shall be barred by statute of limitations after six months, counted from the date of delivery.

**Article 1,473.** If the same thing should have been sold to different purchasers, ownership shall be transferred to the person who took possession of it in good faith, if it should be a movable thing.

Of it should be an immovable property, ownership shall belong to the acquirer who first registered it with the Registry. In the absence of registration, ownership shall belong to the person who first takes possession of it in good faith; and, in the absence thereof, to the person who presents a deed with a prior date, provided that he has acted in good faith.

## SECTION 3<sup>a</sup>

### *On warranty*

**Article 1,474.** Pursuant to the warranty mentioned in article 1461, the seller shall be liable to the purchaser:

1. For the lawful and peaceful possession of the things sold.
2. For any hidden faults or defects it should have.

#### **1. On warranty against dispossession**

**Article 1,475.** Dispossession shall take place when the purchaser is deprived of all or a part of the thing purchased by a final judgement and pursuant to a right prior to the purchase.

The seller shall be liable for dispossession even if nothing has been expressed in the contract.

However, the contracting parties may increase, reduce or suppress this legal obligation of the seller.

**Article 1,476.** Any covenant which exempts the seller from liability for dispossession shall be null and void, if he has acted in bad faith.

**Article 1,477.** Where the purchaser should have waived the warranty against dispossession, in the event that such dispossession should occur, the seller must deliver only the price of the things sold at the time of dispossession, unless the purchaser should have made the waiver being aware of the risk of dispossession and submitting to its consequences.

**Article 1,478.** Where a warranty has been stipulated, or where nothing has been agreed on this matter, in the event of dispossession the purchaser shall be entitled to request from the seller the following:

1. Restitution of the price of the things sold at the time of dispossession, irrespective of whether it is higher or lower than the sale price.
2. Fruits or returns, if he should have been sentenced to deliver them to the party who won the trial.
3. Court costs of the proceedings which gave rise to dispossession and, as the case may be, court costs of the proceedings initiated against the debtor on account of the warranty.
4. Contract expenses, if paid by the purchaser.
5. Damages and interest and voluntary or purely recreational or decorative expenses, if the sale was performed in bad faith.

**Article 1,479.** If the purchaser should lose, as a result of the dispossession, a part of the things sold which is of such importance in connection to the whole that he would not have bought it without such a part, he may demand the rescission of the contract; with the obligation to return the thing without any other encumbrances than it had when he acquired it.

The same shall be observed when two or more things are sold jointly for a lump sum, or for a specific sum for each of them, if it should be clearly set forth that the purchaser would not have bought the one without the other.

**Article 1,480.** The warranty may not be enforced until a final judgement has been issued sentencing the purchaser to forfeit the thing acquired or a part thereof.

**Article 1,481.** The seller shall be obliged to perform the relevant warranty whenever it should be proved that he was given notice of the claim of dispossession at the purchaser's request. In the absence of such notice, the seller shall not be obliged to act on the warranty.

**Article 1,482.** The defendant purchaser shall request, within the period provided in the Civil Procedural Law to respond to the claim, notice thereof to be served to the seller or sellers within as brief a period as possible. Such notice shall be given as set forth in the same law to summon defendants.

The period provided to the purchaser to respond to the claim shall be suspended until expiration of the periods provided to the seller or sellers to appear and respond to the claim, which shall be the same periods provided for all defendants in the aforementioned Civil Procedural Law, counting from the notice provided in paragraph 1 of this article.

If the parties summoned in the dispossession proceedings should fail to appear in due time and form, the period provided to respond to the claim shall continue in respect of the purchaser.

**Article 1,483.** If the properties sold should be encumbered with any lien or non-apparent easement, of such nature that it must be presumed that the purchaser would not have acquired it if he had known it, and the public deed should have failed to mention it, the purchaser may request rescission of the contract, unless he prefers the corresponding compensation.

For one year counting from the execution of the public deed, the purchaser may exercise the action for rescission, or request compensation.

After the lapse of one year, he may only claim for damages within a similar period, counting from the date on which he discovered the lien or easement.

## ***2. On the warranty against hidden defects or encumbrances of the thing sold***

**Article 1,484.** The seller shall be obliged to provide a warranty for hidden defects of the things sold, if they render it unsuitable for the use to which it is destined, or if they reduce such use in such a way that, if the purchaser had known them, he would not have acquired it or would have given a lower price for it; but he shall not be liable for manifest defects or those which are in plain sight, nor for those which are not, if the purchaser is an expert who, as a result of his trade or profession, ought easily to have been aware of them.

**Article 1,485.** The seller shall be liable to the purchaser for the warranty for hidden defects or flaws of the things sold, even if he should have been unaware of them.

This provision shall not apply when it has been stipulated otherwise and the seller should be unaware of the hidden defects or flaws of the thing sold.

**Article 1,486.** In the cases of the two preceding articles, the purchaser may choose between withdrawing from the contract, being paid any expenses he has paid or a reduction of the price in a proportional amount, pursuant to expert opinion.

If the seller should have been aware of the hidden defects or flaws of the thing sold and did not represent them to the purchaser, the latter shall have the same option, and shall further be compensated for any damages if he should choose rescission.

**Article 1,487.** If the thing sold should be lost as a result of the hidden defects, and the seller should have been aware of them, the latter shall suffer the loss and must return the price and pay the contract expenses, together with any damages. If he was not aware of them, he must only return the price and pay the contract expenses paid by the purchaser.

**Article 1,488.** If the thing sold should have had any hidden defect at the time of the sale and it should subsequently be lost as a result of a fortuitous event or pursuant to the purchaser's fault, the latter may claim from the seller the price he paid, with a reduction in value had by the thing at the time of its loss.

If the seller acted in bad faith, he must pay the purchaser any damages and interest.

**Article 1,489.** In judicial sales, the liability for damages shall never apply; but the remaining provisions of the preceding articles shall apply.

**Article 1,490.** Actions resulting from the provisions of the five preceding articles shall be extinguished after six months, counting from delivery of the thing sold.

**Article 1,491.** If two or more animals should be sold together, either for a lump sum, or by paying a price for each of them, any redhibitory defect of each animal shall only give rise to the redhibition of such animal, and not of the others, unless it should be apparent that the purchaser would not have purchased the healthy animal or animals without the defective one.

This last instance shall be presumed to be the case where a couple, yoke, pair or set of animals should have been purchased, even if a separate price has been set for each of the animals comprising it.

**Article 1,492.** The provisions of the preceding article relating to the sale of animals are deemed to apply equally to the sale of other things.

**Article 1,493.** The warranty for hidden defects of animals and livestock shall not apply to sales performed in a fair or a public auction, or to the sale of horses disposed of for slaughtering purposes, save in the event provided in the following article.

**Article 1,494.** Livestock and animals which suffer from contagious diseases may not be the subject matter of sale contracts. Any contract entered into in respect thereof shall be null and void.

Likewise, a sales contract over livestock and animals shall also be null and void if the contract should express the service or use for which they are acquired and they should be useless for such purpose.

**Article 1,495.** Where, even if they have been examined by a vet, the nature of the animals' hidden defect should be such that expert knowledge is not enough to discover it, the defect shall be deemed redhibitory.

However, if the expert, as a result of ignorance or bad faith, should fail to discover or disclose it, he shall be liable for any damages.



**Article 1,496.** The redhibitory action based on animals' hidden defects or flaws must be brought within forty days, counting from delivery thereof to the purchaser, unless local custom should provide longer or shorter periods.

This action in respect of animal sales may only be exercised in respect of such defects or flaws thereof provided in the law or pursuant to local custom.

**Article 1,497.** If the animal should die within three days of its purchase, the seller shall be liable, provided that the illness which caused the death should have existed prior to the contract, in the Physicians' opinion.

**Article 1,498.** Upon termination of the sale, the animal must be returned in the condition in which it was sold and delivered, and the purchaser shall be liable for any impairment resulting from his negligence, which was not originated by the redhibitory defect or flaw.

**Article 1,499.** In sales of animals and livestock with redhibitory defects, the purchaser shall also have the power expressed in article 1486; but he must exercise it within the same period respectively provided to exercise the redhibitory remedy.

## CHAPTER 5°

### *On the purchaser's obligations*

**Article 1,500.** The purchaser is obliged to pay the price of the things sold in the time and place set forth in the contract.

If none should have been set, payment must be made at the time and place in which the thing sold is delivered.

**Article 1,501.** The purchaser shall owe interest for the time elapsed between delivery of the thing and payment of the price, in the three following cases:

1. If it has been thus agreed.
2. If the thing sold and delivered produces fruits or rent.
3. If the purchaser should be in default, in accordance with article 1,100.

**Article 1,502.** If the purchaser should be disturbed in the possession or ownership of the thing acquired, or should have a reasonable ground to fear being disturbed by an action of ejectment or a mortgage foreclosure, may suspend payment of the price until the seller has made the disturbance or the danger cease, unless the latter should secure the return of the price, as the case may be, or unless it should have been set forth that, notwithstanding any contingency, the purchaser shall be obliged to pay.

**Article 1,503.** If the seller should have reasonable grounds to fear the loss of the immovable property and the price, he may immediately terminate the sale.

In the absence of such grounds, the provisions of article 1124 shall be observed.

**Article 1,504.** In the sale of immovable property, even if it should have been provided that termination of the contract shall take place by operation of law upon failure to pay the price within the agreed period, the purchaser may pay, even after expiration of the term, prior to being demanded to do so judicially or pursuant to notarial deed. After the demand has been made, the Judge may not grant a further period.

**Article 1,505.** In respect of immovable property, termination of the sale shall take place by operation of law, in the interests of the seller, where the purchaser, prior to expiration of the term provided to deliver the thing,

should not have appeared to receive it or, having appeared, should not have offered the price at the same time, save if a further deferment should have been agreed for such purposes.

## CHAPTER 6°

### *On termination of the sale*

**Article 1,506.** The sale shall be terminated on the same grounds as obligations, and, further, on the grounds expressed in the preceding chapters and pursuant to contractual repurchase or legal pre-emption.

## SECTION ONE

### *On contractual repurchase*

**Article 1,507.** Contractual repurchase shall take place where the seller reserves the right to recover the things sold, with the obligation to comply with the provisions of article 1518 and whatever else should have been agreed.

**Article 1,508.** The right mentioned in the preceding article, in the absence of an express agreement, shall last four years counted from the date of the contract.

If a period is expressly provided, it may not exceed 10 years.

**Article 1,509.** If the seller should fail to comply with the provisions of article 1518, the purchaser shall irrevocably acquire ownership of the thing sold.

**Article 1,510.** The seller may exercise his action against any possessor whose right originates from the purchaser, even if no mention has been made to the contractual repurchase provision in the second contract; except for the provisions of the Mortgage Law with respect to third parties.

**Article 1,511.** The purchaser shall replace the seller in all rights and remedies thereof.

**Article 1,512.** The seller's creditors may not exercise conventional repurchase against the purchaser until after excussion of the seller's property.

**Article 1,513.** The purchaser subject to a repo agreement in respect of a part of an undivided property who subsequently acquires the whole of such property in the case provided in article 404 may oblige the seller to redeem the whole if the latter should wish to exercise their repurchase covenant.

**Article 1,514.** Where several persons should sell an undivided property jointly and in a single contract subject to a repo covenant, each of them may only exercise this right for his respective part.

The same shall be observed if the person who has sold a landed property on his own has left several heirs, in which case each of them may only redeem the part acquired thereby.

**Article 1,515.** In the cases mentioned in the preceding article, the purchaser may require all sellers or co-heirs to reach an agreement on the redemption of the entirety of the thing sold; if they should fail to do so, the purchaser may not be compelled to accept a partial repurchase.

**Article 1,516.** Each co-owner of an undivided property who has sold his part separately may exercise, with the same separation, the right of repurchase for his respective share, and the purchaser may not compel him to redeem the whole property.

**Article 1,517.** If the purchaser should leave several heirs, the action to repurchase may only be exercised against each one for his respective share, irrespective of whether the property remains undivided or has been distributed among them.

However, if the estate has been divided and the thing has been adjudicated to one of the heirs, the repurchase action may only be addressed against him for the whole.

**Article 1,518.** The seller may not exercise the repurchase right without reimbursing the purchaser the sales price and, also:

1. Contract expenses and any other lawful payment made pursuant to the sale.
2. Necessary and useful expenses made in the thing sold.

**Article 1,519.** When, upon entering into the sale, the property should have fruits which are manifest or born, no payment or pro rating of any fruits existing at the time of the repurchase shall take place.

If there should have been none at the time of the sale, and there are fruits at the time of the repurchase, they shall be prorated between the repurchaser and the purchaser, and the latter shall receive the share corresponding to the time during which he possessed the property in the past year, counting from the sale.

**Article 1,520.** The seller who recovers the thing sold shall receive it free from any lien or mortgage imposed by the purchaser, but shall be obliged to accept any leases performed by the latter in good faith, according to local custom.

## SECTION 2<sup>a</sup>

### *On legal redemption*

**Article 1,521.** Legal redemption is the right to become subrogated, under the same conditions provided in the contract, in the position of the person who acquires the thing pursuant to a sale or dation in payment.

**Article 1,522.** The co-owner of a thing owned in common may use the right of redemption in the event that the shares of all other co-owners or of any of them should be disposed of to a stranger.

Where two or more co-owners should wish to use the right of redemption, they may only do so pro rata to their share in the thing owned in common.

**Article 1,523.** Owners of adjoining lands shall also be entitled to redemption in sales of rural property the surface whereof does not exceed one hectare.

The right mentioned in the preceding paragraph shall not apply to adjoining lands separated by streams, irrigation ditches, ravines, paths and other apparent easements for the benefit of other properties.

If two or more adjoining owners should exercise the right of redemption at the same time, the owner of the adjoining land with less surface shall be preferred; and if they should have the same, the first who requests it.

**Article 1,524.** The legal right of redemption may only be exercised within nine days counting from registration of the sale in the Registry and, in the absence thereof, from the time in which the person entitled to redemption should have become aware of the sale.

The right of redemption of co-owners excludes that of adjoining owners.

### **Article 1,525**

The provisions of articles 1511 and 1518 shall apply to legal redemption.

## CHAPTER 7°

### *On the transfer of credits and other incorporeal rights*

**Article 1,526.** Assignment of a credit, right or action shall not be effective against third parties until the date on which it is to be considered certain in accordance with articles 1218 and 1227.

If it should refer to immovable property, it shall be effective from the date of registration thereof in the Registry.

**Article 1,527.** The debtor who, prior to becoming aware of the assignment, should pay the creditor, shall be released from the obligation.

**Article 1,528.** The sale or assignment of a credit comprises that of all ancillary rights thereof, such as guaranty, mortgage, pledge or privilege.

**Article 1,529.** The seller in good faith shall be liable for the existence and lawfulness of the credits at the time of the sale, unless it has been sold as a doubtful credit; but not for the debtor's solvency, unless expressly provided or unless the insolvency should be prior and publicly known.

Even in these cases, he shall only be liable for the price received and any expenses mentioned in number 1 of article 1518.

The seller in bad faith shall always be liable for the payment of all expenses and damages.

**Article 1,530.** Where the assignor in good faith should have agreed to be liable for the debtor's solvency, and the contracting parties should have agreed no provision concerning the duration of such liability, it shall only last one year, counting from the assignment of the credit, if the term should have already expired.

If the credit should be payable in a forward term or period which has not expired, liability shall cease one year after maturity thereof.

If the credit should consist of a perpetual income, liability shall be extinguished after ten years, counting from the date of the assignment.

**Article 1,531.** A person who sells an estate without listing the things of which it is comprised shall only be liable for his capacity as heir.

**Article 1,532.** A person who sells for a lump sum or as a global sale a whole set of certain rights, income or products shall comply with his obligations by being liable for the lawfulness of the whole in general; but shall not be obliged to warrant each of the parts comprising it, save in the event of dispossession of the whole or of the majority.

**Article 1,533.** If the seller should have benefited from some fruits or should have perceived anything from the estate sold thereby, he must pay them to the purchaser, unless otherwise agreed.

**Article 1,534.** The purchaser must, in his turn, pay the seller all that the latter has paid for any debts and liens on the estate and for the credits held against it, unless otherwise agreed.

**Article 1,535.** In the event of sale of a litigious credit, the debtor shall be entitled to extinguish the same by reimbursing the assignee of the price paid, any costs incurred and interest on the price from the date on which it was paid.

A credit shall be deemed litigious from the time that a response to the claim relating thereto is filed.

The debtor may exercise his right within nine days, counting from the assignee's demand for payment.

**Article 1,536.** The following assignments or sales shall be excepted from the provisions of the preceding article:

1. Those made to a co-heir or co-owner of the assigned right.
2. Those made to a creditor as payment of his credit.
3. Those made to the possessor of a property subject to the litigious right thus assigned.

## CHAPTER 8°

### *General provision*

**Article 1,537.** The provisions of the present title are understood to be subject to the provisions of the Mortgage Law in respect of immovable property.

## TITLE V

### **On barter**

**Article 1,538.** Barter is a contract whereby one of the contracting parties undertakes to give a thing to receive another.

#### **Article 1,539**

If one of the contracting parties should have received the thing which was promised to him to be bartered, and should evidence that the thing did not belong to the person who gave it, he cannot be obliged to deliver the thing that he offered in exchange, and shall be released from his obligation by returning the thing he received.

**Article 1,540.** The person who was dispossessed of the thing received in a barter may choose between recovering the thing he gave in exchange, or claim for damages; but he may only exercise the right to recover the thing which he delivered while it remains in the possession of the other contracting party, without prejudice to rights acquired thereto in the meantime by a third party in good faith.

**Article 1,541.** For all matters not especially provided in this title, barter shall be governed by the provisions governing sales.

## TITLE VI

### **On the lease contract**

## CHAPTER ONE

### *General provisions*

**Article 1,542.** A lease may be of things, works or services.

**Article 1,543.** In a lease of things, one of the parties undertakes to give to the other the enjoyment or use of a thing for a specific time and at a certain price.

**Article 1,544.** In the lease of works or services, one of the parties undertakes to execute a work or provide a service to the other for a certain price.

**Article 1,545.** Fungible property which is consumed by its use cannot be the subject matter of this contract.

## CHAPTER 2°

### *On leases of rural and urban properties*

#### SECTION ONE

##### *General provisions*

**Article 1,546.** The person who undertakes to assign the use of the thing, execute the work or provide the service is called lessor; the person who acquires the use of the thing or the rights to the work or service, which he undertakes to pay, is called lessee.

**Article 1,547.** If the performance of a verbal lease contract should have begun without evidence of the agreed price, the lessee shall return to the lessor the thing subject to the lease, paying the regulated price for the time during which he has enjoyed it.

**Article 1,548.** Parents or guardians may not lease the property of the minors or incapacitated persons, and administrators without a special power of attorney may not lease property for a term exceeding six years.

**Article 1,549.** Leases of immovable property which are not duly registered in the Property Registry shall not be effective against third parties.

**Article 1,550.** Where it is not expressly forbidden in the contract to lease things, the lessee may sublease the thing subject to the lease in its entirety or in part, without prejudice to his liability for the performance of the contract against the lessor.

**Article 1,551.** Without prejudice to his obligation to the sub lessor, the sub lessee shall be obliged to perform in favour of the lessor all acts relating to the use and conservation of the thing subject to the lease in the manner agreed between the lessor and the lessee.

**Article 1,552.** The sub lessee shall also have an obligation towards the lessor to pay the amount of the price agreed in the sublease which may be owed at the time of the demand for payment, and any advance payments shall be deemed not to have been made, unless they have been verified according to local custom.

**Article 1,553.** The provisions contained in the title regulating the sale and purchase concerning warranty shall apply to the lease contract.

In cases where the parties are obliged to return the price, such price shall be reduced proportionally to the time during which the lessee enjoyed the use of the thing.

#### SECTION 2ª

##### *On the rights and obligations of the lessor and of the lessee*

**Article 1,554.** The lessor is obliged:

- 1.** To deliver to the lessee the thing constituting the subject matter of the contract.
- 2.** To perform therein during the lease any repairs required to preserve it in a condition to serve for the use to which it has been destined.
- 3.** To maintain the lessee in the peaceful enjoyment of the lease for the whole term of the contract.

**Article 1,555.** The lessee is obliged:

- 1.** To pay the price of the lease in the agreed terms.
- 2.** To use the thing subject to the lease as an orderly *paterfamilias*, to use give it the agreed use; and, in the absence of agreement, the use which is inferred from the nature of the thing subject to the lease according to local custom.
- 3.** To pay any expenses arisen as a result of raising the contract to public deed.

**Article 1,556.** If the lessor or the lessee should fail to comply with the obligations expressed in the preceding articles, they may request rescission of the contract and claim for damages, or only the latter, leaving the contract to subsist.

**Article 1,557.** The lessor may not alter the form of the thing subject to the lease.

**Article 1,558.** If, during the lease, it should be necessary to make any urgent repair in the thing subject to the lease which cannot be delayed until expiration thereof, the lessee shall have the obligation to tolerate the works, even if they are very annoying to him, and even if he should be deprived of a part of the property during their performance.

If the repair should last longer than forty days, the price of the lease must be reduced proportionally to the time and the part of the property of which the lessee has been deprived.

If the nature of the works is such that it renders uninhabitable the part which the lessee and his family need to live in, the latter may rescind the contract.

**Article 1,559.** The lessee is obliged to make the owner aware, within as brief a period as possible, of any usurpation or harmful development performed or openly prepared by another in respect of the thing subject to the lease.

He is also obliged to make the owner aware, with the same urgency, of the need for all repairs comprised in number 2 article 1554.

In both cases, the lessee shall be liable for any damages caused to the owner as a result of his negligence.

**Article 1,560.** The lessor shall not be liable for a mere de facto disturbance caused by a third party in the use of the property subject to the lease; however, the lessee shall have a direct remedy against the disturber.

No de facto disturbance shall exist where the third party, be it the Administration or an individual, has acted pursuant to a right to which it is entitled.

**Article 1,561.** The lessee must return the property, upon expiration of the lease, as he received it, save for anything which may have perished or may have become impaired by usual wear and tear or for an unavoidable cause.

**Article 1,562.** In the absence of a description of the condition of the property at the time of entering into the lease, the law presumes that the lessee received it in good condition, unless evidence to the contrary is provided.

**Article 1,563.** The lessee is liable for the impairment or loss of the thing subject to the lease, unless he should prove that it has been caused without fault on his part.

**Article 1,564.** The lessee is liable for impairment caused by the persons in his household.

**Article 1,565.** If the lease was entered into for a specific period, it shall expire on the date provided without the need for prior notice.

**Article 1,566.** If, upon expiration of the contract, the lessee should remain in the enjoyment of the thing subject of the lease for fifteen with the lessor's acquiescence, the lease shall be deemed implicitly renewed for the period provided in articles 1577 and 1581, unless a prior notice should have been given.

**Article 1,567.** In the event of implied renewal, any obligations entered into by a third party to secure the principal contract shall cease in respect of it.

**Article 1,568.** In the event of loss of the thing subject to the lease or if any of the contracting parties should fail to comply with the provisions of the lease, the provisions of articles 1182 and 1183 and 1101 and 1124 shall respectively apply.

**Article 1,569.** The lessor may judicially evict the lessee on any of the following grounds:

1. Expiration of the agreed term or of the periods provided as term of leases in articles 1577 and 1581.
2. Failure to pay the agreed price.
3. Infringement of any of the conditions provided in the contract.
4. Destining the thing subject to the lease to uses or services which have not been agreed to and which may impair it; or not to submit to the provisions of number 2 article 1555 in the use thereof.

**Article 1,570.** Outside the cases mentioned in the preceding article, the lessee shall be entitled to benefit from the terms provided in articles 1577 and 1581.

**Article 1,571.** The purchaser of a leased real property shall be entitled to terminate the lease currently in force upon execution of the sale, save as otherwise agreed, and except for the provisions of the Mortgage Law.

If the purchaser should exercise this right, the lessee may request to be allowed to collect the fruits of the harvest corresponding to the current agricultural year, and to be compensated by the seller for any damages caused.

**Article 1,572.** The purchaser who has agreed to a contractual repurchase covenant may not exercise his power to evict the lessee until the period provided to exercise the right of repurchase.

**Article 1,573.** The lessee shall have the same right granted to the usufructuary in respect of useful and voluntary improvements.

**Article 1,574.** In the absence of an agreement on the place and time to pay the lease, the provisions of article 1171 shall apply in respect of the place; and local custom in respect of the time.

## SECTION 3<sup>a</sup>

### *Special provisions for leases of rural properties*

**Article 1,575.** The lessee shall not be entitled to a reduction in the rent on account of the barrenness of the leased land or loss of fruits arisen as a result of ordinary fortuitous events; but he shall be entitled to such reduction in the event of loss of more than half of the fruits as a result of extraordinary and unforeseen fortuitous events, always unless otherwise agreed pursuant to special covenant.

Extraordinary fortuitous events shall be deemed to mean: Fire, war, plague, unusual flooding, locusts, earthquake or other equally unaccustomed events, which the contracting parties should have been unable to foresee reasonably.

**Article 1,576.** The lessee shall also not be entitled to a reduction in the rent when the fruits should have been lost after being separated from their root or trunk.



### **Article 1,577**

The lease of a rural plot of land, where its term should not have been set, shall be deemed to have been made for the whole time necessary to harvest the fruits given by the whole property in a year or those which it may produce in a single time, even if it takes two or more years to obtain.

The lease of arable land divided into two or more strips shall be deemed to have been entered into for as many years as there are strips.

**Article 1,578.** The outgoing lessee must allow the incoming lessee use of the premises and other means necessary for the preparation work for the following year; reciprocally, the incoming lessee has the obligation to allow the outgoing lessee to harvest and benefit from the fruits, all in accordance with local custom.

**Article 1,579.** Sharecropping leases of arable land, breeding livestock or manufacturing and industrial undertakings shall be governed by the provisions relating to the partnership agreement and by the provisions agreed to by the parties and, in the absence thereof, by local custom.

## SECTION 4<sup>a</sup>

### *Special provisions for the lease of urban properties*

**Article 1,580.** In the absence of a special covenant, local custom shall apply as regards which repairs on urban properties must be borne by the owner. In case of doubt, they shall be deemed to be borne by the latter.

**Article 1,581.** If no term should have been set for the lease, it shall be deemed to have been entered into from year to year where an annual lease has been set, from month to month where the lease is monthly, from day to day where it is daily.

In any event the lease shall cease upon expiration of the term, without the need for a special notice.

**Article 1,582.** Where the lessor of a house, or part of it, destined for habitation by family, or a shop, or warehouse, or industrial establishment, should also lease the furniture, the lease of the latter shall be deemed to be for the same term as the lease relating to the leased property.

## CHAPTER 3<sup>o</sup>

### *On the lease of works and services*

## SECTION ONE

### *On services by servants and salaried employees*

**Article 1,583.** These kinds of services may be hired without a fixed term, for a certain time, or for a specific work. A lease entered into for life is null and void.

**Article 1,584.** The domestic servant destined to the personal service of his master, or his family, for a specific time, may resign and be dismissed prior to expiration of the term; but if the master should dismiss the servant without just cause, he must compensate him by paying him the salary due and fifteen more days' salary.

The master shall be believed, unless evidence to the contrary is provided:

- 1.** As concerns the amount of the salary of the domestic servant.
- 2.** As relates to the payment of salaries accrued in the current year.

**Article 1,585.** As well as the provisions of the preceding articles, the provisions of special laws and regulations shall be observed as regards masters and servants.

**Article 1,586.** Agricultural and manual workers, artisans and other salaried employees for a specific term for a specific work cannot resign or be dismissed prior to the performance of the contract, without just cause.

**Article 1,587.** The dismissal of servants, manual workers, artisans and other salaried employees mentioned in the preceding articles shall entitle the master to dispossess them of the tools and the buildings they should occupy by reason of their position.

## SECTION 2<sup>a</sup>

### *On works for a lump sum*

**Article 1,588.** The execution of building works may be hired under the agreement that the executor must only provide his work or industry, or also supply materials.

**Article 1,589.** If the person who contracted the building works undertook to supply the materials, he must suffer their loss in the event that the building works should be destroyed before delivery, unless he should have delayed its acceptance.

**Article 1,590.** The party who has undertaken to provide only his work or industry may not claim any stipend if the work is destroyed prior to delivery, unless the other party should have delayed its acceptance, or the destruction has resulted from the inferior quality of the materials, provided that the former duly warned the owner of this circumstance.

**Article 1,591.** The contractor of a building which should collapse as a result of defects in its construction shall be liable for any damages if such collapse should take place within ten years, counting from completion of construction; the architect who manages the building works shall have the same liability for the same term if the collapse should result from a defect in the land or from his management.  
If the cause should be the fault of the contractor, the action to claim for damages shall last fifteen years.

**Article 1,592.** A person who undertakes to perform the work by pieces or measurements, may require the owner to receive it in parts and to pay in proportion. The part which has been paid shall be presumed to have been approved and accepted.

**Article 1,593.** The architect or contractor who undertakes to perform the construction of a building or other building works for a lump sum based on a plan agreed with the owner of the land may not request an increase in the price even in the event of increase in the price of wages or materials; he may, however, request such increase where any change has been made to the plan which involves an increase in the scope of the building works, provided that the owner has given his authorisation.

**Article 1,594.** The owner may desist, at his sole discretion, from the construction of the works even after they have begun, compensating the contractor for all his expenses, work and for the profit which the owner may have obtained .

**Article 1,595.** Where a certain work should have been entrusted to a person as a result of his personal qualities, the contract shall be rescinded by the death of such person.

In this event, the owner must pay the builder's heirs, in proportion to the agreed price, the value of the part of the work which was performed and the materials which were prepared, provided that any profit should result from these materials.

The same shall be understood if the person who contracted the work cannot finish it for any reason beyond his will.

**Article 1,596.** The contractor is liable for the work performed by any persons hired to perform it.

**Article 1,597.** Persons who provide work and materials for building works which have been agreed for a lump sum by the contractor shall have no action against the owner thereof in excess of the amount owed by the owner to the contractor at the time of making the claim.

**Article 1,598.** Where it should be agreed that the building works are to be performed to the owner's satisfaction, in the absence of acceptance, the owner's approval shall be deemed subject to the relevant expert's opinion. If the person who is to approve the works is a third party, the parties shall abide by his decision.

**Article 1,599.** Unless otherwise provided by covenant or custom, the price of the works must be paid upon delivery thereof.

**Article 1,600.** The person who has performed works in a movable thing shall be entitled to retain it as a pledge until he is paid.

## SECTION 3<sup>a</sup>

### *On transportation by water and land of both persons and things*

**Article 1,601.** Carriers of shipments by land or water shall be subject to the same obligations set forth in articles 1783 and 1784 in respect of innkeepers, as relates to the care and conservation of the things entrusted to them. The provisions of this article shall be understood without prejudice to the provisions of the Commercial Code in respect of transportation by sea and land.

**Article 1,602.** Likewise, carriers shall be liable for the loss and average of the things received, unless they should prove that the loss or average has resulted from a fortuitous event or from force majeure.

**Article 1,603.** The provisions of these articles shall be understood without prejudice to the provisions of special statutes and regulations.

## TITLE VII

### **On ground rents (censos)**

#### CHAPTER ONE

##### *General provisions*

**Article 1,604.** A ground rent is constituted when certain immovable properties are earmarked for the payment of an annual rent or annuity as remuneration for a capital sum received in cash, or for the full or limited ownership transferred in respect of the same properties.

**Article 1,605.** The ground rent shall be emphyteutic where one person assigns in favour of the other useful ownership of a property, and reserves for himself direct ownership thereof and the right to receive from the emphyteutic lessee an annual pension in recognition of such ownership.

##### **Article 1,606**

The ground rent shall be consignative where the lessee subjects an immovable property owned by him to the encumbrance of paying a rent or annuity, which he undertakes to pay the lessor in exchange for the capital sum received from the latter in cash.

**Article 1,607.** The ground rent shall be reservative where a person assigns to the other full ownership over an immovable property, reserving for himself the right to receive from the same immovable property an annuity payable by the lessee.

**Article 1,608.** It is inherent to the nature of ground rents that the assignment of the capital sum or the immovable property be for perpetuity or for an indefinite period; however, the lessee may redeem the ground rent at his discretion, even in spite of any covenant to the contrary; this provision shall apply to all existing ground rents.

The parties may, however, agree that redemption of the ground rent may not take place during the life of the lessor or of a specific person, or that it may not be redeemed in a certain number of years, which shall not be greater than twenty for consignative ground rents or sixty for reservative and emphyteutic ground rents.

**Article 1,609.** In order to perform such redemption, the lessee must give one year's notice thereof to the lessor, or pay an annuity in advance.

**Article 1,610.** Ground rents may not be redeemed in part unless expressly agreed.

Neither may they be redeemed against the will of the lessor if the lessee is not up to date in the payment of any annuities.

**Article 1,611.** Redemption of ground rents created prior to the enactment of the present Code, if the relevant capital sum should be unknown, shall be governed by the amount resulting from capitalising the annuity at 3 per cent.

If the annuity should be paid in fruits, the latter shall be estimated at their average price in the last five years in order to calculate the relevant capital sum.

The provisions of this article shall not apply to *foros*, *subforos*, surface rights and any other similar encumbrances in respect of which the redemption of ownership rights is regulated by a special statute.

**Article 1,612.** Any expenses arisen upon redemption and release of the ground rent shall be borne by the lessee, save for any expenses caused by reckless opposition thereto, in the opinion of the Courts.

**Article 1,613.** The annuity or rent in ground rents shall be determined by the parties upon execution of the contract.

It may consist of money or fruits.

**Article 1,614.** The annuities shall be paid within the agreed periods and, in the absence of agreement, if they should consist of monies, yearly in arrears counting from the date of the contract, and if they consist of fruits, upon completion of the respective harvest.

**Article 1,615.** If the contract should not have designated the place where the annuities are to be paid, this obligation shall be met at the location of the property encumbered by the ground rent, provided that the lessor or his attorney should be domiciled within the same municipality. Otherwise, if the lessee's domicile should be located therein, payment shall take place in the latter's domicile.

**Article 1,616.** The lessor, at the time of delivering any annuity, may make the lessee to provide a receipt evidencing payment thereof.

**Article 1,617.** Properties encumbered with ground rent may be transferred as gifts or in exchange for valuable consideration, and also the right to receive the annuity.

**Article 1,618.** Properties encumbered with ground rent may not be divided between two or more persons without the lessor's express consent, even if they are acquired by inheritance.

If the lessor allows the division, the part of the ground rent which shall encumber each share shall be designated with his consent, and as many ground rents shall be created as portions into which the property is divided.

**Article 1,619.** In the event of an attempt to adjudicate the property encumbered by a ground rent to several heirs where the lessor should fail to give his consent to the division, the property shall be auctioned between them.

In the absence of an agreement or if none of the interested parties should bid the appraisal price, the property shall be sold with the encumbrance, and the price thereof shall be divided among the heirs.

**Article 1,620.** Both the capital sum and the annuities in ground rents are capable of prescription in accordance with the provisions of title XVIII of this book.

**Article 1,621.** Notwithstanding the provisions of article 1,110, payment of two consecutive annuities shall be required to presume all of the foregoing annuities to have been paid.

**Article 1,622.** The lessee is obliged to pay any contributions and other taxes affecting the property subject to the ground rent.

The lessee, upon paying the annuity, may discount therefrom the part of such taxes corresponding to the lessor.

**Article 1,623.** Ground rents give rise to an action *in rem* over the encumbered property. As well as the action *in rem*, the lessee may exercise a personal remedy to claim payment of any annuities which are in arrears and any damages and interest, if applicable.

**Article 1,624.** The lessee may not request the release or reduction of the annuity as a result of accidental barrenness of the property or loss of its fruits.

**Article 1,625.** If the property encumbered by a ground rent should be fully lost or rendered useless, the ground rent shall be extinguished and payment of the annuity shall cease.

If it should be lost only in part, the lessee shall not be exempted from paying the annuity, unless he should prefer to relinquish the property in favour of the lessor.

If there should have been negligence on the part of the lessee, he shall be obliged in both cases to pay damages.

**Article 1,626.** In the case of the first paragraph of the preceding article, if the property should be insured, the value of the insurance shall be earmarked to the payment of the capital sum of the ground rent and any annuities due and payable, unless the lessee should prefer to invest it in rebuilding the property, in which case the ground rent shall be reinstated with full force and effect, including payment of any unpaid annuities. The lessor may require the lessee to ensure the investment of the sum of the insurance in rebuilding the property.

**Article 1,627.** If the property encumbered by a ground rent should be expropriated on grounds of public utility, the price thereof shall be earmarked for the payment of the capital sum of the ground rent and any annuities due and payable, and the ground rent shall be extinguished.

The preceding provision shall also apply to the case where the expropriation should only affect one part of the property, when the price obtained should be sufficient to cover the capital sum of the ground rent.

If it should not be sufficient, the ground rent shall continue to encumber the rest of the property, provided that the price thereof should be sufficient to cover the capital sum of the ground rent plus 25 per cent.

Otherwise, the lessee shall be obliged to replace the expropriated portion with another guarantee, or to redeem the ground rent, at his discretion, except for the provisions of article 1,631 relating to emphyteutic ground rents.

## CHAPTER 2°

### *On emphyteutic ground rent*

#### SECTION ONE

##### *Provisions relating to emphyteusis*

**Article 1,628.** The emphyteutic ground rent may only be created in respect of immovable property and pursuant to public deed.

**Article 1,629.** Upon creation of the emphyteutic ground rent, the contract shall determine the value of the property and the annuity to be paid, under penalty of nullity.

**Article 1,630.** Where the annuity should consist of a specific amount of fruits, the species and quality thereof shall be set forth in the contract.

If it should consist of a proportional share of the fruits obtained by the property, in the absence of an express covenant relating to the intervention of the direct owner, the emphyteutic lessee must give the former or his representative prior notice of the day on which he proposes to begin harvesting each kind of fruit, so that the former may, by himself or through his representative, be present at all such operations until he receives the part corresponding to him.

After giving notice, the emphyteutic lessee may proceed with the harvest, even if neither the direct owner or his representative or controller should be present.

**Article 1,631.** In the event of expropriation, the provisions of the first paragraph article 1,627 shall apply if the whole property is expropriated.

In the event of expropriation of only one part of the property, the price obtained shall be distributed between the direct owner and the useful owner, and the former shall receive the part of the capital sum of the ground rent proportionally corresponding to the expropriated part, according to the value given to the whole property upon creation of the ground rent, or the value which has served as redemption price, and the rest shall correspond to the emphyteutic lessee.

In this case, the ground rent shall continue in respect of the remainder of the property, with the corresponding reduction of the capital sum and the annuities, unless the emphyteutic lessee should opt for total redemption thereof or should choose to relinquish the property in favour of the direct owner.

Where, in accordance with the contract, any *laudemium* should be payable, the direct owner shall receive any amount corresponding to him in this respect only from the part of the price belonging to the emphyteutic lessee.

**Article 1,632.** The emphyteutic lessee shall appropriate the produce of the property and any accessions thereof.

He shall have the same rights to any treasures and mines discovered in the property constituting the subject matter of the emphyteutic ground rent which would correspond to the owner.

**Article 1,633.** The emphyteutic lessee may dispose of the emphyteutic property and any accessions thereof both pursuant to acts *inter vivos* and by last will and testament, except for the rights of the direct owner and subject to the provisions of the following articles. ,

**Article 1,634.** Where the annuity should consist of a proportional share of the fruits of the emphyteutic property, no easement or other lien may be created which reduces the products without the direct owner's express consent.

**Article 1,635.** The emphyteutic lessee may freely give or swap the property, giving notice thereof to the direct owner.

**Article 1,636.** The direct and the useful owner shall reciprocally hold first refusal and redemption rights in the event of sale or dation in payment of their respective ownership rights over the emphyteutic property. This provision shall not apply to disposals for valuable consideration on grounds of public utility (*eminent domain*).

**Article 1,637.** For the purposes of the preceding article, any person purporting to dispose of the ownership of an emphyteutic property must give notice thereof to the other co-owner, stating the final price offered to him or at which he purports to dispose of his ownership rights.

Within twenty days of such notice, the co-owner may exercise his right of first refusal paying the aforementioned price. If he should fail to do so, he shall forfeit such right and the disposal may proceed.

**Article 1,638.** Where the direct owner, or, as the case may be, the emphyteutic lessee, should not have exercised the right of first refusal mentioned in the preceding article, he may exercise his right of redemption to acquire the property for the price at which it is sold.

In such case, the right of redemption must be exercised within nine days of execution of the public deed of sale. If such sale should be concealed, this period shall begin to count from registration thereof with the Property Registry. Concealment shall be presumed to exist where the public deed should not be submitted to the Registry within nine days following execution thereof.

Irrespective of such presumption, concealment may be proven by other legal means.

**Article 1,639.** If such disposal should have taken place without the prior notice mentioned in article 1,637, the direct owner and, as the case may be, the useful owner, may exercise their right of redemption at all times until one year should elapse counting from registration of the disposal in the Property Registry.

**Article 1,640.** In judicial sales of emphyteutic properties, the direct and the useful owner, in their respective instances, may exercise the right of first refusal within the period provided in the relevant court order to place the final bid, paying the price which serves as rate for the auction, and the right of redemption within nine business days following execution of the relevant public deed.

In this last case the prior notice required pursuant to article 1,637 shall not be necessary.

**Article 1,641.** Where several properties subject to the same ground rent should have been disposed of, neither the right of first refusal nor the right of redemption may be exercised only in respect of some and excluding the others.

**Article 1,642.** Where the direct or useful ownership should belong *pro indiviso* to several persons, each of them may exercise the right of first refusal subject to the rules set forth for co-owners, and the direct owner shall be preferred among them, in the event of disposal of part of the useful ownership; or the emphyteutic lessee, if the disposal refers to the direct ownership.

**Article 1,643.** If the emphyteutic lessee should be disturbed in his rights by a third party disputing direct ownership or challenging the validity of the emphyteusis, he may not claim compensation from the direct owner unless he summons him to the dispossession proceedings according to the provisions of article 1,481.

**Article 1,644.** In disposals of emphyteutic properties for valuable consideration, *laudemium* shall only be payable to the direct owner where it has been expressly provided in the emphyteusis contract.

If no fixed sum should have been set by covenant, this shall consist of 2 per cent of the disposal price.

For emphyteutic leases prior to the enactment of the present Code subject to the payment of *laudemium*, even if not expressly agreed, the provision shall continue as accustomed, but shall not exceed 2 per cent of the disposal price unless a greater sum should have been expressly agreed.

**Article 1,645.** The obligation to pay *laudemium* shall be borne by the acquirer, save as otherwise agreed.

**Article 1,646.** Where the emphyteutic lessee should have obtained from the direct owner an authorisation to perform the disposal, or should have given him prior notice thereof as provided in article 1,637, the direct owner may only claim, as the case may be, payment of the *laudemium* within one year following the date of registration of the public deed with the Property Registry. Outside such cases, the action shall be subject to ordinary statute of limitations.

**Article 1,647.** Every twenty nine years the direct owner may request the acknowledgement of his right by the possessor of the emphyteutic property. Acknowledgement expenses shall be borne by the emphyteutic lessee, who may not be required to perform anything else in this respect.

**Article 1,648.** The property shall be forfeited and the direct owner may demand restitution thereof:

**1.** By failure to pay the annuity for three consecutive years.

**2.** If the emphyteutic lessee does not fulfil the condition provided in the contract or should seriously impair the property.

**Article 1,649.** In the first case of the preceding article, the direct owner must, in order to request such forfeiture, demand payment from the emphyteutic lessee judicially or via a Notary Public; if the lessee should fail to pay within thirty days following the demand, the former shall be free to exercise his rights.

**Article 1,650.** The emphyteutic lessee may be released from such forfeiture in any event by redeeming the ground rent and paying all annuities due and payable within thirty days following the demand for payment or the summons pursuant to the claim.

The creditors of the emphyteutic lessee may exercise the same right within thirty days following recovery of full ownership by the direct owner.

**Article 1,651.** Redemption of the emphyteutic ground rent shall consist of delivery in a lump sum in cash to the direct owner of the capital sum determined as the value of the property at the time of creating the ground rent, and no other undertaking may be required unless it has been set forth in the contract.

**Article 1,652.** In the event of forfeiture or rescission of the emphyteusis contract on any grounds, the direct owner must pay for any improvements which have increased the value of the property, provided that such increase should be subsisting at the time of returning the property.

If the property should have suffered any impairments as a result of the fault or negligence of the emphyteutic lessee, these may be set off against any improvements and, to the extent that the latter are insufficient, the emphyteutic lessee shall have a personal obligation to pay them; the same shall apply to annuities due and payable which have not become statute barred.

**Article 1,653.** In the absence of testamentary heirs, descendants, ascendants, surviving spouse or relatives within the sixth degree of the last emphyteutic lessee, the property shall return to the direct owner in its current condition, unless otherwise provided by the emphyteutic lessee.



**Article 1,654.** The sub-emphyteusis contract shall hereafter be suppressed.

## SECTION 2<sup>a</sup>

### *On foros and other contracts analogous to emphyteusis*

**Article 1,655.** *Foros* and any other analogous encumbrances established after the enactment of the present Code, for an indefinite term, shall be governed by the provisions set forth for emphyteutic ground rents in the preceding section.

If they should be temporary or for a limited term, they shall be deemed to be leases, and shall be governed by the provisions relating to such contract.

**Article 1,656.** The contract whereby the owner of the land assigns the use thereof to plant vines for the life of the first stock, and the assignee pays the owner an annual rent or annuity in fruits or in cash shall be governed by the following rules:

- 1.** It shall be deemed to be extinguished fifty years from its granting, where no other term should have been expressly set.
- 2.** It shall also be extinguished as a result of the death of the first stock, or if two thirds of any planted stock should become barren.
- 3.** The assignee or colonist may perform cuttings or scions during the term of the contract.
- 4.** This contract shall not forfeit its character by the power to make other plantings in the land assigned, provided that the main purpose thereof is the planting of vines.
- 5.** The assignee may freely transfer his right for valuable consideration or as a gift, but without the ability to divide the use of the property, save with the owner's express consent.
- 6.** In disposals for valuable consideration, the assignor and the assignee shall reciprocally hold rights of first refusal and redemption in accordance with the provisions applicable to emphyteusis, and with the obligation to give each other prior notice as provided in article 1,637.
- 7.** The colonist or assignee may resign or return the property to the assignor when he deems convenient, paying any impairments which were caused by his fault.
- 8.** The assignee shall not be entitled to appropriate any improvements made at the time of expiration of the contract, provided that they should have been necessary or should have been performed in compliance with the contract.

As relates to useful and voluntary improvements, he shall not be entitled to receive compensation for them either, unless he should have performed them with the written consent of the owner of the land, wherein the latter should have undertaken to pay them. In this case, such improvements shall be paid at their value upon returning the property.

**9.** The assignor may evict the assignee upon expiration of the term of the contract.

**10.** Where, after expiration of the fifty-year term or the term expressly provided by the interested parties, the assignee should continue to use and benefit from the property with the assignor's implied consent, the former may not be evicted without prior notice, to be given one year in advance of termination of the contract.

## CHAPTER 3<sup>o</sup>

### *On consignative ground rent*

**Article 1,657.** In the event that payment of the annuity in a consignative ground rent should be agreed to be made in fruits, the parties must set the species, amount and quality thereof, which may not consist of a proportional share in the fruits produced by the property constituting the subject matter of the ground rent.

**Article 1,658.** Redemption of the consignative ground rent shall consist of returning to the lessor in a lump sum in cash, the capital sum delivered by the latter to constitute the ground rent.

**Article 1,659.** In the event of initiation of an action *in rem* against the property constituting the subject matter of the ground rent to claim payment of any annuities, if the remaining value of the property should not be enough to cover the capital sum of the ground rent plus 25 per cent, the lessor may compel the lessee, at the latter's discretion, to redeem the ground rent or to complete the guaranty, or to relinquish the remainder of the property in favour of the former.

**Article 1,660.** The lessor may also exercise the right set forth in the preceding article in the remaining cases where the value of the property should be insufficient to cover the capital of the annuity lease plus 25 per cent, in the event of any of the following circumstances:

1. Reduction in the value of the property as a result of the lessee's fault or negligence.  
In such case the latter shall also be liable for any damages.
2. Failure to pay the annuity on two consecutive years.
3. The declared civil or commercial bankruptcy or insolvency of the lessee.

## CHAPTER 4°

### *On reservative ground rent*

**Article 1,661.** No reservative ground rent may be validly constituted unless it is preceded by an appraisal of the property by an estimate agreed between the parties or a reasonable price determined by experts.

**Article 1,662.** Redemption of this ground rent shall take place by the lessee's delivering to the lessor, in a lump sum in cash, the capital sum determined in accordance with the preceding article.

**Article 1,663.** The provisions of article 1,657 shall apply to reservative ground rents.

**Article 1,664.** In the cases provided in articles 1,659 and 1,660, the debtor in a reservative ground rent may only be compelled to redeem the ground rent or to relinquish the property in favour of the lessor.

## TITLE VIII

### **On partnerships**

#### CHAPTER ONE

##### *General provisions*

**Article 1,665.** A partnership is a contract whereby two or more persons undertake to put in common money, property or industry, with the intention of dividing any gains between them.

**Article 1,666.** The partnership must have a lawful purpose and be established for the common interest of the partners.

In the event of dissolution of an unlawful partnership, any gains obtained shall be destined to charitable institutions of the partnership's domicile and, in the absence thereof, those of the province.

**Article 1,667.** A civil partnership may be incorporated in any form, unless immovable properties or rights *in rem* should be contributed thereto, in which case a public deed shall be required.

**Article 1,668.** The partnership contract shall be null and void whenever immovable properties are contributed thereto, unless an inventory thereof is drafted and signed by the parties, which must be attached to the relevant public deed.

**Article 1,669.** Partnerships whose covenants are kept secret between the partners and those wherein each partner contracts in his own name with third parties shall have no legal personality. These kinds of partnerships shall be governed by the provisions regulating joint ownership.

**Article 1,670.** Civil partnerships may hold all forms recognised by the Commercial Code depending on their corporate purpose. In such case, the provisions thereof shall apply to the extent that they do not oppose the provisions of the present Code.

**Article 1,671.** A partnership is either universal or specific.

**Article 1,672.** A universal partnership may affect all existing property or all gains.

**Article 1,673.** A partnership affecting all existing property is the one whereby the parties put in common all property currently belonging to them, with the intention of dividing it between them, and all gains acquired as a result thereof.

**Article 1,674.** In a universal partnership of all existing property, any property which used to belong to each partner and all gains acquired as a result thereof shall become the common property of them all. The partners may also agree to share reciprocally any other gains; but the partnership may not comprise property which the partners may subsequently acquire pursuant to inheritance, legacy or gift, but may include the fruits thereof.

**Article 1,675.** The universal partnership of gains comprises everything which the partners may acquire as a result of their industry or work during the term of the partnership. Movable or immovable property held by each partner at the time of execution of the contract shall continue to be the private property of each of them, and the partnership shall only acquire the usufruct thereof.

**Article 1,676.** A universal partnership contract entered into without specification of the kind of partnership shall only create a universal partnership of gains.

**Article 1,677.** Persons to whom it is forbidden to reciprocally grant each other any gift or advantage may not create a universal partnership between them.

**Article 1,678.** The purpose of a specific partnership is only specific things, the use thereof or their fruits, or a specific undertaking, or the exercise of a profession or Article

## CHAPTER 2°

### *On the obligations of the partners*

#### SECTION ONE

##### *On the obligations of the partners toward each other*

**Article 1,679.** The partnership shall begin from the very moment of entering into the contract, unless otherwise agreed.

**Article 1,680.** The partnership shall last the agreed term; in the absence of an agreement, for the term of the business serving as exclusive purpose of the partnership, if the former should have a limited duration as a result of its nature; in any other case, for the whole life of the partners, save for the power reserved in article 1,700 and for the provisions of 1,704.

**Article 1,681.** Each partner shall owe the partnership what he has undertaken to contribute to it. He shall also be liable for dispossession of any certain and specific things contributed to the partnership in the same cases and in the same manner as the seller vis-à-vis the purchaser.

**Article 1,682.** The partner who has undertaken to contribute a sum of money and has failed to provide it shall owe by operation of law the interest thereon from the date on which he ought to have provided it, without prejudice to his liability for any damages caused.

The same shall apply in respect of any sums taken from the partnership's account, and interest shall be payable from the date on which he took them for his personal benefit.

**Article 1,683.** The industrial partner shall owe the partnership any gains obtained in the branch of industry constituting the purpose thereof.

**Article 1,684.** Where a partner authorised to administer the partnership should collect an amount due and payable to him on his own behalf, from a person who also owed the partnership another amount which was also due and payable, the amount collected must be attributed to both credits in proportion to their respective amounts, even if he should have issued a receipt only on account of his own assets; however, if he should have issued a receipt on account of the partnership's assets, the whole amount thereof shall be attributed thereto.

The provisions of this article shall be understood without prejudice to the debtor's right to exercise the power granted pursuant to article 1,172, in the sole event that the partner's personal credit should be more burdensome to him.

**Article 1,685.** The partner who has received his share in a credit held against the partnership without the other partners having received their share shall be obliged to contribute the amount received to the partnership's assets if the debtor should later become insolvent, even if he should have issued a receipt only for his share of the credit.

**Article 1,686.** Any partner shall be liable to the partnership for any damages suffered by the latter by his fault, and may not set off such damages against any benefits obtained from his industry.

**Article 1,687.** The risk of specific and determined non-fungible things contributed to the partnership whereby only the use and fruits thereof are to be common property shall be borne by the partner who is their owner. If the things contributed should be fungible, or if they cannot be stored without impairment thereof, or if they should have been contributed in order to be sold, the risk shall be borne by the partnership. The risk of any things contributed including an appraisal thereof in the relevant inventory shall also be borne by the partnership, and in this case any claim shall be limited to their appraisal price.

**Article 1,688.** The partnership shall be liable to any partner for any amounts disbursed by the latter on behalf of the former plus applicable interest; it shall also be liable for any obligations undertaken in good faith by the partner on corporate business, and for the risks which are inseparable from the management of the partnership.

**Article 1,689.** Gains and losses shall be distributed as agreed. If only the share of each partner in any gains should have been agreed, the same share shall apply for losses.

In the absence of an agreement, the part of each partner in gains and losses must be proportional to his contribution. The share of the partner who only contributes his industry shall be equal to that of the partner who has contributed the least. If, as well as his industry, he should also have contributed some capital, he shall also receive the proportional share corresponding thereto.

**Article 1,690.** If the partners should have agreed to entrust to a third party the designation of the share corresponding to each partner in any gains and losses, such designation may only be challenged in the event that it should be manifestly inequitable. In no event may such decision be challenged by a partner who has begun to enforce the third party's decision, or who has failed to challenge it within three months counting from the time he became aware of it.

Designation of gains and losses may not be entrusted to one of the partners.

**Article 1,691.** An agreement excluding one or more partners from any share in gains or losses shall be null and void.

Only the industrial partner may be released from liability for any losses.

**Article 1,692.** The partner appointed as director in the partnership contract may perform all acts of administration in spite of his partners' opposition, unless he should act in bad faith; his powers shall be irrevocable unless there are legitimate grounds for it.

A power of attorney granted after execution of the contract, where such contract should not include an agreement to confer it, may be revoked at any time.

**Article 1,693.** Where two or more partners should have been entrusted with the management of the partnership without determination of their duties, or without having expressed that the ones may not act without the others' consent, each of them may exercise all acts of administration separately; but any of them may object to the transactions performed by another before they are legally effective.

**Article 1,694.** In the event of stipulation that the managing partners cannot act without the others' consent, the consent of all of them shall be required for the validity of any acts, without the possibility of alleging absence or impossibility of any of them, save in the event of imminent danger of serious or irreparable harm to the partnership.

**Article 1,695.** In the absence of stipulations relating to the manner of administration, the following rules shall be observed:

- 1.** All partners shall be deemed to be attorneys, and whatever each of them performs by himself shall be binding on the partnership, but any of them may object to the transactions performed by the others before they become legally effective.
- 2.** Each partner may avail himself of the things which comprise the partnership's funds according to local custom, as long as he does not do so against the interests of the partnership, or in such a way that it prevents the use thereof to which his partners are entitled.
- 3.** Any partner may make the rest bear with him any expenses necessary for the conservation of common property.
- 4.** No partner may undertake any development of the partnership's immovable properties, even if he should allege that it is useful for the partnership.

**Article 1,696.** Each partner may by himself associate with a third party as regards his share; but the associate shall not become a member of the partnership without the partners' unanimous consent, even if the former should be a director.

## SECTION 2<sup>a</sup>

### *On the partners' obligations to third parties*

**Article 1,697.** The following shall be required to bind the partnership vis-à-vis a third party as a result of the acts of one of the partners:

1. For the partner to have acted as such, on behalf of the partnership.
2. For the partner to have the power to bind the partnership pursuant to an express or implied mandate.
3. For the partner to have acted within the limits provided in his power of attorney or mandate.

**Article 1,698.** The partners shall not be joint and severally bound by the debts of the partnership; and no partner may bind the rest as a result of an act undertaken by him personally unless they have conferred a power of attorney on him for such purpose.

The partnership shall not be bound in respect of a third party for acts performed by a partner in his own name or without the partnership's power of attorney; but it shall be bound vis-à-vis the partner to the extent that such acts have inured to its benefit.

The provisions of this article shall be understood without prejudice to the provisions of rule 1 of article 1,695.

**Article 1,699.** The creditors of the partnership shall be preferred over the each partner's creditors in respect of the property of the partnership. Without prejudice to this right, each partner's particular creditors may request the attachment and auctioning of the latter's share in the assets of the partnership.

## CHAPTER 3<sup>o</sup>

### *On the ways in which partnerships are extinguished*

**Article 1,700.** A partnership shall be extinguished:

1. Upon expiration of the term for which it was created.
2. Upon loss of the thing or termination of the business constituting its purpose.
3. As a result of the death, insolvency, incapacitation or declaration of prodigality of any of the partners, and in the event provided in article 1,699.
4. By the will of any of the partners, subject to the provisions of articles 1,705 and 1,707.

Partnerships mentioned in article 1,670 shall be excepted from the provisions of numbers 3 and 4 of this article in the cases where they are to survive in accordance with the Commercial Code.

**Article 1,701.** Where the specific thing which a partner should have promised to contribute to the partnership should perish prior to delivery thereof, its loss shall trigger the dissolution of the partnership.

The partnership shall also be dissolved in any event as a result of the loss of such thing where, the partner contributing it having reserved the ownership thereof, he should only have transferred the use or enjoyment thereof. However, the partnership shall not be dissolved as a result of the loss of the thing where such loss should take place after the partnership has acquired ownership thereof.

**Article 1,702.** A partnership created for a specific period may be extended with the consent of all partners. Such consent may be express or implied, and shall be evidenced by ordinary means.

**Article 1,703.** If the partnership should be extended after expiration of its term, a new partnership shall be deemed to have been created. If it should be extended prior to expiration of the term the original partnership shall continue.

**Article 1,704.** The agreement that, in the event of death of one of the partners the partnership shall continue between the surviving partners is valid. In such case, the deceased partner's heir shall only be entitled to have the partition performed, as of the date of the deceased's death; and he shall not participate in any subsequent rights and obligations save to the extent that they are a necessary result of acts undertaken prior to such date.

If the agreement provides that the partnership is to continue with the heir, it shall be enforced,, without prejudice to the provisions of number 4 article 1,700.

**Article 1,705.** Dissolution of the partnership at the will or pursuant to the resignation of one of the partners shall only take place where no term of the partnership should have been set or no term should result from the nature of the business.

For the resignation to be effective it must be given in good faith at the proper time; likewise it must be communicated to the other partners.

**Article 1,706.** A resignation shall be in bad faith where the resigning partner intends to appropriate for himself the profit which should have been common to all. In this case the resigning partner shall not be released vis-à-vis his partners, and the latter shall be entitled to exclude him from the partnership.

Resignation shall be deemed not to have been given in proper time where, things not being in order, the partnership should be interested in delaying its dissolution. In this case the partnership shall continue until the conclusion of any outstanding business.

**Article 1,707.** A partner cannot claim dissolution of a partnership which has been created for a specific term either pursuant to the provisions of the contract or to the nature of the business, unless he has just cause to do so, such as the breach by one of his partners of his obligations, or his becoming disqualified to conduct the business of the partnership or other similar grounds in the opinion of the Courts.

**Article 1,708.** Partition between the partners is governed by the rules applicable to estates, both as regards its form and the resulting obligations. The industrial partner cannot be adjudicated any share in the property provided, but only its fruits or profits, in accordance with the provisions of article 1,689, unless otherwise expressly agreed.

## TITLE IX

### On the mandate

#### CHAPTER ONE

##### *On the nature, form and kinds of mandate*

**Article 1,709.** Pursuant to the mandate contract one person undertakes to provide a service or to do something on account or on behalf of another.

**Article 1,710.** The mandate may be express or implied.

An express mandate may be executed pursuant to a public or private instrument, and even verbally.

Acceptance may also be express or implied, as deduced from the acts of the attorney.

**Article 1,711.** Save as otherwise agreed, the mandate shall be deemed to be gratuitous.

Notwithstanding the foregoing, if the attorney's occupation is the provision of services or the kind to which the mandate refers, the obligation to remunerate the mandate shall be presumed.

**Article 1,712.** The mandate is either general or special.  
The first comprises all of the principal's business.  
The second comprises one or more specific business transactions.

**Article 1,713.** The mandate, conceived in general terms, only comprises acts of administration.  
An express mandate shall be required to settle, dispose of, mortgage or perform any other act inherent to ownership.  
The power to settle shall not authorise the attorney to delegate in favour of arbitrators or amicable compounders.

**Article 1,714.** The attorney cannot exceed the limits of the mandate.

**Article 1,715.** The limits of the mandate shall not be deemed to have been exceeded if the mandate should be complied with in a manner which is more advantageous to the principal than the manner set forth by the latter.

**Article 1,716.** The emancipated minor may be an attorney, but the principal shall only be entitled to bring an action against him in accordance with the provisions regulating the obligations of minors.

**Article 1,717.** Where the attorney should act in his own name, the principal shall have no action against the persons with whom the attorney has entered into any contract, nor the latter against the principal.  
In this case, the attorney shall be directly bound vis-à-vis the person with whom he has contracted, as if the affair were a personal affair of his own.  
The case where the affair should relate to things owned by the principal shall be excepted from the foregoing.  
The provisions of this article shall be understood without prejudice to any actions between principal and attorney.

## CHAPTER 2°

### *On the attorney's obligations*

**Article 1,718.** By his acceptance, the attorney shall be obliged to perform the mandate and shall be liable for any damages caused to the principal if he should fail to perform it.  
He must also finish any business which should have been started prior to the death of the principal, if any danger should result from delay.

**Article 1,719.** The attorney must comply with the principal's instructions in the performance of the mandate.  
In the absence thereof, he shall do all that an orderly *paterfamilias* would do, attending to the nature of the business.

**Article 1,720.** Any attorney is obliged to give account of his transactions and to pay the principal any amounts received pursuant to the mandate, even if the amount received should not have been owed to the latter.

**Article 1,721.** The attorney may appoint a substitute if the principal has not forbidden it; but he shall be liable for his substitute's performance:

1. When he was not granted the power to appoint one.
2. When he was granted such power, but without designation of the specific person, and the appointee should have been notoriously incapable or insolvent.

The actions of the substitute appointed against the principal's prohibition shall be null and void.

**Article 1,722.** In the cases comprised in both numbers of the preceding article, the principal shall also be entitled to bring an action against the substitute.



**Article 1,723.** The liability of two or more attorneys, even if they were appointed simultaneously, is not joint and several unless otherwise provided.

**Article 1,724.** The attorney shall owe interest for any amounts applied to his own expenses from the date on which he did so, and for any amounts owed thereby after termination of the mandate, from the time when he should have incurred in default.

**Article 1,725.** The attorney acting as such shall not be personally liable to the party with whom he contracts except where he expressly undertakes to be liable or where he exceeds the limits of the mandate without making the other party sufficiently aware of his powers.

**Article 1,726.** The attorney is liable not just for wilful misconduct but also for negligence, which must be appreciated more or less rigorously by the Courts depending on whether the mandate was remunerated or not.

## CHAPTER 3°

### *On the principal's obligations*

**Article 1,727.** The principal must fulfil all obligations undertaken by the attorney within the limits of the mandate.

The principal shall not be bound insofar as the attorney has exceeded the mandate save where the principal should ratify such acts in an express or implied manner.

**Article 1,728.** The principal must advance the attorney, upon the latter's request, the amounts necessary to perform the mandate.

If the attorney should have advanced such amounts, the principal must reimburse them, even if the transaction has not been successful, provided that the attorney is not at fault.

Reimbursement shall comprise interest on the amounts advanced, counting from the date of the advance.

**Article 1,729.** The principal must also compensate the attorney for any damages caused thereto as a result of the performance of the mandate, without fault or imprudence on the part of the attorney.

**Article 1,730.** The attorney may retain as pledge the things which constitute the subject matter of the mandate until the principal should compensate and reimburse him as provided in the two preceding articles.

**Article 1,731.** If two or more persons have appointed an attorney for a common transaction, they shall be joint and severally liable to him for all purposes relating to the mandate.

## CHAPTER 4°

### *On the ways in which the mandate is terminated*

**Article 1,732.** The mandate ends:

1. By revocation thereof.
2. By resignation of the attorney.
3. By death, incapacitation, declaration of prodigality, bankruptcy or insolvency of the principal or the attorney.

**Article 1,733.** The principal may revoke the mandate at will, and compel the attorney to return the document in which the mandate is set forth.

**Article 1,734.** Where the mandate should have been issued to contract with specific persons, its revocation may not prejudice such persons unless they have been given notice thereof.

**Article 1,735.** The appointment of a new attorney for the same business transaction shall entail the revocation of the prior mandate from the date on which it was made known to the former attorney, save as provided in the preceding article.

**Article 1,736.** The attorney may resign from the mandate giving notice thereof to the principal. If the latter should suffer any detriment as a result of the resignation, the attorney must compensate them, unless he should have based his resignation on the impossibility to continue to exercise it without serious detriment to himself.

**Article 1,737.** Even if the attorney should resign from the mandate pursuant to a just cause, he must continue his commission until the principal is able to make the necessary dispositions to cover for his absence.

**Article 1,738.** The actions performed by the attorney being unaware of the death of the principal or any other causes which involve termination of the mandate shall be valid and fully effective against third parties who have transacted with him in good faith.

**Article 1,739.** In the event of the attorney's death, his heirs must make the principal aware of it and in the meantime take any actions required by circumstances in the interests of the principal.

## TITLE X

### On the loan

#### GENERAL PROVISION

**Article 1,740.** Pursuant to the loan contract, one of the parties delivers to the other either a non-fungible thing so that the other may use it for a certain time and return it, in which case it shall be called *commodatum*, or money or another fungible thing, under the condition to return the same amount of the thing, and of the same kind and quality, in which case it shall simply be called a loan.

*Commodatum* is in essence gratuitous.

The simple loan may be gratuitous or include a covenant to pay interest.

#### CHAPTER ONE

##### *On commodatum*

#### SECTION ONE

##### *On the nature of commodatum*

**Article 1,741.** The lender under *commodatum* shall retain ownership of the thing loaned. The borrower under *commodatum* shall acquire the use thereof, but not its fruits; if any consideration should be payable by the person who acquires use of the thing, the contract shall cease to be *commodatum*.

**Article 1,742.** Rights and obligations which arise from *commodatum* shall pass to the heirs of both contracting parties, unless the loan was made in consideration of the person of the borrower under *commodatum*, in which case the latter's heirs shall not be entitled to continue using the thing which has been loaned.

## SECTION 2<sup>a</sup>

### *On the borrower's obligations under commodatum*

**Article 1,743.** The borrower under *commodatum* shall be obliged to pay ordinary expenses required for the use and conservation of the thing loaned.

**Article 1,744.** If the borrower under *commodatum* should destine the thing to a use other than that for which it was loaned, or should keep it in his possession longer than agreed, he shall be liable for its loss, even if it should occur as a result of a fortuitous event.

**Article 1,745.** If the thing loaned was delivered subject to an appraisal and it should be lost, even if it should occur as a result of a fortuitous event, the borrower under *commodatum* shall be liable for the price thereof, unless it should have been expressly agreed that he is to be exonerated from liability.

**Article 1,746.** The borrower under *commodatum* shall not be liable for any impairments to the thing as a result of ordinary wear and tear and without negligence on his part.

**Article 1,747.** The borrower under *commodatum* may not retain the thing loaned with the pretext that the lender under *commodatum* owes him an amount, even if such amount results from expenses.

**Article 1,748.** All borrowers under *commodatum* who are jointly lent something shall be joint and severally liable for such thing, pursuant to the provisions of the present section.

## SECTION 3<sup>a</sup>

### *On the lender's obligations under commodatum*

**Article 1,749.** The lender under *commodatum* may not claim the thing loaned until after the use for which it was loaned has been completed. Notwithstanding the foregoing, if, prior to such expiration, the lender under *commodatum* should have urgent need for the thing, he may claim its return.

**Article 1,750.** If no duration of the *commodatum* or use to which the thing loaned should have been destined should have been agreed, and if the latter should not be determined according to local custom, the lender under *commodatum* may claim it at will.

In the event of doubt, the burden of proof shall rest on the borrower under *commodatum*.

**Article 1,751.** The lender under *commodatum* must pay any extraordinary expenses arisen during the term of the contract for the conservation of the thing loaned, provided that the borrower under *commodatum* should give him notice thereof before making them, save where they should be so urgent that one cannot wait for receipt of the notice without danger.

**Article 1,752.** The lender under *commodatum* who, being aware of the defects of the thing loaned, should not have made the borrower under *commodatum* aware of them shall be liable to the latter for any damages suffered thereby by reason thereof.

## CHAPTER 2°

### *On the simple loan*

**Article 1,753.** A person who receives as a loan money or another fungible thing, acquires the ownership thereof, and is obliged to return to the creditor the same amount thereof, of the same kind and quality.

**Article 1,754.** The obligation of the person who takes money out on loan shall be governed by the provisions of article 1,170 of this Code.

If the thing loaned is another fungible thing, or an amount of un-minted metal, the debtor shall owe an amount equal to the amount received, of the same kind and quality, even if there should have been an alteration in its price.

**Article 1,755.** No interest shall be owed save as expressly agreed.

**Article 1,756.** The borrower who has paid interest without this being stipulated may not claim it or charge it to the principal.

**Article 1,757.** Pledge loan establishments shall likewise be subject to the regulations which affect them.

## TITLE XI

### **On deposit**

#### CHAPTER ONE

##### *On deposits in general and the different kinds thereof*

**Article 1,758.** A deposit is constituted from the time when a person receives a thing belonging to another with the obligation to keep it and return it.

**Article 1,759.** Deposits may be constituted judicially or extrajudicially.

#### CHAPTER 2°

##### *On deposit per se*

#### SECTION ONE

##### *On the nature and essence of the deposit contract*

**Article 1,760.** Deposit is a gratuitous contract, save as otherwise agreed.

**Article 1,761.** Only moveable property may be subject to deposit.

**Article 1,762.** Extrajudicial deposit may be necessary or voluntary.

## SECTION 2<sup>a</sup>

### *On voluntary deposit*

**Article 1,763.** Voluntary deposit takes place where delivery is made at the will of the depositor. The deposit may also be made by two or more persons who believe themselves entitled to the thing subject to deposit, with a third party, who shall deliver the thing to the person entitled to it, as the case may be.

**Article 1,764.** If a person capable of entering into a contract accepts a deposit made by an incapable person, he shall be subject to all obligations of the depository and may be compelled to return the thing by the guardian, conservator or administrator of the person who made the deposit, or by the latter, if he should subsequently achieve sufficient capacity.

**Article 1,765.** If the deposit was made by a capable person to another who is not, the depositor shall only have an action to claim the thing deposited while it remains in the possession of the depository, or to have the latter pay him the amount by which he should have been enriched by the thing, or its price.

## SECTION 3<sup>a</sup>

### *On the depository's obligations*

**Article 1,766.** The depository is obliged to keep the thing and to return it, upon request, to the depositor, or his successors, or to the person designated in the contract. His liability as regards the care and loss of the thing shall be governed by the provisions of title I of this book.

**Article 1,767.** The depository may not avail himself of the thing deposited without the depositor's express consent. Otherwise, he shall be liable for any damages.

**Article 1,768.** Where the depository should have permission to avail himself of or to use the thing, the contract shall cease to be a deposit and shall become a loan or *commodatum*. Such permission shall not be presumed, and its existence must be proved.

**Article 1,769.** Where the thing given in deposit is delivered closed and sealed, the depository must return it in the same way, and shall be liable for any damages if the seal or lock should have been forced as a result of his negligence.

The depository's negligence shall be presumed, unless evidence to the contrary is provided.

As concerns the value of the thing deposited, where the forcing of the lock or seal should be attributable to the depository, the depositor's statement shall prevail, unless evidence to the contrary is provided.

**Article 1,770.** The thing deposited shall be returned with all products and accessions thereof. If the deposit should consist of money, the provisions of article 1,724 concerning the attorney shall be applied.

**Article 1,771.** The depository may not require the depositor to prove he is the owner of the thing subject to deposit.

However, if he should discover that the thing has been stolen, and the identity of its rightful owner, he must make the latter aware of the deposit.

If, in spite of this, the owner should not claim within one month, the depository shall be released from all liability by returning the thing subject to deposit to the person from whom he received it.

**Article 1,772.** If there are two or more depositors, if they should not be joint and severally liable and the thing should be capable of division, each of them may only claim his share.

In the event of joint and severability, or if the thing should not be capable of division, the provisions of articles 1,141 and 1,142 of this Code shall apply.

**Article 1,773.** Where the depositor, after making the deposit, should lose his capacity to enter into contracts, the deposit may only be returned to the persons empowered to administer his property and rights.

**Article 1,774.** Where upon making the deposit a place should have been designated for its return, the depository must take the thing subject to deposit to such place, but any freight expenses shall be borne by the depositor.

In the absence of designation of a place to make the return, it must be made at the place where the thing subject to deposit is located, even if it should not be the same as the place where the deposit was made, provided that there has been no malice on the part of the depository.

**Article 1,775.** The deposit must be restored to the depositor at his request, even if the contract should have set forth a specific period or time for such return.

This provision shall not apply where the deposit in the depository's possession should have been judicially attached, or where the latter has been notified of a third party's opposition to the return or transfer of the thing subject to deposit.

**Article 1,776.** The depository who has just cause not to continue the deposit may, even before expiration of the term, return it to the depositor and, if the latter should resist, may obtain from the Judge the judicial deposit thereof.

**Article 1,777.** The depository who should have lost the thing subject to deposit as a result of force majeure and should have received another in its stead shall be obliged to deliver the latter to the depositor.

**Article 1,778.** The depository's heir who has sold in good faith the thing which he was unaware was held under deposit shall only be obliged to return the price received or to assign his actions against the purchaser in the event that he should not have been paid the price.

#### SECTION 4<sup>a</sup>

##### *On the depositor's obligations*

**Article 1,779.** The depositor is obliged to reimburse the depository for any expenses made for the conservation of the thing subject to deposit and to compensate any damages incurred as a result of the deposit.

**Article 1,780.** The depository may retain as pledge the thing subject to deposit until full payment of any amounts owed pursuant to the deposit.

#### SECTION 5<sup>a</sup>

##### *On necessary deposit*

**Article 1,781.** The deposit is necessary:

- 1.** Where it is made in compliance with a legal obligation.
- 2.** Where it takes place on occasion of any calamity, such as fire, collapse, pillage, shipwreck or other similar events.

**Article 1,782.** The deposit comprised in number 1 of the preceding article shall be governed by the provisions of the law which creates it and, in the absence thereof, by the provisions governing voluntary deposits. The deposit comprised in number 2 shall be governed by the rules applicable to voluntary deposits.

**Article 1,783.** The deposit of any personal effects introduced by travellers in inns and restaurants shall also be deemed a necessary deposit. The innkeepers or restaurateurs shall be liable for them as such depositories, provided that they or their employees should have been made aware of the personal effects introduced into their property, and that the travellers in their turn observe any precautions made by such innkeepers or their substitutes concerning the care and surveillance of such effects.

**Article 1,784.** The liability mentioned in the preceding article comprises any damages to the personal effects of travellers caused by both the servants and employees of the innkeepers or restaurateurs and by strangers, but not those incurred as a result of armed robbery or which are caused by another event of force majeure.

## CHAPTER 3°

### *On sequestration*

**Article 1,785.** Judicial deposit or sequestration takes place when the attachment or seizure of property under litigation is ordered.

**Article 1,786.** Sequestration may affect both movable and immovable property.

**Article 1,787.** The depository of the properties or objects subject to sequestration may not be released from his commission until termination of the controversy which motivated it, unless the Judge should order otherwise, with the consent of all interested parties or on other legitimate grounds.

**Article 1,788.** The depository of property subject to sequestration is obliged to fulfil all obligations of an orderly *paterfamilias* in respect thereof.

**Article 1,789.** For matters not provided in this Code, judicial sequestration shall be governed by the provisions of the Civil Procedural Law.

## TITLE XII

### **On random or chance-based contracts**

#### CHAPTER ONE

##### *General provisions*

**Article 1,790.** Pursuant to random contracts one of the parties, or both of them reciprocally, undertake to give or do something in consideration for something that the other party is to give or do in the event of occurrence of an uncertain event, or an event which must take place in an unspecified time.

## CHAPTER 2°

### *On the contract of support*

**Article 1,791.** Pursuant to the contract of support one of the parties undertakes to provide a person with a home, maintenance and assistance of all kinds during his whole life, in exchange for the transfer of a capital sum consisting of any kind of property and rights.

**Article 1,792.** In the event of the death of the person obliged to provide support or of any serious circumstance which prevents the peaceful coexistence of the parties, either of them may request that the agreed support be paid by means of an updatable pension payable regularly in advance provided for such purposes in the contract or, in the absence of any provision, the allowance set by the Court.

**Article 1,793.** The scope and quality of the support shall be as results from the contract and, unless otherwise agreed, shall not depend on the circumstances of the net worth and needs of the obligor or of the net worth of the person receiving it.

**Article 1,794.** The obligation to give support shall not cease for the reasons mentioned in article 152 save as provided in section one thereof.

**Article 1,795.** Breach of the obligation to give support shall entitle the supportee, without prejudice to the provisions of article 1,792, to choose between demanding performance thereof, including payment of support accrued prior to the claim, or termination of the contract, with application, in both cases, of the general rules governing reciprocal obligations.

In the event that the supportee should choose termination, the person obliged to provide support must immediately return the property received pursuant to the contract, and the judge may, however, resolve that the restitution to which the supportee is entitled in compliance with the provisions of the following article be delayed in whole or in part, for the supportee's benefit, for the period and with the security determined thereby.

**Article 1,796.** The supportee must receive at least a surplus sufficient to constitute once again an analogous pension for his remaining life as a result of termination of the contract.

**Article 1,797.** Where the property or rights transferred in exchange for the support are capable of registration, the rights of the supportee may be secured vis-à-vis third parties by means of a registered covenant whereby failure to pay shall be deemed an explicit condition subsequent, and by a mortgage, as regulated by article 157 of the Mortgage Law.

## CHAPTER 3°

### *On gambling and betting*

**Article 1,798.** The law does not provide any action to claim what has been won in a game of luck, gambling or chance; but the person who has lost money therein cannot recover what he has voluntarily paid, unless it should have been obtained pursuant to fraudulent misrepresentation, or such person should be a minor or should have been incapacitated to administer his own property.

**Article 1,799.** The provisions of the preceding article regarding gambling shall apply to betting. Betting which bears any analogy with forbidden gambling shall be deemed prohibited.



**Article 1,800.** Games which contribute to bodily exercise, such as those whose purpose is training in the use of weapons, running or horse racing, chariot races, ball games and other analogous games shall not be deemed to be prohibited.

**Article 1,801.** A person who loses in any gambling or betting in respect of non-prohibited games shall be liable under civil law.

The judicial authority may, however, find against a claim where the amount exchanged in the gamble or wager should have been excessive, or reduce the obligation to the extent that it exceeds the custom of an orderly *paterfamilias*.

## CHAPTER 4°

### *On life annuities*

**Article 1,802.** The random life annuity contract binds the debtor to pay an annuity or annual income during the life of one or more specific persons in exchange for a capital sum consisting of movable or immovable property whose ownership is transferred from the time of the contract, with the encumbrance of paying the annuity.

**Article 1,803.** An annuity may be created based on the life of the person providing the capital sum, a third party or the life of several persons.

It may also be created in favour of the person or person based on whose life it is granted, or in favour of another or other different persons.

**Article 1,804.** The annuity constituted based on the life of a person who is dead at the time of its execution, or who at the time suffers from an illness which causes his death within twenty days of such date shall be null and void.

**Article 1,805.** Failure to pay any annuities which are due and payable does not authorise the recipient of the life annuity to request reimbursement of the capital sum or recover possession of the transferred property; he shall only be entitled to claim in court the payment of any annuities in arrears and security for the payment of future annuities.

**Article 1,806.** The annuity corresponding to the year of the death of its recipient shall be paid in proportion to the days in which he was alive; if it was payable in advance, the total amount corresponding to the period which should have begun during his life shall be paid.

**Article 1,807.** A person who constitutes an annuity over his property as a gift may provide, at the time of execution thereof, that such annuity shall not be subject to attachment as a result of the pensioner's obligations.

**Article 1,808.** The annuity may not be claimed without evidencing the existence of the person based on whose life it was constituted.

## TITLE XIII

### On settlements and compromises

#### CHAPTER ONE

##### *On settlements*

**Article 1,809.** Settlement is a contract whereby the parties, by each giving, receiving or retaining something, prevent a lawsuit or end one which has already begun.

**Article 1,810.** The same rules shall apply to settle in respect of the property and rights of children subject to parental authority as apply to their disposal.

**Article 1,811.** The guardian may not settle in respect of the rights of the person under his care save in the manner provided in the present Code.

**Article 1,812.** Corporations which are legal entities may only reach a settlement in the manner and meeting the requirements necessary to dispose of their property.

**Article 1813.** It is possible to reach a settlement in respect of the civil action resulting from a crime, but the public action to impose the legal sentence shall not be extinguished as a result thereof.

**Article 1,814.** It is not possible to reach a settlement in respect of the civil status of persons, matrimonial issues or future support.

**Article 1,815.** The settlement only comprises the subjects specifically expressed therein or which, by necessary induction based on the wording thereof, must be deemed to be comprised therein. A general waiver of rights shall be deemed to refer only to those which relate to the dispute to which the settlement refers.

**Article 1,816.** The settlement shall have the authority of *res iudicata* for the parties, but may only be enforced pursuant to enforcement proceedings in the event of enforcement of a court settlement.

**Article 1,817.** A settlement reached pursuant to error, fraudulent misrepresentation, duress or misstatement shall be subject to the provisions of article 1,265 of this Code.

Notwithstanding the foregoing, neither of the parties may use an error in fact as defence against the other whenever the latter should have settled to end a lawsuit already begun.

**Article 1,818.** Discovery of new documents shall not constitute grounds to annul or rescind the settlement, unless there has been bad faith.

**Article 1,819.** If, after a lawsuit is resolved by a final judgement, a settlement should be reached because one of the parties should be unaware of the existence of such final judgement, such party may request rescission of the settlement.

Unawareness of a judgement which may be revoked does not constitute grounds to challenge the settlement.

## CHAPTER 2°

### *On compromises*

**Article 1,820.** (No content)

**Article 1,821.** (No content)

## TITLE XIV

### **On guaranty**

#### CHAPTER ONE

##### *On the nature and scope of the guaranty*

**Article 1,822.** Pursuant to a guaranty one person undertakes to pay or perform on behalf of a third party if the latter should fail to do so.

If the guarantor should be joint and severally liable with the principal debtor, the provisions of section four, chapter III, title I of this book shall apply.

**Article 1,823.** Guaranty may be conventional, legal or judicial, gratuitous or for valuable consideration. It may also be created not only in favour of the principal debtor, but also in favour of another guarantor, with the latter's consent, if he should be unaware of it or even if he should be against it.

**Article 1,824.** Guaranty cannot exist without a valid obligation. Notwithstanding the foregoing, it may refer to an obligation whose nullity may be claimed pursuant to a purely personal exception in favour of the obligor, such as the latter's minority of age. The case of a loan made to the son of the family shall be excepted from the provisions of the preceding paragraph.

**Article 1,825.** A guaranty may also be provided to secure future debts whose amount is as yet unknown, but no claim may be brought against the guarantor until the debt is due and payable.

**Article 1,826.** The guarantor may undertake to pay more, but not less than the principal debtor, both as concerns the amount and the burdensomeness of the conditions. If he should have undertaken to pay more, his obligation shall be reduced to the limits of the debtor's obligation.

**Article 1,827.** A guaranty cannot be implied: it must be express and may not extend beyond what is expressly provided therein.

A simple or undefined guaranty shall comprise not only the principal obligation but also all ancillary obligations thereof, even legal expenses, understanding in respect of the latter that he shall only be liable for those which may accrue after the guarantor has been demanded to pay.

**Article 1,828.** The person obliged to provide a guarantor must present a person with the capacity to contract obligations and sufficient property to assume liability for the obligation guaranteed thereby. The guarantor shall be deemed subject to the jurisdiction of the Judge of the place where the obligation is to be performed.

**Article 1,829.** If the guarantor should become insolvent, the creditor may request another who meets the conditions required in the preceding article. The case where the creditor should have required and agreed to appoint a specific person as guarantor shall be excepted from the foregoing.

## CHAPTER 2º

### *On the effects of the guaranty*

#### SECTION ONE

##### *On the effects of the guaranty between the guarantor and the creditor*

**Article 1,830.** The guarantor may not be compelled to pay the creditor without first making excussion of all of the debtor's property.

**Article 1,831.** Excussion shall not take place:

- 1.** In the event of express waiver thereof by the guarantor.
- 2.** Where the guarantor is joint and severally liable with the debtor.
- 3.** In the event of the debtor's commercial or civil bankruptcy.
- 4.** When no judicial claim can be brought against the debtor within the Kingdom.

**Article 1,832.** For the guarantor to take advantage of the benefit of excussion, he must use it as defence against the creditor as soon as the latter should demand payment, and designate property belonging to the debtor capable of being realised within Spanish territory which is sufficient to cover the amount of the debt.

**Article 1,833.** If the guarantor fulfils all conditions provided in the preceding article, the creditor who has been negligent in the excussion of the property shown shall be liable, to the limit of the value of such property, for the debtor's insolvency resulting from such oversight.

**Article 1,834.** The creditor may summon the guarantor in his claim against the principal debtor, but the benefit of excussion shall always remain in force, even if a judgement should find against both.

**Article 1,835.** A settlement reached with the guarantor shall not be effective vis-à-vis the principal debtor. Neither shall the settlement reached by the principal debtor be effective against the guarantor against his will.

**Article 1,836.** A guarantor's guarantor shall enjoy the benefit of excussion both in respect of the guarantor and of the principal debtor.

**Article 1,837.** If there are several guarantors of the same debtor for the same debt, liability for such debt shall be divided between all of them. The creditor may only claim against each guarantor the part which he is obliged to pay, unless it has been expressly provided that the guarantors are joint and several.

The benefit of division against co-guarantors shall cease in the same cases and on the same grounds as the benefit of excussion against the principal debtor.

#### SECTION 2ª

##### *On the effects of the guaranty between the debtor and the guarantor*

**Article 1,838.** The guarantor who pays on behalf of the debtor must be compensated by the latter.

Such compensation shall comprise:

1. The total amount of the debt.
2. Legal interest thereon from the time that the debtor is made aware of the payment, even if the debt did not accrue interest in favour of the creditor.
3. Expenses incurred by the guarantor after making the debtor aware that he has received a demand for payment.
4. Damages, where applicable.

The provisions of this article shall apply even if the guaranty should have been provided without the debtor being aware of it.

**Article 1,839.** As a result of his payment the guarantor shall become subrogated to all rights held by the creditor against the debtor.

If he has reached a settlement with the creditor, he may not request the debtor more than he has really paid.

**Article 1,840.** If the guarantor should pay without giving notice thereof to the debtor, the latter may allege any exceptions which he could have used as defence against the creditor at the time of payment.

**Article 1,841.** If the debt should be subject to a forward term and the guarantor should have paid it before it became due and payable, he may not request the debtor to reimburse him until expiration of the term.

**Article 1,842.** If the guarantor should have paid without giving notice thereof to the debtor, and the debtor, being unaware of such payment, should repeat it in his turn, the guarantor shall have no recourse against the debtor, but he shall have recourse against the creditor.

**Article 1,843.** Even before having paid, the guarantor may proceed against the principal debtor:

1. When he receives a judicial demand for payment.
2. In the event of commercial bankruptcy, civil bankruptcy or insolvency.
3. When the debtor has undertaken to release him from the guaranty within a specific period, and such period has expired.
4. When the debt has become payable as a result of expiration of the term in which it is to be paid.
5. After ten years, when the principal obligation has no fixed term of maturity, unless its nature is such that it can only be extinguished later than ten years.

In all such cases, the guarantor's remedy shall tend to the release of the guaranty or to obtain security covering him against the proceedings initiated by the creditor, and against the danger of the debtor's insolvency.

## SECTION 3<sup>a</sup>

### *On the effects of the guaranty between co-guarantors*

**Article 1,844.** When there are two or more guarantors of the same debtor for the same debt, the guarantor among them who has paid it may claim from each of the others the part which he is proportionally obliged to pay. If any of them should be insolvent, his share shall pass to all of them in the same proportion.

For the provisions of this article to apply, payment must have been made pursuant to a court claim, or in the event that the principal debtor should be subject to civil or commercial bankruptcy.

**Article 1,845.** In the case of the preceding article, the co-guarantors may use as defence against the one who paid the same exceptions to which the principal debtor would have been entitled against the creditor and which are not purely personal exceptions pertaining to such debtor.

**Article 1,846.** The sub-guarantor, in the event of insolvency of the guarantor in respect of which the former is bound, shall be liable against the co-guarantors in the same terms as the guarantor.

## CHAPTER 3°

### *On the termination of the guaranty*

**Article 1,847.** The guarantor's obligation shall be extinguished at the same time as the debtor's and on the same grounds as other obligations.

**Article 1,848.** Confusion between the person of the debtor and the guarantor when one of them inherits from the other shall not extinguish the sub-guarantor's obligation.

**Article 1,849.** If the creditor voluntarily accepts an immovable property or any commercial paper as payment of the debt, the guarantor shall be released, even if the creditor should subsequently be dispossessed of them.

**Article 1,850.** Release by the debtor of one of the guarantors without the consent of the others shall benefit all of them, to the extent of the share of the guarantor in favour of whom it was granted.

**Article 1,851.** The extension granted by the creditor to the debtor without the guarantor's consent shall extinguish the guaranty.

**Article 1,852.** The guarantors, even if they are joint and several, shall be released from their obligation whenever, as a result of any act of the creditor, they should become unable to be subrogated to the rights, mortgages and privileges thereof.

**Article 1,853.** The guarantor may use against the creditor all exceptions applicable to the principal debtor which are inherent to the debt; but not exceptions which are purely personal to the debtor.

## CHAPTER 4°

### *On legal guaranty and judicial guaranty*

**Article 1,854.** The guarantor required pursuant to the provisions of the law or a court order must meet the qualities provided in article 1,828.

**Article 1,855.** If the person obliged to provide a guaranty in the cases provided in the preceding article should be unable to find one, a pledge or mortgage deemed sufficient to cover his obligation shall be accepted in its stead.

**Article 1,856.** The judicial guarantor cannot request excussion of the property of the principal debtor. The sub-guarantor, in the same case, may not request excussion either of the debtor or of the guarantor.

## TITLE XV

### On the contracts of pledge, mortgage and antichresis

#### CHAPTER ONE

##### *Provisions common to pledges and mortgages*

**Article 1,857.** The following requirements are of the essence in contracts of pledge and mortgage:

1. They must be created to secure the performance of a principal obligation.
2. The thing pledged or mortgaged must be owned by the pledgor or mortgagor.
3. The persons who constitute the pledge or mortgage may freely dispose of their property or, if not, must be legally authorised for such purposes.

Third parties who are strangers to the principal obligation may secure it by pledging or mortgaging their own property.

**Article 1,858.** It is also of the essence in these contracts that, upon maturity of the principal obligation, the things constituting the pledge or mortgage may be disposed of to pay the creditor.

**Article 1,859.** The creditor cannot appropriate the things pledged or mortgaged, nor dispose of them.

**Article 1,860.** The pledge and the mortgage are indivisible, even if the debt should be divided between the successors of the debtor or the creditor.

As a result, the heir of the debtor who has paid part of the debt may not request the proportional cancellation of the pledge or mortgage until the debt has been paid in full.

Neither may the heir of the creditor who received his share return the pledge or cancel the mortgage to the detriment of the remaining heirs who have not been paid.

The case where, there being several things mortgaged or pledged, each of them should secure only a specific portion of the credit, shall be excepted from the foregoing.

In this case, the debtor shall be entitled to the cancellation of the pledge or mortgage to the extent that he should pay the part of debt for which each thing is especially liable.

**Article 1,861.** The contracts of pledge and mortgage may secure all kinds of obligations, whether pure or subject to conditions precedent or subsequent.

**Article 1,862.** The promise to constitute a pledge or mortgage shall only result in a personal action between the contracting parties, without prejudice to the criminal liability of a person who defrauds another by offering to pledge or mortgage, as free from liens, things which he knew were encumbered, or by pretending to be the owner of things which do not belong to him.

#### CHAPTER 2°

##### *On the pledge*

**Article 1,863.** As well as the requirements provided in article 1,857, the contract of pledge shall require giving possession of the thing to the creditor or to a third party agreed by common consent.

**Article 1,864.** All movable things which are subject to trade may be pledged, provided that they are capable of possession.

**Article 1,865.** No pledge shall be effective against a third party unless the certainty of its date is set forth in a public instrument.

**Article 1,866.** The contract of pledge entitles the creditor to retain the thing in his possession or in that of the third party to whom it was delivered until he is paid the credit.

If, while the creditor retains the pledge, the debtor should contract another debt with the creditor, prior to the payment of the first debt, the creditor may extend such retention until payment of both credits, even in the absence of stipulation that the pledge also secures the second debt.

**Article 1,867.** The creditor must care for the thing pledged with the diligence of an orderly *paterfamilias*; he is entitled to be paid any expenses made for its conservation and shall be liable for its loss or impairment in accordance with the provisions of this Code.

**Article 1,868.** If the pledge should generate interest, the creditor shall set off any interest received against the interest owed by the creditor; and, if none should be owed or to the extent that such amount should exceed the interest legitimately owed, shall charge it to redeem the principal.

**Article 1,869.** Unless he is deprived of the thing given in pledge, the debtor shall continue to be its owner. Notwithstanding the foregoing, the creditor may exercise the actions for its recovery or defence against a third party to which the owner of the thing subject to pledge is entitled.

**Article 1,870.** The creditor may not use the thing pledged without the owner's authorisation and, if he should do so or should abuse it in any other manner, the latter may request that it be placed in deposit.

**Article 1,871.** The debtor may not request the return of the pledge against the will of the creditor until he pays his debt plus interest, and any expenses, as the case may be.

**Article 1,872.** The creditor whose credit should not have been paid in due time may proceed to dispose of the thing subject to pledge before a Notary Public. Such disposal must specifically take place pursuant to a public auction, summoning the debtor and the owner of the thing subject to pledge, as the case may be. If the pledge should fail to be disposed of in the first auction, a second one may take place with the same formalities; if it should also fail, the creditor may become the owner of the thing subject to pledge. In such case he shall be obliged to issue a release for the full credit.

If the pledge should consist of listed securities, they shall be sold in the manner provided in the Commercial Code.

**Article 1,873.** As concerns Pawnshops and other public establishments which, pursuant to their charter or profession, lend money accepting pledges as collateral, their special acts and regulations shall apply, and, on a subsidiary basis, the provisions of this title.

## CHAPTER 3°

### *On the mortgage*

**Article 1,874.** Only the following may be subject to the contract of mortgage:

1. Immovable property.
2. Rights *in rem* capable of disposal in accordance with the law, created on the above kind of property.

**Article 1,875.** As well as the requirements provided in article 1,857, it is indispensable, for the mortgage to be validly constituted, that the document of its constitution be registered in the Property Registry.



The persons in whose favour the law creates a mortgage shall have no other right than to demand the execution and registration of the document in which the mortgage is to be executed, save as provided in the Mortgage Law in favour of the State, provinces and villages as relates to taxes payable within the past year, and in favour of the insurers as relates to the insurance premium.

**Article 1,876.** The mortgage binds the property which it encumbers, whatever its possessor, directly and immediately to the performance of the obligation in security whereof it was constituted.

**Article 1,877.** The mortgage extends to natural accretion, improvements, pending fruits and rents which have not been received upon maturity of the obligation, and the indemnities granted or due to the owner by the insurers of the mortgaged properties, or as a result of expropriation on grounds of public utility, with the representations, extensions and limitations set forth in the law, irrespective of whether the property remains in the possession of the person who mortgaged it or if it has passed into the hands of a third party.

**Article 1,878.** The mortgage loan may be disposed of or assigned to a third party in whole or in part, in compliance with the formalities required by the law.

**Article 1,879.** The creditor may claim from the third party who is in possession of the mortgaged properties the part of the loan secured with the property possessed by the latter, under the terms and in compliance with the formalities set forth in the law.

**Article 1,880.** The form, the scope and the effects of the mortgage, and all matters relating to its creation, amendment and cancellation and remaining aspects not included in the present chapter shall be subject to the provisions of the Mortgage Law, which shall remain in force.

#### CHAPTER 4°

##### *On antichresis*

**Article 1,881.** Pursuant to *antichresis* the creditor acquires the right to receive the fruits of an immovable property belonging to the debtor, with the obligation to allocate them to the payment of any interest, if any is due, and subsequently to the principal of his credit.

**Article 1,882.** Unless otherwise agreed, the creditor is obliged to pay any taxes and charges to which the property is subject.

He is also obliged to make the necessary expenses for the conservation and repair thereof.

Any amounts spent on one or the other shall be deducted from the fruits.

**Article 1,883.** The debtor may not recover the enjoyment of the property without first paying in full the amount owed to the creditor.

However, the latter may always, in order to be released from the obligations imposed in the preceding article, compel the debtor to recover enjoyment of the property, save as otherwise agreed.

**Article 1,884.** The creditor does not acquire ownership of the property as a result of the failure to pay the debt within the agreed period.

Any agreement to the contrary shall be null and void. However, the creditor may in such case request payment of the debt or the sale of the property as provided in the Civil Procedural Law.

**Article 1,885.** The contracting parties may provide that the fruits of the property subject to antichresis be set off against the interest of the debt.

**Article 1,886.** The last paragraph of article 1,857, the second paragraph of article 1,866, and articles 1,860 and 1,861 shall apply to this contract.

## TITLE XVI

### On obligations which are entered into without an agreement

#### CHAPTER ONE

##### *On quasi contracts*

**Article 1,887.** Quasi contracts are lawful and purely voluntary acts which result in an obligation of the author thereof to a third party, and sometimes in a reciprocal obligation between the interested parties.

#### SECTION ONE

##### *On the management of another's business*

**Article 1,888.** A person who voluntarily takes charge of the agency or administration of another's business without the latter's mandate shall be obliged to continue managing it until completion of the business and any incidents thereof, or to request the interested party to replace him in such management if he is in a condition to do so by himself.

**Article 1,889.** The unofficial manager must perform his duties with all the diligence of an orderly *paterfamilias* and compensate any damages caused to the owner of the properties or business managed thereby by his fault or negligence.

The Courts may, however, moderate the importance of such damages depending on the circumstances of the case.

**Article 1,890.** If the manager should delegate to another person all or some of the duties of which he is in charge, he shall be liable for the acts of the delegate, without prejudice to the latter's direct obligation to the owner of the business.

If there should be two or more managers, they shall be joint and severally liable.

**Article 1,891.** The manager shall be liable for fortuitous events if he should undertake risky transactions which the owner was not accustomed to performing, or if he should have relegated the owner's interest to his own.

**Article 1,892.** Ratification of the management by the owner of the business has the effect of an express mandate.

**Article 1,893.** Even in the absence of express ratification of another's management, the owner of properties or business who profits from the benefits thereof shall be responsible for the obligations entered into in his interest, and shall compensate the manager for necessary and useful expenses made and any damages suffered in the exercise of his duties.

The same obligation shall apply where the purpose of such management should have been to prevent an imminent and manifest damage, even if no benefit should have resulted therefrom.

**Article 1,894.** When a stranger should provide support, unknown to the person obliged to provide it, the former shall be entitled to claim such amounts from the latter, unless it should be evidenced that he gave it for reasons of piety and without the intention to claim them.

The persons who would have had the obligation to support the deceased must pay his funeral expenses proportional to his condition and to local custom, even if the deceased should not have left any property.

## SECTION 2<sup>a</sup>

### *On collection of things which were not due*

**Article 1,895.** When something is received which one was not entitled to collect and which was unduly given by mistake, there arises the obligation to return it.

**Article 1,896.** The person who accepts an undue payment, if he should have acted in bad faith, must pay legal interest for the capital, or the fruits which were received or which should have been received where the thing which was received should produce them.

Likewise, he shall be liable for any impairment suffered by the thing for any reason, and for any damages caused to the person who delivered it, until he recovers it. He shall not be liable for fortuitous events if they would have affected the things in the same way if they had been in the possession of the person who delivered them.

**Article 1,897.** The person who accepted in good faith payment of a certain and specific thing shall only be liable for impairments or losses thereof and accessions thereof to the extent that he was enriched by them. If he should have disposed of them, he shall return their price or assign the action to recover it.

**Article 1,898.** The provisions of title V Book Two shall apply to the payment of any improvements and expenses made by the person who unduly received the thing.

**Article 1,899.** The person who, believing in good faith that such payment was made on account of a legitimate and outstanding credit, should have cancelled the deed or let the action become barred by statute of limitations, or should have abandoned any pledges or cancelled any security to which he was entitled shall be exempted from the obligation to return it. The person who paid unduly may only claim against the real debtor or the guarantors in respect of whom the action should still be enforceable.

**Article 1,900.** The burden of proof of payment shall rest on the person who purports to have made it. He shall also have the burden of proving the error pursuant to which he made such payment, unless the defendant should deny having received the thing claimed. In this case, if the plaintiff should evidence delivery thereof, he shall be released from the burden of providing any other evidence. This shall not curtail the defendant's right to evidence that he was owed what he allegedly received.

**Article 1,901.** Error in payment shall be presumed to exist where a thing is delivered which was never owed or which had already been paid, but the person requested to return it may prove that such delivery was made as a gift or pursuant to another just cause.

## CHAPTER 2<sup>o</sup>

### *On obligations arising from fault or negligence*

**Article 1,902.** The person who, as a result of an action or omission, causes damage to another by his fault or negligence shall be obliged to repair the damaged caused.

**Article 1,903.** The obligation imposed pursuant to the preceding article shall be enforceable not only as a result of one's own actions or omissions but also of those of such persons for whom one is liable.

Parents are liable for damages caused by children under their care.

Guardians are liable for damages caused by minors or incapacitated persons who are under their authority and who live in their company.

Likewise, the owners or managers of an establishment or undertaking shall be liable for damages caused by their employees, in the service in which they are employed or in the performance of their duties.

Persons or entities which own an educational centre other than a centre for higher education shall be liable for the damages caused by its underage students during the periods in which the latter are under the control or supervision of the Centre's teaching staff, or while conducting school, extracurricular or complementary activities.

The liability provided in the present article shall cease if the persons mentioned therein should evidence that they acted with all the diligence of an orderly *paterfamilias* to prevent the damage.

**Article 1,904.** The person who pays damages caused by his employees may recover from the latter the amount paid.

The owners of educational centres other than centres for higher education may claim from the teachers the amounts paid by the former in the event of wilful misconduct or gross negligence in the exercise of their duties being the cause of the damage.

**Article 1,905.** The possessor or an animal, or the person who avails himself of it, is liable for any damages caused by the latter, even if it should have escaped or been lost. This liability shall only cease if the damage should result from force majeure or from the negligence of the person who has suffered the damage.

**Article 1,906.** The owner of a property used for hunting purposes shall be liable for the damages caused by the game in neighbouring properties, when he has not done all that is necessary to prevent their multiplication or has hindered the actions of the owners of such properties to pursue them.

**Article 1,907.** The owner of a building is liable for damages resulting from the collapse of all or part thereof, if such collapse should occur as a result of a failure to make the necessary repairs.

**Article 1,908.** Likewise, the owners shall be liable for damages caused:

1. By the explosion of machines which have not been taken care of with due diligence, and by the inflammation of explosive substances which have not been put in a safe and suitable place.
2. By excessive fumes which are harmful to persons or properties.
3. By the fall of trees placed on transit spaces, unless it results from force majeure.
4. By the emanations of drains or deposits of infectious materials which have been built without observing precautions appropriate to their location.

**Article 1,909.** If the damage mentioned in the two preceding articles should result from a construction defect, the third party who suffers it may only claim against the architect or, as the case may be, the builder, within the requisite legal period.

**Article 1,910.** The head of a family who lives in a house or part of it is liable for damages caused by things thrown or which should fall from it.

## TITLE XVII

### On the concurrence and priority of credits

#### CHAPTER ONE

##### *General provisions*

**Article 1,911.** The debtor is liable for the performance of his obligations with all present and future property.

**Article 1,912 to 1,920.** [Repealed]

#### CHAPTER 2°

##### *On the classification of credits*

**Article 1,921.** Credits shall be classified for the purpose of their graduation and payment, in the order and in the terms set forth in this chapter.

**Article 1,922.** In connection with specific property belonging to the debtor, the following credits shall be preferred:

1. Credits granted for the construction, repair, conservation or sales price of movable property which is in the debtor's possession, up to the value of such property.
2. Credits secured by a pledge which is in possession of the creditor, in respect of the thing subject to the pledge and up to the value thereof.
3. Credits secured by a deposit of commercial paper or securities executed in a public or commercial establishment, in respect of the deposit and for the value thereof.
4. Credits relating to freight, in respect of the goods subject to transportation, for the price thereof, freight and conservation fees and expenses, until delivery thereof and thirty days thereafter.
5. Credits relating to lodging, in respect of the debtor's movable property left at the inn.
6. Credits relating to seeds and cultivation and harvesting expenses advanced to the debtor, in respect of the fruits of the harvest for which they served.
7. Credits for lease payments and income for one year, in respect of the lessee's movable property existing in the leased property and of the fruits thereof.

If the movable property preferred hereunder should have been removed, the creditor may claim it from its holder, within thirty days counting from its removal.

**Article 1,923.** In connection with certain specific immovable property and rights *in rem* belonging to the debtor, the following credits shall be preferred:

1. Credits in favour of the State, in respect of the taxpayers' property, for the amount of the last annual period accrued and unpaid for any taxes thereon.
2. Credits held by insurers, in respect of the insured property, for the insurance premiums relating to the past two years and, in the case of mutual insurance, for the last two dividends distributed.
3. Mortgage and construction credits (*crédito refaccionario*) entered and registered with the Property Registry, in respect of the mortgaged property or the property which backs the credit.
4. Credits in respect of which a precautionary entry has been made in the Property Registry pursuant to a court order, as a result of attachment, sequestration or enforcement of judgements, in respect of the property subject to such entry and only with preference to subsequent credits.

**5.** Construction credits which have not been entered or registered over the immovable properties included as collateral, and only in respect of credits other than those mentioned in the four preceding numbers.

**Article 1,924.** In connection with the remaining movable and immovable property belonging to the debtor, the following credits shall be preferred:

**1.** Credits in favour of the province or Municipality, in respect of taxes corresponding to the last annual period accrued and unpaid which are not comprised within article 1,923, number 1.

**2.** Credits accrued:

a) (Repealed)

b) For the debtor's funeral expenses, according to local custom, and also those of his spouse and children under his parental authority, if they should have no property of their own.

c) As a result of expenses incurred in the final illness of the aforementioned persons, made in the last year, counting until the date of decease.

d) For salaries and wages of employees and domestic servants corresponding to the last year.

e) For contributions corresponding to mandatory social subsidies, social insurance and labour mutual insurance for the same period provided in the preceding section, provided that they are not recognised a greater preference in accordance with the preceding article.

f) For advances made to the debtor, for himself and for his family who is under his authority, for food, dress or shoes, within the same period.

g) (Repealed)

**3.** Credits not awarded any special preference with are set forth:

a) In a public deed.

b) In a final judgement, if they should have been subject to dispute.

These credits shall have preference in respect of each other by order of priority of the dates of the public deeds and judgements.

**Article 1,925.** Credits of any other kind or pursuant to any other title, not comprised in the preceding articles, shall enjoy no preference whatsoever.

## CHAPTER 3°

### *On the priority of credits*

**Article 1,926.** Credits which are preferred in connection with specific movable property shall exclude all others up to the value of the movable property to which the preference refers.

If two or more credits should be concurrent in respect of specific movable property, the following rules shall be observed to determine the order of payment thereof:

**1.** The credit backed by pledge shall exclude the rest up to the value of the thing subject to the pledge.

**2.** In the event of a guaranty, if such bond should have been legitimately executed in favour of more than one creditor, the priority between the latter shall be determined by the order of the dates on which the security was provided.

**3.** Credits for advancing seeds, cultivation and harvesting expenses shall be preferred to credits for rents and leases in respect of the fruits of the harvest for which the former served.

**4.** In all remaining cases, the price of the movable property shall be distributed pro rata between credits which enjoy a special preference in connection with such property.

**Article 1,927.** Credits preferred in connection with specific immovable properties or rights *in rem* shall exclude all others in the full amount thereof up to the value of the immovable property or right *in rem* to which the preference refers.

In the event of concurrence of two or more credits in respect of specific immovable properties or rights *in rem*, the following rules shall be observed to determine their respective priority:

- 1.** Credits provided in numbers 1 and 2 of article 1,923, shall be preferred, in the same order, to those comprised in the remaining numbers thereof.
- 2.** Mortgage or construction credits entered or registered in the Property Registry as provided in number 3 of the aforementioned article 1,923 and those comprised in number 4 thereof shall have priority in respect of each other according to the order of priority of their respective registration or entries in the Property Registry.
- 3.** Construction credits not registered or entered in the Property Registry mentioned in number 5 article 1,923, shall have priority in respect of each other in inverse order of their date.

**Article 1,928.** The remainder of the debtor's property, after paying any credits preferred in connection with specific movable or immovable property, shall be accumulated to the property owned free and clear by the debtor for the payment of the remaining credits.

Credits which, having preference in connection with certain movable or immovable property should not have been fully paid with the amount thereof shall be paid, as relates to the shortfall, in the order and with the priority corresponding to them according to their respective nature.

**Article 1,929.** Credits which have no preference in connection with specific property and those which do have such preference, for the amount outstanding, or in the event that the right to such preference should have become barred by statute of limitations, shall be paid in accordance with the following rules:

- 1.** In the order set forth in article 1,924.
- 2.** Credits which have preference according to their date, in the order thereof, and those subject to common preference, pro rata.
- 3.** Common credits mentioned in article 1,925, without consideration of their date.

## TITLE XVIII

### On prescription

#### CHAPTER ONE

##### *General provisions*

**Article 1,930.** Ownership and other rights *in rem* are acquired pursuant to prescription, in the manner and subject to the conditions provided in the law.

Likewise, rights and actions of any kind are also extinguished by the running of their statute of limitations.

**Article 1,931.** Persons with the capacity to acquire property or rights by other legitimate means may also acquire them by prescription.

**Article 1,932.** Rights and actions are extinguished by the running of the statute of limitations to the detriment of all kinds of persons, even legal entities, in the terms provided in the law.

Persons who are prevented from administering their property shall always remain entitled to claim against their legitimate representatives whose negligence should have caused the running of the statute of limitations.

**Article 1,933.** Prescription achieved by a co-owner or owner of property held in common shall benefit the rest.

**Article 1,934.** The legal effects of prescription in favour of and against the estate shall take place prior to acceptance thereof and during the time provided to make the inventory and to deliberate.

**Article 1,935.** Persons with the capacity to dispose of property may waive the prescription achieved, but not the right to acquire by prescription thereafter.

Prescription shall be deemed implicitly waived where such waiver results from actions which make one suppose that the right acquired has been relinquished.

**Article 1,936.** All things which are within the bounds of trade between men are capable of prescription.

**Article 1,937.** Creditors, and any other person interested in enforcing prescription, may use it in spite of the express or implied waiver of the debtor or owner.

**Article 1,938.** The provisions of the present title shall be understood without prejudice to the provisions in this Code or in special acts in respect of specific instances of prescription.

**Article 1,939.** Prescription begun prior to the publication of the present Code shall be governed by the laws prior hereto; but if the whole period required herein for prescription should expire after the present Code enters into force, such prescription shall be effective, even if such prior laws should require a longer lapse of time.

## CHAPTER 2°

### *On prescription of ownership and other rights in rem*

**Article 1,940.** Ordinary prescription of ownership and remaining rights *in rem* shall require possession of the thing in good faith and pursuant to just title for the period provided in the law.

**Article 1,941.** Possession must be in the capacity of owner, and must be public, peaceful and uninterrupted.

**Article 1,942.** Acts of a possessory nature executed pursuant to licence or mere tolerance by the owner shall not serve to establish possession.

**Article 1,943.** For prescription purposes, possession is interrupted on a natural or on a civil basis.

**Article 1,944.** Possession is interrupted naturally when for any reason such possession should cease for more than one year.

**Article 1,945.** Civil interruption occurs as a result of the judicial summons to the possessor, even if it should be by order of an incompetent Judge.

**Article 1,946.** The judicial summons shall be deemed not to have been given, and shall cease to generate an interruption:

- 1.** If it should be null and void as a result of lack of the legal solemnities.
- 2.** If the plaintiff should abandon the claim or should let the action lapse.
- 3.** If the possessor should be acquitted.

**Article 1,947.** Civil interruption shall also take by an act of conciliation, provided that, within two months thereof, the claim concerning possession or ownership of the thing in question is submitted before the Judge.

**Article 1,948.** Any express or implied recognition by the possessor of the owner's right shall likewise interrupt possession.



**Article 1,949.** Ordinary prescription of ownership or rights *in rem* to the detriment of a third party shall not take place against a title registered in the Property Registry, unless it is pursuant to another title which has also been registered, and the time shall begin to run from registration of the latter.

**Article 1,950.** The possessor's good faith consists of the belief that the person from whom he received the thing was its owner, and could transfer ownership thereof.

**Article 1,951.** The conditions of good faith required for possession in articles 433, 434, 435 and 436 of this Code are likewise necessary to establish this prerequisite for the prescription of ownership and other rights *in rem*.

**Article 1,952.** Just title shall be deemed to mean a title legally sufficient to transfer ownership or the right *in rem* subject to prescription.

**Article 1,953.** For prescription purposes, title must be authentic and valid.

**Article 1,954.** Just title must be proved; it is never presumed.

**Article 1,955.** Ownership of movable property prescribes by three years of uninterrupted possession in good faith.

Ownership of movable property also prescribes by six years of uninterrupted possession, without any other condition.

The provisions of article 464 of this Code shall apply as related to the owner's right to claim movable property which has been lost or of which he has been unlawfully deprived, and likewise as relates to movable property acquired in a public sale in an Exchange, fair or market or from a tradesman who is legally established and dedicated on a habitual basis to trading in similar objects.

**Article 1,956.** Movable property purloined or stolen may not prescribe in the possession of those who purloined or stole it, or their accomplices or accessories, unless the crime or misdemeanour or its sentence, and the action to claim civil liability arising therefrom, should have become barred by statute of limitations.

**Article 1,957.** Ownership and other rights *in rem* over immovable property prescribe by ten years' possession among present persons, and twenty among absent persons, in good faith and with just title.

**Article 1,958.** For the purposes of prescription, foreign or overseas residents are deemed to be absent.

If part of the time the owner should have been present and another part absent, two years of absence shall be deemed one year in order to complete the ten years of presence required.

Absences for less than a whole continuous year shall not be taken into account for the calculation.

**Article 1,959.** Ownership and other rights *in rem* over immovable property also prescribe as a result of thirty years of uninterrupted possession, without requiring any title or good faith, and without distinction between persons present and absent, save for the exception provided in article 539.

**Article 1,960.** The following rules shall be observed to count the time required for prescription:

- 1.** The current possessor may complete the time required for prescription adding to his own that of his predecessor.
- 2.** The current possessor who was also a possessor in a previous time, shall be presumed to have continued to be so during the time in between, unless there is evidence to the contrary.
- 3.** The day on which such time begins to be counted shall be deemed to have been a full day; but the last day must be completed in full.

## CHAPTER 3°

### *On the statute of limitations on actions*

**Article 1,961.** Actions expire by the running of the statute of limitations by the mere lapse of the time set forth in the law.

**Article 1,963.** Actions *in rem* relating to immovable property shall become barred by statute of limitations after thirty years.

This provision shall be understood without prejudice to the provisions relating to acquisition of ownership of rights *in rem* pursuant to prescription.

**Article 1,964.** The mortgage remedy shall become barred by statute of limitations after twenty years, and personal remedies for which no special statute of limitations has been provided, after fifteen years.

**Article 1,965.** The action between co-heirs, co-owners or owners of adjoining properties to request partition of the estate, division of common property or the setting of boundaries of the adjoining properties shall not be subject to statute of limitations.

**Article 1,966.** Actions to claim the performance of the following obligations shall be barred by statute of limitations after five years:

1. The obligation to pay support.
2. The obligation to pay leases, whether of rural or urban properties.
3. Any other payments to be made on a yearly basis or in shorter time periods.

**Article 1,967.** Actions to claim the performance of the following obligations shall be barred by statute of limitations after three years:

1. The obligation to pay Judges, Attorneys, Registrars, Notaries Public, Scriveners, experts, agents and clerks their fees and charges, and any expenses and disbursements made thereby in the performance of their duties or professions in the affairs to which such obligations refer.
2. The obligation to pay Pharmacists the medicines they supplied; teachers and Masters their fees and stipends for their teaching, or for the exercise of their profession, art or trade.
3. The obligation to pay manual workers, servants and agricultural labourers the amount for their services and any supplies or disbursements made in respect thereof.
4. The obligation to pay innkeepers food and board, and merchants the price of the goods sold to others who are not or who, being merchants, deal in another trade.

The time required for the statute of limitations to run in the actions mentioned in the three preceding paragraphs shall count from the date on which the respective services ceased to be provided.

**Article 1,968.** The following shall be barred by statute of limitations upon the lapse of one year:

1. The action to recover or retain possession.
2. The action to claim civil liability as a result of insults or slander, and for obligations resulting from fault or negligence as provided in article 1,902, from the date on which the injured party became aware of them.

**Article 1,969.** The time required for the barring of all kinds of actions by statute of limitations, unless otherwise provided by a specific provision, shall be counted from the day on which they could be exercised.

**Article 1,970.** The time required to bar by statute of limitations actions whose purpose is to claim the performance of obligations to pay capital with interest or rent shall run from the last payment of the rent or interest.

The same shall be understood of the capital sum in consignative ground rents.

In emphyteutic and reservative ground rents, the time required for the running of the statute of limitations shall likewise be counted from the last payment of the pension or rent.

**Article 1,971.** The time required for the statute of limitations on actions to request performance of obligations declared in a judgement shall begin to run from the time when the judgement becomes final.

**Article 1,972.** The term of the statute of limitations on actions to require the giving of accounts shall run from the day on which those who are to give them were removed from their positions.

The term corresponding to the action relating to the result of such accounts shall run from the date on which such result was acknowledged by agreement between the interested parties.

**Article 1,973.** The statute of limitations on actions is interrupted by the bringing of such actions before the Courts, by an out of court claim issued by the creditor and by any act of acknowledgement of the debt by the debtor.

**Article 1,974.** Interruption of the statute of limitations on actions in joint and several obligations shall inure to the benefit or detriment of all creditors and debtors equally.

This provision shall also apply in respect of the heirs of the debtor in all kinds of obligations.

In joint obligations, where the creditor only claims from one of the debtors the part which corresponds to him, the statute of limitations shall not be interrupted in respect of the other co-debtors as a result.

**Article 1,975.** Interruption of the statute of limitations against the principal debtor as a result of the judicial claiming of the debt shall also be effective against his guarantor; but the interruption occurred as a result of out of court claims by the creditor or private acknowledgements by the debtor shall not prejudice the guarantor.

## FINAL PROVISION

**Article 1,976.** All laws, uses and customs which comprise Common Civil Law in all matters constituting the subject matter of this Code are hereby repealed, and they shall become without force and effect as directly enforceable laws and as subsidiary rules. This provision shall not apply to the laws that this Code has declared to subsist.

