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Subdirección General de Documentación y Publicaciones  
tienda.publicaciones@mjusticia.es  
San Bernardo, 62  
28015, Madrid

This is a translation of a text originally drafted in Spanish. It is an unofficial translation pursuant to the meaning of Section 1º) Article 6 of Royal Decree 2555/1977, of 27th August, approving the Regulation of the Office for the Interpretation of Languages of the Ministry of Foreign Affairs and Cooperation.

This translation coincides with the consolidated text extracted from the Official State Gazette which was last updated on 6th October 2015.

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**ROYAL DECREE OF 24<sup>TH</sup> JULY 1889  
WHEREBY THE SPANISH CIVIL CODE IS  
PUBLISHED.**

Please bear in mind that any references to the so-called “full adoption” are deemed to be replaced by the adoption governed in Act 21/1987, of 11<sup>th</sup> November, as established in Article 3 of the aforesaid Act. Ref. BOE-A-1987-25627.

In view of the provisions of the Act of 26<sup>th</sup> May last; agreeing with the proposal of the Minister of Grace and Justice, and in accordance with the opinion of My Council of Ministers;

On behalf of My August Son, His Majesty The King Alfonso XIII, and as The Queen Regent of the Realm,

I come to decree that the attached text of the new edition of the Civil Code may be published and inserted to the Madrid Gazette; incorporating the amendments and additions proposed by the Civil Section of the General Codification Commission, arising from the discussion held in both Co-legislative Chambers, and in compliance with the provisions of the aforesaid Act of 26<sup>th</sup> May last.

Given at San Ildefonso, this twenty-fourth day of July of eighteen eighty nine.

MARÍA CRISTINA

The Minister of Grace and Justice,

JOSÉ CANALEJAS Y MÉNDEZ



## **SPANISH CIVIL CODE**

### **PRELIMINARY TITLE**

#### **On legal provisions, their application & effectiveness**

##### **CHAPTER I**

##### **Sources of the Law**

###### **Article 1**

1. The sources of the Spanish legal system are written laws, custom and general legal principles.

2. Any provision which contradicts another of higher rank shall be invalid.

3. Custom shall only apply in the absence of applicable written laws, provided that they are not contrary to morality or the public order, and that it is duly proven.

Legal uses which are not merely for the construction of a declaration of will shall be deemed customs.

4. General legal principles shall apply in the absence of applicable written law or custom, without prejudice to the fact that they contribute to shape the legal system.

5. Legal provisions 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 Official State Gazette.

6. Case Law shall complement the legal system by means of the opinion repeatedly handed down by the Supreme Court in its construction and application of written laws, customs and the general legal principles.

7. The Judges and Courts of Law shall have the inexcusable duty of resolving in any event on the issues brought before them, abiding by system of sources established.

###### **Article 2**

1. Written laws shall enter into force twenty days after their full publication in the Official State Gazette, unless otherwise provided therein.

2. Written laws may only be repealed by subsequent written laws. Such repeal shall have the scope explicitly provided therein, and shall always extend to any provision of

the new written law on the same matter which is incompatible with the prior written law. Mere repeal of a written law shall not entail re-entry into force of any provision repealed thereby.

3. Laws shall not have retroactive effect, unless otherwise provided therein.

## **CHAPTER II**

### **Application of legal provisions**

#### **Article 3**

1. Legal provisions shall be construed according to the very meaning of their words and in connection with the context, with their historical and legislative precedents and with the social reality of the time in which they are to be applied, basically in view of the spirit and purpose thereof.

2. Equity shall be taken into account in applying legal provisions, but resolutions of the Courts of Law may only be based exclusively on equity if the law explicitly allows this.

#### **Article 4**

1. If a provision fails to contemplate a specific case, but does regulate another similar one in which identical reason is perceived, such provision shall be applied by analogy.

2. Criminal laws, exceptional laws and laws of a temporary nature shall not be applied in cases or times other than as explicitly provided therein.

3. The provisions of this Code shall be of subsidiary application in matters governed by other laws.

#### **Article 5**

1. Unless otherwise provided, for periods stated in number of days, counting from a particular day, 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 day to day. If on the month of the expiration date there is no day 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 the Civil Law shall not exclude non-business days.

## **CHAPTER III**

### **General effectiveness of legal provisions**

#### **Article 6**

1. Ignorance of the law does not excuse from compliance therewith. Error in the law shall only have the effects provided in the laws.

2. The voluntary exclusion of applicable law and the renunciation of any rights recognised therein shall only be valid if they do not contradict the public interest or order or cause a detriment to third parties.



3. Acts contrary to mandatory and prohibitive legal provisions shall be null and void by operation of law, save if such legal provisions provide for a different effect in the event of a breach.

4. Acts carried out pursuant to the text of a legal provision, which pursue a result forbidden by the legal system or contrary thereto shall be deemed to be in fraud of the law and shall not prevent due application of the provision which they purported to elude.

#### **Article 7**

1. Rights must be exercised pursuant to the requirements of bona fide.

2. The law does not cover abuse of rights or antisocial exercise thereof. Any act or omission which, as a result of the perpetrator's intention, its purpose or the circumstances in which it is carried out manifestly exceeds the normal limits of exercise thereof, with damage to a third party, shall give rise to the corresponding compensation and the adoption of judicial or administrative measures required to prevent persistence in such an abuse.

### **CHAPTER IV**

#### **Provisions of Private International Law**

#### **Article 8**

1. Criminal, police and public security laws shall be binding on all persons within Spanish territory.

#### **Article 9**

1. The personal law applicable to an individual shall be determined by his citizenship. Such law shall govern capacity and civil status, family rights and duties and *mortis causa* succession.

A change in personal law shall not impinge the coming of age acquired pursuant to 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 matrimony; 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 solemnisation of the matrimony; in the absence of such choice, by the law of the place of habitual residence common to both immediately after the solemnisation of the matrimony and, in the absence of such residence, by that of the place of the solemnisation of the matrimony.

Nullity, separation and divorce shall be governed by the law provided in Article 107.

3. Nuptial agreements or covenants stipulating, amending or replacing the property system of the marriage shall be valid if they are pursuant to either the law governing the effects of the wedlock, or the law of the citizenship or habitual abode of either party at the time of execution thereof.

4. The nature and content of natural filiation shall be governed by the law of the habitual abode of the child at the time when the filiation is established. In the absence of the habitual abode of the child, or if the filiation is not permitted under law, the national law at that time of the child shall apply. If this law does not permit the filiation or if the child does not have a habitual abode or citizenship, Spanish substantive Law shall apply. As regards filiation by adoption, the provisions of Section 5 shall apply.

The nature and content of filiation, including filiation by adoption, and parental responsibility shall be governed by the Hague Convention of 19<sup>th</sup> October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

5. International adoption shall be governed by the provisions of the International Adoptions Act. Likewise, adoptions decreed by foreign authorities shall be effective in Spain pursuant to the provisions of the aforesaid International Adoptions Act.

6. The law applicable to the protection of children shall be determined pursuant to the Hague Convention of 19<sup>th</sup> October 1996, as referred to in Section 4 of this Article.

The law applicable to the protection of elderly persons shall be determined by the law of their habitual abode. If their abode changes to another State, the law of the new habitual abode shall apply, without prejudice to the recognition in Spain of the protection measures granted in other States. The aforesaid notwithstanding, Spanish Law shall apply for the adoption of provisional or urgent protection measures.

7. The law applicable to maintenance obligations between relatives shall be determined pursuant to the Hague Protocol of 23<sup>rd</sup> November 2007 on the Law Applicable to Maintenance Obligations or any legal text by which it is replaced.

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 goods and the country where they are located. The aforesaid notwithstanding, testamentary provisions and covenants relating to future succession executed pursuant to 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 *ipso iure* to the surviving spouse shall be governed by the same law which governs the effects of marriage, respecting at all times the reserved share allocated to the descendants.

9. For the purposes of the present Chapter, the provisions of international treaties shall apply to situations of dual citizenship provided under Spanish Law, and, in the absence of such provisions, the citizenship of the last place of habitual abode and, in the absence thereof, the last citizenship acquired shall be preferred.

In any event, Spanish citizenship shall prevail for persons who also hold another citizenship that is not provided for in Spanish Laws or international treaties. If such individual were to hold two or more nationalities, and none be Spanish, the provisions of the following Section shall apply.

10. The law of the place of habitual abode shall be deemed to be the personal law of persons without a citizenship or with indeterminate citizenship.



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

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 goods and publicity thereof shall be governed by the law of the place where such goods are located.

The same law shall apply to movable goods.

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 were to have explicitly or implicitly covenanted to deem them to be deemed 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 pursuant to 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 explicitly 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 abode 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 explicit submission, contracts relating to immovable goods shall be governed by the law of the place of their location, and sale and purchases of material movable goods in commercial establishments by the law of the location of such establishments.

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

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

**8.** Contracts for valuable consideration entered into in Spain by an alien without sufficient capacity pursuant to his national law shall be valid for the purposes of Spanish Law if the cause of his lack of capacity were not recognised under Spanish Law. This provision shall not apply to contracts relating to immovable goods 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 conveyance of goods 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 the attorney's powers derive, voluntary representation, in the absence of explicit submission, by the law of the country where the powers conferred are to be exercised.

#### **Article 11**

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

If such acts were to 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 pertain.

2. If the law regulating the content of acts and contracts were to 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, last wills and testaments and other legal acts witnessed by Spanish diplomatic or consular officials abroad.

#### **Article 12**

1. Classification to determine the applicable conflict of laws provision shall always be made pursuant to Spanish Law.

2. Referral to an alien law shall be deemed made to the substantive law thereof, without taking into account any renvoi made by its conflict of laws provisions to another law other than Spanish Law

3. Under no circumstances whatsoever shall an alien law apply if it is contrary to public order.



4. The use of a conflict of laws provisions to elude a mandatory Spanish Law shall be deemed to constitute fraud of the law.
5. If a conflict of laws provision were to refer to the legislation of a State in which different legislative systems coexist, the establishment of which one is applicable shall be made pursuant to the legislation of such State.
6. The Courts of Law and authorities shall apply Spanish conflict of laws provisions on their own motion.

## CHAPTER V

### Scope of application of the different Civil Laws coexisting within Spain

#### Article 13

1. The provisions of this preliminary Title, to the extent that they determine the effects of laws and the general provisions governing their application, and those of Title IV of Book I, with the exception of the provisions in the latter relating to the marriage property system, shall be generally and directly applicable throughout Spain.
2. For the rest, fully respecting any Special or Regional Law of any provinces or territories in which such Laws apply, the provisions of the Civil Code shall apply on a subsidiary basis, in the absence of a subsidiary law in each of them, pursuant to the specific provisions thereof.

#### Article 14

1. Submission to Common Civil Law or to Special or Regional Law shall be determined by civil citizenship.
2. Persons born from parents from the Common Civil Law territory or from a Special or Regional Law territory shall have the same civil citizenship as their parents.

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

3. If the parents were to have different civil citizenships upon the birth or adoption of their child, the child shall have the civil citizenship pertaining to the parent in respect of whom the child's filiation were to have been determined first; in the absence thereof, that of his place of birth and, lastly, the Common Civil Law citizenship.

Notwithstanding the foregoing, the parents, or the parent who exercises or has been attributed parental authority, may attribute to a child the civil citizenship of either within six months following the birth or adoption.

Deprivation or suspension in the exercise of parental authority, or a change of civil citizenship of the parents shall not impinge the civil citizenship of their children.

In any event, a child, from his fourteenth birthday and within one year from his emancipation, may either opt for the civil citizenship of his place of birth or the last civil citizenship of either parent. If he has not been emancipated, he shall be assisted in his choice by his legal representative.

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

5. Civil citizenship 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 at the Civil Registry and need shall not be repeated.

6. In case of doubt, the civil citizenship pertaining to the place of birth shall prevail.

### Article 15

1. An alien who acquires Spanish citizenship shall, upon registration of the acquisition of such citizenship, opt for any of the following civil citizenships:

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

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

2. The alien who acquires Spanish citizenship by decree of naturalisation shall have the civil citizenship determined in the Royal Decree granting such naturalisation, taking into account his choice, pursuant to the provisions of the preceding Section or other circumstances concurring in the applicant.

3. Recovery of Spanish citizenship shall entail recovery of the civil citizenship held by the interested party at the time of the loss of the former.

4. Personal dependence in respect of an area or locality having its own or distinct Civil Law, within a Special or Regional Civil Law 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 Spain shall be resolved pursuant to the provisions provided in Chapter IV, with the following particularities:

1. The personal law shall be that determined by civil citizenship;
2. The provisions of Sections 1, 2 and 3 Article 12 on classification, referral and public order shall not apply;



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

Expectant widowhood rights shall not be effective against a *bona fide* acquirer for valuable consideration of any properties not located within the territory where such right is recognised, if the contract has been entered into outside such territory without noting the conveyer's marriage property system.

The widow's usufruct shall also correspond to the surviving spouse if the predeceased spouse has the civil citizenship of Aragon at the time of his death.

3. The effects of marriage between Spaniards shall be governed by the applicable Spanish Law pursuant to the criteria provided in Article 9 and, in the absence thereof, by the Civil Code.

In this last case the separation of property marriage system provided in the Civil Code shall apply if such kind of system would be applicable pursuant to the personal law of both of the spouses.

## **BOOK I**

### **ON PERSONS**

#### **TITLE ONE**

##### **On Spaniards & aliens**

#### **Article 17**

**1.** The following persons are Spaniards by birth right:

- a) Those born of a Spanish mother or father;
- b) Those born in Spain of alien parents if at least one of them has also been born in Spain. The children of a diplomatic or consular official accredited in Spain shall be excepted from this provision;
- c) Those born in Spain of alien parents if both of them are stateless or if the legislation of neither were to grant a citizenship to the child;
- d) Those born in Spain of uncertain filiation. For these purposes, minors whose first known place of stay 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 itself constitute a basis to acquire Spanish citizenship. The interested party shall then be entitled to opt for Spanish citizenship by birth right within two years counting from such determination.

#### **Article 18**

The *bona fide* possession and continued use of Spanish citizenship for ten years, based on a title recorded at the Civil Registry shall constitute grounds for the consolidation of Spanish citizenship, even if the title which originated such citizenship were to be annulled.

#### **Article 19**

**1.** An alien younger than eighteen adopted by a Spaniard shall acquire Spanish citizenship by birth right as of the adoption.

**2.** If the adoptee were to be older than eighteen, he may opt for Spanish citizenship by birth right within two years following the adoption.

**3.** Without prejudice to the provisions of Section 1, if, pursuant to the legal system of the country of birth, the adopted minor retains his citizenship, it shall also be recognised in Spain.



## Article 20

### 1. The following persons shall be entitled to opt for Spanish citizenship:

- a) Those who are or have been subject to the parental authority of a Spaniard;
- b) Those whose father or mother was originally Spanish and born in Spain;
- c) Those concerned by the second Section of Articles 17 and 19.

### 2. The declaration of option shall be formulated:

- a) By the legal representative of the person who makes the option if the latter were to be younger than fourteen or incapacitated. In this case the option shall require the leave of the official 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 leave 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 if, in spite of his incapacity, he were to be allowed to do so by the incapacitation judgment.
- c) By the interested party, by himself, if he is emancipated or older than eighteen. The right to exercise the option shall expire when he turns twenty, but if he were not emancipated pursuant 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 has expired pursuant to Section c) shall be excepted therefrom.

### 3. Notwithstanding the provisions of the previous Section, the right to exercise the option established in Section 1.b) of this Article shall not be subject to any age limit.

## Article 21

### 1. Spanish citizenship shall be acquired by decree of naturalisation, granted discretionally by Royal Decree, when exceptional circumstances concur in the interested party.

### 2. Spanish citizenship 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 order 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 judgment.

In the last two cases, the legal representative may only formulate the application if he previously obtains a leave pursuant to the provisions of Paragraph a) of Section 2 of the preceding Article.

4. The granting of citizenship pursuant to decree of naturalisation or of residence shall expire after one hundred and eighty days if the interested party does not within such period appear before a competent official to comply with the requirements provided in Article 23.

## Article 22

1. Granting of citizenship 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 right of Ibero-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 persists at the time of the application;
- d) A person who, at the time of the application, has been married to a Spaniard for one year and is not separated *de iure* or *de facto*;
- e) A widow or widower of a Spaniard if, upon the death of the spouse he were not separated *de iure* or *de facto*;
- f) A 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 Paragraph d) of the preceding Section, the spouse cohabiting with a Spanish diplomatic or consular official accredited 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 into Spanish society in the proceedings regulated by the Civil Registry legislation.

5. The granting or refusal of citizenship 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 citizenship by option, naturalisation or residence:

- a) For the person older than fourteen and capable of issuing a statement by himself to swear or promise allegiance to The King and compliance with the Constitution and the laws;
- b) For the same person to declare that he renounces his prior citizenship. Nationals of the countries mentioned in Section 1 of Article 24 and Sephardic Jews originally from Spain are 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 citizenship or who exclusively use their alien citizenship attributed prior to their emancipation shall lose their Spanish citizenship. Such loss shall take place after the lapse of three years, counting, respectively, from the acquisition of the alien citizenship or from the emancipation. The aforesaid notwithstanding, interested parties may prevent any such loss if they declare their desire to retain Spanish citizenship to the official in charge of the Civil Registry within the established period.

Acquisition of the citizenship of Ibero-American countries, Andorra, the Philippines, Equatorial Guinea or Portugal shall not be sufficient to cause the loss of Spanish citizenship by birth right.

2. In any event, emancipated Spaniards who explicitly renounce their Spanish citizenship shall lose it if they have another citizenship and reside abroad.

3. Those who were born and reside abroad and who have Spanish citizenship by virtue of having a Spanish father or mother, who were also born abroad, if the laws of the country in which they reside attribute them the citizenship of that country, shall lose Spanish citizenship at any rate if they do not declare their desire to retain it to the official in charge of the Civil Registry within a period of three years, counting from their age of majority or emancipation.

4. Loss of Spanish citizenship shall not take place pursuant to the provisions of this Article if Spain were at war.

## Article 25

1. Spaniards who are not Spanish by birth right shall lose their citizenship:

- a) If for a period of three years they have exclusively used the citizenship which they have declared to have renounced upon acquiring Spanish citizenship;
- b) If they were to voluntarily enter the armed forces or exercise public office in an alien State against the Spanish Government's explicit prohibition.

2. A final judgment holding that the relevant party has incurred in misrepresentation, concealment or fraud in the acquisition of Spanish citizenship shall cause such acquisition's to be null and void, although no prejudicial effects shall result for *bona fide* third parties. The action for annulment shall be exercised by the Public Prosecutor on his own motion or pursuant to a complaint, within a period of fifteen years.

## Article 26

1. A person who has lost his Spanish citizenship 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 renounced by the Minister of Justice if exceptional circumstances concur;
- b) Declaring before the official in charge of the Civil Registry his intention to recover Spanish citizenship; and
- c) Registering the recovery at 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 citizenship, without the Spanish Government's prior authorisation, which shall be granted discretely.

#### **Article 27**

Aliens shall enjoy in Spain the same civil rights as Spaniards, save as provided in Special Laws and Treaties.

#### **Article 28**

Corporations, foundations and associations recognised by law and domiciled in Spain shall have Spanish nationality, provided that they are legal persons pursuant to the provisions of the present Code.

Associations domiciled abroad shall have in Spain the consideration and rights determined by treaties or Special Laws.



## **TITLE II**

### **On the birth & extinction of civil personality**

#### **CHAPTER I**

##### **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 were to be born meeting the conditions stated in the following Article.

###### **Article 30**

Legal personality is acquired at the time of live birth, once the complete detachment from the mother's womb has taken place.

###### **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 who died first, the person affirming who died first must prove it; in the absence of evidence, they shall be presumed to have died at the same time, and no conveyance 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 II**

##### **On legal persons**

###### **Article 35**

The following shall be legal persons:

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

Their personality shall begin from the very moment in which they have been validly incorporated pursuant to the law.

2. Associations of private interest, whether civil, business 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, if this requirement is necessary.

**Article 38**

Legal persons may acquire and possess goods of all kinds, and contract obligations and exercise civil and criminal actions, pursuant to the laws and internal regulations.

The Catholic 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 the Special Laws.

**Article 39**

If, as a result of expiration of their legal term, or because 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 were to cease to operate, their goods shall be allocated as provided in the laws, Articles of Association or Foundational Articles. In the absence of any prior provision, such goods shall be allocated to the performance of analogous purposes in the interests of the region, province or municipality mainly 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 Procedure Act.

The domicile of Spanish 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**

If neither the law which created or recognised them or the Articles of association or Foundational Articles were to establish the domicile of legal persons, 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 I**

##### **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 matrimony.

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 a cause, shall only give rise to the obligation to compensate the other party for expenses made and obligations contracted in consideration of the promised wedlock.

This action shall be extinguished after one year has elapsed counting from the day of the refusal to solemnise the marriage.

#### **CHAPTER II**

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

##### **Article 44**

Men and women are entitled to marry pursuant to the provisions of this Code.

Marriage shall have the same requirements and effects whether the 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 put.

##### **Article 46**

The following persons may not marry:

1. Non-emancipated minors;
2. Persons who are already joined by wedlock.

##### **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 perpetrators or accomplices of the murder of the spouse of either of them.



### Article 48

The Judge may dispense, with just cause and at the request of one of the parties, by means of a resolution handed down in non-contentious proceedings, the impediment of murder of the spouse or person with whom he is partnered in an emotional relationship akin to marriage and the impediment of the third degree of kinship in collateral line. A subsequent dispensation shall validate the marriage from the day of its solemnisation, if neither party has applied to the Court to have it declared null and void.

## CHAPTER III

### On the form of solemnisation of matrimony

#### Section One. General provisions

### Article 49

Any Spaniard may marry within or without Spain:

1. Pursuant to the form regulated in this Code;
2. Pursuant to the religious form provided in the law.

He may also marry outside of Spain pursuant to the form provided in the law of the place of the solemnisation of the matrimony.

The wording of this Article, drafted by Final Provision 1.3 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“Any Spaniard may marry within or without of Spain:*

- 1. Before the Judge, Mayor or public official provided in this Code;*
- 2. Pursuant to the religious form provided in the law.*

*He may also marry outside of Spain pursuant to the form provided in the law of the place of the solemnisation of the matrimony.”*

### Article 50

If both parties intending to enter into wedlock are aliens, the marriage may be solemnised in Spain in pursuant to the form provided for Spaniards, or in compliance with the form set forth in the personal law applicable to either of them.

#### Section Two. On the solemnisation of matrimonies

### Article 51

**1.** The Court Clerk, Notary Public or official in charge of the Civil Registry of the place of the address of one of the contracting parties of the wedlock or the diplomatic or consular official in charge of the Civil Registry if they reside abroad shall be competent to acknowledge the fulfilment of the capacity requirements of both contracting parties

of the matrimony and the absence of impediments or their renunciation, or any manner of obstacles to contract the marriage, by means of a record of the proceedings.

**2.** The following persons shall be competent to solemnise the marriage:

1. The Judge of the Peace in charge of the Civil Registry and the Mayor of the municipality where the marriage is solemnised, or the councillor in favour of whom the latter has delegated.
2. The Court Clerk or Notary Public freely chosen by both parties contracting the wedlock, competent by reason of the place of solemnisation;
3. The diplomatic or consular official in charge of the Civil Registry abroad.

The wording of this Article, drafted by Final Provision 1.5 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“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 solemnised, or the councillor in favour of whom the latter has delegated;*
- 2. In municipalities where such a Judge were not in residence, the delegate appointed pursuant to applicable regulations;*
- 3. The diplomatic or consular official in charge of the Civil Registry abroad.”*

## **Article 52**

The following persons may solemnise the marriage of persons in articulo mortis:

1. The Judge of the Peace, the Mayor or Councillor on whom the latter may delegate, the Court Clerk, Notary Public or official referred to in Article 51;
2. For soldiers in military campaigns, the immediately superior Officer or Chief;
3. For marriages solemnised on board a ship or aircraft, the Captain or Commander thereof.

A marriage in articulo mortis shall not require for its solemnisation a prior matrimonial dossier or record of proceeding, but shall require the presence of two witnesses of legal age at the solemnisation of the matrimony, and when the danger of death arises from an illness or the physical condition of either contracting party, a medical opinion on the party's capacity to give consent and the seriousness of the situation, save in the event of proven impossibility, without prejudice to the provisions of Article 65.

The wording of this Article, drafted by Final Provision 1.6 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“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 judicial 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 solemnised on board a vessel or aircraft, the Captain or Commander thereof.*

*Such marriage shall not require the prior formation of proceedings, but shall require the presence of two witnesses of legal age at the solemnisation of the matrimony, save in the event of proven impossibility."*

### **Article 53**

The validity of the marriage shall not be affected by the incompetence or lack of appointment of the Judge of the Peace, Mayor, Councillor, Court Clerk, Notary Public or official before whom the marriage is solemnised, if at least one of the contracting parties acted in bona fide and the former exercised his duties publicly.

The wording of this Article, drafted by Final Provision 1.7 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*"The validity of the marriage shall not be affected by the incompetence or lack of legitimate appointment of the Judge, Mayor or official who authorises it, if at least one of the contracting parties has acted in bona fide and the former exercised his 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 matrimonial record of proceeding or dossier shall be processed confidentially, without the publication of edicts or banns.

### **Article 55**

Either of the contracting parties may solemnise the marriage by means of an attorney, to whom a special power of attorney shall be granted 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 solemnised, detailing the personal circumstances necessary to establish his identity; the Court Clerk, Notary Public, official in charge of the Civil Registry or any official that processes the matrimonial record or proceeding or dossier shall assess the validity of the power of attorney prior to the marriage.

The power of attorney shall be extinguished 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 solemnisation of the marriage shall be sufficient for these purposes. Notice of such revocation shall be immediately given to the Court Clerk, Notary Public, official in charge of the Civil

Registry or any official that processes the matrimonial dossier or proceeding prior to the marriage, and if it has already been finalised, to whomever is to solemnise it.

The wording of this Article, drafted by Final Provision 1.8 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“The matrimonial dossier may authorise that the prospective spouse who does not reside in the district or district of the authorising Judge, Mayor or official may enter solemnise 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 solemnised, detailing the personal circumstances necessary to establish his identity.*

*The power of attorney shall be extinguished 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 official.”*

#### **Article 56**

Persons wishing to marry must previously provide evidence, in a record of proceeding or dossier processed pursuant to the Civil Registry legislation, that they meet the capacity requirements and on the absence of impediments or their dispensation, as set forth in this Code.

If either of the prospective spouses is affected by mental, intellectual or sensorial deficiencies, a medical opinion on his ability to give consent shall be required by the Court Clerk, Notary Public, official in charge of the Civil Registry or any official that processes the matrimonial record of the proceeding or dossier.

The wording of this Article, drafted by Final Provision 1.9 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“Persons wishing to marry must previously provide evidence, in a matrimonial record of proceeding processed pursuant to the Civil Registry legislation, that they meet the capacity requirements set forth in this Code.*

*If either of the prospective spouses is affected by mental deficiencies or anomalies, a medical opinion on his ability to give consent shall be required.”*

#### **Article 57**

The marriage dossier processed by the Court Clerk or consular or diplomatic official may be solemnised before the same or a different party with the same capacity, or before a Judge of the Peace, Mayor or Councillor on whom the latter may delegate, at



the discretion of the contracting parties of the wedlock. If it is processed by the official in charge of the Civil Registry, the contracting parties of the wedlock may choose to be married before a Judge of the Peace, Mayor or Councillor on whom the latter may delegate.

Finally, if the record of marriage is issued by a Notary Public, the contracting parties may choose to give their consent before the same Notary Public that processed the prior dossier or any other Notary Public or a Judge of the Peace, Mayor or Councillor on whom the latter may delegate.

The wording of this Article, drafted by Final Provision 1.10 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“The marriage shall be solemnised before the Judge, Mayor or official corresponding to the domicile of either prospective spouse, and two witnesses of legal age.*

*Consent may also be given, by delegation of the official in charge of the record of the proceedings, either at the request of the prospective spouses or before the Judge, Mayor or official of another location, on the latter’s motion.”*

#### **Article 58**

The Judge of the Peace, Mayor, Councillor, Court Clerk, Notary Public or official, after reading Articles 66, 67 and 68 hereof, shall ask each of the contracting parties of the wedlock 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 draw up the relevant entry or certificate.

The wording of this Article, drafted by Final Provision 1.11 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“The Judge, Mayor or official, 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 draw up the relevant entry or certificate.”*

### **Section Three. On marriage solemnised in a religious form**

#### **Article 59**

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

#### **Article 60**

**1.** A marriage solemnised pursuant to the provisions of Canon Law or in any of the religious forms provided in the cooperation agreements between the State and the religious confessions shall have civil effects.

2. Likewise, civil effects are hereby recognised to any marriage solemnised in the religious form established by the churches, confessions, religious communities or federations thereof which, having been entered in the Registry of Religious Entities, and are recognised as being well-established in Spain.

In this event, the recognition of civil effects shall require the fulfilment of the following requirements:

- a) The processing of a prior record or dossier as to the capacity to marry pursuant to Civil Registry provisions;
- b) The free expression of consent before a duly accredited minister of religion and two witnesses of legal age.

The status of minister of religion shall be evidenced by a certificate issued by the church, confession or religious community that has been recognised and accepted as well-established in Spain, along with the approval of any federation that has requested said recognition.

3. The provisions of the following Chapter shall apply for full recognition of the civil effects of the marriage solemnised in a religious form.

#### CHAPTER IV

##### On registration of the marriage at the Civil Registry

###### Article 61

Marriage shall have civil effects from the time of its solemnisation.

The full recognition of such civil effects shall require registration of the marriage at the Civil Registry.

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

###### Article 62

The solemnisation of a marriage shall be evidenced by a certificate or public deed signed by the party before whom it is solemnised, the contracting parties of the wedlock and two witnesses.

Once the certificate is issued or the public deed authenticated, a copy evidencing the solemnisation of the marriage shall be submitted to the competent Civil Registry by the authorising party so that it may be registered, following qualification by the official in charge of said Registry.

The wording of this Article, drafted by Final Provision 1.13 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“The Judge, Mayor or official before whom the marriage is solemnised shall, immediately after its performance, make the relevant 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 official shall deliver to each spouse a document evidencing the performance of the marriage.”*

### **Article 63**

Registration of the marriage solemnised in Spain in a religious form shall take place by the mere filing of the certification issued by the respective church, confession, religious community or federation, which shall state the circumstances required by the Civil Registry legislation.

Registration shall be refused if the documents submitted or the entries in the Registry were to evidence 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 bona fide third parties until publication thereof in the ordinary Civil Registry.

### **Article 65**

In cases where the marriage has have been solemnised without processing the relevant prior dossier or record of proceeding, if this is necessary, the Court Clerk, Notary Public or diplomatic or consular official in charge of the Civil Registry before whom it has been solemnised, before carrying out the procedures required for the registration thereof, shall ascertain whether the legal requirements for its validity are met by processing the dossier or record of proceeding referred to in this Article.

If the marriage has been solemnised before any authority or competent person other than those indicated in the previous Paragraph, the relevant record shall be submitted to the official in charge of the Civil Registry of the place where the marriage is solemnised so that the requirements of validity can be verified by means of the relevant dossier. Once verified, the registration shall be carried by the official of the Civil Registry.

The wording of this Article, drafted by Final Provision 1.15 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.

Previous wording:

*“Save for the provisions of Article 63, in all other cases where the marriage has been solemnised without processing the relevant dossier, the Judge or official in charge of the Registry shall ascertain whether the legal requirements for its performance are met prior to registration thereof.”*

## CHAPTER V

### On the rights & duties of the spouses

#### Article 66

The spouses are equal in rights and duties.

#### Article 67

The spouses shall respect and assist each other and act in the family interest.

#### Article 68

The spouses are obliged to live together, to be faithful to each other and to come to each other's assistance. They must, furthermore, share domestic responsibilities and the care and attendance of ascendants and descendants and other dependents under 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, considering the family interest.

#### Article 71

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

#### Article 72

(Repealed)

## CHAPTER VI

### On the nullity of a marriage

#### Article 73

A marriage shall be null and void, whoever solemnised it:

1. The matrimony is solemnised without matrimonial consent;
2. The marriage is solemnised between the persons mentioned in Articles 46 and 47, save in the event of dispensation pursuant to Article 48;
3. The wedlock is solemnised without the intervention of a Judge of the Peace, Mayor or Councillor, Court Clerk, Notary Public or any official before whom it is to be solemnised, or without the presence of witnesses.

The wording of Section 3, drafted by Final Provision 1.16 of Act 15/2015, dated 2nd July (Ref. BOE-A-2015-7391), shall enter into force on 30th June 2017, pursuant to Final Provision 21.3 thereof.



Previous wording:

*“3. Marriage solemnised without the intervention of the Judge, Mayor or official before whom it is to be solemnised, or without the presence of witnesses.”*

4. Marriage solemnised because of error as to the identity of the other spouse, or such personal qualities which, as a result of their importance, have been decisive in the giving of consent.

5. Marriage solemnised 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 were to be age, whilst 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 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 be extinguished and the marriage shall be validated if the spouses have lived together for a year after the error has disappeared, or the duress or the grounds for fear have ceased.

#### **Article 77**

(Repealed)

#### **Article 78**

A Judge shall not decree the nullity of a marriage because of a defect of form, if at least one of the spouses entered into the wedlock in bona fide, save as provided in Number 3 of Article 73.

#### **Article 79**

The declaration of a 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 bona fide.

Bona fide is presumed.

#### **Article 80**

Resolutions issued by an Ecclesiastical Courts of Law relating to the nullity of a canonical marriage and Papal decisions relating to valid but non-consummated

matrimonies shall be effective under Civil law, at the request of either party, if they are declared to adjust to the Law of the Spanish State in a resolution issued by the competent Civil Judge pursuant to the conditions mentioned in **Article 954** of the Civil Procedure Act.

## **CHAPTER VII**

### **On separation**

#### **Article 81**

Whatever the form of solemnisation of the marriage, judicial separation shall be decreed if there are underage non-emancipated or incapacitated children that depend on their parents:

1. At the request of both spouses or of one with the consent of the other, after the lapse of three months from the solemnisation of the marriage. To the claim, the proposal of settlement agreement, pursuant to Article 90 of this Code, shall necessarily be attached.
2. At the request of one of the spouses, after the lapse of three months from the solemnisation of the marriage. The lapse of this period shall not be required to file the claim if 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.

A reasoned proposal of the measures which are to regulate the effects of the separation shall be attached to the claim.

#### **Article 82**

1. The spouses may agree to separate by mutual consent after the lapse of three months from the solemnisation of the marriage by concluding a settlement agreement in the presence of the Court Clerk or a public deed in the presence of a Notary Public, wherein, along with the explicit desire to separate, they shall establish the measures that are to regulate the effects arising from the separation under the terms established in Article 90. Diplomatic or consular officials may not authenticate the public deed of separation in the exercise of the notarial functions attributed to them.

The spouses shall be present in person when the agreement is executed, without prejudice to the fact that they shall be assisted by a practising Solicitor, and shall give their consent in the presence of the Court Clerk or Notary Public. Any children of full age or underage emancipated children shall also give consent in the presence of the Court Clerk or Notary Public on the measures impinging them, if they do not have own income and live in the family dwelling.

2. The provisions of this Article shall not apply if there are underage non-emancipated or judicially incapacitated children that depend on their parents.

#### **Article 83**

The separation judgment or decree or the execution of the public deed recording the settlement agreement 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.

Marital separation shall only become effective when the judgment or decree becomes final or if the consent of both spouses is granted in a public deed pursuant to the provisions of Article 82. A certified copy of the judgment or decree, or a copy of the public deed, shall be submitted to the Civil Registry for registration and, until that happens, the separation shall not be fully effective against bona fide third parties.

#### **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 concurring.

If the separation has occurred without any judicial intervention, pursuant to the form established in Article 82, the reconciliation shall be formalised in a public deed or affidavit.

For it to be effective against third parties, the reconciliation must be registered at the relevant Civil Registry.

### **CHAPTER VIII**

#### **On the dissolution of the marriage**

#### **Article 85**

A marriage shall be dissolved, whatever the form and time of its solemnisation, 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 of Law, whatever the form of solemnisation of the marriage, at the request of one of the spouses, of both or of one with the consent of the other, if the requirements and circumstances of Article 81 are met.

#### **Article 87**

The spouses may also agree to divorce by mutual consent by concluding a settlement agreement in the presence of the Court Clerk or a public deed in the presence of a Notary Public, pursuant to the form and containing the contents established in Article 82, and the same requirements and circumstances stipulated therein shall be met. Diplomatic or consular officials may not authenticate the public deed of divorce in the exercise of the notarial functions attributed to them.

#### **Article 88**

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

Reconciliation after the divorce shall have no legal effect, although the divorcees may marry again between them.

#### **Article 89**

Dissolution of the marriage by divorce may only take place by means of judgment or decree declaring the divorce and shall be effective when the judgment or decree becomes final, or by the consent of both spouses granted in a public deed under the provisions of Article 87. It shall not be prejudicial to bona fide third parties until after registration thereof at the Civil Registry.

### **CHAPTER IX**

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

#### **Article 90**

1. The settlement agreement mentioned in Articles 81, 82, 83, 86 and 87 shall contain, at least and if applicable, 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 dwelling and appurtenances.
- d) Contribution to the expenses of the marriage and support, the basis on which it is to be updated, and guarantees thereof, if applicable.
- e) Liquidation, if applicable, of the marriage property system.
- f) Alimony to be paid, as the case may be, pursuant to Article 97, to one of the spouses.

2. Agreements between the spouses adopted to regulate the consequences of the annulment, separation or divorce presented before a judicial body 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 agreement must be made by a reasoned resolution, and, in this case, the spouses shall submit a new proposal for the Judge's consideration, for his approval, if applicable.

If the spouses formalise the agreements in the presence of the Court Clerk or Notary Public and the latter take the view that any of these agreements might be detrimental or seriously prejudicial to one of the spouses or the children of full age or any emancipated minors concerned, they shall inform the executing parties to this effect and put an end to the proceedings. In this event, the spouses may only bring legal action for the approval of the proposed settlement agreement before a Judge.



The agreements may be enforced by summary proceedings as of the judicial approval of the settlement agreement or execution of the public deed.

3. The measures adopted by the Judge in the absence of an agreement, or those covenanted between the spouses, may be amended by the Judge or by a new settlement agreement approved by the Judge, according to any new needs of the children or in the event of a change of circumstances of the spouses. Any measures that have been covenanted in the presence of the Court Clerk or in a public deed may be modified by a new agreement, pursuant to the requirements established in this Code.

4. The Judge or the parties may establish personal or in rem guarantees to ensure performance of the agreement.

#### **Article 91**

In annulment, separation or divorce judgments or the enforcement thereof, the Judge, in the absence of an agreement between the spouses or non-approval thereof, shall determine, pursuant to the provisions of the following Articles, any measures that are to replace those already adopted previously in connection with the children, the family dwelling, marital expenses, liquidation of the marriage property system and any respective precautions or security, establishing applicable measures if none have been adopted in respect thereof. These measures may be amended in the event of material alteration of the circumstances.

#### **Article 92**

1. Separation, annulment and divorce shall not exonerate parents from their obligations with their children.

2. If 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 judgment shall order the deprivation of parental authority if grounds for this were to be revealed in the proceedings.

4. The parents may agree in the settlement agreement, or the Judge may decide, to 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 if the parents were to request this in the settlement agreement proposal or if both were to agree on this during the proceedings. The Judge, in decreeing joint custody and after duly motivating his resolution, shall adopt the necessary precautions for effective compliance with the custody system ordered, trying not to separate siblings.

6. In any event, before decreeing the care and custody system, the Judge shall ask the opinion of the Public Prosecutor and hear the minor who has sufficient maturity, if this is deemed necessary on his own motion 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 the children thereof to determine the suitability of the custody system.

7. No joint custody shall be granted if either parent were to 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. Neither shall it apply if the Judge were to observe, from the parties' allegations and the evidenced practice, that there is grounded *prima facie* evidence of domestic violence.

8. Exceptionally, even if the circumstances described in Section Five of this Article do not arise, the Judge, at the request of one of the parties, with the favourable opinion of the Public Prosecutor, may award shared care and custody, on the basis that only in that way are the best interests of the minor adequately protected.

The highlighted Sub-Section of Section 8 was declared unconstitutional and invalid by Judgment of the Constitutional Court dated 17th October 2012 (Ref. BOE-A-2012-14060).

9. The Judge, before adopting any of the decisions mentioned in the preceding Paragraphs, on his own motion or at request of a party, 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 system.

#### **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 in view of the 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 income were to live in the family dwelling, the Judge, in the same resolution, shall set any support which may be due on 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 were to advise so 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, pursuant to Article 160 of this Code, always keeping in mind the interests of the minor.

#### **Article 95**

The final judgment, the final decree or the public deed in which the settlement agreement is formalised, as the case may be, shall give rise to the dissolution or extinction of the marriage property system, as regards matrimonial property. The



relevant liquidation shall be approved if there is a mutual agreement between the spouses in this respect.

If the judgment of annulment were to declare the *mala fide* of one spouse only, the spouse who has acted in *bona fide* may choose to apply the provisions relating to the participation system to the liquidation of the marriage property system, and the spouse acting in *mala fide* 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 dwelling and the objects of ordinary use therein shall correspond to the children and to the spouse in whose company they remain.

If 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 appropriate time thus provided, shall correspond to the non-owner spouse, if, under the circumstances, this be advisable, and that such spouse's interest were to be in greater need of protection.

The consent of both parties or, as the case may be, judicial leave shall be required to dispose of the dwelling and goods mentioned above if the use thereof were to correspond to the non-owner spouse.

#### Article 97

The spouse for whom the separation or divorce were to 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 judgment.

In the absence of an agreement between the spouses, the Judge shall determine, pursuant to a judgment, the amount thereof, considering 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 business, 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;
9. Any other relevant circumstance.

The judicial resolution or the settlement agreement formalised in the presence of the Court Clerk or the Notary Public shall set the frequency, the method of payment, the bases to update the alimony, the duration or the moment of rescission and any guarantees to ensure its effectiveness.

#### **Article 98**

The *bona fide* spouse whose marriage has been declared null and void shall be entitled to compensation if there has been marital cohabitation, in view of the circumstances provided in Article 97.

#### **Article 99**

At any time, the parties may agree to replace the alimony set by the Judge pursuant to Article 97 by the constitution of a life annuity, usufruct over certain goods or payment of a capital sum in the form of ownership or cash.

#### **Article 100**

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

The alimony and the bases to update it, as set out in the settlement agreement formalised in the presence of the Court Clerk or the Notary Public, may only be modified by a new agreement, pursuant to the requirements established in this Code.

#### **Article 101**

The right to receive the alimony shall be extinguished as a result of the removal of the cause which motivated it, or as a result of the beneficiary thereof marrying again or living with another person in a situation akin to marriage.

The right to receive the alimony 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 were to affect their right to a reserved share.

### **CHAPTER X**

#### **On interim measures due to a claim for annulment, separation or divorce**

#### **Article 102**

Upon admission to consideration of a claim for annulment, separation or divorce, the following effects take place *ipso iure*:

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 thereby revoked.

Likewise, save as otherwise resolved, the possibility of binding the exclusive goods 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 at the Civil Registry and, as the case may be, in the Property and Business 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 are to remain, and to make the appropriate decisions pursuant to 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 thereto, 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.

If there is 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 Spanish territory, save with a prior judicial leave;
- b) Prohibition to issue a passport to the minor, or withdrawal thereof if one has already been issued;
- c) Submission of any change of domicile of the minor to prior judicial leave.

2. To determine, taking into account the family interest most requiring protection, which of the spouses shall continue using the family dwelling and, likewise, after making an inventory thereof, which goods or objects pertaining to the appurtenances are to continue in the dwelling 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 carried out by one of the spouses to attend to the children in common subject to parental authority shall be deemed a contribution to such expenses.

4. To determine, in view of the circumstances, any common goods which, after making an inventory, are to be delivered to one spouse or the other, and the provisions to be observed in the administration and disposal thereof, and in the mandatory rendering of accounts relating to common goods or the part thereof received thereby, and any acquired thereafter.

5. To determine, as the case may be, the arrangements for the administration and disposal of any exclusive goods which, as a result of nuptial agreement or pursuant to a public deed, are to be especially destined to pay 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 thirty days counting from initial adoption thereof, the relevant claim is filed before the competent Judge or Court.

**Article 105**

The spouse who leaves the marital dwelling for a reasonable cause and within thirty 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 conclude, in any event, upon replacement thereof by those provided in the judgment or in the event of conclusion of the proceedings in any other way.

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

**CHAPTER XI****Law applicable to nullity, separation & divorce.****Article 107**

1. The nullity of the marriage and its effects shall be determined pursuant to the law applicable to the solemnisation thereof.
2. Separation and divorce shall be governed either by European Union or Spanish provisions of Private International Law.



## **TITLE V**

### **On paternity & filiation**

#### **CHAPTER I**

##### **On filiation & its effects**

##### **Article 108**

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

Matrimonial and non-matrimonial filiation, and adoptive filiation, shall have the same effects, pursuant to the provisions of the present Code.

##### **Article 109**

Filiation determines the surnames, pursuant to the provisions of the law.

Filiation is determined by both lines; the father and mother may decide by common consent to alter the order of the child's surnames. 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 *ipso iure* in respect of the child or his descendants, or to their estates:

1. If he has been sentenced because of the relations resulting in the conception, pursuant to a final criminal judgment;
2. If filiation was determined judicially with his opposition.

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

These restrictions shall cease to have effect by decision of the child's legal representative, approved by the Court of Law, 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 II

### On establishment & evidence of filiation

#### Section One. General provisions

##### Article 112

Filiation shall be effective from the moment on which it takes place. Its legal establishment shall have retroactive effects, 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 establishment of filiation shall remain valid.

##### Article 113

Filiation shall be evidenced by registration at the Civil Registry, by the document or judgment 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 Act shall apply to the admission of evidence contrary to the register entry.

The establishment of filiation shall not be effective if another contradictory filiation is on record.

##### Article 114

Filiation entries may be rectified pursuant to the Civil Registry Act, 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 judgment may also be rectified at any time.

#### Section Two. On establishment 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 judgment.

##### Article 116

Children born after the wedlock is solemnised and before three hundred days after the dissolution thereof, or after the *de iure* or *de facto* separation of the spouses, shall be presumed to be children of the husband.

##### Article 117

If the child were to be born within 180 days following solemnisation of the marriage, the husband may destroy the presumption by declaring otherwise in a public deed executed within six months of becoming aware of the birth. If he has explicitly or implicitly acknowledged his paternity, or was aware of the woman's pregnancy prior to solemnisation of the wedlock shall be excepted from the foregoing, save if, in the latter case, such a declaration has been made in a public deed, with the consent of both spouses, prior to the marriage or subsequent 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' *de iure* or *de facto* separation, filiation may be registered as matrimonial with the consent of both.

**Article 119**

Filiation shall become matrimonial from the day of the marriage of the parents, if the latter takes place after the birth of the child, if the fact of the filiation has been legally determined pursuant to 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 Three. On the establishment of non-matrimonial filiation****Article 120**

Non-matrimonial filiation shall be legally established:

1. At the moment of registration of the birth, by a compliant declaration made by the father on the relevant official form referred to in Civil Registry legislation;
2. By recognition before the official in charge of the Civil Registry, in a last will and testament or in another public document;
3. By a resolution issued in proceedings processed pursuant to the Civil Registry legislation;
4. By a final judgment;
5. In respect of the mother, maternal filiation shall be established in the registration of birth performed within the requisite period, pursuant to the provisions of the Civil Registry Act.

**Article 121**

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

**Article 122**

If a parent were to recognise a child separately, he shall not be entitled to declare the identity of the other parent therein, unless this has been already legally established.

**Article 123**

Recognition of a child who is of legal age shall not be effective unless the latter's explicit or implicit consent is secured.

**Article 124**

The effectiveness of recognition by a minor or incapable person shall require the explicit 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 has been made by last will and testament 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 were to request confirmation of the entry, judicial approval, after hearing the Public Prosecutor, shall be required.

#### **Article 125**

If the minor's or incapable person's parents were to be siblings or blood relatives in the direct line, upon legal establishment of filiation in respect of one, such filiation may only be legally established in respect of the other prior judicial leave, which shall be granted, after hearing the Public Prosecutor, if it were in the interest of the minor or incapable person.

If the latter reaches full capacity, he may, pursuant to a statement made in a public deed, invalidate this last establishment if he did not consent thereto.

#### **Article 126**

Recognition of a child who has already deceased shall only be effective if his descendants were to consent thereto, by themselves or by means of their legal representatives.

### **CHAPTER III**

#### **On filiation actions**

##### **Section One. General provisions**

#### **Articles 127 to 130**

(Repealed)

##### **Section Two. On claims**

#### **Article 131**

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

The case where the filiation claimed were to contradict another filiation legally established shall be excepted therefrom.

#### **Article 132**

In the absence of the relevant possession of status, the claim of matrimonial filiation, which shall not be subject to prescription, corresponds to the father, the mother or the child.

If the child were to 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 was based, the action shall pass on to his heirs for the time required to complete such periods.

#### **Article 133**

**1.** The action to claim non-matrimonial filiation, in the absence of the respective possession of status, shall correspond to the child during his entire lifetime.



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

**2.** Likewise, the parents may take this action on filiation within a period of one year, counting from the time when they become aware of the circumstances on which their claim is based.

This action may not be conveyed to any heirs who may only continue the action instituted by the parent in life.

#### **Article 134**

Exercise of the claim by the child or the parent, pursuant to the preceding Articles, shall in any event allow the challenging of contradictory filiation.

#### **Article 135**

(Repealed)

### **Section Three. On contesting**

#### **Article 136**

**1.** 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 period shall not begin to count whilst the husband is unaware of the birth. If the husband were to die without being aware of the birth, the year shall count from the day on which the heir becomes aware thereof.

**2.** If the husband, despite being aware of the birth of the person registered as his child, were ignorant of his lack of biological parenthood, the period of one year shall begin to elapse from the time that he became aware of this circumstance.

**3.** If the husband were to die before the period provided in the preceding Paragraphs lapses, the action shall correspond to his heir for the time remaining to complete such period.

#### **Article 137**

**1.** Paternity may be contested by the child during the year following registration of the filiation. If he were to 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

**2.** If the child, even though more than a year has elapsed since registration in the registry or since his age of majority or since the recovery of sufficient capacity for these purposes, was unaware of the lack of biological parenthood of the person registered as his parent, the period of one year shall begin to elapse from the time that he became aware of this circumstance.

3. If the child were to die before the periods provided in the preceding Paragraphs lapse, the action shall correspond to his heirs for the time remaining to complete such period.

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

#### **Article 138**

The recognition and other legal acts which determine matrimonial or non-matrimonial filiation pursuant to the law may be contested because of a defect of consent, pursuant to the provisions of Article 141. The contest of paternity for other causes shall be governed by the provisions 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 were to 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 be extinguished after four years from the day on which the child, after registration of the filiation, enjoys the relevant 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 be extinguished 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 has 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 whilst he is underage and even thereafter, if he has not finished his education 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, if needed for any reason not attributable to the recipient of support; these shall extend, as the case may be, to the support required for the education thereof.

#### Article 144

The claim for support, if applicable and if two or more persons were to 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 solely 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

If the obligation to provide support were to fall on two or more persons, payment of the allowance shall be shared amongst them in proportion to the respective wealth thereof.

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

If two or more recipients of support were to claim support at the same time from the same person legally obliged to provide them, and such person were to not have sufficient wealth to attend to all of them, the order provided in the preceding Article

shall be followed, unless the recipient of support were to 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 wealth or resources of the person who provides it and to 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 from which the person entitled to receive it were to need it to subsist; but it shall not be paid until after the day on which the relevant claim was filed.

Payment shall be effected 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 dwelling 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 if it were to 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 obliged person, even if he were to provide it in compliance with a final judgment.

#### **Article 151**

The right to receive support cannot be renounced or conveyed to a third party. Neither may it be offset against the amounts due by the recipient of support to the person obliged to provide it.

The aforesaid notwithstanding, outstanding support allowances may be subject to set-off and renounced, and the right to claim them may be conveyed 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. If the wealth of the person obliged to provide it has been reduced to a point if he is unable to satisfy it without neglecting his own needs and those of his family;
3. If the recipient of support can 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. If the recipient of support, whether or not a forced heir, were to have committed any offence of those giving rise to disinheritance;
5. If the recipient of support is a descendant of the person obliged to provide support, and the latter's need were to arise from his bad conduct or lack of application at work, whilst this cause subsists.

## **Article 153**

The preceding provisions shall apply to the remaining cases where, pursuant to this Code, to a last will and testament or to an agreement, a person were to 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 I**

##### **General provisions**

##### **Article 154**

Non-emancipated children shall be under the parents' parental authority.

Parental authority shall be exercised always to 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 goods.

If the children were to have sufficient maturity, they shall be heard always before adopting decisions that impinge them.

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

##### **Article 155**

Children must:

1. Obey their parents whilst they remain under their parental authority and always respect them;
2. Equitably contribute, according to their possibilities, to the discharge of family expenses whilst they live therein.

##### **Article 156**

Parental authority shall be exercised jointly by both parents, or by one of them with the explicit or implicit consent of the other. Acts carried out 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 and the child, if he were to have sufficient maturity, and, in any case, if he were to 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 were to 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 amongst 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 bona fide third parties, 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 were to 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 the exercise thereof.

#### **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, on his own motion 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 Spanish territory, save with prior judicial leave;
  - b) Prohibition to issue a passport to the minor, or withdrawal thereof if one has already been issued;
  - c) Submission to prior judicial leave of any change of domicile of the minor.
4. The measure whereby parents, guardians, other relatives or third parties are prohibited from approaching the minor and visiting his domicile or educational centre and other places that he habitually goes, respecting the principle of proportionality.
5. The measure whereby communication with the minor is prohibited, which shall prevent parents, guardians, other relatives or third parties from making written, verbal or visual contact by any means of communication or electronic or telematic means, respecting the principle of proportionality.
6. Generally, other provisions deemed suitable, to remove the minor from danger or to prevent any damages to his family environment or to third parties. The Judge shall ensure that the minor is heard under suitable conditions for the protection of his interests.

In the event of possible child neglect, the Court shall report the measures to the Public Entity.

All these measures may be adopted within any civil or criminal proceedings, or in non-contentious proceedings.

#### **Article 159**

If the parents live separately and are unable to decide by common consent, the Judge shall decide, always in the children's benefit, 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 maturity and, in any event, those older than twelve.

#### **Article 160**

1. Parents, even if they do not exercise parental authority, are entitled to relate to their underage children, unless otherwise stated by a judicial resolution or by the Public Entity in the cases set forth in Article 161. In the event of deprivation of liberty of the parents, and provided it is in the best interests of the minor to visit them, the Administration shall facilitate the visit of the minor to the penitentiary centre, accompanied either by a family member appointed by the competent Administration or by a professional who shall prepare the minor for this visit. Furthermore, the visit to a penitentiary centre shall take place outside of school hours and in a suitable environment for the minor.

Underage children adopted by another person may only have a relationship with their biological family under the terms established Article 178.4.

2. Personal relations between the child and his siblings, 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 siblings, grandparents, relatives or close friends, shall decide, in view of the circumstances. He shall especially ensure that the measures which may be set to favour relations between siblings, and between grandparents and grandchildren do not permit the infringement of judicial resolutions restricting or suspending relations between the minors and one of the parents.

#### **Article 161**

The Public Entity to which the protection of underage children is entrusted in the respective territory shall regulate the visits and communications corresponding to parents, grandparents, siblings and other relatives and next of kin as regards the neglected minors. These visits and communications may, for just cause, be temporarily suspended, in the interests of the minor, following a hearing in which those concerned and the minor, if he has sufficient maturity and, at any rate, is over the age of twelve, have been heard, with immediate notification to the Public Prosecutor. For this purpose, the Director of the institutional care centre or the foster family or other agents or professionals involved shall inform the Public Entity of any indication that these visits are having harmful effects on the minor.

The minor, the parties concerned and the Public Prosecutor may object to these administrative resolutions pursuant to the Civil Procedure Act.

### **CHAPTER II**

#### **On 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, pursuant to the law and to his maturity, may perform by himself.

Notwithstanding the foregoing, those with parental responsibility shall intervene in these cases by virtue of their duties of care and assistance.

2. Those where there is a conflict of interest between the parent and the child.
3. Those relating to goods which are excluded from the parents' administration.

Entering contracts which oblige the child to perform personal services shall require the child's consent, if he were to have sufficient maturity, without prejudice to the provisions of **Article 158**.

### **Article 163**

If, in any affair, the father's and mother's interests are opposed to that of their non-emancipated children, the latter shall be appointed a defender who shall represent them within and without the Courts of Law. This appointment shall also take place if the parents' interest is opposed to that of the underage emancipated child whose capacity they are required to supplement.

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

## **CHAPTER III**

### **On children's goods & the administration thereof**

### **Article 164**

Parents shall administer their children's goods 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 Act.

The following goods shall be excepted from parental administration:

1. Goods acquired as a gift, if the grantor has ordered it explicitly. The will of the conveyor on the administration of these goods and the destination of the fruits thereof shall be strictly complied with.
2. Goods acquired by succession when one or both persons exercising parental authority have been justly disinherited or have been unable to inherit as a result of being unworthy, which shall be administered by the person appointed by the decedent and, in the absence thereof, successively, by the other parent or by a specially appointed judicial administrator.
3. Goods acquired by the child older than sixteen by his work or industry. Ordinary acts of administration shall be carried out by the child, who shall need the parents' consent for acts exceeding the former.

**Article 165**

The fruits of the goods of the non-emancipated child, and anything acquired by his work or industry shall always pertain to him.

Notwithstanding the foregoing, the parents may destine the goods 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 account for any goods consumed for such purposes.

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

**Article 166**

Parents may not renounce 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 rights over shares, save for a just cause of utility or necessity, prior leave of the Judge of their domicile, after hearing the Public Prosecutor.

Parents must secure judicial leave to refuse an inheritance or legacy bequeathed to the child. If the Judge were to refuse the leave, the inheritance may only be accepted under the benefit of inventory.

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

**Article 167**

If the parents' administration were to 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 goods, require security or a bond for their continuation in the administration thereof or even appoint an Administrator.

**Article 168**

Upon extinction of parental authority, the children may require the parents to account for the administration carried out over the goods until then. The action to enforce this obligation shall be prescribe after three years.

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



## CHAPTER IV

### On extinction 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 parental authority pursuant to a judgment on grounds of breach of the duties inherent thereto, or handed down in criminal or matrimonial proceedings.

The Courts of Law may, to the benefit and in the interest of the child, decide the restoration of parental authority if the cause which motivated the deprivation has ceased.

#### Article 171

Parental authority over children who have been incapacitated shall be extended, ipso iure, upon their coming of age. If a child who is of legal age, unmarried, and lives in the company of his parents or of either of them were to 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 pursuant to the specific provisions of the incapacitation resolution and, on a subsidiary basis, to the provisions of the present Title.

Extended parental authority shall be extinguished:

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 extinction of the extended parental authority, the incapacitation were to subsist, guardianship or conservatorship shall be appointed, as applicable.

## CHAPTER V

### On adoption & other forms of protection of minors

#### Section One. On custody & foster care of minors

#### Article 172

1. If the Public Entity entrusted with the protection of minors in the respective territory were to become aware that a minor is in a situation of neglect, it shall have ipso iure the guardianship of such minor, and shall adopt the necessary protection measures for his custody, making the Public Prosecutor aware of this, and, if applicable, the Judge that granted the ordinary guardianship. The administrative resolution declaring the

situation of neglect and the measures adopted shall be duly notified to the parents, guardians or custodians and the minor impinged, if he has sufficient maturity and, at any rate, is over the age of twelve, without delay and within forty-eight hours, as a maximum. The information shall be clear, easy to understand and in an accessible format; it shall include the reasons for the Administration's intervention and the effects of the decision adopted and, in the case of the minor, adapted to his degree of maturity. Whenever possible, and especially in the case of the minor, this information shall be provided in person.

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, if they are 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 carried out by the parents or guardians on behalf of the minor which are beneficial to the latter shall be valid.

The Public Entity and the Public Prosecutor may promote, if necessary, the deprivation of parental responsibility and removal of guardianship.

**2.** 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 pursuant to the provisions of Number one of this Article shall be entitled to request to the Public Entity 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 were to 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 shall 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.

In any case, after the lapse of the two years, only the Public Prosecutor shall be authorised to object to the resolution of the Public Entity.

During this period of two years, the Public Entity, as it assesses the situation and informs the Public Prosecutor thereof, may adopt any protection measure, including the proposed adoption, if the prospect of a return to the biological family is completely unattainable.

**3.** The Public Entity, on its own motion, 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 it were to deem that it is in the best interests of the minor. Such decision shall be notified to the Public Prosecutor.



4. In compliance with the obligation to provide immediate protection, the Public Entity may take on the provisional custody of a minor by means of an administrative resolution, and shall inform the Public Prosecutor whilst simultaneously completing the necessary procedures to identify the minor, investigating his circumstances and verifying the actual situation of neglect, if applicable.

These proceedings shall be carried out as quickly as possible. During this period, the situation of neglect and consequential assumption of guardianship or the undertaking of the necessary protection measure shall be declared, if applicable. If there are any persons involved who, on account of their relationship with the minor or due to any other circumstances, may take on the guardianship in the best interests of the minor, the guardian shall be appointed in accordance with ordinary provisions.

If the indicated period has elapsed and no guardianship has been formalised or other resolution adopted, the Public Prosecutor shall take the necessary action to ensure that the most suitable protection measure for the minor is adopted by the Public Entity.

5. The Public Entity shall no longer act as guardian of any minors declared to be in a situation of neglect when it is observed, according to the relevant reports, that the reasons that gave rise to the guardianship no longer exist, in the light of any of the events set out in Articles 276 and 277.1 and if any of the following circumstances can be reliably verified:

- a) The minor has voluntarily moved to another country;
- b) The minor is now in the territory of another Autonomous Community whose Public Entity has issued a resolution on the declaration of the situation of neglect and has taken on the guardianship or adopted relevant protection measures, or takes the view that it is no longer necessary to adopt any protection measures in accordance with the situation of the minor;
- c) Six months have elapsed since the minor voluntarily left the protection centre and his whereabouts are now unknown.

Provisional custody shall be suspended for the same reasons as guardianship.

#### **Article 172 bis**

1. If, due to serious and temporary circumstances that are duly evidenced, parents or guardians are unable to take care of the minor, they may ask the Public Entity to take on custody for the necessary period, which may not exceed a maximum two-year temporary care period, unless, by way of exception, it is in the best interests of the child to extend the measures. When the period or, if applicable, the extended period has elapsed, the minor shall return to his parents or guardians or, if the conditions are unsuitable for such an action, be declared to be in a situation of neglect under law.

Custody shall be voluntarily taken on in written form; it shall be noted that the parents or guardians have been informed of the responsibilities that they continue to have as regards the minor, and the form of custody to be undertaken by the Public Entity, whilst guaranteeing the continuation of any specialised support, especially for incapacitated minors, that was previously received or the adoption of more suitable measures adapted to the needs thereof.

The administrative resolution on the assumption of custody by the Public Entity, and on any subsequent amendment of the way in which it is exercised, shall be reasoned and reported to the parents or guardians and the Public Prosecutor.

**2.** Likewise, the Public Entity shall take on custody if ordered by a Judge, in any cases where such action is a legal necessity, by adopting the relevant protection measure.

#### **Article 172 *ter***

**1.** Custody shall take the form of family foster care or, if this is not possible or a suitable option in the interests of the minor, be undertaken by an institutional care centre. The care at the foster home shall be provided by the person or persons decided by the Public Entity. The support at the institutional care centre shall be provided by the Director or manager of the centre to which the minor is sent, pursuant to the terms established in the legislation on the protection of minors.

Any person that is not qualified to be a guardian pursuant to law is not able to become a foster parent.

The resolution of the Public Entity in which the custody measure is formalised in writing shall be notified to any parents or guardians who have not been deprived of parental responsibility or guardianship, and to the Public Prosecutor.

**2.** Action shall always be taken in the best interests of the minor and, provided it is not contrary to these interests, the minor's reintegration into his own family shall be prioritised and the custody of any siblings shall be entrusted to a single institution or person so that they are not separated. The situation of the minor as regards his biological family, both in relation to his custody and visitation and other forms of communication, shall be reviewed, at least, every six months.

**3.** The Public Entity may grant visits, weekend trips or holidays with families or institutions dedicated to these functions, for the minor in a foster home or institutional care, if this is in his best interests. To this end, only persons or institutions suitable to the needs of the minors shall be selected. These measures shall be granted once the minor has been given the chance to be heard if he has sufficient maturity and, at any rate, is over the age of 12.

The delegation of custody for visits, weekend trips or holidays shall contain the relevant terms and any information required to guarantee the well-being of the minor, especially all the restrictive measures established by the Public Entity or the Judge. Any such measures shall be notified to the parents or guardians, if they have not been deprived of parental responsibility or excluded from the exercise of guardianship, and any foster parents. The details of these custodians shall be withheld if it is deemed to be in the best interests of the minor or for any just cause.

**4.** In cases where any situation of neglect or the assumption of custody are declared by an administrative or judicial resolution, the Public Entity may establish the amount that shall be paid by parents or guardians to contribute, as maintenance and according to their capabilities, to any costs related to the care and protection of the minor, and those arising from any civil liability that may be incurred by the minors on account of their actions.

**Article 173**

1. Family foster care involves 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. In case of incapacitated minors, any specialised support previously received shall be maintained or other more suitable forms of care adapted to his needs shall be provided.

2. Foster care shall require the consent of the foster parents and the minor in question, if he has sufficient maturity and, in any case, is over the age of 12.

3. If any serious cohabitation problems arise between the minor and the person or persons to whom custody in the family foster home has been entrusted, the foster parent, the Public Prosecutor, the parents or guardian who have not been deprived of parental responsibility or guardianship or any person concerned may ask the Public Entity to revoke custody.

4. The foster care of the minor shall cease:

- a) By judicial resolution.
- b) By decision of the Public Entity, on its own motion or at the instigation of the Public Prosecutor, the parents, guardians, foster parents or the minor himself, if he has sufficient maturity, if it deems it necessary to safeguard the interests of the latter, after hearing the foster parents, the minor, his parents or guardian;
- c) By the death or declaration of death of the foster parent(s) of the minor;
- d) By the minor's reaching the age of majority.

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

**Article 173 bis**

1. Family foster care may be provided by the extended family of the minor or an unaffiliated family, who, in the latter case, may provide specialist care in this regard.

2. Family foster care may adopt the following forms, depending on its purpose:

- a) Urgent family foster care, mainly for children under the age of six, which shall last for a period not exceeding six months, during which time the relevant family protection measure is established.
- b) Temporary 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, such as permanent family foster care or adoption. This foster care shall last for a maximum of two years, unless it is in the best interests of the minor to extend the measure due to the foreseeable and immediate family reintegration, or the adoption of another definitive protection measure.
- c) Permanent family foster care, which shall be constituted either at the end of the period of two years of temporary foster care, as family reintegration is impracticable, or even directly in cases where minors have special needs or if the

circumstances of the minor and his family so advise it. The Public Entity may request the Judge to confer on the foster parents those faculties of guardianship which facilitate the performance of their responsibilities, bearing in mind in any event the overriding interest of the minor.

#### **Article 174**

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

**2.** For such purposes, the Public Entity shall give immediate notice thereto 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 shall inform the Public Prosecutor of any interesting developments in the minor's circumstances.

The Public Prosecutor shall verify the situation of the minor at least every half-year 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.

**4.** In fulfilment of the function of the higher supervision of the guardianship, foster care or custody of minors, as applicable, the Public Prosecutor may demand the production of reports by the relevant services of the competent Public Administrations.

For that purpose, the relevant services of the competent Public Administrations shall answer any requests for information made by the Public Prosecutor in the course of investigations which seek to determine any situation of risk or neglect by which a minor may be affected.

### **Section Two. On adoption**

#### **Article 175**

**1.** Adoption shall require that the adopter be older than twenty-five years. In an adoption by both spouses, it shall be sufficient for one of them to have reached such age. In any event, the age difference between adopter and adoptee shall be at least sixteen years and may not exceed forty-five years, except in the cases established in Article 176.2. In the event two adopters, only one shall have to fulfil the age different requirement in relation to the adoptee. If the adopters can adopt groups of siblings or minors with special needs, the maximum age difference may be greater.

Any person that is not qualified to be a guardian pursuant to the provisions of this Code may not be an adopter.

**2.** Only non-emancipated minors may be adopted. As an exception, it shall be possible to adopt a person of legal age or an emancipated minor if, immediately prior to the emancipation, an uninterrupted situation of foster care or of cohabitation of at least one year has existed.



### 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 carried out jointly or successively by both spouses or by a couple whose emotional relationship is akin to marriage. Marriage solemnised subsequently to the adoption shall allow the spouse to adopt the children of his consort. This provision shall also apply to couples whose relationship is subsequently formed. In the event of death of the adoptive parent, or if the adoptive parent were to incur in the grounds for exclusion provided in Article 179, a new adoption of the adoptee shall be possible.
5. If the adoptee is in the permanent foster care or pre-adoptive custody of two spouses or a couple whose emotional relationship is akin to marriage, their separation or legal divorce or relationship breakdown, which is reliably evidenced subsequent to the proposed adoption, shall not impede the joint adoption, provided there is evidence of the effective co-habitation of the adoptee with both spouses or the couple whose emotional relationship is akin to marriage for at least two years before the proposed adoption.

### Article 176

**1.** The adoption shall be constituted by judicial resolution, which shall consider always the interests of the prospective adoptee and the suitability of the adopter or adopters 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 adopter or adopters 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 if the prospective adoptee meets any of the following circumstances:

1. Being an orphan and a relative of the adopter in the third degree by consanguinity or affinity;
2. Being a child of the spouse or person partnered with the adopter in an emotional relationship akin to marriage;
3. Having been in legal foster care for more than a year under a measure of a pre-adoptive foster care, or having been under the adopter's guardianship for the same time;
4. Being of legal age or an emancipated minor.

**3.** Suitability refers to the appropriate capacity, ability and motivation to exercise parental responsibility, according to the needs of the minors to be adopted, and to adapt to the particular needs, consequences and responsibilities involved in adoption.

The declaration of suitability by the Public Entity shall require a psychological and social assessment of the personal, family, relationship and social situation of the adopters, as well as their ability to establish stable and secure connections, their educational skills and their ability to take care of a minor according to his individual circumstances. This declaration of suitability shall be formalised by means of the relevant resolution.

Any person that has been deprived of parental responsibility, whose parental responsibility has been suspended or whose child is under the custody of the Public Entity may not receive the declaration of suitability.

Any adopters shall attend information and preparation sessions organised by the Public Entity or collaborating authorised Entity.

4. If any of cases 1, 2 or 3 of Section 2 arise, the adoption may be constituted even if the adopter has deceased, if the latter were to already have given his consent before the Judge or this consent has been granted by means of a public document or in a last will and testament. In this case, the judicial resolution shall have retroactive effect to the day of such consent.

#### **Article 176 *bis***

1. The Public Entity may delegate the custody of a minor declared to be in a state of neglect to any persons who, having met the requirements of capacity to adopt established in Article 175 and having given their consent, have been prepared, received a declaration of suitability and have been assigned for his adoption. For this purpose, after the adoption proposal has been submitted, the Public Entity shall delegate pre-adoptive custody until such time as the judicial resolution of adoption is handed down, by means of a duly reasoned administrative resolution, after hearing the parties concerned and the minor, if he has sufficient maturity and, at any rate, if he is over the age of 12, and the parents or any guardians who have not been deprived of parental responsibility or guardianship shall be informed thereof.

The pre-adoptive carers shall have the same rights and obligations as family foster carers.

2. Unless otherwise resolved in the interests of the minor, the Public Entity shall suspend visitation rights and relations with the biological family if the period of pre-adoptive co-habitation begins, as referred to in the previous Section, except in the cases established in Article 178.4.

3. The adoption proposal submitted to the Judge shall be made at the earliest possible time and, at any rate, before the lapse of three months from the day on which the delegation of pre-adoptive custody has been granted. The aforesaid notwithstanding, if the Public Entity sees it fit, according to the age and circumstances of the minor, it may set out a period of adaptation for the minor with the family and this period of three months may be extended to a maximum of one year.

If the Judge deems that adoption not to be appropriate, the Public Entity shall decide on the most suitable protection measure for the minor.

**Article 177**

1. The adopter or adopter 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:

1. The spouse of the adopter or person partnered with the adopter in an emotional relationship akin to marriage, save in the event of legal separation or divorce pursuant to a final judgment or de facto separation by mutual consent set forth in a public deed, except in cases where the adoption is to be jointly formalised.

2. The parents of the prospective adoptee who is not emancipated, unless they are deprived of parental authority by final judgment or they were to 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 the Civil Procedure Act.

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

Nor shall such consent of the parents be required if their parental responsibility has been suspended and two years have elapsed since the declaration of a situation of neglect was notified, under the terms established in Article 172.2, without any objection thereto, or if any appeal lodged within the established deadlines has been dismissed.

The consent of the mother may not be given until six months have elapsed from the birth.

For adoptions that require a prior proposal, the consent of the parents shall not be allowed to refer to specific adoptive parents.

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

1. Parents who have not been deprived of parental authority if their consent were not 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 years of age, if he were to have sufficient maturity;

4. Consent and assent shall be freely granted, with the required legal form and in writing, after information about the consequences thereof has been provided.

**Article 178**

1. Adoption causes 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:

a) If the adoptee were to be the child of the spouse of the adopter, even if the spouse has died;

- b) If only one of the parents has been legally established, provided that it has been requested by the adopter, the adoptee older than twelve and the parent whose relation therewith is to persist.

**3.** The provisions of the preceding Sections shall be construed to be without prejudice to the provisions relating to matrimonial impediments.

**4.** If it is in the best interests of the minor, because his family situation, age or any other significant circumstance evaluated by the Public Entity, some form of relationship or contact may be maintained via visits or communication between the minor, members of the biological family in question and the adoptive family and, if possible, special priority shall be given to relationships between biological siblings.

In these cases, upon constituting the adoption, the Judge may allow this relationship to be maintained, by establishing its frequency, duration and conditions, at the proposal of the Public Entity or Public Prosecutor and with the consent of the adoptive family and adoptee, if he has sufficient maturity and is over the age of 12. At any rate, the adoptee under the age of 12 shall be heard, in accordance with his age and maturity. If necessary, this resolution shall be made with the intermediation of the Public Entity or entities certified to this effect. The Judge may also authorise its amendment or extinction in keeping with the best interests of the minor. The Public Entity shall submit periodic reports to the Judge regarding visits and communications, and any proposed maintenance or amendment thereof in the first two years and at the request of the Judge thereafter.

The Public Entity, adoptive family, biological family and the minor, if he has sufficient maturity and, at any rate, is over the age of 12, shall have the capacity to request the suspension or termination of these visits or communications.

The declaration of suitability shall indicate whether the adopters would agree to adopt a minor that is to maintain relations with his biological family.

#### **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 decision 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 parents who, without fault on their part, has not taken part in the proceedings in the terms stated 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.

If the adopted minor is of legal age, the extinction of the adoption shall require his explicit consent.

3. Extinction of the adoption shall not be a cause the loss of Spanish citizenship or of the civil citizenship acquired, nor shall it impinge any patrimonial effects which have taken place before.

4. Establishment of the filiation corresponding to the adoptee by birth shall not affect adoption.

5. Public Entities shall ensure that any information at their disposal regarding the background of the minor is preserved, especially any information about the identity of his parents and the medical history of the minor and his family; this information shall be kept for at least fifty years as of the time when the adoption is finalised. The information shall be kept for the sole purposes of ensuring that the adoptee can exercise the right referred to in the next Section.

6. Adopted persons, after reaching legal age or whilst 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.

For that purpose, following a request, any private or Public Entity shall be required to issue Public Entities and the Public Prosecutor with any necessary reports and records on the minor and his biological family.

## **TITLE VIII**

### **On absence**

#### **CHAPTER I**

#### **Declaration of absence & effects thereof**

##### **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 Court Clerk 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 already has legal or voluntary representation pursuant to Article 183 shall be excepted.

The spouse who is present of legal age and not legally separated shall be the defender and representative of the disappeared person *ipso iure*; 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 evident urgency, the Judge shall appoint a solvent person with good background, after hearing the Public Prosecutor.

He may also adopt, if he deems it fit, any necessary orders for the preservation of the goods.

##### **Article 182**

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

First. The spouse of the absentee who is not legally separated from him;

Second. Blood relatives up to the fourth degree;

Third. The Public Prosecutor, on his own motion or pursuant to a complaint.

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

First. After one year has elapsed from the last news of him, or, in the absence thereof, from his disappearance, if he has not left an attorney with powers of administration over all his goods.

Second. After three years have elapsed, if he has empowered someone to administer all his goods.

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 were to be unknown and one year has elapsed from the



last news of him or, in the absence thereof, from his disappearance. Upon registration of the declaration of absence in the Civil Registry, all general or special mandates executed by the absentee shall be revoked ipso iure.

#### **Article 184**

Save in the event of a serious reason appreciated by the Court Clerk, the representation of the person declared an absentee, the investigation of his whereabouts, the protection and administration of his goods and the performance of his obligations shall befall upon:

1. The present spouse of legal age not separated from him de iure or de facto;
2. His child of legal age; if there were to 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 aforesaid persons, such representation shall correspond, in all its scope, to the solvent person of good background appointed by the Court Clerk as he may deem fit, 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 goods and to describe any immovable goods of his principal.
2. To provide the bond set by the Court Clerk, as he may deem fit. The representatives included in Numbers 1, 2 and 3 of the preceding Article shall be excepted.
3. To preserve and defend the goods of the absentee and obtain from his goods any normal returns of which they may produce.
4. To comply with the provisions provided in the Civil Procedure Act relating to possession and administration of the absentee's goods.

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 goods of the absentee and shall be entitled to the liquid products thereof in the amount set forth by the Court Clerk, 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 specific destination which encumber the goods and other circumstances of the kind.

The legitimate representatives included in Number 4 of the aforesaid Article shall also enjoy the temporary possession of the goods 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 goods of the absentee may not sell, encumber, mortgage or pledge them, save in the event of evident need or utility, acknowledged and declared by the Court Clerk, 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, somebody evidences 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 day of the filing of the claim.

In the event of appearance of the absentee, his goods shall be restored to him, but not the products received, save in the event of mala fide, in which case such restitution shall also comprise any fruits received and those which ought to have been received counting from the day on which the absence commenced, pursuant to the Court Clerk's declaration.

#### **Article 188**

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

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

#### **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 provide 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 would 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, shall make an inventory of such goods, 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 construed to be without prejudice of any actions to claim an inheritance or any rights to which the absentee, his representatives or his successors were to be entitled. Such rights shall only be extinguished by the passage of the time provided as prescription. Any entry in the Registry of any immovable goods accruing in favour of any co-heirs shall state the circumstance that they remain subject to the provisions of this Article and the preceding one.

**CHAPTER II****On the declaration of death****Article 193**

A 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 would have reached seventy-five.

The aforesaid 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 one year has elapsed, counted from day to day, from an imminent risk of death as a result of an act of violence against the life of a person, from whom no news has been received since the violence occurred. In case of an accident, the period shall be three months.

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

**Article 194**

A declaration of death shall also apply:

1. In respect of persons who, appertaining to an armed contingent or linked thereto as voluntary ancillary officials of, or for information purposes, took part in campaign operations and disappeared therein, 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 war.
2. In respect of persons certified as being on board a vessel whose shipwreck or disappearance as a result of immersion in the sea has been confirmed, or on board an aircraft whose involvement in an accident has been verified, and for which there is rational evidence of an absence of survivors.

3. In respect of persons from whom no news has been received since they were certified as being on board a vessel whose shipwreck or disappearance as a result of immersion in the sea has been confirmed, or on board an aircraft whose involvement in an accident has been verified or, if any human remains have been found in these events and they are unable to be identified, after a period of eight days has elapsed.

4. In respect of persons on board a vessel that is presumed to be shipwrecked or missing as a result of immersion in the sea, on account of the fact that it did not reach its destination or, if, lacking a fixed destination, it did not return, and there is rational evidence of an absence of survivors, in both cases after the lapse of one month counting from the last news received from it or, in the absence thereof, from the day of departure of the vessel from the initial port of the journey.

5. Of those persons who were on board of an aircraft that is presumed to have crashed, in a flight over the sea, desert or uninhabited areas, if it did not reach its destination or if, lacking a fixed destination, it were to not return, and there is rational evidence of an absence of survivors, after one month has elapsed from the last news received from the persons or from the aircraft or, in the absence thereof, from the day on which the journey commenced. If the flight were to be in stages, the aforesaid period shall be computed from the point of take-off from which the last news was 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 shall be reputed to have died, save as otherwise established in an investigation.

Any declaration of death shall state the day from which the death is deemed to have occurred, pursuant to 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 testate 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 were to be necessary, to draw up a detailed inventory of movable goods and a description of any real estate goods before a notary public.



### **Article 197**

If, after the declaration of death, the absentee were to appear or his existence were to be proved, he shall recover his property in their 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 III**

### **On registration at the Civil Registry**

### **Article 198**

The Civil Registry shall register declarations of disappearance, legal absence and death, as well as legitimate and appointed representations granted and the extinction thereof.

Likewise, it shall note the inventories of movable goods and description of immovable properties provided in this Title; concession decrees and public deeds of conveyance and encumbrance made by absentees' legitimate or appointed representatives; and 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 public deeds of notarisation of the partition papers, as the case may be.



## **TITLE IX**

### **On incapacitation**

#### **Article 199**

No one may be declared incapable save pursuant to a Court judgment due 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 were to apply to them and is reasonably expected to persist after they come of age.

#### **Articles 202 to 214**

(Repealed)



## **TITLE X**

### **On guardianship, conservatorship & custody of minors & incapacitated persons**

#### **CHAPTER I**

##### **General provisions**

#### **Article 215**

The custody and protection of the person and goods, or only of the person or the goods of minors or incapacitated persons shall be carried out, if applicable, by means of the following:

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

#### **Article 216**

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

The Judge, on his own motion 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 were to require it.

If the case concerns minors under the guardianship of the Public Entity, these measures may only be decreed on the Judge's own motion, or at the request of this Entity, the Public Prosecutor or the minor himself. The Public Entity shall be a party in the proceedings and the measures decreed shall be reported to the Public Entity, which shall convey this communication to the Director of the institutional care centre or foster family.

#### **Article 217**

A person 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 shall be registered at 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 on the official in charge of the Civil Registry.

**Article 220**

A person who, in the exercise of a guardianship duty, were to suffer any damages without fault on his part shall be entitled to be compensated for such damages with charge to the goods of the ward, if he were to 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 if 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 goods pertaining to the ward or conveying goods to the latter for valuable consideration.

**CHAPTER II****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 if the judgment has so decided;
3. Persons subject to extended parental authority, upon extinction thereof, save if conservatorship were to apply;
4. Minors who are in a situation of neglect.

**Article 223**

Parents may, pursuant to a last will and testament or in a notarial public document, appoint a guardian, establish the guardian's supervision bodies, and appoint the persons who are to propose them or order any provision relating to the person or goods 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 provision relating to his person or goods, including the appointment of a guardian.

The public documents mentioned in the present Article shall be communicated on his own motion by the authorising Notary Public to the Civil Registry, to be registered at 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 provisions 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 interest of the minor or incapacitated person were to require otherwise, in which case he shall issue a reasoned ruling.

**Article 225**

In the event of the existence of testamentary provisions 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 are compatible. If they are not, the Judge shall adopt, in a reasoned ruling, those which he considers most convenient for the ward.

**Article 226**

Provisions made in a last will and testament or notarial public document concerning guardianship shall be ineffective if, at the time of their adoption, the executor thereof has been deprived of parental authority.

**Article 227**

A person disposing of goods as a gift in favour of a minor or incapacitated person may establish the provisions governing the administration thereof and appoint 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 were to 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 decide, even on his own motion, the constitution of the guardianship.

**Article 229**

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

**Article 230**

Any person may make the Public Prosecutor or the judicial authority aware of a 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 were to have sufficient mental capacity, and always if he were to be older than twelve years of age.

**Article 232**

Guardianship shall be exercised under the supervision of the Public Prosecutor, who shall act on his own motion or at the request of any interested party.

The Public Prosecutor 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 to the benefit of the ward. Likewise, he may at any time require the tutor to inform him about the minor or incapacitated person and the state of administration of the guardianship.

## **Section Two. On appointment of the guardianship & appointment of the guardian**

### **Article 234**

The following persons shall be preferred to be appointed as a guardian:

1. The person appointed by the ward himself, pursuant to the second Paragraph of Article 223;
2. The spouse who lives with the ward;
3. The parents;
4. The person or persons appointed by the parents in their testamentary provisions;
5. The descendant, ascendant or sibling appointed 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 were to 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 appoint as guardian the person he considers to be most suitable, in view of his relations with the ward and to the benefit of the latter.

### **Article 236**

Guardianship shall be exercised by single guardian, except:

1. If, as a result of special circumstances concurring in the person of the ward or his goods, it were to be convenient to separate into different positions a guardian for his person and a guardian for his goods, each of whom shall act independently within the scope of their competence, although decisions concerning both shall be taken jointly.
2. If 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 were to be appointed guardian of his sibling's children and it were to be deemed convenient that the spouse of the guardian were to also exercise such guardianship.



4. If the Judge were to appoint as guardians the persons appointed by the parents of the ward in a last will and testament or notarial public document to exercise the guardianship jointly.

#### **Article 237**

In the case of Number 4 of the preceding Article, if the testator were to have explicitly provided it, and, in the case of Number 2, if the parents were to request it, the Judge may, upon appointing the guardians, provision that they may exercise the powers inherent to the guardianship jointly 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 shall be exercised by them acting jointly, but any acts carried out with the agreement of the majority shall be valid. In the absence of such agreement, the Judge, after hearing the guardians and the ward if he were to have sufficient maturity, shall decide, without further appeal, whatever he deems convenient. If disagreements occur repeatedly and materially 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 have been granted powers to act jointly and any of them were to incur in an incompatibility or conflict of interest in respect of any acts or contracts, these may be carried out by the other guardian or, if there are several, by the rest of them jointly.

#### **Article 238**

In cases where, for any reason, any of the guardians were to be removed, the guardianship shall subsist with the remaining guardians, unless otherwise explicitly provided upon making the appointment.

#### **Article 239**

1. The guardianship of neglected minors shall correspond ipso iure to the Public Entity.
2. Notwithstanding the foregoing, a guardian shall be appointed pursuant to the ordinary provisions in the event of existence of persons who, because of their relations with the minor or other circumstances, may take on the guardianship to the benefit of the former.

In these events, prior to the judicial appointment of the ordinary guardian or in the same resolution, the suspension or deprivation of parental responsibility or removal of the guardian shall be ordered, as applicable.

3. The Public Prosecutor, Public Entity and any parties called to act as guardians shall have the capacity to exercise the actions of deprivation of parental responsibility, removal of the guardian and to request the appointment of a guardian.

**Article 239 bis**

The Public Entity entrusted with the protection and support of incapacitated persons in the respective territory shall be appointed guardian if the guardianship has not been constituted in favour of any of the persons provided in Article 234.

Likewise, it shall take on ipso iure the guardianship of an incapacitated person if the latter is affected by a situation of neglect, and this event shall be reported to the judicial authority under which he was declared to be incapacitated.

A de facto situation of neglect shall be deemed to exist for these purposes if the incapacitated person is deprived of the necessary assistance as a result of the breach or of the impossible or inadequate exercise of the duties attributed to the person appointed to exercise guardianship, pursuant to the laws, or if there is no such guardian.

**Article 240**

If it were to be necessary to appoint 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, non-profit making legal persons 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, whilst they are serving their sentence;
4. Persons sentenced for any criminal offence which could lead justifiably to 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 were to owe him material sums;
5. Bankrupt persons who have not been discharged, save in the event that the guardianship only covers the ward's person.

**Article 245**

Likewise, persons explicitly excluded by the father or the mother in their testamentary provisions or those provided in a notarial document may also not be guardians, unless the Judge, in a motivated resolution, were to decide otherwise to 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 appointed pursuant to the testamentary provisions of the parents if the latter had been aware of them at the time of making the appointment, unless the Judge, in a reasoned resolution, were to decide otherwise to the benefit of the minor or the incapacitated person.

**Article 247**

Persons who, after their appointment, were to incur in a legal ground for ineligibility, or were to conduct themselves improperly in the exercise of the guardianship, by breaching the duties inherent to their position or evident ineptitude in the exercise thereof, or if serious and ongoing problems were to arise in their life together with the ward, shall be removed from the guardianship.

**Article 248**

The Judge, on his own motion or at the request of the Public Prosecutor, of the ward or of another interested person, shall decide the removal of the guardian, after hearing the latter if, being summoned, he were to appear in Court. Likewise, the ward shall be heard if he were to have sufficient maturity.

**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 if, 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 were to be exceedingly burdensome.

Legal persons may be excused if 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 day on which he became aware of the appointment.

**Article 253**

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

**Article 254**

The provisions of the preceding Article shall not apply to guardianship entrusted to legal persons.

**Article 255**

If the excuse were to arise subsequently, it may be alleged at any time.

**Article 256**

Whilst the resolution relating to the excuse is pending, the person who has alleged it shall be obliged to exercise his duties.

If he fails 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 were to be rejected.

**Article 257**

The guardian appointed pursuant to a last will and testament who were to be excused from the guardianship at the time of his appointment shall lose any goods bequeathed by the testator in consideration of the appointment.

**Article 258**

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

**Section Three. On the exercise of the guardianship****Article 259**

The Court Clerk shall vest the appointed guardian in his post.

**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 *ipso iure* or performs such guardianship because 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 goods of the ward within sixty days, counting from the day on which he took charge of his duties.



### **Article 263**

The Court Clerk may extend this period in a reasoned resolution if there are grounds to do so.

### **Article 264**

The inventory shall be made in the presence of the Court Clerk, with the intervention of the Public Prosecutor, summoning any persons who the Court Clerk deems convenient.

### **Article 265**

Any money, jewellery, precious objects and securities or documents which, in the opinion of the Court Clerk, 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 goods.

### **Article 266**

The guardian who does not include in the inventory any credits held against the ward shall be deemed to renounce 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 explicit provision of the Law or of the incapacitation judgment.

### **Article 268**

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

If 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 feed him;
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 account for his administration on an annual basis.

### **Article 270**

The single guardian and, as the case may be, the guardian of the ward's goods, is the legal administrator of the goods of the ward and is obliged to exercise such administration with the diligence of a bonus pater familias.

**Article 271**

The guardian shall require judicial leave:

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 pertaining to minors or incapacitated persons, or to enter into contracts or perform acts which are acts of disposal and may be registered. The sale of preferred subscription rights relating to shares shall be excepted from the above.
3. To renounce rights, and to settle or submit to arbitration any matters in which the ward may have an interest.
4. To accept any inheritance without the benefit of inventory, or to refuse inheritances or bequeaths.
5. To make extraordinary expenses in the goods.
6. To file a claim in the name of the ward, save for urgent matters or those involving a small amount.
7. To lease goods for a period exceeding six years.
8. To lend and borrow money.
9. To dispose as a gift of goods or rights pertaining 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 goods carried out by the guardian shall not require judicial leave, 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 were to be older than twelve or if the Judge were to deem it convenient, and shall commission any reports requested or any he deems suitable.

**Article 274**

The guardian shall be entitled to remuneration, if the goods of the ward were to 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 carried out and the value and returns of the goods, 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 goods.

**Article 275**

Only parents, in their testamentary provisions, may establish that the guardian is entitled to appropriate the fruits of the ward's goods in exchange for providing support, save if the Judge, in a duly reasoned resolution, were to decide otherwise.



#### **Section Four. On extinction of the guardianship & final rendering of accounts**

##### **Article 276**

Guardianship shall be extinguished:

1. When the minor turns eighteen, unless he has been judicially incapacitated previous;
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 be extinguished:

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

##### **Article 278**

The guardian shall continue in the exercise of his position if the underage ward has been incapacitated before coming of age, pursuant to the provisions of the incapacitation judgment.

##### **Article 279**

Upon ceasing in his duties, the guardian shall 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 prescription 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 interest at the legally established rate, in favour or against the guardian.

##### **Article 283**

If the balance were to be in favour of the guardian, it shall accrue interest at the legally established rate as from the day on which payment is demanded from the ward, after delivering his goods to him.

**Article 284**

If the balance were to be against the guardian, it shall accrue interest at the legally established rate as from the approval of the account.

**Article 285**

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

**CHAPTER III****On conservatorship****Section One. General provisions****Article 286**

The following persons shall be subject to conservatorship:

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

**Article 287**

Likewise, a conservatorship shall be established for persons whose incapacitation judgment or, as the case may be, judicial resolution amending the former, were to 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 explicitly provided in the judgment which established it.

**Article 290**

If the incapacitation judgment has not specified those acts in which the intervention of the conservator is necessary, such intervention shall be deemed to extend to the same acts for which guardians require judicial leave, pursuant to this Code.

**Article 291**

The provisions 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 were to 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, if the latter is required, shall be annulable at the request of the conservator himself or of the ward, pursuant to Articles 1301 et seq. of this Code.

### **Section Two. On conservatorship over prodigal persons**

#### **Article 294**

(Repealed)

#### **Article 295**

(Repealed)

#### **Article 296**

(Repealed)

#### **Article 297**

The acts of the person declared to be prodigal carried out prior to the claim requesting declaration of prodigality may not be challenged on these grounds.

#### **Article 298**

(Repealed)

## **CHAPTER IV**

### **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, if a conflict of interest were to exist only with one of them, the other, ipso iure and without the need for a special appointment, shall be entitled to represent and protect the minor or incapacitated person.
2. If, for any reason, the guardian or conservator were to fail to perform his duties, until termination of the cause of such failure or appointment 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 take on his representation and defence. In such case, if, as well as the care of his person, such person's goods must also be administered, the Court Clerk may appoint an administrator thereof, who shall account for his management upon termination thereof.

**Article 300**

In non-contentious proceedings, ex officio or at the request of the Public Prosecutor, of the minor himself or of any person capable of appearing in Court, whoever is deemed most suitable shall be appointed defender.

**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 and shall account for his management upon conclusion thereof.

**CHAPTER V****On de facto custody****Article 303**

1. Without prejudice to the provisions of Article 228, if the judicial authority were to become aware of the existence of a de facto guardian, it may request him to inform on the situation of the person and goods 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.

As a precautionary measure, for the duration of the situation of de facto guardianship and until such time as the suitable protection measure is constituted, as applicable, powers of guardianship may be judicially granted to these de facto guardians. Furthermore, in the case of a minor, temporary foster care may be constituted, with the guardians becoming foster parents.

2. The situation of neglect or minors and incapacitated persons in a situation of de facto guardianship shall be declared if, in addition to this circumstance, the objective prerequisites of a lack of care established in Articles 172 and 239 bis are met.

In all other cases, the de facto guardian may demand the deprivation or suspension of parental responsibility, removal of the guardian or appointment of a guardian.

**Article 304**

Acts carried out by the de facto guardian in the interest of the minor or allegedly incapable person may not be challenged if they are to his benefit.



**Article 305**

(Repealed)

**Article 306**

The provisions of Article 220 concerning the guardian shall apply to the de facto guardian.

**Articles 307 to 313.**

(Repealed)

## TITLE XI

### On legal age & emancipation

#### Article 314

Emancipation takes place:

1. On coming of age;
2. By concession granted by persons exercising parental authority;
3. By concession granted by a Court of Law.

#### Article 315

Legal age begins upon turning eighteen years old.

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

#### Article 316

(Repealed)

#### Article 317

Emancipation by concession granted by the persons exercising parental authority shall require that the minor is sixteen years old 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 shall be registered at 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 years who lives independently of his parents and 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 years if they were to request it, after hearing the parents:

1. If the person exercising parental authority were to marry or live together in marital fashion with a person other than the other parent;
2. If the parents were to live separated;
3. In the event of any cause which seriously hinders the exercise of parental authority.

#### Article 321

The Judge, after hearing the Public Prosecutor, may also grant the benefit of legal age to the person subject to guardianship who is older than sixteen and who so requests.



### **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 goods 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 is of legal age; if the other spouse is also underage, the consent of the parents or conservators of both shall also be required.

## TITLE XII

### On the Civil Registry

#### Article 325

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*“Acts relating to the civil status of persons shall be registered at the Registry destined for such purposes.”*

#### Article 326

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*“The Registry of Civil Status shall comprise all registrations or entries of births, marriages, emancipations, recognitions and legalisations, deaths, naturalisations and civil citizenship, and shall be entrusted to the municipal Judges or other officials of the civil jurisdiction in Spain, and consular or diplomatic agents abroad.”*

#### Article 327

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

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

#### Article 328

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*“It shall not be necessary to physically present the new-born before the official 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 were to be unable to sign.”*

### **Article 329**

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*"In canonical marriages, the spouses shall be obliged to provide to the Public official 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**

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

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

### **Article 331**

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*"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 criminal offence or misdemeanour with a 20 to 100 peseta fine."*

### **Article 332**

(Repealed)

This Article was repealed by the Repealing Provision of Act 20/2011, dated 21st July (Ref. BOE-A-2011-12628), effective from 30th June 2017.

Previous wording:

*"Act of 17th June 1870 shall continue to apply to the extent that it has not been amended by the preceding Articles."*

On goods, ownership & amendments thereof

**BOOK II**  
**ON GOODS, OWNERSHIP & AMENDMENTS THEREOF**

**TITLE ONE**  
**On the classification of goods**

**PRELIMINARY PROVISION**

**Article 333**

All objects which are or may be subject to appropriation are deemed either movable or immovable goods.

**CHAPTER I**  
**On immovable goods**

**Article 334**

The following are immovable goods:

1. Land, buildings, roads and constructions of all kinds which are joined to the ground.
2. Trees and plants and pending fruits, whilst they are joined to the earth or form integral part of an immovable good.
3. Anything which is joined to an immovable good 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 good, 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 good to the industry or undertaking carried out 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, if the owner has placed or preserved them for the purpose of keeping them joined to the good 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, whilst their matter remains joined to the source, and flowing or stagnant waters.



9. Docks and constructions which, even if they float, are destined, because 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 goods.

## **CHAPTER II**

### **On movable goods**

#### **Article 335**

Goods that may be appropriated not included in the preceding Chapter and, generally, all goods 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 goods.

#### **Article 336**

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

#### **Article 337**

Movable goods shall be either fungible or non-fungible.

Goods which cannot be properly used according the nature thereof without being consumed shall appertain to the first species; other goods shall appertain to the second species.

## **CHAPTER III**

### **On goods based on the persons to which they pertain**

#### **Article 338**

Goods are either of public domain or private property.

#### **Article 339**

The following goods are of public domain:

1. Goods destined for public use, such as roads, canals, rivers, torrents, ports and bridges built by the State, riverbanks, shores, bays and other analogous goods.
2. Goods exclusively owned by the State, which are not for public use, and which are 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 goods pertaining to the State in which the circumstances stated in the preceding Article do not concur shall be deemed to private goods.

#### **Article 341**

If goods of public domain cease to be destined to general use or to the requirements of the defence of the territory, they shall become part of the goods owned by the State.

#### **Article 342**

Goods pertaining to the Royal Patrimony shall be governed by a specific statute, and, for all matters not provided therein, by the general provisions governing private goods set forth in this Code.

#### **Article 343**

Goods pertaining to provinces and towns are divided into goods for public use and patrimonial goods.

#### **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 goods for public use.

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

#### **Article 345**

Besides the patrimonial goods of the State, the Province and the Municipality, goods individually or jointly pertaining to individuals shall be private goods.

Provisions common to the three preceding Chapters

#### **Article 346**

If, in a provision of law, or pursuant to an individual statement, the expression immovable goods or objects, or movable goods or objects were to be used, the goods listed in Chapter 1 and in Chapter 2, respectively, shall be deemed comprised therein.

If only the word “movables” were to 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 objects the main destination whereof is not to furnish or adorn rooms shall not be deemed comprised therein, save if the context of the law or individual provision clearly provides otherwise.

#### **Article 347**

If in any sale, legacy, gift or other provision in which there is a reference to movable or immovable goods, possession or ownership thereof were to be conveyed with everything located therein, any cash, securities, credits and shares whose documents are located within the conveyed goods shall not be deemed comprised therein, unless the intention to extend the conveyance to such securities and rights were to be clearly stated.



## **TITLE II**

### **On ownership**

#### **CHAPTER I**

##### **On ownership in general**

##### **Article 348**

Ownership is the right to enjoy and dispose of an object, without other limitations than those set forth in the laws.

The owner shall have an action against the holder and the possessor of the goods to claim them.

##### **Article 349**

Nobody may be deprived of his goods save by the competent Authority and 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 a 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 he may deem convenient, save for any easements, and pursuant to the provisions of the laws relating to mining and waters and police regulations.

##### **Article 351**

Hidden treasure shall pertain to the owner of the land in which it is found.

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

If the objects discovered were to be of interest to science or art, the State may acquire them for their fair value, which shall be distributed pursuant to 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 owner is unknown.

#### **CHAPTER II**

##### **On the right of accession**

##### **GENERAL PROVISION**

##### **Article 353**

Ownership of the goods 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 goods**

### **Article 354**

The following shall pertain 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 offspring and other products of animals.

Industrial fruits are those produced by plots of land of any kind due to 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 shall suffice if they are in their mother's womb, even if they are not yet born.

## **Section One. On the right of accession in respect of immovable goods**

### **Article 358**

Anything built, planted or sown on another's plot of land and any improvements or repairs made therein shall pertain to the owner of the land, pursuant 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 evidence to the contrary is produced.

### **Article 360**

The owner of the land who performs therein, by himself or via another, plantations, constructions or works with another's materials, shall pay the value thereof; and, if he has acted in mala fide, 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 carried out.



#### **Article 361**

The owner of the land on which another has built, sowed or planted in bona fide 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 built or plant pay the price of the land, and to the person who sowed, the corresponding rent.

#### **Article 362**

The person who builds, plants or sows in mala fide 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 mala fide may request the demolition of the works or the uprooting of the plantation and sowing, returning objects to their original condition at the expense of the person who built, planted or sowed.

#### **Article 364**

In the event of mala fide 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 bona fide.

The owner shall be deemed to have acted in mala fide if the deed has been carried out in his full sight, with his awareness and forbearance, and without opposition.

#### **Article 365**

If the materials, plants or seeds were to pertain to a third party who has not acted in mala fide, the owner of the land shall be liable for their value on a subsidiary basis, only if the person who used them does not have sufficient goods to pay.

This provision shall not apply if the owner were to exercise the right provided in Article 363.

#### **Article 366**

The accretion gradually obtained by riverbanks as a result of the water currents shall pertain 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**

If the current of a river, stream or torrent were to segregate from the bank of a landed property a known portion of land and were to transport it to another property, the owner of the property to which the segregated part appertained shall remain the owner thereof.

**Article 369**

Trees that are uprooted and transported by the current of the waters shall pertain to the owner of the land to which they are taken, if the former owners were to not claim them within one month. If they were to claim them, they shall 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 pertain to the owners of the lands of the riverbanks, in their respective lengths. If the abandoned riverbeds were to have separated plots of land pertaining 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 pertain to the State.

**Article 372**

If a navigable and floatable river were to 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 if the waters 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 pertain to the owners of the nearest banks or shores, or to those of both banks if the island were to be in the middle of the river, and the island shall then be divided longitudinally in half. If a single island thus formed were to be further away from one bank than from the other, the owner of the nearest bank shall own all of it.

**Article 374**

If the river current were to 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 Three. On the right of accession in respect of movable goods****Article 375**

If two movable objects pertaining to different owners are joined in such a manner that they form a single object, without mala fide, the owner of the main object shall acquire the accessory object, compensating the former owner for its value.

**Article 376**

Between two objects which have been incorporated together, the object to which the other has been joined as an adornment, or for its use or perfection shall be deemed the main object.



### **Article 377**

If, pursuant to the provision of the preceding Article, it is impossible to determine which of two objects incorporated together is the main object, the object of greater value shall be deemed the main one, and, between two objects 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**

If the objects joined together can be separated without impairment, the respective owners may demand their separation.

The aforesaid notwithstanding, if the object joined for the use, embellishment or perfection of another is much more precious than the main object, the owner of the former may demand separation thereof, even if the object to which it was incorporated suffers an impairment.

### **Article 379**

If the owner of the accessory object has incorporated it in mala fide, he shall lose the incorporated object and shall be obliged to compensate the owner of the main object for any damages suffered.

If the owner of the main object has acted in mala fide, the owner of the accessory object shall be entitled to choose between the former paying its value or the separation of the object pertaining to him, even if it were to be necessary to destroy the main object; in both cases, compensation of damages shall also apply.

If either owner has carried out the incorporation in the other's sight, with his awareness and forbearance, and without opposition, their respective rights shall be established as if they had acted in bona fide.

### **Article 380**

Whenever the owner of the materials employed without his consent is entitled to compensation, he may request that this consist of delivery of an object 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 objects of the same or different species were to be mixed, or if the mix were to take place by chance, and in this last case the objects may not be separated without impairment, each owner shall acquire a proportional right to the part which corresponds thereto based on the value of the objects mixed or commingled.

**Article 382**

If, at the will of one owner only, but in bona fide, two objects of equal or different species were to be mixed or commingled, the rights of the owners shall be established pursuant to the provisions of the preceding Article.

If the person who carried out the mix or commingling acted in mala fide, he shall lose the object pertaining to him which was mixed or commingled, and shall also be obliged to compensate any damages caused to the owner of the object with which he carried out the mix.

**Article 383**

The person who, acting in bona fide, 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 were to 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 mala fide were to 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 III****On survey & marking of boundaries****Article 384**

Any 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 carried out pursuant to 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 were to fail to determine the limits or area pertaining to each owner, and the matter may not be resolved by reference to possession or by another means of evidence, the marking of boundaries shall be carried out by distributing in equal parts the land the object of dispute.

**Article 387**

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



## **CHAPTER IV**

### **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 V**

### **On ruinous buildings & trees which threaten to fall**

#### **Article 389**

If a building, wall, column or any other construction were to 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 were to not perform this, the Authorities may have it demolished at his expense.

#### **Article 390**

If a sturdy tree were to threaten to fall in such a manner that it may cause damage to another's landed property or to any passers-by on a public or private road, the owner of the tree shall be obliged to uproot and remove it; and, if he were to 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 were to fall, the provisions of Articles 1907 and 1908 shall apply.

### **TITLE III**

#### **On joint ownership**

##### **Article 392**

There is joint ownership if ownership of an object or right pertains 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 objects owned in common, if 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 pursuant to their right.

##### **Article 395**

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

##### **Article 396**

The different flats or premises in a building, or the parts thereof that may be used independently, as a result of having their own exit to communal elements of the former or to the public road, may be the object of 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, amongst 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 were to 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 audio-visual 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 under no circumstance whatsoever be divided, 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 first refusal or call-back.

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

#### **Article 397**

None of the co-owners may make alterations in the object owned in common without the others' consent, even though advantages for all of them were to 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 object 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 were to be seriously detrimental to the persons interested in the object owned in common, the Judge shall decide what he deems suitable, at the request of any party, even by appointing an administrator.

If a part of the object were to pertain exclusively to a participant or to some of them, and another were to be owned in common, the provisions of the preceding Paragraph shall only apply to the latter.

#### **Article 399**

Each co-owner shall have the freehold 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 were to be personal rights. The aforesaid notwithstanding, 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 extinction of the joint ownership.

#### **Article 400**

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

Notwithstanding the foregoing, the covenant to preserve the object undivided for a specific period, which may 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 object owned in common if, if they were to do so, it would become useless for its intended destination.

If it were a building whose characteristics 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 object owned in common may be carried out by the interested parties, or by arbitrators or amiable compositeurs appointed at the will of the participants.

If it were to be carried out by arbitrators or amiable compositeurs, they shall 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 object owned in common and challenge any division carried out without their attendance. The aforesaid notwithstanding, they may not challenge the division which has already been completed, save in the event of fraud, or if it has 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**

If the object were to be in essence indivisible, and the co-owners were not to agree on its being awarded to one of them, compensating the rest, it shall be sold, and its price shall be distributed amongst them.

**Article 405**

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

**Article 406**

The provisions concerning the partition of the estate shall apply to division amongst the participants in joint ownership.



## **TITLE IV**

### **On certain special properties**

#### **CHAPTER I**

##### **On water**

Please bear in mind that Articles 407 to 425 were repealed to the extent that they are contrary to the provisions of the Water Act.

#### **Section One. On ownership of water**

##### **Article 407**

The following waters are of public domain:

1. Rivers and the natural courses thereof;
2. Continuous or discontinuous waters of springs and streams flowing in the natural courses thereof, 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 the rivulets thereof;
5. Rainwater which flows on cliffs or watercourses, if the course is also of public domain;
6. Underground waters in public land;
7. Water found in areas when 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 goods:

1. Continuous or discontinuous waters which spring from privately owned plots of land, whilst they remain in such land;
2. Lakes and lagoons and the rivulets thereof, created by nature in such plots of land;
3. Underground waters located in such plots of land;
4. Rainwater which falls therein, whilst it does not exit the boundaries thereof;
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 deemed 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 were to pass may not allege ownership thereof, nor any right to use its bed or banks, unless it is based on deeds of ownership which evidence the right or ownership claimed thereby.

## **Section Two. 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 shall be construed without prejudice to the rights of third parties.

### **Article 411**

The right to use public waters shall conclude due to expiration of the concession and by lack of use for twenty years.

## **Section Three. On the use of private waters**

### **Article 412**

The owner of a plot of land in which a continuous or discontinuous spring or stream were to be born may use its waters whilst they pass through it; but the remaining waters shall become public, and the use thereof shall be governed by the special Water Act.

### **Article 413**

Private property over rivulets of rainwater shall not authorise to perform tasks or works to change the course thereof 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 leave 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, if he does not cause any detriment to the public or to a third party.



#### **Section Four. On underground waters**

##### **Article 417**

Only the owner of a plot of land or another person with his leave may investigate underground waters therein.

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

##### **Article 418**

Waters surfaced pursuant to the special Water Act pertain to the person who brought them to the surface.

##### **Article 419**

If the owner of the waters surfaced were to abandon them to the natural course thereof, they shall become part of the public domain.

#### **Section Five. General provisions**

##### **Article 420**

The owner of a plot of land in which defensive works have been carried out to contain the water or if, as a result of the variation of the course thereof, it were 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 would 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 have caused the damage by their fault shall be liable for any expenses.

##### **Article 423**

Ownership and use of waters pertaining to corporations or individuals shall be subject to the Expropriation Act 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 goods.

##### **Article 425**

For all that is not explicitly provided in this Chapter, the provisions of the special Water Act shall apply.

## CHAPTER II

### On minerals

#### Article 426

Any Spaniard or alien 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 shall give prior notice thereof to the local authorities. On private property, no sampling may be carried out without the leave of the owner or his representative.

#### Article 427

The limits of the rights mentioned in the preceding Article, prior procedures and conditions for the exercise thereof, designation of materials to be deemed minerals and establishment 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 Act.

## CHAPTER III

### 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 Act sets forth the persons to whom this right pertains, the manner of its exercise and its duration. In cases not provided or resolved by such specific statute, the general provisions provided in this Code relating to property shall apply.



## **TITLE V**

### **On possession**

#### **CHAPTER I**

##### **On possession & its species**

##### **Article 430**

Natural possession is the holding of an object or the enjoyment of a right by a person. Civil possession is that same holding or enjoyment joined with the intention of having the object or right *animus domini*.

##### **Article 431**

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

##### **Article 432**

Possession of goods and rights may be held in one of two capacities: either *animus domini*, or as holder of the object or right, to preserve or enjoy them, whilst ownership pertains 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 *bona fide* possessor.

Otherwise he shall be deemed a *mala fide* possessor.

##### **Article 434**

*Bona fide* is always presumed, and the person asserting a possessor's *mala fide* shall have the burden of the proof.

##### **Article 435**

Possession acquired in *bona fide* shall not lose this nature unless there are acts which evidence that the possessor is not unaware that he possesses the object unduly.

##### **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 objects and rights which may be appropriated may be possessed.

#### **CHAPTER II**

##### **On acquisition of possession**

##### **Article 438**

Possession is acquired by material occupation of the object or right possessed, or by the latter coming under a person's power, or pursuant to the acts and legal procedures 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 effected were to ratify it.

**Article 440**

Possession of hereditary goods shall be deemed conveyed to the heir without interruption from the time of death of the decedent, in the event that the former were to finally accept the inheritance.

The person who validly refuses an inheritance shall be deemed never to have possessed it.

**Article 441**

Under no circumstances whatsoever may possession be acquired violently if there is a possessor who opposes this. A person who believes he has an action or right to deprive another of holding an object, if the holder refuse to deliver it, shall 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 impinged it; the aforesaid notwithstanding, the effects of bona fide possession shall only benefit him from the day of his decedent's death.

**Article 443**

Minors and incapacitated persons may acquire possession over objects; but they shall require the assistance of the legitimate representatives thereof 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 carried out in a clandestine fashion and without the possessor of the object being aware thereof, or with violence, shall not impinge 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 were to arise on the fact of possession, the current possessor shall be preferred; if there were to be two possessors, the oldest shall be preferred; if the dates of possession were to be the same, the possessor who presents a title shall be preferred; and, all these conditions being equal, the object shall be deposited or consigned with the Court of Law, until the possession or ownership thereof is established pursuant to the relevant proceedings.



### CHAPTER III

#### On the effects of possession

##### **Article 446**

Any possessor is entitled to be respected in his possession; and, if he were to be disturbed in it, he shall be protected or such possession shall 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 estate property shall involve possession of the furniture and objects located therein, unless it were to be stated or evidenced that they are to be excluded.

##### **Article 450**

Each participant of object possessed in common shall be deemed to have possessed exclusively the part which, upon dividing the object, were to be allocated to him, during the whole period during which it remained undivided. Interruption in the possession of the whole or part of the object possessed in common shall be to the equal detriment of all.

##### **Article 451**

The bona fide possessor 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 pertain to the bona fide possessor in such proportion.

##### **Article 452**

If at the time on which the bona fide were to cease, any natural or industrial fruits were to be pending, the possessor shall be entitled to recover any expenses made for the production thereof, 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 amongst two possessors.

The owner of the object may, if he wishes to, grant the bona fide possessor 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 pertain to him; the

bona fide possessor 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 bona fide possessor may retain the object until satisfaction thereof.

Useful expenses shall be paid to the bona fide possessor, who shall be entitled to the same right of retention, and the person who were to have prevailed in the dispute over possession may choose to satisfy the amount of the expenses, or pay the increase in value of the object as a result thereof.

#### **Article 454**

Purely luxurious or merely recreational expenses shall not be payable to the bona fide possessor; but he may take away any adornments with which he has embellished the main object if it were to not suffer any impairment, and if his successor in possession does not prefer to pay the amount of the relevant expenses.

#### **Article 455**

The mala fide possessor 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 object. Expenses made for luxurious and recreational improvements shall not be paid to the mala fide; but he may take the objects in which such expenses have been invested, provided that the object suffers no impairment, and that the legitimate possessor does not prefer to keep them by paying their value at the time of becoming the possessor thereof.

#### **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 bona fide possessor shall not be liable for the impairment or loss of object possessed, outside cases if he is proved to have acted with malice. The mala fide possessor shall be liable for impairment or loss in any case, and even for those caused by act of God or force majeure if he has maliciously delayed delivery of the object to the legitimate possessor thereof.

#### **Article 458**

The person who obtains possession is not obliged to pay improvements which have ceased to exist upon acquiring the object.

#### **Article 459**

The current possessor who proves having previously possessed the object 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 object;
2. By assignment made in favour of another for valuable consideration or as a gift;
3. By total destruction or loss of the object, or as a result of it becoming beyond the bounds of commerce;
4. By another's possession, even against the will of the former possessor, if such new possession has lasted more than one year.

#### **Article 461**

Possession of movable goods shall not be deemed lost whilst they remain in the power of the possessor, even if the latter is accidentally unaware of its whereabouts.

#### **Article 462**

Possession of immovable goods and rights in rem shall only be deemed to have been lost or conveyed, for the purposes of prescription to the detriment of a third-party, pursuant to the provisions of the Mortgage Act.

#### **Article 463**

Acts relating to possession, carried out or consented by the person possessing an object pertaining 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 has explicitly granted to the former powers to perform them or were to subsequently ratify them.

#### **Article 464**

Possession of movable goods, acquired in bona fide, is equivalent to title. Notwithstanding the foregoing, any person who has lost movable goods or has been deprived thereof unlawfully may claim them from its possessor.

If the possessor of the lost or stolen movable goods has acquired them in bona fide at a public sale, the owner may not have them restored to him without reimbursing the price paid for them.

The owner of objects pawned in pawnshops created with governmental licence 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 objects acquired in an exchange, fair or market, or from a legally established trader who regularly trades in analogous objects, the provisions of the Code of Commerce shall apply.

#### **Article 465**

Wild animals are only possessed whilst 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 dwelling of the possessor.

#### **Article 466**

A person who lawfully recovers the possession unduly 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 & on habitation**

#### **CHAPTER I**

##### **On usufruct**

##### **Section One. On usufruct in general**

###### **Article 467**

Usufruct entitles a person to enjoy another's goods with the obligation to preserve the form and substance thereof, 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 object, in favour of one or several persons, simultaneously or successively, and in any event from or until a certain day, without qualification or subject to a condition. It may also be created over a right, provided that it is not a strictly personal or a non-conveyable right.

###### **Article 470**

The rights and obligations of the usufructuary shall be as established 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 Two. On the rights of the usufructuary**

###### **Article 471**

The usufructuary shall be entitled to receive all natural, industrial and civil fruits of the goods encumbered by the usufruct. He shall be deemed 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 pertain to the usufructuary.

Those which are pending at end of the usufruct shall pertain 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 has leased the land or properties given in usufruct and the latter were to 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 pertain 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 were to consist of the enjoyment of the profits of a share in an industrial or commercial undertaking, without a fixed distribution day, 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 explicitly granted in the deed which created it, or unless the usufruct is universal.

The usufructuary may, the aforesaid notwithstanding, extract stones, lime and plaster from quarries for any repairs or works which he is obliged to perform or which are 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 Act to discover and obtain the concession of any mines existing in plots of land encumbered by usufruct, in the manner and under the conditions set forth in the same Act.

#### **Article 479**

The usufructuary shall be entitled to enjoy any increase in the object encumbered by usufruct by accretion, any easements in its favour and generally all benefits inherent thereto.

**Article 480**

The usufructuary may use himself the object encumbered by usufruct, lease it to another and dispose of his right of usufruct, even as a gift, but all contracts entered into as usufructuary shall be extinguished 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 were to comprise objects which, although not consumed, are slowly impaired pursuant to wear and tear, the usufructuary shall be entitled to avail himself thereof, using them in accordance with the purpose thereof, and shall only be obliged to return them at the end of the usufruct in the condition thereof at the time; but with the obligation to compensate the owner for any impairment suffered due to his malice or negligence.

**Article 482**

If the usufruct were to comprise objects which cannot be used without consuming them, the usufructuary shall be entitled to avail himself thereof with the obligation to pay the value thereof upon expiration of the usufruct, if it has been estimated. If it has not been estimated, he shall be entitled to return them in the same amount or quality or to pay the current price thereof 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 have been 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 have disappeared in such a considerable number that the replacement thereof is 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 the nature thereof.

In timber or construction timber woodland, the usufructuary may perform any ordinary cutting or felling usually carried out by the owner and, in the absence thereof, shall perform it pursuant to local custom as relates to manner, portions and season.

In any event, any felling or cutting shall be carried out 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 grow 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 objects encumbered by usufruct and, in this case, he shall give the owner prior notice of the need to perform such tasks.

#### **Article 486**

The usufructuary of an action to claim a plot of land or a right in rem or movable goods 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 were to acquire the object subject to the 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 goods constituting the subject matter of the usufruct any useful or recreational improvements deemed convenient, provided that he does not alter the form or the substance thereof; the aforesaid notwithstanding, he shall not be entitled to compensation for this reason. He may, notwithstanding the foregoing, remove such improvements, if it is possible to do so without detriment to the goods.

#### **Article 488**

The usufructuary may offset any damages to the goods against any improvements carried out therein.

#### **Article 489**

The owner of goods held by another pursuant to usufruct may dispose thereof, but not alter their form or substance, nor perform anything therein which may be to the detriment of the usufructuary.

#### **Article 490**

The usufructuary of part of the object 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 were to cease as a result of division of the object possessed in common, the usufructuary shall hold the usufruct of the part awarded to the owner or co-owner.

### **Section Three. On the obligations of the usufructuary**

#### **Article 491**

The usufructuary, prior to beginning his enjoyment of the goods, shall be obliged to do the following:

1. To make an inventory of the goods, summoning the owner or his legitimate representative for such purposes, obtaining appraisals of movable goods and describing the condition of immovable goods.
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 goods sold or given, nor to parents who are usufructuaries of goods pertaining to their children, nor to the surviving spouse in respect of his legal share in usufruct, unless the parents or the spouse were to 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 were to result therefrom.

**Article 494**

If the usufructuary fails to provide a bond in those cases if he is obliged to do so, the owner may request that any immovable goods be placed under administration, that any movable goods be sold, that any commercial paper, nominative or bearer credit facilities be registered 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 goods be invested in secure securities.

The interest generated by the price of movable goods and of commercial paper and securities and the products of the goods placed under administration shall pertain to the usufructuary.

If the owner were to prefer it, he may also, provided the usufructuary does not provide a bond or if he is excused from doing so, retain in his possession the goods encumbered by usufruct as administrator thereof, with the obligation to deliver to the usufructuary the liquid products thereof, after deducting the sum covenanted or judicially decreed in consideration of such administration.

**Article 495**

If the usufructuary who has not provided a bond were to 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 dwelling included in the usufruct, the Judge may assent to this request, after verifying the circumstances of the case.

The same shall be done in respect of any instruments, tools and other movable goods necessary for the business he conducts.

If the owner were to wish that certain movable goods not be sold because of their artistic merit or sentimental value, he may request delivery thereof, securing payment of the interest at the legally established rate on their appraisal value.

**Article 496**

Upon delivery of the bond by the usufructuary, he shall be entitled to all products from the day on which he ought to have begun to receive them, pursuant to the deed which created the usufruct.



#### **Article 497**

The usufructuary shall care for the objects given in usufruct as a bonus pater familias.

#### **Article 498**

The usufructuary who disposes of or leases his usufruct shall be liable for the impairment suffered by the objects encumbered by usufruct as a result of the fault or negligence of the person replacing him.

#### **Article 499**

If the usufruct were to 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 go missing as a result of harmful rapacious animals.

If the livestock over which the usufruct has been constituted were to perish completely, without fault of the usufructuary, because of disease or another uncommon event, the usufructuary shall comply with his obligation merely by delivering to the owner any remains which have been saved from this misfortune.

If the herd were to perish in part, also by accident and without fault of the usufructuary, the usufruct shall continue over the part which is preserved.

If the usufruct were to relate to sterile cattle, it shall be deemed, as regards its effects, as if it had been constituted over a fungible object.

#### **Article 500**

The usufructuary shall be obliged to make ordinary repairs required by the objects given in usufruct.

Ordinary repairs shall be deemed to mean those required because of any impairments or damage resulting from the natural use of objects which are indispensable for their preservation. If he were to 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 were to perform extraordinary repairs, he shall be entitled to request the usufructuary to pay interest at the legally established rate on the amount invested therein for the duration of the usufruct.

If the owner were to fail to perform them despite being indispensable for the subsistence of the object, the usufructuary may perform them; but the latter shall be entitled to demand the former, upon expiration of the usufruct, to pay the increase in value of the property as a result of such works.

If the owner were to refuse to satisfy such amount, the usufructuary shall be entitled to retain the object until he is reimbursed with the products thereof.

**Article 503**

The owner may perform any works and improvements possible in the property encumbered by usufruct, or new plantations therein if it were a rural property, provided that the value of the usufruct is not reduced or the right of the usufructuary damaged as a result of such action.

**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 has paid them, the usufructuary shall pay interest corresponding to the sums paid for such purpose and, if the usufructuary has advanced payment thereof, he shall receive the amount thereof at the end of the usufruct.

**Article 506**

If the usufruct were to be constituted over a whole estate, and, upon its creation the owner has 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 is obliged, upon creation of the usufruct, to pay regular amounts, even if the principal thereof were to be unknown.

**Article 507**

The usufructuary may claim by himself any matured credits which form part of the usufruct if he has provided or provides the corresponding bond. If he were to be excused from providing a bond or has been unable to provide it, or if the bond provided were not sufficient, he shall require the owner's leave 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 shall place such capital for it to generate interest by common consent with the owner; in the absence of an agreement between both, with judicial leave; and, in any event, with sufficient guarantees to preserve the integrity of the capital encumbered by usufruct.

**Article 508**

The universal usufructuary shall 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 objects shall only pay the legacy if the annuity or allowance were to 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 were to 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 covers the whole or a proportional share of an inheritance, the usufructuary may anticipate the sums corresponding to the property encumbered by 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 were to refuse to make such an advance, the owner may request that the part of the property encumbered by 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 he were to become aware which may impinge on the right of ownership, and, if he were to fail to do so, shall be liable for any damages, as if they had been caused through his fault.

#### **Article 512**

The usufructuary shall bear the expenses, legal fees and cost of the rulings handed down in any litigation relating to the usufruct.

### **Section Four. 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 compliance 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 object constituting the subject matter of the usufruct;
6. By extinction of the right of the person who constituted the usufruct;
7. By prescription.

#### **Article 514**

If the object given in usufruct were to 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 has been created, and before such time the village is 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 pre-established number of years, even if the third party were to die beforehand, unless such usufruct was explicitly granted only on the basis of the life of such person.

**Article 517**

If the usufruct were to encumber a property of which a building forms part and such building were to be destroyed in any way, the usufructuary shall be entitled to enjoy the land and materials.

The same shall happen if the usufruct were to encumber only a building and the latter were to be destroyed. The aforesaid notwithstanding, in such case, if the owner were to 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 were to take out, jointly with the owner, an insurance policy covering 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 is built, or shall receive the interest on the insurance indemnity if it were not in the owner's interest to rebuild.

If the owner refused to contribute to the insurance on the plot of land, and the usufructuary were to have taken out the policy 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 were to have refused to contribute to the insurance, and the owner were to have taken out the policy 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 object encumbered by 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 interest at the legally established rate on the amount of the indemnity for the duration of the usufruct. If the owner were to choose the latter option, he shall guarantee payment thereof.



#### **Article 520**

The usufruct shall not be extinguished due to misuse of the object encumbered by usufruct; the aforesaid notwithstanding, if such abuse were to cause material damage to the owner, the latter may request delivery of the object, 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 survivor.

#### **Article 522**

Upon expiration of the usufruct, the object encumbered by the 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 II**

#### **On use & habitation**

#### **Article 523**

The rights and obligations of the user and of the person entitled to inhabit 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 an object pertaining to another, those which are sufficient for the needs of the user and his family, even if the latter were to increase in size.

Habitation entitles a person to occupy in another's dwelling the necessary rooms for himself and the persons in his family.

#### **Article 525**

The rights of use and habitation may not be leased or conveyed 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 user were to consume all fruits of an object pertaining to another, or the person entitled to habitation were to occupy the whole dwelling, he shall be obliged to pay cultivation expenses, ordinary repairs for the purposes of preserving the object and to pay contributions, in the same way as the usufructuary.

If he were to only receive a part of the fruits or live in part of the dwelling, he shall not contribute at all, provided that the owner is left with a part of the fruits or benefits sufficient to cover expenses and charges. If they were not 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 are not contrary to 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 object and of the right to habitation.



## **TITLE VII**

### **On easements**

#### **CHAPTER I**

##### **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 to the benefit of another pertaining 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 to the benefit of one or several persons or a community to whom the encumbered property does not pertain.

###### **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 pertain.

**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 Two. On the ways of acquiring easements****Article 537**

Continuous and apparent easements are required pursuant to title, or by twenty 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 day on which the owner of the dominant tenement or the person who has taken advantage of the easement has begun to exercise it over the servient tenement; and in negative easements, from the day on which the owner of the dominant tenement has 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 judgment may make up 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 deemed, 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 were to state otherwise in the deed of disposal of either of them, or if such sign were to be removed before execution of the public deed.

**Article 542**

If an easement is established, all rights necessary for its use are deemed to have been granted.



### **Section Three. Rights & obligations of the owners of the dominant tenement & 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 shall 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 were to 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 in the benefit of the rest.

If the owner of the servient tenement were to in any way use the easement, he shall be obliged to contribute to such expenses in the aforesaid proportion, unless otherwise covenanted.

#### **Article 545**

The owner of the servient tenement may not in any way impair the use of an existing easement.

The aforesaid notwithstanding, if, as a result of the place originally allocated, or the manner initially established to use the easement, it were to become very inconvenient for the owner of the servient tenement or it were to 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 Four. On the ways of extinguishing easements**

#### **Article 546**

An easement is 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 a discontinuous easement, from the day on which the easement was last used; and, for continuous easements, from the day on which an act contrary to the easement took place.

3. If the properties were to be in such a condition that an easement cannot be used; but the latter shall revive if, thereafter, the condition of the properties were to allow its use, unless, if such use were to again be possible, sufficient time were to have elapsed for prescription, pursuant to the provisions of the preceding number.

4. Upon arrival of the relevant day or the performance of the condition, if the easement were to be temporary or conditional.
5. By renunciation of the owner of the dominant tenement.
6. By redemption covenanted between the owner of the dominant tenement and the servient tenement.

**Article 547**

The way an easement is carried out may be subject to prescription just as the easement itself, and in the same way.

**Article 548**

If the dominant tenement were to pertain to several persons in common, use of the easement by one of them shall prevent prescription in respect of the rest.

**CHAPTER II****On statutory easements****Section One. General provisions****Article 549**

Easements imposed by 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 laws and regulations which establish them and, in the absence thereof, by the provisions of the present Title.

**Article 551**

Easements imposed by 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 laws, regulations and general or local urban or rural policing ordinances.

These easements may be amended by covenant between the interested parties if this is not forbidden by the law or results in detriment to a third party.

**Section Two. On easements relating to waters****Article 552**

Plots lower down are subject to receiving the waters which naturally descend, without human intervention, from plots higher up, and the soil or stones dragged in their wake.

The owner of the plot lower down may not perform works which prevent the easement, nor may the owner of the property higher up perform works which make it more burdensome.

**Article 553**

Riverbanks, even if they are private property, are encumbered by the easement of public use in an area amounting to three metres of their whole length and margins for the general interest of navigation, flotation, fishing and salvage.

Plots of land adjoining the banks of navigable or floatable rivers are also encumbered by the easement of providing a tow path exclusively for river navigation and flotation purposes.

If it were necessary to occupy private land for such purpose, the corresponding compensation shall be paid.

**Article 554**

If the diversion or taking of waters from a river or stream, or the use of other continuous or discontinuous currents were to 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 up to the point where they are to be used, and the compensation shall extend to this service.

**Article 557**

Any person who wishes to avail himself of the water available to him for a property pertaining 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 descend.

**Article 558**

A person who purports to use the rights granted in the preceding Article shall be obliged:

1. To provide 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 established by the laws 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 irrigate or improve his property, were to 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 because 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 law on this issue in all matters not provided in this Code.

**Section Three. On the right of way****Article 564**

The owner of the property or land located between others pertaining 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 were to be created so that its use may be continuous to serve all 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.

If it is 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 shall be given through the point which is least detrimental to the servient tenement and, to the extent that it can comply with the preceding provision, through the shortest distance from the dominant tenement to the public road.

**Article 566**

The width of the right of way shall be that 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 is enclosed between other properties pertaining 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 were to cease to be necessary due to its owner's having joined it to another which is adjacent to the public road, the owner of the servient tenement may request extinction of the easement, returning what he received as compensation.

The same shall be construed in the event that a new path were to be opened giving access to the property.

**Article 569**

If it were to 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 sector and, in the absence thereof, by the uses and customs of the land.

Without prejudice to any rights legitimately acquired, a sheep passage cannot in any event exceed the width of 75 metres, a cattle trail 37.50 metres and the footpath 20 metres.

If it were to 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 metres.

## Section Four. 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 if 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. If the dividing walls of buildings have windows or openings;
2. If 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. If the whole wall is built on land pertaining to one of the properties, and not halfway between the two adjacent properties;
4. If it bears the load of the beams, floors and structures of one of the properties and not of the adjacent one;
5. If the dividing wall between patios, gardens and properties is built so that the coping pours water into one of the properties only;
6. If the dividing wall, built of masonry, were to have stones, called passing stones, which from distance to distance were to protrude from the surface only on one side and not on the other;
7. If 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 pertain exclusively to the owner of the property or land in whose favour the presumption has been established based on any of the aforesaid signs.

### Article 574

Ditches or irrigation channels opened between properties are also presumed to be party walls, unless otherwise evidenced pursuant to title or sign.

There is a sign contrary to the existence of a party wall if 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 pertain 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 irrigation 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 supports a building pertaining to him.

**Article 576**

If the owner of the building supported by a party wall were to 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 the previous condition thereof; likewise, he shall pay a compensation for the increase in the expense of preserving the party wall because of the increase in height or depth.

If the party wall were to 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 were to be necessary to make it thicker for such purposes, he shall 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, the aforesaid notwithstanding, 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, nevertheless, preventing the communal and respective use of the remaining party wall owners.

In order to use this right, the party wall owner shall previously obtain the consent of the other parties with an interest in the party wall; and, if he were to 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 Five. On the easement of light & air

### 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 a size of a 30 centimetres 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 have been made may close them if he acquires the party wall, unless otherwise covenanted.

He may also cover them by building on his land or by building a wall adjacent to the one on which such opening has 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 a distance of two metres 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 centimetres' distance.

### Article 583

The distances 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 are 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 street.

### 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 build at less than three metres' distance, such measurement being taken as indicated in Article 583.

## Section Six. On drainage of buildings

### Article 586

The owner of the building shall be obliged to build his roofs or covering so that rainwater falls onto his own land, or onto a public street or place, and not on his neighbour's land. Even if it were to fall on his own land, the owner shall be obliged to collect the waters so that they do not cause detriment to an 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 by providing them with another way out, pursuant to local ordinances or customs, in a manner which does not result in any encumbrance or detriment for the dominant tenement.

**Article 588**

If the yard or patio of a dwelling is located between others and it were not possible to find a way out for rainwater collected in such dwelling 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 Seven. On distances & intermediate works for certain constructions & plantations****Article 589**

It is forbidden to build or plant near strongholds or fortresses without submitting to the conditions required by the specific laws, ordinances and regulations on the matter.

**Article 590**

Nobody may build near a wall pertaining to another or a party wall wells, drains, aqueducts, ovens, forges, chimneys, stables, deposits of corrosive materials, artefacts moved by a 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 except 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 hereafter are planted at a shorter distance from his property.

**Article 592**

If the branches of certain trees were to 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 were to extend

into land pertaining to another, the owner of the land into which they have been introduced may cut them himself within his property.

#### **Article 593**

Existing trees in a live hedge constituting a party wall are also presumed to constitute a party wall, and either owner is entitled to demand 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 III**

#### **On voluntary easements**

#### **Article 594**

Any owner of a property may establish thereon any easements he deems convenient, in the manner and form he deems fit, provided that he does not infringe the law or public order.

#### **Article 595**

The owner of the property whose usufruct pertains to another may impose on it, without the usufructuary's consent, any easements not detrimental to the usufruct.

#### **Article 596**

If one person holds direct ownership over a property and the other its beneficial 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 has granted it.

The aforesaid notwithstanding, the granting made by one of the co-owners separately from the others bind the grantor and his successors, even if they are 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 applicable thereto.

#### **Article 599**

If the owner of the servient tenement undertook, upon creation of the easement, to bear the expense of the necessary works for the use and preservation thereof, he shall



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 explicit 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 pursuant to this Article shall be governed by its deed of creation.

#### **Article 601**

Communal grazing on public land, whether pertaining to Municipalities or to the State, shall be governed by administrative laws.

#### **Article 602**

If there were to be communal grazing rights between the neighbours of one or several villages, the owner who encloses a property with a wall or hedge shall release it from the easement. The aforesaid notwithstanding, the remaining easements constituted on the property shall remain in force.

The owner who encloses his property shall preserve 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 per cent of the annual value of the grazing, as established 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 Act shall apply to determine which deeds are subject to registration or entry, the form, effects and extinction 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 occupation.

Ownership and other rights over goods 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 occupation**

##### **Article 610**

Goods that may be appropriated and do not have an owner, such as game or wild fish, hidden treasure and abandoned movable objects are acquired by occupation.

##### **Article 611**

Hunting and Fishing Law is governed by specific laws.

##### **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 were to be enclosed, he shall require the owner's consent to enter it.

If the owner fails to pursue the swarm or were to cease doing so for two consecutive days, the possessor of the property may capture or retain the swarm.

The owner of tame animals may also claim them within twenty days, counting from their capture by another person. After the lapse of this period, they shall pertain to the person who has captured and kept them.

##### **Article 613**

Doves, rabbits and fish that pass from their respective breeding place to another pertaining 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 object, which is not a treasure, shall return it to the former possessor thereof. If such possessor were to be unknown, he shall 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 object 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 object 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 were to 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 object found. If the value of the finding were to 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 were to bring to the beach, of whatever nature or over the plants and grasses which grow on its shores are established by specific laws.



## **TITLE II**

### **On gifts**

#### **CHAPTER I**

##### **On the nature of gifts**

###### **Article 618**

A gift is an act of liberality whereby a person gratuitously disposes of the object in favour of another person, who accepts it.

###### **Article 619**

Likewise, a 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 well as gifts in which the donee is imposed an encumbrance of lesser value than the object given.

###### **Article 620**

Gifts which are to be effective at the death of the donor shall have the same nature as testamentary provisions, and shall be governed by the provisions set forth in the Chapter on testate succession.

###### **Article 621**

Gifts which are to be effective inter vivos shall be governed by the general provisions on contracts and obligations in all matters not provided for in this Title.

###### **Article 622**

Onerous gifts shall be governed by the provisions relating to contracts, and remunerative 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 II**

##### **On persons entitled to make or receive gifts**

###### **Article 624**

All persons with the capacity to contract and dispose of their goods 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 or onerous gifts 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 another person.

**Article 629**

The gift is not binding on the donor, or effective, until acceptance thereof.

**Article 630**

The donee shall 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**

A gift of a movable object may be made verbally or in writing.

A verbal gift shall require simultaneous delivery of the object given. In the absence of this, it shall not be effective unless it is both made and accepted in writing.

**Article 633**

For the gift of an immovable good to be valid, it must be carried out in a public deed, individually detailing the properties given and the value of any charges to be paid by the donee.

Acceptance may be given in 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 were to be given in a separate public deed, the acceptance shall be notified to the donor in an authentic instrument, and this formality shall be noted in both public deeds.



## CHAPTER III

### On the effects & limitations of gifts

#### Article 634

A gift may comprise all current goods of the donor, or parts thereof, as long as the donor reserves, in freehold or in usufruct, whatever he needs to live in a condition corresponding to his circumstances.

#### Article 635

A gift may not comprise future goods.

Future goods shall be deemed to mean goods 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 under a last will and testament.

A gift shall be deemed ineffective to the extent that it exceeds this measure.

#### Article 637

If a gift has 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 both spouses shall be excepted from the foregoing provision, and such right of accretion shall exist between the parts, unless otherwise provided by the donor.

#### Article 638

The donee shall be subrogated in all rights and actions corresponding to the donor in the event of eviction. Notwithstanding the foregoing, the latter shall not be obliged to warrant for the objects given, save if the gift has been onerous, in which case the donor shall be liable to compensate for eviction up to the amount of the consideration.

#### 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 were to die without having exercised this right, the reserved properties or amounts shall pertain to the donee.

#### Article 640

The donor may also give the ownership of the goods 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 were to 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 if the gift has been made in fraud of creditors.

The gift shall always be presumed to have been made in fraud of creditors if the donor, in making it, has not reserved sufficient goods to pay debts prior thereto.

### **CHAPTER IV**

#### **On the revocation & 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 mere occurrence of any of the following:

1. The donor's having children, even if they were to be posthumous, after making the gift;
2. That the donor's child thought dead at the time of making the gift were to turn out to be alive.

#### **Article 645**

After rescission of the gift as a result of any surviving children, the donated properties, or their value, if the donee were to have sold them, shall be returned to the donor.

If the goods have been mortgaged, the donor may release the mortgage by paying the amount secured thereby, and shall be entitled to claim such amount from the donee.

If the goods cannot be returned, they shall be appraised according to the value thereof at the time of making the gift.

#### **Article 646**

The action of revocation as a result of subsequently born or surviving children shall prescribe 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 action cannot be renounced and shall be conveyed, on the death of the donor, to his children and descendants.



#### **Article 647**

A gift shall be revoked at the request of the donor, if the donee has failed to comply with any of the conditions imposed by the former.

In this case, the donated goods 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 Act 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 were to commit any criminal offence against the donor's person, honour or goods;
2. If the donee were to attribute to the donor any of the criminal offences which give rise to ex officio proceedings or to public charges, even if he were to provide evidence thereof; unless the criminal offence has been committed against the done himself, his spouse, or children under his authority;
3. If he were to 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 goods disposed of which cannot be claimed from third parties, or the amount for which they have been mortgaged.

The time of the gift shall be taken into account to establish the value of such goods.

#### **Article 651**

In the event of revocation on any of the grounds stated in Article 644, or on grounds of ingratitude, and in the event of reduction thereof as a result of its being damaging to forced heirs, the donee shall not return the fruits obtained prior to the filing of the claim.

If the revocation is based on having failed to comply with any of the conditions imposed by the gift, the donee shall return, as well as the donated properties, the fruits which he has received after ceasing to meet the condition.

#### **Article 652**

The action available to the donor on grounds of ingratitude may not be renounced in advance. This action shall be prescribe after one year counting from the day on which the donor became aware of the fact and of the possibility to exercise the action.

**Article 653**

This action shall not be conveyed to the donor's heirs if the latter, being able to do so, had not exercised it.

Neither may it be exercised against the donee's heir, unless, on the death of the former, the claim had already been filed.

**Article 654**

Gifts which, pursuant to the provisions of Article 636, were to be found to be detrimental to forced heirs after calculating the net value of the donor's goods at the time of his death, shall 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 reserved share or to a proportional share in the inheritance and their heirs or successors shall be entitled to request a reduction of gifts.

Persons comprised in the preceding Paragraph may not renounce their rights during the life of the donor whether explicit statement or by giving their consent to the gift.

Donees, legatees other than to 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 were not sufficient to cover them, the most recent gifts shall be cancelled or reduced to cover the excess.



## **TITLE III**

### **On successions**

#### **General provisions**

##### **Article 657**

The rights to a person's succession are conveyed as from the time of his death.

##### **Article 658**

Succession takes place pursuant to the will of a person expressed in a last will and testament and, in the absence thereof, by operation of the law.

The former is called testate succession, and the latter intestate succession.

Succession may also take place partially under a last will and testament and partially pursuant to the law.

##### **Article 659**

An estate comprises all properties, rights and obligations pertaining to a person, unless they are extinguished as a result of his death.

##### **Article 660**

A person who succeeds pursuant to universal title shall be called heir, and a person who succeeds pursuant to specific title shall be called legatee.

##### **Article 661**

Heirs succeed the de cuius pursuant to the sole fact of his death in all his rights and obligations.

## **CHAPTER I**

### **On last wills & testaments**

#### **Section One. On the capacity to dispose of goods pursuant to a last will & testament**

##### **Article 662**

All persons who are not explicitly forbidden to do so by the law may make a last will and testament.

##### **Article 663**

The following persons may not make a last will and testament:

1. Persons under fourteen years of age of either gender;
2. Any person who usually or accidentally is not of sound mind.

##### **Article 664**

The last will and testament made before the person's insanity shall be valid.

**Article 665**

If a person incapacitated pursuant to a judgment which does not contain a ruling concerning his capacity to make a last will and testament were to wish to make a last will and testament, the Notary Public shall appoint 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 last will and testament.

**Section Two. On last wills & testaments in general****Article 667**

An act whereby a person disposes of all his estate or part thereof for after his death is called a last will and testament.

**Article 668**

A testator may dispose of his goods by inheritance or by legacy.

If there were to be any doubt, a provision shall be valid as a universal disposal or inheritance even if the testator did not materially use the word heir, if his intention on this matter is clear.

**Article 669**

Two or more persons may not make a last will and testament jointly or in the same instrument, irrespective of whether they do so for their reciprocal benefit, or to the benefit of a third party.

**Article 670**

Making a last will and testament is a strictly personal: it may not be delegated, in whole or in part, to the discretion of a third party, nor may it be made by means of an attorney or proxy.

Also, the subsistence of the appointment of heirs or legatees may not be left at the discretion of a third party, and neither may the specification of the portions in which they are to succeed, if they have been called by name.

**Article 671**

The testator may entrust to a third party the distribution of the amounts bequeathed generally to specific classes, such as relatives, the poor or charitable establishments, and the selection of the persons or establishments to which they are to be allocated.

**Article 672**

Any provision made by the testator pertaining to the appointment of an heir, bequests or legacies, with reference to private instruments or papers which after his death appear within or without his domicile, shall be null and void if such instruments or papers do not meet the requirements provided for holographic wills and testaments.



#### **Article 673**

A last will and testament 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, were to prevent another person, of whom he is the intestate heir, from freely making a testamentary provision, shall be deprived of his inheritance rights, without prejudice to any criminal liability in which he may have incurred.

#### **Article 675**

Any testamentary provision shall be construed according to the literal meaning of its words, unless it were to 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 last will and testament, shall be observed.

The testator may not forbid the contesting of his last will and testament in cases where it is null and void pursuant to the law.

### **Section Three. On the form of last wills & testaments**

#### **Article 676**

A last will and testament may be common or special.

A common last will and testament may be holographic, open or closed.

#### **Article 677**

A military last will and testament, a maritime last will and testament and a last will and testament made in a foreign country shall be deemed special last wills and testaments.

#### **Article 678**

A last will and testament shall be called holographic if the testator writes it himself in the form and with the requisites set forth in Article 688.

#### **Article 679**

A last will and testament shall be open if the testator were to declare his last will in the presence of the persons who are to witness the act, who are made aware of the provisions made therein.

#### **Article 680**

A last will and testament shall be closed if the testator, without revealing his last will, declares that it is contained in the document presented to the persons who are to witness the act.

**Article 681**

The following persons may not act as witnesses in last wills and testaments:

1. Minors, save as provided in Article 701;
2. (without content)
3. Persons who do not understand the language of the testator;
4. Persons who lack the soundness of mind to complete the formalities related to the last will and testament;
5. The spouse or relatives within the fourth degree of consanguinity or the second degree of affinity of the Notary Public present and persons who have an employment relationship with the latter.

**Article 682**

In an open testament, heirs and legatees appointed 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 if the legacy impinges 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 were to exist at the time of making the last will and testament.

**Article 684**

If the testator were to 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 provision 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 last will and testament and the deed of the closed last will and testament 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 were to 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 shall also ensure that, in his opinion, the testator has the necessary legal capacity to make a last will and testament.

In the cases of Articles 700 and 701, the witnesses shall have the obligation of knowing the testator, and shall attempt to ascertain his capacity.



#### **Article 686**

If it were not 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 a last will and testament were to be challenged on such grounds, the person upholding its validity shall have the burden of proving the testator's identity.

#### **Article 687**

A last will and testament in whose execution the formalities respectively established in this Chapter have not been observed shall be null and void.

### **Section Four. On holographic last wills & testaments**

#### **Article 688**

A holographic last wills and testaments may only be made by persons who are of legal age.

In order to be valid, this last will and testament shall 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 were to contain words which have been crossed out, amended or written between the lines, the testator shall validate such amendments with his signature.

Aliens may make a holographic last will and testament in their own language.

#### **Article 689**

A holographic last will and testament shall be notarised by submission to a Notary Public, within five years counting from the death of the testator. The Notary Public shall draw up the notarised deed of putting on record pursuant to the notarial regulations.

#### **Article 690**

The person in whose possession such a last will and testament has been consigned shall submit it to the competent Notary Public within ten days of the day he becomes aware of the death of the testator. If he were to fail to do so, he shall be liable for any damages caused by such delay.

Any person with an interest in the last will and testament as heir, legatee, executor or in any other capacity may also submit it.

#### **Article 691**

After a holographic last will and testament has been submitted, and the death of the testator has been evidenced, it shall be authenticated pursuant to the notarial legislation.

#### **Article 692**

After a holographic last will and testament has been authenticated, and the identity of the author has been evidenced, it shall be notarised.

**Article 693**

If the Notary Public deems the truthfulness of a last will and testament to have been proven, he shall execute the public deed of putting on record, wherein the actions taken and, as applicable, any observations made shall be recorded.

If the last will and testament is not authenticated, due to sufficient confirmation of the identity of the executing party not being provided, the file shall be closed without the notarisation thereof.

Whether or not the holographic last will and testament is notarised, any interested parties who disagree may exercise their rights via the relevant judicial proceedings.

**Section Five. On open last wills & testaments****Article 694**

An open last will and testament shall be made before a Notary Public qualified to act in the place where it is made.

Only the cases explicitly established in the same Section shall be excepted from this provision.

**Article 695**

The testator shall express, verbally or in writing, his last will and testament to the Notary Public. Upon the Notary's drafting the last will and testament 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 for him 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 concur.

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 attest knowing the testator or having duly identified him or, 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 last will and testament.

**Article 697**

Two suitable witnesses shall be present in the act of making the last will and testament:

1. If the testator declares that he does not know how to or is unable to sign the last will and testament.
2. If 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 last will and testament by himself.



If the testator who does not know how to or is unable to read were to be entirely deaf, the witnesses shall read the testament in the presence of the Notary Public, and shall declare that it coincides with the declared intention.

3. If the testator or the Notary Public request it.

#### **Article 698**

The following persons shall also be present at the act of making the last will and testament:

1. The witnesses of the testator's identity, if any, who may also act as witnesses of the last will and testament itself;
2. The physicians who have examined the incapacitated testator;
3. The interpreter who has translated the last will and testament of the testator to the official language employed by the Notary Public.

#### **Article 699**

All formalities stated on this Section shall be solemnised in a single act, which shall begin with the reading of the last will and testament, without any interruption being allowed, unless it is motivated by a fleeting incident.

#### **Article 700**

If the testator were to be in imminent danger of death, a last will and testament may be executed before five suitable witnesses, without the need for a Notary Public.

#### **Article 701**

In the event of an epidemic, a last will and testament may also be executed without intervention of a Notary Public, before three witnesses older than sixteen years only.

#### **Article 702**

In the cases of the two preceding Articles, the last will and testament shall be written down, if possible; if not, the last will and testament shall be valid even if the witnesses do not know how to write.

#### **Article 703**

A last will and testament made pursuant to the provisions of the three preceding Articles shall be ineffective if two months were to elapse from the time if the testator is no longer in danger of death, or the epidemic has ceased.

If the testator were to 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 Notary Public to notarise it, irrespective of whether it was executed in writing or verbally.

#### **Article 704**

Last wills and testaments made without the intervention of a Notary Public shall be ineffective if they are not notarised in a public deed and put on a notarial record as provided in the notarial legislation.

## **Article 705**

Upon an open last will and testament'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 witnessed it shall be liable for any damages incurred, if the fault were to result from his malice or inexcusable negligence or ignorance.

### **Section Six. On closed last wills & testaments**

## **Article 706**

A closed last will and testament shall be executed in writing.

If the testator were to write it in his own hand, he shall put his signature at the end.

If it were to be written by any mechanical means or by another person at the testator's request, the latter shall sign all pages thereof and at the end of the last will and testament.

If 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, stating 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 last will and testament:

1. The paper which contains the last will and testament shall be put inside a 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 last will and testament, or shall close it and seal it in the act, before the Notary Public who is to witness 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 last will and testament, detailing 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 last will and testament, the Notary Public shall draw up the corresponding deed of execution, detailing the number and mark of the seals with which it has been closed, and attesting 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 last will and testament.
5. Having drawn and read the deed, the testator who is able to do so and, as the case may be, the persons who are present shall sign it, and the Notary Public shall attest it with his stamp and signature.



If the testator were to declare that he does not know how to or is unable to sign, one of the two suitable witnesses who shall 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, day, 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 were to so request.

#### **Article 708**

Blind persons and persons who do not know how to or are unable to read may not make a closed last will and testament.

#### **Article 709**

Persons who cannot express themselves verbally, but who are able to write, may make a closed last will and testament, observing the following formalities:

1. The last will and testament shall 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 last will and testament, stating 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 attest 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 notarisation of the closed last will and testament, the Notary Public shall deliver it to the testator, after including in his ordinary official files an attested copy of the deed of execution.

#### **Article 711**

The testator may keep in his possession the closed last will and testament, 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, a note that the last will and testament is in his possession. If the testator were to subsequently withdraw it, he shall sign a receipt below such note.

#### **Article 712**

1. A person who holds in his possession a closed last will and testament shall submit it to the competent Notary Public within ten days of learning of the death of the testator.

2. The authorising Notary Public of a closed last will and testament, which has been submitted by the testator, shall notify the surviving spouse, descendants and

ascendants of the testator and, in their absence, any collateral relatives to the fourth degree, of the existence of the last will and testament within ten days of learning of his death.

3. In the previous two cases, if the identity or address of such persons is not known, or that their existence is unknown, the Notary Public shall arrange the publication established under the notarial legislation.

Failure to comply with this duty or with the duty to present the last will and testament by the party that has it in his possession or by the Notary Public shall render them liable for any damages resulting.

### **Article 713**

A person who, through malice, were to fail to submit the closed last will and testament in his possession within the period provided in the preceding Article, in addition to the liability provided therein, shall lose any right to the inheritance, if he were to be an intestate heir or as testate heir or legatee.

This same penalty shall be incurred by the person who maliciously were to remove the closed last will and testament from the testator's domicile or that of the person in whose custody or deposit it has been left, and by the person who hides it, breaks it or otherwise renders it useless, without prejudice to any applicable criminal liability.

### **Article 714**

The provisions of notarial legislation shall be observed as to the opening and notarisation of a closed last will and testament.

### **Article 715**

A closed last will and testament shall be null and void if the formalities set forth in this Section were not observed in its execution; and the Notary Public who attested it shall be liable for any damages, if it is proven that the fault resulted from his malice, inexcusable negligence or ignorance. The aforesaid notwithstanding, it shall be valid as a holographic last will and testament if it is entirely written and signed by the testator and if it meets the remaining conditions inherent to this kind of last will and testament.

## **Section Seven. On military last wills & testaments**

### **Article 716**

In time of war, any soldiers in campaign, volunteers, hostages, prisoners and other individuals employed in the army, or following it, may make a last will and testament before an Official who has, at least, the rank of Captain.

This provision shall apply to individuals in an army which is in a foreign country.

If the testator were to be ill or wounded, he may make the last will and testament before the Chaplain or Physician who attends him.

If he were to be with a detachment, he may make the last will and testament before the commander thereof, even if he is a subaltern.



In all the 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 last will and testament 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**

Last wills and testaments made pursuant to the two preceding Articles shall be forwarded as soon as possible to the Army Staff Headquarters and by the latter to the Ministry of Defence.

The Ministry, if the testator has died, shall forward the last will and testament to the relevant Notary Public of the deceased's last domicile, and, if such domicile were to not know, to the Association of Notaries Public of Madrid.

The Association of Notaries Public shall forward the last will and testament to the competent Notary Public of the deceased's last domicile. Once it is received by the Notary Public, he shall inform the heirs and other parties interested in the succession of its existence, in order that they might appear before him with a view to notarising it pursuant to legal provisions.

#### **Article 719**

The last wills and testaments 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 war actions, a military last will and testament may be made verbally before two witnesses.

The aforesaid notwithstanding, this last will and testament shall become ineffective if the testator were to save himself from the danger in consideration of which he made the last will and testament.

Even if he did not save himself, the last will and testament shall be ineffective if it is not formalised by the witnesses before the War Auditor or judicial official following the army, subsequently proceeding in the manner provided in Article 718.

#### **Article 721**

If the military last will and testament were to be a closed last will and testament, the provisions of Article 706 and 707 shall be observed; nevertheless, it shall be executed before the Official and the two witnesses required for the open last will and testament pursuant to Article 716, and all of them shall sign the deed of execution, as well as the testator, if he were to be able to.

## **Section Eight. On maritime last wills & testaments**

### **Article 722**

Open or closed last wills and testaments made by persons on board in a maritime journey, shall be executed in the following manner:

If the vessel were to 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 last will and testament shall be witnessed 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 amongst 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 last will and testament were to be an open last will and testament, the provisions of Article 695 shall likewise be observed, and, if it were to be a closed last will and testament, 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 last will and testament of the Paymaster of a warship and of the Captain of a merchant ship shall be witnessed by the person who is to substitute them in their post, observing, for all else, the provisions of the preceding Article.

### **Article 724**

Open last wills and testaments 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 last wills and testaments.

### **Article 725**

If the vessel were to 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 last will and testament, or the deed of execution of the closed last will and testament, and of the note taken in the Logbook.

The copy of the last will and testament or the deed shall include the same signatures as the original, if the persons who signed it are alive and on board; otherwise, it shall be witnessed by the Paymaster or Captain who attested the last will and testament, or the person acting in their stead, and shall also be signed by those of the persons who took part in the last will and testament 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 last will and testament or that of the deed of execution in the event of a closed last will and testament, shall



forward it, together with the note taken in the Logbook, to the Minister of the Navy via the competent 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, reaches the first port of the Kingdom of Spain, the Commander or Captain shall deliver the original last will and testament, closed and sealed, to the local naval Authority, with a copy of the note taken in the Logbook; and, if the testator has 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 has died and the last will and testament is an open last will and testament, the Minister of the Navy shall perform the actions provided in Article 718.

#### **Article 728**

If the last will and testament has been executed by an alien on board a Spanish vessel, the Minister of the Navy shall forward the last will and testament to the Minister of State, to forward it as applicable by diplomatic channels.

#### **Article 729**

If the last will and testament were to be holographic, and the testator has died during the journey, the Commander or Captain shall keep the last will and testament 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 arrives at the first port of the Kingdom of Spain.

The same shall be done if the last will and testament is a closed last will and testament, if the testator had it in his possession at the time of his death.

#### **Article 730**

Open and closed last wills and testaments made pursuant to the provisions of this Section shall become void after four months, counting from the time when the testator disembarked at a point where he is able to make a last will and testament in the ordinary manner.

#### **Article 731**

If there were to be danger of shipwreck, the provisions of Article 720 shall apply to the crew and passengers of warships or merchant ships.

## **Section Nine. On last wills & testaments made in a foreign country**

### **Article 732**

Spaniards may make a last will and testament outside Spain, subject to the forms set forth by the laws of the country in which they find themselves.

They may also make a last will and testament in the open sea during their journey in a foreign vessel, subject to the laws of the nation to which the vessel pertains.

They may also make a holographic last will and testament, pursuant to Article 688, even in countries whose laws do not admit such a last will and testament.

### **Article 733**

A joint last will and testament, forbidden by Article 669, made by Spaniards in a foreign country shall not be valid, even if permitted by the laws of the nation where it was made.

### **Article 734**

Spaniards who are in a foreign country may also make an open or closed last will and testament in a foreign country before the diplomatic or consular official of Spain who performs notarial duties at the place where it is made.

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 last will and testament or of the deed of execution of the closed last will and testament, attested with his signature and seal, to the Ministry of State, to be consigned in its Files.

### **Article 736**

The diplomatic or consular agent in whose possession a Spaniard has consigned his holographic or closed last will and testament, shall forward it to the Ministry of State upon the death of the testator, together with a 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 last will and testament and notarise it in the manner provided.

## **Section Ten. On the revocation & ineffectiveness of last wills & testaments**

### **Article 737**

All testamentary provisions are essentially revocable, even if the testator states in the last will and testament his intention or resolution not to revoke them.

Clauses which annul future provisions and those where the testator ordered the invalidity of the revocation of the last will and testament unless it were performed using certain words or signs shall be deemed inexistent.

**Article 738**

A last will and testament may not be revoked in the whole or in part unless the solemnities required to make a last will and testament are observed.

**Article 739**

A prior last will and testament is revoked ipso iure by a subsequent valid last will and testament, if the testator does not express in the latter his intention to make the former subsist in whole or in part.

Notwithstanding the foregoing, a prior last will and testament shall recover its legal force if the testator were to subsequently revoke the subsequent last will and testament, and were to explicitly declare his intention for the former last will and testament to be valid.

**Article 740**

The revocation shall be effective even if the second last will and testament were to become void as a result of the incapacity of the heir or legatees appointed therein, or as a result of renunciation by the former or the latter.

**Article 741**

The recognition of a child shall not lose its legal force even if the last will and testament in which it was made were revoked, or it were to not contain other provisions, or the other provisions contained in the last will and testament were to be null and void.

**Article 742**

A closed last will and testament 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 last will and testament shall be valid if it were to be evidenced that the damage has taken place without intention or awareness on the part of the testator, or upon the latter's being of unsound mind; the aforesaid notwithstanding, if the cover or the seals are broken, for the last will and testament to be valid, it shall also be necessary to prove its authenticity.

If the last will and testament were to be in the possession of another person, if the cover or the seals were to be broken the defect shall be deemed to be such person's fault, and the last will and testament shall not be valid unless its authenticity is proved; and, if both were to be unharmed, but the signatures have been erased, scratched out or amended, the last will and testament shall be valid unless it is evidenced that the document was delivered by the testator in such condition.

**Article 743**

Last wills and testaments shall become void and testamentary provisions shall be ineffective, in whole or in part, only in the cases explicitly provided in this Code.

## **CHAPTER II**

### **On inheritance**

#### **Section One. On capacity to succeed testate or intestate**

##### **Article 744**

Persons who are not incapacitated by law may succeed testate or intestate.

##### **Article 745**

The following persons are incapable of succeeding:

1. Abortive creatures, construing as such those which do not meet the requirements stated in Article 30;
2. Associations or corporations which are not permitted under the law.

##### **Article 746**

Churches and ecclesiastical chapters, provincial governments and provinces, town councils and municipalities, hospitals, charitable and public instruction establishments, associations authorised or recognised by the law and other legal persons may acquire by last will and testament pursuant to the provisions of Article 38.

##### **Article 747**

If the testator were to dispose of all or part of his estate for religious services or charitable works to the benefit of his soul, in an indeterminate manner and without specifying the allocation thereof, the executors shall sell his goods and shall distribute the amount thereof, giving half to the local Bishop so that he may allocate it to the aforesaid 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 provision 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**

Provisions 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 were to clearly result that his intention was another.

The qualification of who are the poor and the distribution of the goods shall be made by the person appointed 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 shall resolve by majority vote any doubts which may arise.

The same shall be done if the testator has disposed of his goods in favour of the poor of a specific parish or village.



#### **Article 750**

Any provision 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 provision made generally in favour of the testator's relatives shall be deemed made in favour of those nearest in degree.

#### **Article 752**

Testamentary provisions 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, chapter, community or institution shall have no force or effect.

#### **Article 753**

A testamentary provision 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 were not necessary to provide accounts, after extinction of the guardianship or conservatorship.

Notwithstanding the foregoing, bequeaths 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 attesting his last will and testament, 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 last will and testament, executed with or without a Notary Public.

The provisions hereof shall also apply to witnesses and persons before whom special last wills and testaments are executed.

#### **Article 755**

A testamentary provision in favour of an incapable person shall be null and void, even if it were to be disguised in the form of a contract for valuable consideration, or were to be made using another person.

#### **Article 756**

The following persons are incapable of succeeding on grounds of unworthiness:

1. A person who is convicted by a final judgment for an attempt to take the life, or condemned to a serious penalty for causing bodily injury or having habitually exercised physical or psychological violence within the family environment to the testator, his spouse, the person with whom he is partnered in an emotional relationship akin to marriage, or any of his descendants or ascendants.

2. A person who is convicted by a final judgment of criminal offences against freedom, moral integrity and sexual indemnity, if the injured party is the testator, his spouse, the person with whom he is partnered in an emotional relationship akin to marriage, or any of his descendants or ascendants.

Furthermore, the person convicted by a final judgment and condemned to a serious penalty for committing a criminal offence against family rights and obligations as regards the inheritance of the aggrieved party.

In addition, the person deprived of parental responsibility by a final judgment, or removed from the exercise of guardianship or family foster care of a minor or incapacitated person for reasons attributable to him, as regards the inheritance thereof.

3. A person who has accused the testator of a criminal offence for which the law establishes a serious penalty, if the accusation is declared to be a false.

4. The overage heir who, being aware of the testator's violent death, were to not have reported it within one month to the authorities, unless the authorities have already acted on their own motion.

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, were to force the testator to make a last will and testament or to change it.

6. A person who, with the same means, were to prevent another from making a last will and testament, or from revoking a last will and testament previously made, or were to replace, hide or alter another subsequent last will and testament.

7. As regards the succession of a disabled person, any persons with a right to the inheritance that have not provided the due care, the forms whereof are construed as those regulated under Articles 142 and 146 of the Civil Code.

#### **Article 757**

The grounds of unworthiness shall cease to be effective if the testator was aware thereof at the time of making the last will and testament or if, having become aware thereof later, he were to forgive them in a public deed.

#### **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 judgment, 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 were to be conditional, the time on which the condition is met shall also be taken into account.



#### **Article 759**

The heir or legatee who were to die before fulfilling the condition, even if he were to survive the testator, shall not convey any rights to his heirs.

#### **Article 760**

A person incapable of succeeding who, against the prohibition provided in the preceding Articles, were to have taken the goods of the estate into his possession, shall be obliged to return them with any accretions and any fruits and rents received.

#### **Article 761**

If the person excluded from the inheritance as a result of incapacity were to be a child or descendant of the testator and were to have children or descendants, the latter shall acquire his right to a reserved share of the estate.

#### **Article 762**

No action to declare incapacity may be brought after five years from the time the incapable person has taken possession of the inheritance or legacy.

### **Section Two. On the appointment of an heir**

#### **Article 763**

A person who has no forced heirs may dispose by a last will and testament of all his goods or a part thereof in favour of any person with the capacity to acquire them.

A person who has forced heirs may only dispose of his goods in the manner and pursuant to the limitations set forth in Section 5 of this Chapter.

#### **Article 764**

A last will and testament shall be valid even if it does not contain the appointment of an heir, or if such appointment does not comprise all of the goods, and even if the person thus appointed were to not accept the inheritance or were to be incapable of inheriting.

In such cases the testamentary provisions made pursuant to the law shall be complied with, and the remainder of the goods shall pass to the intestate heirs.

#### **Article 765**

Heirs appointed without designation of shares shall inherit by equal shares.

#### **Article 766**

A voluntary heir who dies before the testator, a person incapable of inheriting and a person who renounces the inheritance do not convey 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 as not written, unless it can be deduced from the last will and testament that the testator

would not have made such appointment or legacy had he been aware that such reason was false.

The expression of a reason which is against the law, even if it were true, shall also be deemed as not written.

#### **Article 768**

An heir appointed to inherit a certain and specific object shall be deemed a legatee.

#### **Article 769**

If the testator were to appoint certain heirs individually and others jointly, for example if he were to say: "I hereby appoint as my heirs N and N, and the children of N", those appointed jointly shall be deemed to have been had been appointed individually, unless it were to clearly result that the intention of the testator was another.

#### **Article 770**

If the testator were to appoint his siblings, and he were to have full siblings and half siblings, the inheritance shall be divided as if he had died intestate.

#### **Article 771**

If the testator were to call to the succession a person and his children, they shall all be deemed to have been appointed simultaneously and not successively.

#### **Article 772**

The testator shall appoint the heir by his name and surnames, and, if there are two persons with the same name, he shall provide a circumstance by which the appointed heir may be identified.

Even if the testator were to have omitted the name of the heir, if the heir has been appointed so that there cannot be any doubt of who has been appointed, the appointment shall be valid.

In the last will and testament 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, if the appointed person's identity can be known for certain in another way.

If there were to 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 Three. On substitution**

#### **Article 774**

The testator may substitute one or more persons instead of the appointed heir or heirs in the event that they were to die before him, or were not wish to or be unable to accept the inheritance.

Simple substitution, without stating the specific case, comprises all three cases stated 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 either gender, in the event that they were to die before reaching such an age.

#### **Article 776**

The ascendant may appoint a substitute for his descendant older than fourteen years old who, pursuant to 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 were to make a last will and testament during a lucid interval or after having recovered his reason.

#### **Article 777**

The cases of substitution mentioned in the two preceding Articles, if the substituted person were to have forced heirs, shall only be valid to the extent that they are not detrimental to the rights of such heirs as to their reserved share.

#### **Article 778**

An individual person may be substituted by two or more persons; and, likewise, two or more persons may be substituted by an individual person.

#### **Article 779**

If heirs appointed to unequal portions were to be reciprocally substituted, they shall have the same portions in the substitution as they did in the appointment, unless the intention of the testator were to clearly appear otherwise.

#### **Article 780**

The substitute shall be subject to the same liens and conditions imposed on the appointed heir, unless the testator were to have explicitly 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 convey 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 reserved share of the estate, unless they were to encumber the part of the reserved share to be divided equally amongst heirs necessarily to the benefit of a child or descendant who has been judicially incapacitated pursuant to 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 explicit 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 were to 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 explicitly, either by calling them by this name, or by imposing on the substitute the strict obligation to deliver the goods to a second heir;
2. Provisions which contain a perpetual prohibition to dispose of the goods, 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 as not written.

**Article 787**

The provision whereby the testator leaves to one person all or part of the estate, and to another its usufruct, shall be valid. If several persons were to be called to the usufruct not simultaneously but successively, the provisions of Article 781 shall apply.

**Article 788**

The provision 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 were to be imposed on immovable goods and were to be temporary, the heir or heirs may dispose of the encumbered goods, and the encumbrance shall not be lifted until its registration is cancelled.

If the lien were to 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 carried out with the intervention of the Civil Governor of the province, after hearing the Public Prosecutor.

In any event, if the testator were to not have set an order for the administration and application of the charitable bequest, this shall be done by the competent administrative authority pursuant to the laws.

#### **Article 789**

All of the provisions in this Chapter concerning heirs shall also be deemed to apply to legatees.

### **Section Four. On the appointment of an heir or bequeathing a legacy subject to condition or term**

#### **Article 790**

Both universal and particular testamentary provisions 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 provisions set forth for conditional obligations.

#### **Article 792**

Impossible conditions and those contrary to the law or to generally accepted principles of morality shall be deemed as not written and shall in no way prejudice the heir or legatees, even if the testator were to provide otherwise.

#### **Article 793**

The absolute condition of not entering into a first or subsequent wedlock shall be deemed as not written, unless it is imposed on the widow or widower by the deceased spouse, or by the latter's ascendants or descendants.

The aforesaid notwithstanding, an 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 provision made under the condition that the heir or legatee is to make any provision in his last will and testament 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 complied by the latter, after becoming aware of it, after the testator's death.

The case where the condition has already been complied and cannot be repeated shall be an exception to the foregoing.

**Article 796**

If the condition were to be casual or mixed, it shall be sufficient for it to be performed or complied with at any time, whether the testator is alive or dead, unless otherwise provided by the latter.

If it were to already have existed or been complied with at the time of making the last will and testament, and the testator was unaware of it, it shall be deemed to have been complied.

If he was aware of it, it shall only be deemed to have been complied if its nature is such that it cannot exist or be complied once again.

**Article 797**

The expression of the purpose of the appointment as heir or legacy, or the application to be given to the goods bequeathed by the testator, or the liens imposed by the latter, shall not be deemed to be a condition, unless this appears to have been the testator's intention.

Any goods bequeathed in this manner may be claimed without delay, and are conveyable to any heirs who provide a bond securing their compliance of the testator's mandate, with the obligation to return the goods received, together with any fruits and interest, if they were to fail to perform this obligation.

**Article 798**

If, 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 other terms, as closely analogous and adjusted to his intentions as possible.

If the party interested in the fulfilment or non-fulfilment of such condition were to prevent the fulfilment thereof without fault or by an act performed personally by the heir or legatee, the condition shall be deemed to have been complied.

**Article 799**

A condition precedent shall not prevent the heir or legatee from acquiring his respective rights and conveying them to his heirs, even before verification of its fulfilment.

**Article 800**

If the discretionary condition imposed on the heir or legatee were to be negative, or were to consist of an obligation not to do or not to give something, it shall be complied 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 goods received, together with the fruits and interest thereof.

#### **Article 801**

If the heir were to be appointed subject to a condition precedent, the goods of the estate shall be placed under administration, until fulfilment of the condition or until there is a certainty that it cannot be complied.

The same shall apply if the heir or legatee were to 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, if between them and the conditional heir there were to exist a right of accretion. The same shall be construed in respect of legatees.

#### **Article 803**

If the conditional heir were to have no co-heirs, or, having them, there were to be no right of accretion between them, the former shall be entrusted the administration of the estate, providing a bond.

If he were to fail to provide it, the administration shall be conferred upon the presumptive heir, also with a bond; and if neither one nor the other were to provide a bond, the Courts of Law 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 an absentee's goods.

#### **Article 805**

The designation of a day 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 heir shall be deemed to have been called. The aforesaid notwithstanding, in the first case, he shall not come into possession of the goods until he has provided a sufficient bond, with the intervention of the testate heir.

### **Section Five. On the reserved shares of the estate**

#### **Article 806**

The reserved share of the estate is the portion of goods which the testator cannot dispose of, because the law has reserved them to certain heirs, who are thus 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 reserved share corresponding to children and descendants.

The aforesaid notwithstanding, parents may dispose of one of the two thirds which form the reserved share, to apply it as betterment in favour of their children or descendants.

If any of the children or descendants has been declared to be judicially incapacitated, the testator may establish a trust on the reserved share corresponding to the third of the estate the testator must necessarily distribute equally among his descendants; the beneficiaries being the children or descendants declared to be legally incapacitated whilst the trustees being the forced co-heirs.

The remaining third may be freely disposed of.

**Article 809**

One half of the estate of children and descendants constitutes the reserved share corresponding to parents or ascendants, save in the case where they were to concur with the widowed spouse of the deceased descendant, in which case it shall be one third of the estate.

**Article 810**

The reserved share reserved to parents shall be divided between both of them equally; if one of them were to have died, all of it shall correspond to the surviving parent.

If the testator were to 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 were to 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 goods acquired by the latter as a gift from another ascendant, or from a sibling, shall be obliged to reserve the goods acquired *ipso iure* in favour of relatives within the third degree, and who appertain to the line where the goods came from.

**Article 812**

Ascendants shall succeed, to the exclusion of other persons, to objects given by them to their children or descendants who have died without issue, if the same objects



which were given were to exist in the estate. If they have been disposed of, they shall succeed to all actions held by the donee in connection therewith, and to the proceeds obtained if they have been sold, or to the goods for which they were exchanged, if they have been exchanged or bartered.

### **Article 813**

A testator may not deprive his heirs of their reserved share except in the cases explicitly 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**

If the testator overrides the rights of a forced heir this shall not prejudice the latter's reserved share. The appointment of the heir shall be reduced prior to any legacies, betterments and other testamentary provisions.

The aforesaid notwithstanding, the unintentional override of the rights of children or descendants shall have the following effect:

1. If all forced heirs have been overridden, all patrimonial testamentary provisions 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 do not impinge the forced share. Notwithstanding the foregoing, the appointment of the spouse as heir shall only be annulled to the extent that it is prejudicial to the reserved shares of the estate.

Descendants of another descendant who has not been overridden 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 overridden were to die before the testator, the last will and testament shall have full force and effect.

Once respected the reserved shares, the provisions ordered by the testator shall have preference in any event.

### **Article 815**

A forced heir who has been bequeathed by the testator, pursuant to any title, less than the reserved share which corresponds to him by the testator may demand that his share be supplemented.

### **Article 816**

Any renunciation or settlement regarding the future reserved 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 shall bring to collation what they received in exchange for the renunciation or settlement.

**Article 817**

Testamentary provisions which impinge the reserved share of the forced heirs shall be reduced, at the request of the heirs, to the extent that they affect such reserved share or are excessive.

**Article 818**

In order to set the value of the reserved share, the value of the goods remaining at the time of the testator's death shall be calculated, deducting any debts and liabilities, without including in the latter those which are imposed by the last will and testament.

The value of any gifts susceptible 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 reserved 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 provision.

To the extent that they were to be impinging the reserved share or were to exceed the share the testator may freely dispose of, they shall be reduced pursuant to the provisions provided in the following Articles.

**Article 820**

After establishing the reserved share pursuant to the two preceding Articles, the reduction shall be made as follows:

1. Gifts shall be respected to the extent that the reserved share is covered, reducing or annulling, if necessary, any bequests made in the last will and testament.
2. The reduction of bequests shall be pro rata, without any distinction whatsoever. If the testator were to have provided that a certain legacy shall 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 reserved share.
3. If the bequest were to consist of a usufruct or life annuity, whose value is deemed greater than the freely disposable share, the forced heirs may choose between complying with the testamentary provision or delivering to the legatee the share of the estate the testator could freely dispose of.

**Article 821**

If the legacy that is subject to reduction were to consist of a good which cannot be divided easily, the good shall be bequeathed to the legatee if the reduction does not reach half of its value; otherwise, it shall be for the forced heirs; but both shall pay the other the respective difference due in cash.



A legatee also entitled to a reserved share may retain the whole property, as long as its value does not exceed the amount of the freely disposable share plus his reserved share.

If the heirs or legatees do 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.

#### **Article 822**

The gift or legacy of a right of habitation on the habitual dwelling that its holder makes in favour of a disabled forced heir shall not be considered in the calculation of the reserved shares if, at the time of death, both were living therein.

This right of habitation shall be allocated, ipso iure, under the same conditions to any incapacitated forced heir that needs it and who was living with the deceased, unless the testator has provided otherwise or has explicitly excluded this, but its holder may prevent the other forced heirs living there so long as they need to.

The right referred to in the previous two Paragraphs shall not be conveyable.

The provisions in the first two Paragraphs shall not prevent the allocation to the spouse of the rights pursuant to Articles 1406 and 1407 of this Code, which shall co-exist with the right of habitation.

### **Section Six. 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 reserved 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 or onerous, made in favour of children or descendants who are forced heirs shall be deemed a betterment, unless the donor has explicitly declared his intention in this regard.

#### **Article 826**

The promise to make or not to make a betterment, made by public deed in a nuptial agreement, shall be valid.

The testator's provision contrary to this promise shall be without force or effect.

#### **Article 827**

Betterments, even if evidenced by delivery of goods, shall be revocable, unless made pursuant to a nuptial agreement 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 deemed a betterment unless the testator has explicitly declared this to be his intention, or if it were to exceed the freely disposable share.

**Article 829**

The betterment may refer to a specific object. If the object's value were to exceed the third of the estate destined to betterment and the part of the reserved share corresponding to the heir who has received the betterment, the latter shall pay the difference in cash to the remaining interested parties.

**Article 830**

The power to effect betterment 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 last will and testament 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 goods pursuant to any title or in any capacity, or partitions, including those relating to goods pertaining to the marriage property community which has been dissolved and is pending liquidation.

These betterments, adjudications or allocations may be carried out by the spouse in one or several acts, whether simultaneous or successive. If the deceased were to not have conferred the power to do so in his last will and testament itself or were to 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.

Provisions made by the spouse relating to specific and determined goods, 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 goods in respect which the powers mentioned in the preceding Paragraph are pending exercise.

3. The spouse, on exercising the powers entrusted to him, shall respect the part of the reserved share of the estate of any descendants had in common that must necessarily be distributed equally between them and any betterments and other provisions made by the decedent in favour of the latter.

If the part of the reserved share of any descendant had in common that must necessarily be distributed equally between them or the share in the estate provided in his favour by the decedent were not respected, the aggrieved heir may request the rescission of the act of the spouse to the extent necessary to satisfy the injured interest.



The decedent's provisions in favour of children or descendants had in common and reserved shares shall be deemed to have been respected if both are sufficiently satisfied, even if, in whole or in part, this has been done with goods pertaining only to the spouse who exercises the powers.

4. The granting of the aforesaid powers to the spouse shall not alter the system governing the reserved shares or the decedent's provisions, if 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 goods destined to the exercise of such powers, to act on behalf of descendants in common in any acts of performance or adjudication relating to such reserved shares or provisions.

If any descendant who is not a descendant of the surviving spouse has been unintentionally overridden 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 were to marry again or begin de facto a relationship akin to marriage, or were to 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 if persons with descendants in common are not married to each other.

#### **Article 832**

If the betterment were to not have been set in respect of a specific object, it shall be paid with the goods pertaining to the estate, observing, to the extent possible, the provisions contained 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 renounce the inheritance and accept the betterment.

### **Section Seven. Rights of the widowed spouse**

#### **Article 834**

The spouse who, upon the death of his consort, were not judicially or de facto separated, if he partakes 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 has been a reconciliation between separated spouses, notified to the Court who adjudged the separation proceedings pursuant to Article 84 of this Code, the surviving spouse shall preserve his rights.

**Article 836**

(Repealed)

**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 in usufruct by allocating to him a life annuity, the products of certain goods or a sum of capital in cash, by mutual covenant and, in the absence thereof, pursuant to a Court order.

Until this is carried out, all goods in the estate shall be destined to pay the part of the usufruct corresponding to the spouse.

**Article 840**

If the widowed spouse concurs 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 goods pertaining to the estate.

**Section Eight. Payment of the hereditary portion in special cases****Article 841**

The testator, or the partitioner explicitly authorised by the former, may adjudicate all goods in the estate or part thereof to one or more of the children or descendants, ordering him or them 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 authority 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 pertaining to their siblings may request that such share be paid in goods pertaining 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 explicit confirmation thereof by all children or descendants, the partition mentioned in the two preceding Articles shall require the approval of the Court Clerk or the Notary Public.



#### **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 shall be made within another year, save as otherwise covenanted. 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 lapse, and the estate shall be distributed pursuant to the general provisions relating to partition.

#### **Article 845**

The option mentioned in the preceding Articles shall not impinge legacies of a specific object.

#### **Article 846**

Such option shall also not impinge the provisions on partition made by the testator referring to specific objects.

#### **Article 847**

For the purpose of setting the sum to be paid to the children or descendants, the value of the goods at the time of settling the corresponding portion shall be considered, taking into account any fruits or yields accrued until such time. As from that calculation, credits in cash shall accrue interest at the legally established rate.

### **Section Nine. On disinheritance**

#### **Article 848**

Disinheritance may only take place on one of the grounds explicitly set forth in the law.

#### **Article 849**

Disinheritance may only be made in a last will and testament, stating 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 were to deny it.

#### **Article 851**

Disinheritance performed without stating any ground, or on a ground whose certainty, if contradicted, were not proven, or which is not included amongst those listed in the four following Articles, shall annul the appointment of heir to the extent that it prejudices the disinherited heir; the aforesaid notwithstanding, legacies, betterments and other testamentary provisions shall be valid to the extent that they do not prejudice the disinherited heir's reserved 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 established 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 physically or seriously insulted him verbally.

**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 stated 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, pursuant to Article 170;
3. Having refused support to the testator or the children;
4. Having attempted to take the life of the testator, if no reconciliation between them has taken place.

**Article 856**

A subsequent reconciliation between offender and offended shall deprive the latter of the right to disinherit, and shall render the disinheritance already effected null and void.

**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 reserved share.

**Section Ten. On bequests & legacies****Article 858**

The testator may encumber with bequests and legacies, not only his heir, but also the legatees.

Legatees shall only be liable for the encumbrance up to the value of the legacy.



#### **Article 859**

If the testator were to encumber one of the heirs with the legacy, only such heir shall be obliged to perform it.

If the legacy were to 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 eviction, if the object were to be indeterminate and were to be mentioned only by type or species.

#### **Article 861**

A legacy of an object pertaining to another shall be valid if the testator, in making the legacy, was aware of the fact. The heir shall be obliged to acquire it and deliver it to the legatee; and, if this were not possible, to give to the latter the fair value thereof.

The burden of proof that the testator knew that the object pertained to another corresponds to the legatee.

#### **Article 862**

If the testator was unaware that the object bequeathed pertained to another, the legacy shall be null and void.

The aforesaid notwithstanding, it shall be valid if he were to acquire it after making the last will and testament.

#### **Article 863**

A legacy made to a third party of objects pertaining to the heir or legatee shall valid, and the latter, in accepting the succession, shall deliver the object subject to the legacy or the fair value thereof, with the limitation provided in the following Article.

The provisions of the preceding Paragraph shall be construed without prejudice to the reserved share corresponding to forced heirs.

#### **Article 864**

If the testator, heir or legatee were to only hold one part of or a right in the object bequeathed, the legacy shall be deemed limited to such part or right, unless the testator were to explicitly declare that he bequeaths the whole object.

#### **Article 865**

The legacy of objects which are beyond the bounds of commerce shall be null and void.

#### **Article 866**

The legacy of an object which, at the time of making the last will and testament, were to already pertain to the legatee, shall be without force and effect, even if any other person were to hold a right over it.

If the testator explicitly provides that the object is to be released of this right or encumbrance, the legacy shall be valid in this respect.

#### **Article 867**

If the testator were to bequeath an object 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 were to pay the debt, the latter shall become subrogated in the position and in rights of the creditor to claim the debt from the heir.

Any other perpetual or temporary lien to which the object bequeathed were to be encumbered with shall pass to the legatee; but in both cases the income and interest or yield accrued until the testator's death shall constitute an encumbrance of the estate.

#### **Article 868**

If the object bequeathed were to be encumbered by an usufruct, use or habitation, the legatee shall respect these rights until they are legally extinguished.

#### **Article 869**

The legacy shall be without force and effect:

1. If the testator were to transform the object bequeathed, so that it does not keep the form or the name it had before.
2. If the testator were to dispose, pursuant to any title or for any reason, of the object 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 object were to return to the testator's ownership, even if this were to be as a result of the nullity of the relevant contract, the legacy shall subsequently still be ineffective, unless the re-acquisition were to result from a sell-back covenant.
3. If the object bequeathed were to wholly perish during the life of the testator, or after his death without fault by the heir. The aforesaid notwithstanding, the person obliged to pay the legacy shall be liable for eviction if the object bequeathed were to not have been established as to the species thereof, pursuant to the provisions of Article 860.

#### **Article 870**

A 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 actions 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 due 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, were to judicially claim his debt from the debtor, even the debtor had not paid at the time of the former's death.

A legacy of a pledged object in favour of the debtor shall only be deemed to comprise a renunciation to the pledge.

#### **Article 872**

A generic legacy of release or forgiveness of debts comprises debts outstanding at the time of making the last will and testament, not any subsequent debts.

#### **Article 873**

A legacy made to a creditor shall not be allocated to payment of his credit, unless explicitly 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 amendments resulting from the testator's explicit intention.

#### **Article 875**

A legacy of a generic movable object shall be valid even if the estate includes no objects of such type.

A legacy of an indeterminate immovable object shall only be valid if an object of this type exists in the estate.

The choice shall correspond to the heir, who shall fulfil his obligation by giving an object which is not of a low or a high quality.

#### **Article 876**

If the testator were to explicitly 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 was unable to make the choice, if it has been given to him, his right shall pass to the heirs; the aforesaid notwithstanding, once made, such choice shall be irrevocable.

**Article 878**

If the object bequeathed pertained to the legatee on the day of the last will and testament, the legacy shall be invalid, even if it has been disposed of subsequently.

If the legatee were to have acquired it as a gift after such day, he may not request any amount as a result; the aforesaid notwithstanding, if the acquisition were to have been made for valuable consideration, he may request the heir to compensate him for the amount given to acquire it.

**Article 879**

A legacy consisting of paying for someone's education shall last until the legatee comes of age.

A legacy consisting of support shall subsist during the life of the legatee, unless otherwise provided by the testator.

If the testator were to 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 objects as support, the same amount shall be deemed to have been bequeathed, unless this 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 were to die before the end of the relevant period.

**Article 881**

The legatee shall be entitled to outright and simple legacies as of the testator's death, and shall convey this right to his heirs.

**Article 882**

If a legacy consists of a specific and determined object 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 object bequeathed shall from such time be at the legatee's own risk and benefit, and the legatee shall therefore bear its loss or impairment, and shall benefit from any accretion or improvement thereof.

**Article 883**

The object bequeathed shall be delivered with all its fittings and in its condition at the time of the testator's death.



#### **Article 884**

If the legacy were to not consist of a specific and determined object, but of a generic object or amount, the fruits and interest thereof from the testator's death shall correspond to the legatee if the testator were to have so provided explicitly.

#### **Article 885**

The legatee may not take possession of the object bequeathed by his own authority, but shall request delivery and possession thereof to the heir or to the executor, if the latter is authorised to do so.

#### **Article 886**

The heir shall give the exact object bequeathed, if he were able to do so, and shall not fulfil his obligation by paying its estimated value.

Legacies consisting of money shall be paid in money, even if there is none in the estate.

Expenses necessary to deliver the object bequeathed shall be borne by the estate, but without prejudice to the reserved share.

#### **Article 887**

If the goods of the estate were not sufficient to cover all legacies, payment thereof shall be made in the following order:

1. Remunerative legacies;
2. Legacies of a certain and specific object 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**

If the legatee cannot or does not want to accept the legacy, or if the latter were to be without force and effect for any reason, it shall be returned to the estate, save in the event of substitution or right of accretion.

#### **Article 889**

A legatee cannot accept one part of the legacy and refuse another if the latter were to be onerous.

If he were to die before accepting the legacy, leaving several heirs, some may accept and others refuse their corresponding share in the legacy.

#### **Article 890**

The legatee of two legacies, one of which is onerous, may not renounce the latter and accept the former. If both of them are onerous or outright, he shall be free to accept them all or refuse whichever one he chooses.

The heir who is at the same time a legatee may renounce the inheritance and accept the legacy, or renounce 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 Eleven. 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 leave.

#### **Article 894**

The executor may be a general or a specific executor.

In any event, executors may be appointed jointly, successively or jointly and severally.

#### **Article 895**

In the case of executors appointed jointly, only actions carried out by all of them in agreement, or those carried out by one of them with the legal leave of the rest or, in the event of disagreement, the actions resolved 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 jointly 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**

The post of executor is voluntary, and shall be deemed accepted by the executor if he does not excuse himself within six days following that on which he becomes aware of his appointment or, if he were to 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 takes on the obligation to perform the duties thereof; but may resign from it by alleging a just cause, accepted by the Court Clerk or Notary Public.

#### **Article 900**

The executor who does not accept the position or resigns from it without just cause shall forfeit anything which the testator has bequeathed him, always excepting his right to the reserved share.

#### **Article 901**

Executors shall have all powers explicitly conferred upon them by the testator which are not contrary to the law.

#### **Article 902**

In the absence of specific decision thereon 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 last will and testament and, in the absence of any provision, pursuant 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 last will and testament, 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 goods, with the intervention of the heirs who are present.

#### **Article 903**

If the estate were to not include sufficient money to pay the funerals and legacies, and the heirs were to not contribute from their own goods, the executors shall promote the sale of any movable goods; and, if such goods were not enough, immovable goods, with intervention of the heirs.

If any minor, absentee, corporation or public establishment were to have an interest in the estate, the sale of the goods shall be carried out with the procedures provided by the law for such cases.

#### **Article 904**

The executor who has not been set a specific period by the testator, shall 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 last will and testament or any provision thereof.

**Article 905**

If the testator were to wish to extend the legal deadline, he shall explicitly 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 were to still not have been complied, the Court Clerk or the Notary Public may grant another extension for the period deemed necessary, in view of the circumstances of the case.

**Article 906**

The heirs and legatees may, by common consent, extend the term of the executor for the time they deem to be necessary; but, if the resolution has only been adopted by the majority, the extension may not exceed one year.

**Article 907**

The executors shall account for the fulfilment of their commission to the heirs.

If they have been appointed not to deliver the goods to specific heirs, but to invest or distribute them as provided by the testator in the cases permitted under the law, they shall be accountable to the Judge.

Any provision by the testator contrary to this Article shall be null and void.

**Article 908**

The post of executor is not remunerated. The aforesaid notwithstanding, the testator may provide the 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 were to 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**

An executor may not delegate his position unless he has the testator's explicit permission.

**Article 910**

The exercise of the post of executor shall conclude by the death, impossibility, resignation or removal of the executor, and by expiration of the lapse of time provided by the testator, by the law and, as the case may be, by the interested parties. The removal shall require approval by the Judge.

**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 III

### On intestate succession

#### Section one. General provisions

##### Article 912

Intestate succession shall occur:

1. If a person dies without having made a last will and testament, or his last will and testament is null and void or has subsequently become invalid;
2. If the last will and testament does not contain the appointment of an heir for the whole or part of the goods, or does not dispose of the testator's entire estate. In this event, intestate succession shall only take place in respect of the goods which have not been disposed of;
3. In the event of non-compliance of a condition imposed on the appointment of the heir, or if the latter were to die before the testator, or were to refuse the inheritance and have no substitute, and there is no right of accretion;
4. If the appointed heir is incapable of succeeding.

##### Article 913

In the absence of testate 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 a last will and testament shall likewise apply to intestate succession.

#### Section Two. 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 do 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 double kinship.

**Article 921**

For inheritance purposes, the relative of nearest degree excludes the more distant relative, save for the right of representation, if applicable.

Relatives of the same degree shall inherit in equal shares, save as provided in Article 949 concerning double kinship.

**Article 922**

If there were to be several relatives of the same degree, and one or some do not want or are unable to inherit, their part shall accrue in favour of the others of the same degree, save for the right of representation, if applicable.

**Article 923**

If the nearest relative, if there is only one, or, if there were to be several, all nearest relatives called by the law were to refuse the inheritance, the relatives of the next degree shall inherit in their own right without being entitled to represent the person who refused the inheritance.

**Section Three. 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 double or half-siblings.

**Article 926**

If 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 were to have left issue, the latter shall inherit from the former by right of representation if they stand to inherit in concurrence with their uncles. The aforesaid notwithstanding, if they were alone, they shall inherit by equal shares.

**Article 928**

The right to represent a person is not be forfeited as a result of having renounced his inheritance.

**Article 929**

An person cannot represent a person who is alive except in the event of disinheritance or incapacity.

**CHAPTER IV**

**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 were to have died leaving several heirs, the portion which corresponds to him shall be divided between the latter in equal shares.

**Article 934**

If there were to be children and descendants of other predeceased children, the former shall inherit in their own right and the latter by right of representation.

## **Section Two. 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 were to 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 appertaining to the same line, they shall divide the estate per capita.

### **Article 940**

If the ascendants were to appertain 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 testate succession.

## **Section Three. On succession by the spouse & 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 goods.

### **Article 945**

The spouse shall not be called to inherit as mentioned in the preceding Article if he were to be separated de iure or de facto.



#### **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 were to stand to inherit, the former shall inherit per capita and the latter per stirpes.

#### **Article 949**

If both double siblings and half siblings were to stand to inherit, the former shall take double the share of the latter in the estate.

#### **Article 950**

If only half-siblings were to exist, some on the father's side and some on the mother's, they shall all inherit by equal shares, without any distinction between properties.

#### **Article 951**

Children of half-siblings shall inherit per capita or per stirpes, according to the provisions set forth for full siblings.

#### **Article 952**

(Repealed)

#### **Article 953**

(Repealed)

#### **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 effected without any distinction between lines, or preference between them as a result of any double kinship.

### **Section Four. On the succession of the State**

#### **Article 956**

In the absence of persons entitled to inherit pursuant to the provisions of the preceding Sections, the State shall inherit and, having liquidated the goods of the estate, shall allocate the remaining amount to the Public Treasury, unless, due to the nature of the inherited goods, the Council of Ministers resolves to give another application thereto, in whole or in part. Two thirds of the value of that remnant estate shall be allocated to

social causes, and added to the tax assignment applied to these causes in the State Budget.

#### **Article 957**

The rights and obligations of the State 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 1023.

#### **Article 958**

The appropriation of the estate by the State shall be preceded by a judicial declaration of being the heir, adjudicating the goods in the absence of heirs at law.

### **CHAPTER V**

#### **Provisions common to testate & intestate inheritances**

##### **Section One. On the precautions which shall be adopted if the widow is pregnant**

#### **Article 959**

If the widow believes that she is pregnant, she shall report this fact to the persons who hold a right of such nature that it may 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 simulated, or to prevent passing off the creature that is born as viable if in reality he is not.

The Judge shall take care that any measures adopted do not impinge on 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 shall report the fact to the same interested persons. Such persons shall be entitled to appoint a trusted person to ascertain the fact of the delivery.

If the appointed person were to be refused by the patient, the Judge shall make the appointment, which shall befall a physician or a woman.

#### **Article 962**

The omission of these procedures shall not by itself be sufficient to evidence the simulation of the delivery or the new-born's lack of viability.

**Article 963**

If the husband were to 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 shall comply with the provisions of Article 961.

**Article 964**

The widow who is pregnant, even if she is rich in her own right, shall be supported by the goods pertaining to the estate, taking into consideration the share to which the posthumous child shall be entitled, if he were to be born and live.

**Article 965**

During the time until the delivery is effected, or it becomes certain that such delivery shall not take place, either as a result of miscarriage or after exceeding the maximum gestational term, the necessary proceedings shall be carried out 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.

The aforesaid notwithstanding, the administrator may pay creditors, after securing 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 account for of his performance to the heirs or their legitimate representatives.

**Section Two. 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 former spouse the ownership of all goods acquired from his deceased spouse by last will and testament, 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 goods which, pursuant to the title stated therein, have 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 goods shall cease if the children of the marriage, being of legal age, who are entitled to the goods were to explicitly renounce their rights thereto, or in the case of objects given or bequeathed 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 bestow a betterment to any of the children or descendants of the first marriage with the goods to be reserved, pursuant to the provisions of Article 823.

**Article 973**

If the father or mother have not used in whole or in part the power granted by the preceding Article, the children and descendants of the first marriage shall inherit the goods subject to reservation pursuant to the provisions provided for succession in the descending line, even if, pursuant to the predeceased parent's will and testament, they have inherited his estate unequally, or if they have refused the inheritance.

A child who has been justly disinherited by the father or the mother shall forfeit all right to the reserve, but, if he were to have children or descendants, the provisions of 857 and Article 164 Number 2 shall apply.

**Article 974**

Any disposals of immovable goods 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 goods 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 are no children or descendants from the first marriage, without prejudice to the provisions of the Mortgage Act.

**Article 976**

Disposals of movable goods made prior or subsequently to marrying a second time shall be valid, but always with the obligation to compensate.

**Article 977**

The widower or widow, upon marrying again, shall order an inventory to be made of all the goods subject to reservation, shall make an entry in the Property Registry noting the fact that any immovable goods are subject to reservation pursuant to the provisions of the Mortgage Act and shall order an appraisal of any movable goods 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 goods which have not been disposed of in the condition thereof 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 goods disposed of or of the price which would have been obtained at the time of their disposal, if they have been disposed of by gift;
4. The value of immovable goods 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 has 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 Three. On the right of accretion

### Article 981

In intestate successions, the share of the heir who refuses the inheritance shall always accrue in favour of his co-heirs.

### Article 982

The following are required for the right of accretion to occur in testate successions:

1. For two or more persons to be called to inherit the same estate, or the same portion thereof, without specific appointment of shares;
2. For one of the persons called to die before the testator, or to refuse the inheritance, or be incapable of receiving it.

### Article 983

The appointment shall be deemed made by parts only in the event that the testator has explicitly established a share for each heir.

The phrase “by halves or in equal shares” or others which, even if they set out a proportional share do not set it numerically or by signs which make each heir the owner of a separate body of goods 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 wish or was unable to receive it.

**Article 985**

Amongst forced heirs, the right of accretion shall only take place if the share of the estate freely disposable is bequeathed to two or more of them, or to some of them and a stranger.

If the refused share were to be the reserved share, the co-heirs shall inherit it in their own right, and not pursuant to a right of accretion.

**Article 986**

In testate successions, if the right of accretion does not apply, the vacant share pertaining to the appointed person for whom no substitute has been appointed shall pass to the testator's legitimate heirs, who shall receive it with the same liens and obligations.

**Article 987**

The right of accretion shall also exist amongst legatees and usufructuaries in the same terms set forth for heirs.

**Section Four. On acceptance & refusal of an inheritance****Article 988**

Acceptance and refusal of an inheritance are entirely voluntary and free acts.

**Article 989**

Acceptance and refusal of an inheritance shall always have retroactive effect to the time of the death of the decedent.

**Article 990**

Acceptance and refusal of an inheritance may not be done partially, or be subject to term or condition.

**Article 991**

No one may accept nor refuse an inheritance without being certain of the death of the deceased and of his right to the inheritance.

**Article 992**

All persons who can freely dispose of their goods may accept or refuse an inheritance.



The acceptance of an estate bequeathed to the poor shall correspond to the persons appointed by the testator to qualify such group and to distribute the goods 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 goods may accept the inheritance bequeathed to them, but shall require judicial approval, after hearing the Public Prosecutor, to refuse it.

#### **Article 994**

Official public establishments may neither accept nor refuse an inheritance without the Government's approval.

#### **Article 995**

If an inheritance were to be accepted without the benefit of inventory by a married person, and the other spouse were not to accept and give his consent to the acceptance in addition, the goods pertaining to the marriage property community shall not be liable for the debts of the estate.

#### **Article 996**

If the judgment decreeing incapacitation as a result of physical or mental illness were to not provide otherwise, a person subject to conservatorship may accept the inheritance without qualification or under the benefit of inventory.

#### **Article 997**

Acceptance and refusal of an 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 last will and testament were to appear.

#### **Article 998**

An inheritance may be accepted without qualification or under the benefit of inventory.

#### **Article 999**

Unqualified acceptance may be explicit or implicit.

Explicit acceptance is that which is given in a public or private document.

Implicit acceptance is that which ensues as a result of acts which necessarily entail the will to accept, or which the person would not be entitled to perform without having 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 1000**

An inheritance is deemed to have been accepted:

1. If the heir sells, gives or assigns his rights to a stranger, to all his co-heirs or to one of them;
2. If the heir renounces the inheritance, even if he does without a consideration, to the benefit of one or more of his co-heirs;
3. If he renounces it for a consideration in favour of all his co-heirs indistinctly; the aforesaid notwithstanding, if such renunciation were to be without a consideration and the co-heirs in whose favour it is made were to be those in favour of whom the renounced share is to accrue, the inheritance shall not be deemed to have been accepted.

**Article 1001**

If the heir refuses 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 the creditors to the extent sufficient to cover the amount of their credits. The excess, if any, shall under no circumstance whatsoever pertain to the heir who has renounced it, but shall be adjudicated to the relevant persons pursuant to the provisions set forth in this Code.

**Article 1002**

Heirs who have purloined or concealed any goods of the estate shall forfeit the power to renounce the inheritance, and shall become unqualified heirs with unlimited liability, without prejudice to any penalties in which they have incurred.

**Article 1003**

Unqualified, outright acceptance, without the benefit of inventory, shall make the heir liable for all liabilities of the estate, not just with the goods pertaining to the estate, but also with his own goods.

**Article 1004**

No action may be initiated against the heir to force him to accept or renounce the inheritance until nine days after the death of the deceased.

**Article 1005**

If an interested third party confirms his interest in the heir's accepting or refusing the inheritance, it may instruct a Notary Public to convey such an interest to the heir giving him a period of thirty calendar days to accept unconditionally, or under benefit of inventory, or to renounce the inheritance. The Notary Public shall also indicate that if he fails to express his decision within the aforesaid time, the inheritance shall be deemed to have been unconditionally accepted.

**Article 1006**

If the heir were to die without accepting or refusing the inheritance, the same right held by him shall pass onto his heirs.



#### **Article 1007**

If several heirs were to be called to an inheritance, some of them may accept it and others refuse it. Each heir shall have the same freedom to accept it without qualification or under the benefit of inventory.

#### **Article 1008**

Refusal of an inheritance shall be formalised in a public deed in the presence of a Notary Public.

#### **Article 1009**

A person who is called to the same inheritance by testament and by intestate succession and refuses it pursuant to the former title shall be deemed to have refused it pursuant to both.

Having refused it as intestate heir without having received notice of his testamentary title, he may still accept it pursuant to the latter.

### **Section Four. On the benefit of inventory & the right to deliberate**

#### **Article 1010**

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 refusing the inheritance, in order to deliberate on this matter.

#### **Article 1011**

The declaration to avail oneself of the benefit of inventory shall be formalised in the presence of a Notary Public.

#### **Article 1012**

If the heir mentioned in the preceding Article were to 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 1013**

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 goods of the estate, made with the formalities and within the periods stated in the following Articles.

#### **Article 1014**

An heir who has in his possession the goods pertaining to the estate or part of it, and wishes to avail himself of the benefit of inventory or of the right to deliberate, shall declare it to the Notary Public and ask, within thirty days following the day on which he became aware of his condition of heir, for the notarial inventory to be produced whilst summoning the creditors and legatees so that they can bear witness thereto, should the latter see it fit.

**Article 1015**

If the heir does not have in his possession the estate or a part of it, nor has carried out any formality in the capacity of heir, the period stated in the preceding Article shall be counted from the day following expiration of the period set to accept or refuse the inheritance pursuant to Article 1005, or from the day on which he has accepted the inheritance or managed the estate in the capacity of heir.

**Article 1016**

Outside the cases mentioned in the two preceding Articles, if no claim has 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 has prescribed.

**Article 1017**

The inventory shall begin to be drawn up within thirty days following the summoning of the creditors and legatees, and shall be completed within another sixty days.

If, as a result of the goods being at a long distance, or being very substantial, or another just cause, such sixty day period were to seem insufficient, the Notary Public may extend this term for the time deemed necessary, which may not exceed one year.

**Article 1018**

If, as a result of the fault or negligence of the heir, the inventory were not begun or completed within the periods and with the solemnities provided in the preceding Articles, he shall be deemed to accept the inheritance without qualification.

**Article 1019**

An heir who has reserved the right to deliberate shall declare to the Notary Public within thirty days counting from the day following completion of the inventory whether he accepts or refuses the inheritance and whether or not he avails himself of the benefit of inventory.

After the lapse of thirty days without having made such declaration, he shall be deemed to have accepted the inheritance without qualification.

**Article 1020**

In any event, the Notary Public 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, pursuant to the provisions of this Code and the notarial legislation.

**Article 1021**

A person who claims in Court an inheritance of which another has been in possession for more than one year, if the Court were to find in his favour, shall have no obligation to make an inventory to enjoy this benefit, and shall only be liable for the liabilities of the estate with the goods delivered to him.



### **Article 1022**

An inventory made by an heir who subsequently refuses 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 day on which they became aware of the refusal.

### **Article 1023**

The benefit of inventory generates the following effects in favour of the heir:

1. The heir shall only be obliged to pay the debts and other liabilities of the estate to the extent that they are covered by the goods of such estate;
2. He shall keep all rights and actions he may have held against the deceased against the estate;
3. His own goods shall not be commingled with the goods pertaining to the estate for any purpose to the detriment of the heir.

### **Article 1024**

An heir shall forfeit the benefit of inventory:

1. If he were to knowingly fail to include in the inventory any of the goods, rights or actions of the estate;
2. If, prior to completing the payment of debts and legacies, he were to dispose of any goods of the estate without judicial leave or the authorisation of all interested parties, or if he fails to give to the sales price the application provided on granting such leave or authorisation.

Notwithstanding the foregoing, he may dispose of any securities listed on a secondary market by selling on this market, and of any other goods by means of their sale at a public auction before a Notary Public previously notified to all the interested parties, and specifying the way in which the price obtained shall be allocated in both cases.

### **Article 1025**

During the drawing up of the inventory and the period to deliberate, the legatees may not claim payment of their legacies.

### **Article 1026**

An estate 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 answer any claims lodged against such estate.

### **Article 1027**

An administrator may only pay the legacies after having paid all creditors.

**Article 1028**

If proceedings between the creditors are pending regarding the preference of their credits, such credits shall be paid in the order and pursuant to the degree provided in the final judgment 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; the aforesaid notwithstanding, if any of the credits is a preferential credit, no payment shall be made without first providing a surety bond in favour of the creditor with the better right.

**Article 1029**

If, after paying the legacies, other creditors were to appear, the latter may only claim against the legatees in the event that the estate does not have sufficient goods to pay them.

**Article 1030**

If it were necessary to sell the goods of the estate to pay the credits and legacies, this shall be done as provided in the second Paragraph of Section Two of Article 1024 of this Code, unless all heirs, creditors and legatees were to agree otherwise.

**Article 1031**

If the goods of the estate were not sufficient to pay the debts and legacies, the administrator shall account for 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 1032**

After paying creditors and legatees, the heir shall have the full enjoyment of the residue of the estate.

If the estate were to have been administered by another person, the latter shall account for his administration to the heir pursuant to the liability provided in the preceding Article.

**Article 1033**

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 estate itself. Costs incurred by the heir personally as a result of his malice or mala fide shall be excepted from the foregoing.

The same shall be applied in respect of expenses incurred in the exercise of the right to deliberate, if the heir were to refuse the inheritance.

**Article 1034**

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; nevertheless, they may demand the retention or attachment of the residue which may result in favour of the heir.



## CHAPTER VI

### On collation & partition

#### Section One. On collation

##### Article 1035

A forced heir who stands to inherit an estate together with other heirs, shall bring to the estate any goods or securities received from the decedent during the latter's life, as a dowry, gift or pursuant to any other title without consideration, for them to be taken into account in the calculation of any reserved shares and in the partition account.

##### Article 1036

Collation shall not take place between forced heirs if the donor were to have explicitly provided so, or if the donee were to refuse the inheritance, save in the event that the donation is to be reduced as a result of being deemed unlawful due to being detrimental to the rights of forced heirs.

##### Article 1037

Any goods bequeathed by testament shall not be deemed subject to collation unless otherwise provided by the testator, respecting, in any case, any reserved shares.

##### Article 1038

If grandchildren inherit from their grandparents in representation of their parent, and stand to inherit together with their uncles or cousins, they shall bring to collation all goods which their parent ought to have collated had he been alive, even if have not inherited them.

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 shall be respected unless it were to prejudice the co-heirs' reserved share.

##### Article 1039

Parents shall not be obliged to bring to collation the inheritance of their ascendants the goods given by the latter to the former's children.

##### Article 1040

Gifts made to the child's spouse shall also not be brought to collation; nevertheless, if they have been made by the father jointly to both of them, the child shall be obliged to bring to collation half of the object given.

##### Article 1041

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 1042**

Expenses incurred by the father to give his children a professional or artistic career shall not be brought to collation unless the parent were to so order or such expenses impinge on the reserved share; nevertheless, if they are to be brought to collation, the amount which the child would have spent living in the dwelling and in the company of his parents shall be deducted therefrom.

**Article 1043**

Amounts paid by the father to exempt his children from military service, to pay their debts, obtain an honorific title and other similar expenses shall be subject to collation.

**Article 1044**

Wedding presents consisting of jewellery, dress and equipment shall not be reduced as unlawful due to being detrimental to the rights of forced heirs save in the part exceeding one tenth or more of the amount that may be freely bequeathed by last will and testament.

**Article 1045**

It is not necessary to bring to collation or to the partition the objects which were given themselves, but rather 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 to his risk or benefit.

**Article 1046**

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 1047**

A donee shall reduce his share in the estate to the extent that he has already received goods, and his co-heirs shall receive the equivalent, if possible, in goods of the same nature, species and quality.

**Article 1048**

If the provisions of the preceding Article cannot be implemented, if the goods given were to be immovable goods, 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 goods shall be sold in a public auction to obtain the necessary amount.

If the goods donated were to be immovable goods, the co-heirs shall only be entitled to receive the same amount in other movable goods of the estate at their fair value, at their discretion.



#### **Article 1049**

Fruits and interest of the goods subject to collation shall not be owed to the estate until the day on which the succession is opened.

The income and interest of the goods in the estate of the same species as the goods brought to collation shall be taken into account in the regulation thereof.

#### **Article 1050**

If any dispute were to arise amongst the co-heirs regarding the obligation to bring to collation or the objects which shall be brought to collation, the partition shall not be interrupted for this reason, with the obligation to provide the corresponding bond.

### **Section Two. On partition**

#### **Article 1051**

No co-heir shall be obliged to remain in a situation where the estate is undivided, unless the testator were to have explicitly forbidden division.

Notwithstanding the foregoing, even if he were to have forbidden it, the estate may always be divided based on any of the grounds for dissolution of companies.

#### **Article 1052**

Every co-heir who has the free administration and disposal of his goods may at any time request the partition of the estate.

The legitimate representatives of incapacitated persons and absentees shall request it on their behalf.

#### **Article 1053**

Either spouse may request partition of the estate without intervention of the other.

#### **Article 1054**

Heirs encumbered by a condition may not request partition until such condition is fulfilled. The aforesaid notwithstanding, the other co-heirs may request it, properly securing the right of the former in the event that the condition were to 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 1055**

If, prior to the partition, one of the co-heirs were to die, leaving two or more heirs, it shall be sufficient for one of the latter to request it; the aforesaid notwithstanding, all those who partake in the partition in this last capacity shall appear under a single representation.

**Article 1056**

If the testator were to perform the partition of his estate inter vivos or in his will and testament, such partition shall be applied to the extent that it does not prejudice the reserved share of the forced heirs.

A 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 thereof may use the power granted in this Article, providing for the payment in cash of the reserved share to the remaining interested persons. For such purposes, it shall 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 appointed 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 shall also be applied. If the form of payment were to not have been set, any forced heir may request his reserved share in goods pertaining to the estate. The provisions of Article 843 and Paragraph 1 of Article 844 shall not apply to the partition thus carried out.

**Article 1057**

A 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 last will and testament or of a partitioner appointed therein, or in the event that the position were to be vacant, the Court Clerk or the Notary Public, at the request of heirs and legatees representing at least fifty percent of the estate, and summoning all other interested parties, if their domicile were to be known, may appoint a court-appointed partitioner, pursuant to the provisions set forth in the Civil Procedure Act and Notaries' Act for the appointment of experts. The partition thus carried out shall require approval by the Court Clerk or the Notary Public, save in the event of explicit 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 were to be subject to parental authority, guardianship or curatorship; but the partitioner shall in these cases make an inventory of the properties of the estate, summoning the legal representatives or conservators of such persons.

**Article 1058**

If the testator has not carried out the partition, or entrusted this power to another, if the heirs are of legal age and have the free administration of their goods, they may distribute the estate as they deem fit.

**Article 1059**

If the heirs who are of legal age were to not agree on the manner of making the partition, they shall be free to exercise their rights as provided in the Civil Procedure Act.



#### **Article 1060**

If minors or persons with modified capacity judicially are legally represented in the partition, no judicial intervention or approval shall be required, but the guardian shall require judicial approval for the completed partition. The judicial defender appointed to represent a minor or incapacitated person in the partition shall obtain the Judge's approval, unless otherwise provided by the Court Clerk at the time of making the appointment.

#### **Article 1061**

Equality shall be maintained in the partition of the estate, by making lots or by adjudicating to each of the co-heirs objects of the same nature, quality or species.

#### **Article 1062**

If an object were to 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.

The aforesaid notwithstanding, it shall 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 1063**

The co-heirs shall 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 1064**

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 1065**

The deeds of acquisition or ownership shall be delivered to the coheir that was adjudicated the good or goods to which they refer.

#### **Article 1066**

If the same deed were to 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 goods or properties, and the others shall be provided with attested copies thereof, at the expense of the estate. If their interests were to 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 it remains must also show it to other interested parties at their request.

**Article 1067**

If one of the heirs were to 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 Three. On the effects of the partition****Article 1068**

A partition legally carried out confers upon each heir the exclusive ownership of the goods adjudicated thereto.

**Article 1069**

After performance of the partition, the co-heirs shall be reciprocally liable to each another in case of eviction or defects in the adjudicated goods.

**Article 1070**

The obligation mentioned in the preceding Article shall only cease in the following cases:

1. If the testator has carried out the partition himself, unless he were to appear or may rationally be presumed to have wished otherwise, always respecting the reserved share;
2. If this was explicitly covenanted upon making the partition;
3. If the eviction would result from a cause subsequent to the partition, or would be the fault of the heir who was adjudicated the goods.

**Article 1071**

The co-heirs' reciprocal obligation to be liable for eviction is proportional to their respective share in the estate; nevertheless, if one of them were to 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 until such time as his financial situation improves.

**Article 1072**

If a credit were to 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; nevertheless, if they are recovered in whole or in part, the amount received shall be distributed proportionally between the co-heirs.



#### **Section Four. On rescission of the partition**

##### **Article 1073**

Partitions may be rescinded on the same grounds as obligations.

##### **Article 1074**

Partitions may also be rescinded on grounds of injury in excess of one fourth of the estate, in view of the value of the objects if they were adjudicated.

##### **Article 1075**

A partition made by the deceased may not be challenged on grounds of injury, save in the event that it were to prejudice the reserved share pertaining to the forced heirs, or if it the intention of the testator were to appear or be rationally presumed to have been another.

##### **Article 1076**

The action for rescission on grounds of injury shall last four years, counting from the performance of the partition.

##### **Article 1077**

An 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 objects which resulted in the detriment.

In the event of a new partition, it shall not impinge those who have not received less or more than their fair share.

##### **Article 1078**

An heir who has disposed of the whole or a material part of the immovable goods which were adjudicated to him may not exercise the action for rescission on grounds of injury.

##### **Article 1079**

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 1080**

A partition carried out passing over one of the heirs shall not be rescinded unless it is proved that there was mala fide or malice on the part of other interested parties; nevertheless, the others shall have the obligation to pay the heir who was passed over his proportional share.

##### **Article 1081**

A partition made including a person who was wrongly believed to be an heir shall be null and void.

## **Section Five. On payment of the debts of the estate**

### **Article 1082**

Creditors acknowledged as such may object to the partition of the estate until the amount of their credits is paid or secured.

### **Article 1083**

The creditors of one or several co-heirs may, at their expense, partake in the partition to prevent it being made in fraud or prejudice of their rights.

### **Article 1084**

After the partition is carried out, 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 have accepted 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 provisions or of the partition, he were to be the only one obliged to pay the debt.

### **Article 1085**

The co-heir who has paid more than his share in the estate may claim his proportional share from the remaining heirs.

This shall also be observed when he has paid it in full because the debt was secured by a mortgage or consisted of a specific object. The heir adjudicated the good may in such case claim only the proportional part from his co-heirs, even if the creditor has assigned his actions in this favour and he has become subrogated in the latter's position.

### **Article 1086**

If any of the properties of the estate were to be encumbered with an annuity or perpetual in rem lien, such lien shall not be extinguished, even if it is redeemable, unless the majority of the co-heirs so agree.

If they were to not agree, or if the lien were not irredeemable, its value or capital shall be deducted from the value of the goods, and the latter shall pass, together with the lien, to the person who acquires them by lot or by adjudication.

### **Article 1087**

A 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 VI of this Title.

**BOOK IV**  
**ON OBLIGATIONS & CONTRACTS**

**TITLE ONE**  
**On obligations**

**CHAPTER I**  
**General provisions**

**Article 1088**

All obligations consist of giving, doing or refraining from doing something.

**Article 1089**

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 1090**

Obligations arising from the law shall be presumed. Only those explicitly established in this Code or in special laws shall be enforceable, and they shall be governed by the provisions of the law which created them; and, for matters not provided therein, by the provisions of the present Book.

**Article 1091**

Obligations arising from contracts have the force of law between the contracting parties and shall be complied with pursuant to the provisions thereof.

**Article 1092**

Civil obligations arising from criminal offences or misdemeanours shall be governed by the provisions of the Criminal Code.

**Article 1093**

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 II

### On the nature & effects of obligations

#### Article 1094

A person obliged to give something is also obliged to preserve it with the diligence of a bonus pater familias.

#### Article 1095

A creditor is entitled to the fruits of the object from the time if the obligation to deliver it were to arise. Notwithstanding the foregoing, he shall not acquire a right in rem over it until it is delivered to him.

#### Article 1096

If a specific object 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 object were to be indeterminate or generic he may request the performance of the obligation at the debtor's expense.

If the obliged person were to default on his obligation, or were to have undertaken to deliver the same object to two or more different persons, he shall be liable for any fortuitous events until delivery thereof.

#### Article 1097

An obligation to give a specific object comprises that of delivering all its fittings, even if they have not been mentioned.

#### Article 1098

If the person obliged to do something were to fail to do it, it shall be ordered to be done at his expense.

This shall also be observed if he were to perform the obligation contravening the content thereof. Likewise, he may be ordered to undo anything which was done unduly.

#### Article 1099

The provisions of the second Paragraph of the preceding Article shall also be observed if the obligation consists of not doing something and the debtor were to do what he was forbidden to do.

#### Article 1100

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.

The aforesaid notwithstanding, the creditor's intimation shall not be necessary for the existence of default:

1. If the obligation or the law were to explicitly provide so;



2. If it were to result from the nature and circumstances of the obligation that the designation of the time in which the object was to be delivered or the service to be carried out was a decisive factor to establish the obligation.

In reciprocal obligations, neither of the obliged persons shall incur in default if the other does not perform or does not agree to duly perform his obligation. Default shall begin for the other obliged person from the time that one of the obliged persons performs his obligation.

#### **Article 1101**

Persons who, in the performance of their obligations, were to incur in malice, negligence or default, and those who in any way were to contravene the content of the obligation shall have to compensate any damages caused.

#### **Article 1102**

Liability arising from malice is enforceable for all obligations. Renunciation of the action to enforce it shall be null and void.

#### **Article 1103**

Liability arising from negligence is equally enforceable in the performance of all kinds of obligations; but may be moderated by the Courts of Law according to the circumstances of the case.

#### **Article 1104**

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.

If the obligation were to not explicit the diligence to be used in its performance, the diligence of a bonus pater familias shall be required.

#### **Article 1105**

Outside the cases explicitly mentioned in the law, and those in which the obligation were to require it, no one shall be liable for events which cannot be foreseen or which, being foreseeable, are inevitable.

#### **Article 1106**

Damage compensation comprises not just the value of the loss suffered, but also the *lucrum cessans* the creditor has failed to obtain, save for the provisions of the following Articles.

#### **Article 1107**

Damages for which the bona fide debtor 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 malice, the debtor shall be liable for all damages arisen from the failure to perform the obligation.

**Article 1108**

If the obligation were to consist of the payment of an amount of money, and the debtor were to incur in default, damages, unless otherwise covenanted, shall consist of paying the covenanted interest and, in the absence of an agreement, interest at the legally established rate.

**Article 1109**

Interest outstanding shall accrue interest at the legally established rate from the time that it is judicially demanded, even if the obligation is silent on this point.

For business transactions the provisions of the Code of Commerce shall apply.

Pawn broking Institutions and Savings Banks shall be governed by their special regulations.

**Article 1110**

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, if the creditor were to also fail to make reservations, shall extinguish the obligation in respect of prior instalments.

**Article 1111**

After pursuing all goods in the debtor's possession to enforce their debts, creditors may exercise all rights and actions 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 carried out in fraud of their right.

**Article 1112**

All rights acquired pursuant to an obligation are conveyable pursuant to the laws, unless otherwise covenanted.

**CHAPTER III****On the different kinds of obligations****Section One. On pure & conditional obligations****Article 1113**

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 1114**

In conditional obligations the acquisition of rights, and the extinction or loss of rights already acquired, shall depend on the event constituting the condition.

**Article 1115**

If the performance of the condition were to depend on the exclusive will of the debtor, the conditional obligation shall be null and void. If it were to depend on chance or on the will of the third party, the obligation shall have full force and effect pursuant to the provisions of this Code.

**Article 1116**

Impossible conditions, those contrary to generally accepted principles of morality and those forbidden by the law shall annul the obligation which depends on them.

A condition of not doing an impossible object shall be deemed not written.

**Article 1117**

A condition that an event is to take place within a specific period shall extinguish the obligation upon the lapse of such period, or if it becomes evident that the event is not going to take place.

**Article 1118**

A condition that a certain event is not take place within a specific time shall make the obligation become effective after the lapse of the period provided, or if it becomes evident that the event cannot occur.

If no specific period has been set, the condition shall be deemed to have been fulfilled within the time which plausibly would have been set, in view of the nature of the obligation.

**Article 1119**

A condition shall be deemed fulfilled if the obliged person voluntarily prevents its fulfilment.

**Article 1120**

The effects of the conditional obligation to give, after fulfilment of the condition, shall retroact to the day of constitution of the obligation. Notwithstanding the foregoing, if the obligation imposes reciprocal obligations to the interested parties, the fruits and interest of the time during which the condition has remained pending fulfilment shall be deemed offset against one another. If the obligation were to 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 were to be inferred that the intention of the person who constituted it was another.

In obligations to do and not to do something, the Court of Law shall determine, in view of the merits of the case, the retroactive effect of the condition complied.

**Article 1121**

A creditor may exercise the relevant actions for the conservation of his right before fulfilment of the conditions.

A debtor may recover anything he has paid during the same time.

**Article 1122**

If the conditions have been set with the intention to suspend the effectiveness of the obligation to give, the following provisions shall be observed, in the event that the object were to improve, be lost or impaired whilst the condition remains pending:

1. If the object were lost through no fault on the part of the debtor, the obligation shall be extinguished.
2. If the object were lost through the debtor's fault, the latter shall be obliged to compensate any damages.

The object shall be deemed to have been lost when it perished, went beyond the bounds of commerce or disappeared in such a way that the parties are unaware of its existence or it cannot be recovered.

3. If the object were impaired through no fault on the part of the debtor, the impairment shall be borne by the creditor.
4. If it were to be lost through the debtor's fault, the creditor may choose between extinction of the obligation and performance thereof, with compensation of damages in both cases.
5. If the object were to improve as a result of its nature or time, the improvements shall inure to the benefit of the creditor.
6. If it were to be improved at the debtor's expense, he shall have the same rights as those granted to the usufructuary.

**Article 1123**

If the purpose of the conditions is to rescind the obligation to give, the interested parties, upon fulfilment of the condition, shall return to each other what they have received.

In the event of loss, impairment or improvement of the object, the provisions contained in the preceding Article relating to the debtor shall be applied to the person who is to return the object.

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 extinction.

**Article 1124**

The right to rescind obligations is deemed to be implicit in reciprocal obligations, if either of the obliged person's does not perform his obligation.

The aggrieved party may choose between demanding performance or rescission of the obligation, with compensation of damages and payment of interest in both cases. He may also request rescission, even after having chosen specific performance, if the latter is impossible.

The Court of Law shall order the requested termination, unless there are justified grounds which authorise it to set a term.

The foregoing shall be construed without prejudice to the rights of third party acquirers, pursuant to Articles 1295 and 1298 and to the provisions of the Mortgage Act.



## **Section Two. On obligations subject to a forward term**

### **Article 1125**

Obligations for whose performance a certain day has been set shall only be enforceable upon arrival of such a day.

A certain day shall be deemed to mean a day which must necessarily arrive, even though it is uncertain when it shall do so.

If the uncertainty consists on whether the day shall arrive or not, the obligation is conditional, and shall be governed by the provisions of the preceding Section.

### **Article 1126**

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 object.

### **Article 1127**

Whenever a forward term is established in obligations, it shall be presumed to have been established to the benefit of both the creditor and the debtor, unless it were to result from the provisions of such obligations or from other circumstances that it has been set in favour of one or the other.

### **Article 1128**

If the obligation were to 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 of Law shall set the duration thereof.

The Courts of Law shall also set the duration of the term if it has been left to the will of the debtor.

### **Article 1129**

The debtor shall lose any right to make use of the term:

1. If, after contracting the obligation, he were to become insolvent, save if he were to secure the debt;
2. If he were to fail to provide the creditor with the security which he has undertaken to provide;
3. If, by his own acts, he has reduced such security after having provided it, and if, as a result of a fortuitous event, such security were to disappear, unless it is replaced without delay by other new equally safe security.

### **Article 1130**

If the term of the obligation is set by days counting from a specific day, such day shall be excluded from the calculation, which shall begin on the following day.

### Section Three. On alternative obligations

#### Article 1131

An obliged person alternatively obliged to perform several undertakings shall perform in full one of them.

A creditor cannot be compelled to receive part of one and part of another.

#### Article 1132

The choice corresponds to the debtor, unless explicitly granted to the creditor.

A 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 1133

The choice shall only be effective as from notice thereof.

#### Article 1134

The debtor shall lose his right to choose if, out of the undertakings which he is alternatively obliged to perform, it is only possible to perform one.

#### Article 1135

The creditor shall be entitled to compensation for damages if, by the debtor's fault, all objects which alternatively constituted the subject matter of the obligation were to have disappeared, or the performance thereof has become impossible.

The compensation shall be set taking as the basis the value of the last object which disappeared, or the undertaking which last became impossible.

#### Article 1136

If the choice has been explicitly attributed to the creditor, the obligation shall cease to be alternative from the day on which such choice is notified to the debtor.

Until then, the debtor's liabilities shall be governed by the following provisions:

1. If one of the objects has been lost by a fortuitous event, he shall perform his obligation by delivering the object chosen by the creditor amongst the remainder, or the one left, if only one were to remain;
2. If the loss of one of the objects were to have occurred through the debtor's fault, the creditor may claim any of the objects which subsist, or the price of that which were to have disappeared through the debtor's fault;
3. If all objects were to have been lost through the debtor's fault, the creditor's choice shall relate to the value of the objects.

The same provisions shall apply to obligations to do or not do, in the event that one or all of the undertakings were to become impossible.



## Section Four. On joint & on joint & several obligations

### Article 1137

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 shall perform in full the object constituting the subject matter thereof. This shall only take place if the obligation explicitly determines it, being created as a joint and several obligation.

### Article 1138

Unless it were to result otherwise from the wording of the obligations mentioned in the preceding Article, a 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 1139

If the division were to 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 were to be insolvent, the others shall not be obliged to make up for his failure.

### Article 1140

Obligations may be joint and several even if the creditors and debtors are not bound in the same manner and by the same terms and conditions.

### Article 1141

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 1142

A debtor may pay the debt to any of the joint and several creditors; but, if any of them were to have filed a judicial claim against him, he shall make his payment to such creditor.

### Article 1143

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.

A creditor who has carried out any of these acts and a creditor who collects the debt shall be liable to the others for their share of the obligation.

**Article 1144**

A 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 1145**

Payment made by one of the joint and several debtors shall extinguish the obligation.

A 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 1146**

Acquittal or forgiveness by the creditor of the share impinging one of the joint and several debtors shall not release the latter from his liability to his co-debtors, in the event that the debt were to have been paid in full by any of them.

**Article 1147**

If the object were to have perished or the undertaking were to have become impossible without fault by the joint and several debtors, the obligation shall be extinguished.

If it were to 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 action against the party who was negligent or at fault.

**Article 1148**

A 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 Five. On divisible & indivisible obligations****Article 1149**

The divisibility or indivisibility of the objects constituting the subject matter of obligations in which there is a single debtor and a single creditor does not alter or amend the provisions of Chapter II of this Title.

**Article 1150**

Joint, indivisible obligations shall be extinguished 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 object or the service of which the obligation were to consist.



#### **Article 1151**

For the purposes of the preceding Articles, obligations to give a specific object as such and all those which may not be performance partially shall be deemed to be indivisible.

Obligations to do something shall be divisible if their subject matter is the provision of a number of days' work, the performance of works by metric units, or other analogous objects which, by their nature, may be performed partially.

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 Six. On obligations with a penalty clause**

#### **Article 1152**

In obligations with a penalty clause, the penalty shall replace damage compensation and payment of interest in the event of breach, unless otherwise covenanted.

The penalty may only be enforced if it is enforceable pursuant to the provisions of the present Code.

#### **Article 1153**

A debtor may not be released from performing the obligation by paying the penalty, unless such right has been explicitly 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 1154**

The Judge shall equitably amend the penalty if the principal obligation has been carried out partially or irregularly by the debtor.

#### **Article 1155**

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 IV**

### **On the extinction of obligations**

#### **General provisions**

#### **Article 1156**

Obligations are extinguished:

- By their payment or performance;
- By the loss of the object due;
- By forgiveness of the debt;
- By confusion of the rights of creditor and debtor;
- By setoff;
- By novation.

## Section One. On payment

### Article 1157

A debt shall not be deemed to have been paid until complete delivery of the objects or performance of the undertaking of which the obligation consisted has taken place.

### Article 1158

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 explicit will.

In this last case, he may only recover from the debtor the part in which such payment has been useful to the latter.

### Article 1159

A person who pays in the debtor's name if the latter is unaware thereof may not compel the creditor to become subrogated in the latter's rights.

### Article 1160

In obligations to give something, payment made by a person who did not have the free disposal of the object due and capacity to dispose of it shall not be valid. Notwithstanding the foregoing, if the payment has consisted in an amount of money or fungible object, no claim may be brought against the creditor who has spent or consumed it in bona fide.

### Article 1161

In obligations to do, the creditor may not be compelled to receive the benefit or service from a third party, if the conditions and circumstances of the debtor's person have been taken into account in establishing the obligation.

### Article 1162

Payment shall be made to the person in whose favour the obligation has been created, or to another authorised to receive it in his name.

### Article 1163

Payment made to a person incapable of administering his goods shall be valid to the extent that it is to his benefit.

Likewise, payment made to a third party, to the extent that it eventually inures to the benefit of the creditor shall also be valid.

### Article 1164

A bona fide payment made to a person who is in possession of the credit shall release the debtor.



#### **Article 1165**

Payment made to the creditor by the debtor after having been ordered by the Court of Law to retain the debt shall not be valid.

#### **Article 1166**

A debtor of the object may not oblige his creditor to receive a different object, even if it has equal or greater value than the object due.

Likewise, in obligations to do something, one act may not be replaced by another against the will of the creditor.

#### **Article 1167**

If the obligation consists of delivering an indeterminate or generic object, whose condition and circumstances have not been stated, a creditor may not demand that it be of high quality or a debtor deliver it of low quality.

#### **Article 1168**

Out-of-court expenses arisen on occasion of the payment shall be borne by the debtor. As regards court costs, the Court of Law shall decide pursuant to the Civil Procedure Act.

#### **Article 1169**

Unless the contract were to explicitly authorise it, a creditor cannot be compelled to receive partially the undertakings of which the obligation consists.

The aforesaid notwithstanding, if the debt were to 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 1170**

Payment of monetary debts shall be made in the currency agreed and, if it were not possible to deliver such currency, in the silver or gold coin which is 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 have become impaired by the creditor's fault.

Meanwhile, the action resulting from the primitive obligation shall be suspended.

#### **Article 1171**

Payment shall be made at the place established in the obligation.

In the absence thereof, and if the obligation were to consist of delivering a specific object, payment shall be made at the place if such object 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 1172**

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 shall be applied.

If he were to 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 1173**

If a debt accrues interest, a payment cannot be deemed to have been made to pay the capital whilst the interest remains unpaid.

**Article 1174**

If a payment cannot be allocated pursuant to the preceding provisions, the debtor shall be deemed to have discharged the debt which is most burdensome to him amongst those which are outstanding.

If the latter were to 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 goods

**Article 1175**

A debtor may assign his goods to creditors as payment for his debts. This assignment, unless otherwise covenanted, shall release the debtor from liability up to the net amount of the assigned goods. Any composition regarding the effect of the assignment entered into between the debtor and his creditors shall comply with the provisions of Title XVII of this Book and with the provisions of the Civil Procedure Act.

On tender of payment and on deposit

**Article 1176**

If a creditor to whom an offer of payment is made, pursuant to the provisions by which it is regulated, were to refuse, either explicitly or de facto and without good reason to admit it or to execute the supporting deed to evidence that any collateral, if applicable, that had been constituted has been cancelled, the debtor shall be free from liability by the deposit of the object due.

The deposit by itself shall have the same effect when it is carried out if the creditor is absent from the place in which the payment is to be made or incapacitated to receive payment when it becomes due, and if several persons purport to have the right to receive it, or if the document incorporating the obligation has been mislaid.

In any case, the deposit shall be appropriate if the fulfilment of the obligation becomes more burdensome for the debtor for reasons not attributable to him.

**Article 1177**

In order for a deposit to release an obliged person, the deposit of the object due shall 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 1178**

A deposit shall be effected by the debtor or a third party, by placing the objects due at the disposal of the Court of Law or the Notary Public, pursuant to the terms established in the Non-Contentious Proceedings Act or in the notarial legislation.

**Article 1179**

The expenses of the deposit, if applicable, shall be borne by the creditor.

**Article 1180**

The acceptance of the deposit by the creditor or the judicial declaration that it is effectively completed shall extinguish the obligation and the debtor may ask for the cancellation of the obligation and any guarantee, if applicable, to be ordered.

Meanwhile, the debtor may withdraw the object or amount deposited, permitting the obligation to subsist.

**Article 1181**

If, after effecting the deposit, the creditor were to authorise the debtor to withdraw it, he shall lose any preference he has over the object. Co-debtors and co-guarantors shall be released.

**Section Two. On the loss of the thing due****Article 1182**

An obligation consisting of delivering a specific object shall be extinguished if the object were lost or destroyed without fault on the part of the debtor and before the debtor has incurred in default.

**Article 1183**

If the object was lost whilst in the debtor's possession, the loss shall be presumed to have occurred through his fault and not by a fortuitous event unless there is evidence to the contrary, without prejudice to the provisions of Article 1096.

**Article 1184**

In obligations to do something, the debtor shall also be released if the undertaking is legally or physically impossible.

**Article 1185**

If the debt of a certain and specific object were to arise as a result of a criminal offence or misdemeanour, the debtor shall not be released from paying its price, whatever the reason for its loss, unless, having offered the object to the person who was to receive it, the latter has unreasonably refused to accept it.

**Article 1186**

After the obligation has been extinguished as a result of the loss of the object, the creditor shall hold all actions held by the debtor against third parties as a result thereof.

### Section Three. On remission of the debt

#### Article 1187

Remission may be explicit or implicit.

Both shall be subject to the provisions governing gifts deemed unlawful due to entailing a violation of the rights of forced heirs. Explicit remission shall, furthermore, comply with the form governing gifts.

#### Article 1188

The delivery of the private document evidencing the credit, made voluntarily by the creditor to the debtor, shall imply renunciation of the action held by the former against the latter.

If such renunciation were to be purported to be unlawful in that it violates the rights of forced heirs 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 1189

If the private document evidencing the debt were to be in the debtor's possession, it shall be presumed that the creditor gave it voluntarily, unless there is evidence to the contrary.

#### Article 1190

Remission of the main debt shall extinguish ancillary obligations thereof; but in the event of remission of the latter, the former shall subsist.

#### Article 1191

An ancillary pledge obligation shall be presumed to have been remitted if the object which had been pledged were to be in the debtor's possession, after having been delivered to the creditor.

### Section Four. On confusion of rights

#### Article 1192

An obligation shall be extinguished from the moment when the condition of creditor and debtor are combined in a single person.

The case where this confusion were to occur pursuant to an inheritance shall be excepted from the foregoing, if the inheritance were to have been accepted under the benefit of inventory.

#### Article 1193

The confusion in the person of the debtor or the main 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 1194**

Confusion does not extinguish the joint debt, save in the portion corresponding to the debtor or creditor in whom both conditions concur.

### **Section Five. On setoff**

#### **Article 1195**

Setoff shall take place if two persons, in their own right, are reciprocally creditors and debtors of one another.

#### **Article 1196**

For setoff to apply, the following is required:

1. That each obliged person is the main obliged person and in his turn is the main creditor of the other;
2. That both debts consist of an amount of money or, if the objects owed are fungible, that they are of the same species and also of the same quality, if the latter have been specified;
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 1197**

Notwithstanding the provisions of the preceding Article, the guarantor may allege setoff as defence in respect of what the creditor were to owe his principal debtor.

#### **Article 1198**

A 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 thereto, he may use as defence the setoff of debts prior to such assignment, but not of subsequent debts.

If the assignment takes 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 thereof.

#### **Article 1199**

Debts payable in different places may be set off by compensating any freight or movement expenses to the place of payment.

#### **Article 1200**

Setoff shall not apply if one of the debts results 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 without consideration.

#### **Article 1201**

If several debts that may be set off were to exist against the same person, the order of set off shall observe the provisions relating to allocation of payments.

#### **Article 1202**

The effect of set off is to extinguish both debts in the coinciding amount, even if creditors and debtors were to be unaware of it.

### **Section Six. On novation**

#### **Article 1203**

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 in the creditor's rights.

#### **Article 1204**

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 1205**

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 1206**

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 was prior to the novation and public or known by the debtor upon delegating his debt.

#### **Article 1207**

If the principal obligation were to 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 1208**

Novation shall be null and void if 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 are validated by ratification.

#### **Article 1209**

Subrogation of a third party in the creditor's rights shall not be presumed outside the cases explicitly mentioned in this Code.

For the rest, it shall require clear evidence thereof to be effective.



### **Article 1210**

Subrogation shall be presumed to exist:

1. If a creditor were to pay another preferred creditor;
2. If a third party who has no interest in the obligation were to pay with the debtor's explicit or implicit approval;
3. If a person with an interest in the performance of the obligation were to pay, except for the effects of confusion as concerns his corresponding share.

### **Article 1211**

A debtor may perform the subrogation without the creditor's consent if, in order to pay the debt, he has taken the money on loan pursuant to a public deed, setting forth therein his purpose, and stating in the payment receipt the origin of the amount paid.

### **Article 1212**

Subrogation conveys 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 1213**

A 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 V**

### **On the evidence of obligations**

#### **GENERAL PROVISIONS**

### **Article 1214**

(Repealed)

### **Article 1215**

(Repealed)

#### **Section One. On public deeds**

### **Article 1216**

Public deeds are those attested by a Notary Public or competent public official, with the solemnities required by the law.

### **Article 1217**

Documents intervened by a Notary Public shall be governed by the notarial legislation.

**Article 1218**

Public deeds 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 1219**

Public deeds executed to invalidate another prior public deed between the same interested parties shall only be effective against third parties if the content of the former is 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 has acted.

**Article 1220**

Copies of public deeds of which there is an original or an official file, challenged by those to whom they prejudice, shall only have force as evidence if they have been duly verified with the original.

If there were to be any difference between the original and the copy, the provisions of the former shall prevail.

**Article 1221**

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 official who attested them;
2. Subsequent copies issued pursuant to a Court order, summoning the interested parties;
3. Those which, without a Court order, have been obtained in the presence of the interested parties and with their consent.

In the absence of the aforesaid copies, any others which are thirty or more years old shall constitute evidence, provided that they have been obtained from the original by the official who attested them or another person in charge of their custody.

Copies which are less than thirty years old or those which were attested by a public official who does not meet the circumstances mentioned in the preceding Paragraph shall only serve as prima facie documentary evidence.

The Courts of Law shall weigh the evidentiary force of copies depending on the circumstances.

**Article 1222**

The registration of a document which has disappeared in any public registry shall be weighed pursuant to the provisions set forth in the last two Paragraphs of the preceding Article.

**Article 1223**

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 were signed by the executors.

**Article 1224**

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 were to differ from it by excess or by omission, unless the novation of the former were to be explicitly set forth therein.

On private deeds

**Article 1225**

A legally recognised private deed shall have the same value as a public deed between those who executed it and their successors.

**Article 1226**

(Repealed)

**Article 1227**

The date of a private document shall only be effective against third parties from the day on which it has been entered in or registered with a public registry or from the death of any of the persons who signed it or from the day on which it was delivered to a public official in an official capacity.

**Article 1228**

Private notes, records and papers only constitute evidence against the person who has written them in all matters which are clear, but any person who wishes to benefit from them must accept them in the part which is prejudicial to him.

**Article 1229**

A note written or signed by the creditor at the foot, on the margin or on the reverse side of a public deed which was in his possession shall constitute evidence in all matters favourable to the debtor.

The same shall be construed of the note written or signed by the creditor on the reverse side, on 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 1230**

Private deeds executed to alter the covenants of a public deed shall not be effective against third parties.

**Section Two. On confession****Article 1231 to 1253**

(Repealed)

## **TITLE II**

### **On contracts**

#### **CHAPTER I**

##### **General provisions**

##### **Article 1254**

A contract exists from the time when one or several persons consent to bind themselves vis-à-vis another or others to give something or to provide a service.

##### **Article 1255**

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 order.

##### **Article 1256**

The validity and performance of contracts cannot be left to the discretion of one of the contracting parties.

##### **Article 1257**

Contracts shall only be effective between the parties who enter into them, and their heirs; except, in respect of the latter, in the event that the rights and obligations arising from the contract were not conveyable, either by nature, by covenant or by the provisions of the law.

If the contract were to contain any stipulation in favour of a third party, the latter may demand performance thereof, provided that he made known his acceptance to the obliged person before such stipulation is revoked.

##### **Article 1258**

Contracts are perfected by mere consent, and as from then bind the parties, not just to the performance of the matters explicitly covenanted therein, but also to all consequences which, according to their nature, are in accordance with bona fide, custom and the law.

##### **Article 1259**

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 leave or legal representation 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 1260**

No oath shall be admitted in contracts. If it is given it shall be deemed not given.



## CHAPTER II

### On the essential requirements for the validity of contracts

#### General provision

##### Article 1261

There is no contract unless the following requirements concur:

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 1262

Consent is manifested by the coincidence between the offer and the acceptance over the object and the cause that 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 person offering becomes aware of the acceptance, or from the time when, after the recipient has sent his acceptance, the person making the offer cannot be unaware of it in bona fide. 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 1263

The following persons cannot give their consent:

1. Non-emancipated minors, except in any contracts in which they are legally permitted to do so by themselves or with the assistance of their representatives, and those relating to everyday goods and services appropriate to their age, pursuant to social customs.
2. Incapacitated persons, under the terms indicated in the judicial resolution.

##### Article 1264

The provisions of the preceding Article shall be construed without prejudice of the legal prohibitions or the special capacity requirements the laws may establish.

##### Article 1265

Consent given pursuant to error, duress, intimidation or malice shall be null and void.

##### Article 1266

For error to invalidate consent, it must be about the substance of the object which constituted the subject matter of the contract, or about the conditions thereof which have been the main reason to enter into it.

Error concerning the person shall only invalidate the contract if consideration for such person has been the main cause thereof.

A simple mathematical error shall give rise only to the correction thereof.

#### **Article 1267**

There is duress if an irresistible force is applied to extract consent.

There is intimidation if one of the contracting parties is induced a rational and founded fear of suffering an imminent and serious harm to his person or goods, or to the person or goods of his spouse, descendants or ascendants.

In order to assess the existence of intimidation, the age and condition of the person shall be taken into account.

The fear of displeasing persons to whom one owes submission and respect shall not annul the contract.

#### **Article 1268**

Duress and intimidation shall annul the obligation, even if they have been used by a third party who does not partake in the contract.

#### **Article 1269**

Malice exists if, 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 entered into without them.

#### **Article 1270**

For malice to render a contract null and void, it must be material 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 Two. On the subject matter of contracts**

#### **Article 1271**

All objects which are not beyond the bounds of commerce between persons may be the subject matter of a contract, even future objects.

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 provisions on partition, pursuant to the provisions of **Article 1056**.

Likewise all services which are not contrary to the laws or to generally accepted principles of morality may constitute the subject matter of a contract.

#### **Article 1272**

Impossible objects or services may not be the subject matter of a contract.

**Article 1273**

The subject matter of any contract shall be an object determined as to its species. The fact the amount is indeterminate shall not prevent the existence of a contract, provided that it is possible to determine it without the need for a new covenant with the contracting parties.

**Section Three. On the cause of contracts****Article 1274**

In contracts for a valuable consideration, the provision or promise of an object 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 true generosity, the mere liberality of the benefactor.

**Article 1275**

Contracts without cause or with an unlawful cause shall have no effect whatsoever. The cause is unlawful if it is against the law or morals.

**Article 1276**

In contracts, the statement of a false cause shall entail the nullity thereof, unless it is proven that they were based on another true and lawful cause.

**Article 1277**

Even if the cause is not stated in the contract, it is presumed to exist and to be lawful, unless the debtor were to prove otherwise.

**CHAPTER III****On effectiveness of contracts****Article 1278**

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 1279**

If the law were to 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 the validity thereof concur.

**Article 1280**

The following shall be set forth in a public deed:

1. Acts and contracts whose purpose is the creation, conveyance, amendment or extinction of rights in rem over immovable goods;
2. Leases over the same goods for six or more years, provided that they are to be effective against third parties;

3. Nuptial agreements and amendments thereof;
4. The assignment, refusal and renunciation 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 goods, and any other whose purpose is an act drafted or which shall be drafted in a public deed, or which is be effective against a third party;
6. The assignment of actions or rights arising from an act which is set forth in a public deed.

Likewise, other contracts if the amount of one of the undertakings to be provided by one or both contracting parties exceeds 1,500 pesetas shall be set forth in writing, even in a private deed.

## CHAPTER IV

### On construction of contracts

#### Article 1281

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 1282

In order to judge the intention of the contracting parties, their acts at the time of and subsequent to the contract shall be mainly taken into account.

#### Article 1283

However general the terms of the contract are, they shall not be deemed to comprise objects and cases different from those in respect of which the interested parties proposed to contract.

#### Article 1284

If any clause of the contract admits several meanings, it shall be construed to have the meaning most suitable for it to be effective.

#### Article 1285

Clauses in contracts shall be construed in connection with each other, attributing to any doubtful clauses the meaning resulting from the whole.

#### Article 1286

Words which may have different meanings shall be construed in the meaning which is most in accordance with the nature and subject matter of the contract.



#### **Article 1287**

Uses or customs of the country shall be taken into account to construe any ambiguities in contracts, standing in for the omission of clauses which are usually set forth therein.

#### **Article 1288**

The construction of obscure clauses in the contract shall not favour the party who caused the obscurity.

#### **Article 1289**

If it is absolutely impossible to resolve any doubts pursuant to the provisions set forth in the preceding Articles, if such doubts were to be about accidental circumstances of the contract, and the contract is gratuitous, they shall be resolved in favour of the least conveyance of rights and interests. If the contract is for a 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 were to be about the main subject matter of the contract, so that the intention or will of the contracting parties cannot be known, the contract shall be null and void.

### **CHAPTER V**

#### **On rescission of contracts**

#### **Article 1290**

Contracts which have been validly entered into may be rescinded in the cases set forth in the law.

#### **Article 1291**

The following contracts may be rescinded:

1. Contracts entered into by guardians without judicial leave, provided that the persons who they represent have suffered an injury in more than one fourth of the value of the objects 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, if the creditors cannot otherwise recover what is due to them.
4. Contracts referring to litigious objects, if 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 were to especially provide this.

#### **Article 1292**

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 may also be rescinded.

**Article 1293**

No contract shall be rescinded as a result of injury, outside the cases mentioned in Numbers one and two of Article 1291.

**Article 1294**

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 1295**

Rescission shall oblige to return the objects which constituted the subject matter of the contract, together with their fruits, and the price thereof with interest; consequently, it may only take place if the person who demands rescission may return what he is bound in its turn.

Rescission shall also not take place if the objects constituting the subject matter of the contract are legally in the power of third parties who have not acted in mala fide.

In this case, it shall be possible to claim damages from the person who caused the injury.

**Article 1296**

The rescission mentioned in Number 2 Article 1291 shall not be possible in respect of contracts entered into with judicial leave.

**Article 1297**

All contracts pursuant to which a debtor disposes of goods without consideration are presumed to have been entered into in fraud of creditors.

Likewise, disposals for a valuable consideration made by persons sentenced in a judgment at any stage or against which an order to attach goods has been issued shall also be presumed to be fraudulent.

**Article 1298**

A person who acquired in mala fide objects disposed of in fraud of creditors shall compensate the creditors for any damages caused by the disposal, if, for any reason, it were to be impossible for him to return them.

**Article 1299**

The action to claim for rescission shall prescribe after 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 VI

### On nullity of contracts

#### Article 1300

Contracts which meet the requirements stated 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 pursuant to the law.

#### Article 1301

The action for annulment must be initiated within four years. This period shall begin to count:

In cases of duress or intimidation, from the day on which the latter ceased;

In those of error, fraud, or falseness of the cause, the period shall count from the consummation of the contract;

If 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 carried out by one of the spouses without the other's consent, if this consent is necessary, the period shall count from the day of dissolution of marriage property estate or the marriage, unless the spouse was sufficiently aware of such act or contract before that.

#### Article 1302

The action for annulment of contracts may be exercised by those who are bound thereby on a main or on a subsidiary basis. Capable persons may not, nevertheless, allege the incapacity of those with whom they contracted; neither may those who caused the duress or intimidation, or acted fraudulently or provoked the error base their action on these defects of the contract.

#### Article 1303

Upon an obligation's being declared null and void, the contracting parties shall reciprocally return to one another the objects which constituted the subject matter of the contract, with their fruits, and the price, with interest, save as provided in the following Articles.

#### Article 1304

If the nullity were to 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 object or price he received.

#### Article 1305

If the nullity were to arise from the unlawfulness of the cause or subject matter of the contract, if such a deed constitutes a criminal offence 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 objects 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 a criminal offence or misdemeanour.

This provision shall apply to the case where there were only a criminal offence or misdemeanour on the part of one of the contracting parties; nevertheless, the party who was not guilty may claim what he has given, and shall not be obliged to perform what he had promised.

#### **Article 1306**

If the deed which constitutes the unlawful cause does not constitute a criminal offence or misdemeanour, the following provisions shall be observed:

1. If 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 had offered;
2. If 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 had offered. The other, who was foreign to the unlawful cause, may claim what he has given, without the obligation to perform what he had offered.

#### **Article 1307**

If the person who is obliged pursuant to the declaration of nullity to return the object cannot return it because it has been lost, he shall return any fruits received and the value of the object at the time of its loss, plus interest as from the same day .

#### **Article 1308**

Whilst 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 1309**

The action for annulment shall be extinguished from the moment when the contract is validly confirmed.

#### **Article 1310**

Only contracts which meet the requirements stated in Article 1261 may be confirmed.

#### **Article 1311**

Confirmation may be explicit or implicit. Implicit confirmation shall be deemed to exist if, knowing the grounds for nullity and after such grounds have ceased, the person entitled to invoke them were to perform an act which necessarily implies the intention to renounce them.

#### **Article 1312**

Confirmation does not require the agreement of the contracting party who is not entitled to exercise the action for annulment.



### **Article 1313**

Confirmation purifies the contract from the defects from which it suffered from the time of it was entered into.

### **Article 1314**

The action for the annulment of contracts shall also be extinguished if the object constituting their subject matter has been lost pursuant to fraud 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 object shall not be an obstacle for the action to prevail, unless it has occurred as a result of fraud or negligence of the claimant, after having acquired full capacity.

### **TITLE III**

## **On the marriage property system**

### **CHAPTER I**

#### **General provisions**

#### **Article 1315**

The property system of the marriage shall be as stipulated by the spouses in a nuptial agreement, without other limitations than those provided in this Code.

#### **Article 1316**

In the absence of a nuptial agreement, or if it were to be ineffective, the system shall be the community of acquisitions during marriage.

#### **Article 1317**

The amendments of the matrimonial property system carried out during the marriage shall under no circumstances whatsoever prejudice rights already acquired by third parties.

#### **Article 1318**

The goods of the spouses are subject to the payment of household expenses.

If either spouse were to breach his duty to contribute to the payment of these expenses, the Judge, at the request of the other spouse, shall order any precautionary measures deemed convenient, to ensure payment thereof, and the necessary advances, or to provide for future needs.

If a spouse were to lack sufficient goods of his own, the necessary expenses caused in litigation against the other spouse, without mala fide or temerity, or against a third party if they inure to the benefit of the family, shall be charged to the common goods and, in the absence thereof, shall be debited to the other spouse's own goods, if the latter's economic position prevents the former from obtaining legal aid, pursuant to the provisions of the Civil Procedure Act.

#### **Article 1319**

Either spouse may perform acts directed at covering the ordinary needs of the family entrusted to his care, pursuant to local custom and the circumstances of the family.

The common goods, the goods pertaining to the spouse who contracts the debt and, on a subsidiary basis, the goods of the other spouse shall be liable for debts contracted in the exercise of this power.

The spouse who has contributed his own goods for the discharge of such needs shall be entitled to reimbursement pursuant to his marriage property system.

**Article 1320**

The consent of both spouses or, as the case may be, judicial leave shall be required to dispose of rights over the marital dwelling and the furniture ordinarily used by the family, even if such rights were to pertain to a single spouse.

The erroneous or false declaration concerning the nature of the dwelling by the person who disposes of it shall not prejudice the bona fide acquirer.

**Article 1321**

Upon the death of one of the spouses, the clothes, furniture and fittings constituting the appurtenances of the common marital dwelling of the spouses shall be delivered to the surviving spouse, without counting it as part of his attribution.

Appurtenances shall not be deemed to comprise any jewellery, artistic and historic objects and others of extraordinary value.

**Article 1322**

If the law were to require that one of the spouses must act with the other's consent for an act of administration or disposal, acts carried out without such consent and which are not confirmed in an explicit or implicit manner, may be annulled at the request of the spouse whose consent was lacking, or of his heirs.

Notwithstanding the foregoing, acts without consideration over common goods shall be null and void in the absence of the consent of the other spouse.

**Article 1323**

Spouses may convey to one another goods and rights pursuant to any title and enter into all kinds of contracts whatsoever with each other.

**Article 1324**

In order to prove between spouses that certain goods are 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 either of the spouses.

**CHAPTER II****On nuptial agreements****Article 1325**

In a nuptial agreement the executors may stipulate, amend or replace the property system of their marriage or adopt any other provisions by reason thereof.

**Article 1326**

A nuptial agreement may be executed before or after solemnisation of the marriage.

**Article 1327**

A nuptial agreement must be set forth in a public deed to be valid.

**Article 1328**

Any stipulation contrary to the laws or to generally accepted principles of morality, or which limits the equal rights of each spouse shall be null and void.

**Article 1329**

A non-emancipated minor who, pursuant to the law, is able to marry, may execute a nuptial agreement, but he shall need the agreement and consent of his parents or guardian, unless he merely agrees to the separation or participation system.

**Article 1330**

A person who has been judicially incapacitated may only execute a nuptial agreement with the assistance of his parents, guardian or conservator.

**Article 1331**

An amendment of a nuptial agreement shall require, to be valid, to have been carried out with the attendance and agreement of the persons who took part therein as executors, if they are alive and the amendment were to impinge rights granted by such persons.

**Article 1332**

The existence of covenants which constitute amendments of a prior nuptial agreement 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 1333**

In any entry of a marriage in the Civil Registry, a mention shall be made, as the case may be, of any nuptial agreement executed, and of any covenants, judicial resolutions and other facts which amend the marriage property system. If the former or the latter were to impinge immovable goods, a note thereof shall be entered in the Property Registry, in the form and for the purposes provided in the Mortgage Act.

**Article 1334**

All provisions of a nuptial agreement for the event of a future marriage shall become without force and effect in the event that such wedlock is not solemnised within one year.

**Article 1335**

The invalidity of a nuptial agreement shall be governed by the general provisions governing contracts. The consequences of annulment shall not prejudice bona fide third parties.



### CHAPTER III

#### On donations propter nuptias

##### Article 1336

Gifts made by any person in favour of one or both spouses, before the marriage and in consideration thereof are deemed donations propter nuptias.

##### Article 1337

These gifts are governed by the ordinary provisions to the extent that they are not amended by the following Articles.

##### Article 1338

A non-emancipated minor who is able to marry pursuant to the law may also, in a nuptial agreement or outside of it, make gifts by reason of his marriage, with the leave of his parent or guardian. To accept them, the provisions of Title II of Book III of this Code shall apply.

##### Article 1339

Goods donated jointly to the spouses shall pertain to both of them on an ordinary pro indiviso basis and in equal shares, unless the donor has provided otherwise.

##### Article 1340

A person who gives or promises propter nuptias shall only be liable for eviction or hidden defects if he has acted in mala fide.

##### Article 1341

The future spouses may give to each other their existing goods propter nuptias.

Likewise, they may, in a nuptial agreement, prior to the marriage, give each other future goods, only in the event of death, and to the extent provided in the provisions concerning testate succession.

##### Article 1342

Gifts propter nuptias shall be rendered without force and effect if the marriage were not solemnised within one year.

##### Article 1343

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 pursuant to the judgment, 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 has have acted in mala fide 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 if, pursuant to the judgment, the grounds for separation or divorce are attributable to him shall likewise be deemed to constitute ingratitude.

## **CHAPTER IV**

### **On the system of community of acquisitions during marriage**

#### **Section One. General provisions**

##### **Article 1344**

By means of the community of acquisitions during marriage any gains or profits obtained indistinctly by either spouse become common to both spouses and shall be allocated by halves upon dissolution thereof.

##### **Article 1345**

The community of acquisitions during marriage shall commence when the matrimony is solemnised or, subsequently, upon agreement thereof in a nuptial agreement.

#### **Section Two. On exclusive goods & goods held in common**

##### **Article 1346**

The following goods are exclusive to each of the spouses:

1. Goods and rights which pertained to him at the start of the community;
2. Those which he acquires subsequently without consideration;
3. Those acquired at the cost of or as a replacement for exclusive goods;
4. Those acquired pursuant to a right of pre-emption pertaining to one spouse only;
5. Patrimonial property rights inherent to the person and which are not conveyable 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.

Goods mentioned in Sections 4 and 8 shall not lose their nature as exclusive property if their acquisition was made with common funds; nevertheless, in this case, the community shall be the creditor of the spouse who owns it for the value paid for them.

##### **Article 1347**

The following goods are property held in common:

1. Goods obtained pursuant to the work or industry of either spouse,
2. Fruits, income or interest generated by both exclusive and common property;



3. Goods acquired for valuable consideration charged to the goods held in common, irrespective of whether the acquisition is made for the community or for only one of the spouses;
4. Those that are acquired pursuant to a right of pre-emption held in common, even if they were 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 established 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 was used, the provisions of Article 1354 shall apply.

**Article 1348**

If an amount or credit payable in a certain number of years pertains 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 either spouse depending on who the credit pertains to.

**Article 1349**

A right of usufruct or to an allowance pertaining to one of the spouse is shall form part of his exclusive property; nevertheless, the fruits, allowances or interest accrued during the marriage shall be common property.

**Article 1350**

Heads of livestock which, upon dissolution of the community, exceed from the number contributed by each of the spouses on an exclusive basis shall be deemed property held in common.

**Article 1351**

Profits obtained by either spouse from gambling or those resulting from other causes which are exempt from the obligation to return them shall pertain to the community of acquisitions during marriage.

**Article 1352**

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 were used to pay the subscription or if the shares were issued against profits, the value paid for them shall be reimbursed.

**Article 1353**

Goods given or bequeathed by a last will and testament 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 1354**

Goods acquired in exchange for a price or for valuable consideration, which are in part held in common and in part exclusive property, shall correspond pro indiviso to the community of acquisitions during marriage, and to the spouse or spouse in proportion to the value of the respective contributions thereof.

**Article 1355**

The spouses may, by common consent, give the condition of common property to goods acquired for valuable consideration during the marriage, whatever the origin of the price or consideration and the form and instalments by which they were paid.

If the acquisition is made jointly and without allocation of shares, their intention shall be presumed favourable to the common nature of such goods.

**Article 1356**

Goods acquired by one of the spouses, whilst the community subsists, by instalments, shall be property held in common if the first payment is of such nature, even if the remaining instalments are paid with money held on an exclusive basis. If the first payment has been made with exclusive property, the goods shall have this nature.

**Article 1357**

Goods 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 deferred price is paid with money held in common.

The family dwelling and appurtenances shall be excepted from the foregoing, in respect whereof Article 1354 shall apply.

**Article 1358**

If, pursuant to this Code, goods are deemed to be held exclusively or in common, irrespective of the origin of the funds with which the acquisition is carried out, the value paid by and charged to, respectively, the community property or to exclusive property shall be reimbursed, by returning the amount thereof, updated as of the day of liquidation of the community.

**Article 1359**

Buildings, plantations in any other improvements made to common property and to exclusive property shall have the nature corresponding to the goods which they affect, without prejudice to the reimbursement of the price paid for them.

Notwithstanding the foregoing, if the improvement was made in exclusive goods using common funds or the activities of either spouse, the community shall be owed the increase in value experienced by the goods as a result of the improvement, at the time of dissolution of the community or disposal of the improved goods.



#### **Article 1360**

The same provisions of the preceding Article shall apply to patrimonial gains of a businesses, commercial establishment or other kind of undertaking.

#### **Article 1361**

Goods existing in the marriage shall be deemed to be held in common unless it is proved that they pertain exclusively to one of both spouses.

### **Section Three. On the expenses & obligations of the community of acquisitions during marriage**

#### **Article 1362**

Expenses originated by any of the following causes shall be borne by the community of acquisitions during marriage:

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 acquisitions during marriage if they were to live in the family dwelling. Otherwise, expenses resulting from these items shall be paid by the community of acquisitions during marriage, but shall give rise to a right reimbursement at the time of liquidation thereof.

2. The acquisition, holding and enjoyment of common goods.
3. The ordinary administration of the exclusive goods of either spouse.
4. The regular exploitation of businesses or the conduct of the profession, art or trade of each spouse.

#### **Article 1363**

Amounts given or promised by both spouses by common consent shall also be borne by the community, unless it has been covenanted that they are to be paid with the exclusive goods of one of them in whole or in part.

#### **Article 1364**

A spouse who has contributed exclusive goods for expenses or payments to be borne by the community shall be entitled to reimbursement of the value thereof, charged to the common goods.

#### **Article 1365**

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 goods to which he is entitled pursuant to the law or to the nuptial agreement;
2. In the ordinary practice of his profession, art or trade or in the ordinary administration of the goods. If one of the spouses is a merchant, the provisions of the Code of Commerce shall apply.

**Article 1366**

The community of acquisitions shall be liable for and shall bear the expense of any tortious obligations pertaining to a spouse as a result of his actions to the benefit of the community or within the scope of the administration of the goods, unless they are due to malice or gross negligence on the part of the debtor spouse.

**Article 1367**

Common goods shall in any event be liable for obligations entered into by both spouses jointly or by one of them with the explicit consent of the other.

**Article 1368**

Common goods shall also be liable for obligations entered into by only one of the spouses, in the event of de facto separation, to cover the maintenance, insurance and education expenses of the children for whom the community of acquisitions during marriage is responsible.

**Article 1369**

Goods pertaining to the community shall also be jointly and severally liable for the debts of a spouse which are likewise debts of the community.

**Article 1370**

Without prejudice to the liability of any other goods pursuant to the provisions of this Code, common goods acquired by a spouse without the other's consent shall always be liable for the deferred price thereof.

**Article 1371**

Amounts lost and paid during the marriage by either spouse in any kind of gambling shall not reduce the respective part of the common goods, provided that the amount of such loss is deemed moderate pursuant to custom and family circumstances.

**Article 1372**

If the law provides an action to claim what has been lost and not paid whilst gambling, the exclusive property of the debtor shall be exclusively liable for amounts lost and not paid by either of the spouses.

**Article 1373**

Each spouse shall be liable with his personal goods for his own debts and, if his exclusive property were not sufficient to repay them, the creditor may request the attachment of common goods, which shall be immediately notified to the other spouse, and the latter may request that in the attachment the common goods be replaced by the part held by the debtor spouse in the community of acquisitions during marriage, in which case the attachment shall entail dissolution of the community.

If the attachment were to impinge on common goods, the debtor spouse shall be deemed to have received the value thereof on account of his share if he were to pay with other funds of his own or at the time of liquidation of the community of acquisitions during marriage.

**Article 1374**

After the dissolution mentioned in the preceding Article, the property separation system shall apply, save if, within three months, the debtor's spouse were to choose in a public deed to start a new community of acquisitions during marriage.

**Section Four. On the administration of the community of acquisitions****Article 1375**

In the absence of a covenant made pursuant to a nuptial agreement, the management and disposal of common goods shall correspond jointly to the spouses, without prejudice to the provisions of the following Articles.

**Article 1376**

If the consent of both spouses is necessary for the performance of acts of administration, and one of them is unable to give it or were to unreasonably withhold it, the Judge may give it in his stead if he were to find the request to be well founded.

**Article 1377**

The performance of acts of disposal for valuable consideration impinging common goods shall require the consent of both spouses.

Of one of them were to refuse or is unable to give such consent, the Judge, after summary information proceedings, may authorise one or several acts of disposal if he considers this to be in the interest of the family. Exceptionally, he shall provide any limitations or precautions deemed convenient.

**Article 1378**

Acts without consideration shall be null and void unless both spouses consent thereto. The aforesaid notwithstanding, either of them may perform the accustomed liberalities with common goods.

**Article 1379**

Either spouse may dispose of half of the common goods by last will and testament.

**Article 1380**

A testamentary provision impinging on common goods shall have full force and effect if the goods are adjudicated to the estate of the testator. Otherwise, the bequest shall be deemed to refer to the value thereof at the time of his death.

**Article 1381**

Fruits and gains of exclusive goods and the gains obtained by either spouse shall pertain to the community of acquisitions and shall be subject to the payment of the expenses and liabilities of the community of acquisitions during marriage. Notwithstanding the foregoing, either spouse, as administrator of his exclusive goods, may for this sole purpose dispose of the fruits and products of his goods.

**Article 1382**

Either spouse may, without the other's consent, but always with his knowledge, take in advance any common money which he needs, pursuant to custom and family circumstances, for the practice of his profession or the ordinary administration of his goods.

**Article 1383**

The spouses shall inform each other on a regular basis on the status and returns of any economic activity they undertake.

**Article 1384**

Acts of administration of goods and acts of disposal of money or securities carried out by the spouse in whose name they appear or who has them in his possession shall be valid.

**Article 1385**

Credit rights, whatever the nature thereof, shall be exercised by the spouse in whose name they appear.

Either spouse may exercise the defence of common goods and rights by bringing actions or opposing them.

**Article 1386**

The consent of only one of the spouses shall be sufficient to make necessary urgent expenses, even if they are extraordinary expenses.

**Article 1387**

The administration and disposal of the goods pertaining to the community of acquisitions during marriage shall be bestowed ipso iure to the spouse who is the guardian or legal representative of his consort.

**Article 1388**

The Courts of Law may confer the power of administration to only one of the spouses if the other is unable to give his consent or has abandoned the family, or in the event of de facto separation.

**Article 1389**

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, were to establish any precautions or limitations.

In any event, the spouse shall require judicial leave to perform acts of disposal over immovable goods, commercial establishments, precious objects or securities, save for preferred subscription rights.



### Article 1390

If, as a result of an act of administration or disposal carried out by only one of the spouses the latter has obtained a benefit or profit of an exclusive nature, or has caused, with malice, damage to the community, he shall owe the community the amount thereof, even if the other spouse has not challenged the effectiveness of the act within the applicable period.

### Article 1391

If a spouse has carried out 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 has acted in mala fide, the act may be rescinded.

## Section Five. On the dissolution & liquidation of the community of acquisitions during marriage

### Article 1392

The community of acquisitions during marriage shall end ipso iure:

1. If the marriage is dissolved;
2. If the marriage is declared null and void;
3. If the separation of the spouses is judicially decreed;
4. If the spouses agree upon a different marriage property system in the manner provided in this Code.

### Article 1393

The community of acquisitions during marriage shall also end by judicial decree, at the request of one of the spouses, in one of the following cases:

1. If the other spouse has been judicially incapacitated, or has been declared a prodigal, an absentee or bankrupt pursuant to civil or business 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 submit the relevant judicial resolution.

2. If the other spouse has been performing by himself acts of disposal or management of goods which involve fraud, detriment 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 1394**

The effects of dissolution as provided in the preceding Article shall take place from the day on which it is decreed. If there is a dispute 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 goods, and all acts which exceed ordinary administration shall require judicial leave.

**Article 1395**

If the community of acquisitions during marriage is dissolved as a result of the marriage being null and void and with declaration that one of the spouses has acted in mala fide, the other may choose to liquidate the marriage property system pursuant to the provisions of this Section or to the provisions relating to the participation system, and the spouse in mala fide shall not be entitled to participate in the gains obtained by his consort.

**Article 1396**

After its dissolution, the community shall be liquidated, beginning by drafting an inventory of the assets and liabilities thereof.

**Article 1397**

The following shall be included as assets:

1. Common goods existing at the time of dissolution;
2. The updated amount of the value of the goods at the time of its disposal as a result of an unlawful or fraudulent transaction, if they 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 1398**

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 goods, if such amount must be returned in cash, because such value has been spent in the interest of the community.

The same provision shall apply to impairments suffered by such goods as a result of the use thereof to the benefit of the community.

3. The updated amount of any sums which, having been paid by only one of the spouses, are required to be borne by the community and, generally, those which constitute credits held by the spouses against the community.

**Article 1399**

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 goods subject to inventory were not sufficient to pay them, the provisions relating to concurrence and order of priority of credits shall apply.

**Article 1400**

If there were not sufficient cash to pay the debts, allocations of common goods may be offered in lieu of payment, but, if any participant or creditor were to request it, they shall be disposed of and payment shall be made with the proceeds.

**Article 1401**

Until the debts of the community have been paid in full, the creditors shall preserve their credits against the debtor spouse. The non-debtor spouse shall not be liable with the property adjudicated to him, if an inventory has been duly drafted within or without Court.

If, as a result thereof, one of the spouses has paid an amount exceeding the amount attributable to him, he may recover it from the other.

**Article 1402**

Creditors of the community of acquisitions during marriage shall have upon its liquidation the same rights recognised by the laws in respect of the partition and liquidation of estates.

**Article 1403**

After paying the community's debts and expenses, any compensations and reimbursement due to each spouse shall be paid, up to the amount of the goods that have been the object of inventory, performing any applicable setoffs if the spouse owes any debts to the community.

**Article 1404**

After making any deductions from the goods subject to inventory as provided in the preceding Articles, the residue shall constitute the net assets of the community of acquisitions during marriage, which shall be divided by halves between the spouses or their respective heirs.

**Article 1405**

If either spouse were to be, at the time of liquidation, a personal creditor of the other, he may demand satisfaction of his credit by being adjudicated common goods, unless the debtor pays voluntarily.

**Article 1406**

Either 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. Goods of personal use not included in Number 7 of Article 1346;
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 1407**

In the cases provided in Numbers 3 and 4 of the preceding Article, a spouse may, at his discretion, request to be allocated the ownership of goods or to have constituted in his favour a right of use or habitation. If the value of the goods or the right were to exceed the assets corresponding to the spouse who is allocated the goods, he shall pay the difference in money.

**Article 1408**

The spouses or, as the case may be, the surviving spouse and children, shall be provided with support from the common goods whilst the liquidation of the property subject to inventory takes place and until they are given their assets; the aforesaid notwithstanding, 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 1409**

Whenever the liquidation of the community of acquisitions during marriage of two or more marriages entered into by the same person is to be carried out simultaneously, in order to determine the capital corresponding to each estate all types of evidence shall be admitted in the absence of inventories. In the event of doubt, common goods shall be allocated to the different communities proportionally, bearing in mind the respective duration and the goods and income of the respective spouses.

**Article 1410**

For matters not provided in this Chapter concerning the drafting of the inventory, the provisions regarding appraisal and sales of goods, division of goods, adjudications to the participants and others which are not explicitly established herein, the provisions regarding partition and liquidation of estates shall be observed.

**CHAPTER V****On the participation system****Article 1411.**

In the participation system each spouse acquires a right to participate in the gains obtained by his consort during the time that such system has remained in force.

**Article 1412**

Each spouse shall have the administration, the enjoyment and the free disposal of both the goods which pertained to him at the time of solemnising the marrying and of any which he may acquire subsequently pursuant to any title.



#### **Article 1413**

For all matters not provided in this Chapter, the provisions relating to separation of property shall apply during the term of the participation system.

#### **Article 1414**

If persons married pursuant to the participation system were to jointly acquire any good or right, it shall pertain to them pursuant to the ordinary pro indiviso system.

#### **Article 1415**

The participation system shall be extinguished in the same cases provided for the community of joint assets, applying the provisions of Articles 1394 and 1395.

#### **Article 1416**

Either spouse may request termination of the participation system if the irregular administration carried out by the other could seriously compromise his interests.

#### **Article 1417**

Upon termination, any gains shall be calculated by the difference between the initial and final net assets of each spouse.

#### **Article 1418**

The initial net assets of each spouse shall be deemed to consist of:

1. The goods and rights pertaining to him at the commencement of the system;
2. Those acquired subsequently as inheritance, gift or legacy.

#### **Article 1419**

The obligations of the spouse at the start of the system 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 goods bequeathed or given shall be deduced.

#### **Article 1420**

If the liabilities were to exceed the assets, there shall be no initial net assets.

#### **Article 1421**

Goods constituting the initial net assets shall be estimated according to the state and value thereof at the start of the system or, as the case may be, at the time of the acquisition thereof.

The amount of the appraisal shall be updated to the day on which the system were to cease.

#### **Article 1422**

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 system, deducting any outstanding obligations.

**Article 1423**

The value of the goods disposed of by one of the spouses without consideration and without his consort's consent shall be included in the final net assets, unless they are accustomed liberalities.

**Article 1424**

The same rule shall apply in respect of acts carried out by either spouse in fraud of the rights of the other.

**Article 1425**

Goods constituting the final net assets shall be estimated according to the state and value thereof at the time of extinction of the system, and goods disposed of as gifts or fraudulently, according to the condition thereof on the day of the disposal thereof and for the value they would have had if they had been kept until the day of extinction.

**Article 1426**

Credits held by either spouse vis-à-vis the other, pursuant to any title, even as a result of having covered or performed obligations of the former, shall be computed also as final net assets of the creditor spouse, and shall be deducted from the estate of the debtor spouse.

**Article 1427**

If the difference between the final and initial net assets of both spouses shows 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 1428**

If only one set of net assets shows 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 1429**

At the time of constitution of the system, the spouses may agree on a different participation than the one provided in the two preceding Articles, but it must apply equally and in the same proportion in respect of both sets of net assets and in favour of both spouses.

**Article 1430**

If there are descendants who are not common to both, the only participation that may be covenanted shall be by halves.

**Article 1431**

The participation credit shall 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 interest at the legally established rate are sufficiently secured.

**Article 1432**

The participation credit may be paid by adjudication of specific goods, by agreement between the interested parties or if the Judge were to allow it, upon a duly grounded request by the debtor.

**Article 1433**

If there were not sufficient goods in the debtor's net assets to implement the right of participation in his gains, the creditor spouse may challenge any disposals he has made without consideration and without his consent and those which have been made in fraud of his rights.

**Article 1434**

The actions to challenge mentioned in the preceding Article shall be lapsed by pre-emption two years after the participation system is extinguished and may not be brought against third party bona fide acquirers for a valuable consideration.

**CHAPTER VI****On the property separation system****Article 1435**

There shall be property separation between the spouses:

1. If they have agreed it;
2. If the spouses have agreed in a nuptial agreement that the community of acquisitions during marriage shall not apply between them, without stating the provisions pursuant to which their goods shall be governed;
3. Upon termination of the community of acquisitions or the participation system whilst the marriage subsists, unless the system is replaced by another different one pursuant to the will of the interested parties.

**Article 1436**

The claim requesting property separation and the final judgment declaring it shall be entered and registered, respectively, in the relevant Property Registry, if they were to refer to immovable property. The final judgment shall also be noted in the Civil Registry.

**Article 1437**

In the separation of property marriage system, the goods held by each spouse at the start and any which he may subsequently acquire pursuant to any title shall pertain to such spouse. Likewise, each spouse shall have the administration, enjoyment and free disposal of such goods.

**Article 1438**

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 of property marriage system.

#### **Article 1439**

If one of the spouses has administered or managed goods or interests of the other, he shall have the same obligations and liabilities as an attorney, but shall not have the obligation to account for fruits received and consumed, unless it is proved that he invested them in items other than the discharge of household expenses.

#### **Article 1440**

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 Articles 1319 and 1438 of this Code.

#### **Article 1441**

If it were not possible to evidence to which of the spouses any goods or rights pertain, they shall correspond to both by halves.

#### **Article 1442**

If a spouse is declared bankrupt, the provisions of bankruptcy legislation shall apply.

#### **Article 1443**

The separation of property marriage system, 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 have motivated it.

#### **Article 1444**

Notwithstanding the provisions of the preceding Article, the spouses may agree in a nuptial agreement that the same provisions which applied prior to the separation of property marriage system shall apply again.

Such a nuptial agreement shall set forth the goods contributed by each of them once again, and these shall be deemed exclusive goods even if, in whole or in part, they were common property prior to the liquidation carried out as a result of the separation.



## TITLE IV

### On the contract of sale & purchase

#### CHAPTER I

##### On the nature & form of this contract

##### **Article 1445**

Pursuant to the contract of sale and purchase, one of the contracting parties undertakes to deliver a specific object and the other to pay a certain price for it, in money or something which represents it.

##### **Article 1446**

If the sale price were to consist in part in money and in part in something else, the contract shall be classified pursuant to the manifest intention of the contracting parties. If such intention is not stated, the contract shall be deemed to be barter, if the value of the object given as part of the price exceeds the amount of money or its equivalent; and a sale if otherwise.

##### **Article 1447**

For the price to be deemed certain, it shall be sufficient that it be certain by reference to another certain object, or that its establishment is left to the discretion of a specific person.

If such person were not able to or does not wish to set the price, the contract shall become without force and effect.

##### **Article 1448**

Likewise, the price shall be deemed certain in the sale of securities, grains, liquids and other fungible objects, if the value set is the value which the objects sold had on a specific day, exchange or market, or if an amount higher or lower than the price on the day, exchange or market had set, as long as it is certain.

##### **Article 1449**

The setting of the price may never be left at the discretion of one of the contracting parties.

##### **Article 1450**

The sale shall be perfected between the purchaser and the seller, and shall be binding on both, if they have agreed on the object constituting the subject matter of the contract and on the price, even if neither has been delivered yet.

##### **Article 1451**

An undertaking to sell or purchase, if there is agreement as to the object and the price, shall entitle the contracting parties to reciprocally claim the performance of the contract.

If the undertaking of sale or purchase cannot be kept, the provisions concerning obligations and contracts provided in the present Book shall apply to the seller and purchaser, as the case may be.

#### **Article 1452**

Damages or improvements in the objects sold after perfecting the contract shall be regulated by the provisions of Articles 1096 and 1182.

This provision shall apply to the isolated sale of fungible objects for a lump sum price, or without considering the weight, number or measurement thereof.

If the fungible objects are sold for a price set in relation to the weight, number or measurement thereof, the risk shall not be conveyed to the purchaser until they have been weighed, counted or measured, unless the latter has incurred in default.

#### **Article 1453**

The sale made on trial or to test the objects sold, and the sale of objects 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 1454**

If earnest money or a deposit has 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 by refunding double the amount.

#### **Article 1455**

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 covenanted.

#### **Article 1456**

Forced sales for causes of public utility shall be governed by the provisions of special laws.

### **CHAPTER II**

#### **On the capacity to purchase or sell**

#### **Article 1457**

All persons authorised by this Code to bind themselves may enter into the contract of sale and purchase, save for the amendments contained in the following Articles.

#### **Article 1458**

Spouses may reciprocally sell goods to one another.

#### **Article 1459**

The following persons may not acquire objects 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 goods of the person or persons who are under their custody or protection.
  2. Attorneys, in respect of the goods whose administration or disposal is entrusted to them.
  3. Executors, in respect of the goods entrusted to their care.
  4. Public officials, in respect of goods pertaining to the State, Municipalities, villages and public establishments, of which they are in charge of the administration.
- This provision shall apply for Judges and experts who in any way partake in the sale.
5. Magistrates, Judges, Public Prosecutors, Court Clerks and Court Officials, in respect of the goods and rights subject to dispute before the Court of Law in whose jurisdiction or territory they 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 goods they possess shall be excepted from this provision.

The prohibition contained in this Number 5 shall comprise Solicitors and Barristers in respect of the properties and rights which constitute the subject matter of the dispute in which they partake as a result of their profession and work.

### **CHAPTER III**

#### **On the effects of the contract of sale & purchase if the thing sold were lost**

##### **Article 1460**

If, at that time of entering into the sale, the object constituting the subject matter thereof has been lost in its entirety, the contract shall become without force and effect.

Notwithstanding the foregoing, if it has been lost only in part, the purchaser may choose between desisting from the contract or claiming the existing part, paying its price proportionally to the covenanted total sum.

### **CHAPTER IV**

#### **On the seller's obligations**

##### **Section One. General provision**

##### **Article 1461**

The seller is bound to perform delivery of and warrant the object constituting the subject matter of the sale.

##### **Section Two. On delivery of the thing sold**

##### **Article 1462**

The object sold shall be deemed to have been delivered if it is put in the power and possession of the purchaser.

If the sale has been made pursuant to a public deed, the execution thereof shall be equivalent to the delivery of the object constituting the subject matter of the contract, except if this is not so or the opposite can clearly be deduced from the public deed.

#### **Article 1463**

Outside the cases stated in the preceding Article, delivery of movable goods 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 goods sold cannot be moved to the possession of the purchaser at the time of the sale, or if the latter already has them in his power for some other reason.

#### **Article 1464**

In respect of incorporeal objects, 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 1465**

Delivery expenses of the objects 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 1466**

The seller shall not be obliged to deliver the object sold if the purchaser has not paid the price or the contract has provided no period to pay.

#### **Article 1467**

The seller shall also not be obliged to deliver the object sold if a forward period or term for the payment has been covenanted 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 secured all his payment in the period provided shall be excepted from this provision.

#### **Article 1468**

The seller shall deliver the object sold in its condition at the time of perfecting the contract.

All fruits shall pertain to the purchaser from the day on which the contract was perfected.

#### **Article 1469**

The obligation to deliver the object sold comprises the obligation of putting in the purchaser's power any object stated in the contract, pursuant to the following provisions:

If a sale of immovable goods were to have taken place stating the volume thereof, 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 stated in the contract; nevertheless,

if this were not 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 is not lower than one tenth of the volume attributed to the goods.

The same shall be done, even if the volume is the same, if a part thereof is not of the quality stated in the contract.

In this case, rescission shall only take place at the will of the purchaser, if the reduction in value of the object sold exceeds one tenth of the agreed price.

#### **Article 1470**

If, in the case of the preceding Article, the immovable goods were to have greater capacity or number than that which was stated 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; nevertheless, if it were to exceed such one twentieth, the purchaser may choose between paying the higher value of the immovable goods, or desist from the contract.

#### **Article 1471**

In the sale of immovable goods made for a lump sum and not at a rate per unit or number, no increase or reduction thereof shall take place, even if they were to have greater or lower capacity or number than those stated in the contract.

This shall also occur if two or more properties are sold for a single price; nevertheless if, as well as stating the boundaries, which is indispensable in any disposal of immovable properties, the contract were to set out their volume or number, the seller shall be obliged to deliver all that is comprised within the same boundaries, even if it were to exceed the volume or number stated in the contract; and, if he is unable to, he shall suffer a reduction in the price, proportional to the shortfall in volume or number, unless the contract is to be annulled because the purchaser does not accept failure to deliver what was stipulated.

#### **Article 1472**

Actions arisen as a result of the three preceding Articles shall prescribe after six months, counted from the day of delivery.

#### **Article 1473**

If the same object were to have been sold to different purchasers, ownership shall be conveyed to the person who first took possession of it in bona fide, if it were to be a movable object.

Of it were to be an immovable good, ownership shall pertain to the acquirer who first registered it with the Registry.

In the absence of registration, ownership shall pertain to the person who first takes possession of it in bona fide; and, in the absence thereof, to the person who presents a deed with a prior date, provided that he has acted in bona fide.

### Section Three. On warranty

#### Article 1474

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 objects sold;
2. For any hidden faults or defects it were to have.

#### 1. On warranty against eviction

#### Article 1475

Eviction shall take place if the purchaser is deprived of all or a part of the object purchased by a final judgment and pursuant to a right prior to the purchase.

The seller shall be liable for eviction even if no object has been stated in the contract.

The aforesaid notwithstanding, the contracting parties may increase, reduce or suppress this legal obligation of the seller.

#### Article 1476

Any covenant which exempts the seller from liability for eviction shall be null and void, if he has acted in mala fide.

#### Article 1477

If the purchaser were to have renounced the warranty against eviction, in the event that such eviction were to occur, the seller shall deliver only the price of the objects sold at the time of eviction, unless the purchaser were to have made the renunciation being aware of the risk of eviction and submitting to the consequences thereof.

#### Article 1478

If a warranty has been stipulated, or if nothing has been covenanted on this matter, in the event of eviction the purchaser shall be entitled to request from the seller the following:

1. Restitution of the price of the objects had at the time of eviction, irrespective of whether it is higher or lower than the sale price;
2. Fruits or returns, if the buyer has been sentenced to deliver them to the party who won the trial;
3. Court costs of the proceedings which gave rise to eviction and, as the case may be, court costs of the proceedings initiated against the seller on account of the warranty;
4. Contractual expenses, if paid by the purchaser;
5. Damages and interest and voluntary or purely recreational or decorative expenses, if the sale was carried out in mala fide.

**Article 1479**

If the purchaser were to lose, as a result of the eviction, a part of the objects 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; but with the obligation to return the object without any other encumbrances than it had when he acquired it.

The same shall be observed if two or more objects are sold jointly for a lump sum, or for a specific sum for each of them, if it were to be clearly set forth that the purchaser would not have bought the one without the other.

**Article 1480**

The warranty may not be enforced until a final judgment has been issued sentencing the purchaser to forfeit the object acquired or a part thereof.

**Article 1481**

The seller shall be obliged to honour the relevant warranty if it is proved that he was given notice of the claim of eviction at the purchaser's request. In the absence of such notice, the seller shall not be obliged to honour the warranty.

**Article 1482**

A defendant purchaser shall request, within the period provided in the Civil Procedure Act to reply to the claim, that notice thereof be served on the seller or sellers without delay.

Such notice shall be given as set forth in the same law to summon defendants.

The period granted to the purchaser to reply to the claim shall be suspended until expiration of the periods provided to the seller or sellers to appear and reply to the claim, which shall be the same periods provided for all defendants in the aforesaid Civil Procedure Act, counting from the notice provided in Paragraph 1 of this Article.

If the parties summoned in the eviction proceedings were to fail to appear in due time and form, the period granted to reply to the claim shall continue in respect of the purchaser.

**Article 1483**

If a property sold were to be encumbered with any lien or non-apparent easement, of such a nature that it can be presumed that the purchaser would not have acquired it if he had known it, and the public deed 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 day on which he discovered the lien or easement.

## **2. On the warranty against hidden defects or encumbrances of the object sold**

### **Article 1484**

The seller shall be obliged to provide a warranty for hidden defects of the an object 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 thereof.

### **Article 1485**

The seller shall be liable to the purchaser for the warranty for hidden defects or flaws of the objects sold, even if he was unaware thereof.

This provision shall not apply when it has been stipulated otherwise and the seller was unaware of the hidden defects or flaws of the object sold.

### **Article 1486**

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 an expert's opinion.

If the seller had been aware of the hidden defects or flaws of the object sold and did not tell the purchaser, the latter shall have the same option, and shall further be compensated for any damages if he were to choose rescission.

### **Article 1487**

If the object sold were to be lost as a result of the hidden defects, and the seller had been aware thereof, the latter shall suffer the loss and shall return the price and pay the contractual expenses, together with any damages. If he was not aware thereof, he shall only return the price and pay the contractual expenses paid by the purchaser.

### **Article 1488**

If the object sold were to have had any hidden defect at the time of the sale and it were to 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, deducting the value the object had at the time of its loss.

If the seller acted in mala fide, he shall pay the purchaser any damages and interest.

### **Article 1489**

In judicial sales, the liability for damages shall never apply; but the remaining provisions of the preceding Articles shall do so.

**Article 1490**

Actions resulting from the provisions of the five preceding Articles shall perish after six months, counting from delivery of the object sold.

**Article 1491**

If two or more animals were to be sold together, either for a lump sum, or by paying a price for each of them, any unacceptable defect in an animal shall only give rise to such animal being refused, and not the others, unless it is 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 if a couple, yoke, pair or set of animals have been purchased, even if a separate price has been set for each of the animals comprising it.

**Article 1492**

The provisions of the preceding Article relating to the sale of animals are deemed to apply equally to the sale of other objects.

**Article 1493**

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 case regulated in the following Article.

**Article 1494**

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 were to state the service or use for which they are acquired and they prove useless for such purpose.

**Article 1495**

If, even if they have been examined by a veterinary doctor, the nature of an animal's hidden defect were to be such that expert knowledge is not enough to discover it, the defect shall be deemed unacceptable.

The aforesaid notwithstanding, if the expert, as a result of ignorance or mala fide, were to fail to discover or disclose it, he shall be liable for any damages.

**Article 1496**

The action to rescind due to unacceptable defects based on an animal's hidden defects or flaws must be brought within forty days, counting from delivery thereof to the purchaser, unless local custom were to provide longer or shorter periods.

This action in respect of animal sales may only be exercised in respect of defects or flaws foreseen at law or pursuant to local custom.

**Article 1497**

If the animal were to die within three days of its purchase, the seller shall be liable, provided that the illness which caused the death existed prior to the contract, in a practitioner's opinion.

**Article 1498**

Upon termination of the sale, the animal shall 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 unacceptable defect or flaw.

**Article 1499**

In sales of animals and livestock with unacceptable defects, the purchaser shall also have the power stated in Article 1486; but he must exercise it within the same period respectively provided to exercise the action to rescind a sale due to unacceptable defects.

**CHAPTER V****On the purchaser's obligations****Article 1500**

The purchaser is obliged to pay the price of the objects sold in the time and place set forth in the contract.

If none were set, payment shall be made at the time and place in which the object sold is delivered.

**Article 1501**

The purchaser shall owe interest for the time elapsed between delivery of the object and payment of the price, in the three following cases:

1. If it has been thus covenanted;
2. If the object sold and delivered produces fruits or rent;
3. If the purchaser were to be in default, pursuant to Article 1100.

**Article 1502**

If the purchaser were to be disturbed in the possession or ownership of the object acquired, or were to have reasonable grounds to fear being disturbed by an action to claim ownership or a mortgage action, he may suspend payment of the price until the seller has made the disturbance or the danger cease, unless the latter secures the return of the price, as the case may be, or unless it were to have been set forth that, notwithstanding any contingency, the purchaser shall be obliged to pay.

**Article 1503**

If the seller were to have reasonable grounds to fear the loss of the immovable good and the price, he may immediately rescind the sale.

In the absence of such grounds, the provisions of Article 1124 shall be observed.

**Article 1504**

In the sale of immovable good, even if it were to have been provided that termination of the contract shall take place ipso facto 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 1505**

In respect of movable goods, termination of the sale shall take place ipso iure, in the interests of the seller, if the purchaser, prior to expiration of the term provided to deliver the goods, were not to appear to receive them or, having appeared, were he not to offer the price at the same time, save if a further deferment were to have been covenanted for such purposes.

**CHAPTER VI****On termination of the sale****Article 1506**

A sale shall be rescinded on the same grounds as obligations, and, further, on the grounds stated in the preceding Chapters and pursuant to contractual repurchase or legal pre-emption.

**Section One. On contractual repurchase****Article 1507**

Contractual repurchase shall take place if the seller reserves the right to recover the objects sold, with the obligation to comply with the provisions of Article 1518 and whatever else has been covenanted.

**Article 1508**

The right mentioned in the preceding Article, in the absence of an explicit covenant, shall last four years counted from the day of the contract.

If a period is explicitly provided, it may not exceed 10 years.

**Article 1509**

If a seller were to fail to comply with the provisions of Article 1518, the purchaser shall irrevocably acquire ownership of the object sold.

**Article 1510**

A 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 Act with respect to third parties.

**Article 1511**

A purchaser shall substitute the seller in all rights and actions thereof.

**Article 1512**

A seller's creditors may not exercise contractual repurchase against the purchaser until after having proceeded against the seller's goods.

**Article 1513**

A purchaser encumbered by a repurchase covenant in respect of a part of an undivided goods who subsequently acquires the whole of such goods in the case provided in Article 404 may oblige the seller to purchase it entirely if the latter were to wish to exercise their repurchase covenant.

**Article 1514**

If several persons were to sell an undivided property jointly and in a single contract encumbered by a repurchase covenant, each of them may only exercise this right for their respective part.

The same shall be observed if the person who has sold a landed property on his own has bequeathed it to several heirs, in which case each heir may only recover the part acquired by him.

**Article 1515**

In the cases mentioned in the preceding Article, the purchaser may require all sellers or co-heirs to reach an agreement on the repurchase of the entirety of the object sold; if they were to fail to do so, the purchaser may not be compelled to accept a partial repurchase.

**Article 1516**

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 repurchase the whole property.

**Article 1517**

If a purchaser were to leave several heirs, the action to repurchase may only be exercised against each heir for his respective share, irrespective of whether the property remains undivided or has been distributed amongst them.

The aforesaid notwithstanding, if the estate has been divided and the object has been adjudicated to one of the heirs, the repurchase action may only be addressed against him for the whole.

**Article 1518**

A seller may not exercise the repurchase right without reimbursing the purchaser the sales price and, also:



1. Contractual expenses and any other lawful payment made pursuant to the sale;
2. Necessary and useful expenses made in the object sold.

**Article 1519**

If, upon entering into the sale, the property were to 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 were 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 preceding year, counting from the sale.

**Article 1520**

A seller who recovers the object sold shall receive it free from any lien or mortgage imposed by the purchaser, but shall be obliged to accept any leases established by the latter in bona fide, pursuant to local custom.

**Section Two. On legal repurchase****Article 1521**

Legal repurchase is the right to become subrogated, under the same conditions provided in the contract, in the position of the person who acquires the object pursuant to a sale or dation in payment.

**Article 1522**

A co-owner of an object owned in common may use the right of repurchase in the event that the shares of all other co-owners or of any of them were to be disposed of to a stranger.

If two or more co-owners were to wish to use the right of repurchase, they may only do so pro rata to their share in the object owned in common.

**Article 1523**

Owners of adjoining lands shall also be entitled to repurchase 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 to the benefit of other properties.

If two or more adjoining owners were to exercise the right of repurchase at the same time, the owner of the adjoining land with less surface shall be preferred; and if they have the same, the first who so requests.

**Article 1524**

A legal right of repurchase 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 repurchase were to become aware of the sale.

The right of repurchase of co-owners excludes that of adjoining owners.

**Article 1525**

The provisions of Articles 1511 and 1518 shall apply to legal repurchase.

**CHAPTER VII****On the conveyance of credits & other incorporeal rights****Article 1526**

Assignment of a credit, right or action shall not be effective against third parties until the day on which it is to be deemed certain pursuant to Articles 1218 and 1227.

If it were to refer to immovable goods, it shall be effective from the day of registration thereof at the Registry.

**Article 1527**

A debtor who, prior to becoming aware of the assignment, were to pay the creditor, shall be released from the obligation.

**Article 1528**

The sale or assignment of a credit comprises that of all ancillary rights thereof, such as guaranty, mortgage, pledge or privilege.

**Article 1529**

A bona fide seller 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 explicitly provided or unless the insolvency was 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.

A mala fide seller in shall always be liable for the payment of all expenses and damages.

**Article 1530**

If a bona fide assignor were to have accepted to be liable for the debtor's solvency, and the contracting parties were to have covenanted no provision concerning the duration of such liability, it shall only last one year, counting from the assignment of the credit, if the credit were already due.

If the credit were to be payable in a forward term or period which has not expired, liability shall cease one year after maturity thereof.

If a credit were to consist of a perpetual income, liability shall be extinguished after ten years, counting from the day of the assignment.

#### **Article 1531**

A person who sells an estate without listing the objects comprised therein shall only be liable for his capacity as heir.

#### **Article 1532**

A person who sells for a lump sum or as a global sale a whole set of specific 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 eviction of the whole or of the most.

#### **Article 1533**

If a seller were to have benefited from some fruits or were to have perceived anything from the estate sold thereby, he shall pay them to the purchaser, unless otherwise covenanted.

#### **Article 1534**

A purchaser shall, in his turn, pay the seller all that the latter has paid for any debts and liabilities on the estate and for the credits held against it, unless otherwise covenanted.

#### **Article 1535**

In the event of sale of a litigious credit, the debtor shall be entitled to extinguish it by reimbursing the assignee the price paid, any costs incurred and interest on the price from the day on which it was paid.

A credit shall be deemed litigious from the time that a reply to the claim relating thereto is filed.

A debtor may exercise this right within nine days, counting from the assignee's demand for payment.

#### **Article 1536**

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 landed property subject to the litigious right assigned.

### **CHAPTER VIII** **General provision**

#### **Article 1537**

The provisions of the present Title shall be construed pursuant to the provisions of the Mortgage Act in respect of immovable goods.

## **TITLE V**

### **On barter**

#### **Article 1538**

Barter is a contract whereby one of the contracting parties undertakes to give an object to receive another.

#### **Article 1539**

If one of the contracting parties were to have received the object which was promised to him to be bartered, and were to provide evidence that the object did not pertain to the person who gave it, he cannot be obliged to deliver the object that he offered in exchange, and shall be released from his obligation by returning the object he received.

#### **Article 1540**

A person who was dispossessed of the object received in a barter may choose between recovering the object he gave in exchange, or claim for damages; but he may only exercise the right to recover the object which he delivered whilst it remains in the possession of the other contracting party, without prejudice to rights acquired thereto in the meantime by a bona fide third party.

#### **Article 1541**

For all matters not especially provided in this Title, barter shall be governed by the provisions governing sales.



## **TITLE VI**

### **On the contract of lease**

#### **CHAPTER I**

##### **General provisions**

##### **Article 1542**

A lease may be of objects, works or services.

##### **Article 1543**

In a lease of objects, one of the parties undertakes to give to the other the enjoyment or use of an object for a specific time and at a certain price.

##### **Article 1544**

In a 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 1545**

Fungible goods which are consumed by their use cannot be the subject matter of this contract.

#### **CHAPTER II**

##### **On leases of rural & urban properties**

##### **Section One. General provisions**

##### **Article 1546**

A person who undertakes to assign the use of the object, execute the work or provide the service is called lessor; the person who acquires the use of the object or the rights to the work or service, which he undertakes to pay, is called lessee.

##### **Article 1547**

If the performance of a verbal lease contract were to have begun without providing evidence of the agreed price, the lessee shall return to the lessor the object encumbered by the lease, paying the regulated price for the time during which he enjoyed it.

##### **Article 1548**

Parents or guardians may not lease the goods of the minors or incapacitated persons and administrators without a special power of attorney may not lease goods for a term exceeding six years.

##### **Article 1549**

Leases of immovable goods which are not duly registered at the Property Registry shall not be effective against third parties.

**Article 1550**

If not explicitly forbidden in the contract to lease objects, a lessee may sublease the object leased in its entirety or in part, without prejudice to his liability for the performance of the contract against the lessor.

**Article 1551**

Without prejudice to his obligation to the sublessor, the sublessee shall be obliged to perform in favour of the lessor all acts relating to the use and conservation of the object encumbered by the lease in the manner covenanted between the lessor and the lessee.

**Article 1552**

A sublessee shall also have an obligation towards the lessor to pay the amount of the price agreed in the sublease which may be due at the time of the demand of payment, and any advance payments shall be deemed not to have been made, unless they have been effected pursuant to local custom.

**Article 1553**

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 according to the time during which the lessee enjoyed the use of the object.

**Section Two. On the rights & obligations of a lessor and of a lessee****Article 1554**

A lessor is obliged:

1. To deliver to the lessee the object constituting the subject matter of the contract;
2. To perform therein during the lease any repairs required to preserve it in a condition to be useful 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 1555**

A lessee is obliged:

1. To pay the price of the lease in the terms covenanted;
2. To use the object leased as a bonus pater familias, to use give it the agreed use; and, in the absence of agreement, the use which is inferred from the nature of the object leased pursuant to local custom;
3. To pay any expenses that may arise to notarise the contract.



#### **Article 1556**

If a lessor or a lessee were to fail to comply with the obligations stated 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 1557**

The lessor may not alter the form of the object leased.

#### **Article 1558**

If, during the lease, it were necessary to make an urgent repair in the object leased 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 were to be deprived of a part of the property during their performance.

If the repair were to last longer than forty days, the price of the lease shall be reduced proportionally according 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 1559**

A lessee is obliged to make the owner aware, as soon as possible, of any usurpation or detrimental novelty carried out or openly prepared by another in respect of the object leased.

He is also obliged to make the owner aware, with the same urgency, of the need for all repairs comprised in Number 2 Article 1.554.

In both cases, the lessee shall be liable for any damages caused to the owner as a result of his negligence.

#### **Article 1560**

A lessor shall not be liable for a mere de facto disturbance caused by a third party in the use of the property leased; the aforesaid notwithstanding, the lessee shall have direct action against the disturber.

No de facto disturbance shall exist if the third party, be it the Administration or an individual, has acted pursuant to a right to which it is entitled.

#### **Article 1561**

The lessee shall 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 1562**

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 1563**

A lessee is liable for the impairment or loss of the object leased, unless he were to prove that it has been caused without fault on his part.

**Article 1564**

A lessee is liable for impairment caused by the persons in his household.

**Article 1565**

If the lease was entered into for a specific period, it shall expire on the day provided without the need for prior notice.

**Article 1566**

If, upon expiration of the contract, a lessee were to remain in the enjoyment of the object subject of the lease for fifteen days with the lessor's acquiescence, the lease shall be deemed implicitly renewed for the period provided in Articles 1577 and 1581, unless prior notice has been given.

**Article 1567**

In the event of implicit renewal, any obligations entered into by a third party to secure the main contract shall cease in respect of it.

**Article 1568**

In the event of loss of the object leased or if any of the contracting parties were to fail to comply with the provisions of the lease, the provisions of Articles 1182 and 1183 and 1101 and 1124(\*) shall respectively apply.

(\*) In the first editions of the Civil Code the last two Articles were not cited but they do appear added both in the Legislative Collection and in the last official edition of the original version.

**Article 1569**

A 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 covenanted price;
3. Infringement of any of the conditions provided in the contract;
4. Destining the object leased to uses or services which have not been covenanted and which may impair it; or not to submit to the provisions of Number 2 of Article 1555 in the use thereof.

**Article 1570**

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 1571**

The purchaser of a leased real estate property shall be entitled to rescind the lease currently in force upon execution of the sale, save as otherwise covenanted, and except for the provisions of the Mortgage Act.

If the purchaser were to 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 1572**

A purchaser who has covenanted a contractual repurchase covenant may not exercise his power to evict the lessee until the period provided to exercise the right of repurchase has not elapsed.

**Article 1573**

A lessee shall have the same right granted to the usufructuary in respect of useful and voluntary improvements.

**Article 1574**

In the absence of a covenant as to 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 Three. Special provisions for leases of rural properties

**Article 1575**

A 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, unless otherwise especially covenanted.

Extraordinary fortuitous events shall be deemed to include fire, war, plague, unusual flooding, locusts, earthquake or other equally unaccustomed events, which the contracting parties would have been unable to foresee reasonably.

**Article 1576**

A lessee shall also not be entitled to a reduction in the rent if the fruits were to have been lost after being separated from their root or trunk.

**Article 1577**

A lease of a rural plot of land, if its term has not 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.

A 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 1578**

A outgoing lessee shall 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 pursuant to local custom.

#### **Article 1579**

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 covenanted by the parties and, in the absence thereof, by local custom.

#### **Section Four. Special provisions on the lease of urban properties**

#### **Article 1580**

In the absence of a special covenant, local custom shall apply as regards which repairs on urban properties shall be borne by the owner. In case of doubt, they shall be deemed to be borne by the latter.

#### **Article 1581**

If no term has been set for the lease, it shall be deemed to have been entered into from year to year if an annual lease has been set, from month to month if the lease is monthly, from day to day if it is daily.

In any event the lease shall cease upon expiration of the term, without the need for a special notice.

#### **Article 1582**

If a lessor of a dwelling, or part of it, destined for habitation by family, or a shop, or warehouse, or industrial establishment, were to 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 III**

#### **On the lease of works & services**

##### **Section One. On services by servants & salaried employees**

#### **Article 1583**

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 1584**

A 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 were to dismiss the servant without just cause, he shall 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 1585**

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 1586**

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 1587**

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 occupy by reason of their position.

**Section Two. On works for a lump sum****Article 1588**

The carrying out of building works may be hired under the agreement that the executor shall only provide his work or industry, or also supply materials.

**Article 1589**

If the person who contracted the building works undertook to supply the materials, he shall suffer their loss in the event that the building works were to be destroyed before delivery, unless the acceptance thereof has been unduly delayed.

**Article 1590**

A 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 were to have unduly delayed its acceptance, unless the destruction has resulted from the inferior quality of the materials, provided that the former duly warned the owner of this circumstance.

**Article 1591**

The contractor of a building which collapses as a result of defects in its construction shall be liable for any damages if such collapse were to 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 were to result from a defect in the land or from his management.

If the cause were to be the fault of the contractor, the action to claim for damages shall last fifteen years.

#### **Article 1592**

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 1593**

An architect or contractor who undertakes to perform the construction of a building or other building works for a lump sum based on a plan covenanted 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, nevertheless, request such increase if 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 permission.

#### **Article 1594**

An 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 constructor could have obtained.

#### **Article 1595**

If a certain work has 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 shall pay the builder's heirs, in proportion to the agreed price, the value of the part of the work which was carried out and the materials which were prepared, provided that any profit were to result for the owner from these materials.

The same shall be applicable if the person who contracted the work cannot finish it for any reason beyond his will.

#### **Article 1596**

A contractor is liable for the work carried out by any persons hired by him to perform it.

#### **Article 1597**

Persons who provide work and materials for building works which have been covenanted for a lump sum by the contractor shall have no action against the owner thereof in excess of the amount due by the owner to the contractor at the time of making the claim.

#### **Article 1598**

If it is be covenanted that the building works are to be carried out 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 1599**

Unless otherwise provided by covenant or custom, the price of the works shall be paid upon delivery thereof.

**Article 1600**

A person who has carried out works in a movable object shall be entitled to retain it as a pledge until he is paid.

**Section Three. On transportation by water & land of both persons  
& things**

**Article 1601**

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 objects entrusted to them.

The provisions of this Article shall be construed without prejudice to the provisions of the Code of Commerce in respect of transportation by sea and land.

**Article 1602**

Likewise, carriers shall be liable for the loss and detriment of the objects received, unless they were to prove that the loss or detriment has resulted from a fortuitous event or from act of God or force majeure.

**Article 1603**

The provisions of these Articles shall be construed without prejudice to the provisions of special laws and regulations.

## **TITLE VII**

### **On ground leases**

#### **CHAPTER I**

##### **General provisions**

##### **Article 1604**

A ground lease is constituted if certain immovable properties are destined to the payment of an annual rent or annuity as remuneration for a capital sum received in cash, or for the full or limited ownership conveyed in respect of the same properties.

##### **Article 1605**

A ground lease shall be emphyteutic if 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 1606**

A ground lease shall be of consignation if 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 1607**

A ground lease shall be of reservation if a person assigns to the other the freehold over an immovable property, reserving for himself the right to receive from the same immovable good an annuity payable by the lessee.

##### **Article 1608**

It is inherent to the nature of ground leases that the assignment of the capital sum or the immovable good be for perpetuity or for an indefinite period; nevertheless, the lessee may redeem the ground lease at his discretion, even despite any covenant to the contrary; this provision shall apply to all existing ground leases.

The parties may, nevertheless, agree that redemption of the ground lease may not to 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 years for ground leases of consignation or sixty for emphyteutic ground leases or those of reservation.

##### **Article 1609**

In order to perform such redemption, the lessee shall give one year's notice thereof to the lessor, or pay an annuity in advance.

##### **Article 1610**

Ground leases may not be redeemed in part unless explicitly covenanted.

Neither may they be redeemed against the will of the lessor if the lessee is not up to day in the payment of any annuities.

**Article 1611**

Redemption of ground leases created prior to the enactment of the present Code, if the relevant capital sum were to be unknown, shall be governed by the amount resulting from capitalising the annuity at 3 per cent.

If the annuity were to 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 law.

**Article 1612**

Any expenses arisen upon redemption and release of a ground lease shall be borne by the lessee, save for any expenses caused by reckless opposition thereto, in the opinion of the Courts of Law.

**Article 1613**

The annuity or rent in ground leases shall be established by the parties upon entering into the contract.

It may consist of money or fruits.

**Article 1614**

Annuitants shall be paid within the agreed periods and, in the absence of agreement, if they were to consist of monies, yearly in arrears counting from the day of the contract, and if they consist of fruits, upon completion of the respective harvest.

**Article 1615**

If the contract were to not have established the place where the annuities are to be paid, this obligation shall be met at the location of the property encumbered by the ground lease, provided that the lessor or his attorney is domiciled within the same municipality. Otherwise, if the lessee's domicile were to be located thereat, payment shall take place in the latter's domicile.

**Article 1616**

A lessor, at the time of delivering any annuity, may make the lessee to provide a receipt evidencing payment thereof.

**Article 1617**

Properties encumbered with a ground lease may be conveyed as gifts or in exchange for valuable consideration, and also the right to receive the annuity.

**Article 1618**

Properties encumbered with a ground lease may not be divided between two or more persons without the lessor's explicit consent, even if they are acquired by inheritance.

If the lessor allows the division, the part of the ground lease which shall encumber each share shall be established with his consent, and as many ground leases shall be created as portions into which the property is divided.

#### **Article 1619**

In the event of an attempt to adjudicate the property encumbered by a ground lease to several heirs if the lessor were to 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 were to bid the appraisal price, the property shall be sold with the encumbrance, and the price thereof shall be divided amongst the heirs.

#### **Article 1620**

Both the capital sum and the annuities in ground leases may prescribe pursuant to the provisions of Title XVIII of this Book.

#### **Article 1621**

Notwithstanding the provisions of Article 1110, payment of two consecutive annuities shall be required to presume all of the foregoing annuities to have been paid.

#### **Article 1622**

A lessee is obliged to pay any contributions and other taxes impinging the property subject to the ground lease.

The lessee, upon paying the annuity, may discount therefrom the part of such taxes corresponding to the lessor.

#### **Article 1623**

Ground leases give rise to an action in rem over the encumbered property. As well as the action in rem, the lessor may exercise a personal action to claim payment of any annuities which are in arrears and any damages and interest, if applicable.

#### **Article 1624**

A 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 1625**

If the property encumbered by a ground lease were to be fully lost or rendered useless, the ground lease shall be extinguished and payment of the annuity shall cease.

If it were to be lost only in part, the lessee shall not be exempted from paying the annuity, unless he were to prefer to relinquish the property in favour of the lessor.

If there has been negligence on the part of the lessee, he shall be obliged in both cases to pay damages.

**Article 1626**

In the case of the first Paragraph of the preceding Article, if the property were to be insured, the value of the insurance shall be destined to the payment of the capital sum of the ground lease and any annuities due and payable, unless the lessee were to prefer to invest it in rebuilding the property, in which case the ground lease 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 1627**

If the property encumbered by a ground lease were to be expropriated on grounds of public utility, the price thereof shall be destined to the payment of the capital sum of the ground lease and any annuities due and payable, and the ground lease shall be extinguished.

The preceding provision shall also apply to the case where the expropriation were to only impinge one part of the property, if the price obtained is sufficient to cover the capital sum of the ground lease.

If it were not sufficient, the ground lease shall continue to encumber the rest of the property, provided that the price thereof is sufficient to cover the capital sum of the ground lease plus 25 per cent. Otherwise, the lessee shall be obliged to replace the expropriated portion with another guarantee, or to redeem the ground lease, at his discretion, except for the provisions of Article 1631 relating to emphyteutic ground leases.

**CHAPTER II****On emphyteutic ground leases****Section One. Provisions relating to emphyteutic ground leases****Article 1628**

An emphyteutic ground lease may only be created in respect of immovable property and pursuant to public deed.

**Article 1629**

Upon creation of the emphyteutic ground lease, the contract shall determine the value of the property and the annuity to be paid, under penalty of nullity.

**Article 1630**

If the annuity were to consist of a specific amount of fruits, the species and quality thereof shall be set forth in the contract.

If it were to consist of a proportional share of the fruits obtained by the property, in the absence of an explicit covenant relating to the intervention of the lessor, the emphyteutic lessee shall 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 lessor or his representative or controller be present.

#### **Article 1631**

In the event of expropriation, the provisions of the first Paragraph Article 1627 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 lessor and the lessee, and the former shall receive the part of the capital sum of the ground lease proportionally corresponding to the expropriated part, according to the value given to the whole property upon creation of the ground lease, or the value which has served as redemption price, and the rest shall correspond to the emphyteutic lessee.

In this case, the ground lease 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 were to opt for total redemption thereof or were to choose to relinquish the property in favour of the lessor.

If, pursuant to the contract, any laudemium were to be payable, the lessor shall receive any amount corresponding to him in this respect only from the part of the price pertaining to the emphyteutic lessee.

#### **Article 1632**

An emphyteutic lessee shall make his 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 lease which would correspond to the owner thereof.

#### **Article 1633**

An emphyteutic lessee may dispose of the emphyteutic property and any accessions thereof both pursuant to acts inter vivos and by last will and testament, without prejudice to the rights of the lessor and pursuant to the provisions of the following Articles.

#### **Article 1634**

If the annuity were to 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 lessor's explicit consent.

**Article 1635**

An emphyteutic lessee may freely give or exchange the property, giving notice thereof to the lessor.

**Article 1636**

The lessor and the lessee shall reciprocally hold first pre-emption and repurchase 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.

**Article 1637**

For the purposes of the preceding Article, the lessor or lessee purporting to dispose of an emphyteutic property shall give notice thereof to the other, stating the final price offered to him or at which he purports to dispose of his rights.

Within twenty days of such notice, the other party may exercise his right of first refusal paying the aforesaid price. If he were to fail to do so, he shall forfeit such right and the disposal may proceed.

**Article 1638**

If the lessor, or, as the case may be, the emphyteutic lessee, were to not have exercised the right of first refusal mentioned in the preceding Article, he may exercise his right of repurchase to acquire the property for the price at which it is sold.

In such case, the right of repurchase must be exercised within nine days of execution of the public deed of sale. If such sale were to be concealed, this period shall begin to count from registration thereof with the Property Registry.

Concealment shall be presumed to exist if the public deed were not submitted to the Registry within nine days following execution thereof.

Irrespective of such presumption, concealment may be evidenced by other legal means.

**Article 1639**

If such disposal were to have taken place without the prior notice mentioned in Article 1637, the lessor and, as the case may be, the lessee, may exercise their right of repurchase at all times until one year elapses counting from registration of the disposal in the Property Registry.

**Article 1640**

In judicial sales of emphyteutic properties, the lessor and the lessee, in their respective capacity, 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 repurchase within nine business days following execution of the relevant public deed.

In this last case the prior notice required pursuant to Article 1637 shall not be necessary.

**Article 1641**

If several properties subject to the same ground lease were to have been disposed of, neither the right of first refusal nor the right of repurchase may be exercised only in respect of some whilst excluding the others.

**Article 1642**

If the direct or useful ownership were to pertain pro indiviso to several persons, each of them may exercise the right of first refusal pursuant to the provisions set forth for co-owners, and the lessor shall be preferred amongst 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 1643**

If the emphyteutic lessee were to 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 lessor unless he summons him to the eviction proceedings pursuant to the provisions of Article 1481.

**Article 1644**

In disposals of emphyteutic properties for valuable consideration, *laudemium* shall only be payable to the lessor if it has been explicitly provided in the emphyteutic contract.

If no fixed sum has 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 explicitly covenanted, such *laudemium* shall continue to be paid as accustomed, but shall not exceed 2 per cent of the disposal price unless a greater sum has been explicitly covenanted.

**Article 1645**

The obligation to pay *laudemium* shall be borne by the acquirer, save as otherwise covenanted.

**Article 1646**

If the emphyteutic has secured from the lessor a permission to perform the disposal, or were to have given him prior notice thereof as provided in Article 1637, the lessor may only claim, as the case may be, payment of the *laudemium* within one year following the day of registration of the public deed with the Property Registry. Outside such cases, the action shall be subject to ordinary prescription.

**Article 1647**

Every twenty- nine years the lessor 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 1648**

The property shall be forfeited and the lessor may demand restitution thereof:

1. By failure to pay the annuity for three consecutive years;
2. If the emphyteutic lessee were not to fulfil the condition provided in the contract or were to seriously impair the property.

**Article 1649**

In the first case of the preceding Article, the lessor must, in order to request such forfeiture, demand payment from the emphyteutic lessee judicially or via a Notary Public; if the lessee were to fail to pay within thirty days following the demand, the former shall be free to exercise his right.

**Article 1650**

An emphyteutic lessee may be released from such forfeiture in any event by redeeming the ground lease and paying all annuities due and payable within thirty days following the demand for payment or the summons pursuant to the claim.

Creditors of the emphyteutic lessee may exercise the same right within thirty days following recovery of the freehold by the lessor.

**Article 1651**

Redemption of the emphyteutic ground lease shall consist of delivery in a lump sum in cash to the lessor of the capital sum established as the value of the property at the time of creating the ground lease, and no other undertaking may be required unless it has been set forth in the contract.

**Article 1652**

In the event of forfeiture or rescission of the emphyteutic contract on any grounds, the lessor shall pay for any improvements which have increased the value of the property, provided that such increase were to subsist at the time of returning the property.

If the property were to 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 prescribed.

**Article 1653**

In the absence of testate heirs, descendants, ascendants, surviving spouse or relatives within the sixth degree of the last emphyteutic lessee, the property shall return to the lessor in its current condition, unless otherwise provided by the emphyteutic lessee.

**Article 1654**

The sub-emphyteutic contract shall hereafter be abolished.

## **Section Two. On foros & other contracts analogous to emphyteutic ground leases**

### **Article 1655**

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 leases in the preceding Section.

If they were to be temporary or for a limited term, they shall be deemed to be ordinary leases, and shall be governed by the provisions relating to such contract.

### **Article 1656**

A 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 provisions:

1. It shall be deemed to be extinguished fifty years from its granting, if no other term were to have been explicitly 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 were to 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 conferment of the right to make other plantings in the land assigned, provided that the main purpose thereof is the planting of vines.
5. The assignee may freely convey his right for valuable consideration or as a gift, but without the right to divide the use of the property, save with the owner's explicit consent.
6. In disposals for valuable consideration, the assignor and the assignee shall reciprocally hold rights of first refusal and repurchase pursuant to the provisions applicable to emphyteutic ground leases, and with the obligation to give each other prior notice as provided in Article 1637.
7. The colonist or assignee may resign or return the property to the assignor if he deems convenient, paying any impairments which were caused through 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 were necessary or have been carried out 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 were to have performed them with the written consent of the owner of the land, wherein the latter were to 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. If, after expiration of the fifty-year term or the term explicitly provided by the interested parties, the assignee were to continue to use and benefit from the property with the assignor's implicit consent, the former may not be evicted without prior notice, to be given one year in advance of rescission of the contract.

### CHAPTER III

#### On ground leases of consignation

##### Article 1657

In the event that payment of the annuity in a ground lease of consignation is agreed to be paid in fruits, the parties shall 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 lease.

##### Article 1658

Redemption of a ground lease of consignation shall consist of returning to the lessor in a lump sum in cash, the capital sum delivered by the latter to constitute the ground lease.

##### Article 1659

In the event of initiation of an action in rem against the property constituting the subject matter of the ground lease to claim payment of any annuities, if the remaining value of the property were not enough to cover the capital sum of the ground lease plus 25 per cent, the lessor may compel the lessee, at the latter's discretion, to redeem the ground lease or to complete the guaranty, or to relinquish the remainder of the property in favour of the lessor.

##### Article 1660

The lessor may also exercise the right set forth in the preceding Article in the remaining cases where the value of the property were to 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 business bankruptcy or insolvency of the lessee.

### CHAPTER IV

#### On ground leases of reservation

##### Article 1661

No ground lease of reservation 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 established by experts.

**Article 1662**

Redemption of this ground lease shall take place by the lessee's delivering to the lessor, in a lump sum in cash, the capital sum established pursuant to the preceding Article.

**Article 1663**

The provisions of Article 1657 shall apply to ground leases of reservation.

**Article 1664**

In the cases provided in Articles 1659 and 1660, the debtor in a ground lease of reservation may only be compelled to redeem the ground lease or to relinquish the property in favour of the lessor.



## **TITLE VIII**

### **On partnerships**

#### **CHAPTER I**

##### **General provisions**

##### **Article 1665**

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 1666**

A partnership must have a lawful purpose and be established in 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 1667**

A civil partnership may be incorporated in any form, unless immovable properties or rights in rem were to be contributed thereto, in which case a public deed shall be required.

##### **Article 1668**

A partnership contract shall be null and void if immovable properties are contributed thereto, unless an inventory thereof is drafted and signed by the parties, which shall be attached to the relevant public deed.

##### **Article 1669**

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 1670**

Civil partnerships may have any of the forms recognised by the Code of Commerce depending on their corporate object. In such case, the provisions thereof shall apply to the extent that they do not oppose the provisions of the present Code.

##### **Article 1671**

A partnership is either universal or specific.

##### **Article 1672**

A universal partnership may cover all existing good or all gains.

**Article 1673**

A partnership impinging all existing goods is the one whereby the parties put in common all goods currently pertaining to them, with the intention of dividing them amongst them, as well as sharing amongst them all gains made as a result thereof.

**Article 1674**

In a universal partnership of all existing goods, any goods which used to belong to each partner and all gains acquired as a result thereof shall become the common goods of them all.

The partners may also agree to share reciprocally any other gains; but the partnership may not comprise goods which the partners may subsequently acquire pursuant to inheritance, legacy or gift, but may include the fruits thereof.

**Article 1675**

A 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 goods held by each partner at the time of entering into the contract shall continue to be the private property of each of them, and the partnership shall only acquire the usufruct thereof.

**Article 1676**

A universal partnership contract entered into without specification of the kind of partnership shall only create a universal partnership of gains.

**Article 1677**

Persons to whom it is forbidden to reciprocally grant each other any gift or advantage may not create a universal partnership between them.

**Article 1678**

The object of a specific partnership may only be specific things, the use thereof or their fruits, or a specific undertaking, or the exercise of a profession or art.

**CHAPTER II****On the obligations of partners****Section One. On the reciprocal obligations of partners****Article 1679**

A partnership shall begin from the very moment of entering into the contract, unless otherwise covenanted.

**Article 1680**

A partnership shall last the covenanted term; in the absence of an agreement, for the term of the business serving as exclusive object of the partnership, if the former were to 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 1700 and for the provisions of Article 1704.

#### **Article 1681**

Each partner shall owe the partnership what he has undertaken to contribute thereto.

He shall also be liable for eviction of any certain and specific objects contributed to the partnership, in the same cases and in the same manner as the seller vis-à-vis the purchaser.

#### **Article 1682**

The partner who has undertaken to contribute a sum of money and has failed to provide it shall owe ipso iure the interest thereon from the day 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 day on which he took them for his personal benefit.

#### **Article 1683**

An industrial partner shall owe the partnership any gains obtained in the branch of industry constituting the purpose thereof.

#### **Article 1684**

If a partner authorised to administer the partnership were to 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 shall be attributed to both credits in proportion to their respective amounts, even if he has issued a receipt only on account of his own assets; nevertheless, if he has 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 construed without prejudice to the debtor's right to exercise the power granted pursuant to Article 1172, in the sole event that the partner's personal credit were to be more burdensome to him.

#### **Article 1685**

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 were to later become insolvent, even if he were to have issued a receipt only for his share of the credit.

#### **Article 1686**

Any partner shall be liable to the partnership for any damages suffered by the latter through his fault, and may not set off such damages against any benefits obtained from his industry.

**Article 1687**

The risk of specific and determined non-fungible objects 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 objects contributed were to be fungible, or if they cannot be stored without impairment thereof, or if they have been contributed in order to be sold, the risk shall be borne by the partnership. The risk of any objects 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 1688**

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 bona fide by the partner on corporate business, and for the risks which are inseparable from the management of the partnership.

**Article 1689**

Gains and losses shall be distributed as covenanted. If only the share of each partner in any gains were to have been covenanted, the same share shall apply for losses.

In the absence of an agreement, the part of each partner in gains and losses shall 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 has also contributed some capital, he shall also receive the proportional share corresponding thereto.

**Article 1690**

If the partners were to have covenanted to entrust to a third party the apportionment on the share corresponding to each partner in any gains and losses, such apportionment may only be challenged in the event that it were to be manifestly inequitable. Under no circumstances whatsoever 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.

Apportionment of gains and losses may not be entrusted to one of the partners.

**Article 1691**

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 1692**

A partner appointed as director in the partnership contract may perform all acts of administration in spite of his partners' opposition, unless he were to act in mala fide; his powers shall be irrevocable unless there are legitimate grounds for such revocation.

A power of attorney granted after entering into the contract, if such contract were to not include a covenant to confer it, may be revoked at any time.

#### **Article 1693**

If two or more partners were to have been entrusted with the management of the partnership without establishment of their duties, or without having stated 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 1694**

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 detriment to the partnership.

#### **Article 1695**

In the absence of stipulations relating to the manner of administration, the following provisions 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 objects which comprise the partnership's funds pursuant 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, without the consent of the others, any development of the partnership's immovable properties, even if he were to allege that it is useful for the partnership.

#### **Article 1696**

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 were to be a director.

### **Section Two. On partners' obligations to third parties**

#### **Article 1697**

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 explicit or implicit mandate;
3. For the partner to have acted within the limits provided in his power of attorney or mandate.

**Article 1698**

Partners shall not be jointly 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.

A partnership shall not be bound in respect of a third party for acts carried out 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 the benefit thereof.

The provisions of this Article shall be construed without prejudice to the provisions of provision 1 of Article 1695.

**Article 1699**

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 III****On the ways in which partnerships are extinguished****Article 1700**

A partnership shall be extinguished:

1. Upon expiration of the term for which it was created;
2. Upon loss of the object 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 1699.
4. By the will of any of the partners, pursuant to the provisions of Articles 1705 and 1707.

Partnerships mentioned in Article 1670 shall be excepted from the provisions of Numbers 3 and 4 of this Article in the cases in which they are to survive pursuant to the Code of Commerce.

**Article 1701**

If the specific object which a partner were to have promised to contribute to the partnership were to 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 object if only the use or enjoyment thereof were conveyed, with the partner contributing reserving the ownership thereof.

The aforesaid notwithstanding, the partnership shall not be dissolved as a result of the loss of the object if such loss were to take place after the partnership has acquired ownership thereof.

#### **Article 1702**

A partnership created for a specific period may be extended with the consent of all partners.

Such consent may be explicit or implicit, and shall be evidenced by ordinary means.

#### **Article 1703**

If a partnership were to be extended after expiration of its term, a new partnership shall be deemed to have been created. If it were to be extended prior to expiration of the term, the original partnership shall continue.

#### **Article 1704**

A covenant 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 carried out, as of the day 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 day

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 1700.

#### **Article 1705**

Dissolution of the partnership at the will or pursuant to the resignation of one of the partners shall only take place if no term of the partnership has been set or no term derives from the nature of the business.

For the resignation to be effective it must be given in bona fide at the proper time; likewise it must be communicated to the other partners.

#### **Article 1706**

A resignation shall be in mala fide if 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 if, things not being in order, the partnership were to be interested in delaying its dissolution. In this case the partnership shall continue until the conclusion of any outstanding business.

**Article 1707**

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 of Law.

**Article 1708**

Partition amongst the partners is governed by the provisions applicable to estates, both as regards its form and the resulting obligations. An industrial partner cannot be adjudicated any share in the goods provided, but only the fruits or profits thereof, pursuant to the provisions of Article 1689, unless otherwise explicitly covenanted.



## **TITLE IX**

### **On mandates**

#### **CHAPTER I**

##### **On the nature, form & kinds of mandates**

###### **Article 1709**

Pursuant to the mandate contract one person undertakes to provide a service or to do something on account or on behalf of another.

###### **Article 1710**

A mandate may be explicit or implicit.

An explicit mandate may be granted pursuant to a public or private deed, and even verbally.

Acceptance may also be explicit or implicit, as deduced from the acts of the mandatary.

###### **Article 1711**

Save as otherwise covenanted, a mandate shall be deemed to be without consideration.

Notwithstanding the foregoing, if a mandatary'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 1712**

A mandate is either general or special.

The first comprises all of the mandator's business.

The second comprises one or more specific business transactions.

###### **Article 1713**

A mandate, conceived in general terms, only comprises acts of administration.

An explicit 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 mandatary to submit to arbitrators or amiable compositeurs.

###### **Article 1714**

A mandatary cannot exceed the limits of the mandate.

###### **Article 1715**

The limits of the mandate shall not be deemed to have been exceeded if the mandate were to be complied with in a manner which is more advantageous to the mandator than the manner set forth by the latter.

**Article 1716**

An emancipated minor may be a mandatary, but the mandator shall only be entitled to bring an action against him pursuant to the provisions regulating the obligations of minors.

**Article 1717**

If the mandatary were to act in his own name, the mandator shall have no action against the persons with whom the mandatary has entered into any contract, nor the latter against the mandator.

In this case, the mandatary shall be directly bound with the person with whom he has contracted, as if the affair were a personal affair of his own. If the affair were to relate to objects owned by the mandator shall be excepted from the foregoing.

The provisions of this Article shall be construed without prejudice to any actions between mandator and mandatary.

**CHAPTER II****On a mandatary's obligations****Article 1718**

By his acceptance, the mandatary shall be obliged to perform the mandate and shall be liable for any damages caused to the mandator if he were to fail to perform it.

He shall also finish any business commenced prior to the death of the mandator, if any danger were to result from delay.

**Article 1719**

The mandatary shall comply with the mandator's instructions in the performance of the mandate.

In the absence thereof, he shall do all that a *bonus pater familias* would do, in view of the nature of the business.

**Article 1720**

A mandatary is obliged to account for his transactions and to pay the mandator any amounts received pursuant to the mandate, even if the amount received were not due to the latter.

**Article 1721**

A mandatary may appoint a substitute if the mandator has not forbidden it; but he shall be liable for his substitute's performance:

1. If he was not granted the power to appoint one;
2. If he was granted such power, but without appointment of a specific person, and the appointee were to have been evidently incapable or insolvent;

The actions of a substitute appointed contrary to the mandator's prohibition shall be null and void.

**Article 1722**

In the cases comprised in both numbers of the preceding Article, the mandator shall also be entitled to bring an action against the substitute.

**Article 1723**

The liability of two or more mandataries, even if they were appointed simultaneously, is not joint and several unless otherwise provided.

**Article 1724**

A mandatory shall owe interest for any amounts applied to his own expenses from the day on which he did so, and for any amounts owed thereby after revocation of the mandate, from the time if he has incurred in default.

**Article 1725**

A mandatory acting as such shall not be personally liable to the party with whom he contracts except if he explicitly undertakes to be liable or if he exceeds the limits of the mandate without making the other party sufficiently aware of his powers.

**Article 1726**

A mandatory is liable not just for malice but also for negligence, which shall be appreciated more or less rigorously by the Courts of Law depending on whether the mandate was remunerated or not.

**CHAPTER III****On a mandator's obligations****Article 1727**

A mandator shall fulfil all obligations undertaken by the mandatory within the limits of the mandate.

A mandator shall not be bound insofar as the mandatory has exceeded the mandate save if the mandator were to ratify such acts in an explicit or implicit manner.

**Article 1728**

A mandator shall advance the mandatory, upon the latter's request, the moneys necessary to perform the mandate.

If the mandatory were to have advanced such amounts, the mandator shall reimburse them, even if the transaction has not been successful, provided that the mandatory is not at fault.

Reimbursement shall comprise interest on the amounts advanced, counting from the day of the advance.

**Article 1729**

The mandator shall also compensate the mandatary for any damages caused thereto as a result of the performance of the mandate, without fault or imprudence on the part of the mandatary.

**Article 1730**

The mandatary may retain as pledge the objects which constitute the subject matter of the mandate until the mandator were to compensate and reimburse him as provided in the two preceding Articles.

**Article 1731**

If two or more persons have appointed a mandatary for a common transaction, they shall be jointly and severally liable to him for all purposes relating to the mandate.

**CHAPTER IV****On the ways in which a mandate is extinguished****Article 1732**

The mandate ends:

1. By revocation thereof;
2. By resignation or incapacitation of the mandatary;
3. By death, declaration of prodigality, bankruptcy or insolvency of the mandator or the mandatary.

A mandate shall also be extinguished due to the subsequent incapacitation of the mandator unless the mandate stipulates the continuation thereof or the mandate is granted in case of the mandator's incapacity as assessed by the latter. In these cases, the mandate may be revoked by a judicial resolution ordered when the guardianship body is constituted or later at the request of the guardian.

**Article 1733**

A mandator may revoke the mandate at will, and compel the mandatary to return the document in which the mandate is set forth.

**Article 1734**

If the mandate has been granted to contract with specific persons, its revocation may not prejudice such persons unless they have been given notice thereof.

**Article 1735**

The appointment of a new mandatary for the same business transaction shall entail the revocation of the prior mandate from the day on which it was made known to the former mandatary, save as provided in the preceding Article.



#### **Article 1736**

A mandatary may resign from the mandate giving notice thereof to the mandator. If the latter were to suffer any detriment as a result of the resignation, the mandatary shall compensate him, unless he has based his resignation on the impossibility to continue to exercise the mandate without serious detriment to himself.

#### **Article 1737**

Even if the mandatary were to resign from the mandate pursuant to a just cause, he shall continue with the mandate until the mandator is able to take the necessary measures to cover for his absence.

#### **Article 1738**

The actions carried out by the mandatary being unaware of the death of the mandator or any other causes which involve extinction of the mandate shall be valid and fully effective vis-à-vis bona fide third parties.

#### **Article 1739**

In the event of the mandatary's death, his heirs shall make the mandator aware thereof and in the meantime take any actions required by circumstances in the interests of the mandator.

## **TITLE X**

### **On loans**

#### **General provision**

##### **Article 1740**

Pursuant to a loan contract, one of the parties delivers to the other either a non-fungible object 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 object, under the condition to return the same amount of the object, and of the same kind and quality, in which case it shall simply be called a loan.

Commodatum is in essence gratuitous.

A simple loan may or not be with interest.

#### **CHAPTER I**

##### **On commodatum**

##### **Section One. On the nature of commodatum**

##### **Article 1741**

The commodans shall retain ownership of the object loaned. The commodatarius shall acquire the use thereof, but not its fruits; if any consideration were to be payable by the commodatarius, the contract shall cease to be commodatum.

##### **Article 1742**

Rights and obligations which arise from commodatum shall pass to the heirs of both contracting parties, unless the commodatum was made in consideration of the commodatarius, in which case the latter's heirs shall not be entitled to continue using the object which has been loaned.

##### **Section Two. On a commodatarius's obligations**

##### **Article 1743**

A commodatarius shall be obliged to pay the ordinary expenses required for the use and conservation of the object loaned.

##### **Article 1744**

If the commodatarius were to put the object to a use other than that for which it was loaned, or were to keep it in his possession longer than covenanted, he shall be liable for its loss, even if it were to occur as a result of a fortuitous event.

##### **Article 1745**

If the object loaned was delivered subject to an appraisal and it were to be lost, even if it were to occur as a result of a fortuitous event, the commodatarius shall be liable for



the price thereof, unless it has been explicitly covenanted that he is to be exonerated from liability.

#### **Article 1746**

A commodatarius shall not be liable for any impairments to the object as a result of ordinary wear and tear and without negligence on his part.

#### **Article 1747**

A commodatarius may not retain the object loaned with the pretext that the commodans owes him an amount, even if such amount results from expenses.

#### **Article 1748**

If there are more than one commodatarius and they are jointly lent an object they shall be jointly and severally liable for such object, pursuant to the provisions of the present Section.

Section Three. On a commodans's obligations

#### **Article 1749**

A commodans may not claim the object loaned until after it has completely served the use for which it was loaned. Notwithstanding the foregoing, if, prior to such expiration, the commodans were to have urgent need for the object, he may claim its return.

#### **Article 1750**

If no duration of the commodatum or use to which the object loaned is to be put have been covenanted, and if the latter were not established pursuant to local custom, the commodans may claim it at will.

In the event of doubt, the burden of proof shall rest on the commodatarius.

#### **Article 1751**

A commodans shall pay any extraordinary expenses arisen during the term of the contract for the conservation of the object loaned, provided that the commodatarius gives notice thereof before making them, save if they were to be so urgent that one cannot wait for the results of the notice without danger.

#### **Article 1752**

A commodans who, being aware of the defects of the object loaned, were to not have made the commodatarius aware of them shall be liable to the latter for any damages suffered by the latter by reason thereof.

## CHAPTER II

### On simple loans

#### **Article 1753**

A person who receives as a loan money or another fungible object, acquires the ownership thereof, and is obliged to return to the creditor the same amount thereof, of the same kind and quality.

#### **Article 1754**

The obligation of the person who takes money out on loan shall be governed by the provisions of Article 1170 of this Code.

If the object loaned is another fungible object, 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 has been an alteration in its price.

#### **Article 1755**

No interest shall be due unless explicitly covenanted.

#### **Article 1756**

The borrower who has paid interest without this being stipulated may not claim the refund thereof or charge it to the principal.

#### **Article 1757**

Pledge loan establishments shall likewise be subject to the regulations which affect them.



## **TITLE XI**

### **On deposits**

#### **CHAPTER I**

##### **On deposits in general & the different kinds thereof**

###### **Article 1758**

A deposit is constituted from the time when a person receives an object pertaining to another with the obligation to keep it and return it.

###### **Article 1759**

Deposits may be constituted judicially or extrajudicially.

#### **CHAPTER II**

##### **On proper deposits**

###### **Section One. On the nature & essence of the deposit contract**

###### **Article 1760**

A deposit is a contract without consideration, save as otherwise covenanted.

###### **Article 1761**

Only moveable goods may be the object of deposit.

###### **Article 1762**

Extrajudicial deposit may be necessary or voluntary.

###### **Section Two. On voluntary deposits**

###### **Article 1763**

A voluntary deposit takes place if delivery is made at the will of the depositor. A deposit may also be made by two or more persons who believe themselves entitled to the object deposited, with a third party, who shall deliver the object to the person entitled thereto, as the case may be.

###### **Article 1764**

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 depositary and may be compelled to return the object by the guardian, conservator or administrator of the person who made the deposit, or by the latter, if he were to subsequently achieve sufficient capacity.

###### **Article 1765**

If a deposit was made by a capable person to another who is not, the depositor shall only have an action to claim the object deposited whilst it remains in the possession of

the depositary, or to have the latter pay him the amount by which he has been enriched by the object, or its price.

### **Section Three. On the depositary's obligations**

#### **Article 1766**

A depositary is obliged to keep the object and to return it, upon request, to the depositor, or his successors, or to the person appointed in the contract. His liability as regards the care and loss of the object shall be governed by the provisions of Title I of this Book.

#### **Article 1767**

A depositary may not avail himself of the object deposited without the depositor's explicit consent.

Otherwise, he shall be liable for any damages.

#### **Article 1768**

If the depositary were to have permission to avail himself of or to use the object, 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 1769**

If the object given in deposit is delivered closed and sealed, the depositary shall return it in the same way, and shall be liable for any damages if the seal or lock has been forced as a result of his negligence.

The depositary's negligence shall be presumed, unless evidence to the contrary is provided.

As concerns the value of the object deposited, if the forcing of the lock or seal were to be attributable to the depositary, the depositor's statement shall prevail, unless evidence to the contrary is provided.

#### **Article 1770**

The object deposited shall be returned with all products and accessions thereof.

If the deposit were to consist of money, the provisions of Article 1724 concerning the mandatary shall be applied to the depositary.

#### **Article 1771**

A depositary may not require the depositor to prove he is the owner of the object deposited.

The aforesaid notwithstanding, if he were to discover that the object has been stolen and the identity of its rightful owner, he shall make the latter aware of the deposit.

If, in spite of this, the owner were to not claim within one month, the depositary shall be released from all liability by returning the object deposited to the person from whom he received it.

**Article 1772**

If there are two or more depositors, if they are not jointly and severally liable and the object may be divided, each of them may only claim his share.

In the event of joint and several liability or if the object may not be divided, the provisions of Articles 1141 and 1142 of this Code shall apply.

**Article 1773**

If the depositor, after making the deposit, were to lose his capacity to enter into contracts, the deposit may only be returned to the persons empowered to administer his goods and rights.

**Article 1774**

If upon making a deposit a place has been established for its return, the depositary shall take the object deposited to such a place, but any freight expenses shall be borne by the depositor.

In the absence of designation of a place to make the return, it shall be made at the place where the object deposited is located, even if it were not the same as the place where the deposit was made, provided that there has been no malice on the part of the depositary.

**Article 1775**

A deposit shall be restored to the depositor at his request, even if the contract were to have set forth a specific period or time for such return.

This provision shall not apply if the deposit in the depositary's possession has been judicially attached, or if the latter has been notified of a third party's opposition to the return or delivery of the object deposited.

**Article 1776**

A depositary 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 were to refuse, may obtain from the Judge the judicial deposit thereof.

**Article 1777**

A depositary who has lost the object deposited as a result of act of God or force majeure and has received another in its stead shall be obliged to deliver the latter to the depositor.

**Article 1778**

A depositary's heir who has sold in bona fide the object 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 has not been paid the price.

#### **Section Four. On a depositor's obligations**

##### **Article 1779**

A depositor is obliged to reimburse the depositary for any expenses made for the conservation of the object deposited and to compensate any damages incurred as a result of the deposit.

##### **Article 1780**

A depositary may retain as pledge the object deposited until full payment of any amounts due pursuant to the deposit.

#### **Section Five. On necessary deposits**

##### **Article 1781**

The deposit is necessary:

1. If it is made in compliance with a legal obligation;
2. If it takes place on occasion of any calamity, such as fire, collapse, pillage, shipwreck or other similar events.

##### **Article 1782**

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 provisions applicable to voluntary deposits.

##### **Article 1783**

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 have been made aware of the personal effects introduced into their property, and that the travellers in their turn observe any precautions established by such innkeepers or their substitutes concerning the care and surveillance of such objects.

##### **Article 1784**

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 act of God or force majeure.



### CHAPTER III

#### On sequestrations

##### **Article 1785**

Judicial deposit or sequestration takes place when the attachment or seizure of goods under litigation is ordered.

##### **Article 1786**

Sequestration may impinge both movable and immovable goods.

##### **Article 1787**

The depositary of the properties or objects sequestered may not be released from his commission until conclusion of the controversy which motivated it, unless the Judge were to order otherwise, with the consent of all interested parties or on other legitimate grounds.

##### **Article 1788**

The depositary of goods sequestered is obliged to fulfil all obligations of a bonus pater familias in respect thereof.

##### **Article 1789**

For matters not provided in this Code, judicial sequestration shall be governed by the provisions of the Civil Procedure Act.

## **TITLE XII**

### **On random or chance-based contracts**

#### **CHAPTER I**

##### **General provisions**

###### **Article 1790**

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 shall take place in an unspecified time.

#### **CHAPTER II**

##### **On contracts of support**

###### **Article 1791**

Pursuant to the contract of support one of the parties undertakes to provide a person with a dwelling, maintenance and assistance of all kinds during his whole life, in exchange for the conveyance of a capital sum consisting of any kind of goods and rights.

###### **Article 1792**

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 be set by a Court of Law.

###### **Article 1793**

The scope and quality of the support shall be as results from the contract and, unless otherwise covenanted, shall not depend on the circumstances of the net worth and needs of the obliged person or of the net assets of the person receiving it.

###### **Article 1794**

The obligation to give support shall not cease for the reasons mentioned in Article 152 save as provided in Section one thereof.

###### **Article 1795**

Breach of the obligation to give support shall entitle the beneficiary, without prejudice to the provisions of Article 1792, to choose between demanding performance thereof, including payment of support accrued prior to the claim, or rescission of the contract, with application, in both cases, of the general provisions governing reciprocal obligations.

In the event that the beneficiary were to choose rescission, the person obliged to provide support shall immediately return the goods received pursuant to the contract,



and the Judge may, nevertheless, resolve that the restitution to which the beneficiary is entitled in compliance with the provisions of the following Article be delayed in whole or in part, in the beneficiary's benefit, for the period and with the security that shall be ordered.

#### **Article 1796**

The beneficiary shall receive at least a surplus sufficient to constitute once again an analogous pension for his remaining life as a result of rescission of the contract.

#### **Article 1797**

If the goods or rights conveyed in exchange for the support may be registered, the rights of the beneficiary 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 Act.

### **CHAPTER III**

#### **On gambling & betting**

#### **Article 1798**

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 voluntarily paid, unless it has been maliciously obtained, or such person were to be a minor or has been incapacitated to administer his own goods.

#### **Article 1799**

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 1800**

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 1801**

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, nevertheless, find against a claim if the amount exchanged in the gamble or wager has been excessive, or reduce the obligation to the extent that it exceeds the habit of a bonus pater familias.

## **CHAPTER IV**

### **On life annuities**

#### **Article 1802**

A 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 goods whose ownership is conveyed at the time of the contract, with the encumbrance of paying the annuity.

#### **Article 1803**

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 1804**

An annuity constituted based on the life of a person who is dead at the time of its establishment, or who at the time suffered from an illness which caused his death within twenty days of such time shall be null and void.

#### **Article 1805**

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 conveyed goods; 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 1806**

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 has begun during his life shall be paid.

#### **Article 1807**

A person who constitutes an annuity over his goods as a gift may provide, at the time of the establishment thereof, that such annuity shall not be subject to attachment as a result of the pensioner's obligations.

#### **Article 1808**

An annuity may not be claimed without evidencing the existence of the person based on whose life it was constituted.



## **TITLE XIII**

### **On settlements & compromises**

#### **CHAPTER I**

##### **On settlements**

##### **Article 1809**

A 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 1810**

The same provisions shall apply to settle in respect of the goods and rights of children subject to parental authority as apply to their disposal.

##### **Article 1811**

A 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 1812**

Corporations which are legal persons may only reach a settlement in the manner and meeting the requirements necessary to dispose of their goods.

##### **Article 1813**

It is possible to reach a settlement in respect of the civil action resulting from a criminal offence, but the public action to impose the legal sentence shall not be extinguished as a result thereof.

##### **Article 1814**

It is not possible to reach a settlement in respect of the civil status of persons, matrimonial issues or future support.

##### **Article 1815**

A settlement only comprises the subjects specifically stated therein or who, by necessary induction based on the wording thereof, are deemed to be comprised therein.

A general renunciation of rights shall be deemed to refer only to those which relate to the dispute to which the settlement refers.

##### **Article 1816**

A 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 1817**

A settlement reached due to error, malice, duress or forged documents shall be subject to the provisions of Article 1265 of this Code.

Notwithstanding the foregoing, neither party may use an error in fact as defence against the other whenever the latter has settled to end a lawsuit already begun.

**Article 1818**

Discovery of new documents shall not constitute grounds to annul or rescind the settlement, unless there has been mala fide.

**Article 1819**

If, after a lawsuit is resolved by a final judgment, a settlement were to be reached because one of the parties were to be unaware of the existence of such final judgment, such party may request rescission of the settlement.

Unawareness of a judgment which may be revoked does not constitute grounds to challenge a settlement.

**CHAPTER II****On compromises****Article 1820**

(Repealed)

**Article 1821**

(Repealed)



## **TITLE XIV**

### **On guarantees**

#### **CHAPTER I**

##### **On the nature & scope of guarantees**

###### **Article 1822**

Pursuant to a guaranty one person undertakes to pay or perform on behalf of a third party if the latter were to fail to do so.

If the guarantor were to be jointly and severally liable with the principal debtor, the provisions of Section four, Chapter III, Title I of this Book shall apply.

###### **Article 1823**

A guaranty may be contractual, legal or judicial, without consideration or for valuable consideration.

It may also be created not only in favour of the principal debtor, but also in favour of another guarantor, either with the latter's consent or without the latter knowing or even with the latter's opposition.

###### **Article 1824**

A 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 obliged person, 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 1825**

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 1826**

A guarantor may undertake to pay less, but not more than the principal debtor, both as concerns the amount and the burdensomeness of the conditions.

If he were to have undertaken to pay more, his obligation shall be reduced to the limits of the debtor's obligation.

###### **Article 1827**

A guaranty cannot be presumed: it must be explicit and may not extend beyond what is explicitly provided therein.

A simple or undefined guaranty shall comprise not only the principal obligation but also all ancillary obligations thereof, even legal expenses; but the guarantor shall only be liable for the legal expenses may accrue after the guarantor has been demanded to pay.

#### **Article 1828**

A person obliged to provide a guarantor shall present a person with the capacity to contract obligations and sufficient goods to take on the liability for the obligation guaranteed thereby. A guarantor shall be deemed subject to the jurisdiction of the Judge of the place where the obligation is to be carried out.

#### **Article 1829**

If the guarantor were to become insolvent, the creditor may request another who meets the conditions required in the preceding Article. The case where the creditor has demanded and agreed to the appointment of a specific person as guarantor shall be excepted from the foregoing.

### **CHAPTER II**

#### **On the effects of guarantees**

##### **Section one. On the effects of a guaranty between a guarantor & a creditor**

#### **Article 1830**

A guarantor may not be compelled to pay the creditor unless the creditor has first proceeded against all of the debtor's goods.

#### **Article 1831**

Proceeding first against the debtor's goods shall not be required:

1. In the event of explicit renunciation of the beneficium excussionis by the guarantor;
2. If the guarantor is jointly and severally liable with the debtor;
3. In the event of the debtor's business or civil bankruptcy;
4. If no judicial claim can be brought against the debtor within the Kingdom of Spain.

#### **Article 1832**

For the guarantor to take advantage of the beneficium excussionis he must use it as defence against the creditor as soon as the latter were to demand payment and point out goods pertaining to the debtor that may be attached within Spanish territory which are sufficient to cover the amount of the debt.

#### **Article 1833**

If the guarantor fulfils all conditions provided in the preceding Article, the creditor who has been negligent in proceeding against the goods indicated shall be liable, to the



limit of the value of such goods, for the debtor's insolvency resulting from such oversight.

#### **Article 1834**

A creditor may summon the guarantor in his claim against the principal debtor, but the beneficium excussionis shall always remain in force, even if a judgment were to find against both.

#### **Article 1835**

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 1836**

A guarantor's guarantor shall enjoy the beneficium excussionis both in respect of the guarantor and of the principal debtor.

#### **Article 1837**

If there are several guarantors of the same debtor for the same debt, liability for such debt shall be divided amongst all of them. The creditor may only claim against each guarantor the part which he is obliged to pay, unless it has been explicitly provided that the guarantors are joint and severally liable.

The benefit of division against co-guarantors shall cease in the same cases and on the same grounds as the beneficium excussionis against the principal debtor.

### **Section Two. On the effects of the guaranty between a debtor & a guarantor**

#### **Article 1838**

The guarantor who pays on behalf of the debtor shall be compensated by the latter.

Such compensation shall comprise:

1. The total amount of the debt;
2. Interest at the legally established rate 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, if applicable.

The provisions of this Article shall apply even if the guaranty has been provided without the debtor being aware of it.

**Article 1839**

As a result of his payment the guarantor shall become subrogated in 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 1840**

If a guarantor were to 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 1841**

If the debt were subject to a forward term and the guarantor has paid it before it became due and payable, he may not request the debtor to reimburse him until expiration of the term.

**Article 1842**

If a guarantor were to have paid without giving notice thereof to the debtor, and the debtor, being unaware of such payment, were to repeat it in his turn, the guarantor shall have no recourse against the debtor, but he shall have recourse against the creditor.

**Article 1843**

Even before having paid, the guarantor may proceed against the principal debtor:

1. If he receives a judicial demand of payment;
2. In the event of business bankruptcy, civil bankruptcy or insolvency;
3. If the debtor has undertaken to release him from the guaranty within a specific period, and such period has expired;
4. If the debt has become payable as a result of expiration of the term in which it is to be paid;
5. After ten years, if 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 action shall tend to the release of the guaranty or to obtain security covering him against the proceedings by the creditor, and against the danger of the debtor's insolvency.

**Section Three. On the effects of a guaranty amongst co-guarantors****Article 1844**

If there are two or more guarantors of the same debtor for the same debt, the guarantor amongst them who has paid it may claim from each of the others the part which each one is proportionally obliged to pay.



If any of them were to 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 were to be subject to civil or business bankruptcy.

#### **Article 1845**

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 1846**

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 III**

#### **On the extinction of a guaranty**

#### **Article 1847**

The guarantor's obligation shall be extinguished at the same time as the debtor's and on the same grounds as other obligations.

#### **Article 1848**

Confusion between the person of the debtor and the guarantor if one of them inherits from the other shall not extinguish the sub-guarantor's obligation.

#### **Article 1849**

If the creditor voluntarily accepts an immovable goods or any commercial paper as payment of the debt, the guarantor shall be released, even if the creditor were to subsequently be dispossessed of them.

#### **Article 1850**

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 1851**

The extension granted by the creditor to the debtor without the guarantor's consent shall extinguish the guaranty.

**Article 1852**

The guarantors, even if they are joint and several, shall be released from their obligation if, as a result of any act of the creditor, they cannot be subrogated in the rights, mortgages and privileges thereof.

**Article 1853**

A 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 of the debtor.

**CHAPTER IV****On legal & a judicial guarantees****Article 1854**

A guarantor required pursuant to the provisions of the law or a Court order must meet the qualities provided in Article 1828.

**Article 1855**

If the person obliged to provide a guaranty in the cases provided in the preceding Article were to be unable to find one, a pledge or mortgage deemed sufficient to cover his obligation shall be accepted in its stead.

**Article 1856**

A judicial guarantor cannot request the *beneficium excussionis* in respect of the goods of the principal debtor.

The sub-guarantor, in the same case, may not request the *beneficium excussionis* in respect neither of the goods of the principal debtor nor of the guarantor.



## TITLE XV

### On the contracts of pledge, mortgage & antichresis

#### CHAPTER I

##### Provisions common to pledges & mortgages

###### Article 1857

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 object 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 goods 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 goods.

###### Article 1858

It is also of the essence in these contracts that, upon maturity of the principal obligation, the objects constituting the pledge or mortgage may be disposed of to pay the creditor.

###### Article 1859

The creditor cannot appropriate the objects pledged or mortgaged, nor dispose of them.

###### Article 1860

The pledge and the mortgage are indivisible, even if the debt were to 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 objects mortgaged or pledged, each of them were to 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 were to pay the part of debt for which each object is especially liable.

###### Article 1861

The contracts of pledge and mortgage may secure all kinds of obligations, whether pure or subject to conditions precedent or subsequent.

**Article 1862**

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, objects which he knew were encumbered, or by pretending to be the owner of objects which do not pertain to him.

**CHAPTER II****On pledges****Section One. On pledges****Article 1863**

As well as the requirements provided in Article 1857, the contract of pledge shall require giving possession of the object to the creditor or to a third party agreed by common consent.

**Article 1864**

All movable objects which are the object of trade may be pledged, provided that they may be possessed.

**Article 1865**

No pledge shall be effective against a third party unless the certainty of its date is set forth in a public deed.

**Article 1866**

The contract of pledge entitles the creditor to retain the object in his possession or in that of the third party to whom it is delivered until he is paid the credit.

If, whilst the creditor retains the pledge, the debtor were to 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 1867**

A creditor shall care for the object pledged with the diligence of a bonus pater familias; he is entitled to be paid any expenses made for its conservation and shall be liable for its loss or impairment pursuant to the provisions of this Code.

**Article 1868**

If a pledge were to generate interest, the creditor shall set off any interest received against the interest due by the creditor; and, if none were to be due or to the extent that such amount were to exceed the interest legitimately owed, shall charge it to repay the principal.

**Article 1869**

Unless he is deprived of the object 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 object pledged is entitled.

**Article 1870**

The creditor may not use the object pledged without the owner's permission and, if he were to do so or were to abuse it in any other manner, the latter may request that it be placed in deposit.

**Article 1871**

A 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 1872**

A creditor whose credit were to not have been paid in due time may proceed to dispose of the object pledged before a Notary Public. Such disposal shall specifically take place in a public auction, summoning the debtor and the owner of the object pledged, as the case may be. If the pledge were to fail to be disposed of in the first auction, a second one may take place using the same procedure; if it were to also fail, the creditor may become the owner of the object pledged. In such case he shall be obliged to issue a receipt for the full credit.

If the pledge were to consist of listed securities, they shall be sold in the manner provided in the Code of Commerce.

**Article 1873**

As concerns Pawnshops and other public establishments which, pursuant to their charter or profession, lend money accepting pledges as collateral, their special laws and regulations shall apply, and, on a subsidiary basis, the provisions of this Title.

**Section Two. On pledges without possession****Articles 1863 bis to 1873 bis**

(Repealed)

**CHAPTER III****On mortgages****Article 1874**

Only the following may be the object of a contract of mortgage:

1. Immovable goods;
2. Rights in rem that may be disposed of pursuant to the law, created on the above kind of goods.

**Article 1875**

As well as the requirements provided in Article 1857, it is indispensable, for the mortgage to be validly constituted, that the document of its constitution be registered with 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 established, save as provided in the Mortgage Act 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 1876**

A mortgage binds the goods which it encumbers, whoever their possessor, directly and immediately to the performance of the obligation in security whereof it is constituted.

**Article 1877**

A mortgage extends to natural accretions, 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 1878**

A mortgage loan may be disposed of or assigned to a third party in whole or in part, complying with the legally established procedures.

**Article 1879**

A creditor may claim from the third party who is in possession of the mortgaged properties the part of the loan secured with the goods possessed by the latter, under the terms and in compliance with the procedures set forth in the law.

**Article 1880**

The form, the scope and the effects of the mortgage, and all matters relating to the creation, amendment and cancellation thereof and remaining aspects not included in the present Chapter shall be subject to the provisions of the Mortgage Act, which shall remain in force.

## **CHAPTER IV**

### **On antichresis**

**Article 1881**

Pursuant to an antichresis the creditor acquires the right to receive the fruits of an immovable goods pertaining 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 1882**

Unless otherwise covenanted, 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 1883**

A debtor may not recover the enjoyment of the property without first paying in full the amount due to the creditor.

The aforesaid notwithstanding, 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 covenanted.

#### **Article 1884**

The creditor does not acquire ownership of the property as a result of the failure to pay the debt within the covenanted period.

Any agreement to the contrary shall be null and void. The aforesaid notwithstanding, the creditor may in such case request payment of the debt or the sale of the property as provided in the Civil Procedural Act.

#### **Article 1885**

The contracting parties may provide that the fruits of the property encumbered by antichresis be set off against the interest of the debt.

#### **Article 1886**

The last Paragraph of Article 1857, the second Paragraph of Article 1866, and Articles 1860 and 1861 shall apply to this contract.

## **TITLE XVI**

### **On obligations which are entered into without an agreement**

#### **CHAPTER I**

##### **On quasi contracts**

###### **Article 1887**

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 amongst the interested parties.

##### **Section One. On the management of another's business**

###### **Article 1888**

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 1889**

An unofficial manager shall perform his duties with all the diligence of a *bonus pater familias* and compensate any damages caused to the owner of the properties or business managed thereby through his fault or negligence.

The Courts of Law may, nevertheless, moderate the importance of such damages depending on the circumstances of the case.

###### **Article 1890**

If a manager were to 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 were to be two or more managers, they shall be jointly and severally liable.

###### **Article 1891**

A manager shall be liable for fortuitous events if he were to undertake risky transactions which the owner was not accustomed to performing, or if he were to have relegated the owner's interest to his own.

###### **Article 1892**

Ratification of the management by the owner of the business has the effect of an explicit mandate.

###### **Article 1893**

Even in the absence of explicit 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 if the purpose of such management were to have been to prevent an imminent and manifest damage, even if no benefit were to have resulted therefrom.

#### **Article 1894**

If a stranger were to provide support, without the person obliged to provide it being aware, the former shall be entitled to claim such amounts from the latter, unless it were to be evidenced that he gave it for reasons of piety and without the intention to claim them.

The persons who would had the obligation to support the deceased shall pay his funeral expenses in line with his condition and to local custom, even if the deceased has not bequeathed any goods.

### **Section Two. On collection of things which were not due**

#### **Article 1895**

If something is received by a person who is entitled to receive it and which was given by mistake, there arises the obligation to return it.

#### **Article 1896**

A person who accepts an undue payment, if he were to have acted in mala fide, shall pay interest at the legally established rate for the capital, or the fruits which were received or which should have been received if the object which was received had produced them.

Likewise, he shall be liable for any impairment suffered by the object 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 impinged the objects in the same way if they had been in the possession of the person who delivered them.

#### **Article 1897**

A person who accepted in bona fide payment of a certain and specific object shall only be liable for impairments or losses thereof and accessions thereof to the extent that he was enriched by them. If he were to have disposed of them, he shall return their price or assign the action to recover it.

#### **Article 1898**

The provisions of Title V of Book II shall apply to the payment of any improvements and expenses made by the person who unduly received the object.

#### **Article 1899**

A person who, believing in bona fide that such payment was made on account of a legitimate and outstanding credit, were to have cancelled the deed or let the action prescribe, or were to 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 debtor or the guarantors in respect of whom the action were to still be enforceable.

#### **Article 1900**

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 were to deny having received the object claimed. In this case, if the plaintiff were to provide evidence delivery thereof, he shall be released from the burden of providing any other evidence. This shall not curtail the defendant's right to provide evidence that he was due what he allegedly received.

#### **Article 1901**

Error in payment shall be presumed to exist if an object 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 II**

#### **On obligations arising from fault or negligence**

#### **Article 1902**

A person who, as a result of an action or omission, causes damage to another through his fault or negligence shall be obliged to repair the damage caused.

#### **Article 1903**

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 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 whilst conducting school, extracurricular or complementary activities.

The liability provided in the present Article shall cease if the persons mentioned therein were to provide evidence that they acted with all the diligence of a bonus pater familias to prevent the damage.

**Article 1904**

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 if the malice or gross negligence in the exercise of their duties was the cause of the damage.

**Article 1905**

The possessor of an animal, or the person who avails himself of it, is liable for any damages caused by the latter, even if it has escaped or has been lost. This liability shall only cease of the damage were to result from an act of God or force majeure or from the negligence of the person who has suffered the damage.

**Article 1906**

The owner of a property used for hunting purposes shall be liable for the damages caused by the game in neighbouring properties, if 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 1907**

The owner of a building is liable for damages resulting from the collapse of all or part thereof, if such collapse were to occur as a result of a failure to make the necessary repairs.

**Article 1908**

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 an act of God or 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 1909**

If the damage mentioned in the two preceding Articles were to 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 1910**

The head of a family who lives in a dwelling or part thereof is liable for damages caused by objects thrown or which have fallen from it.

## **TITLE XVII**

### **On the concurrence & priority of credits**

#### **CHAPTER I**

##### **General provisions**

###### **Article 1911**

A debtor is liable for the performance of his obligations with all his present and future goods.

###### **Articles 1912 to 1920**

(Repealed)

#### **CHAPTER II**

##### **On the classification of credits**

###### **Article 1921**

Credits shall be classified for the purpose of their graduation and payment, in the order and in the terms set forth in this Chapter.

In case of bankruptcy, the classification and graduation of the credits shall be governed by the provisions of the Bankruptcy Act.

###### **Article 1922**

In connection with specific moveable goods pertaining to the debtor, the following credits shall be preferred:

1. Credits granted for the construction, repair, conservation or sales price of movable goods which are in the debtor's possession, up to the value of such goods.
2. Credits secured by a pledge which is in possession of the creditor, in respect of the object pledged 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 transported, 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 goods 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 goods existing in the leased property and of the fruits thereof.



If the movable goods preferred hereunder have been removed, the creditor may claim them from the holder thereof, within thirty days counting from the removal thereof.

### **Article 1923**

In connection with certain specific immovable goods and rights in rem pertaining to the debtor, the following credits shall be preferred:

1. Credits in favour of the State, in respect of the taxpayers' goods, 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 goods, 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 credits and credits for assets entered and registered with the Property Registry, in respect of the mortgaged goods or the goods which are the collateral of 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 judgments, in respect of the goods the object of such entry and only with preference to subsequent credits.
5. Credits for assets 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 1924**

In connection with the remaining movable and immovable goods pertaining 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 1923, Number 1.
2. Credits accrued:
  - A) (Repealed)
  - B) For the debtor's funeral expenses, pursuant to local custom, and also those of his spouse and children under his parental authority, if they were to have no goods of their own.
  - C) As a result of expenses incurred in the final illness of the aforesaid persons, made in the last year, counting until the day 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 pursuant to 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 judgment, if they 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 judgments.

#### **Article 1925**

Credits of any other kind or pursuant to any other title, not comprised in the preceding Articles, shall enjoy no preference whatsoever.

### **CHAPTER III**

#### **On the preference of credits**

#### **Article 1926**

Credits which are preferred in connection with specific movable goods shall exclude all others up to the value of the movable goods to which the preference refers.

If two or more credits were to be concurrent in respect of specific movable goods, the following provisions 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 object pledged.
2. In the event of a guaranty, if such bond were to have been legitimately executed in favour of more than one creditor, the priority amongst the latter shall be established 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 goods shall be distributed pro rata amongst credits which enjoy a special preference in connection with such goods.

#### **Article 1927**

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 goods 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 provisions shall be observed to determine their respective priority:

1. Credits provided in Numbers 1 and 2 of Article 1923, shall be preferred, in the same order, to those comprised in the remaining numbers thereof.



2. Mortgage credits and credits for assets entered or registered with the Property Registry as provided in Number 3 of the aforesaid Article 1923 and those comprised in Number 4 thereof shall have priority in respect of each other pursuant to the order of priority of their respective registration or entries in the Property Registry.

3. Credits for assets not registered or entered in the Property Registry mentioned in Number 5 Article 1923, shall have priority in respect of each other in inverse order of their date.

#### **Article 1928**

The remainder of the debtor's goods, after paying any credits preferred in connection with specific movable or immovable goods, shall be accumulated to the goods freely owned by the debtor for the payment of the remaining credits.

Credits that, having preference in connection with certain movable or immovable goods have not 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 1929**

Credits which have no preference in connection with specific goods and those which do have such preference, for the amount outstanding, or in the event that the right to such preference has prescribed, shall be paid pursuant to the following provisions:

1. In the order set forth in Article 1924.
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 1925, without consideration of their date.

## **TITLE XVIII**

### **On prescription**

#### **CHAPTER I**

##### **General provisions**

##### **Article 1930**

Ownership and other rights in rem are acquired pursuant to prescription, in the manner and pursuant to the conditions provided in the law.

Likewise, rights and actions of any kind whatsoever are also extinguished by their prescription.

##### **Article 1931**

Persons with the capacity to acquire goods or rights by other legitimate means may also acquire them by prescription.

##### **Article 1932**

Rights and actions are extinguished by prescription to the detriment of all kinds of persons, even legal persons, in the terms provided in the law.

Persons who are prevented from administering their goods shall always remain entitled to claim against their legitimate representatives whose negligence has caused the prescription.

##### **Article 1933**

Prescription achieved by a co-owner or owner of goods held in common shall benefit the rest.

##### **Article 1934**

The legal effects of prescription in favour of and against the inheritance shall take place prior to acceptance thereof and during the time provided to make the inventory and to deliberate.

##### **Article 1935**

Persons with the capacity to dispose of goods may renounce the prescription attained, but not the right to acquire by prescription thereafter.

Prescription shall be deemed implicitly renounced if such renunciation results from actions which make one suppose that the right acquired has been relinquished.

##### **Article 1936**

All objects which are within the bounds of trade amongst persons are susceptible of prescription.

**Article 1937**

Creditors, and any other person interested in enforcing prescription, may use it in spite of the explicit or implicit renunciation of the debtor or owner.

**Article 1938**

The provisions of the present Title shall be construed without prejudice to the provisions in this Code or in special laws in respect of specific instances of prescription.

**Article 1939**

Prescription begun prior to the publication of the present Code shall be governed by the laws prior to this Code; but if the entire period required therein for prescription were to be completed after the present Code enters into force, such prescription shall be effective, even if such prior laws required a longer lapse of time.

**CHAPTER II****On prescription of ownership & other rights in rem****Article 1940**

Ordinary prescription of ownership and remaining rights in rem shall require bona fide possession of the object and pursuant to just title for the period provided in the law.

**Article 1941**

Possession must be *animus domini*, public, peaceful and uninterrupted.

**Article 1942**

Acts of a possessory nature carried out pursuant to leave or by mere tolerance of the owner shall not serve to establish possession.

**Article 1943**

For prescription purposes, possession is interrupted on a natural or on a civil basis.

**Article 1944**

Possession is interrupted naturally if for any reason such possession were to cease for more than one year.

**Article 1945**

Civil interruption occurs as a result of the judicial summons of the possessor, even if it were to be by order of an incompetent Judge.

**Article 1946**

A judicial summoning shall be deemed not to have been given, and shall not generate an interruption:

1. If it were to be null and void as a result of lack of the legal solemnities;
2. If the plaintiff were to abandon the claim or were to let the action lapse;
3. If the possessor were to be acquitted.

**Article 1947**

Civil interruption shall also take by an act of conciliation, provided that, within two months thereof, the claim concerning possession or ownership of the object in question is submitted before a Judge.

**Article 1948**

Any explicit or implicit recognition by the possessor of the owner's right shall likewise interrupt possession.

**Article 1949**

Ordinary prescription of ownership or rights in rem to the detriment of a third party shall not take place against a title registered at the Property Registry, unless it is pursuant to another title which has also been registered, and time shall begin to run from registration of the latter.

**Article 1950**

The possessor's bona fide consists of the belief that the person from whom he received the object was the owner and could convey ownership thereof.

**Article 1951**

The bona fide conditions 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 1952**

Just title shall be deemed to mean a title legally sufficient to convey ownership or the right in rem the object of prescription.

**Article 1953**

For prescription purposes, title must be authentic and valid.

**Article 1954**

Just title must be proved; it is never presumed.

**Article 1955**

Ownership of movable goods prescribes by three years of uninterrupted bona fide possession.

Ownership of movable goods also prescribes by six years of uninterrupted possession, without any other condition.

The provisions of Article 464 of this Code shall apply as to the owner's right to claim movable goods which he has lost or of which he has been unlawfully deprived, and likewise as relates to movable goods 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 1956**

Movable goods purloined or stolen may not prescribe in the possession of those who purloined or stole them, or their accomplices or accessories, unless the criminal offence or misdemeanour or its sentence, and the action to claim civil liability arising therefrom, have prescribed.

**Article 1957**

Ownership and other rights in rem over immovable goods prescribe by ten years' bona fide possession amongst persons present, and twenty years amongst absent persons, in bona fide and with just title.

**Article 1958**

For the purposes of prescription, those residing abroad or overseas are deemed to be absent.

If part of the time the owner were to have been present and another part absent, two years of absence shall be deemed one year of presence 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 1959**

Ownership and other rights in rem over immovable goods also prescribe as a result of thirty years of uninterrupted possession, without requiring any title or bona fide, and without distinction between persons present and absent, save for the exception provided in Article 539.

**Article 1960**

The following provisions 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 III

#### On prescription of actions

##### Article 1961

Actions expire through prescription by the mere lapse of the time set forth in the law.

##### Article 1962

Actions in rem relating to moveable goods prescribe after six years have elapsed as from the loss of possession thereof, unless the possessor has acquired absolute title thereon before then, pursuant to Article 1955, and except in cases of misplacement, public sale, theft or robbery, pursuant to the provisions contained in Paragraph 3 of the aforesaid Article.

##### Article 1963

Actions in rem relating to immovable goods shall prescribe after thirty years.

This provision shall be construed without prejudice to the provisions relating to acquisition of ownership or rights in rem pursuant to prescription.

##### Article 1964

1. The mortgage action shall prescribe after twenty years.
2. Any personal actions that do not have a special period set out shall prescribe after five years from the time the fulfilment of the obligation could be demanded. In the case of any continuous obligations to perform or not to perform, the period shall begin to elapse whenever they are breached.

##### Article 1965

The action between co-heirs, co-owners or owners of adjoining properties to request partition of the estate, division of common goods or the setting of boundaries of the adjoining properties shall not be subject to prescription.

##### Article 1966

Actions to claim the performance of the following obligations shall be prescribe 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 1967

Actions to claim the performance of the following obligations shall prescribe after three years:

1. The obligation to pay Judges, Solicitors, Registrars, Notaries, 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 prescription to run in the actions mentioned in the three preceding Paragraphs shall count from the day on which the respective services ceased to be provided.

#### **Article 1968**

The following shall be prescribe after 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 1902, from the day on which the injured party became aware thereof.

#### **Article 1969**

The time required for the barring of all kinds of actions by prescription, unless otherwise provided by a specific provision, shall be counted from the day on which they could be exercised.

#### **Article 1970**

The time required to bar by prescription 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 ground leases of consignment.

In emphyteutic ground leases and those of reservation, the time required for prescription shall likewise be counted from the last payment of the pension or rent.

#### **Article 1971**

The time required for prescription of actions to request performance of obligations declared in a judgment shall begin to run from the time when the judgment becomes final.

#### **Article 1972**

The term of prescription 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 day on which such result was acknowledged by agreement between the interested parties.

#### **Article 1973.**

Prescription on actions is interrupted by the bringing of such actions before the Courts of Law, by an out-of-court claim made by the creditor and by any act of acknowledgement of the debt by the debtor.

#### **Article 1974**

Interruption of prescription 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, if the creditor only claims from one of the debtors the part which corresponds to him, prescription shall not be interrupted in respect of the other co-debtors as a result.

#### **Article 1975**

Interruption of prescription 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 1976**

All laws, uses and customs which constitute the Common Civil Law in all matters covered by this Code are hereby repealed, and they shall lose all force and effect whatsoever both as directly enforceable laws and as subsidiary legal provisions. This provision shall not apply to the laws that this Code has declared as subsisting.

### **TRANSITIONAL PROVISIONS**

Any amendments established by this Code which prejudice any acquired rights pursuant to the prior civil legislation, shall not have retroactive effect.

To apply the relevant legislation, in cases that are not explicitly established in the Code, the following provisions shall apply:

#### **One.**

The legislation prior to the Code shall govern any rights arising, pursuant to this legislation, from events that have occurred under its provisions, even if the Code regulates them in another way or does not recognise them. But if the law is declared for the first time in the Code, it shall naturally be valid even if the event that gave rise thereto occurred under the repealed legislation, provided that it does not prejudice any other acquired right of the same origin.

**Two.**

Any acts and contracts concluded under the provisions of the repealed legislation, and which are valid in accordance with it, shall be fully effective under it and pursuant to the limitations established in these provisions. As a result, any last wills and testaments, even joint wills and testaments, powers to bequeath and testamentary reports, executed or written before the Code enters into force shall be valid, and any clauses ad cautelam, trusts in which goods are held pursuant to the reserved instructions of the testator and any other acts permitted by the repealed legislation shall be effective; but the revocation or amendment of these acts or any of the clauses contained therein may not be carried, after the Code enters into force, except by making a last will and testament pursuant to this Code.

**Three.**

Any provisions of the Code that penalise acts or omissions which were not punished under previous laws with a civil penalty or with deprivation of rights, are not applicable to the party who, when these previous laws were valid, was involved in the omission or the party that executed the act prohibited by the Code.

If the breach by this party is also penalised by the repealed legislation, the most benign provision shall apply.

**Four.**

Any actions and rights arising from and not exercised before the Code enters into force shall continue with the extension and under the terms recognised under the repealed legislation; nevertheless, as regards their exercise, duration and proceedings brought to assert them, they are pursuant to the provisions of the Code. If the exercise of the right or the action is pending official proceedings initiated under the repealed legislation, and these are different from those established in the Code, the parties concerned may choose between them.

**Five.**

Any children that have reached the age of twenty-three when the Code enters into force are hereby emancipated and no longer subjected to parental authority; but if they are still living in the dwelling and at the expense of their parents, the latter may retain the usufruct, administration and any other rights that they enjoy over the goods of their own private resources, until such time as the children would no longer covered by parental authority pursuant to the repealed legislation.

**Six.**

Any parent that has voluntarily emancipated a child, whilst retaining some form of right over his adventitious goods, may continue to enjoy them until such time as the child is no longer covered by parental authority pursuant to the repealed legislation.

**Seven.**

Fathers, mothers and grand-parents who are exercising the curatorship of their descendants may not withdraw any deposits that they have constituted, or be required

to constitute them if they have not been provided, or to supplement them if those that have been provided prove to be insufficient.

**Eight.**

Any guardians and conservators appointed under the provisions of the repealed legislation and subject thereto shall retain this capacity, although, as regards their exercise, they shall be pursuant to the provisions of the Code.

This provision is also applicable to possessors and interim administrators of borrowed capital, in the cases established by law.

**Nine.**

Any guardianship and conservatorship whose final constitution is pending the resolution of the Courts of Law when the Code enters into force, shall be constituted in accordance with the repealed legislation, without prejudice to the previous provision.

**Ten.**

Municipal Judges and Public Prosecutors shall not, on their own motion, appoint the family councils except in the case of minors whose guardianship is still not definitively constituted when the Code enters into force. When the guardian or conservator has already started to exercise his responsibility, the council shall not be appointed until such time as any of the persons that are to constitute it, or the same guardian or existing conservator have so requested; and, in the meantime, the appointment of the guardian shall be suspended.

**Eleven.**

Any ongoing cases related to adoption, voluntary emancipation and exemptions under law before the Government or the Courts of Law shall run their course pursuant to the repealed legislation, unless the parents or applicants of the exemption no longer continue with such proceedings and instead resort to the course of action established in the Code.

**Twelve.**

The rights to the inheritance of the deceased, with or without a last will and testament, before the Code enters into force, shall be governed by the repealed legislation. The inheritance of the deceased, with or without a last will and testament, shall subsequently be awarded and distributed pursuant to the Code; nevertheless, if permitted by the Code, the testamentary provisions shall be complied with. Therefore, any forced heirs, improvements and legacies shall be respected but reducing their amount, if the share corresponding to each beneficiary of the inheritance cannot otherwise be given, pursuant to the Code.

**Thirteen.**

Any cases not directly covered by the previous provisions shall be resolved in application of the principles on which they are based.



## **ADDITIONAL PROVISIONS**

### **One.**

The Presiding Judge of the Supreme Court and those of the Appellate Courts of Law shall submit to the Ministry of Grace and Justice, at the end of every year, a Report which, in reference to the business addressed in the Civil Chambers during the year, shall indicate any deficiencies and doubts that they have encountered in the application of this Code. It shall specify in detail any controversial matters and points of law and any Articles and omissions of the Code that have given rise to the doubts of the Court of Law.

### **Two.**

The Ministry of Grace and Justice shall convey these Reports and a copy of the Civil Statistics for the same year to the General Codification Committee.

### **Three.**

In view of these data, any progress made in other countries that may be usable in Spain and the Case Law established by the Supreme Court, the Codification Commission shall draw up and submit to the Government every ten years those reforms deemed appropriate.

### **Four.**

Any reference made to incapacitated persons in Articles 756, 822 and 1041, shall be deemed to relate to the concept defined in the Act on the Protection of Goods of Disabled Persons and of Amendment of the Civil Code, of the Civil Procedure Act and Tax Legislation in this regard.

This document is for informational purposes and does not have any legal force.

