

**DRAFT ORDONNANCE FOR THE REFORM OF THE LAW OF
CONTRACT, THE GENERAL REGIME OF OBLIGATIONS, AND PROOF
OF OBLIGATIONS**

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*TITLE III
THE SOURCES OF OBLIGATIONS*

*SUB-TITLE I
CONTRACT*

*CHAPTER I
PRELIMINARY PROVISIONS*

Art. 1101. – A contract is a concordance of wills of two or more persons with a view to creating legal consequences.

Art. 1102. – Everyone is free to contract or not to contract, to choose the person with whom to contract, and to determine the content and form of the contract, within the limits imposed by legislation.

However, this contractual freedom does not allow the parties to derogate from rules which are an expression of public policy, nor to infringe fundamental rights and freedoms recognised by a provision which applies to relationships between private parties except where such infringement is indispensable to the protection of legitimate interests and proportionate to the intended purpose.

Art. 1103. – Contracts must be formed and performed in good faith.

Art. 1104. – A contract is synallagmatic where the parties undertake reciprocal obligations in favour of each other.

It is unilateral where one or more persons undertake obligations in favour of one or more others without there being any reciprocal obligation on the part of the latter.

Art. 1105. – A contract is onerous where each of the parties receives a benefit from the other in return for what he¹ provides.

It is gratuitous where one of the parties provides a benefit to the other without receiving anything in return.

¹ Note: The French uses “she” (*elle*) in this context because of the reference to *la partie*. Throughout the translation we follow the convention of English statutory drafting and use the masculine singular personal and possessive pronoun (which is to be read as referring equally to the feminine or neuter) rather than using “he/she”, “his/her” etc., or some form of circumlocution.

Art. 1106. – A contract is commutative where each of the parties undertakes to provide a benefit to the other which is regarded as the equivalent of what he receives.

It is aleatory where the parties, without seeking equivalence in what they agree to in return, agree that the effects of the contract—both its anticipated benefits and its anticipated losses—shall depend on an uncertain event.

Art. 1107. – A contract is consensual where it is formed by the mere exchange of consents, in whatever way they may be expressed.

A contract is formal where its formation is subject to formalities prescribed by legislation.

A contract is real where its formation is subject to the delivery of a thing.

Art. 1108. – A bespoke contract² is one whose terms are freely negotiated by the parties.

A standard-form contract³ is one whose essential terms have been determined by one of the parties without free discussion.

Art. 1109. – A framework contract is an agreement by which the parties agree the essential characteristics of their future contractual relations. Implementation contracts determine the modalities of performance under a framework contract.

Art. 1110. – A contract of instantaneous performance is one whose obligations can be performed as a single act of performance.⁴

A contract of successive performance is one of which the obligations of at least one of the parties are performed in a number of acts of performance over time.

CHAPTER II *FORMATION OF CONTRACTS*

SECTION I *Conclusion of Contracts*

Sub-section 1 *Negotiations*

Art. 1111. – The commencement, continuation and breaking-off of precontractual negotiations are free from control. They must satisfy the requirements of good faith.

² ‘Bespoke contract’ translates *contrat de gré à gré*, which has the sense of a contract in which the parties come together in an amicable agreement.

³ ‘Standard-form contract’ translates *contrat d’adhésion*, more literally ‘a contract to which one adheres’ and whose conclusion therefore involves no or little choice.

⁴ ‘Act of performance’ translates *prestation* in all cases except in the composite phrase ‘*prestation de services*’, which is translated as ‘supply of services’. See also note 5 to art. 1126-3.

The person who is at fault in the conduct or breaking-off of the negotiations must make reparation on the basis of extra-contractual liability.

Damages are not calculated so as to compensate the loss of profits which were expected from the contract that has not been concluded.

Art. 1112. – A person who without permission makes use of confidential information obtained in the course of negotiations incurs extra-contractual liability.

Sub-section 2
Offer and Acceptance

Art. 1113. – The formation of a contract requires the meeting of an offer and an acceptance demonstrating the will of each of the parties to be bound.

The demonstration of the will may be express, or may be implied from conduct.

Art. 1114. – An offer contains the essential elements of the intended contract, and may be made to a particular person or to persons generally. Failing this, there is only an invitation to enter into negotiations.

Art. 1115. – An offer may be withdrawn freely as long as it has not come to the knowledge of the person to whom it was addressed.

Art. 1116. – An offer may not be revoked before the expiry of any period for which it makes express provision or, if no such provision is made, before the expiry of a reasonable period.

Art. 1117. – The person who revokes an offer in contravention of the obligation to maintain it, as set out in article 1116, incurs only extra-contractual liability, and has no obligation to compensate the loss of profits which were expected from the contract.

Art. 1118. – An offer lapses at the expiry of the period fixed by the offeror or, if no period is fixed, at the end of a reasonable period.

It lapses also in the case of the incapacity or death of the offeror.

Art. 1119. – An acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer.

An acceptance which does not conform to the offer has no effect, apart from constituting a new offer.

Art. 1120. – General conditions put forward by one party have no effect on the other party unless they have been brought to the latter's attention and that party has accepted them.

In case of inconsistency between general conditions relied on by each of the parties, conflicting clauses have no effect.

Art. 1121. – Silence does not count as acceptance except where so provided by legislation, usage, business practices or other particular circumstances.

Art. 1122. – A contract is completed as soon as the acceptance reaches the offeror. It is deemed to be concluded at the place where the acceptance has arrived.

Art. 1123. – Where legislation or the parties provide for a period for reflection, the offeree cannot give his effective consent to the contract until the expiry of this period.

Where legislation or the parties provide for a period for withdrawal, the offeree may withdraw his consent to the contract until the end of this period, without having to give any reason.

Sub-section 3 *Unilateral Promises and Pre-emption Agreements*

Art. 1124. – A unilateral promise is a contract by which one party, the promisor, gives another, the beneficiary, a right, for a certain time, to have the option to conclude a contract whose essential elements are determined, and for the formation of which only the consent of the beneficiary is missing.

Revocation of the promise during the period allowed to the beneficiary to exercise the option does not prevent the formation of the contract which was promised.

A contract concluded in breach of a unilateral promise with a third party who knows of its existence, is a nullity.

Art. 1125. – A pre-emption agreement is a contract by which a party undertakes that, in the event that he decides to enter into a contract, he will make the first proposal for that contract to the beneficiary of the pre-emption agreement.

Where in breach of the pre-emption agreement a contract has been concluded with a third party who knows of its existence, the beneficiary of the pre-emption agreement may sue for nullity or may ask the court to substitute him for the third party in the contract that has been concluded. The beneficiary may also obtain reparation of the loss that he has suffered.

Where a third party believes that there may be a pre-emption agreement, he may give written notice to the beneficiary within a reasonable period requiring him to confirm it.

Such a written notice must state clearly that if he does not reply, the beneficiary of the pre-emption agreement will no longer have the right to claim either to be substituted in any contract concluded with the third party, or nullity of the contract, unless the pre-emption agreement contains a confidentiality clause.

Sub-section 4
*Contracts made by Electronic Means*⁵

Art. 1126. – Electronic means may be used to make available contract terms or information about property or services.

Art. 1126-1. – Information requested with the view to the conclusion of a contract or provided during its performance may be sent by electronic mail if the recipient has agreed that this means may be used.

Art. 1126-2. – Information intended for a business or professional may be addressed to them by electronic mail as long as they have communicated their electronic address.

If the information must be placed on a form, the form must be made available electronically to the person who is required to complete it.

Art. 1126-3. – A person who, in a business or professional capacity, makes a proposal by electronic means for the supply of property or services,⁶ must make available the applicable contractual conditions in a way which permits their storage and reproduction.

Without prejudice to the conditions of validity set out in the offer or the invitation to enter into negotiations, the person issuing it remains bound by it as long as it is made accessible by him by electronic means.

An offer or an invitation to enter into negotiations must set out in addition:

1. The different steps that must be followed to conclude the contract by electronic means;
2. The technical means by which the user, before the conclusion of the contract, may identify errors in the data entry, and correct them;
3. The languages offered for the conclusion of the contract;
4. Where the contract is to be filed, the circumstances on which the party issuing the offer or the invitation to enter in negotiations is to file it, and the conditions for access to the filed contract;
5. The means of consulting electronically any business, professional or commercial rules to which the party issuing the offer or invitation to enter into negotiations (as the case may be) intends to be bound.

⁵ Arts 1126 to 1126-8 implement Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') arts 9–11. Where the text of the *Projet d'ordonnance* follows the wording or the terminology of the French version of the Directive, we have used the counterpart in the English version of the Directive.

⁶ '*prestation de services*' is the one phrase where we do not translate '*prestation*' as 'act of performance', but as 'supply' of services. In a composite phrase like this ('*la fourniture de biens ou la prestation de services*') the reference to 'supply' covers both *fourniture* (of property) and *prestation* (of services).

Art. 1126-4. – In order that a contract may be validly concluded, the party to whom the offer or the invitation to enter into negotiations is addressed must have had the possibility of verifying the detail of his order and its total price, and to correct any possible errors, before confirming his order and thereby expressing his acceptance.

The party issuing the offer or the invitation to enter into negotiations must without undue delay acknowledge by electronic means the receipt of such an order which has been addressed to him.

The order, the confirmation of acceptance of the offer, and the acknowledgement of receipt are deemed to have been received when the parties to whom they are addressed are able to have access to them.

Art. 1126-5. – There is an exception to the obligations referred to in paragraphs 1 to 5 of article 1126-3 and to the first two paragraphs of article 1126-4 for contracts for the supply of property or services which are concluded exclusively by exchange of electronic mails.

In addition, the provisions of paragraphs 1 to 5 of article 1126-3 and article 1126-4 may be excluded or restricted in contracts concluded between businesses or professionals.

Art. 1126-6. – A simple letter relating to the conclusion or performance of a contract may be sent by electronic mail.

The date of sending may be attached as a result of an electronic process which, in the absence of proof to the contrary, is presumed to be reliable as long as it satisfies the requirements set by decree made by the *Conseil d'État*.

Art. 1126-7. – A registered letter relating to the conclusion or performance of a contract may be sent by electronic mail as long as this electronic mail is routed through a third party following a process which allows the third party to be identified, the sender to be denoted and the identity of the addressee to be guaranteed, and as long as it can be established whether or not the letter has been delivered to the addressee.

The contents of such a letter may, at the option of the sender, be printed by the third party on paper for distribution to the recipient or may be addressed to him by electronic means. In the latter case, if the recipient is not a business or professional, he must have requested that it be sent in this form or must have accepted this by usage in the course of earlier exchanges.

Where the affixing of the date of dispatch or of receipt results from an electronic process, this is presumed, in the absence of contrary evidence, to be reliable if it satisfies the requirements set by a decree made by the *Conseil d'État*.

An acknowledgement of receipt may be addressed to the sender by electronic means or by any other means which allows him to preserve it.

The modalities of implementation of this article are to be fixed by decree made by the *Conseil d'État*.

Art. 1126-8. In cases other than those set out in articles 1126 and 1126-1, the delivery of a document in electronic form take effect when the recipient is able to become aware of it and has then acknowledged receipt.

If there is provision for a document to be read to its recipient, the delivery to the person concerned of an electronic document in compliance with the requirements set out in the first paragraph is the equivalent of reading.

SECTION 2 *Validity*

Art. 1127. – The following are necessary for the validity of a contract:

- 1^o the consent of the parties;
- 2^o their capacity to contract;
- 3^o content which is lawful and certain.

Sub-section 1 *Consent*

§1 – Existence of Consent

Art. 1128. – To give valid consent, one must be of sound mind.

§2 – Duty to Inform

Art. 1129. – If one of the parties knows or ought to know information which is of decisive importance for the consent of the other, he must inform him of it where it is legitimate that the other does not know the information or relies on him.

A failure to fulfil a duty to inform attracts extra-contractual liability. Where the failure gives rise to a defect in consent, the contract may be annulled.

§3 – Defects in Consent

Art. 1130. – Mistake, fraud and duress vitiate consent where they are of such a nature that, without them, one of the parties would not have contracted or would have contracted on substantially different terms.

Their decisive character is assessed in the light of the person and of the circumstances of the case.

Art. 1131. – Mistake of law or of fact is a ground of nullity of the contract if it bears on the essential qualities of the act of performance owed, or of the other contracting party, and if it is excusable.

Art. 1132. – The essential qualities of the act of performance owed are those which have been expressly or impliedly agreed and which the parties took into consideration on contracting.

Mistake is a ground of relative nullity, whether it bears on the act of performance of one party or of the other.

Acceptance of a risk about a quality of the act of performance rules out mistake in relation to this quality.

Art. 1133. – Mistake about the essential qualities of the other contracting party is only a ground of nullity as regards contracts entered into on the basis of considerations personal to the party.

Art. 1134. – Mistake about mere motive, extraneous to the essential qualities of the act of performance owed or of the other contracting party is a ground of nullity only if the parties have expressly made it a decisive element of their consent.

However, mistake about the motive for an act of generosity is a ground of nullity where, but for the mistake, the donor would not have made it.

Art. 1135. – A simple mistake as to value is not in itself a ground of nullity where, in the absence of a mistake about the essential qualities of the act of performance owed, a contracting party makes only an inaccurate valuation of it.

Art. 1136. – Fraud is an act of a party in obtaining the consent of the other by scheming or lies, or by the intentional concealment from him of information which he had a legislative duty to provide.

Art. 1137. – Fraud is equally established where it originates from the other party's representative, a person who manages his affairs, his employee or one standing surety for him. It is also established where it originates from a third party if the other party knew of it and took advantage of it.

Art. 1138. – A mistake induced by fraud is always excusable. It is then a ground of relative nullity even if it bears on value of the act of performance or on a party's mere motive.

Art. 1139. – There is duress where one party contracts under the influence of a constraint which makes him fear that his person or his wealth, or those of his near relatives, might be exposed to significant harm.

Art. 1140. – A threat of legal action does not constitute duress, except where the legal process is deflected from its proper aims or is exercised in order to obtain a manifestly excessive advantage.

Art. 1141. – Duress is a ground of relative nullity regardless of whether it has been applied by the other party or by a third party.

Art. 1142. – There is also duress where one party exploits the other’s state of necessity or dependence in order to obtain an undertaking to which the latter would not have agreed if he had not been in that situation of weakness.

Art. 1143. – In the case of duress the period for bringing an action for nullity runs only from the day when it ceased. In the case of mistake or fraud the period runs only from the day when they were discovered.

However, an action for nullity may not be brought after twenty years from the day when the contract was concluded.

Sub-section 2
Capacity and Representation

§1 – Capacity

Art. 1144. – Every natural person is able to conclude a contract, as long as he has not been declared by legislation to lack capacity.

Art. 1145. – The following lack the capacity to conclude a contract, to the extent to which legislation provides:

1° minors who have not been emancipated;

2° protected adults within the meaning of article 425 of this Code.

Art. 1146. – Every person who lacks the capacity to contract may nonetheless effect independently day-to-day transactions⁷ authorised by legislation or by custom, provided that they are concluded on normal terms.

Art. 1147. – A lack of capacity to conclude a contract is a ground of relative nullity.

In the case of day-to-day transactions which legislation or custom authorises for minors, mere substantive inequality of bargain constitutes a ground of nullity. However, nullity is not incurred where the substantive inequality results from an unforeseeable event.

The same rule applies as regards contracts concluded by adults who are protected in the situations foreseen by articles 435 and 465 of this Code.

A party who has benefited from a contract may at any stage propose the revaluation of the act of performance in order to avoid the annulment of the contract on the ground of substantive inequality of bargain.

Art. 1148. – The mere fact that a minor has made a declaration of majority does not form an obstacle to restitution.

⁷ We translate ‘*acte*’ differently according to context: sometimes as ‘transaction’, sometimes ‘act’ and sometimes ‘instrument’: see translators’ preface.

However, a minor cannot escape from undertakings which he has entered into in the exercise of his business or profession.

Art. 1149. – A contracting party who has the capacity to contract cannot invoke the lack of capacity of the person with whom he has contracted.

Such a contracting party may defend an action for annulment brought against him by showing that the transaction benefited the protected person and was free from substantive inequality, or that the protected person made a profit from it.

Such a contracting party may also set up against an action for annulment the fact that the other party to the contract ratified the transaction after gaining or regaining his capacity.

Art. 1150. – Restitution owed to an unemancipated minor or to a protected adult is to be reduced in proportion to any benefit which he has drawn from the transaction that has been annulled.

Art. 1151. – Prescription runs:

1° as regards transactions made by minors, from the day of achieving majority or of emancipation;

2° as regards transactions made by a protected adult, from the day when he becomes aware of them, provided that he was in a position to remake the transactions validly;

3° as regards the heirs of a person subject to guardianship (whether as a minor or an adult) or supervisory control (in the case of adults), from the day of the death, unless it has started to run before that time.

[*Art. 1151-1.* – In the absence of authorisation by a court, it is forbidden on pain of nullity for any person who holds an office in or is employed by an establishment which houses dependent persons or which provides psychiatric care, to become the acquirer of property or the assignee of a right belonging to a person admitted to the establishment, or to become the tenant of residential premises occupied by such a person before his admission to the establishment.

For these purposes, the spouses, ascendants and descendants of the persons to which these prohibitions apply are also deemed to be affected.]

[*Art. 1151-2.* – Where the formalities required as regards minors or adults subject to guardianship either for the sale or other disposition of immovable property or for the sharing out of an estate on a person's death, are fulfilled, these formalities are considered in relation to these transactions as having been fulfilled on attaining their majority or, as the case may be, before the guardianship commenced.]

§2 – Representation

Art. 1152. – A representative authorised by legislation, by a court or by a contract is justified in acting only within the limits of the authority conferred upon him.

Art. 1153. – Where a representative acts within his authority and in the name and on behalf of the person whom he represents, only the latter is bound.

Where a representative states that he is acting on behalf of another person but contracts in his own name, he is bound personally towards a third party contractor.

Art. 1154. – Where the authority of a representative is defined in general terms, it covers only managerial transactions.

Where his authority is defined specially, a representative may conclude only those transactions for which he is empowered and any accessory transactions.

Art. 1155. – A transaction concluded by a representative without authority or beyond his authority cannot be set up against⁸ the person whom he represents, unless the third party with whom he contracts legitimately believed that he had that person's authority by reason of the latter's behaviour or statements.

Where a third party with whom a representative contracts is unaware that the transaction was concluded by the representative without authority or beyond his authority, the third party may invoke the nullity.

Neither this inability to set up a transaction nor its nullity can be invoked once the person represented has ratified it.

Art. 1156. – Where a representative abuses his authority to the detriment of the person whom he represents, the latter may invoke the nullity of any transaction concluded if the third party was aware of the abuse of authority or could not have been unaware of it.

Art. 1157. – Where, at the time of the conclusion of a transaction, a third party doubts the extent of the authority of a representative appointed by contract, the former may in writing request the person represented to confirm to him within a reasonable time that the representative is empowered to conclude the transaction.

The written request must set out clearly that, in the absence of a reply, the representative is deemed to be empowered to conclude the transaction.

Art. 1158. – The establishing of representation by legislation or by a court deprives the person represented of the powers transferred to the representative for the period of the representation.

Representation established by contract leaves the person represented in possession of his ability to exercise his own rights.

Art. 1159. – The authority of a representative ceases if he becomes affected by a lack of capacity or is subject to a prohibition.

⁸ We have translated *opposabilité* and its cognate terms by 'set up against'. The sense of the French term is that a person may (or, as in art. 1155, may not) rely on a contract or other juridical act against another person. See further arts 1172, 1201, 1202, 1305-5, 1324-4, 1331-2, 1334, and 1335.

Art. 1160. – A representative cannot act on behalf of both parties to a contract nor can he contract on his own behalf with the person whom he represents.

Where he does so, any transaction which is concluded is a nullity unless legislation authorises it or the person represented has authorised or ratified it.

Sub-section 3. The content of a contract

Art. 1161. – A contract cannot derogate from public policy either by its content or by its purpose, whether or not this was known by all the parties.

Art. 1162. – An obligation has as its subject-matter a present or future act of performance.

The latter must be possible and determined or capable of being determined.

An act of performance is capable of being determined where it can be deduced from the contract or by reference to customs or the previous dealings of the parties.

Art. 1163. – In framework contracts or contracts whose performance is successive it may be agreed that the price of the act of performance will be fixed unilaterally by one of the parties, subject to the requirement that the latter must justify the amount if it is challenged.

In the case of an abuse in the fixing of a price, a court may hear a claim for the revision of the price taking into account usual practices, market prices or the legitimate expectations of the parties, or for damages and, in an appropriate case, for the termination of the contract.⁹

Art. 1164. – In contracts for the supply of services, in the absence of an agreement by the parties in advance of their performance, the price may be fixed by the creditor,¹⁰ subject to the latter's justifying its amount. In the absence of agreement, the debtor may bring proceedings before a court for the latter to fix the price taking into account usual practices, market prices or the legitimate expectations of the parties.

Art. 1165. – Where the price or any other element of a contract is to be determined by reference to an index which does not exist or has ceased to exist or to be available, the index is replaced by the index which is most closely related to it.

⁹ *La résolution* is used in the *Code civil* to denote the retroactive termination of a contract, coupled with (in principle) restitution and counter-restitution: this follows from the significance of its definition and use of *la condition résolutoire*: see arts 1183–1184 C.civ. Moreover, in the practice of writers and the courts, a distinction is made between this retroactive termination and prospective termination of contracts which is termed *la résiliation*. By contrast, while the *Projet d'ordonnance* art. 1304 al. 3 defines *la condition résolutoire* in the traditional way (a condition is 'resolutive where its fulfilment results in the destruction of the obligation'), its provisions governing *la résolution* do not use the technique of '*la condition résolutoire*' and more generally do not specify the temporal effect of *la résolution* beyond saying that it 'puts an end to the contract': art. 1229 al.1. Instead, the *Projet d'ordonnance* (arts 1224–1230) sets out the circumstances in which *la résolution* takes place and its restitutionary consequences. We have, therefore, translated *la résolution* with the neutral English word 'termination'.

¹⁰ We translate '*créancier*' generally as 'creditor' and '*débiteur*' generally as 'debtor', following the French usage of these terms to denote the party with (respectively) the right and the duty under an obligation (without limiting such references to *money* obligations, as in the common usage of these terms in English law).

Art. 1166. – Where the quality of the act of performance is not determined or capable of being determined under the contract, the debtor must offer an act of performance of a quality which conforms to the legitimate expectations of the parties taking into account its nature, usual practices and the amount of what is agreed in return.

Art. 1167. – An onerous contract is a nullity where, at the moment of its formation, what is agreed in return for the benefit of the person undertaking an obligation is illusory or derisory.

Art. 1168. – Any contract term which deprives a debtor's essential obligation of its substance is deemed not written.

Art. 1169. – A contract term which creates a significant imbalance in the rights and obligations of the parties to the contract may be struck out by the court on the request of the party to the contract to whose detriment it is stipulated.

The assessment of significant imbalance must not concern either the definition of the subject-matter of the contract nor the adequacy of the price in relation to the act of performance.

Art. 1170. – A lack of equivalence in the obligations of synallagmatic contracts is not a ground of their nullity, unless legislation provides otherwise.

SECTION 3

The Form of Contracts

§1 – General Provisions

Art. 1171. – A contract is complete on the mere exchange of the parties' consents.

By way of exception, the validity of a contract may be subject to the fulfilment of formal requirements set either by legislation or by the parties, or to the delivery of a thing.

Art. 1172. – Formal requirements imposed for the purposes of proof of a contract or setting up a contract against another person have no effect on the validity of the contract.

Art. 1173. – Contracts whose object is the modification or termination of an earlier contract are subject to the same rules of form as that earlier contract, unless it is provided or agreed otherwise.

§2 – Special provisions governing contracts concluded by electronic means

Art. 1174. – Where writing is required for the validity of a juridical act, it may be created or stored in electronic form subject to the conditions provided by articles 1366 and 1367 and, where an authenticated instrument is required, by paragraph 2 of article 1369 of this Code.

Where a person undertaking an obligation is required to add something in his own hand, he may do so in electronic form if the circumstances of this are such as to guarantee that it could have been done only by him.

Art. 1175. – The provisions of the preceding article do not apply to:

1° signed juridical acts relating to family law or the law of succession;

2° signed juridical acts relating to personal or real guarantees, whether made under civil or commercial law, unless they are entered into by a person for the purposes of his business or profession.

Art. 1176. – Where a written document on paper is subject to special conditions of legibility or presentation, a written document in electronic form must conform to equivalent requirements.

A requirement of a detachable form is satisfied by an electronic process which allows for it to be accessed and returned by the same means.

Art. 1177. – A requirement of sending one or more copy is deemed to be satisfied in an electronic form where the written document can be printed by the person to whom it is sent.

SECTION 4

Sanctions

§ 1 Nullity

Art. 1178. – A contract which does not satisfy the conditions necessary for its validity is a nullity. Nullity must be declared by a court, unless the parties establish it by mutual agreement.

Acts of performance which have been carried out give rise to restitution under the conditions foreseen by Chapter V of Title IV.

Irrespective of whether or not the contract is annulled, a victim may claim reparation for any harm suffered under the conditions set out by the general law of extra-contractual liability.

Art. 1179. – Nullity is absolute where the rule that is violated has as its object the safeguard of the public interest.

It is relative where the rule that is violated has as its object the safeguard of a private interest.

Art. 1180. – Absolute nullity may be invoked by any person who can demonstrate an interest, as well as by the *ministère public* [the magistrate representing the public interest].

It may not be remedied by affirmation of the contract.

Art. 1181. – Relative nullity may be invoked only by the person that the legislation intends to protect. He can renounce this right and affirm the contract.

Where more than one person has the right to bring an action for relative nullity, renunciation by one of them does not prevent the others from bringing proceedings.

Art. 1182. – Affirmation is an act by which a person who could rely on the nullity of the contract renounces the right to do so. This act must mention the substance of the obligation and the defect affecting the contract.

Affirmation has no effect where it takes place before the conclusion of the contract.

Voluntary performance of a contract in the knowledge of a ground of nullity is equivalent to affirmation. In the case of duress, affirmation can take place only after the duress has ceased.

Affirmation entails renunciation of the grounds of claim or defences that might otherwise be set up, without prejudice, however, to the rights of third parties.

Art. 1183. – A party may claim in writing from a person who could rely on the nullity of the contract either to affirm it, or to proceed with an action for nullity within a period of six months, on pain of losing the right to do so.

A party may also give a victim of mistake the option of performing the contract on the basis of his understanding of it at the time of its conclusion.

The party's claim has no effect unless the ground of nullity has ceased and if it sets out in clear terms that unless the action for nullity is brought within a period of six months, the contract shall be deemed to have been affirmed.

[*Art. 1184.* – In the case of a defect of form, a gift *inter vivos* cannot be the object of affirmation. It must be made again in the form required by legislation.

After the death of the donor, affirmation, ratification or voluntary performance of a gift by the heirs or legal representatives of the donor entail their renunciation of any right to set up any defects of form or any other ground of nullity.]

Art. 1185. – Where a ground of nullity affects only one or more terms of the contract, it entails the nullity of the whole act only if this term or these terms constituted a decisive factor in the undertaking of the parties, or of one of them.

§2 Lapse

Art. 1186. – A contract which has been validly formed lapses if one of its constituent elements disappears. This is also the case where an element which is external to the contract but which is necessary to its effectiveness becomes absent.

This is again the case where contracts have been concluded with a view to a group operation and the disappearance of one of them renders impossible or pointless the

performance of another. However, the lapse of the latter contract takes place only if the contracting party against whom it is invoked knew of the existence of the group operation at the time when he gave his consent.

Art. 1187. – Lapse puts an end to the contract between the parties.

It may give rise to restitution under the conditions provided by Chapter V of Title IV.

CHAPTER III CONTRACTUAL INTERPRETATION

Art. 1188. – A contract is to be interpreted according to the common intention of the parties rather than according to the literal meaning of the terms which it uses.

Where the common intention of the parties cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it.

Art. 1189. – Clear and unambiguous terms are not subject to interpretation as doing so risks their distortion.

Art. 1190. – In case of doubt, an obligation is to be interpreted against the creditor and in favour of the debtor.

Art. 1191. – All the terms of a contract are to be interpreted in relation to each other, giving to each the meaning which respects the consistency of the contract as a whole. Where, according to the intention of the parties, several contracts contribute to the same operation, they are to be interpreted by reference to this operation.

Art. 1192. – Where a contract term is capable of bearing two meanings, the one which gives it some effect is to be preferred to the one which makes it produce no effect.

Art. 1193. – In the case of ambiguity, the terms of a standard form contract are to be interpreted against the party who put them forward.

CHAPTER IV THE EFFECTS OF CONTRACTS

SECTION I The Effects of Contracts between the Parties

Sub-section 1 Binding Effect

Art. 1194. – Contracts which are lawfully formed take the place of legislation for those who have made them.

They can be modified or revoked only by the parties' mutual consent or on grounds which legislation authorises.

Art. 1195. – Contracts create obligations not merely in relation to what they expressly provide, but also to all the consequences which equity, custom or legislation give to the obligation according to its nature.

Art. 1196. – If a change of circumstances that was unforeseeable at the time of the conclusion of the contract renders performance excessively onerous for a party who had not accepted the risk of such a change, that party may ask the other contracting party to renegotiate the contract. The first party must continue to perform his obligations during renegotiation.

In the case of refusal or the failure of renegotiations, the parties may by common agreement ask the court to set about the adaptation of the contract. In the absence of their doing so, a party may ask the court to terminate the contract, as from a date and subject to such conditions as it shall determine.

Sub-section 2
*Proprietary Effect*¹¹

Art. 1197. – As regards contracts whose object is to alienate property or some other right, transfer takes place at the time of the conclusion of the contract.

This transfer may be deferred by the will of the parties, by the nature of the things or by legislative provision.

Subject to the provisions set out in article 1322-1, the transfer of property entails the transfer of risk in the thing.

Art. 1198. – An obligation to deliver a thing entails an obligation to look after it until delivery, taking all the care of a reasonable person in doing so.

Art. 1199. – Where two persons acquire the same physical movable thing in turn and hold their right from the same person, the person who has taken possession of this movable thing first is to be preferred, even if his right is later, provided that he is in good faith.

SECTION 2
The Effects of Contracts as regards Third Parties

Sub-section 1
General Provisions

Art. 1200. – A contract creates obligations only as between the contracting parties.

Third parties may neither claim performance of the contract nor be constrained to perform it, subject to the provisions of this section.

Art. 1201. – Third parties must respect the legal situation created by a contract.

¹¹ This translates '*Effet translatif*', which refers to a contract's effect of transferring property in a thing and this is the sense in which 'proprietary effect' should be understood.

They may rely on it notably in order to provide proof of a fact.

[The transfer of property and other real rights in immovables may be set up against third parties on the conditions determined by legislation governing the publication of rights in land. Special legislation governs the setting up against third parties of the transfer of property in certain types of movable things.]

Art. 1202. – Where the parties have concluded an apparent contract which conceals a secret contract, the latter (also called a ‘counter-letter’) takes effect between the parties. It cannot be set up against third parties, though the latter may themselves rely on it.

Art. 1203. – Any counter-letter whose object is an increase in the price agreed for the assignment of an office held by a professional who thereby enjoys public service powers [*un office ministériel*] is a nullity.

A contract is also a nullity where its purpose is to conceal part of the price where it concerns a sale of immovable property, a transfer of business assets or clientele, an assignment of a right under a lease, or the benefit of a promise of a lease relating to all or part of immovable property and all or part of the difference in value payable in a contract of exchange or in a division of immovable property, business assets or clientele.

Sub-section 2 *Standing Surety and Stipulations for Third Parties*

Art. 1204. – In general, a person is not able to undertake engagements nor to make stipulations in his own name except for himself.

Art. 1205. – A person may stand surety¹² by promising that a third party will do something.

If the third party performs the act which was promised, the promisor is released from any obligation. Where this is not the case, he may be ordered to pay damages.

If the third party ratifies the promise made for him, he is bound as from his ratification and can take advantage of the undertaking from the date on which it was agreed to by the promisor.

Art. 1206. – A person may equally make a stipulation for another person.

One of the parties to a contract (the ‘promisee’ (‘stipulator’)) may require a promise from the other party (the ‘promisor’) to accomplish an act of performance for the benefit of a third party (the beneficiary). The third party may be a future person but must be exactly identified or must be able to be determined at the time of the performance of the promise.

¹² We translate ‘*se porter fort*’ as ‘to stand surety’ (there being no exact equivalent in the common law); we translate ‘*le cautionnement*’ as ‘a guarantee’: see, e.g., art.1231-6.

Art. 1207. – The promisee may freely revoke a stipulation which he has made unless and until its beneficiary has accepted it.

Provided that it takes place before revocation, acceptance by the beneficiary renders the stipulation irrevocable as soon as the promisee or the promisor becomes aware of it.

It invests the beneficiary with a right to bring proceedings directly against the promisor for the enforcement of the undertaking, this right being deemed to have arisen from its creation.

Art. 1208. – Revocation may be effected only by the promisee, or, after his death, by his heirs. The latter may do so only after a period of three months has elapsed from the date when they put the third party on notice to accept the benefit of the promise.

Revocation is effective as soon as the third party beneficiary or the promisor becomes aware of it.

Where it is made by testament, it takes effect from the moment of the testator's death. If it is not accompanied by a new designation of a beneficiary, revocation benefits the promisee or his heirs, as the case may be. The third party who was initially designated is deemed never to have benefited from the stipulation made for his benefit.

Art. 1209. – Acceptance may come from the beneficiary or, after his death, his heirs, subject to any contract term to the contrary. Acceptance may be express or implied. It may take place even after the death of the promisee or the promisor.

Art. 1210. – The promisee may himself require the promisor to perform his undertaking towards the beneficiary.

SECTION 3 *The Duration of Contracts*

Art. 1211. – Perpetual undertakings are prohibited.

Art. 1212. – Where a contract is concluded for an indefinite duration, one or other of its parties may put an end to it at any time, subject to giving reasonable notice.

A contracting party who unilaterally puts an end to a contract may be liable only in the case of abuse.

Art. 1213. – Where a contract is concluded for a definite duration, each contracting party must perform it until the date of its due ending.

Subject to any legislative provision or contract term to the contrary, no-one may require the renewal of a contract.

Art. 1214. – A contract may be extended if the contracting parties manifest an intention to do so before its expiry. Such an extension may not prejudice the rights of third parties.

Art. 1215. – A contract of definite duration may be renewed as a result of legislative provision to this effect or by the agreement of the parties.

Subject to legislative provision or contract term to the contrary, renewal gives birth to a new contract whose content is identical to its predecessor but whose duration is indefinite.

Art. 1216. – Where, on the expiry of the term of a contract concluded for a definite duration, the parties continue to perform their obligations, there is an implied continuation of the contract. The latter produces the same effects as a renewal of such a contract.

SECTION 4 *Contractual Non-performance*

Art. 1217. – A party towards whom an undertaking has not been performed or has been performed imperfectly, may:

- suspend performance of his own obligations;
- seek enforced performance in kind of the undertaking;
- request a reduction in price;
- provoke the termination¹³ of the contract;
- claim reparation of the consequences of non-performance.

Remedies which are not incompatible may be combined; damages may be added to any other remedy.

Art. 1218. – In contractual matters, there is force majeure where an event beyond the control of the debtor, which could not reasonably have been foreseen at the time of the conclusion of the contract and whose effects could not be avoided by appropriate measures, prevents performance of his obligation by the debtor.

If the non-performance is not incapable of being remedied, the contract may be suspended. If the non-performance is incapable of being remedied, the contract is terminated by operation of law and the parties are discharged from their obligations under the conditions provided by articles 1328 and 1328-1.

Sub-section 1 *Defence of Non-performance*

Art. 1219. – A party may refuse to perform his obligation, even where it is enforceable, if the other party does not perform his own and if this non-performance is sufficiently serious.

¹³ See above, n. 9.

Art. 1220. – A party may suspend the performance of his act of performance as soon as it becomes clear that his contracting partner will not perform his obligation when it becomes due and that the consequences of this non-performance are sufficiently serious for him. Notice of this suspension must be given as quickly as possible.

Sub-section 2
Enforced Performance in Kind

Art. 1221. – A creditor of an obligation may, having given notice to perform, seek performance in kind unless performance is impossible or its cost is manifestly unreasonable.

Art. 1222. – Having given notice to perform, a creditor may also have an obligation performed himself or have something which has been done in breach of an obligation destroyed, as long as this is done within a reasonable time and at a reasonable cost. He may claim reimbursement of sums of money employed for this purpose from the debtor.

He may also bring judicial proceedings in order to require the debtor to advance a sum necessary for this performance or destruction.

Sub-section 3
Reduction in Price

Art. 1223. – A creditor may accept an imperfect contractual performance and reduce the price proportionally.

If he has not yet paid, the creditor must give notice of his decision as quickly as possible.

Sub-section 4
Termination

Art. 1224. – Termination results either from the application of a termination clause, or, where the non-performance is sufficiently serious, notice by the creditor to the debtor or from a judicial decision.

Art. 1225. – A termination clause must designate the undertakings whose non-performance will lead to the termination of the contract.

Termination may take place only after service of a notice to perform which has not been complied with, unless it was agreed that termination may arise from the mere act of non-performance. The notice to perform must refer to the termination clause in a clear manner.

Termination takes effect by notice made to the debtor and as from the date of its receipt.

Art. 1226. – A creditor may, at his own risk, terminate the contract by notice. He must previously have put the debtor in default on notice to perform his undertaking within a reasonable time.

The notice to perform must state in a clear manner that if the debtor fails to fulfil his undertaking, the creditor will have a right to terminate the contract.

Where the non-performance continues, the creditor must notify the debtor of the termination of the contract and the reasons on which it is based.

The debtor may at any time bring proceedings before a court to challenge such a termination. The creditor must then establish the seriousness of the non-performance.

Art. 1227. – Termination may always be claimed in court proceedings.

Art. 1228. – A court may, according to the circumstances, recognise or declare the termination of the contract or order its performance, with the possibility of allowing the debtor further time to do so.

Art. 1229. – Termination puts an end to the contract.

Termination takes effect, according to the situation, on the conditions provided by any termination clause, at the date of receipt by the debtor of a notice given by the creditor, or on the date set by the court or, in its absence, the day on which proceedings were brought.

It gives rise to obligations to make restitution in respect of acts of performance provided to each other by the parties where their performance was not in conformity with their respective obligations or where the economic balance of the contract so requires.

Restitution takes place under the conditions foreseen by Chapter V of Title IV.

Art. 1230. – Termination does not affect contract terms relating to dispute-resolution, nor those intended to take effect even in the case of termination, such as confidentiality or non-competition clauses.

Sub-section 5

Reparation of Loss caused by Contractual Non-performance

Art. 1231. – Damages are due only where the debtor is on notice to perform his obligation, except, however, where the thing which the debtor was obliged to give or to do could not be given or done except within a certain period which he has allowed to go by.

Art. 1231-1. – A debtor may be condemned, where appropriate, to the payment of damages by reason of either the non-performance or a delay in performance of an obligation, unless he is able to justify that the non-performance results from an external cause for which he is not responsible, and that there was no bad faith at all on his part.

Art. 1231-2. – In general, damages due to the creditor are for the loss that he has incurred or the gain of which he has been deprived, with the following exceptions and qualifications.

Art. 1231-3. – A debtor is only bound to damages which were either foreseen or which could have been foreseen at the time of the contract, as long as there was no bad faith or dishonesty in the non-performance of the obligation.

Art. 1231-4. – In the situation where non-performance of a contract has indeed taken place by reason of the debtor's bad faith or dishonesty, damages in respect of loss established by the creditor or of a gain of which he has been deprived include only that which is the immediate and direct result of non-performance of the contract.

Art. 1231-5. – Where a contract stipulates that the person who fails to perform shall pay a certain sum of money by way of damages, the other party may be awarded neither a higher nor a lower sum.

Nevertheless, a court may, even of its own initiative, moderate or increase the penalty which was agreed if it is manifestly excessive or derisory.

Where an undertaking has been performed in part, the agreed sanction may be reduced by a court, even of its own initiative, in proportion to the advantage which partial performance has procured for the creditor, without prejudice to the application of the preceding paragraph.

Any stipulation contrary to the preceding two paragraphs is deemed not written. Subject to any contract term to the contrary, a penalty is not incurred unless the debtor was put on notice to perform.

Art. 1231-6. – In the case of obligations limited to the payment of a certain sum of money, damages resulting from delay in performance always consist only of an award of interest at the rate set by legislation, except where special rules governing commerce or guarantees provide otherwise.

These damages are due without the creditor having to establish any loss.

They are due only from the day of notice to perform, except as regards situations where legislation provides that they run by operation of law.

Where a debtor who is late in performing has by his bad faith caused his creditor a loss independent of this delay, the latter may obtain damages distinct from damages for the delay in respect of his right arising from the obligation.

Art. 1231-7. – In all matters, an award of compensation attracts interest at the rate set by legislation, even in the absence of any claim by a party or specific order by the court. Subject to any legislative provision to the contrary, this interest runs from the giving of judgment unless the court decides otherwise.

In the case of a pure and simple affirmation by a court of appeal of a decision awarding compensation in reparation of harm, the latter bears interest by operation of

law at the rate set by legislation from the giving of judgment at first instance. In other situations, compensation awarded on appeal bears interest from the appellate decision. A court of appeal may nonetheless derogate from the provisions of this paragraph.

SUB-TITLE II
EXTRA-CONTRACTUAL LIABILITY
[setting out again the existing law contained in arts 1382 to 1386-18
of the Civil Code]

SUB-TITLE III
OTHER SOURCES OF OBLIGATIONS

Art. 1300. – Quasi-contracts are purely voluntary actions which result in a duty in a person who benefits from them without having a right to do so, and sometimes a duty in the person performing them towards another person.

The quasi-contracts governed by this sub-title are management of another's affairs, payment of a debt which is not due, and unjustified enrichment.

CHAPTER 1
MANAGEMENT OF ANOTHER'S AFFAIRS

Art. 1301. – A person who, without being bound to do so, knowingly manages another's affairs without the knowledge or opposition of the latter (the principal), is bound in accomplishing any juridical acts or physical action which this entails to all the obligations which he would have owed as an agent.

Art. 1301-1. – He is bound to take all the care of a reasonable person in the management of the other's affairs; he must carry on with their management until the principal or his successor is able to do so himself.

A court may, depending on the circumstances, moderate any compensation due to the principal on the ground of any fault or failure to act in the person intervening.

Art. 1301-2. – A person whose affairs have been managed usefully must fulfil any undertakings which the person intervening contracted in his interest.

He must reimburse the person intervening for expenses incurred in his interest and compensate him for harm which he has suffered as a result of the management.

Sums advanced by the person intervening carry interest from the day of payment.

Art. 1301-3. – Ratification of the management by the principal is equivalent to conferring the authority of an agent.

Art. 1301-4. – A personal interest in the intervener in taking on the affairs of the principal does not exclude the application of the rules governing management of another's affairs.

In this situation, the burden of undertakings, expenses and harm caused is shared in proportion to the interest of each person in the common affairs.

Art. 1301-5. – If the action of the person intervening does not satisfy the conditions for the application of management of another’s affairs but nevertheless inures for the benefit of the principal, the latter must compensate the person intervening under the rules of unjustified enrichment.

CHAPTER II UNDUE PAYMENT

Art. 1302. – Every payment presupposes a debt; something which is supplied without being due is subject to recovery.

Recovery is not allowed as regards natural obligations which have been voluntary discharged.

Art. 1302-1. – A person who receives by mistake or knowingly something which is not owed to him must restore it to the person from whom he unduly received it.

Art. 1302-2. – A person who by mistake or under constraint has discharged another person’s debt enjoys a right of recovery against the creditor. However, this right ceases in the situation where the creditor, as a result of payment, has cancelled his instrument of title or has released any security guaranteeing the right arising from the obligation.

Reimbursement may also be claimed from a person whose debt has been discharged by mistake.

Art. 1302-3. – Recovery is subject to the rules governing restitution set out in Chapter V of Title IV.

Any restitution may be reduced if a payment made by mistake stems from fault.

CHAPTER III UNJUSTIFIED ENRICHMENT

Art. 1303. – Apart from the situation of undue payment, a person who benefits from an unjustified enrichment to the detriment of another person must indemnify the person who is thereby made the poorer to an amount equal to the lesser of the two values of the enrichment and the impoverishment.

Art. 1303-1. – An enrichment is unjustified where it stems neither from the fulfilment by the person impoverished of an obligation nor from his intention to confer a gratuitous benefit.

Art. 1303-2. – Compensation is excluded where the impoverishment stems from an act made by the impoverished person with a view to personal profit.

Compensation may be moderated by a court if the impoverishment stems from the fault of the person impoverished.

Art. 1303-3. – Compensation is excluded where another action may be brought by the impoverished person, or where the action is barred, as in the case of prescription.

Art. 1303-4. – Impoverishment established in a person's assets from the day of its expenditure, and enrichment such as it still exists at the day of the claim, are evaluated as of the day of judgment of the court. In the case of bad faith in the person enriched, the compensation due is equal to the higher of the two values.

TITLE IV
THE GENERAL REGIME OF OBLIGATIONS

CHAPTER I
MODALITIES OF OBLIGATIONS

SECTION I
Conditional Obligations

Art. 1304. – An obligation is conditional where it depends on a future, uncertain event.

A condition is suspensive where its fulfilment renders the obligation unconditional.

It is resolutive where its fulfilment results in the destruction of the obligation.

Art. 1304-1. – A condition must be [possible and] lawful. If it is not, the obligation is a nullity.

Art. 1304-2. – A suspensive obligation undertaken subject to a condition whose satisfaction depends on the will of the debtor alone is a nullity. Nullity on this ground cannot be invoked where the obligation has been performed while aware of the position.

Art. 1304-3. – A suspensive condition is deemed to have been fulfilled if the party who is interested in its failing has obstructed its fulfilment.

A resolutive condition is deemed to have failed if its fulfilment has been caused by the party who had an interest in this occurring.

Art. 1304-4. – A party is free to renounce a condition which has been stipulated for his exclusive benefit, as long as the condition has not been fulfilled.

Art. 1304-5. – Until a suspensive condition has been fulfilled, the debtor must refrain from any act which would obstruct the proper performance of the obligation; and the creditor may take all measures necessary to preserve his rights and challenge any acts effected by the debtor in fraud of his rights.

Art. 1304-6. – An obligation is fully effective from the moment when the suspensive condition is fulfilled.

However, the parties may provide that the fulfilment of the condition will have a retroactive effect from the date when the undertaking was contracted. In that case, the thing which is the subject-matter of the obligation remains at the risk of the debtor, who retains its management and takes its fruits until the condition is fulfilled.

If a suspensive condition fails, the obligation is deemed never to have existed.

Art. 1304-7. – The fulfilment of a resolutive condition extinguishes the obligation retroactively, but does not challenge any acts of management which might have been carried out.

The effect is not retroactive if the parties so agree or if the overall balance of the contract so requires.

SECTION 2 *Time-Delayed Obligations*

Art. 1305. – An obligation is time-delayed where its enforceability is deferred until the occurrence of a future, certain event, even if its date is uncertain.

Art. 1305-1. – The time for the delay may be express or implied.

Where the time for the delay has not been fixed, or where its establishment requires a new agreement or the decision of one of the parties, if the time for the delay has not been established at the end of a reasonable period, the court may fix it taking into consideration the nature of the obligation and the situation of the parties.

Art. 1305-2. – Whatever is due only after a delay may not be demanded until the time so fixed has passed; but whatever has been paid in advance may not be recovered.

[The creditor of an obligation subject to a time-delay may take all measures necessary to preserve his rights and take action against any acts effected by the debtor in fraud of his rights.]

Art. 1305-3. – A time-delay is for the benefit of the debtor, unless legislation, the parties' agreement or circumstances entail that it has been set in favour of the creditor or of both parties.

A party for whose exclusive benefit a time delay has been fixed may renounce it without the consent of the other.

Art. 1305-4. – A debtor may not claim the benefit of a time delay if he does not provide the securities he promised to the creditor or if by his own action he reduces the value of those which he has provided to him.

Art. 1305-5. – The loss of the benefit of a time delay by a debtor may not be set up against his co-debtors, even if they are joint and several.

SECTION 3
Plural Obligations

Sub-section 1
Plurality of Subject-matters

§1 – Cumulative Obligations

Art. 1306. – An obligation is cumulative where it has as its subject-matter more than one act of performance and the debtor is discharged only by performance of the totality of these acts.

§ 2 – Alternative Obligations

Art. 1307. – An obligation is alternative where it has as its subject-matter more than one act of performance and the debtor is discharged by the performance of one of these acts.

Art. 1307-1. – Except where legislation or the contract otherwise provide, the debtor may choose between the acts of performance.

If the choice has not been made within the time set or within a reasonable period, the other party may, after giving notice, make the choice or terminate the contract.

Once made, the choice is final and the obligation loses its alternative character.

Art. 1307-2. – Impossibility to perform the chosen act of performance discharges the debtor if it results from an event of *force majeure*.

Art. 1307-3. – If one of the acts of performance becomes impossible [by reason of an event of *force majeure*], the debtor who has not made known his choice must perform the other.

Art. 1307-4. – If one of the acts of performance becomes impossible to perform by reason of an event of *force majeure*, the creditor who has not made known his choice must accept performance of the other.

Art. 1307-5. – Where the acts of performance become impossible, the debtor is discharged only if the impossibility of performance of both acts results from an event of *force majeure*.

§3 – Optional Obligations

Art. 1308. – An obligation is optional where it has as its subject-matter a particular act of performance but, although it has as its subject-matter a particular act of performance, the debtor has the right to discharge himself by performing another.

An optional obligation is extinguished if the performance of the act agreed at the outset becomes impossible by reason of *force majeure*.

*Sub-section 2
Plurality of Parties*

Art. 1309. – An obligation binding multiple creditors or debtors is divided by operation of law as between them. A division takes place again as between their successors. In default of specific regulation by legislation or by the contract, the division takes place in equal parts.

Each creditor is entitled to only his share of the joint right; each debtor is liable for only his share of the joint debt. This is varied, as between the creditors and the debtors, only if the obligation is in addition joint and several, or if the act of performance owed is indivisible.

§1 – Joint and Several Obligations

Art. 1310. – The division of a joint debt or right arising from an obligation is joint and several as between the debtors or as between the creditors. The joint and several nature of an obligation does not apply to successors of the creditor or of the debtor.

The joint and several nature of an obligation arises as a result of legislation or agreement: it cannot be presumed.

1. Joint and Several Creditors

Art 1311. – Where the obligation is joint and several amongst creditors each of them may require and receive contractual satisfaction in full. Satisfaction made in favour of one, who must account to the others, discharges the debtor as regards them all.

The debtor may satisfy any of the creditors as long as he has not been sued by one of them.

Art. 1312. – Any act which interrupts or suspends the running of time for the purposes of prescription with regard to one of the joint and several creditors operates for the benefit of the other creditors.

2. Joint and Several Debtors

Art. 1313. – The joint and several nature of an obligation amongst debtors imposes on each of them liability for the whole of the debt. Satisfaction by one of them discharges them all as regards the creditor.

The creditor may require satisfaction from any joint and several debtor he may choose. An action brought against one of the joint and several debtors does not prevent the creditor from bringing similar actions against the others.

Art. 1314. – A joint and several debtor who is sued by the creditor may set up defences which are common to all the co-debtors, and those which are available to him personally. He may not set up defences which are personal to the other debtors, but he may take advantage of the extinction of a separate part of the debt owed by

another debtor to reduce the total of the debt.

Art. 1315. – A creditor who consents to the release of one of two or more joint and several debtors retains his right arising from the obligation against the others, but after deduction of the share of the debtor whom he has discharged.

Art. 1316. – As between themselves, the contribution of each joint and several debtor is limited to his own share.

A debtor who has satisfied the obligation beyond his own share has a right of recourse against the others in proportion to their own shares.

If one of the debtors is insolvent, his share is divided amongst the other solvent debtors, including the one who has satisfied the obligation and the one who has benefited from a release of his joint and several obligation.

Art. 1317. – If the matter for which the debt has been entered into jointly and severally concerns only one of the debtors, he alone is liable for this debt as regards the others. If he has satisfied it, he has no recourse against the other debtors. If they have satisfied it, they have a right of recourse against him.

Art. 1318. – Joint and several debtors are jointly and severally liable for non-performance of the obligation. In the final account the burden lies on those who are responsible for the non-performance.

§2 – Obligations whose Acts of Performance are Indivisible

Art. 1319. – Where an act of performance is indivisible, either by its nature or by the terms of the contract, each creditor of the obligation may require and receive satisfaction in full, subject to a duty to account to the others. However, he may not on his own dispose of the right arising from the obligation, nor accept its value in place of the thing.

Each of the debtors of such an obligation is bound to the whole, but he has his rights of recourse against the others for their contribution.

It is the same for each successor of these creditors and debtors.

CHAPTER II EXTINCTION OF OBLIGATIONS

SECTION I Satisfaction

Sub-section 1 General Provisions

Art. 1320. – Satisfaction is the performance of the act of performance which is due.

Satisfaction must be rendered as soon as the debt becomes enforceable.

It discharges the debtor as against the creditor and extinguishes the debt, except where legislation makes provision for subrogation to the rights of the creditor.

Art. 1320-1. – Satisfaction may even be rendered by a person who is not bound to do so, except where the creditor legitimately refuses it, or the debtor justifiably objects.

Art. 1320-2. – Satisfaction must be rendered to the creditor or to a person designated to receive it.

Satisfaction rendered to a creditor who lacks capacity is not valid unless he has received a benefit from it.

Satisfaction rendered to a person who was not authorised to represent the creditor is none the less valid if the creditor ratifies it or has received a benefit from it.

Art. 1320-3. – Satisfaction rendered in good faith to an apparent creditor is valid.

Art. 1320-4. – A creditor may refuse to accept partial satisfaction, even if the act of performance is divisible.

He may agree to receive in satisfaction some other thing than that which is owed to him.

Art. 1320-5. – A debtor who must provide specific property is discharged by the delivery to the creditor of the thing in its present state unless, where it has deteriorated, it is proved that the deterioration was not a consequence of his action or the action of persons for whom he is responsible.

Art. 1320-6. – Unless legislation, the court or the contract otherwise provide, satisfaction must be rendered at the place of domicile of the debtor.

Art. 1320-7. – The costs of satisfaction must be borne by the debtor.

Art. 1320-8. – Satisfaction may be established by any means of proof.

Art. 1320-9. – A voluntary delivery by the creditor to the debtor of the original signed instrument, or of the court order establishing his right, raises a rebuttable presumption that the debtor has been discharged.

A delivery of that same kind to one of the joint and several debtors has that same effect in relation to them all.

Art. 1320-10. – A debtor who owes more than one debt of the same nature may indicate when he renders satisfaction which debt he intends to discharge.

Failing indication by the debtor, satisfaction is allocated as follows: first, to overdue debts, and amongst these the debts which the debtor has the greatest interest in discharging. If the interest in their discharge is equal, satisfaction is allocated to the oldest; and things being equal, the allocation is pro rata.

Sub-section 2
Particular Provisions Relating to Monetary Obligations

Art. 1321. – A debtor of a monetary obligation is discharged by payment of its nominal value.

The value of a sum due may vary as a result of indexation.

A person who owes a debt whose value is to be assessed is discharged by the payment of the sum of money which is identified by its assessment.

Art. 1321-1. – Where a monetary obligation carries interest, the debtor is discharged by the payment of the principal and interest. Part-payment is allocated in the first instance to interest.

Interest is either granted by legislation or stipulated by the contract. An agreed rate of interest must be fixed in writing. In the absence of contrary provision, the interest is deemed to be annual.

Art. 1321-2. – Overdue interest which has been due for at least a full year generates interest where the contract so provided or a court order so specifies.

Art. 1321-3. – Payment in France of a monetary obligation must be made in the money current there at the time. However, payment may be made in another currency if the obligation providing for it arises under an international contract or a foreign judgment.

Art. 1321-4. – Unless otherwise fixed by legislation, the court or the contract, the place of satisfaction of a monetary obligation is the domicile of the creditor.

Art. 1321-5. – Taking into account the situation of the debtor and the needs of the creditor, a court may defer payment of sums that are due, or allow it to be made in instalments, for a period no greater than two years.

By a special, reasoned decision, a court may order that sums corresponding to deferred instalments shall bear interest at a reduced rate (not lower than the legal rate of interest) or that any payments made will first be allocated to repayment of capital.

The court may make these measures subject to the debtor effecting acts appropriate to facilitate or to secure payment of the debt.

A court order suspends any enforcement procedures which might have been initiated by the creditor. Any interest payable or penalties provided for in case of delay are not incurred during the period fixed by the court.

Any contractual provision to the contrary is deemed not written.

The provisions of this article do not apply [in cases specified by legislation, in particular] to debts in relation to maintenance payments.

Sub-section 3
Notice to Perform

§1 – Notice to the Debtor

Art. 1322. – A debtor is put on notice to perform by formal demand, by an act which gives sufficient warning, or, where this is provided for by the contract, by the mere fact that the obligation becomes enforceable.

Art. 1322-1. – A notice to deliver a thing passes the risk to the debtor, if the risk has not already passed.

§2 – Notice to the Creditor

Art. 1323. – Where performance is due, and without legitimate reason the creditor refuses to accept performance, or obstructs it by his own actions, the debtor may put him on notice to accept or permit performance.

Notice to the creditor stops interest running against the debtor and passes the risk of the thing to the creditor.

It does not interrupt the running of time for the purposes of prescription.

Art. 1323-1. – Where the obligation concerns the delivery of a thing or a sum of money and the obstruction has not come to an end within two months of the notice, the debtor may [consign, sequester or deposit] the subject-matter of the act of performance in the custody of a person authorised to hold it.

If [consignment, sequestration or deposit] of a thing is impossible or too onerous, the court may authorise its sale by private agreement or by public auction. After deduction of the costs of the sale, the price is [consigned or subject to the sequestration].

[Consignment, sequestration or deposit] discharges the debtor from the moment when the creditor is notified of them.

Art. 1323-2. – Where the obligation concerns some other subject-matter, the debtor is discharged if the obstruction has not come to an end within two months of the notice.

Art. 1323-3. – The costs of the notice and of the [consignment, sequestration or deposit] must be borne by the creditor.

Sub-section 4
Satisfaction with Subrogation

Art. 1324. – Subrogation takes place automatically by law in favour of a person who satisfies a debt as soon as his satisfaction discharges as against the creditor another person who is subject to the final burden in respect of all or part of a debt.

Art. 1324-1. – Subrogation also takes place where a debtor, borrowing a sum of money in order to satisfy his debt, subrogates the lender to the creditor’s rights with the latter’s concurrence. In this situation, subrogation must be express, and the receipt given by the creditor must indicate the source of the funds.

Subrogation may be agreed without the concurrence of the creditor, but only where the debt has fallen due or the period for payment was set for the debtor’s benefit. In such case the instrument of loan and the receipt must be entered into before a notary, it must be declared in the instrument of loan that the sum has been borrowed in order to have the debt satisfied, and in the receipt it must be declared that the satisfaction has been effected from funds provided for this purpose by the new creditor.

Art. 1324-2. – Subrogation cannot prejudice the creditor where he has received satisfaction only in part; in this situation, he may exercise his rights, as regards what still remains owed to him, in priority to the person from whom he has received only partial satisfaction.

Art. 1324-3. – Subrogation transfers to its beneficiary, up to the limit of the satisfaction which he has rendered, the right arising from the obligation and its ancillary rights, apart from rights which belong exclusively to the creditor personally.

[The subrogated person is entitled only to interest at the rate set by legislation from the moment of a notice to perform, unless he has agreed a new rate of interest with the debtor. The interest on either basis is guaranteed by any security attached to the creditor’s right.]

Art. 1324-4. – The debtor may invoke the subrogation from the time he becomes aware of it, but it can be set up against him only if it has been notified to him.

Subrogation may be set up against third parties from the time of the satisfaction which gives rise to it.

As against a subrogated creditor, the debtor may set up the defences inherent in the debt itself, such as nullity, the defence of non-performance, or the right to set off related debts. He may also set up defences which arose from the relations with the subrogating party before the subrogation became enforceable against him, such as the grant of a deferral, the release of a debt, or the set-off of debts which are not related.

SECTION 2

Set-Off

Sub-section 1

General Rules

Art. 1325. – Set-off is the simultaneous extinguishment of reciprocal obligations between two persons.

Art. 1325-1. – Subject to the provisions set out in the following sub-section, set-off takes place only in the case of two fungible obligations which are both liquidated and enforceable.

Obligations are fungible if they are of a sum of money, even in different currencies, provided that they can be converted; or if they have as their subject-matter a quantity of things of the same generic kind.

Art. 1325-2. – Unless the creditor consents, there can be no set-off of rights that cannot be attached, or of the obligation to return a deposit, a thing loaned for use, or a thing of which the owner has been unjustly deprived.

Art. 1325-3. - A period of grace for payment is no obstacle to set-off.

Art. 1325-4. – If there is more than one debt liable for set-off, the rules for the allocation of payments are applicable.

Art. 1325-5. – Set-off extinguishes the parties’ obligations up to the value of the lower of the two at the date when all the conditions for set-off are satisfied.

Art. 1325-6. – Where the debtor has agreed without reservation to the assignment of the creditor’s right, he may not set up against the assignee a set-off which he could have set up against the assignor.

Art. 1325-7. – A joint and several debtor and a guarantor may set up against the creditor a set-off which arises between the creditor and a co-debtor.

Art. 1325-8. – Set-off does not prejudice rights acquired by third parties.

Sub-Section 2 Particular Rules

§1 – Particular Rules Relating to Judicial Set-off

Art. 1326. – Set-off may be ordered by a court even if one of the obligations is not yet liquidated or enforceable. Unless otherwise decided, in these circumstances set-off is effective at the date of the decision.

Art. 1326-1. – The court may not refuse to set off related debts for the sole reason that one of the obligations would not be liquidated or enforceable.

In that situation, set-off is deemed to be effected on the day when the rights co-existed.

In that same situation, the acquisition by a third party of rights in relation to one of the obligations does not prevent the debtor from raising set-off.

§2 – Particular Rules Relating to Contractual Set-off

Art. 1327. – The parties are free to agree to extinguish all reciprocal obligations, present or future, by set-off. Such a set-off takes effect on the date of their agreement or, if it concerns future obligations, when they co-exist.

SECTION 3
Impossibility of Performance

Art. 1328. – Impossibility of performing the act of performance discharges the debtor to the extent of that impossibility where it results from an event of *force majeure* and cannot be remedied, unless he had agreed to bear the risk of the event or had been given notice to perform.

Art. 1328-1. – Where the impossibility of performance is a result of the loss of the thing that is owed, the debtor who has been given notice to perform is still discharged if he proves that the loss would equally have occurred if his obligation had been performed.

He must, however, assign to the creditor his rights and claims attached to the thing.

SECTION 4
Release of Debts

Art. 1329. – Release of a debt is a contract by which the creditor discharges the debtor from his obligation.

Art. 1329-1. – Release granted to one of two or more joint and several debtors discharges all the others to the extent of that debtor's share.

Release of a debt agreed by only one of two or more joint and several creditors discharges the debtor only as regards that creditor's share.

Art. 1329-2. – Release of a debt granted to a principal debtor discharges any guarantors.

Release agreed for one of two or more joint and several guarantors discharges the others to the extent of that guarantor's share.

Anything received by a creditor from a guarantor in return for the discharge of his guarantee must be set against the debt and to this extent discharges the principal debtor. The other guarantors remain bound only to the extent which remains after deduction of the share of the guarantor who has been discharged, or of the value he has provided if that exceeds his share.

SECTION 5
Merger

Art. 1330. – There is merger where the same person becomes both creditor and debtor. It extinguishes the debt and any ancillary rights and obligations, apart from any rights acquired by or against third parties.

Art. 1330-1. – Where merger affects only one joint and several debtor, or only one joint and several creditor, the extinction takes place as regard the others only for that party's share.

Where merger affects an obligation which has been guaranteed, the guarantor is discharged. Where merger affects one of a number of guarantors, the others are discharged to the extent of that guarantor's share.

CHAPTER III ACTIONS AVAILABLE TO CREDITORS

[*Art. 1331.* – A creditor has the right to performance of the obligation; he may compel the debtor to perform under the conditions provided by legislation.]

Art. 1331-1. – Where a debtor's failure to act compromises the interests of the creditor, the latter may exercise all the rights and actions of the debtor in the debtor's name, with the exception of those which belong exclusively to him personally.

Art. 1331-2. – A creditor may also take action in his own name to obtain a declaration that acts made by the debtor in fraud of his rights may not be set up against him. In the case of non-gratuitous acts, he can do so only if he establishes that the third party contracting with the debtor knew of the fraud.

Art. 1331-3. – In certain cases defined by legislation, a creditor may sue directly to obtain satisfaction from a debtor of his own debtor.

CHAPTER IV MODIFICATION OF THE RELATIONSHIP OF OBLIGATION

SECTION I Assignment of Rights arising from Obligations

Art. 1332. – Assignment is a contract by which the creditor (the assignor) transfers, whether or not for value, the whole or part of his rights against the assignment debtor to a third party (the assignee).

It may concern all or part of one or more rights, present or future, ascertained or ascertainable.

In the absence of contrary provision, it extends to the ancillary rights of the right that is assigned.

The consent of the debtor is not required unless the identity of the creditor is decisive for the debtor, or the right was stipulated to be non-assignable.

Art. 1333. – An assignment must be effected in writing, on pain of nullity.

Art. 1334. – As between the parties the assignment of a right takes effect from the time of execution of the instrument.

An assignment can be set up against third parties from the date of the instrument. In the event of challenge, the burden of proof of the date of the assignment rests on the assignee, who may establish it by any means of proof.

However, the transfer of a future right takes effect only on the day when it comes into existence, as between the parties as well as against third parties.

Art. 1335. – The debtor may invoke the assignment from the time he becomes aware of it, but it can be set up against him only if it has been notified to him or if he has agreed to it.

The debtor may set up against the assignee defences inherent in the debt itself, such as nullity, the defence of non-performance, or the right to set off related debts. He may also set up defences which arose from the relations with the assignor before the assignment became enforceable against him, such as the grant of a deferral, the release of a debt, or the set-off of debts which are not related.

The assignor and the assignee are jointly and severally liable for any additional costs arising from the assignment which the debtor did not have to advance. In the absence of contrary provision, the burden of these costs lies on the assignee.

Art. 1336. – In the case of successive assignments, competition between the assignees is resolved in favour of the first in time, who has a right of recourse against the one in whose favour the debtor would have in good faith tendered satisfaction.

Art. 1337. – A person who assigns a right for value guarantees the existence of the right and of its ancillary rights [unless the assignee took it at his own risk or knew of the uncertainty relating to the right].

He is not answerable for the solvency of the debtor unless he has undertaken to be so, and then only up to the value of the sum he was able to obtain for the assignment.

Where the assignor has guaranteed the solvency of the debtor, the guarantee extends only to his current solvency; it may be extended to his solvency when the right falls due, but only if the assignor has expressly so specified.

SECTION 2

Assignment of Debts

Art. 1338. – A debtor may assign his debt to another person.

The assignor is discharged only if the creditor expressly consents to it. In the absence of such consent, the assignor is merely a guarantor of the assignee's debts.

Art. 1339. – The assignee, and the assignor if he remains liable, may set up against the creditor defences inherent in the debt. Each may also set up defences which are personal to him.

Art. 1339-1. – Where the assignor is not discharged by the creditor, any guarantees remain binding. Where the assignor is discharged, guarantees given by third parties remain binding only if they agree.

If the assignor is discharged, any joint and several co-debtors remain liable to the extent which remains after deduction of the share of the debtor who has been

discharged.

SECTION 3
Assignment of Contracts

Art. 1340. – With the consent of the other party, a party may assign to a third party his status as party to a contract.

Assignment of a contract discharges the assignor only if the other party has expressly consented to it. Such a discharge operates only for the future.

Where the assignor has not been discharged for the future, and in the absence of contrary provision, he is merely a guarantor of the assignee's debts.

The rules governing assignments of rights arising from obligations and the assignment of debts apply to the extent to which this is necessary.

SECTION 4
Novation

Art. 1341. – Novation is a contract which has as its subject-matter the substitution of one obligation (which it extinguishes) with a new obligation (which it creates).

It may take place by substitution of obligations between the same parties, by change of debtor or by change of creditor.

Art. 1342. – Novation cannot be presumed. The intention to effect it must be shown clearly in the instrument. It may be established by any means of proof.

Art. 1343. – Novation takes place only if the old and the new obligations are both valid, unless it has expressly as its subject-matter the substitution of a valid undertaking for an undertaking which is tainted by a defect.

Art. 1344. – Novation by change of debtor may take place without the concurrence of the first debtor.

Art. 1345. – Novation by change of creditor may take place if the debtor has agreed in advance that the new creditor is to be appointed by the old.

Art. 1346. – Extinction of the old obligation extends to all its ancillary rights and obligations.

By way of exception, any initial real security may be preserved to guarantee the new obligation if the holders of the encumbered rights so agree.

Art. 1347. – A novation agreed between the creditor and one of two or more joint and several debtors discharges the others.

A novation agreed with regard to the principal debtor discharges any guarantors.

A novation agreed between the creditor and a guarantor does not discharge the principal debtor. It discharges the other guarantors to the extent that their contribution is based on the novated obligation.

SECTION 5
Delegation

Art. 1348. – Delegation is a contract by which one person (the delegator) obtains from another (the delegate) an obligation in favour of a third party (the beneficiary of the delegation), who accepts him as debtor.

Unless otherwise provided, the delegate may not set up against the beneficiary any defence arising from his relations with the delegator, or from the relations between the latter and the beneficiary.

Art. 1349. – Where the delegator is debtor of the beneficiary and the instrument demonstrates clearly the will of the beneficiary to discharge the delegator, the delegation takes effect as a novation.

However, the delegator remains bound if he had undertaken to guarantee the future solvency of the delegate, or if the delegate is subject to a procedure for cancellation of his debts at the time of the delegation.

Art. 1350. – Where the delegator is debtor of the beneficiary but the beneficiary has not discharged his debt, the delegation provides the beneficiary with another debtor.

Satisfaction tendered by one of the two debtors discharges the other to the extent of the tendered satisfaction.

Art. 1351. – Where the delegator is creditor of the delegate, his rights are extinguished only by the performance of the delegate's obligation in favour of the beneficiary, and only to the extent of that performance.

Until then, the rights of the delegator against the delegate may not be assigned nor subject to distraint, and the delegator may require or accept satisfaction only in relation to the share beyond that which the delegate has undertaken. He may enforce his rights only if he performs his own obligation in favour of the beneficiary.

However, if the beneficiary has discharged the delegator, the delegate is also discharged as against the delegator, to the extent of the value of his undertaking in favour of the beneficiary.

Art. 1352. – A simple indication by the debtor of a person designated to perform in his place does not constitute either novation or delegation. The same is true of a simple indication by the creditor of a person designated to receive satisfaction on his behalf.

CHAPTER 5
RESTITUTION

Art. 1353. – Restitution takes place in kind or, where this is impossible, by value.

Art. 1353-1. – Restitution of a sum of money relates to the principal sum received by the act of performance as well as interest and any taxes paid to the person who received the price.

Securities attaching to a loan of money are transferred by operation of law to the obligation to make restitution, although the guarantor does not lose the benefit of any time delay.

Art. 1353-2. – Restitution of a thing other than a sum of money includes its fruits and compensation in respect of the enjoyment to which it has given rise.

Compensation for enjoyment is to be assessed by the court as at the date of its decision.

If the fruits no longer exist in kind, their restitution takes place according to their value assessed at the date of reimbursement, on the basis of the condition of the thing at the date of satisfaction of the obligation.

Art. 1353-3. – A party in bad faith owes interest, fruits and payment in respect of enjoyment from the moment of receipt of satisfaction. A party in good faith owes these only from the date when they are demanded.

Art. 1353-4. – Restitution in respect of a service that has been supplied takes place by value, which is assessed at the date at which it was supplied.

An action for restitution brought against a person who has benefited from performance of the service only through a third party is subject to the rules of unjustified enrichment.

Art. 1353-5. – The amount of restitution is fixed taking into account any necessary expenses incurred in the maintenance of the thing, and those which have increased its value.

A person who makes restitution of a thing is responsible for any degradations or deteriorations which have reduced its value unless he was in good faith and these were not due to his fault.

Increases and decreases in value which affect the thing subject to restitution are assessed as at the date of its restitution.

Art. 1353-6. – A person who sells a thing which he received in good faith must make restitution only of the sale price.

If he received it in bad faith, he must pay the value at the date on which he makes restitution where that is higher than the price.

Art. 1353-7. – Restitution in respect of a service that has been supplied takes place by value, which is assessed at the date at which the service was supplied.

An action for restitution brought against a person who has benefited from performance of the service only through a third party is subject to the rules of unjustified enrichment.

Art. 1353-8. – Any securities created for the satisfaction of a contractual obligation also guarantee the obligation to make restitution.

*TITLE IVB
PROOF OF OBLIGATIONS*

*SECTION 1
General Provisions*

Art. 1354. – A person who claims performance of an obligation must prove it.

Conversely, a person who claims to have been discharged must establish satisfaction or circumstances which have resulted in the extinction of the obligation.

Art. 1355. – A legal presumption which is attached by special legislation to certain acts or to certain facts, dispenses the person in whose favour it exists from proof of the act or facts to which it applies.

A simple presumption can be rebutted by any means of proof; a mixed presumption, only by the special means permitted by legislation, or only for the special purpose envisaged by it; an irrebuttable presumption, by an admission in court or by a decisive oath.

Art. 1356. – The authority of *res judicata* applies only with respect to the subject-matter of the judgment. The subject-matter of the claim must be the same; the claim must have the same ground; the claim must be between the same parties, and brought by and against them in the same capacity.

Art. 1357. – Contracts relating to proof are valid where they concern rights of which the parties have free disposal.

Nevertheless, they cannot contradict presumptions established by legislation, nor modify the probative force attached to admissions in court or to oaths. Moreover, they cannot establish for the benefit of one of the parties an irrebuttable presumption as regards something which he has himself written.

Art. 1358. – The judicial administration of the proof of any matter, and disputes relating to it, are governed by the Code of Civil Procedure.

SECTION 2
Admissibility of Kinds of Proof

Art. 1359. – Proof of facts is at large. It may be established by any means.

Art. 1360. – A juridical act relating to a sum of money or value in excess of an amount fixed by decree must be proved by written evidence.

No proof may be brought beyond or contrary to evidence in writing, even if the sum of money or value does not exceed this amount, except by other written evidence which is signed¹⁴ or contained in an authenticated instrument.

Evidence in writing may be supplemented by an admission in court, by a decisive oath, or by a beginning of proof by writing which is corroborated by another means of proof.

Art. 1361. – A person whose right under an obligation exceeds the threshold set out by the preceding article cannot be dispensed from the requirement of proof by written evidence by restricting the amount claimed.

The same rule applies to a person whose claim, even if lower than this amount, concerns the balance of a sum or a part of a right higher than this amount.

Art. 1362. – Any written evidence constitutes a beginning of proof by writing where it originates from the person who is challenging the act or a person whom he represents and renders the fact alleged to be likely to be true.

A court may consider as equivalent to a beginning of proof by writing any statements made by a party in responding orally to the court's questions, his refusal to reply to the court's questions, or his failure to appear to respond to the court's questions.¹⁵

Any reference to an authenticated writing or to a signed writing on a public register is equivalent to a beginning of proof by writing.

Art. 1363. – The above rules find exceptions in the cast of the physical or moral impossibility of obtaining written evidence, where it is customary not to establish written evidence, or where written evidence has been lost as a result of force majeure.

SECTION 3
The Different Kinds of Proof

Sub-section 1
Proof by Written Evidence

¹⁴ 'Other written evidence which is signed' translates '*un autre écrit sous signature privée*'. More generally, we have translated '*sous signature privée*' as 'signed', the significance being that something is *merely signed* as opposed to having been authenticated. Cf. arts 1364–1371 (on authenticated instruments) and 1372–1377 (on signed instruments).

¹⁵ This provision concerns various aspects of *la comparution personnelle*, which is a procedural mechanism for the collection of evidence available to a court and consists of the court putting questions orally to a party: see arts 184–194 *Code de la procédure civile*.

§1 – General Provisions

Art. 1364. – Proof of a juridical act may be constituted in advance by its being created in a publicly authenticated written form or by signature.¹⁶

Art. 1365. – Writing consists of a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, whatever their medium.

[*Art. 1366.* – Electronic writing has the same probative force as writing on paper, provided that it is possible properly to identify the person from whom it originates and that it is created and stored in such circumstances as will guarantee its integrity.]

Art. 1367. – A signature which is required in order to perfect a juridical act identifies the person who places it on the document. It demonstrates the consent of the parties to the obligations which arise from this act. Where it is placed on the act by a public official, it confers authenticity on it.

Where it is in electronic form, it must use a reliable process of identification which guarantees its relationship with the act to which it is attached. The reliability of the process is presumed in the absence of proof to the contrary where an electronic signature is created, the identity of the signatory is ensured and the integrity of the act is guaranteed in circumstances fixed by decree in the *Conseil d'État*.

Art. 1368. – In the absence of legal provision or agreement to the contrary, a court resolves conflicts of written evidence by deciding which is the more likely to be true by reference to any means of proof.

§2 – Authenticated Instruments

Art. 1369. – An authenticated instrument is one which has been received, with the requisite formalities, by a public official having the power to draw it up.

It may be drawn up in an electronic medium if it is created and stored on the conditions fixed by decree in the *Conseil d'État*.

Where it is received by a notary, it does not require any statement in his own hand otherwise than as required by legislation.

Art. 1370. – An instrument which is not authenticated as a result of the lack of authority or incapacity of the official, or of a defect in its form, takes effects as a signed document provided that it was signed by the parties.

Art. 1371. – An authenticated instrument constitutes proof of the act it contains unless an allegation of forgery against the relevant public officer as regards things which he has personally accomplished or given formal recognition is made.

In the case of a claim that the instrument is forged, the court may suspend its performance.

¹⁶ See above, n.14.

§ 3 Signed Instruments

Art. 1372. – A signed instrument, acknowledged by the party against whom it is set up or deemed by law to have been so acknowledged, constitutes proof of its existence as between its signatories and between their heirs or successors.

Art. 1373. – A party against whom the instrument is set up may disavow his writing or signature. The heirs or successors of a party may similarly disavow the writing or signature of their author, or declare that they do not recognise them. In these situations, the veracity of the writing is to be assessed.

Art. 1374. – A signed instrument countersigned by legal counsel provides proof both of the writing and of the signature of the parties.

Proceedings alleging the forgery of the instrument provided by the Code of Civil Procedure may be brought against him.

Such an instrument does not require any statement in his own hand as otherwise required by legislation.

Art. 1375. – A signed instrument which contains a synallagmatic contract constitutes proof of it only if it was made in as many originals as there are parties having a distinct interest, unless the parties agreed to deposit with a third party a unique executed copy of it.

Each original must state the number of the originals which have been executed.

A person who has performed a contract cannot set up a failure in the proper number of the originals or in stating their number.

The requirement of more than one original is deemed to have been satisfied for contracts in an electronic form where [the act is created and stored in accordance with articles 1366 and 1367 so that] the process allows each party to be in possession of or have access to a copy of it.

Art. 1376. – A signed instrument by which a single party undertakes an obligation towards another to pay him a sum of money or deliver to him fungible property does not constitute proof of it unless it bears the signature of the one who undertook the obligation, as well as a statement, written by the signatory himself, of the sum or of the quantity in both words and numbers. In case of a discrepancy between the two, the signed instrument is valid as regards the sum written in words.

Art. 1377. – As against third parties, a signed instrument provides proof of the date of its execution only from the day when it was registered, the day of the signatory's death, or from the day when its substance is formally declared in an authenticated instrument.

§ 4 - Other writing

Art. 1378. – Registers and documents which persons in business or carrying on a profession must hold or create have the same probative force as signed writing against the person who makes them; but a person who relies on them cannot pick and choose between the statements which they contain so as to retain only those which are favourable to him.

[*Art. 1378-1.* – Household registers and papers do not constitute proof for the benefit the person who wrote them.

They constitute proof against him:

1° wherever they formally acknowledge receipt of payment;

2° where they contain express mention that the record has been made in order to remedy the defect in documentary evidence for whose benefit they refer to an obligation.]

Art. 1378-2. – A reference to the satisfaction or other ground of discharge by a creditor borne on the original instrument of title [which still remains in his possession] is equivalent to a simple presumption of discharge of the debtor.

The same is true of a reference borne by a duplicate of an instrument of title or of a receipt, provided that the duplicate is in the hands of the debtor.

[*Art. 1378-3.* – [Traders' registers], household documents and references to the debtor's discharge may constitute proof without more; however, proof to the contrary may be admitted by any means.]

§ 5 - Copies

Art. 1379. – A reliable [and durable] copy has the same probative force as the original. Reliability is left to the assessment of the court. Nevertheless, a copy certified for enforcement or an authenticated copy of authenticated writing is deemed to be reliable. [Any indelible reproduction of the original which entails an irreversible modification in its medium in or on which it is contained is deemed to be durable.]

If an original document still exists, its production may always be required.

§ 6 – Acts of acknowledgement

Art. 1380. – An act of acknowledgment does not dispense with the requirement to produce the original document of title unless its content is specifically set out in the acknowledgment.

Anything contained in the acknowledgement which goes beyond the original document, or which is different from it, is of no effect.

Sub-section 2
Proof by testimonial evidence

Art. 1381. – The probative force of declarations made by third parties under the conditions set by the Code of Civil Procedure is left to the assessment of the court.

Sub-section 3
Proof by judicial presumption

Art. 1382. – Presumptions which are not established by legislation are left to the assessment of the court, which must allow only presumptions which are weighty, definite and corroborative, and only in the situations where legislation permits proof by any means.

Sub-section 4
Admissions

Art. 1383. – An admission is a declaration by which a person recognises as true a fact which is of a kind to produce legal consequences to his prejudice.

It may be judicial or extra-judicial.

Art. 1383-1. – A purely oral extra-judicial admission is not recognised except in the situations where legislation permits proof by any means.

Its probative value is left to the assessment of the court.

Art. 1383-2. An admission in court is a declaration made in the course of proceedings by a party or by his specially authorised representative.

It constitutes proof against a person who makes it.

It may not be divided against the person who makes it.

It is irrevocable, except in the case of mistake of fact.

Sub-section 5
Oaths

Art. 1384. – A decisive oath may be required by a party of another where the outcome of the case is thereby made to be depend upon it. It may also be required of one of the parties by the court of its own initiative.

§ 1 - Decisive oaths

Art. 1385. – A decisive oath may be required on any matter in dispute and at any stage in the proceedings.

Art. 1385-1. – It may be required only as to a personal action of the party of which it is required.

It may be referred back by the latter, at least if the action which is its subject-matter is not purely personal to him.

Art. 1385-2. – A person of whom an oath is required, and who refuses to take it or does not wish to refer it back to the other party, or the person to whom it has been referred back and who refuses to take it, fails in his allegation.

Art. 1385-3. – A party who has required or referred back an oath cannot retract his decision to do so where the other party has declared that he is ready to take an oath on it.

Where an oath which has been required or referred back has been taken, the other party is not permitted to prove that it is false.

Art. 1385-4. – An oath constitutes proof only in favour of, or against, the person who required it and his heirs and successors.

An oath required by one of two or more joint and several creditors of the debtor releases the debtor only in relation to that creditor's share.

An oath required of a principal debtor also releases his guarantors.

An oath required of one of two or more joint and several debtors benefits his co-debtors.

And one required of a guarantor benefits the principal debtor.

In the last two situations, an oath by a joint and several debtor or by a guarantor benefits the other co-debtors or the principal debtor only where it has been required in relation to the debt, and not in relation to the fact of the joint and several nature of the liability, or the fact of the guarantee.

§ 2 – Oaths required by a Court of its own Initiative

Art. 1386. – A court may require an oath of one of the parties of its own initiative. Such an oath may not be referred to the other party.

Its probative value is left to the assessment of the court.

Art. 1386-1. – A court may require an oath of its own initiative only in support of a claim, or of any defence which is set up against it, if the claim or exception is neither conclusively justified nor completely lacking in means of proof.