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Commercial and Civil Code of Thailand

BOOK VI - Succession

TITLE I

GENERAL PROVISIONS
CHAPTER I

DEVOLUTION OF AN ESTATE

Section 1599. When a person dies, his estate devolves on the heirs.

An heir may lose his right to the succession only under the provisions of this Code or other laws.

Section 1600. Subject to the provisions of this Code, the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

Section 1601. An heir shall not be liable in excess of the property devolving on him.

Section 1602. When a person is deemed to have died under the provisions of Section 62* of this Code shall, the estate devolves on the heirs.

If it is proved that such person is living or that he died at a time different from that specified in the adjudication of disappearance, the provisions of Section 63* of this Code shall apply as regards his heirs.

Section 1603. An estate devolves on the heirs by statutory right or by will.

Heirs who are so entitled by law are called ‘statutory heirs'.

Heirs who are entitles by will are called ‘legatees'.

[*Amended by section 15 Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535]

CHAPTER II

HEIRSHIP

Section 1604. A natural person can be an heir only when he has, at the time of the de cujes death, personality or is capable of rights under Section 15 of this Code.

For the purpose of this section, a child shall be deemed to have been en ventre sa mere at the time of such death if he is born or alive within three hundred and ten days after such time.

Section 1605. An heir who, fraudulently or with the knowledge that he prejudices any other heirs, diverts or conceal property up to or in excess of his share in the succession, shall be absolutely excluded from the succession; if he diverts or conceals less than his share in the succession, he shall be excluded from the succession up to the extent of the part so diverted or concealed.

This section does not apply to a legatee to whom a specific property has been bequeathed, in so far as his right to receive such property is concerned.

Section 1606. The following are excluded from succession as being unworthy:

(1) the person who is convicted by a final judgment of having wrongfully and intentionally caused the death or attempted to cause the death of the de cujus or of a person having prior right to the succession;

(2) the person who, having prosecuted the de cujes for having committed an offence punishable with death, has himself been convicted by a final judgment for bringing a false charge or for fabricating false evidence.

(3) the person who, having knowledge that the de cujes was murdered, did not give information thereof for the purpose of bringing the offender to punishment; but this does not apply if he has not completed sixteen years of age, or if he is unsound mind so as to be unable to distinguish between right and wrong, or if the murderer is his spouse or any of his direct ascendants or descendants;

(4) the person who, by fraud or duress, has caused the de cujes to make, revoke or change partly or wholly a will concerning the estate or has prevented him from so doing;

(5) the person who, has partly or wholly forged, destroyed or concealed a will.

The de cujes may remove the exclusion due to unworthiness by a pardon in writing.

Section 1607. The effects of exclusion from the succession are personal. The descendants of the excluded heir succeed as if such heir were dead, nut as regards the property so devolved, the excluded heir has no right of management and enjoyment as specified in Book V title II Chapter III of this Code. In such case Section 1548 shall apply mutatis mutandis.

CHAPTER III

DISINHERINTANCE

Section 1608. A de cujus may disinherit any of his statutory heirs only by an express declaration of intention,

(1) by will

(2) by writing deposited with the competent official.

The identity of the disinherited heir must be clearly stated.

However, when a person has distributed all his estate by will, all his statutory heirs who are not beneficiaries under the will are deemed to be disinherited.

Section 1609. A declaration of disinheritance may be revoked.

If the disinheritance has been made by will, the revocation may be made only by will; but if the disinheritance has been made in writing deposited with the competent official, such revocation may be made either from prescribed in Section 1608 (1) or (2).

CHAPTER IV

RENUNCIATION OF AN ESTATE AND MISCELLANEOUS PROVISIONS

Section 1610. When an estate devolves on a minor, or a person of unsound mind, or on a person incapable of managing his own affairs within the meaning of Section 32* of this Code, and such person has not already had a legal representative or custodian or curator, the court shall appoint a guardian, custodian or curator as the case may be, on application of any interested person or of the Public Prosecutor.

[* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

1611. An heir who is a minor, a person of unsound mind, or a person incapable of managing his own affairs within the meaning of 32* this Code, cannot, except with the consent of his parents, guardian, custodian or curator as the case may be and with the approval of the Court, do the following acts:

(1) renounce and inheritance or refuse legacy

(2) accept an inheritance or legacy encumbered with a charge or condition.

[* Amended by Section 15 Act Promulgation the Revised Provisions of Book I of the Civil and Commercial Code (B.E. 2535)]

Section 1612. Renunciation of an inheritance or refusal of a legacy shall be made by an express declaration of intention in writing deposited with the competent official, or by a contract of compromise.

Section 1613. Renunciation of an inheritance or refusal of a legacy cannot be merely for a part or made subject to a condition or time clause.

Renunciation of an inheritance or refusal of a legacy cannot be revoked.

Section 1614. In an heir in any way renounces an inheritance or refuses a legacy with the knowledge that in so doing he prejudices his creditor, the creditor is entitled to claim cancellation of such renunciation or refusal; but this does not apply if the person enriched by such act did not know, at the time of the renunciation or refusal, of the facts which would make it prejudicial to the creditor; provided, however, that the case of renunciation or refusal made gratuitously, the knowledge on the part of the heir alone is sufficient.

After cancellation of the renunciation or refusal, the creditor may apply to the Court for authorization to accept the inheritance or legacy in the stead and by the right to such heir.

In such case, after payment to the creditor of such heir, the remainder, if any, of his share in the estate shall accrue to his descendants or to the other heirs of the de cujus as the case may be.

Section 1615. The renunciation of an inheritance or refusal of a legacy by an heir relates back, as regards its effect, to the time of the death of the de cujus.

When renunciation is made by any statutory heir, his descendants, provided they are not persons in whose name a valid renunciation has been made on behalf by their parents, guardians or custodians as the case may be, shall succeed under their own rights and shall be entitled to the portion equal to the share which would have devolved on the renouncer.

Section 1616. If the descendants of the renouncer have acquired inheritance as provided in Section 1615, as regards the property so inherited by his descendants, the renouncer has no right of management and enjoyment as specified in Book V Title II Chapter III of this Code, and Section 1548 shall apply mutatis mutandis.

Section 1617. If any person refuses a legacy, neither such person nor his descendants are entitled to receive the legacy so refused.

Section 1618. If a renunciation is made by a statutory heir who has no descendant to inherit or if a refusal is made by a legatee, the part of the estate so renounced or refused shall be distributed to the other heirs of the de cujus.

Section 1619. A person cannot renounce or otherwise dispose of the rights which he may contingently have to the succession of a living person.

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TITLE II

STATUTORY RIGHT OF INHERITANCE

CHAPTER I

GENERAL PROVISIONS

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1620. Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to the law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to the law.

Section 1621. Unless otherwise provided by the testator in his will, although a statutory heir may have received any property under the will, such heir is still entitled to avail himself of his statutory right of inheritance up to the extent of his statutory share from the estate which has not been disposed of by the will.

Section 1622. A Buddhist monk cannot claim inheritance as a statutory heir, unless he leaves the monkhood and enforces his claim within the period of prescription specified in Section 1754.

However, a Buddhist monk can be a legatee.

Section 1623. Any property acquired by a Buddhist monk during his monkhood shall become, upon his death, property of the monastery which is his domicile, unless he has disposed of it during his life or by will.

Section 1624. Property belonging to a person before he entered the Buddhist monkhood shall not become property of the monastery, and shall devolve on his statutory heirs, or may be disposed of him by any way whatsoever according to the law.

Section 1625. If the deceased was married, the liquidation of property and the distribution of the estate between the deceased and the surviving spouse shall be as follows:

(1) as regards the share in the property of husband and wife, the provisions of this Code concerning divorce by mutual consent as supplemented by Sections 1637 and 1638 and especially Section 1513 to 1517 of this Code shall apply; however, such liquidation shall take effect as from the date of dissolution of the marriage by death;

(2) as regards the share in the estate of the deceased, the provisions of this Book other than Sections 1637 and 1638 shall apply.

Section 1626. After Section 1625 (1) has been complied with, the division of the estate between the statutory heirs shall be as follows:

(1) the estate will be divided between the several classes and degrees of heirs as provided in Chapter II of this Title;

(2) the proportion accruing to each class and degree shall be divided between the heirs of such class and degree, as provided in Chapter III of this Title.

Section 1627. An illegitimate child who has been legitimated by his father and an adopted child are deemed to be descendants in the same way as legitimate children within the meaning of this Code.

Secion 1628. Spouses who are living apart under desertion or separation do not lose the statutory right of inheritance to one another as long as divorce between them has not taken place according to the law.

CHAPTER II

DIVISION INTO PERTIONS BETWEEN SEVERAL CLASSES AND DEGREES OF STATUTORY HEIRS

Section 1629. There are only six classes of statutory heir;and subject to the provisions of Section 1630 paragraph 2, each class is entitled to inherit in the following order:

1) descendants;
2) parents;
3) brothers and sisters of full blood;
4) brothers and sisters of half blood;
5) grandparents;
6) uncles and aunts.

The surviving spouse is also a statutory heir, subject to the special provisions of Section 1635.

Section 1630. So long as there is any heir surviving or represented in a class as specified in Section 1629 as the case may be, the heir of the lower class has no right at all to the estate of the deceased.
However, the forgoing paragraph doe not apply in the particular case where there is any descendant surviving or represented as the case may be, and also the parents or one of them are still surviving; in such case each parent is entitled to the same share as an heir in the degree of children.

Section 1631. As between descendants of different degrees, only the children of the de cujus who are entitled to inherit. The descendants of lower degree may receive the inheritance only by the right of representation.

CHAPTER III

DIVISION INTO SHARES BETWEEN THE STATUTORY HEIRS IN EACH CLASS AND DEGREE

Section 1632. Subject to the provisions of Section 1629 last paragraph, the distribution of inheritance to the statutory heirs in the several classes of rlatives shall be in accordance with the provisions in Part I of this Chapter.

Section 1633. The statutory heirs of the same class in any of the classes as specified in Section 1629 are entitled to equal shares. If there is only one statutory heir in such class, he is entitled to the whole portion.

Section 1634. As between the descendants entitled by way of representative to the division per stirpes as provided in Chapter IV of Title II, the divisions shall be as follows:

(1) If there are descendants of different degrees, only the children of the deceased who are the nearest in degree are entitled to receive the inheritance. The descendants of lower degree may receive the inheritance only by virtue of the right of representation;

(2) descendants in the same degree are entitled to equal parts

(3) if in one degree there is only one descendants such descendant is entitled to the whole share.

PART II

Spouses

Section 1635. The surviving spouse is entitled to the inheritance of the deceased in the class and according to the division as hereunder provided:

(1) if there is an heir according to Section 1629 (1) surviving or having representatives as the case may be, such surviving spouse is entitled to the same share as an heir in the degree of children;

(2) if there is an heir according to Section 1629 (3) and such heir is surviving or has representatives, or if in default of an heir according to Section 1629 (1), there is an heir according to Section 1629 (2) as the case may be, such surviving spouse is entitled to one half of the inheritance;

(3) if there is an heir according to Section 1629 (4) or (6) and such heir is surviving or has representatives, or if there is an heir according to Section 1629 (5) as the case may be, such surviving spouse is entitled to two-thirds of the inheritance;

(4) if there is no heir as specified in Section 1629, such surviving spouse is entitled to the whole inheritance.

Section 1636. If the de cujus has left several wives surviving who acquired their legal status before the enforcement of the Civil and Commercial Code Book V, all those wives are jointly entitled to inherit in the class and according to the division as provided in Section1635. However, as between themselves each secondary wife is entitled to inherit one half of the share which the principal wife is entitled.

Section 1637. If any surviving spouse is the beneficiary of an insurance on life, such surviving spouse is entitled to receive the whole sum agreed with the insurer. But he or she shall be bound to compensate either the Sin Derm or the Sin Somros of the other spouse, as the case may be, by restoring such sums paid as premiums as may be proved to have been in excess of the amount of money which could be paid as premiums by the deceased having regard to the latter's income or usual station in life.

The amount of premiums to be restored under the forgoing provisions shall in no case be more than the sum paid by the insurer.

Section 1638. Where both spouses have invested money in a contract whereby an annuity is payable to both of them during their joint lives and afterwards to the survivor for life, the latter shall be bound to compensate either the Sin Derm or the Sin Somros of the other spouse as the case may be, in so much as such Sin Derm or Sin Somros has been used for such investment. Such compensation to the Sin Derm or Sin Somros shall be equal in the amount to the extra sum required by the grantor of the annuity is order to continue to pay the annuity to the surviving spouse.

CHAPTER IV

REPRESENTATION FOR THE PURPOSE OF RECEIVING INHERITANCE

Section 1639. If any person who would have been an heir according to Section 1629 (1), (3), (4) or (6) is dead or has been excluded before death of the de cujus, his descendants, if any, shall represent him for the purpose of receiving inheritance. If any of his descendants is dead or has been excluded in the same manner, the descendants of such descendants shall represent him for the purpose of receiving inheritance and the representation shall take place in this way as regards the share of each person consecutively to the end of the stirpes.

Section 1640. Where a person is deemed to have died according to the provisions of Section 65 of this Code, there may be representation for the purpose of receiving inheritance.

Section 1641. If any person who would have been an heir according to Section 1629 (2) or (5) is dead or has been excluded before the death of the de cujus, the whole share shall devolve to the other surviving heirs, if any, of the same class and no representation shall take place.

Section 1642. Representation for the purpose of receiving inheritance shall take place only among statutory heirs.

Section 1643. The right of representation for the purpose of receiving inheritance belongs only to the direct descendants, the ascendants having no such right.

Section 1644. A descendant may represent for the purpose of receiving inheritance only if he has complete right to the inheritance.

Section 1645. Renunciation of inheritance of a person does not preclude the renouncer from representing such person in inheriting from another person.

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TITLE III

WILLS

CHAPTER 1

GENERAL PROVISIONS

Section 1646. Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or other matters which schall take effect according to the law after his death.

Section 1647. The declaration of intention in contemplation of death shall be the latest one in imperative term provided by will.

Section 1648. A will must be made according to the forms prescribed in Chapter II of this Title.

Section 1649. The administrator of an estate appointed by the deceased shall have the power and duty to arrange for the funeral of the deceased unless another person has been specially appointed by the deceased for that purpose.

If there is no administrator, or no person appointed by the deceased to arrange for the funeral, or no person entrusted by the heirs to arrange for the funeral, the person who has received the greatest amount of property by will or by statutory right shall have the power and duty to arrange for the funeral unless the Court on application of any interested person, thinks fit to appoint another person for that purpose.

Section 1650. Expenses creating an obligation in favour of a person arranging for the funeral may be claimed according to the preferential right as specified in Section 253 (2) of this Code.

If the funeral is delayed for any reason whatsoever, any person empowered under the foregoing section shall reserve a reasonable amount of money out of the assets of the estate for this purpose. Where the amount to be reserved cannot be agreed upon, or where an objection is raised, any interested person may apply to the Court.

In any case, the expenses or the money for the arrangement of the funeral may be reserved only up to the amount suitable to the social station in life of the deceased, and provided that the rights of the creditors of the deceased are not prejudiced thereby.

Section 1651. Subject to the provisions of Title IV:

(1) where a person is entitled, under a testamentary disposition, to the whole of the de cujus' estate or to a fraction or a residuary part thereof which is not specifically separated from the mass of the estate, such person is said to be a legatee under a general title an has the same rights and liabilities as a statutory heir;

(2) where a person is entitled, under a testamentary disposition, only to a specific property identified in particular or specifically separated from the mass of the estate, such person is said to be a legatee under a particular title and has only rights and liabilities pertaining to such property.

In case of doubt, a legatee is presumed to be a legatee under a particular title.

Section 1652. A ward cannot make a legacy in favor of his guardian or in favor of the spouse, ascendant or descendant or brother or sister of his guardian until rendering of the account of the guardianship provided by Section 1577 and following of this Code is completed.

Section 1653. The writer of the will or a witness thereof cannot be a legatee under such will.

The forgoing paragraph shall also apply to the spouse of such writer of witness.

The competent official recording the statement made by witnesses under Section 1663 is deemed to be a writer within the meaning of this section.

Section 1654. The capacity of the testator must be considered only as at the time when the will is made.

The capacity of the legatee must be considered only as at the time when the testator dies.

CHAPTER II

FORMS OF WILLS

Section 1655. A will may be made only in any one of the forms prescribed in this Chapter.

Section 1656. A will may be made in the following form, that is to say, it must be made in writing, dated at the time of making of will and signed by the testator before at least two witnesses present at the same time who shall then and there sign their names certifying the signature of the testator.

No erasure, addition or other alternation in such will is valid unless made in the same form as prescribed by this section.

Section 1657. A will may be made by an holograph document, that is to say the the testator must write with his own hand the whole text of the document, the date and his signature.

No erasure, addition or other alteration in such will is valid unless made by the restator's own hand and signed by him.

The provision of Section 9 of this Code shall not apply to a will made under this section.

Section 1658. A will may be made by a public document, that is to say:

(1) the testator must declare to the Kromakarn Amphoe* before at least two other persons as witness present at the same time what dispositions he wishes to be included in this will;
(2) the Kromakarn Amphoe must note down such declaration of the testator and read it to the latter and to the witnesses;
(3) the testator and the witnesses must sign their names after having ascertained that the statement noted down by the Kromakarn Amphoe corresponds with the declaration made by the testator;
(4) the statement noted down by the Kromakarn Amphoe shall be dated and signed by such official who shall certify under his hand and seal that the will has been made in compliance with the foregoing Subsections 1 to 3.

No erasure, addition or other alternation in such will is valid unless signed by the testator, the witness and the Kromakarn Amphoe.

[* According to Section 40 of the Act on the Administrative Organization of the State, B.E. 2495, all powers and duties relating to the official service are determined by law to belong to Kromakarn Amphoe are vested in Nai Amphoe.]

Section 1659. A will made by a public document may, upon request, be made outside the Amphoe Office.

Section 1660. A will may be made by a secret document, that is to say:

(1) the testator must sign his name on the document;
(2) he must close up the documents and sign his name on the document;
(3) he must produce the closed document before the Kromakarn Amphoe and at least two other persons as witnesses and declare to all of them that it contains his testamentary dispositions; and if the testator has not written with his own hand the whole text of the document he must state the name and domicile of the writer;
(4) after the Kromakarn Amphoe has noted down upon the cover of the document the declaration of the testator and the date of the production and has affixed his seal thereupon, the Kromakarn Amphoe, the testator and the witness must sign their names thereon.

No erasure, addition or other alternation in such will is valid unless signed by the testator.

Section 1661. If a person, who is deaf-mute or unable to speak, desires to make his will by a secret document, he must instead of making the declaration required in Section 1660 (3) write with his own land, in the presence of the Kromakarn Amphoe and of the witnesses, on the cover of the document, a statement that the enclosed document is his will and add the name and the domicile of the writer of the document, if any.

Instead of nothing down the declaration of the testator on the cover, the Kromakarn Amphoe shall certify thereon that the testator has complied with the requirements of the foregoing paragraph.

Section 1662. A will made by a public document or by a secret document shall not be divulged by the Kromakarn Amphoe to any other person during the lifetime of the testator, and the Kromakarn Amphoe is bound to hand over such will to the testator whenever the latter shall require him to do so.

If the will has been made by a public document the Kromakarn Amphoe shall, before handing over such will, make a copy thereof under his signature and seal. Such copy may not be divulged to any other person during the life of testator.

Section 1663. When under exceptional circumstances such as imminent danger of death, or during an epidemic or war, a person is prevented from making his will in any other if the prescribed forms, he may be make an oral will.

For this purpose, he must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.

Such witnesses must without delay appear for the Kromakarn Amphoe and state before him the dispositions which the testator has declared to them orally, as well as the date, place and exceptional circumstances under which the will was made.

The Kromakarn Amphoe shall note down the statement of the witnesses and such two witnesses shall sign the statement or, failing that, may make an equivalent to signature only by affixing a finger-print certified by the signatures of two witnesses.

Section 1664. A will made under the forgoing section loses its validity one month after the time when the testator has again been placed in a position to make a will in any other of the prescribed forms.

Section 1665. When the signature of the testator is required under Section 1656, 1658, 1660, the only equivalent to signature is the affixing of a finger-print certified by the signatures of two witnesses at the same time.

Section 1666. The provisions of Section 9 paragraphs 2* of this Code shall not apply to witnesses whose signatures are required under Section 1656, 1658, 1660.

[Amended by Section 15 of Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code B.E. 2535.]

Setion 1667. In the event of a Thai subject making his will in a foreign territory, such will may be made either according to the form prescribed by the law of the country where it is made or according to the form prescribed by Thai law.

When the will is made according to the form prescribed by Thai law, the powers and duties of the Kromakarn Amphoe under Section 1658, 1660, 1661, 1662, 1663 shall be exercised by:

(1) the Thai Diplomatic or Consular Officer acting within the scope of his authority, or
(2) any authority competent under foreign law for making authentic record of a statement.

Section 1668. Unless otherwise provided by law, the testator need not disclose to the witness the contents of his will.

Section 1669. During the time when the country is engaged in arms conflict or is in the state of war, a person serving in armed forces or acting in connection therewith may make a will according to the form prescribed in Section 1658, Section 1660 or Section 1663; and in such case the military officer or official of commissioned rank shall have the same powers and duties as those of the Kromakarn Amphoe.

The provisions of the foregoing paragraph shall apply mutatis mutandis to the person serving in armed forces or acting in connection therewith, who, while performing the duties for his country, makes a will in a foreign country which is engaged in armed conflict or is in the state of war; and in such cases the military officer or official commissioned rank shall have the same powers and duties as those of the Thai Diplomatic or Consular Officer.

If the testator under the two foregoing paragraphs is sick or wounded and is admitted to a hospital, the physician of that hospital shall also have the same powers and duties as those of the Kromakarn Amphoe, Thai Diplomatic or Consular Officer, as the case may be.

Section 1670. The following persons cannot witness at the making of a will;

(1) persons not sui juris
(2) persons of unsound mind or persons adjudged quasi-incompetent;
(3) persons who are deaf or dumb or blind

Section 1671. Where a person other than the testator is the writer of a will, such persons must sign his name thereon and add the statement that he is the writer.

If such person is also a witness, a statement that he is a witness must be written down after his signature in the same manner as is done by any other witness.

Section 1672. The Minister of Interior, Defense and Foreign Affairs shall have the powers and duties, in so far as they are respectively concerned, to issue Ministerial Regulations for carrying out the provisions of this Book and for fixing the rates and fees in connection therewith.

CHAPTER III

EFFECTS AND INTERPRETATION OF WILLS

Section 1673. Rights and duties under a will take effect from the death of the testator, unless a condition or time clause has been provided by the testator for its taking effect thereafter.

Section 1674. If a testamentary disposition is subject to a condition and the condition has been fulfilled before the death of the testator; if the condition is precedent, such disposition takes effect at the death of the testator; if the condition is subsequent, the disposition has no effect.

If the condition precedent is fulfilled after the death of the testator, the testamentary disposition takes effect at the death of the testator but ceases to have effect when the condition is fulfilled.

However, if the testator has declared in the will that, in the case provided by the two foregoing paragraphs the effect of the fulfillment of the condition shall relate back to the time of his death, such declaration of intention shall prevail.

Section 1675. Where a legacy is subject to a condition precedent, the beneficiary under such testamentary disposition may apply to the Court for the appointment of an administrator of the property bequeathed up to the time when the condition will be fulfilled or when such fulfillment will become impossible.

If the Court thinks fit, such applicant himself may be appointed administrator of the property, and a proper security may be required from him.

Section 1676. A will may be made charging a person to create a foundation or directly determining the appropriation of property for any purpose in accordance with the provisions of Section 110* of this Code.

Section 1677. Where there is a will creating a foundation under the foregoing section it shall be the duty of the heir or administrator, as the case may be, to apply to the Government for authorization to constitute it as a juristic person according to Section 114* of this Code unless it is otherwise provided by will.

If the authorization by the Government has not been applied for by the aforesaid person, the application may be made by any interested person, or by the Public Prosecutor.

[Amended by Section 15 of the Act Promulgation the Revised Provisions of Book I of the Civil Code B.E. 2535.]

Section 1678. When a foundation created by will has been constituted as a juristic person, the properties appropriated to its purpose by the testator are deemed to vest in such juristic person from the time when the will takes effect unless it is otherwise provided by will.

Section 1679. Where the foundation cannot be organized in accordance with its object, the properties shall devolve as may have been provided by the will.

In the absence of such provision, the Court shall, on application by the heir, the administrator, the Public Prosecutor or any interested person, appropriate the properties to such other juristic persons whose purpose appears to be the nearest possible to the intention of the testator.

If such appropriate cannot be made or if the foundation cannot come into existance on account of its being contrary to law or against public order or good morals, such testamentary disposition becomes ineffective.

Section 1680. The creditors of the testators are entitled to claim cancellation of any testamentary disposition creating a foundation, only in so far as they are prejudiced thereby.

Section 1681. If the property forming the subject of the legacy has been lost, destroyed or damaged, and in consequence of such circumstances a substitute or a claim for compensation for such property has been acquired, the legatee may claim delivery of the substitute received or may himself claim the compensation as the case may be.

Section 1682. Where a legacy is made by way of a release or a transfer or a claim, such legacy shall be affective only up to the amount still outstanding at the time of the death of the testator, unless otherwise provided by the will.

Any document evidencing the claim released or transferred shall be delivered to the legatee; and the provisions of Sections 303 to 313 and 340 of this Code shall apply mutatis mutandis; provided that if any act or proceedings were to have been carried out by the testator under those sections, the person who has to execute the legacy, or the legatee, may carry them out in his place.

Section 1683. A legacy made by the testator to any of his creditors is presumed not to be made in payment of the debt due to such creditor.

Section 1684. Where a clause in a will can be interpreted in several senses, the sense which best assures the observance of the intention of the testator shall be preferred.

Section 1685. Where the testator has made a legacy by describing the legatee in such a manner that he can be identified and there are several persons answering to the description of the legatee so made by the testator, in case of doubt all such persons are deemed to be entitles to equal shares.

CHAPTER IV

WILLS WITH APPOINTMENT OF CONTROLLER OF PROPERTY

Section 1686. Trust created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever.

Section 1687. If the testator desires to dispose of his property in favour of a minor or of a person adjudged incompetent or quasi-incompetent or of a person admitted into a hospital for unsoundness of mind but wishes to entrust the custody and management thereof to a person other than the parents, guardian, custodian or curator, he must appoint a controller of property by will.

Such appointment of a controller of property cannot be made for a longer period than the minority or the adjudication of incompetency or quasi-incompetency or the duration of the admittance into hospital as the case may be.

Section 1688. No appointment of the controller of property in regard to an immovable property or any real right appertaining thereto is complete unless it has been registered by the competent official.

The same provision applies as regards ships of five tons and over, floating houses and beasts of burden.(1)

[(1) The second paragraph of Section 1688 has been amended by Section 15 of the Civil and Commercial Code Amendment Act (no.14), B.E. 2548.]

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1689. With the exception of such persons as are specified in Section 1557 of this Code, any juristic or natural person of full capacity may be appointed a controller of property.

Section 1690. A controller of property may be appointed by:

(1) the testator himself
(2) a person nominated for the purpose in the will

Section 1691. Unless otherwise provided in the will by the testator, a controller of property may appoint by will another person to act in his stead.

Section 1692. Unless otherwise provided in the will by the testator, the controller of property shall have, as regards the property entrusted to him, the same rights and duties as the guardian within the meaning of Book V of this Code.

CHAPTER V

REVOCATION AND LAPSE OF A WILL OR CLAUSE IN A WILL

Section 1693. A testator may at any time revoke his will wholly or partly.

Section 1694. If a former will is to be revoked wholly or partly by a latter will, the revocation is valid only when the latter will is made in any of the forms prescribed by law.

Section 1695. Where a will is embodied in one document only, the testator can revoke it wholly or partly by intentional destruction or cancellation.

Where the will is embodied in several duplicates, such revocation shall not be complete unless it is effected in all the duplicates.

Section 1696. A testamentary disposition is revoked if the testator has intentionally made a valid transfer of the property which is the subject of the will.

The same rule applies if the testator has intentionally destroyed such property.

Section 1697. Unless the testator has otherwise made a declaration of intention in his will, if it appears that a former and a latter will conflict, the former is deemed to have been revoked by the latter only as to the parts in which their provisions conflict.

Section 1698. A testamentary disposition lapses:

(1) if the legatee dies before the testator;

(2) if the testamentary disposition is to take effect on a condition being fulfilled and the legatee dies before its fulfillment, or it becomes certain that the condition cannot be fulfilled;

(3) the legatee refuses legacy

(4) if the whole property bequeathed is, without the intention of the testator, lost or destroyed during his lifetime and the testator has not acquired a substitute or a claim for compensation for the loss of such property.

Section 1699. If a will or a clause in a will as regards any property has no effect for any reason whatsoever, such property devolves on the statutory heirs or the State as the case may be.

CHAPTER VI

NULLITY OF A WILL OR OF CLAUSE IN A WILL

Section 1700. Subject to the provisions of this Chapter, a person may, be an act producing effect during lifetime or after death, dispose of any property under a stipulation that such property shall be inalienable by the beneficiary under such disposition, provided that the stipulator appoints some person, other than the beneficiary under such disposition, who shall become absolutely entitled to such property in case of violation of the inalienability clause.

The person appointed must be capable or rights at the same time when the act disposing of such property takes effect.

If there is no such appointment, the inalienability clause shall be deemed non-existent.

Section 1701. The inalienability clause stipulated under the foregoing section may be either for a period of time or for the life of the beneficiary.

If no period has been fixed, the period of inalienability shall be deemed to last for the life of the beneficiary if the beneficiary is a natural person, or thirty years if the beneficiary is a juristic person.

If the period of inalienability is specified, such period cannot exceed thirty years; if a longer period is specified, it shall be reduced to thirty years.

Section 1702. Any inalienability clause concerning movable property whose ownership is not subject to registration shall be deemed non-existent.

No inalienability clause concerning immovable property or any real right appertaining thereto is complete unless it is made in writing and registered by the competent official.

(*1) The provisions of the foregoing paragraph applies as regards ships of five tons and over, floating houses and beast of burden.

[* The third paragraph of Section 1702 has been by Section 16 of Civil and Commercial Code Amendment Act, (no.14), B.E. 2548.]

Section 1703. A will made by a person who has not completed his fifteenth year of age is void.

Section 1704. A will made by a person adjudged incompetent is void.

A will made by a person, who is alleged to be of unsound mind but not adjudged incompetent, may be annulled only if it is proved that at the time of making the will the testator was actually of unsound mind.

Section 1705. A will or clause in a will is void if it is contrary to the provisions of Section 1652, 1653, 1656, 1657, 1658, 1660, 1661, or 1663.

Section 1706. A testamentary disposition is void:

(1) if it appoints a legatee upon the condition that the latter shall dispose also by will of his own property in favour of the testator or of a third person;

(2) if it refers to a person whose identity cannot be ascertained; however a legacy under a particular title may be made in favour of a person to be chosen by a certain person out of several other persons or out of any group of persons specified by the testator;

(3) if the property bequeathed is so insufficient described that it cannot ascertained or if the amount of a legacy is left to the discretion of a certain person.

Section 1707. If a testamentary disposition appoints a legatee upon the condition that the latter shall dispose of the property bequeathed in favour of a third person, such condition shall be deemed non-existent.

Section 1708. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of duress; but if the testator continues to live for more than one year after he has ceased to be under the influence of the duress, such application cannot be made.

Section 1709. After the death of the testator, any interested person may apply to the Court to have a will cancelled on account of mistake or fraud only when the mistake or fraud is such that without it the will would not have been made.

The foregoing paragraph shall apply even if the fraud has been committed by a person who is not a beneficiary under the will.

However, a will made under the influence of mistake or fraud is operative if the testator fails to revoke it within one year after discovering the mistake or fraud.

Section 1710. No action for cancellation of a testamentary disposition can be entered later than:

(1) three months after the death of the testator if the ground for cancellation was known to the plaintiff during the lifetime of the testator, or

(2) three months after the plaintiff has acquired knowledge of such ground in any other case.

However, if such testamentary disposition affecting the interest of the plaintiff is unknown to him, even though the ground for cancellation was known to him, the period of three months shall run from the moment when such disposition is known or ought to have been known to the plaintiff.

In any case, such action cannot be entered later than ten years after the death of the testator.

TITLE IV

ADMINISTRATION AND DSTRIBUTION OF AN ESTATE

CHAPTER I
ADMINISTRATOR OF AN ESTATE

Section 1711 The administrators of an estate shall include the person appointed by will or by order of the court

Section 1712 An administrator of the estate by will may be appointed:
(1) by the testator himself; or
(2) by the person nominated for the purpose in the will.

Section 1713 Any heir or any other interested person or the public prosecutor may apply to the court to appoint an administrator of the estate in the following cases:
(1) if on the death of the *de cujus* any statutory heir or legatee is not to be found or is abroad or is a minor;
(2) if the administrator of the estate or the heir is unable or unwilling to carry on or is impeded in carrying on the administration or distribution of the estate;
(3) if a testamentary disposition appointing an administrator of the estate has no effect for any reason whatsoever.

Such appointment shall be made by the court in accordance with the provisions of the will, if any. Failing such provisions the court may make the appointment for the benefit of the estate, having regard to the circumstances and taking into consideration the intention of the *de cujus* as the court may think fit.

Section 1714 Where an administrator of the estate is appointed by the court for a particular purpose, he is not bound to make an inventory of the estate unless the inventory is required for such purpose or by an order of the court.

Section 1715 A testator may appoint one or more persons to be administrators of his estate.

Unless otherwise provided by the will, if several persons have been appointed administrators and, because some of them are unable or unwilling to act, there remains only one, this latter is solely entitled to act as administrator; if there remain several administrators, it it presumed that they cannot act separately.

Section 1716 The functions of an administrator appointed by the court begin from the day when the order of the court is heard or is deemed to have been heard.

Section 1717 At any time within one year from the death of the *de cujus* but after fifteen days from such death, any heir or any other interested person may give notice requiring any person appointed administrator by will to declare whether he accepts or refuses the administratorship

If the person so notified does not declare his acceptance within one month from the receipt of such notice, he is deemed to have refused. However, acceptance cannot be made after one year from the death of the *de cujus* unless by permission of the court.

Section 1718 The following persons cannot be administrators of an estate:

(1) persons not *sui juris*;
(2) persons of unsound mind or adjudged quasi-incompetent;
(3) persons adjudged bankrupt by the court.

Section 1719 The administrator of an estate has the right and duty to do all such acts as may be necessary for complying with the express or implied order in the will and for the general administration or distribution of the estate.

Section 1720 The administrator of an estate shall be liable to the heirs as provided by sections 809 to 812, and 823 of this Code *mutatis mutandis*; and as regards third persons section 831 shall apply *mutatis mutandis*.

Section 1721 An administrator of an estate is not entitled to receive remuneration out of the estate unless permitted by the will or by the majority of heirs.

Section 1722 The administrator of an estate cannot, unless permitted by the will or the court, ente into any juristic act wherein he has an interest adverse to the interest of the estate.

Section 1723 The administrator of an estate must act personally unless he can act by an agent through express or implied authority under the will or by order of the court or by requirement of the circumstances for the benefit of the estate.

Section 1724 The heirs are bound to third persons by acts which the administrator has done within the scope of his authority by virture of his administratorship.

They are not bound by a juristic act entered into by the administrator with a third person if such juristic act was entered into for consideration of any property or other advantages given for his personal benefit or so promised to him by such person unless the heirs have given their consent.

Section 1725 The administrator of an estate shall take proper steps to seek for the interested persons and shall notify them within a reasonable time of the testamentary dispositions concerning them.

Section 1726 If there are several administrators of an estate, the performance of their duties shall be decided by a majority of votes unless it is otherwise provided by the will. In case of a tie, on application of any interested person, the decision shall be given by the court.

Section 1727 Any interested person may, prior to the completion of the distribution of the estate, apply to the court for the discharge of an administrator for reason of neglect of his dutites or for any other reasonable cause.

Even after having assumed his functions, the administrator may resign for any reasonable cause subject, however, to the permission of the court.

Section 1728 The administrator of an estate must begin making an inventory of the estate within fifteen days:

(1) from the death of the *de cujus* if, at such time, the administrator has knowledge of his appointment under the will entrusted to him, or
(2) from the date when the administratorship begins under section 1716 in the case where the administrator is appointed by the court, or
(3) from the date of his acceptance of administratorship in any other case.

Section 1729 The administrator of an estate must have the inventory of the estate finished within one month from the time specified in section 1728; but this period of time may be extended by permission of the court on application made by the administrator before the expiration of the month.

The inventory shall be made in the presence of at least two witnesses who must be persons interested in the estate.

Persons who cannot be witnesses at the making of a will under section 1670 cannot be witnesses for the making of any inventory under the provisions of this code.

Section 1730 Between the heir and the administrator appointed by will, and between the court and the administrator appointed by the court, section 1563, 1564 paragrahs 1 and 2 1565 of this code shall apply *mutatis mutandis*.

Section 1731 If no inventory is made by the administrator in due time and form or if the inventory is found unsatisfactory by the court on the ground of gross negligence, dishonesty of obvious incapability of the administrator, the administrator may be discharged by the court.

Section 1732 The administrator of an estate shall perform his duties and complete the account of management and distribution within one year from the dates specified in section 1728, unless the period of time is otherwise fixed by the testator, by a majority of the heirs or by the court.

Section 1733 No approval, release from liabilities or any other agreement concerning the account of management provided in section 1732, shall be valid unless such account has been delivered to the heirs together with any document relating thereto not less than ten days beforehand.

No action on account of the administratorship can be entered by an heir later than five years after the termination of the administratorship.

CHAPTER II

REALIZATION OF ASSETS, PAYMENT OF DEBTS AND DISTRIBUTION OF AN ESTATE

Section 1734 The creditors of an estate are entitled to be paid only out of the property in the estate.

Section 1735 The heir is bound to disclose to the administrator all the properties and debts of the deceased known to him.

Section 1736 So long as all the known creditors of the estate on legatees have not been satisfied by performance or distribution, the succession is deemed to be under management.

Section 1737 A creditor of the estate may enforce his claim against any heir. However, where there is an administrator of the estate, he must be summoned by the creditor to appear in the action.

Section 1738 Before the division of the estate the creditor of the estate may enforce full payment of his claim from the estate. In such case each heir may, up to the time of the division inclusively, require that the performance be made out of the *de cujus*'s estate or secured therefrom.

After the division of the estate the creditor may claim performance from any heir up to the extent of the property received by him. In such case an heir who has made performance to the creditor in excess of his proportionate share in the obligation has a right of recourse against the other heirs.

Section 1739 Without prejudice to the creditors having special preferential rights under the provisions of this code or other law and to the creditors secured by pledge or mortgage, the debts due by the estate shall be paid in the following order and in accordance with the provisions of this code concerning preferential rights:
(1) expenses incurred for the common benefit of the estate;

(2) expenses incurred for the funeral of the *de cujus*;
(3) taxes and rates due by the estate;
(4) wages due by the *de cujus* to any clerk, servant and workman;
(5) supplies of daily necessaries made to the *de cujus*
(6) ordinary debts of the *de cujus*
(7) remuneration of the administrator.

Section 1740 Unless otherwise provided by the *de cujus* or by law, his property shall be appropriated to the payment of debts in the following order:
(1) property other than immovable property;
(2) immovable property expressly appropriated to that purpose by will, if any;
(3) immovable property to which the statutory heirs are entitled as such;
(4) immovable property bequeathed to a person upon the condition that he shall pay the debts of the *de cujus*
(5) immovable property bequeathed under a general title as provided by section 1651;
(6) any specific property bequeathed under a particular title as provided by section 1651.
Any property appropriated under the foregoing provisions shall be sold by way of public auction, but any heir may prevent such sale by paying, to the extent required for the satisfaction of the creditors, the value of the whole or part of the property as may be determined by an appraiser appointed by the court.

Section 1741 Any creditor of the estate may, at his own expense, raise an objection to the auction or appraisement of the property specified in the foregoing section. If, notwithstanding such objection having been raised by the creditor, an auction or appraisement is effected the auction or appraisement cannot be set up against the creditor who has raised such objection.

Section 1742 If, during the lifetime of the deceased, a creditor has been designated as the beneficiary of an insurance on life in payment of a debt due to him, he is entitled to receive the whole sum agreed with the insurer. He shall have to return to the estate of the deceased the amount of the premiums only if it is proved by the other creditors:
(1) that by paying his debt in such manner, the deceased and such creditor have acted in contravention of the provision of section 237 of this code; and
(2) that such premiums were out of proportion to the income or station in life of the deceased.
In no case shall the amount of premiums to be returned in such a manner exceed the sum paid by the insurer.

Section 1743 A Statutory heir or a legatee under a general title is not bound to execute legacies under a particular title for more than the amount of property received by him.

Section 1744 The administrator is not bound to deliver the estate or any part thereof to the heirs before one year has elapsed from the death of the *de cujus,* unless all the known creditors of the estate and legatees have been satisfied by performance and distribution.

CHAPTER III

PARTITION OF AN ESTATE

Section 1745 Until the partition of the estate is completed, the rights and duties of the co-heirs as regards the estate are in common, and section 1356 to 1366 of this code shall apply in so far as they are not inconsistent with the provisions of this book.

Section1746 Subject to the provisions of law or clauses in the will, if any, co-heirs are presumed to have equal shares in the undivided estate.

Section 1747 Where an heir has, during the lifetime of the *de cujus,* received from the latter any property or other advantage by gift or by other act under gratuitous title, the rights of such heir in the partition of the estate shall in no way be prejudiced thereby.

Section 1748 Any heir in possession of the undivided estate is entitled to claim partition thereof even after the lapse of the period of prescription as specified in section 1754.

The right to demand partition as provided in the foregoing paragraph may not be excluded by a juristic act for a period exceeding ten years at a time.

Section 1749 When an action for partition of an estate in entered in court, every person claiming to be an heir entitiled to such estate may intervene in the action.

The court can neither call in to participate in the partition other heirs than the parties or the intervener in the action, nor reserve a part of the estate for such other heirs.

Section 1750 Partition of the estate may be made by the heirs severally taking possession of the property or by selling the estate and dividing the proceeds of sale between the co-heirs.

Section 1751 After the partition of an estate, if any heir is by reason of eviction deprived of the whole or a part of the property allotted to him under the partition, the other heirs are bound to compensate him.

Such obligation ceases if there is an agreement to the contrary, or if the eviction results from the fault of the heir evicted or from a cause arising after the partition.

The heir evicted shall be compensated by the other heirs in proportion to their shares, less the quota corresponding to that of the heir evicted; if any of the heirs bound to make compensation is insolvent, the other heirs shall be liable, in the same proportion, for the part of the insolvent heir, less the quota corresponding to that of the compensated heir.

The provisions of the foregoing paragraphs shall not apply to a legatee under a particular title.

Section 1752 No action for liability on account of eviction under section 1751 can be entered later than three months after the date of eviction.

TITLE V

VACANT ESTATES

Section 1753 Subject to the rights of the creditor of the estate, where on the death of a person there is no statutory heir or legatee or creation of foundation under a will, the estate devolves on the state.

TITLE VI

PRESCRIPTION

Section 1754 An action concerning inheritance cannot be entered later than one year after the death of the *de cujus* or after the time when the statutory heir knows or ought to have known of such death.

An action concerning a legacy cannot be entered later than one year after the time when the legatee knows or ought to have known of the rights to which he is entitled under a will.

Subject to the provisions of section 193/17 of this code, a creditor having against the *de cujus* a claim which is subject to a prescription longer than one year is barred from bringing an action after one year from the time when he knows or ought to have known of the death of the *de cujus.*

In no case shall claims under the foregoing paragraphs be entered later than ten years after the death of the *de cujus.*

Section 1755 The prescription of one year can be set up only by an heir or a person entitled to exercise the rights of an heir or by an administrator of the estate.