

**THE LAW OF CONTRACT, THE GENERAL REGIME OF OBLIGATIONS,
AND PROOF OF OBLIGATIONS**

**The new provisions of the *Code civil* created by
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translated into English**

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*TITLE III
THE SOURCES OF OBLIGATIONS*

Art. 1100. – Obligations arise from juridical acts, juridically significant facts¹ or from the sole authority of legislation.

They can arise from the voluntary performance or from the promise of performance of a moral duty towards another person.

Art. 1100-1. – Juridical acts are manifestations of will intended to produce legal effects. They may be based on agreement or unilateral.

As far as is appropriate, they are subject, both as to their validity and as to their effects, to the rules governing contracts.

¹ There is a difficulty in translating '*le fait*' as sometimes it refers to a person's action and sometimes more broadly to fact. We have therefore translated it differently according to context.

Art. 1100-2. – Juridically significant facts consist of behaviour or events to which legislation attaches legal consequences.

Obligations which arise from a juridically significant fact are governed, according to the circumstances, by the sub-title relating to extra-contractual liability or the sub-title relating to other sources of obligations.

*SUB-TITLE I
CONTRACT*

*CHAPTER I
INTRODUCTORY PROVISIONS*

Art. 1101. – A contract is a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations.

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.

Contractual freedom does not allow derogation from rules which are an expression of public policy.

Art 1103. – Contracts which are lawfully formed have the binding force of legislation for those who have made them.

Art. 1104. – Contracts must be negotiated, formed and performed in good faith.

This provision is a matter of public policy.

Art. 1105. – Whether or not they have their own denomination, contracts are subject to general rules, which are the subject of this sub-title.

Rules particular to certain contracts are laid down in the provisions special to each of these contracts.

The general rules are applied subject to these particular rules.

Art. 1106. – 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. 1107. – A contract is onerous where each of the parties receives a benefit from the other in return for what he² provides.

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

Art. 1108. – 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 agree that the effects of the contract— both as regards its resulting benefits and losses—shall depend on an uncertain event.

Art. 1109. – A contract is consensual where it is formed by the mere exchange of consents, in whatever way they may be expressed.

A contract is solemn³ where its validity is subject to form prescribed by legislation.

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

Art. 1110. – A bespoke contract⁴ is one whose stipulations are freely negotiated by the parties.

A standard form contract⁵ is one whose general conditions are determined in advance by one of the parties without negotiation.

Art. 1111. – A framework contract is an agreement by which the parties agree the general characteristics of their future contractual relations. Implementation contracts determine the modalities of performance under a framework contract.

Art. 1111-1. – A contract of instantaneous performance is one whose obligations can be performed as a single act of performance.⁶

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 a period of time.

² General 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 are to be read as referring equally to the feminine or neuter) rather than using “he/she”, “his/her” etc., or some form of circumlocution.

³ Here, ‘solemn’ refers to a particular class of contracts where formality is required, ‘*les contrats solennels*’: see below, arts 1172 – 1173.

⁴ ‘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.

⁵ ‘Standard form contract’ translates *contrat d’adhésion*, more literally ‘a contract to which one adheres’ and whose conclusion therefore involves no or little choice.

⁶ ‘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 10 to art. 1127-1.

CHAPTER II
FORMATION OF CONTRACTS

SECTION I
Conclusion of Contracts

Sub-section 1
Negotiations

Art. 1112. – The commencement, continuation and breaking-off of precontractual negotiations are free from control. They must mandatorily satisfy the requirements of good faith.

In case of fault committed during the negotiations, the reparation of the resulting loss is not calculated so as to compensate the loss of benefits which were expected from the contract that was not concluded.

Art. 1112-1. –The party who knows information which is of decisive importance for the consent of the other, must inform him of it where the latter legitimately does not know the information or relies on the contracting party.

However, this duty to inform does not apply to an assessment of the value of the act of performance.

Information is of decisive importance if it has a direct and necessary relationship with the content of the contract or the status of the parties.

A person who claims that information was due to him has the burden of proving that the other party had the duty to provide it, and that other party has the burden of proving that he has provided it.

The parties may neither limit nor exclude this duty.

In addition to imposing liability on the party who had the duty to inform, his failure to fulfil the duty may lead to annulment of the contract under the conditions provided by articles 1130 and following.

Art. 1112-2. – A person who without permission makes use of or discloses confidential information obtained in the course of negotiations incurs liability under the conditions set out by the general law.⁷

Sub-section 2
Offer and Acceptance

Art. 1113. – A contract is formed by the meeting of an offer and an acceptance by which the parties demonstrate their will to be bound.

⁷ The ‘general law’ (translating ‘*le droit commun*’) refers here to the general law of extra-contractual liability for fault under arts 1240 – 1241, below, except where the parties made contractual arrangements during negotiations.

This may stem from a person's declaration or unequivocal conduct.

Art. 1114. – An offer, whether made to a particular person or to persons generally, contains the essential elements of the envisaged contract, and expresses the will of the offeror to be bound in case of acceptance. 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 reached the person to whom it was addressed.

Art. 1116. – An offer may not be withdrawn before the expiry of any period fixed by the offeror or, if no such period has been fixed, the end of a reasonable period.

The withdrawal of an offer in contravention of this prohibition prevents the contract being concluded.

The person who thus withdraws an offer incurs extra-contractual liability under the conditions set out by the general law, and has no obligation to compensate the loss of profits which were expected from the contract.

Art. 1117. – An offer lapses on the expiry of the period fixed by the offeror or, if no period is fixed, at the end of a reasonable period.

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

Art. 1118. – An acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer.

As long as the acceptance has not reached the offeror, it may be withdrawn freely provided that the withdrawal reaches the offeror before the acceptance.

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

Art. 1119. – 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, incompatible clauses have no effect.

In case of inconsistency between general conditions and special conditions, the latter prevail over the former.

Art. 1120. – Silence does not count as acceptance except where so provided by legislation, usage, business dealings or other particular circumstances.

Art. 1121. – A contract is concluded as soon as the acceptance reaches the offeror. It is deemed to be concluded at the place where the acceptance has arrived.

Art. 1122. – Legislation or the contract may provide for a period for reflection, which is a period within which the offeree cannot give his acceptance, or a period for withdrawal, which is a period within which a party may withdraw his consent.

Sub-section 3
Pre-emption Agreements and Unilateral Promises

Art. 1123. – 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 a contract has been concluded with a third party in breach of a pre-emption agreement, the beneficiary of that agreement may obtain reparation of the loss that he has suffered. Where the third party knew of the existence of the pre-emption agreement and of the beneficiary's intention to take advantage of it, the beneficiary may also sue for nullity or may ask the court to substitute him for the third party in the contract that has been concluded.

The third party may give written notice to the beneficiary requiring him to confirm, within a period which the former fixes and which must be reasonable, the existence of a pre-emption agreement and whether he intends to take advantage of it.

Such a written notice must state that if he does not reply within that period, 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.

Art. 1124. – A unilateral promise is a contract by which one party, the promisor, grants another, the beneficiary, a right 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 knew of its existence, is a nullity.

Sub-section 4
*Special Provisions Governing Contracts made by Electronic Means*⁸

Art. 1125. – Electronic means may be used to make available contractual stipulations or information about property or services.

⁸ Arts 1125 to 1127-6 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 *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.

Art. 1126. – 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. 1127. – Information intended for a business or professional⁹ 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. 1127-1. – A person who, in a business or professional capacity, makes a proposal by electronic means for the supply of property or services,¹⁰ must make available the applicable contractual stipulations in a way which permits their storage and reproduction.

A person issuing an offer remains bound by it as long as it is made accessible by him by electronic means.

An offer 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 person to whom the offer is addressed, before the conclusion of the contract, may identify any errors in the data entry, and correct them;
3. The languages offered for the conclusion of the contract, which must include the French language;
4. Where appropriate, the ways in which the party issuing the offer 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 intends (as the case may be) to be bound.

Art. 1127-2. – A contract is validly concluded only if the party to whom the offer is addressed had the possibility of verifying the detail of his order and its total price and of correcting any possible errors before confirming his order in order to express his definitive acceptance.

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

⁹ ‘*Professionnel*’ (either as a noun or an adjective) refers to a business as well as a profession in the usual English sense.

¹⁰ ‘*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).

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. 1127-3. – There is an exception to the obligations referred to in paragraphs 1 to 5 of article 1127-1 and to the first two paragraphs of article 1127-2 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 1127-1 and article 1127-2 may be excluded or restricted in contracts concluded between businesses or professionals.

Art. 1127-4. – 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 of the *Conseil d'État*.

Art. 1127-5. – 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 decree of 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 of the *Conseil d'État*.

Art. 1127-6. In cases other than those set out in articles 1125 and 1126, the delivery of a document in electronic form takes 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 of the Contract

Art. 1128. – The following are necessary for the validity of a contract:

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

Sub-section 1
Consent

Paragraph 1 – Existence of Consent

Art. 1129. – In accordance with article 414-1, one must be of sound mind to give valid consent to a contract.

Paragraph 2 – 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 in which consent was given.

Art. 1131. – Defects in consent are a ground of relative nullity of the contract.

Art. 1132. – Mistake of law or of fact, as long as it is not inexcusable, is a ground of nullity of the contract where it bears on the essential qualities of the act of performance owed or of the other contracting party.

Art. 1133. – The essential qualities of the act of performance are those which have been expressly or impliedly agreed and which the parties took into consideration on contracting.

Mistake is a ground of 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. 1134. – Mistake about the essential qualities of the other contracting party is a ground of nullity only as regards contracts entered into on the basis of considerations personal to the party.

Art. 1135. – Mistake about mere motive, extraneous to the essential qualities of the act of performance owed or of the other contracting party is not a ground of nullity unless 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. 1136. – A mistake as to value is not a ground of nullity where, in the absence of a mistake about the essential qualities of the act of performance, a contracting party makes only an inaccurate valuation of it.

Art. 1137. – Fraud is an act of a party in obtaining the consent of the other by scheming or lies.

The intentional concealment by one party of information, where he knows its decisive character for the other party, is also fraud.

Art. 1138. – Fraud is equally established where it originates from the other party's representative, a person who manages his affairs, his employee¹¹ or one standing surety for him.

It is also established where it originates from a third party in collusion.

Art. 1139. – A mistake induced by fraud is always excusable. It is a ground of nullity even if it bears on the value of the act of performance or on a party's mere motive.

Art. 1140. – 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 considerable harm.

Art. 1141. – A threat of legal action does not constitute duress, except where the legal process is deflected from its proper purpose or where it is invoked or exercised in order to obtain a manifestly excessive advantage.

Art. 1142. – Duress is a ground of nullity regardless of whether it has been applied by the other party or by a third party.

Art. 1143. – There is also duress where one contracting party exploits the other's state of dependence and obtains an undertaking to which the latter would not have agreed in the absence of such constraint, and gains from it a manifestly excessive advantage.

Art. 1144. – In the case of mistake or fraud the period for bringing an action for nullity runs only from the day when they were discovered, and in the case of duress the period runs only from the day when it ceased.

¹¹ 'Employee' here (and in art. 1242) translates '*préposé*.' While this includes a person who works for another under a contract of employment ('*contrat de travail*'), it is wider and extends to other situations where there is a 'relationship of subordination'. The other party to such a relationship is termed *le commettant*, which we translate as 'employer': see art. 1242. We reserve the English 'agent' to translate '*mandataire*': see art. 1301, below.

Sub-section 2
Capacity and Representation

Paragraph 1 – Capacity

Art. 1145. – Every natural person is able to conclude a contract, except in the case of lack of capacity provided for by legislation.

The capacity of legal persons is limited to acts useful for realizing their purpose as defined by their statutes and acts which are incidental to them, in accordance with the rules applicable to each of those persons.

Art. 1146. – 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.

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

Art. 1148. – Every person who lacks the capacity to contract may nonetheless effect independently day-to-day acts authorised by legislation or by usage, provided that they are concluded on normal terms.

Art. 1149. – Day-to-day acts effected by a minor may be annulled on the ground of mere substantive inequality of bargain. However, nullity is not incurred where the substantive inequality results from an unforeseeable event.

The mere fact that a minor has made a declaration of majority does not constitute an obstacle to annulment.

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

Art. 1150. – Acts made by protected adults are governed by articles 435, 465 and 494-9 without prejudice to articles 1148, 1151 and 1352-4.

Art. 1151. – A contracting party who has capacity may defend an action for annulment brought against him by establishing that the act was useful to the protected person and was free from substantive inequality, or that he profited from it.

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

Art. 1152. – Prescription of the action runs:

1. as regards acts made by minors, from the day of achieving majority or of emancipation;
2. as regards acts made by a protected adult, from the day when he becomes aware of them, provided that he was in a position to remake the acts validly;
3. as regards the heirs of a person subject to guardianship (whether as a minor or an adult) or of a person subject to an order empowering their family to act on their behalf,¹² from the day of the death, unless it has started to run before that time.

Paragraph 2 – Representation

Art. 1153. – 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. 1154. – 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 to the undertaking so contracted.

Where a representative states that he is acting on behalf of another person but contracts in his own name, he alone is bound towards the other contracting party.

Art. 1155. – Where the authority of a representative is defined in general terms, it covers only acts of conservation or management.

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

Art. 1156. – An act made by a representative without authority or beyond his authority cannot be set up against¹³ the person whom he represents, unless the third party with whom he contracts legitimately believed that he had that person's authority, notably by reason of the latter's behaviour or statements.

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

Neither an inability to set up an act against another person nor its nullity can be invoked once the person represented has ratified it.

¹² '[A] person subject to an order empowering their family to act on their behalf' translates in an explanatory way '*la personne faisant l'objet d'une habilitation familiale*.' On this *habilitation familiale* see arts 494-4 et seq of the Civil Code as inserted by *Ordonnance* n° 2015-1288 of 15 October 2015 concerning the simplification and modernisation of family law.

¹³ 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. 1156, may not) rely on a contract or other juridical act against another person. See further arts 1173, 1201, 1305-5, 1323, 1324, 1333, 1341-2, 1341-2, and 1346-5.

Art. 1157. – Where a representative abuses his authority to the detriment of the person whom he represents, the latter may invoke the nullity of any act concluded if the third party was aware of the abuse of authority or could not have been unaware of it.

Art. 1158. – A third party who, at the time of an act which he is about to conclude, doubts the extent of the authority of a representative appointed by contract may in writing request the person represented to confirm to him within a time which he may fix and which must be reasonable, that the representative is empowered to conclude the act in question.

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

Art. 1159. – 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. 1160. – The authority of a representative ceases if he becomes affected by a lack of capacity or is subject to a prohibition.

Art. 1161. – 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 act 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. 1162. – A contract cannot derogate from public policy either by its stipulations or by its purpose, whether or not this was known by all the parties.

Art. 1163. – 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 usage or the previous dealings of the parties, without the need for further agreement.

Art. 1164. – In framework contracts it may be agreed that the price will be fixed unilaterally by one of the parties, subject to the requirement that the latter must provide the reason for 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 damages and, in an appropriate case, for the termination of the contract.¹⁴

Art. 1165. – 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,¹⁵ subject to the latter’s providing a reason for its amount if it is challenged. In the case of abuse in the fixing of the price, the court may hear a claim for damages.

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. – 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.

Art. 1168. – In synallagmatic contracts, a lack of equivalence in the acts of performance of the parties is not a ground of nullity of the contract, unless legislation provides otherwise.

Art. 1169. – 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. 1170. – Any contract term which deprives a debtor’s essential obligation of its substance is deemed not written.

Art. 1171. – Any term of a standard form contract which creates a significant imbalance in the rights and obligations of the parties to the contract is deemed not written.

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

¹⁴ *La résolution* is used in the *Code civil* as promulgated in 1804 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. Under the new law, *la résolution* is said to put an end to the contract (art. 1229 al. 1), but the effect of this may be retroactive or may instead be prospective, where it is termed ‘*la résiliation*’ (art. 1229 al. 3). We therefore use the neutral word ‘termination’ for *la résolution* and ‘resiling from a contract’ for ‘*la résiliation*’.

¹⁵ 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.

SECTION 3
The Form of Contracts

Sub-section 1
General Provisions

Art. 1172. – On principle contracts require only the consent of the parties.

By way of exception, the validity of a solemn contract is subject to the fulfilment of formalities set by legislation, and their absence renders the contract a nullity except where it may be regularized.

Otherwise, legislation subjects the formation of certain contracts to the delivery of a thing.

Art. 1173. – 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.

Sub-section 2
Special provisions governing contracts concluded by electronic means

Art. 1174. – Where writing is required for the validity of a contract, 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.

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 acts relating to family law or the law of succession;

2° signed acts relating to personal or real security, 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, an electronic written document 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 by electronic means where the written document can be printed by the person to whom it is sent.

SECTION 4
Sanctions

Sub-section 1
Nullity

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

An annulled contract is deemed never to have existed.

Acts of performance which have been carried out give rise to restitution under the conditions provided by articles 1352 to 1352-9.

Irrespective of whether or not the contract is annulled, an injured party 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 sole object the safeguard of a private interest.

Art. 1180. – Absolute nullity may be claimed by any person who can demonstrate an interest, as well as by the *ministère public*.¹⁶

It may not be remedied by affirmation of the contract.

Art. 1181. – Relative nullity may be claimed only by the party that the legislation intends to protect.

It may be remedied by affirmation.

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 subject-matter of the obligation and the defect affecting the contract.

Affirmation can take place only after 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.

¹⁶ The *ministère public* is the magistrate who represents the public interest.

Affirmation entails renunciation of the grounds of claim or defences that might 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. The ground of nullity must have ceased.

The written notice must set out expressly 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. – 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.

The contract is upheld where legislation deems a contract term not written, or where the purposes of the rule not followed requires it to be upheld.

Art. 1185. – The defence of nullity is not subject to prescription if it relates to a contract which has not received any performance.

Sub-section 2 *Lapse*

Art. 1186. – A contract which has been validly formed lapses if one of its necessary elements disappears.

Where the performance of several contracts is necessary for the putting into effect of one and the same operation and one of them disappears, those contracts whose performance is rendered impossible by this disappearance lapse, as do those for which the performance of the contract which has disappeared was a decisive condition of the consent of one of its parties.

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

It may give rise to restitution under the conditions provided by articles 1352 to 1352-9.

CHAPTER III *CONTRACTUAL INTERPRETATION*

Art. 1188. – A contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms.

Where this intention 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. – 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 common intention of the parties, several contracts contribute to one and the same operation, they are to be interpreted by reference to this operation.

Art. 1190. – In case of ambiguity, a bespoke contract is interpreted against the creditor and in favour of the debtor, and a standard-form contract is interpreted against the person who put it forward.

Art. 1191. – 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. 1192. – Clear and unambiguous terms are not subject to interpretation as doing so risks their distortion.

CHAPTER IV THE EFFECTS OF CONTRACTS

SECTION 1 The Effects of Contracts between the Parties

Sub-section 1 Binding Effect

Art. 1193. Contracts can be modified or revoked only by the parties' mutual consent or on grounds which legislation authorises.

Art. 1194. – Contracts create obligations not merely in relation to what they expressly provide, but also to all the consequences which are given to them by equity, usage or legislation.

Art. 1195. – 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 agree to terminate the contract from the date and on the conditions which they determine, or by a common agreement ask the court to set about its adaptation. In the absence of an agreement within a reasonable time, the court may, on the request of a party, revise the contract or put an end to it, from a date and subject to such conditions as it shall determine.

Sub-section 2
*Proprietary Effect*¹⁷

Art. 1196. – As regards contracts whose object is to alienate property or the assignment of 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 in question or by the effect of legislation.

The transfer of property entails the transfer of risk in the thing. Nevertheless, the debtor of an obligation to deliver regains the risk in it from the time of being put on notice to perform, in conformity with article 1344-2 and subject to the rules provided by article 1351-1.

Art. 1197. – 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. 1198. – Where two persons successively acquire the same physical movable thing 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.

Where two persons acquire rights over one and the same immovable property in turn and hold their right from the same person, the person who first published his title of acquisition made in an authenticated instrument on the land register¹⁸ is 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. 1199. – A contract creates obligations only as between the parties.

Third parties may neither claim performance of the contract nor be constrained to perform it, subject to the provisions of this section and those in Chapter III of Title IV

Art. 1200. – Third parties must respect the legal situation created by a contract.

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

Art. 1201. – 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 rely on it.

¹⁷ 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.

¹⁸ This translates ‘*fichier immobilier*’.

Art. 1202. – 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 powers¹⁹ 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. 1203. – A person is not able to undertake engagements in his own name except for himself.

Art. 1204. – A person may stand surety²⁰ by promising that a third party will do something.

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

Where the standing surety has as its subject-matter the ratification of an undertaking, the latter is retroactively validated from the date at which the standing surety was executed.

Art. 1205. – A person may make a stipulation for another person.

One of the parties to a contract (the ‘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’).²¹ 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.

Art. 1206. – The beneficiary is invested with a direct right to the act of performance against the promisor from the time of the stipulation.

Nevertheless, the stipulator may freely revoke the stipulation as long as the beneficiary has not accepted it.

The stipulation becomes irrevocable at the moment when the acceptance reaches the stipulator or the promisor.

¹⁹ Here ‘an office held by a professional who thereby enjoys public service powers’ translates in an explanatory way ‘*un office ministériel*’.

²⁰ 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’ and ‘*la caution*’ as ‘a guarantor’: see, e.g., arts 1335, 1350-2 and 1347-6.

²¹ Here, we have followed closely the language in the French, which itself evokes its own Romanist background. In English discussions, the ‘stipulator’ would often be termed the ‘promisee’.

Art. 1207. – Revocation may be effected only by the stipulator, 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.

If it is not accompanied with the designation of a new beneficiary, the revocation benefits the stipulator or his heirs, as the case may be.

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.

The third party who was initially designated is deemed never to have benefited from the stipulation made for his benefit.

Art. 1208. – Acceptance may come from the beneficiary or, after his death, his heirs. It may be express or implied. It may take place even after the death of the promisee or the promisor.

Art. 1209. – The stipulator may himself require the promisor to perform his undertaking towards the beneficiary.

SECTION 3 *The Duration of Contracts*

Art. 1210. – Perpetual undertakings are prohibited.

Either contracting party may put an end to such an undertaking under the conditions provided for contracts of indefinite duration.

Art. 1211. – Where a contract is concluded for an indefinite duration, each party may put an end to it at any time, subject to respecting any period of notice provided by the contract or, in its absence, a reasonable notice.

Art. 1212. – Where a contract is concluded for a definite duration, each party must perform it until the date of its due ending.

No-one may require the renewal of the contract.

Art. 1213. – 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. 1214. – A contract of definite duration may be renewed as a result of legislative provision to this effect or by the agreement of the parties.

Renewal gives birth to a new contract whose content is identical to its predecessor but whose duration is indefinite.

Art. 1215. – Where, on the expiry of the term of a contract concluded for a definite duration, the contracting 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
Assignment of Contract

Art. 1216. – A contracting party, the assignor, may assign his status as party to the contract to a third party, the assignee, with the agreement of his own contractual partner, the person subject to assignment.

This agreement may be given in advance, notably in a contract concluded between the future assignor and person subject to assignment, in which case assignment takes effect as regards the person subject to assignment when the contract concluded between the assignor and the assignee is notified to him or when he acknowledges it.

An assignment must be established in writing, on pain of nullity.

Art. 1216-1. – If the person subject to assignment has expressly consented to it, assignment of contract discharges the assignor for the future.

In its absence, and subject to any term to the contrary, the assignor is liable jointly and severally to the performance of the contract.

Art. 1216-2. – The assignee may set up against the person subject to assignment the defences inherent in the debt itself, such as nullity, the defence of non-performance, termination or the right to set off related debts. He cannot set up against him defences personal to the assignor.

The person subject to assignment may set up against the assignee all the defences which he could have been able to set up against the assignor.

Art. 1216-3. – If the assignor is not discharged by the person subject to assignment, any securities which may have been agreed remain in place. Where the assignor is discharged, securities agreed by third parties remain in place only with the latter's agreement.

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 5
Contractual Non-performance

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

- refuse to perform or suspend performance of his own obligations;
- seek enforced performance in kind of the undertaking;
- request a reduction in price;
- provoke the termination²² of the contract;
- claim reparation of the consequences of non-performance.

Sanctions which are not incompatible may be combined; damages may always be added to any of the others.

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 prevention is temporary, performance of the obligation is suspended unless the delay which results justifies termination of the contract. If the prevention is permanent, the contract is terminated by operation of law and the parties are discharged from their obligations under the conditions provided by articles 1351 and 1351-1.

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.

Art. 1220. – A party may suspend the performance of his obligation as soon as it becomes evident 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 if there is a manifest disproportion between its cost to the debtor and its interest for the creditor.

²² See above, n. 14.

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

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

*Sub-section 3
Price Reduction*

Art. 1223. – Having given notice to perform, 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 to reduce the price 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, from notice by the creditor to the debtor or from a judicial decision.

Art. 1225. – A termination clause must specify 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 takes effect only if it refers expressly to the termination clause.

Art. 1226. – A creditor may, at his own risk, terminate the contract by notice. Unless there is urgency, 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 expressly that if the debtor fails to fulfil his obligation, the creditor will have a right to terminate the contract.

Where the non-performance persists, the creditor notifies the debtor of the termination of the contract and the reasons on which it is based.

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

Art. 1227. – Termination may in any event 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, or award only damages.

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.

Where the acts of performance exchanged were useful only on the full performance of the contract which has been terminated, the parties must restore the whole of what they have obtained from each other. Where the acts of performance which were exchanged were useful to both parties from time to time during the reciprocal performance of the contract, there is no place for restitution in respect of the period before the last act of performance which was not reflected in something received in return; in this case, termination is termed resiling from the contract.²³

Restitution takes place under the conditions provided by articles 1352 to 1352-9.

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 resulting from non-performance of the contract

Art. 1231. – Unless non-performance is permanent, damages are due only if the debtor has previously been put on notice to perform his obligation within a reasonable time.

Art. 1231-1. – A debtor is condemned, where appropriate, to the payment of damages either on the ground of the non-performance or a delay in performance of an obligation, unless he justifies this on the ground that performance was prevented by force majeure.

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 bound only to damages which were either foreseen or which could have been foreseen at the time of conclusion of the contract, except where non-performance was due to a gross or dishonest fault.²⁴

²³ We translate '*la résiliation*' as 'resiling from a/the contract' so as to distinguish it from '*la résolution*' ('termination'): see above, n. 14.

²⁴ 'Gross or dishonest fault' translates '*une faute lourde ou dolosive*'. While we have translated '*faute dolosive*' as 'dishonest fault', dishonesty for this purpose must be understood in a broad way so as to include situations treated as bad faith in the debtor, notably, where the non-performance is deliberate.

Art. 1231-4. – In the situation where non-performance of a contract does indeed result from gross or dishonest fault, damages include only that which is the immediate and direct result of non-performance.

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 so agreed if it is manifestly excessive or derisory.

Where an undertaking has been performed in part, the agreed penalty 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.

Except where non-performance is permanent, a penalty is not incurred unless the debtor was put on notice to perform.

Art. 1231-6. – Damages due on the ground of delay in satisfaction of a monetary obligation consist of interest at the rate set by legislation, starting from the time of notice to perform.

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

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 interest arising from the delay.

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 of 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 as 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

CHAPTER I
EXTRA-CONTRACTUAL LIABILITY IN GENERAL

Art. 1240. – Any human action whatsoever which causes harm to another creates an obligation in the person by whose fault it occurred to make reparation for it.

Art. 1241. – Everyone is liable for harm which he has caused not only by his action, but also by his failure to act or his lack of care.

Art. 1242. – One is liable not only for the harm which one causes by one's own action, but also for that which is caused by the action of persons for whom one is responsible, or of things which one has in one's keeping.

However, a person who holds on whatever legal basis all or part of immovable or movable property in which a fire has arisen shall not be liable as regards third parties for harm caused by that fire unless it is established that it must be attributed to his fault or the fault of persons for whom he is responsible.

This provision does not apply to the relations between owners and tenants, which remain governed by articles 1733 and 1734 of the Civil Code.

To the extent to which they exercise parental authority, a father and mother are jointly and severally liable for harm caused by their minor children who live with them.

Masters and employers, for harm caused by their servants and employees²⁵ within the functions for which they employed them.

Teachers and artisans, for harm caused by their pupils and apprentices during the time which they are under their supervision.

The above liability arises unless the father and mother and the artisans cannot prove that they could not have prevented the action which gave rise to this liability.

As regards teachers, fault, lack of care or a failure to act invoked against those as having caused the harmful action, must be proved by the claimant at first instance following the general rule.

Art. 1243. – The owner of an animal, or a person who uses an animal while he uses it, is liable for the harm which the animal has caused, whether the animal was in his keeping or whether it had gone astray or escaped.

Art. 1244. – The owner of a building is liable for the harm caused by its ruin, where the latter occurred as a result of a lack of maintenance or defect in construction.

²⁵ Here 'employers' translates '*les commettants*' and 'employees' translates '*[les] préposés*' on which see above, n. 11.

CHAPTER II
LIABILITY FOR DEFECTIVE PRODUCTS

Art. 1245. – A producer is liable for harm caused by a defect in his product, whether or not he is bound by a contract with the victim.

Art. 1245-1. – The provisions of this Chapter apply to the reparation of harm which results from personal injury.

They also apply to the reparation of harm above an amount determined by decree, which results from damage to property other than the defective product itself.

Art. 1245-2. – A product is any movable property, even if it is incorporated into immovable property, including products of the soil, of stock-farming, hunting or fisheries. Electricity is considered to be a product.

Art. 1245-3. – A product is defective within the meaning of this Chapter where it does not provide the safety which one can legitimately expect.

In the assessment of the safety which one can legitimately expect, account must be taken of all the circumstances and in particular the presentation of the product, the use which it may reasonably be expected to be put and the time of its being put into circulation.

A product cannot be considered as defective by the sole fact that another, more advanced product has subsequently been put into circulation.

Art. 1245-4. – A product is put into circulation when the producer voluntarily relinquishes it.

A product is the object of only a single putting into circulation.

Art. 1245-5. – A producer is a manufacturer of a finished product, the producer of raw materials, and the manufacturer of a component part if they act in the course of a business or profession.

Where acting in the course of a business or profession,²⁶ the following persons are assimilated to a producer for the purposes of this Chapter:

1. A person who presents himself as producer by attaching to the product his name, trademark or other distinguishing feature;
2. A person who imports a product into the European Community with the view to sale, hire (with or without an agreement to sell), or any other form of distribution.

Persons whose liability may be sought on the basis of articles 1792 to 1792-6 and 1646-1 are not considered to be producers within the meaning of this Chapter.

²⁶ This translates ‘*agissant à titre professionnel*’: cf. above, n. 9.

Art. 1245-6. – If the producer cannot be identified, the seller, the hirer (with the exception of a finance lessor or a hirer comparable to a finance lessor) or any other supplier in the course of business or a profession is liable for a defect of safety in the product on the same conditions as the producer, unless he indicates his own supplier or the producer within a period of three months starting from the date on which the claim of the victim was notified to him.

Recourse by the supplier against the producer is governed by the same rules as the claim coming from the direct victim of the defect. However, he must sue within a year of the date of proceedings being brought against him.

Art. 1245-7. – In the case of harm caused by a defect in a product incorporated into another product, the producer of the component part and the person who effected its incorporation are jointly and severally liable.

Art. 1245-8. – The claimant must prove the harm, the defect and the causal relationship between the defect and the harm.

Art. 1245-9. – The producer may be liable for a defect even if the product has been manufactured in accordance with the rules of the trade or existing standards or if it was the object of administrative authorization.

Art. 1245-10. – The producer is liable by operation of law²⁷ unless he proves:

1. that he had not put the product into circulation;
2. that, having regard to the circumstances, there is good reason to think that the defect causing the harm did not exist at the time when the product was put into circulation by him or that the defect arose afterwards;
3. that the product was not intended for sale or any other form of distribution;
4. that the state of scientific and technical knowledge at the time when he put the product into circulation did not allow discovery of the existence of the defect;
5. or that the defect is due to compliance of the product with mandatory legislative or administrative rules.

Moreover, the producer of a component part is not liable if he establishes that the defect is attributable to the design of the product in which the part was incorporated or to instructions given by the producer of that product.

Art. 1245-11. – The producer cannot rely on the defence provided by paragraph 4 of article 1245-10 where the harm was caused by an element of the human body or by products derived from it.

²⁷ This translates ‘*de plein droit*’. While in many discussions, this is to be understood to refer to ‘strict liability’ (as opposed to liability for fault) and the producer *is* liable strictly under these provisions, translating the first paragraph of art. 1245-10 as ‘The producer is liable strictly unless he proves’ one of the defences then set out would suggest that the defence changes the basis of liability (which is, of course, not the case).

Art. 1245-12. – The producer’s liability may be reduced or excluded, having regard to all the circumstances, where the harm is caused jointly by a defect in the product and by the fault of the victim or of a person for whom the victim is responsible.

Art. 1245-13. – The producer’s liability to the victim is not reduced by the action of a third party who contributed to the occurrence of the harm.

Art. 1245-14. – Contract terms which seek to exclude or limit liability for defective products are forbidden and deemed not written.

However, as regards harm caused to property which is not used by the victim mainly for his own private use or consumption, contract terms agreed between persons acting in the course of a business or profession are valid.

Art. 1245-15. – In the absence of fault in the producer, the latter’s liability based on the provisions of this Chapter is extinguished ten years after the actual product which caused the harm was put into circulation unless the victim brought proceedings during this period.

Art. 1245-16. – A claim for reparation based on the provisions of this Chapter is subject to prescription after a period of three years starting from the date on which the claimant knew or ought to have known of the harm, the defect and the identity of the producer.

Art. 1245-17. – The provisions of this Chapter are without prejudice to any rights which the victim of the harm may enjoy under the law of contractual or extra-contractual liability or under a special regime of liability.

The producer remains liable for the consequences of his own fault or of the fault of persons for whom he is responsible.

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 I MANAGEMENT OF ANOTHER’S AFFAIRS

Art. 1301. – A person who, without being bound to do so, knowingly and usefully manages another’s affairs without the knowledge or opposition of the latter (the principal), is subject 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 in a position to do so himself.

A court may, depending on the circumstances, moderate the 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 another person 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 affair.

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 benefits 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 received without being due is subject to restitution.

Restitution is not allowed as regards natural obligations which have been voluntarily 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 can sue the creditor for restitution. 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.

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

Art. 1302-3. – Restitution is subject to the rules set by articles 1352 to 1352-9.

It may be reduced if the payment made stems from fault.

*CHAPTER III
UNJUSTIFIED ENRICHMENT*

Art. 1303. – Apart from the situation of management of another’s affairs and 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 of an obligation by the person impoverished nor from his intention to confer a gratuitous benefit.

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

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

Art. 1303-3. – The impoverished person has no action on this basis where another action is open to him or is legally barred, as in the case of prescription.

Art. 1303-4. – Impoverishment established 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 lawful. If it is not, the obligation is a nullity.

Art. 1304-2. – An 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.

Whatever has been paid may be recovered as long as the suspensive condition has not been fulfilled.

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

However, the parties may provide that the fulfilment of the condition will have retroactive effect from the date of the contract. The thing which is the subject-matter of the obligation remains still at the risk of the debtor, who retains its management and has the right to 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 preservation or of management which might have been carried out.

The effect is not retroactive if the parties so agree or if the acts of performance that have been exchanged have fulfilled their aims in the course of the reciprocal performance of the contract.

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.

In the absence of agreement, 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.

Art. 1305-3. – A time-delay is for the benefit of the debtor, unless legislation, the will of the parties 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 he reduces the value of those which guarantee the obligation.

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*

Paragraph 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.

Paragraph 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. –The debtor may choose between the acts of performance.

If the choice has not been made within the agreed time 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, the debtor who has not made known his choice must perform one of the others.

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 one of the others.

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

Paragraph 3 – Optional Obligations

Art. 1308. – An obligation is optional where it has as its subject-matter a particular act of performance but the debtor has the ability 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 also as between their successors, even if the obligation is joint and several. 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 joint and several, or if the act of performance owed is indivisible.

Paragraph 1 – Joint and Several Obligations

Art. 1310. – The joint and several nature of an obligation arises as a result of legislation or agreement: it cannot be presumed.

Art 1311. – Where the obligation is joint and several amongst creditors each of them may require and receive satisfaction of the right 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 joint and several 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.

Art. 1313. – The joint and several nature of an obligation amongst debtors imposes on each of them an obligation 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 claim for interest made against a single joint and several debtor causes interest to run against all.

Art. 1315. – A joint and several debtor who is sued by the creditor may set up defences which are common to all the co-debtors, such as nullity or termination, and those which are available to him personally. He may not set up defences which are personal to the other debtors, such as the grant of a deferral. However, where a defence which is personal to another debtor, such as set-off or release of the debt, extinguishes a separate part of the debt owed by that debtor, he may take advantage of it to reduce the total of the debt.

Art. 1316. – A creditor who receives satisfaction from one of two or more joint and several debtors and consents to his release, retains his right arising from the obligation against the others, but after deduction of the share of the debtor whom he has discharged.

Art. 1317. – 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. 1318. – If the debt arises from a matter which concerns only one of the joint and several 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. 1319. – 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.

Paragraph 2 – Obligations whose Acts of Performance are Indivisible

Art. 1320. – 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
TRANSACTIONS RELATING TO OBLIGATIONS

SECTION I
Assignment of Rights arising from Obligations

Art. 1321. – Assignment of rights 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 one or more rights, present or future, ascertained or ascertainable.

It extends to the ancillary rights of the right that is assigned.

The consent of the debtor is not required unless the right was stipulated to be non-assignable.

Art. 1322. – An assignment of rights must be effected in writing, on pain of nullity.

Art. 1323. – As between the parties the transfer of the right takes effect at the date of the act.

It can be set up against third parties from that moment. 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. 1324. – Unless the debtor has already agreed to it, the assignment may be set up against him only if it has been notified to him or he has acknowledged it.

The debtor may set up against the assignee defences inherent in the debt itself, such as nullity, the defence of non-performance, termination 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. Subject to any contractual term to the contrary, the burden of these costs lies on the assignee.

Art. 1325. – In the case of successive assignments of rights, 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 tendered satisfaction.

Art. 1326. – 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 uncertain character of 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. 1327. – A debtor may assign his debt to another person with the agreement of the creditor.

Art. 1327-1. – If the creditor gave his agreement to the assignment in advance, or if he has not taken part in the assignment, he may find it set up against him, or may take advantage of it himself, only from the day when he was notified of it, or once he has acknowledged it.

Art. 1327-2. – If the creditor expressly so agrees, the original debtor is discharged for the future. Otherwise, and subject to any contractual term to the contrary, he is bound jointly and severally to pay the debt.

Art. 1328. – The substituted debtor, and the original debtor if he remains liable, may set up against the creditor defences inherent in the debt, such as nullity, the defence of non-performance, termination or the right to set off related debts. Each may also set up defences which are personal to him.

Art. 1328-1. – Where the original debtor is not discharged by the creditor, any securities remain in place. Where the original debtor is discharged, securities given by third parties remain binding only if they agree.

If the original debtor²⁸ is discharged, any joint and several co-debtors remain liable to the extent which remains after deduction of the share of the original debtor who has been discharged.

²⁸ We have translated ‘*cédant*’ as ‘original debtor’ as the context appears to so demand.

SECTION 3

Novation

Art. 1329. – 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. 1330. – Novation cannot be presumed. The will to effect it must be shown clearly in the instrument.

Art. 1331. – Novation takes place only if the old and the new obligations are both valid, unless it has as its declared subject-matter the substitution of a valid undertaking for an undertaking which is tainted by a defect.

Art. 1332. – Novation by change of debtor may take place without the concurrence of the first debtor.

Art. 1333. – Novation by change of creditor requires the consent of the debtor, who may agree in advance that the new creditor is to be appointed by the old.

Novation can be set up against third parties at the date of the instrument. In the event of challenge, the burden of proof of the date rests on the new creditor, who may establish it by any means of proof.

Art. 1334. – Extinction of the old obligation extends to all its ancillary rights and obligations.

By way of exception, any initial security may be preserved to guarantee the new obligation if the third party guarantors so agree.

Art. 1335. – A novation agreed between the creditor and one of two or more joint and several debtors discharges the others.

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 4

Delegation

Art. 1336. – Delegation is a transaction 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 of the delegation any defence arising from his relations with the delegator, or from the relations between the latter and the beneficiary of the delegation.

Art. 1337. – Where the delegator is debtor of the beneficiary of the delegation and the instrument demonstrates expressly the will of the beneficiary of the delegation to discharge the delegator, the delegation takes effect as a novation.

However, the delegator remains bound if he had expressly 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. 1338. – Where the delegator is debtor of the beneficiary of the delegation but the latter has not discharged his debt, the delegation provides the beneficiary with another debtor.

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

Art. 1339. – 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 of the delegation, and only to the extent of that performance.

Until then, 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 of the delegation.

An assignment or distraint of the rights of the delegator can take effect only subject to these same limitations.

However, if the beneficiary of the delegation 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 of the delegation.

Art. 1340. – 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 III *ACTIONS AVAILABLE TO CREDITORS*

Art. 1341. – A creditor has the right to performance of the obligation; he may compel the debtor to perform under the conditions provided by legislation.

Art. 1341-1. – Where a debtor's failure in the exercise of his patrimonial rights and actions²⁹ compromises the rights of his creditor, the latter may exercise them on behalf of the debtor, with the exception of those which belong exclusively to the debtor personally.

²⁹ 'His patrimonial rights and actions' translates '*ses droits et actions à caractère patrimonial*'. *Le patrimoine* consists of the totality of a person's property, rights and obligations. It is used by the *Code civil*, *inter alia*, in the context of a minor's property (e.g. art. 387-1) and in the context of matrimonial property regimes (e.g. art. 1569).

Art. 1341-2. – A creditor may also sue 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. 1341-3. – In cases determined by legislation, a creditor may sue directly to obtain satisfaction from a debtor of his own debtor.

CHAPTER IV EXTINCTION OF OBLIGATIONS

SECTION 1 Satisfaction

Sub-section 1 General Provisions

Art. 1342. – Satisfaction is the voluntary 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 or the contract make provision for subrogation to the rights of the creditor.

Art. 1342-1. – Satisfaction may even be rendered by a person who is not bound to do so, except where the creditor legitimately refuses it.

Art. 1342-2. – Satisfaction must be rendered to the creditor or to a person designated to receive it.

Satisfaction rendered to a person who was not authorised to receive it is nonetheless valid if the creditor ratifies it or has received a benefit from it.

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

Art. 1342-3. – Satisfaction rendered in good faith to an apparent creditor is valid.

Art. 1342-4. – 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. 1342-5. – A debtor who has the obligation to deliver 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. 1342-6. – Unless legislation, the contract or the court otherwise provide, satisfaction must be rendered at the place of domicile of the debtor.

Art. 1342-7. – The costs of satisfaction must be borne by the debtor.

Art. 1342-8. – Satisfaction may be established by any means of proof.

Art. 1342-9. – A voluntary delivery by the creditor to the debtor of the original signed instrument, or of the court order establishing his right, raises a simple presumption³⁰ 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. 1342-10. – A debtor who owes more than one debt may indicate when he renders satisfaction which debt he intends to discharge.

Failing indication by the debtor allocation is 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. 1343. – 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. 1343-1. – 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. 1343-2. – 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. 1343-3. – Payment in France of a monetary obligation must be made in Euros. However, payment may be made in another currency if the obligation providing for it arises under an international contract or a foreign judgment.

³⁰ As art.1354, below makes clear a ‘simple’ presumption is one which may be rebutted by proof to the contrary.

Art. 1343-4. – Unless legislation, the contract or the court otherwise provide, the place of satisfaction of a monetary obligation is the domicile of the creditor.

Art. 1343-5. – 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 to debts in relation to maintenance payments.

Sub-section 3 Notice to Perform

Paragraph 1 – Notice to the Debtor

Art. 1344. – 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 is enforceable.

Art. 1344-1. – A notice to perform a monetary obligation causes interest for delay in payment to run at the rate set by legislation, without the creditor being required to demonstrate any loss.

Art. 1344-2. – A notice to deliver a thing passes the risk to the debtor, if the risk has not already passed.

Paragraph 2 – Notice to the Creditor

Art. 1345. – 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, if the risk has not already passed, except in case of gross negligence or fraud on the part of the debtor.

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

Art. 1345-1. – Where the obstruction has not come to an end within two months of the notice, the debtor may, if the obligation concerns a sum of money, deposit the sum with the *Caisse des dépôts et consignations*³¹ or, where the obligation concerns the delivery of a thing, sequester it in the custody of a person authorised to hold it.

If sequestration 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 deposited with the *Caisse des dépôts et consignations*.

Deposit or sequestration discharges the debtor from the moment when the creditor is notified of them.

Art. 1345-2. – 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. 1345-3. – The costs of the notice and of the deposit or sequestration must be borne by the creditor.

Sub-section 4 *Satisfaction with Subrogation*

Art. 1346. – Subrogation takes place by the sole operation of law in favour of a person with a legitimate interest in it who satisfies a debt provided that 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. 1346-1. – Subrogation by contract takes effect on the initiative of the creditor where, on receiving satisfaction from a third party, the creditor substitutes the third party for himself as against the debtor.

This type of subrogation must be express.

It must be agreed upon at the same time as the satisfaction, unless, in an earlier act, the party who subrogates has indicated his will that the other contracting party should be subrogated to him at the time of satisfaction. The concomitance of the subrogation and the satisfaction may be established by any means of proof.

Art. 1346-2. – 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.

³¹ 'The Caisse des Dépôts et Consignations is a special institution charged with the administration of deposits and consignments, the provision of services relating to the funds whose management has been entrusted to it, and the exercise of other functions of the same nature which are lawfully delegated to it': art. L. 518-2 of the French Monetary and Financial Code (extract)). See further www.caissedesdepots.fr/.

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 sums paid for this purpose by the new creditor.

Art. 1346-3. – 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. 1346-4. – 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.

However, 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, but where the security was created by third parties, this is limited to their initial undertaking unless they consent to extend their obligation.

Art. 1346-5. – 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 or if he has acknowledged it.

Subrogation may be set up against third parties from the time of the satisfaction.

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, termination 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. 1347. – Set-off is the simultaneous extinguishment of reciprocal obligations between two persons.

If it is invoked, it operates up to the value of the lower of the two obligations at the date when all the conditions for set-off are met.

Art. 1347-1. – Subject to the provisions of the following sub-section, set-off takes place only in the case of two fungible obligations which are certain, 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. 1347-2. – 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. 1347-3. – A period of grace for payment is no obstacle to set-off.

Art. 1347-4. – If there is more than one debt liable for set-off, the rules for the allocation of payments are applicable.

Art. 1347-5. – Where the debtor has acknowledged without reservation 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. 1347-6. – A guarantor may set up against the creditor a set-off which arises between the creditor and the principal debtor.

A joint and several debtor may take advantage of a set-off which arises between the creditor and one of his co-debtors in order to deduct from the total debt the separate part of the debt owed by that debtor.

Art. 1347-7. – Set-off does not prejudice vested rights of third parties.

Sub-Section 2 Particular Rules

Art. 1348. – Set-off may be ordered by a court even if one of the obligations, although certain, is not yet liquidated or enforceable. Unless otherwise decided, in these circumstances set-off is effective at the date of the decision.

Art. 1348-1. – 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 first of the obligations becomes enforceable.

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.

Art. 1348-2. – 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

Merger

Art. 1349. – There is merger where the same person becomes both creditor and debtor of the same obligation. It extinguishes the debt and any ancillary rights and obligations, apart from any rights acquired by or against third parties.

Art. 1349-1. – 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 even if he is a joint and several guarantor. Where merger affects one of a number of guarantors, the principal debtor is not discharged. The other joint and several guarantors are discharged to the extent of that guarantor's share.

SECTION 4

Release of Debts

Art. 1350. – Release of a debt is a contract by which the creditor discharges the debtor from his obligation.

Art. 1350-1. – 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. 1350-2. – Release of a debt granted to a principal debtor discharges any guarantors, even if they are joint and several guarantors.

Release agreed for one of two or more joint and several guarantors does not discharge the principal debtor, but 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

Impossibility of Performance

Art. 1351. – 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 is definitive unless he had agreed to bear the risk of the event or had previously been given notice to perform.

Art. 1351-1. – 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.

CHAPTER V RESTITUTION

Art. 1352. – Restitution of a thing other than a sum of money takes place in kind or, where this is impossible, by value assessed at the date of the restitution.

Art. 1352-1. – 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.

Art. 1352-2. – 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. 1352-3. – Restitution includes its fruits and the value of the enjoyment to which the thing has given rise.

The value of the enjoyment is to be assessed by the court as at the date of its decision.

Unless otherwise stipulated by the contracting parties, if the fruits no longer exist in kind, their restitution takes place, according to a 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. 1352-4. – Restitution owed to an unemancipated minor or to a protected adult is reduced in proportion to the profit which he has drawn from the act that has been annulled.

Art. 1352-5. – The amount of restitution is fixed taking into account for the party who owes restitution any necessary expenses incurred in the maintenance of the thing, and expenses which have increased its value, limited to the increase in value assessed at the date of restitution.

Art. 1352-6. – Restitution of a sum of money includes interest at the rate set by legislation and any taxes paid to the person who received it.

Art. 1352-7. – A party in receipt in bad faith owes interest, the fruits he has taken and the value of enjoyment from the moment of receipt of satisfaction. A party in receipt in good faith owes these only from the date when they are claimed.

Art. 1352-8. – Restitution in respect of a supply of a service takes place by value, assessed at the date at which the service was supplied.

Art. 1352-9. – Securities created for the satisfaction of an obligation are transferred by operation of law to the obligation to make restitution, although the guarantor does not lose the benefit of any time delay.

*TITLE IVB
PROOF OF OBLIGATIONS*

*CHAPTER I
GENERAL PROVISIONS*

Art. 1353. – 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. 1354. – A presumption which legislation attaches to certain acts or to certain facts and thereby considers them to be certain, dispenses the person in whose favour it exists from their proof.

A presumption is termed ‘simple’ where legislation allows proof to the contrary and where it can be overturned by any means of proof; it is termed ‘mixed’ where legislation limits the means by which it may be overturned or the grounds on which it may be overturned; it is termed ‘irrebuttable’ where it may not be overturned.

Art. 1355. – 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. 1356. – Contracts relating to proof are valid where they concern rights of which the parties have free disposal.

However, they cannot contradict irrebuttable presumptions established by legislation, nor modify the probative force attached to admissions in court or to oaths. Moreover, they cannot establish an irrebuttable presumption for the benefit of one of the parties.

Art. 1357. – The judicial administration of the proof of any matter, and disputes relating to it, are governed by the Code of Civil Procedure.

CHAPTER II
ADMISSIBILITY OF KINDS OF PROOF

Art. 1358. – Apart from cases for which legislation provides otherwise, proof may be established by any means.

Art. 1359. – A juridical act relating to a sum of money or value in excess of an amount fixed by decree must be proved by evidence in writing, whether privately signed or authenticated.³²

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

A person whose contractual right exceeds the threshold mentioned in the previous paragraph may not be dispensed from proving it by evidence in writing by reducing his claim.

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. 1360. – The rules provided by the preceding article find an exception in the case of physical or moral impossibility of the written evidence being obtained, if it is customary not to establish written evidence, or where the written evidence has been lost as a result of force majeure.

Art. 1361. – 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. 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 what is alleged 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.³³

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

³²We have translated '*sous signature privée*' here as 'privately signed', but more generally we translate as 'signed writing', the significance being that something is *merely signed* as opposed to having been authenticated. Cf. arts 1369–1371 (on authenticated instruments) and 1372–1377 (on signed instruments).

³³This 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*.

CHAPTER III
THE DIFFERENT KINDS OF PROOF

SECTION I
Proof by Written Evidence

Sub-section 1
General Provisions

Art. 1363. – No-one can set up their own title by themselves.

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.

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 conditions as will guarantee its integrity.

Art. 1367. – A signature which is required in order to perfect a juridical act identifies its own author. It demonstrates his consent to the obligations which stem from that 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 on the conditions fixed by decree of 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 title is the more likely to be true by reference to any means of proof.

Sub-section 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 and the function 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 of the *Conseil d'État*.

Where it is received by a notary, it does not require any statement in his own hand otherwise 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 effect 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 has given formal recognition is made.

Where the instrument is forged, the court may suspend its performance.

Sub-section 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 as between its signatories and as regards 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 its claimed author, or declare that they do not recognise it. In these situations, the veracity of the writing is to be assessed.

Art. 1374. – A signed instrument countersigned by the legal counsel of each of the parties or by the legal counsel of all the parties provides proof both of the writing and of the signature of the parties, equally as regards themselves and as regards their heirs or successors.

The rules on alleging the forgery of the instrument provided by the Code of Civil Procedure may apply to it.

Such an instrument does not require any statement in its author's own hand otherwise required by legislation.

Art. 1375. – A signed instrument which records 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 even in part 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 and the process allows each party to be in possession of or have access to a copy of it in a durable medium.

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 equivalent to proof of the sum written in words.

Art. 1377. – As against third parties, a signed instrument acquires a date of its execution which is certain 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.

Sub-section 4
Other writings

Art. 1378. – Registers and documents which persons in business or 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 writing 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.

Sub-section 5
Copies

Art. 1379. – A reliable 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 copy resulting in a reproduction which is identical in form and content to the act, and whose integrity is guaranteed in time by means which follow the conditions fixed by decree of the *Conseil d'Etat*, is presumed to be reliable subject to proof to the contrary.

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

Sub-section 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.

SECTION 2
Proof by testimonial evidence

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

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.

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 the person who makes it.

It may not be divided against its author.

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

SECTION 5 *Oaths*

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

Sub-section 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.

One 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.

Sub-section 2
Oath 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 defence is neither conclusively justified nor completely lacking in means of proof.