

REFORM BILL
ON CIVIL LIABILITY
(March 2017)

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by Jean-Jacques Urvoas, *garde des sceaux*, Minister of Justice
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TITLE 1

PROVISIONS RELATING TO BOOK II OF THE CIVIL CODE

Article 1

I. Title III of Book III of the Civil Code is amended as follows:

1. Articles 1231 to 1252 are repealed.

2. Article 1231 is composed as follows: ‘The creditor of an obligation arising from a validly formed contract may, in case of its non-performance, claim from the debtor reparation for his¹ loss² under the conditions provided by sub-title II.’

3. Sub-title II of Title III of Book III is composed as follows:

“SUB-TITLE II — CIVIL LIABILITY

Article 1232

The provisions of Chapters 1 to IV are applicable subject to provisions particular to the special regimes of liability.

CHAPTER 1 INTRODUCTORY PROVISIONS

Article 1233

In the case of non-performance of a contractual obligation, neither the debtor nor the creditor may escape the application of provisions special to contractual liability in order to opt in favour of rules specific to extra-contractual liability.

Article 1233-1

Losses resulting from personal injury are subject to reparation on the basis of the rules of extra-contractual liability, even if they are caused in the course of performance of a contract.

However, the victim may invoke express stipulations of a contract which are more favourable to him than the application of the rules of extra-contractual liability.

Article 1234

Where non-performance of a contract causes harm to a third-party, the latter can claim reparation of its consequences from the debtor only on the basis of extra-contractual liability, and subject to that third-party’s establishing one of the actions giving rise to liability targeted by Section II of Chapter II.

¹ General note. 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.

² There is an important distinction in the text between *le dommage* (translated as ‘harm’ or ‘the harm’) and *le préjudice* (translated as ‘loss’ or ‘the loss’) which the claimant (often in the text, the ‘victim’) suffers as a result of the infliction of this harm. *Le dommage* is translated as ‘harm’ rather than ‘damage’ (which is obviously closer linguistically) as *le dommage* can include a number of non-physical harms (such as the grief or upset included under *le dommage moral*), whereas ‘damage’ in English is typically (though not exclusively) understood as being physical.

Nevertheless, a third party who has a legitimate interest in the proper performance of a contract can equally invoke, on the basis of contractual liability, a contractual failing³ where the latter has caused him harm. The conditions and limitations on this liability which are applicable in the relations between the contracting parties may be set up against him.⁴ Any contract term which limits the contractual liability of a party to the contract in relation to a third party is deemed not written.

CHAPTER II CONDITIONS OF LIABILITY

SECTION I Provisions common to contractual and extra-contractual liability

Sub-section I. Reparable loss⁵

Article 1235

Any certain loss is reparable where it results from harm and consists of an injury to a lawful interest, whether patrimonial or extra-patrimonial.⁶

Article 1236

Future loss is reparable where it is the certain and direct prolongation of an existing state of things.

Article 1237

Expenses incurred by a claimant in order to prevent the imminent occurrence of harm or to avoid its getting worse, as well as in order to reduce its consequences, constitute a reparable loss as long as they were reasonably undertaken.

Article 1238

A loss of a chance is reparable only where it is the present and certain disappearance of a favourable eventuality.

This loss must be calculated by reference to the chance lost and cannot be equal to the advantage which this chance would have procured if it had been realised.

Sub-section 2. Causal relationship

Article 1239

Liability supposes the existence of a causal relationship between the action attributed to the defendant and the harm.

A causal relationship may be established by any means of proof.

³ 'Contractual failing' translates the phrase *un manquement contractuel* (which appears otherwise only in art.1254). The more technical expression for contractual non-performance is *l'inexécution d'une obligation contractuelle* or, less commonly but as earlier in this same provision, *l'inexécution du contrat*.

⁴ 'May be set up against' translates *opposable*.

⁵ 'Loss' here translates '*[le] préjudice*', on which see above, n.2.

⁶ 'Patrimonial' refers to a person's wealth or estate (*le patrimoine*).

Article 1240

Where personal injury is caused by an undetermined person among two or more identified persons acting in concert or exercising a similar activity, each person is liable for the whole, unless he shows that he could not have caused it.

The persons so liable make contribution to each other in proportion to the probability which each had caused the harm.

SECTION 2 Provisions special to extra-contractual liability

Sub-section 1. Action giving rise to extra-contractual liability

§ Fault

Article 1241

A person is liable for the harm caused by his fault.

Article 1242

A violation of a legislative requirement or a failure in the general duty of care or diligence constitutes a fault.

Article 1242-1

[Fault in a legal person results from fault in one of its organs or a failure in its organisation or its functioning.]

§ The action of things

Article 1243

A person is liable strictly⁷ for harm caused by the action of corporeal things within his keeping.

An action of a thing is presumed wherever, while moving, it comes into contact with the person or property which is harmed.⁸

In other cases, it is for the victim to prove the action of the thing by establishing either its defect or the abnormality of its position, its state or its behaviour.

The keeper of a thing is the person who has the use, control and direction of the thing at the time of the action causing the harm. The owner of a thing is presumed to be its keeper.

⁷ 'Strictly' translates '*de plein droit*', more literally, 'by operation of law'. The significance, however, is that the liability is imposed without reference to the fault of the person held liable. Cf. the translation of '*de plein droit*' in art.1280 al.2 as 'by operation of law'.

⁸ 'Person or property which is harmed' translates '*le siège du dommage*', more literally, the 'seat (or locus) of the harm'.

§ Abnormal nuisance between neighbours

Article 1244

The owner, lessee, holder of a title whose principal object is a permission to occupy or exploit land or a building,⁹ or a person who commissions work on land or enjoys the latter's authority, who causes a nuisance¹⁰ exceeding the normal inconveniences of being neighbours, is liable strictly for the harm resulting from the nuisance.

Where a harmful activity has been authorised by an administrative means,¹¹ the court may, however, award damages or order reasonable measures permitting the nuisance to be stopped.

Sub-section 2. The imputation of harm caused by another person

Article 1245

A person is liable for harm caused by another person in the cases and subject to the conditions laid down by articles 1246 to 1249.

This liability rests on proof of an action of a nature to engage liability in the direct author of the harm.

Article 1246

The following are liable strictly for the action of a minor:

- his parents, to the extent to which they exercise parental authority;
- his guardian or guardians,¹² to the extent to which they are charged with care of the minor's person;
- a physical or legal person charged by judicial or administrative decision with organising and controlling the minor's way of life on a permanent basis. In these circumstances, the parents' liability of such a minor cannot be engaged.

Article 1247

A physical or legal person charged by judicial or administrative decision with organising and controlling an adult's way of life on a permanent basis is liable strictly for the action of such an adult placed under their supervision.

Article 1248

Other persons who take on by contract, and by way of their business or profession,¹³ a task of supervision of another person or the organisation and control of the activity of another person, is liable for the action of the physical person supervised unless they show that they did not commit any fault.

⁹ 'Land or a building' translates '*un fonds*', which refers here to 'a thing which is immovable by its nature': cf. art.518 C.civ.

¹⁰ 'Nuisance' translates here '*troubles*' and refers here and in the context of art.1244 (which concerns *les troubles anormaux de voisinage*) to something similar to the common law tort of private nuisance. However, the French term '*trouble*' itself can refer to harmful activities in a much broader sense and outside the context of relations between neighbours. This broader sense may be seen in the *Projet* in arts 1266 and 1279-6 in the context of the cessation of unlawful activity, which refer to '*le trouble illicite*' ('unlawful nuisance').

¹¹ This translates '*[la] voie administrative*'. The very broad expression is used so as to include the different types of authorisation by the administration which could be envisaged.

¹² 'Guardian' translates here '*[le] tuteur*'. Guardianship is provided for by art. 390 et seq. C.civ.

¹³ This translates '*à titre professionnel*', *professionnel* in French being broad enough to include both business and profession.

Article 1249

An employer is liable strictly for harm caused by his employee. An employer is a person who has the power to give orders or instructions to his employee in relation to the performance of his functions.¹⁴

In the case of transfer of the relationship of employment, this liability is borne by the beneficiary of the transfer.

An employer or a beneficiary of such a transfer is not liable if he proves that the employee acted outside the functions for which he was employed, without authorisation and for purposes alien to his attributions. Nor is he liable if he establishes collusion between his employee and the victim.

An employee is not subject to any personal liability except in the case of intentional fault, or where without authorisation he acted for purposes alien to his attributions.

SECTION 3 – Provisions special to contractual liability

Article 1250

Every non-performance of a contract which has caused harm to the creditor gives rise to an obligation in the debtor to be liable for it.

Article 1251

Except for gross or dishonest fault, a debtor is bound to make reparation only for those consequences of non-performance which were reasonably foreseeable at the time of the formation of the contract.

Article 1252

The reparation of loss resulting from delay in performance is premised on the prior giving of a notice to perform to the debtor. Notice to perform is not required for reparation of any other loss except where it is necessary in order to characterize the non-performance.

CHAPTER III – GROUNDS OF EXONERATION OR OF EXCLUSION OF LIABILITY

SECTION 1 – Grounds of exoneration of liability

Article 1253

A fortuitous event, or an act of a third party or of the victim, provide a total exoneration where they bear the characteristics of force majeure.

In extra-contractual matters, force majeure is an event escaping the control of the defendant or of a person for whom he is responsible, whose occurrence and whose consequences the latter could not avoid by appropriate measures.

In contractual matters, force majeure is defined by article 1218.

¹⁴ As will be seen from the definition in this provision, *le commettant* and *le préposé* are understood more widely than the English terms 'employer' and 'employee' which are normally restricted to the persons party to a contract of employment.

Article 1254

A failure by the victim in his contractual obligations, his own fault or that of a person for whom he is responsible, provide a partial exoneration where they contributed to the occurrence of the harm.

In the case of personal injury, only gross fault can lead to partial exoneration.

Article 1255

Unless it bears the characteristics of force majeure, fault in a victim who lacks discernment¹⁵ has no exonerating effect.

Article 1256

Fault or contractual non-performance which may be set up against¹⁶ the direct victim may also be set up against any indirect victims of a loss.

SECTION 2 – Grounds of exclusion of liability

Article 1257

An action causing harm does not give rise to liability where its author finds himself in one of the situations foreseen by articles 122-4 to 122-7 of the Criminal Code.

Article 1257-1

Equally, there is no room for liability where an action causing harm prejudices a right or an interest over which the victim has a power of disposal if the latter has consented to it.

CHAPTER IV – THE EFFECTS OF LIABILITY

SECTION 1 – Principles

Article 1258

The aim of reparation is to replace the victim as much as is possible in the situation in which he would have been if the harmful action had not taken place. It must cause him neither a loss nor an advantage.

Article 1259

Reparation may take the form of reparation in kind¹⁷ or damages, these two types of measures being able to be combined so as to ensure full reparation of the loss.

¹⁵ Such a 'lack of discernment' would be established in cases of relevant mental ill health or disability.

¹⁶ This translates 'opposable'.

¹⁷ 'Reparation in kind' translates *une réparation en nature*. There is, therefore, a close link with *l'exécution forcée en nature* in the context of contractual non-performance, on which see arts 1221 & 1222 C.civ. This relationship comes out very strongly in the provisions governing *la réparation en nature* in arts 1261 al 2 & 3 of the *Projet*.

Sub-section 1. Reparation in kind

Article 1260

Reparation in kind must be specifically appropriate to suppress, reduce or make up for the harm.

Article 1261

Reparation in kind cannot be imposed on the victim.

Nor can it be ordered in the case of impossibility or of manifest disproportionality between its cost for the person liable and its interest for the victim.

Subsequent to the same qualifications, equally a court may authorise the victim himself to take measures of reparation in kind at the expense of the person liable. The latter may be ordered to provide an advance of the money necessary for this purpose.

Sub-section 2. Damages

Article 1262

Damages are assessed as of the day of judgment, taking into account all the circumstances which could have affected the make-up and the value of the loss since the day of the manifestation of the harm, as well as its reasonably foreseeable development.

In the case of the worsening of the harm subsequent to judgment, the victim may claim supplementary compensation for the loss which results from it.

In the case of personal injury, the victim can also claim a supplementary compensation for any pre-existing head of loss¹⁸ not included in the initial claim.

Each head of loss is evaluated separately.

Article 1263

Except in the case of personal injuries, damages are reduced where the victim did not take safe and reasonable measures, notably having regard to his ability to pay, appropriate to avoid an increase in his own loss.

Article 1264

The victim is free in his use of any sums awarded.

¹⁸ 'Head of loss' translates '*[le] chef de préjudice*'. While these are mentioned again by the *projet* (later in art. 1262 and again in art. 1276), they are not explicitly explained or enumerated; instead, the *projet* sets out a series of special rules governing damages for personal injury in arts 1267 to 1277. For this purpose, art.1269 refers to particular 'items of loss' ('*postes de préjudices*') to be fixed by the Conseil d'Etat by decree.

Sub-section 3. The effect of plurality of persons liable

Article 1265

Where one or more persons are liable for the same harm, they are jointly and severally liable to make reparation for it to the victim.

If all or certain of them have committed a fault, they make contribution to each other in proportion to the seriousness and the causal role of the action giving rise to liability which is attributable to them. If none of them has committed a fault, they make contribution in proportion to the causal role of the action giving rise to liability which is attributable to them, or, by way of default rule, in equal parts.

Sub-section 4. Cessation of unlawful action

Article 1266

In extra-contractual matters, independently of any reparation of loss which may have been suffered, a court may prescribe reasonable measures appropriate to prevent harm or to see that an unlawful nuisance to which a claimant is exposed is stopped.

Sub-section 5. Civil penalty

Article 1266-1

In extra-contractual matters, where the author of the harm has deliberately committed a fault with the view to making a gain or to saving money, a court may, at the request of the victim or the *ministère public*¹⁹ and by specially justified decision, condemn him to the payment of a civil penalty.

Such a penalty is proportionate to the seriousness of the fault committed, to the ability to pay of the author of the harm, and to any profits which he may have made from it.

The penalty cannot be higher than ten times the amount of any profit made.

If the person liable is a legal person, the penalty can be as high as 5% of the highest amount of its revenue excluding value-added tax realised in France in the course of one of the fiscal years ending after the fiscal year before the one in the course of which the fault was committed.

Such a penalty is allocated to the financing of a compensation fund related to the nature of the harm suffered or, if not, to the public Treasury.

It is not insurable.

¹⁹ The *ministère public* (sometimes called the *parquet*) is a particularly category of *magistrat* (broadly, a member of the judiciary) whose role in civil matters is to join proceedings (and sometimes initiate them) and submit oral or written arguments to the 'sitting' judges (the *magistrats du siège*) as a matter of the public interest. The *ministère public* is answerable to the Minister of Justice.

SECTION 2 – Special rules governing the reparation of losses resulting from certain types of harm

Sub-section 1 Special rules governing the reparation of losses resulting from personal injury

Article 1267

The rules in the present sub-section are applicable to decisions of private law courts and of administrative courts,²⁰ as well as to settlements concluded between the victim and the person who owes the compensation.

Article 1267-1

Any stipulation contrary to the provisions of the present sub-section are deemed not written unless they are more favourable to the victim.

Article 1268

Losses must be assessed without taking into account any possible predispositions of the victim where the ailment which arose from them was provoked or revealed only by the action which caused the harm.

Article 1269

Patrimonial and extra-patrimonial²¹ losses resulting from personal injury shall be determined item by item following a non-exclusive terminology of items of loss fixed by decree made by the Conseil d'Etat.

Article 1270

Subject to any special provision, a functional deficiency which has stabilised shall be measured according to a single medical scale whose manner of elaboration, revision and publication shall be determined by administrative regulation.

Article 1271

A decree of the Conseil d'Etat shall set the items of extra-patrimonial losses which can be assessed according to an indicative compensation index, whose manner of elaboration and publication it shall decide. This index shall be revalued every three years as a function of developments in the average of compensation awards made by the courts.

For this purpose, a database shall bring together, under the control of the State and under conditions defined by a decree of the Conseil d'Etat, final decisions rendered by courts of appeal in the matter of compensation of personal injury suffered by victims of traffic accidents.

Article 1272

In principle compensation which is due under the heading of loss of business gains, loss of revenue to persons near to the primary victim²² or of assistance by a third person shall take place in the form of a periodic payment. The latter shall be indexed on the basis of an index fixed by way of administrative regulation and shall be tied to changes in the minimum wage.

²⁰ 'Private law courts and administrative courts' translates '*[les] juridictions judiciaires et administratives*'. In the French legal system, the 'judicial jurisdiction' covers all courts and tribunals which do not form part of the administrative law system of adjudication. As a result, 'private law courts' includes courts dealing with a very wide range of cases, including commercial and employment matters.

²¹ See above, note 6.

²² 'Loss of revenue to persons near to the primary victim' translates in an explanatory way the more allusive French '*la perte de revenus des proches*'. In this respect, while *proches* typically includes any relatives of the primary victim, it may extend further.

With the agreement of the parties or on the basis of a specially justified judicial decision, the periodic payment may be converted into a capital sum according to a table determined by way of administrative regulation based on a rate of interest taking account of foreseeable inflation and updated every three years following the latest statistical evaluations of life expectancy published by the *Institut national des statistiques et des études économiques*.

Where a periodic payment has been awarded by agreement or by judicial decision as reparation for future losses, the beneficiary of the periodic payment may, if his personal situation so justifies, claim that the payments falling due in the future are replaced in full or in part by a capital sum, following the conversion table specified by the preceding paragraph.

Article 1273

Sums of money paid to a victim for the purpose of compensation by third party payers²³ give rise to a right to subrogation against the person liable or his insurer only in the situations provided for by legislation.

Article 1274

Only those benefits which are hereafter listed and which are paid to the victim of personal injury give rise to a right of recourse against the person held liable to reparation or his insurer.

1. Benefits supplied by organisations, bodies or services operating a compulsory regime of social security;
2. Benefits listed in paragraph II of article 1 of the *Ordonnance* n° 59-76 of 7 January 1959 concerning actions for civil reparation brought by the State and by certain other public bodies;
3. Sums paid by way of the reimbursement of the cost of medical treatment and rehabilitation;
4. Salaries and their incidental costs which an employer continues to pay during a period of inactivity following the event which caused the harm;
5. Daily sickness payments and invalidity benefits paid by friendly societies governed by the Code of Friendly Societies, provident institutions governed by the Code of Social Security or the Rural Code and insurance companies governed by the Insurance Code.
6. Benefits as provided for by article L.245-1 of the Code of Social Action and Families.

Article 1275

Employers are permitted to pursue directly the person liable for harm or his insurer for the reimbursement of employer contributions relating to remuneration maintained or paid to the victim during the latter's period of unavailability. These provisions are applicable to the State by derogation from the provisions of article 2 of the *Ordonnance* n° 59-76 of 7 January 1959 cited above.

²³ A 'third party payer' may include the victim's own first party insurer or the State by way of social security benefits.

Article 1276

Benefits giving rise to recourse are to be imputed item by item solely to the compensation due by the person liable for the heads of loss²⁴ for which a third party payer²⁵ has taken responsibility, to the exclusion of extra-patrimonial losses.

In the case where the insolvency of the person liable would prevent the full compensation of the victim, the latter will be given priority over the third party payer as regards what remains due to him by the person liable.

A victim's fault can reduce his right to compensation only as regards that part of his loss which has not been subject to reparation by benefits provided by a third party payer. The latter has a right to the remainder of the debt owed by the person liable.

Article 1277

Apart from the benefits mentioned in articles 1274 and 1275, no payment made to the benefit of a victim by virtue of a legislative, contractual or statutory obligation²⁶ gives rise to an action against the person bound to make reparation for the harm or his insurer.

Nevertheless, where it is provided by contract, recourse by way of subrogation by an insurer who has paid to the victim an advance of compensation as a result of an accident can be brought against the insurer of the person bound to make reparation up to the limit of the remaining balance after payments to third parties as set out by article 1274. Where this applies, it must be brought within the periods allowed by legislation to third party payers to put forward their claims.

Sub-section 2. Special rules governing the reparation of losses resulting from physical damage to property

Article 1278

In the case of damage to movable property, compensation is the lower of the two sums representing the cost of repair and the cost of replacement of the property, without any account being taken of its age nor of any possible increase in value resulting from the repair.

Where the property cannot be repaired nor replaced, compensation is the value which the property would have had on the day of judgment in its state before the harm took place.

If, at the request of the victim, the property which was damaged is not handed over in its present state to the person liable for the damage, its remaining value is deducted from the compensation.

Article 1279

As the case may be, compensation shall also make up for any deprivation of enjoyment of the property which was damaged, lost earning capacity or any other loss.

²⁴ See above, n.18.

²⁵ See above, n.23.

²⁶ 'Statutory obligation' translates '*obligation statutaire*'. As will be apparent from the text, such an obligation is to be distinguished from one arising directly from legislation or a contract; it could include, for example, an obligation arising from a collective agreement.

Sub-section 3. Special rules governing the reparation of losses resulting from environmental harm

Article 1279-1

Every person liable for an ecological loss is bound to make reparation for it.

Article 1279-2

Subject to the conditions provided by the present sub-section, an ecological loss is subject to reparation where it consists in a non-negligible damage to the constituent parts or the functions of ecosystems or to the collective benefits drawn by man from his environment.

Article 1279-3

An action for reparation for ecological loss is open to any person having the standing and interest to sue, such as the State, the *Agence française pour la biodiversité*, local authorities and their groups whose area is affected, as well as public bodies and associations accredited or created at least five years from the date of introduction of the proceedings which have as their purpose the protection of nature and the defence of the environment.

Article 1279-4

As a matter of priority, reparation for ecological loss is to be effected in kind.

Where such reparation measures are impossible or insufficient, a court shall order the person liable to pay damages, which are set aside for the reparation of the environment, to the claimant or, if the latter cannot take measures effective for this purpose, to the State.

Where appropriate, assessment of the loss shall take into account any reparation measures which have already taken place, in particular within the framework of the operation of Title VI of Book I of the Environmental Code.

Article 1279-5

As regards any money sum ordered by the court to be paid while its order is not obeyed,²⁷ this is fixed by the court for the benefit of the claimant, who must set it aside for the reparation of the environment or, if the claimant cannot take any effective measures for this purpose, for the benefit of the State, who must set it aside for the same purpose.

The court retains a power to fix the sum later.

Article 1279-6

The provisions of article 1266 are applicable to any unlawful nuisance²⁸ to which the environment is exposed.

²⁷ '[A]ny money sum ordered by the court to be paid while its order is not obeyed' translates in an explanatory way *l'astreinte*. The relevant provisions are now contained in arts L131-1 to L131-4 of the Code of Civil Enforcement Procedures. *Astreintes* are ordered to be paid by the day, week or month and are either 'provisional' or 'final'. An *astreinte* is 'provisional' where the sum to be paid is finally fixed by the court after the person ordered by the court has failed to obey and its amount is then fixed taking into account that person's behaviour and any difficulties he may have encountered: this is the default position. An *astreinte* is 'final' where it is first ordered and may not later be amended.

²⁸ See above, n.10.

Sub-section 4. Special rules governing the reparation of losses resulting from delay in payment of a sum of money

Article 1280

Loss resulting from a delay in payment of a sum of money is subject to reparation by payment of interest at the legal rate.

This interest is due without the creditor being bound to justify any loss. It is due only from the day of notice to perform, except in the case where legislation makes them run by operation of law.

A creditor who has been caused a supplementary loss by his debtor's delay may obtain damages distinct from the interest generated by the delay in performance.

CHAPTER V – CONTRACT TERMS CONCERNING LIABILITY

SECTION 1: Contract terms excluding or limiting liability

Article 1281

Contract terms whose object or effect is to exclude or to limit liability are in principle valid, in contractual as well as in extra-contractual matters.

However, in the case of personal injury, liability cannot be limited or excluded by contract.

Article 1282

In contractual matters, contract terms limiting or excluding liability have no effect in the case of gross or dishonest fault. They are deemed not written where they deprive the debtor's essential obligation of its substance.

Article 1283

In extra-contractual matters, a person cannot exclude or limit his liability for fault.

SECTION 2 - Penalty clauses

Article 1284

Where a contract stipulates that a party who fails to perform shall pay a certain penalty by way of reparation, the other party cannot be awarded a penalty which is either higher or lower.

However, a court may, even of its own initiative, lower or increase the penalty so agreed if it is manifestly excessive or derisory.

Where a party's undertaking has been performed in part, an agreed penalty may be reduced by the 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 two preceding paragraphs is deemed not written.

Except where non-performance is permanent, a penalty is incurred only where the debtor was given notice to perform.

CHAPTER VI – THE PRINCIPAL SPECIAL REGIMES OF LIABILITY

SECTION 1 The action of motor-vehicles²⁹

Article 1285

The driver or the keeper³⁰ of a motor-vehicle is liable strictly for harm caused by a traffic accident in which his vehicle, trailer or articulated trailer, is involved.

The provisions of the present section are a matter of public policy. They apply even where the victim is transported under a contract.

Article 1286

A fortuitous event or the action of a third party may not be set up as a defence³¹ against the victim even where they bear the characteristics of force majeure.

The victim has no right to reparation on the basis of the present section where he voluntarily sought the harm which he suffered.

Article 1287

In the case of personal injury, the victim's fault has no effect on his right to reparation.

However, an inexcusable fault deprives the victim of any right to reparation if it was the exclusive cause of the accident.

Where it was not the exclusive cause of the accident, an inexcusable fault committed by the driver of the motor-vehicle has the effect of limiting his right to reparation.

Apart from drivers of motor-vehicles, victims aged less than sixteen years or more than seventy years or, whatever their age, those who at the time of the accident bear an entitlement recognising them as permanently incapacitated or disabled by at least 80 per cent, are compensated for their personal injuries in all circumstances.

Article 1288

²⁹ The French specifies that the *véhicule à moteur* is 'terrestre' (i.e. by land) but this is not necessary in the English as 'motor-vehicle' is used only of road vehicles.

³⁰ 'The keeper' translates '*le gardien*' which is defined in art. 1243 al. 4 of the *Projet* for the purposes of the general regime of liability for the actions of things.

³¹ 'Set up as a defence' translates '*opposer*'.

In the case of physical damage to property, the victim's fault has the effect of limiting or excluding compensation for his losses where it contributed to the occurrence of the harm.

An exclusion of compensation must be specially justified by a court by reference to the seriousness of the fault.

However, harm caused to supplies or apparatus provided on medical prescription are compensated according to the rules governing personal injury.

Where the driver of a motor-vehicle is not its owner, any fault in that driver can be set up against the owner as regards the compensation of harm other than personal injury. The owner has a recourse against the driver.

SECTION 2 The action of defective products

Article 1289

A producer is liable strictly for harm caused by a defect in his product.

The provisions of the present section are a matter of public policy and are applicable even where the victim is linked to the producer by a contract.

Article 1290

The provisions of the present section are applicable to the reparation of losses which result from personal injury.

They also apply to the reparation of a loss above an amount determined by decree, which results from damage to property other than the defective product itself, on condition that the property is of a type normally intended for private use or consumption and was used by the victim mainly for his own private use or consumption.

Article 1291

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.

Article 1292

A product is defective within the meaning of the present section 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 to 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 mere fact that another, improved product has subsequently been put into circulation.

Article 1293

A manufacturer of a finished product, a producer of raw materials, and a manufacturer of a component part are producers if they act in the course of a business or profession.³²

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

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 Union with the view to sale, hire (with or without an promise to sell), or any other form of distribution.

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

Article 1294

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.

Article 1295

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.

Article 1296

The claimant must prove the harm, the defect and the causal relationship between the defect and the harm.

Article 1297

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

Article 1298

The producer is liable strictly unless he proves:

1° that he had not put the product into circulation;

2° that, having regard to the circumstances, there is 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;

³² This translates '*agissant à titre professionnel*': cf. above, n.13.

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

Article 1298-1

A producer cannot rely on the defence provided by paragraph 4 of article 1298 where the harm was caused by an element of the human body or by products derived from it, or by any health product for human use listed in the first chapter of Title II of Book I of the Fifth Part of the Code of Public Health.

Article 1298-2

The provisions of paragraph 2 of article 1254 are not applicable.

Article 1299-1

Liability based on the provisions of the present section is extinguished ten years after the actual product which caused the harm was put into circulation unless the victim brought legal proceedings during this period.

Article 1299-2

An action for reparation based on the provisions of the present section is subject to prescription after a period of three years starting from the day on which the claimant knew or ought to have known of the harm, the defect and the identity of the producer.

Article 1299-3

The provisions of the present section do not forbid a victim from relying on provisions of other regimes of contractual or extra-contractual liability, as long as the latter rest on a basis other than a defect of safety in the product.