TITLE III

LAW OF SUCCESSION

Chapter 1

Right to decedent’s estate

Section 1475 [Recodification]

(1) Succession right is a right to a decedent’s estate or a proportional share thereof.

(2) A decedent’s estate consists of the entire assets and liabilities of a decedent except for the rights and duties exclusively bound to him personally, unless they have been acknowledged or enforced as a debt before a public body.

(3) A person holding a succession right is an heir, and the decedent’s estate in relation to an heir is his inheritance.

Section 1476 [Recodification]

Inheriting takes place on the basis of an inheritance contract, testament or by means of a statute. These reasons may also operate together.

Section 1477 [Recodification]

(1) A legacy establishes a claim for a legatee to be given a particular thing or one or several things of a certain kind, or a claim to a particular right.

(2) A legatee is not an heir.

Section 1478 [Recodification]

A legal person who is yet to be incorporated may be designated to be an heir or legatee. Such a legal person has the capacity to be an heir or legatee if it is incorporated within one year after the death of the decedent.

Moment of creation of succession right

Section 1479

Succession right is created upon the decedent’s death. A person who dies before or at the same time as the decedent shall not inherit.

Section 1480

A succession right which is yet to be created may only be renounced; it may not be otherwise transferred or disposed of.

Incapacity to inherit

Section 1481 [Recodification]

A person is excluded from his succession right if he commits an act having the nature of an intentional criminal offence against the decedent, his ancestor, descendant or spouse, or a despicable act against the decedent's last will, especially by forcing or deceitfully seducing the decedent to express his last will, frustrating his expression of last will, or concealing, falsifying, forging or intentionally destroying his testament, unless he was expressly forgiven for such an act by the decedent.

Section 1482 [Recodification]

(1) If, on the date of the decedent's death, divorce proceedings initiated on the application of the decedent are in progress, where the application was filed because his spouse committed an act constituting domestic violence against the decedent, the decedent's spouse is excluded from succession rights as a statutory heir.

(2) If a parent has been relieved of his parental responsibility because he abused or was at fault for seriously neglecting such responsibility or its exercise, the parent is excluded from the succession right entitling him to inherit from his child by statutory succession of heirs.

Section 1483 [Recodification]

A descendant of the person excluded from his succession right shall, in the case of statutory succession of heirs, take such a person's place, even where the excluded person survives the decedent. This does not apply to the case provided under Section 1482(1).

Section 1484 [Recodification]

Renunciation of succession right

(1) A succession right may be renounced in advance by a contract with the decedent; unless stipulated otherwise, the renunciation also has effects against the descendants. By renouncing his succession right, a person also renounces his right to the forced share; however, a person who only renounces his right to the forced share does not renounce his right arising from succession of heirs.

(2) If a person has renounced his succession right in favour of another person, the renunciation is presumed to be valid only if such a person becomes an heir.

(3) The agreement must be in the form of a public instrument; however, the rights and duties under such an agreement may be extinguished if the parties do so in writing.

Refusal of inheritance

Section 1485 [Recodification]

(1) An heir has the right to refuse inheritance after the decedent's death; however, the same applies to a contractual heir only if it is not excluded by the inheritance contract. If a forced heir refuses inheritance, he may do so with the reservation of the forced share.

(2) An agent may declare on behalf of an heir that he refuses, does not refuse or accepts the inheritance only if expressly authorised to do so by the power of attorney.

Section 1486

If an heir refuses inheritance, he is considered never to have acquired it.

Section 1487 [Recodification]

(1) An express declaration made before a court is required for the refusal of inheritance. Inheritance may be refused within one month from the date on which a court notified an heir of his right to refuse inheritance and the consequences of refusal; if the heir's only residence is abroad, the time limit for the refusal of inheritance is three months. Based on serious grounds, a court shall appropriately prolong the time limit for an heir to refuse inheritance.

(2) Upon the expiry of the time limit for refusal of inheritance, the right to refuse inheritance is extinguished.

Section 1488 [Recodification]

If an heir dies before the time limit for refusal of inheritance has expired, his right to refuse inheritance passes to his heir and is not extinguished before the expiry of that heir's time limit for refusal of inheritance also from the previous heir.

Section 1489

(1) Refusal of inheritance by an heir with a condition, reservation or only in part shall render such a refusal of inheritance invalid.

(2) Refusal of inheritance is disregarded if the heir's actions alone make it obvious that he wishes to accept the inheritance. An expression of will whereby the heir withdraws his previous declaration stating that he refuses, does not refuse or accepts the inheritance is also disregarded.

Section 1490 [Recodification]

Waiver of inheritance

(1) An heir who has not refused inheritance may waive it before a court in succession proceedings in favour of another heir; where such refusal is made by a forced heir, he also waives his right to the forced share, with effect also for his descendants. With the consent of the other heir, the provisions of Sections 1714 to 1720 apply by analogy; however, in the absence of such consent, a waiver of inheritance is disregarded.

(2) If an heir who waived inheritance was charged with a mandate, order of legacy or another measure which, according to the decedent's will, the heir may and is to fulfil only in person, he is not relieved of the duty to fulfil such a measure.

Chapter 2

Disposition *mortis causa*

Division 1

General provisions

Section 1491

A disposition mortis causa is a testament, inheritance contract or testamentary clause on legacy.

Section 1492 [Recodification]

A disposition *mortis causa* may not reduce the forced share of a forced heir who has not renounced his right to the forced share and has not even been disinherited. If this is in contradiction to the disposition *mortis causa,* a forced heir is entitled to the forced share.

Section 1493 [Recodification]

(1) If a decedent made a disposition *mortis causa* at the period when he was in the care of a facility which provides health care or social services, or when he otherwise received its services, and if he designated a person who administers, is employed or otherwise engaged in such a facility to be an heir, such designation of these persons as heirs or legatees is invalid unless it is made by means of a testament in the form of a public instrument.

(2) If, after the care at such a facility ended or the period in which he otherwise received their services expired, the decedent could have made a disposition *mortis causa* in the form of a public instrument without difficulty, Subsection (1) does not apply in the case of invalidity of testament or testamentary clause on legacy.

Division 2

Testament

Subdivision 1

General provisions

Section 1494 [Recodification]

(1) A testament is a revocable expression of will whereby a decedent personally leaves to one or several persons at least a share in his decedent's estate and also legacy, where appropriate, to be received upon his death. If the day, month and year the testament was made is not clear and if the decedent made several contradictory testaments, or if its legal effects otherwise depend on the determination of the time it was made, the testament is invalid.

(2) A testament is to be interpreted so that it accommodates the will of the decedent to the maximum possible extent. The words used in a testament are to be interpreted according to their usual meaning, unless it is proved that the decedent developed a habit of attributing a special meaning of his own to certain expressions.

Section 1495 [Recodification]

If, in his testament, a decedent refers to the content of another instrument, such other instrument has the same legal effects if it meets the requirements for a testament. If it does not meet such requirements, its contents may only be used to explain the decedent's will.

Section 1496

The right to designate an heir is a personal right of a decedent. A decedent may not entrust designation of heirs to another or make a disposition *mortis causa* jointly with another person.

Section 1497

A decedent must express his will with such accuracy that a mere consent to a proposal made to him does not suffice.

Section 1498 [Recodification]

Testamentary clause on legacy

By a testamentary clause on legacy, a decedent may order a legacy, make a legatee or heir subject to a condition, determine time or impose a mandate on a legatee or heir. Provisions on testaments shall also apply by analogy to testamentary clauses on legacy.

Devolution of decedent's estate to heirs

Section 1499

The entire decedent's estate shall devolve to an heir if he is designated as a sole heir. Where only a share of the decedent's estate is left by the decedent to the designated heir, the remaining share of the decedent's estate shall devolve to statutory heirs.

Section 1500 [Recodification]

(1) Where several heirs have been designated and no shares have been determined, the heirs are entitled to an equal share of the decedent's estate.

(2) Where several heirs have been designated in such a way that a share has been determined for each of them but a part of the decedent's estate still remains, the statutory heirs are entitled to the remaining share of the decedent's estate. Statutory heirs shall not have such a right where a decedent has apparently left the entire decedent's estate to the designated heirs, despite having overlooked something in the listing of shares or things.

Section 1501

(1) If a decedent designates certain shares to some designated heirs but not to others, the designated heirs without a share are equally entitled to the remaining share of the decedent's estate.

(2) If nothing is left, a proportionate deduction from all the designated shares is made for the designated heir without a share in an amount which equals to the share of the heir for whom the smallest share has been designated. If the shares of the other heirs are equal, a deduction therefrom is made in such an amount that the designated heir without a share receives an equal share as the others.

Section 1502 [Recodification]

In all cases where the decedent has apparently made a miscalculation, the estate is designated so that his will is fulfilled in the best way possible.

Section 1503 [Recodification]

(1) If, in statutory succession of heirs, some of the designated heirs are considered to be one person in relation to others, they are also considered to be one person when dividing the estate under the testament; this does not apply in case there is an evident decedent's will to the contrary.

(2) If a decedent designates a group of persons to be an heir without providing further details, the persons who belonged to such a group at the time of the decedent's death are presumed to be the heirs.

(3) If a decedent designates the poor or a similarly designated group of persons as heirs without providing further details, the municipality in whose territory the decedent's last residence was located is presumed to be the heir and use the inheritance in favour of the designated group.

Vacant share

Section 1504

The share of an heir who does not inherit and has no substitute heir becomes vacant and shall proportionately accede to the shares of the other designated heirs only if all heirs have been designated to receive an equal share of the inheritance, or a share defined by a general expression signifying equal division.

Section 1505

(1) A person to whom a particular share of inheritance has been left does not have the right to the accession.

(2) If some heirs have been designated with a share while with others without it, the vacant share shall accede in favour of the designated heirs without a share.

Section 1506

The restrictions associated with the vacant share of inheritance pass to the person in whose favour it accedes, unless the decedent expressed the will to only have such restrictions apply to the designated heir personally, or if it follows from the nature of the case.

Substitution of heirship

Section 1507 [Recodification]

In case the inheritance is not acquired by a person designated as an heir by the decedent, the decedent may designate the person's substitute heir; he may also successively designate substitute heirs to such a substitute heir. If a decedent so designates several substitute heirs, the person on the list of substitute heirs who is closest to the person who did not acquire inheritance is entitled to inherit.

Section 1508 [Recodification]

If a decedent designates substitute heirs for the case where the designated person does not wish to or cannot inherit, the substitution is presumed to have been established for both of these cases.

Section 1509 [Recodification]

Restrictions imposed on an heir shall also affect his substitute heirs unless the decedent expressed his will to only have these restrictions apply to the heir personally, or if it follows from the nature of the case.

Section 1510 [Recodification]

If the co-heirs themselves are designated as substitute heirs, the decedent is presumed to have wished to divide the inheritance among the substitute heirs in the same proportion as among the heirs. However, if a person other than a co-heir is designated as a substitute heir, the vacant share shall devolve equally to all, unless the decedent wishes otherwise.

Section 1511 [Recodification]

(1) Once a designated heir acquires the inheritance, substitution of heirship is extinguished.

(2) Unless a decedent wishes otherwise, substitution of heirship created by the decedent for his child at a time when the child had no descendants is extinguished if the child is survived by descendants having the capacity to inherit. This also applies if the decedent establishes substitution of heirship for another of his descendants at the time when such a descendant has no descendants of his own.

Succession by fideicommissum

Section 1512 [Recodification]

(1) A decedent may order that upon death or in certain other cases, the inheritance pass to a fideicommissary as the subsequent heir. Designation of a fideicommissary is also considered to be designation of a substitute heir.

(2) If a decedent's order is vague to such an extent that it is impossible to ascertain whether he designated a substitute heir or a fideicommissary, his order is considered to have designated a substitute heir.

Section 1513 [Recodification]

If a decedent designates an heir for one of his heirs, prohibits one of his heirs to make dispositions *mortis causa* of the estate, designates a person who does not yet exist upon the decedent's death to be an heir, or designates an heir subject to a condition or for a definite time, it is considered to constitute the establishment of succession by fideicommissum.

Section 1514 [Recodification]

If all fideicommissaries are contemporaries of the decedent, the list with the successive order of fideicommissaries is not limited.

Section 1515 [Recodification]

(1) If several fideicommissaries are designated, some of whom do not yet exist as persons upon the decedent's death, succession by fideicommissum is extinguished once assets and liabilities are acquired by the first of the fideicommissaries who are not the decedent's contemporaries.

(2) Succession by fideicommissum is extinguished no later than one hundred years after the death of the decedent, even where he determined a longer time. However, if a fideicommissary is to acquire inheritance no later than upon the death of an heir alive at the time of the decedent's death, succession by fideicommissum is extinguished only once the first of the fideicommissaries acquires the inheritance from such an heir.

Section 1516 [Recodification]

Succession by fideicommissum is also extinguished where there are no more fideicommissaries or if the event for which it was established does not occur.

Section 1517 [Recodification]

If a decedent has designated a fideicommissary for the decedent's minor child who lacks the capacity to make dispositions *mortis causa*, and if the child later acquires the capacity to perform such acts, succession by fideicommissum is extinguished within the scope of the forced share.

Section 1518 [Recodification]

Succession by fideicommissum established by the decedent for his child at a time when the child had no descendants is extinguished if the child is survived by a descendant having the capacity to inherit, unless the decedent evidently has other intention. This also applies if the decedent establishes succession by fideicommissum for another of his descendants at a time when such a descendant has no descendants of his own.

Section 1519 [Recodification]

If a decedent has designated a fideicommissary for a person who lacks the capacity to make dispositions *mortis causa* due to limitation of legal capacity, succession by fideicommissum is extinguished forever if such a person acquires the capacity to make dispositions *mortis causa*, unless the decedent wished otherwise.

Section 1520 [Recodification]

(1) If so requested by a fideicommissary, an heir shall, without undue delay and in the fideicommissary's presence, prepare a written inventory of everything that the heir has acquired by succession, including the day of preparation, and surrender it to the fideicommissary. On request of a fideicommissary, the heir's signature on the inventory must be authenticated.

(2) A fideicommissary has the right to request that the inventory be prepared in the form of a public instrument.

(3) The costs of preparation of the inventory are paid from the inheritance.

Section 1521 [Recodification]

If a decedent has ordered succession by fideicommissum to an heir excluding his right to freely dispose of the inheritance, the heir's the right of ownership in what he acquired by succession, as well as what he acquired as compensation for the destruction, damage or removal of things from the inheritance are limited to the rights and duties of a usufructuary. This does not apply if a thing under the inheritance is alienated or encumbered in order to pay the decedent's debts.

Section 1522 [Recodification]

(1) If a decedent has ordered succession by fideicommissum to an heir excluding his right to freely dispose of the inheritance, an heir may alienate or encumber a thing acquired by succession only with the consent of the fideicommissary; the consent must be in the form of a public instrument.

(2) If due managerial care requires that a thing be encumbered or alienated, a court may, on the application of an heir, replace the consent of a fideicommissary. If a court decides that a thing be encumbered or alienated for consideration, the court shall determine how to dispose of the proceeds; in doing so, it shall take into account the legitimate interests of a fideicommissary.

Section 1523 [Recodification]

If inheritance includes a thing bearing fruits or revenues, a fideicommissary may request that a court determine the manner and scope in which an heir is to manage or use and enjoy the thing.

Section 1524 [Recodification]

(1) If a thing and its owner are subject to registration in a public register, succession by fideicommissum is also subject to registration in that public register. If a thing and succession by fideicommissum have been registered in a public register and if an heir disposes of a thing which he acquired from the inheritance in a way that frustrates or limits the rights of a fideicommissary without his consent, it has no legal effects with respect to the fideicommissary.

(2) If a thing or succession by fideicommissum are not registered in a public register and if an heir disposes of a thing which he acquired from the inheritance in a way that frustrates or limits the rights of a fideicommissary without the fideicommissary's consent, the fideicommissary has the right to claim, under the provisions on relative ineffectiveness, that a court declare that the juridical acts made by the heir are not legally effective towards him.

Incapacity to make dispositions *mortis causa*

Section 1525 [Recodification]

A person lacking legal capacity is incapable of making dispositions *mortis causa* except as provided in Sections 1526 to 1528.

Section 1526 [Recodification]

A person who has reached the age of fifteen and has not yet acquired full legal capacity may make dispositions *mortis* *causa* in the form of a public instrument without the consent of a legal representative.

Section 1527 [Recodification]

A person whose legal capacity has been limited so that he is incapable of making disposition *mortis causa* may still make valid disposition *mortis causa* in any form if he recovers to the extent that he is able to express his will.

Section 1528 [Recodification]

(1) A person whose legal capacity has been limited may, within the relevant limitations, only make dispositions *mortis causa* in the form of a public instrument.

(2) A person whose legal capacity has been limited due to a pathological addiction to alcohol consumption, use of psychotropic substances, or similar products or toxins, or due to a pathological addiction to gambling which constitutes a serious mental disorder may, within the relevant limitations, make dispositions *mortis causa* in any form prescribed, but of no more than half of the decedent's estate. The remaining share of the decedent's estate shall devolve to the statutory heirs; however, where only the State is to inherit as a statutory heir, a decedent may make disposition *mortis causa* of the entire decedent's estate.

Effects of error

Section 1529 [Recodification]

A substantial error of a decedent invalidates the provision of the testament in question.

Section 1530 [Recodification]

(1) An error is substantial if it concerns a person to whom a thing is left by a decedent, or a share or thing left to a person by a decedent, or the essential properties of a thing. Properties are essential if it is evident that the decedent would have determined otherwise in his testament had he not made an error about such properties.

(2) A provision of a testament is valid if it becomes evident that a person or thing was only incorrectly described.

Section 1531 [Recodification]

If a decedent's will is only based on a wrong motive, it shall invalidate the provision of the testament in question.

Subdivision 2

Form of testament

Section 1532

Written form of testament

A testament must be in written form, unless it was made with concessions.

Testament made by means of a private instrument

Section 1533

A person who wishes to make dispositions *mortis causa* in writing without witnesses shall write and sign the entire testament with his own hand.

Section 1534

If a decedent has not written the testament by his own hand, he must sign it by his own hand and at the same time expressly declare before two witnesses that the instrument contains his last will.

Section 1535

(1) If a decedent is blind, he shall express his last will before three witnesses present at the same time in an instrument that must be read aloud by a witness who has not written the testament. A decedent shall confirm before the witnesses that the instrument contains his last will.

(2) If the decedent is a person with a sensory disability and he cannot read or write, he shall express his last will before three witnesses present at the same time in an instrument whose contents must be interpreted in a special method of communication of the decedent's choosing by a witness who did not write the testament; all witnesses must have command of the method of communication used to interpret the contents of the instrument. The decedent shall use the chosen method of communication to confirm before the witnesses that the instrument contains his last will.

Section 1536

(1) A testament made by a person with sensory disabilities who cannot read or write shall state the fact that the decedent cannot read or write, the person who wrote the testament, the person who read or interpreted it, and the method which the decedent used to confirm that the instrument contains his last will. If the contents were interpreted using a special method of communication, it is indicated in the instrument including the method of communication chosen by the decedent.

(2) The instrument shall also be signed by the decedent; if he cannot write, Section 563 applies by analogy.

Testament made by means of a public instrument

Section 1537

A decedent may express his last will in a public instrument. If a testament in this form is made by a blind person or a person with sensory disabilities who cannot read or write, Section 1535 applies by analogy.

Section 1538

A person drawing up a public instrument about a testament shall make sure that the last will is expressed with prudence, seriously and without coercion.

Witnesses to a testament

Section 1539

(1) Witnesses are present during the making of a testament in such a manner that they are able to confirm that the decedent and the person making the testament are one and the same person. A witness shall sign the instrument containing the testament; to his signature, he shall typically attach a clause referring to his capacity as a witness and information allowing his identification.

(2) A person lacking legal capacity or command of the language or method of communication used to make the expression of will may not be a witness.

Section 1540 [Recodification]

(1) An heir or legatee may not testify about a thing which is left to him by a decedent. Likewise, a close person or an employee of the heir or legatee may not be a witness.

(2) In order for the provisions of a testament made in favour of a person under Subsection (1) to be valid, they must be written by the decedent’s own hand or confirmed by three witnesses.

Section 1541

Section 1540 applies by analogy to a person designated by the decedent to be the executor of testament or the person acting as the writer, reader, interpreter or official in the making of a testament.

Concessions in the making of a testament

Section 1542 [Recodification]

(1) A person who is under imminent threat to life due to a contingency has the right to make a testament orally before three witnesses present at the same time. A person in a place where usual social intercourse is paralysed as a result of a contingency and who cannot be reasonably required to make a disposition *mortis causa* in another form has the same right.

(2) If witnesses do not make a record of the decedent’s last will, the succession of heirs will be based on a judicial protocol of the examination of witnesses.

Section 1543 [Recodification]

Where there is a reasonable concern that a decedent would die before he can make a testament in the form of a public instrument, his last will may be recorded, in the presence of two witnesses, by a mayor of the municipality in whose territory the decedent is located. A person entitled to exercise the powers of a mayor under another legal regulation may, under the same conditions, also record a decedent’s last will.

Section 1544 [Recodification]

(1) If a decedent has a serious reason, his last will may be recorded in the presence of two witnesses aboard a naval vessel sailing under the national flag of the Czech Republic or an aircraft registered in the Czech Republic by the commander of the naval vessels or aircraft, or by his representative, unless he is prevented from doing so due to considerations of safety of the voyage or flight. The validity of a testament may not be denied by claiming that the decedent had no serious reason to make the testament.

(2) If a testament has been made under Subsection (1) on board of:

a) a naval vessel, the commander shall record the testament in the logbook and hand it over without undue delay to an embassy of the Czech Republic closest to the port to which the naval vessel arrives, or to the public body which maintains the naval register in which the naval vessel is registered, or

b) an aircraft, the commander shall record the testament in the logbook and hand it over without undue delay to the embassy of the Czech Republic closest to the place abroad where the plane landed, or to the public body which maintains the aircraft register in which the aircraft is registered.

Section 1545 [Recodification]

(1) When participating in an armed conflict or military operations, the last will of a soldier or another member of the armed forces may be recorded in the presence of two witnesses by a commander of a military unit of the Czech Republic or another soldier at the rank of officer or higher. If a testament is made in this manner, its validity is not to be denied.

(2) A commander shall, without undue delay, deliver the testament made under Subsection (1) to a commander of superior command, who shall, without undue delay, hand it over to the Ministry of Defence of the Czech Republic.

Section 1546 [Recodification]

If a testament was made under Section 1543, the municipality shall, without undue delay, ensure that the testament is deposited with a notary. If a testament was made under Sections 1544 or 1545, the same is provided for by the authority to which the testament was handed over.

Section 1547 [Recodification]

(1) If a decedent has made a disposition *mortis causa* under Sections 1543, 1544 or 1545, the person making the record must also sign it together with both witnesses and read it to the decedent in the presence of both witnesses, and the decedent must confirm that the record constitutes the expression of his last will. A testament so made is to be considered a public instrument.

(2) Where a testament is made under Sections 1543, 1544 or 1545 and the prescribed formalities are not adhered to, in particular where the instrument lacks the signatures of the witnesses present, although they are required, but it is nevertheless certain that the instrument reliably records the decedent’s last will, it does not cause the testament to be invalid; however, such an instrument is not to be considered a public instrument.

Section 1548 [Recodification]

(1) Where a testament with relief is made, persons who have reached the age of fifteen and persons whose legal capacity has been limited may also be witnesses if they have the capacity to credibly describe facts relevant to the validity of the testament.

(2) Where a testament with concessions is made, its validity shall remain unaffected if it is not signed by the decedent or a witness because he could not write or due to another serious obstacle provided that it is explicitly stated in the instrument.

Section 1549 [Recodification]

If a decedent is alive, a testament made under Section 1542 shall lose its validity after two weeks, and a testament made under Section 1543, 1544 or 1545 shall lose its validity after three months from the date on which it was made. However, these periods neither commence nor run until the decedent can make a testament in the form of a public instrument.

Section 1550

Confidentiality

A person who acted as a writer, witness, reader, interpreter, depositary or an official in the making of a testament or making another juridical act which is subject to the same requirements as a testament under this Act shall keep confidential the content of the decedent’s will, unless it is obvious that the decedent wished otherwise; if such a person breaches this duty, he shall compensate the decedent for the harm caused thereby.

Subdivision 3

Clauses of lesser importance in a testament

Section 1551 [Recodification]

(1) In his testament, a decedent may provide a condition, determination of time or a mandate.

(2) Where a clause of lesser importance only aims to apparently harass an heir or legatee as a result of the decedent’s manifest arbitrariness, it is disregarded. A clause of lesser importance which is clearly contrary to public order or is incomprehensible is also disregarded.

Section 1552 [Recodification]

A clause of lesser importance whereby a decedent obliges an heir or legatee to enter or not to enter into marriage, to remain in marriage or to cancel a marriage is disregarded. However, a decedent may create a right for someone for the period before he enters into marriage.

Executor of testament

Section 1553 [Recodification]

(1) In his testament, a decedent may designate an executor of testament and, where applicable, determine his duties and whether or not he will be remunerated and how.

(2) If a court, during succession proceedings, ascertains that an executor of testament has been designated, it shall inform him thereof. An executor of testament may resign his office at any time; the resignation is effective when it reaches a court.

Section 1554 [Recodification]

(1) An executor of testament shall ensure the proper fulfilment of the last will of the decedent while exercising due managerial care. He has all the rights necessary for the fulfilment of his tasks, including the right to defend the validity of the testament and invoke incapacity of an heir or legatee in court, and generally ensure the fulfilment of the decedent's instructions.

(2) If a decedent designated no administrator of the decedent's estate, the executor of testament is also entitled to administer the decedent's estate until a court decides on another measure. If an executor of testament has been designated by a public instrument, the provisions on administrators of the decedent's estate apply to him by analogy; otherwise they apply with the necessary modifications.

Section 1555 [Recodification]

When invalidity of the selection of an executor of testament for office is invoked, he may assert his rights and fulfil his duties until the decision invalidating the expression of the decedent's will becomes final and absolute, unless the court adopts another measure.

Administrator of the decedent's estate

Section 1556 [Recodification]

(1) A decedent may select an administrator of the decedent's estate or any part thereof (hereinafter an "administrator of the decedent's estate") and, where appropriate, determine his duties, and whether or not, and how, he will be remunerated. The selection of an administrator of the decedent's estate must be in the form of a public instrument.

(2) An expression of will whereby an administrator of the decedent's estate was selected may be cancelled in the same way as a testament.

Section 1557 [Recodification]

If an administrator of the decedent's estate is aware that he has been selected, he shall assume administration once he learns of the decedent's death. If the fact that an administrator of the decedent's estate has been selected is only ascertained by a court, it shall inform him thereof.

Section 1558 [Recodification]

If an executor of testament has been selected, an administrator of the decedent's estate shall follow his instructions; their mutual rights and duties are assessed under the provisions on mandates.

Section 1559 [Recodification]

An administrator of the decedent's estate may resign his office at any time; the resignation is effective when it reaches a court.

Section 1560 [Recodification]

If an executor of testament or administrator of the decedent's estate seriously breaches his duties, is unable to fulfil his duties properly or where there is another serious reason, a court shall remove him, even of its own motion.

Conditions

Section 1561 [Recodification]

Where a condition consists in an act which an heir or legatee may repeat, he must perform such an act again after the death of the decedent although he already did so while the decedent was alive, unless another wish of the decedent is evident.

Section 1562 [Recodification]

To acquire what has been left by a decedent with a suspensive condition, the person to whom something has been left in this manner must survive the decedent and have the capacity to inherit.

Section 1563 [Recodification]

(1) If a person is granted a right with an impossible resolutive condition, it is disregarded.

(2) A provision of a testament which grants a person a right with an impossible suspensive condition is invalid.

Determination of time

Section 1564 [Recodification]

If a decedent limits a person's right by determination of time and it is not certain whether or not the moment will occur, the right left to the person by the decedent is conclusively presumed to be conditional.

Section 1565 [Recodification]

If time is determined so that the decisive moment must occur, the right left to a person by a decedent shall also pass, the same way as other unconditional rights, to the heirs of the person to whom inheritance has been left in this manner.

Section 1566 [Recodification]

If it is certain that the period determined in a testament can never occur, such a determination of time is treated as an impossible condition. However, if it is beyond doubt that a decedent merely made an error when determining the time, the decisive moment is determined according to what his will would likely have been.

Special provisions

Section 1567 [Recodification]

(1) As long as a right of the subsequent heir remains postponed until the condition is met or the determined time occurs, the right of a preceding heir to whom the inheritance devolved is limited to that of a usufructuary; the provisions of Sections 1520 to 1524 apply by analogy.

(2) An heir whose right has been postponed due to an imposition of a condition or determination of time by the decedent shall acquire what has been left to him with the duty to proportionately contribute to the preceding heir's payments to satisfy the decedent's debts, or to a forced heir's forced share.

Section 1568 [Recodification]

Where a preceding and subsequent legatee has been designated, Section 1567 applies by analogy.

Mandate

Section 1569 [Recodification]

(1) If a decedent leaves something to someone with a mandate, the mandate is treated as a resolutive condition, so that the right left by the decedent is frustrated if the mandate is not executed, unless the decedent expressed another wish.

(2) The prohibition to alienate or encumber is binding on a person charged with a mandate only if it is imposed for a specific reasonable period and justified by a serious interest worthy of legal protection; otherwise, a court may, on the application of the person charged with the mandate, decide that the prohibition is disregarded. If a prohibition has been registered in a public register, the person charged with a mandate may apply to a court to cancel the prohibition; the court shall not grant such an application unless it is proved that the interest in cancelling the prohibition apparently exceeds the interest in maintaining it.

Section 1570 [Recodification]

If a mandate cannot be fulfilled exactly as ordered, it must be fulfilled at least as closely as possible to its contents. Where even that is impossible, a person charged with the mandate shall acquire what has been left to him, unless the decedent expressed another wish. However, a person who has rendered himself unable to fulfil the mandate knowing that it would result in its frustration shall lose what has been left to him.

Section 1571 [Recodification]

In addition to the person who benefits from a mandate, an executor of testament or another person designated in the testament is also entitled to enforce the fulfilment of a mandate.

Section 1572 [Recodification]

(1) If a mandate aims to benefit multiple persons without further specification, the person charged with a mandate shall fulfil the mandate towards a legal person entitled to protect the interests of such persons. Where there are several such legal persons and the decedent's will is not obvious, the choice lies with the person charged with the mandate; if he fails to choose without undue delay, the entitled person is designated by a court on the application of a person with a legal interest therein.

(2) Where a mandate aims to achieve public benefit, the fulfilment of the mandate may also be enforced by the competent public body.

Section 1573 [Recodification]

If a decedent makes a statement about the purpose for leaving something to someone, but imposes no duty to use the things left to the person by the decedent for that purpose, his expression of will is considered to be a wish without a legally binding effect.

Section 1574 [Recodification]

A provision whereby a decedent charges an heir or legatee with a mandate not to challenge the testament under a sanction of losing some benefits has no legal effect where only the authenticity of the testament or the interpretation of its meaning is challenged.

Subdivision 4

Cancellation of testament

Section 1575

(1) A decedent has the right to cancel his testament or the individual provisions thereof at any time.

(2) A testament is cancelled upon revocation or the making of a subsequent testament.

Section 1576

Making a new testament

When a subsequent testament is made, an earlier testament is cancelled to the extent to which it cannot be performed having regard to a subsequent testament.

Revocation of a testament

Section 1577

An expression of will made in the form prescribed for the making of a testament is required to expressly revoke a testament.

Section 1578

(1) The destruction of the instrument on which the testament was written is required to tacitly revoke a testament. If a decedent destroys only one of several copies of a testament, it cannot lead to the assumption that it has been revoked.

(2) If a decedent has damaged the instrument in any other way, or has not renewed his testament knowing that the instrument was destroyed or lost, the testament will be cancelled provided that the decedent’s intention to cancel the testament undoubtedly follows from the circumstances.

Section 1579

(1) If a testament has been made in the form of a public instrument, the decedent has the right to request at any time that it be surrendered to him; a testament may only be surrendered to the decedent in person. If a testament is surrendered to the decedent, it is considered revoked; the person who surrendered the testament to the decedent shall advise the latter accordingly, and make a note about the revocation of the testament and the advice on the instrument surrendered, as well as in his file.

(2) If a testament has been placed in official deposit, the decedent has the right to request that it be surrendered to him; surrender of a testament has no legal consequences anticipated under the second sentence of Subsection (1).

Section 1580 [Recodification]

If a decedent cancels a subsequent testament but keeps a previous one, the previous testament is presumed to have remained valid and considered never to have been cancelled.

Section 1581

Ineffective cancellation clause

If a decedent declares that all his subsequent dispositions *mortis causa,* or those which are not made in a particular form, are to be invalid, it is disregarded.

Division 3

Inheritance contract

Section 1582 [Recodification]

(1) By an inheritance contract, a decedent designates the other contracting party or a third person to be an heir or legatee, and the other party accepts it.

(2) An inheritance contract must be in the form of a public instrument.

Section 1583 [Recodification]

The provisions of this Division on contractual heirs also apply by analogy to contractual legatees.

Section 1584 [Recodification]

(1) An adult decedent having full legal capacity may conclude an inheritance contract; if a decedent's legal capacity has been limited, he may conclude an inheritance contract and change an obligation arising therefrom with the consent of his guardian.

(2) The parties may conclude an inheritance contract and change an obligation arising therefrom only through a personal act.

Section 1585 [Recodification]

(1) Disposition of the entire decedent's estate is not allowed under an inheritance contract. A quarter of the decedent's estate must remain vacant so that the decedent may make disposition thereof according to his specifically expressed will. Where a decedent also wishes to leave this quarter to a contractual heir, he may do so in his testament.

(2) A person whose legal capacity has been limited due to a pathological addiction to alcohol consumption, use of psychotropic substances, or similar products or toxins, or due to a pathological addiction to gambling which constitutes a serious mental disorder, may make in an inheritance contract a disposition of the property of which he has capacity to make a disposition by means of a testament. This property is the basis to calculate one quarter reserved for disposition *mortis causa* according to his specifically expressed will.

Section 1586 [Recodification]

If an inheritance contract has been concluded where the other heirs have renounced their succession right, such a renunciation ceases to be effective if the heir designated in the inheritance contract does not inherit.

Section 1587 [Recodification]

The conditions in an inheritance contract are governed by Sections 548 and 549.

Section 1588 [Recodification]

(1) An inheritance contract does not prevent the decedent from disposing of his property at will while he is alive. Unless stipulated otherwise, the party designated as an heir may not transfer his right to another person.

(2) However, if a decedent makes a disposition *mortis causa* or enters into a donation contract so that it is inconsistent with an inheritance contract, a contractual heir may invoke the ineffectiveness of these juridical acts.

Section 1589 [Recodification]

(1) If the parties agree that the decedent will transfer property to a contractual heir while he is still alive, the property may be listed in the form of a public instrument. In such a case, if the decedent does not transfer all of his property or if he acquires other property after the transfer, the inheritance contract applies only to the property so listed, unless stipulated otherwise.

(2) Where property was delivered while the decedent was still alive, the rights and duties arising from the inheritance contract pass to an heir of the contractual heir, unless stipulated otherwise.

Section 1590 [Recodification]

A decedent may also exinguish his duties under an inheritance contract by a testamentary disposition. The consent of the contractual heir made in the form of a public instrument is required for the cancellation to become effective.

Section 1591 [Recodification]

An inheritance contract invalid due to lack of form, the failure to meet the conditions under Sections 1584 and 1585 or inconsistency with the provisions on contracts under Book Four of this Act may still have the effects of a testament if it otherwise fulfils all the requirements for a testament.

Special provisions on an inheritance contract concluded between spouses

Section 1592 [Recodification]

(1) Spouses may conclude an inheritance contract whereby one party designates the other to be an heir or legatee and the other party accepts it, or where spouses mutually designate each other as heirs or legatees.

(2) Such an agreement may also be concluded by fiancés for when they enter into marriage; however, the agreement becomes effective only upon the formation of marriage.

Section 1593 [Recodification]

(1) Divorce does not extinguish the rights and duties arising from an inheritance contract, unless the inheritance contract stipulates otherwise. After a divorce, each party may claim that the inheritance contract be cancelled by a court. A court shall dismiss such application if it is aimed against the person who was not at fault for the breakdown of the marriage and disagreed with the divorce.

(2) If a marriage is declared invalid, the rights and duties arising from an inheritance contract are extinguished unless such marriage terminated earlier by the death of a spouse.

Chapter 3

Legacy

Division 1

General provisions

Allocation of legacy

Section 1594 [Recodification]

(1) A decedent may allocate a legacy by ordering a person in a disposition *mortis causa* to surrender the bequeathed thing to a legatee. Only a person having the capacity to inherit may be a legatee. If a decedent designates an heir and determines that the heir is not to inherit a particular thing, it is considered an allocation of legacy to statutory heirs.

(2) Donation dependent on the condition that the beneficiary survives the donor is considered a legacy unless the donor has waived his right to revoke the gift.

Section 1595 [Recodification]

Legacies may be allocated by a person having the capacity to make testamentary dispositions. A decedent lacking the capacity to make dispositions *mortis causa* may, from his property, only bequeath items of small value to another person.

Section 1596 [Recodification]

A decedent may also bequeath a preferential legacy to an heir or co-heirs; they will be considered legatees with respect to such legacy.

Charging with legacy

Section 1597 [Recodification]

Legacies are charged to all the heirs in proportion to their shares, even where the thing bequeathed belonged to one of the co-heirs. This does not apply if the decedent specifically orders an individual co-heir or legatee to carry out the legacy.

Section 1598 [Recodification]

At least a quarter of the value of the inheritance must be left free from charge with legacies for each heir. If a decedent charges an heir in excess, the heir is entitled to a proportionate reduction in the legacy.

Section 1599 [Recodification]

Sub-legacy

(1) Where a decedent orders a legatee to carry out an additional legacy, the fact that its value exceeds the value of the legacy does not relieve the legatee of the duty to carry out the additional legacy.

(2) If a legatee does not acquire a legacy, the additional legacy is carried out by a person to whom the legacy devolves. He is released from that duty if he relinquishes the legacy devolved on him to the person to whom the additional legacy was bequeathed.

Section 1600 [Recodification]

A decedent who allocates a legacy to support a particular group of persons, especially his relatives or the poor, or a publicly beneficial, charitable or similar purpose, may leave it up to an heir or another person to determine which of those persons or purposes are to receive a share of the legacy, and how. In the absence of any statement of the decedent, the choice is up to the heir. If the heir cannot make the choice, the legatees are chosen by a court.

Section 1601 [Recodification]

Substitution with respect to legacy

A decedent may order substitution or succession by fideicommissum with respect to a legacy. Such cases are governed by the provisions of Sections 1507 to 1524 with the necessary modifications.

Revocation of legacy

Section 1602 [Recodification]

A legacy is presumed to have been revoked where the decedent:

a) destroyed or alienated a bequeathed thing and has not reacquired it,

b) altered a bequeathed thing in such a way that it becomes another thing, or

c) enforced and collected a bequeathed claim.

Section 1603 [Recodification]

A legacy is not presumed to have been revoked if the bequeathed thing was acquired by another person, or altered or destroyed without the will of the decedent. This also applies where a debtor has settled a bequeathed claim to the decedent on his own initiative.

Division 2

Special rules on the different types of legacies

Subdivision 1

Legacy of a particular kind of things

Section 1604

(1) Where a thing of a particular kind is bequeathed and there are several such things in the decedent's estate, the person charged with the legacy shall decide which of the things will be surrendered to the legatee. However, he must choose a thing which the legatee will be able to use.

(2) If it is left up to the legatee to choose from several things himself, he may even choose the best thing.

Section 1605

(1) Where a thing of a particular kind which is not part of the decedent's estate is bequeathed, such a legacy is invalid. If a decedent has bequeathed several things of a particular kind, and the decedent's estate does not contain the determined number of those things, the legatee shall settle for those that are contained in the decedent's estate.

(2) However, if a decedent does not expressly bequeath a thing of a particular kind from his property and if such a thing is not part of the decedent's estate, the person charged with the legacy shall obtain it for the legatee in the quality appropriate to the legatee's personal circumstances and needs.

Section 1606

(1) A decedent may also authorise another person to choose which of several things a legatee is to acquire. If that person fails to make the choice, the legacy is determined by a court having regard to the legatee's personal circumstances and needs.

(2) A court shall also determine a legacy where a legatee fails to make the choice committed to him within the time limit set for the application of a person charged with a legacy.

Section 1607

A legacy of money obliges a person charged with the legacy to pay the sum of money, whether or not the decedent's estate contains cash.

Subdivision 2

Legacy of a determined thing

Section 1608

Where a legacy of a determined thing repeats in one or several provisions, the legatee is not entitled to both the bequeathed thing and its price. Other legacies, even if they contain a thing of the same kind or the same amount of money, belong to the legatee as many times as they are repeated.

Section 1609

The legacy of a thing which belonged to the legatee at the time the testament was made is disregarded. If he acquired such a thing later, he is paid the usual price of the thing; however, if he acquired the thing gratuitously from the decedent himself, the legacy is conclusively presumed to have been revoked.

Section 1610

(1) The legacy of a thing of another belonging neither to the decedent, nor the heir or legatee who is to give it to someone else, is disregarded. If these persons have a share in or right to the bequeathed thing, the legacy only concerns such a share or right.

(2) If a decedent has ordered that a thing of another is to be bought and provided to a legatee, but its owner does not wish to sell it for the usual price, the legatee are paid such price.

Section 1611

pledge or other encumbrance of a bequeathed thing affects the recipient as a legacy defect.

Subdivision 3

Legacy of a claim

Section 1612

Where a decedent's claim is bequeathed, the person charged with a legacy shall assign such a claim with accessories and, where applicable, with security to the legatee, surrender the necessary documents regarding the claim to him and provide him with all information necessary to assert the claim against the debtor.

Section 1613

Although a legacy of all claims includes all claims existing after the legacy has been allocated, it does not include claims arising from transferable securities and savings books, or claims encumbering immovable things and claims arising from a right *in rem*.

Section 1614

A legacy of a decedent's claim from a legatee obliges the person charged with the legacy to surrender an acquittance to the legatee or return the debt instrument.

Section 1615

A waiver of a debt does not apply to debts incurred after the legacy has been allocated. A waiver of the security of a debt does not imply a waiver of the debt itself. A mere extension of the time limit for payment does not imply a waiver of interest.

Section 1616

(1) The legal effect of a legacy of a debt to be paid by a decedent to a legatee is one which obliges the person charged with the legacy to acknowledge the debt, which is precisely expressed by the decedent or proved by the legatee, and to pay it no later than within the time limit to carry out the other legacies, regardless of the conditions and time limits stipulated between the person charged with legacy and the decedent.

(2) If a decedent orders that a legatee's claim be secured, the latter must be provided with sufficient security.

Section 1617

If an amount which a decedent has bequeathed to a person is the same as what he owes the person himself, he is presumed not to have wished to discharge his debt by the legacy. A legatee shall receive the debt and the legacy.

Subdivision 4

Other legacies

Section 1618

Legacy to children and relatives

Where a decedent has allocated a legacy to the children of another, children are to be understood only as sons and daughters. However, where the decedent's own children are concerned, children are also to be understood as the descendants taking their place.

Section 1619

Section 1503 shall also apply, by analogy, to legacies other than those under Sections 1594 to 1618.

Division 3

Acquisition of legacy

Section 1620

(1) A legatee acquires the right to a legacy for himself and his successors upon the death of the decedent.

(2) Where a right to a legacy is yet to be created, such a right is governed by Section 1480 by analogy.

Section 1621

(1) A legatee acquires a bequeathed thing in the same manner as when acquiring the right of ownership.

(2) If the right to a legacy becomes due, a legatee may claim that the bequeathed thing be surrendered to him. Where a bequeathed thing is subject to registration in a public register, the surrender of the thing is replaced by a declaration of the executor of testament, or otherwise by a declaration of the person charged with the legacy, with an authenticated signature; unless the due date of a legacy has been postponed, the legatee is registered in the public register directly after the decedent.

Section 1622

Before the death of a decedent, a legatee may not transfer the right to a legacy or make a disposition *mortis causa* thereof.

Section 1623

If a legatee declares, in the manner provided for the refusal of inheritance, that he does not wish to acquire the legacy, he is considered never to have acquired the legacy.

Section 1624

(1) A legacy of individual things from the decedent's estate and a legacy of rights relating to such things may be requested immediately. This also applies to a legacy of smaller rewards for employees and publicly beneficial, charitable and similar legacies. Other legacies are due one year after the death of the decedent.

(2) Subsection (1) applies, unless another wish of the decedent is evident.

Section 1625

In the case of a legacy of an individual thing, a legatee is entitled to the fruits and revenues as well as to everything that is added to the thing, including the associated rights, from the day on which the legacy becomes due. From the same day, the legatee is affected by the defects of the bequeathed thing, as well as its deterioration or decay resulting from the facts for which no one is responsible.

Section 1626

(1) In the case of a legacy of benefits due annually, monthly or otherwise, a legatee becomes entitled to the amount for the entire period if he is still alive at the beginning of the period; however, the payment shall only become due on the determined due date.

(2) A legacy of maintenance and support is governed by Section 922 by analogy.

Section 1627

Right of a legatee to security

(1) In the case of a legacy of a recurrent performance or a legacy whose performance may not yet be claimed with respect to a statutory time limit, or a time limit or condition determined by the decedent, the legatee has the right to be provided with sufficient security with respect to the person charged with the legacy. This does not apply if it is evident that security is not needed.

(2) In other cases, a legatee has the same rights with respect to the person charged with the legacy as any other creditor.

Vacant legacy

Section 1628

(1) If a legatee is unable or refuses to accept a legacy, the legacy shall devolve to a substitute legatee. Where there is no substitute legatee and the entire legacy has been bequeathed to several persons either without determining the shares, or through a general expression signifying equal division, the vacant share is proportionately added to the shares of other holders.

(2) If a particular share has been bequeathed to a legatee, the legatee is not entitled to an accession under Subsection (1), unless there is an evident will of the decedent to bequeath the entire legacy to the listed legatees, and that he determined the shares only to mutually restrict the legatees.

(3) In other cases, the duty to carry out the legacy is extinguished.

Section 1629

A person who benefits from a legacy becoming vacant or from the extinction of the duty to carry out the legacy is also affected by the encumbrances associated with the legacy. This does not apply in the case of personal acts of the person originally charged with the legacy.

Rights of an heir having reserved estate inventory

Section 1630

(1) If the net decedent's estate is charged with a legacy so that it becomes almost used up and an heir fails to assert his right under Section 1598, the heir shall only be entitled to the reimbursement of costs incurred in carrying out legacies and to a reasonable remuneration for his efforts. If the decedent's estate is insufficient for the payment of such costs and remuneration, they are paid by the legatees in proportion to the value of their legacies; the heir has a retention right to secure his right to the bequeathed things; the heir is not required to deal with the legacies without sufficient security.

(2) However, if a legatee has already received the legacy, a deduction is made according to the value of the legacy at the time it was received and according to the revenues which he has already gained therefrom. A legatee may be relieved of the contribution duty by surrendering to the heir the legacy including the revenues, or the price thereof. In other respects, the legatee is considered to be a possessor in good faith.

Section 1631

(1) If the net decedent's estate is insufficient for the payment of all debts and other mandatory expenses, the legacies are proportionately reduced.

(2) If the net decedent's estate is insufficient to deal with all legacies, the legacies of provision for life, upbringing and maintenance are satisfied as a matter of priority; other legacies are proportionately reduced.

Section 1632

Fulfilment of last will by an administrator of the decedent's estate

If an executor of testament has not been appointed and the heir does not wish to expend the time and effort to fulfil the last will, a court shall, on the application of an heir, appoint an administrator of the decedent's estate for that purpose, or order an already selected administrator of the decedent's estate to fulfil the last will.

Chapter 4

Statutory succession of heirs

Section 1633

(1) Where there is no succession of heirs under an inheritance contract or testament, statutory succession of heirs to the decedent's estate or part thereof arises. If there is no statutory heir or if he does not acquire the inheritance, legatees become heirs in proportion to the value of their legacies.

(2) A person who acquired an inheritance because an heir or a substitute heir designated in the inheritance contract or testament did not wish to or could not inherit shall fulfil the other orders of the decedent.

Section 1634 [Recodification]

Escheat

(1) Where no heir inherits even under statutory succession of heirs, the inheritance shall devolve to the State, and the State is considered to be the statutory heir; however, the State does not have the right to refuse inheritance or the right to legacy under the third sentence of Section 1594(1).

(2) With respect to other persons, the State has the same status as an heir who has made a reservation as to estate inventory.

Section 1635

First class of heirs

(1) The decedent's children and spouse inherit in the first class of heirs, each of them equally.

(2) If any of the children does not inherit, his share is acquired equally by his children; the same applies to more distant descendants of the same ancestor.

Section 1636

Second class of heirs

(1) If the decedent's descendants do not inherit, the second-class heirs include the spouse, the decedent's parents and those who lived with the decedent in the common household for at least one year before his death and, as a result, cared for the common household or were dependent in maintenance on the decedent.

(2) Second class heirs inherit equally; however, the spouse shall always inherit at least half of the decedent's estate.

Section 1637

Third class of heirs

(1) If neither the spouse nor any of the parents inherit, decedent's siblings and those who lived with the decedent in the common household for at least one year before his death and, as a result, cared for the common household or were dependent in maintenance on the decedent, inherit in the third class of heirs equally.

(2) If one of the decedent's siblings does not inherit, his share of inheritance is acquired by his children equally.

Section 1638 [Recodification]

Fourth class of heirs

If no heir inherits in the third class, the decedent's grandparents inherit in the fourth class equally.

Section 1639 [Recodification]

Fifth class of heirs

(1) If none of the fourth-class heirs inherits, only the grandparents of the decedent's parents inherit in the fifth class. The grandparents of the decedent's father is entitled to half of the inheritance, the grandparents of the decedent's mother to the other half. Both couples of grandparents shall equally divide between them the half to which they are entitled.

(2) If one of the grandparents from a couple does not inherit, the vacant eighth shall devolve to the other grandparent. If a couple does not inherit, the quarter shall devolve to the other couple from the same side. If none of the couples from the same side inherits, the inheritance shall devolve to the couples from the other side in the same proportion as they divide the half of the inheritance to which they are entitled to directly.

Section 1640 [Recodification]

Sixth class of heirs

(1) If none of the fifth-class heirs inherits, the sixth class of heirs shall include the children of the decedent's siblings' children and the children of the decedent's grandparents, each of them equally.

(2) If any of the children of the decedent's grandparents does not inherit, his children shall inherit.

Section 1641

Multiple family relationship

If a person is related to the decedent from more than one side, he has succession right from each side which he would hold as a relative from that side.

Chapter 5

Forced share

Inclusion in forced share and inheritance share

Division 1

Forced heir

Section 1642 [Recodification]

A forced heir is entitled to a forced share of the decedent's estate.

Section 1643 [Recodification]

(1) Forced heirs include the decedent's children and, if they do not inherit, their descendants.

(2) If a forced heir is a minor, he must inherit at least three-quarters of his statutory inheritance share. If a forced heir is an adult, he must inherit at least a quarter of his statutory inheritance share.

Section 1644

(1) A forced share may be handed down as an inheritance share or legacy, but must be left to a forced heir completely free of burden.

(2) Mandates of a decedent which restrict the mandatory part are disregarded. If a decedent leaves more than a forced share to a forced heir, such an order, if given in a disposition *mortis causa*, applies only to the part which exceeds the value of the forced share. This does not apply if a forced heir dies before the decedent, or he does not inherit for any other reason.

(3) A decedent may also oblige a forced heir to make a choice between what is given to him with restrictions, and the forced share.

Section 1645

A person who has renounced inheritance or the forced share, lacks the capacity to inherit or has been disinherited by the decedent is not entitled to the forced share, but when calculating the forced shares, he is considered to never have been excluded from a succession right.

Division 2

Disinheritance

Section 1646 [Recodification]

(1) For statutory reasons, a forced heir may be excluded from his right to inherit the forced share or his right may be prejudiced by disinheritance. A decedent may disinherit a forced heir who:

a) failed to provide him with the necessary assistance at a time of need,

b) fails to show such genuine interest in the decedent as he should,

c) has been convicted of a criminal offence committed under circumstances which indicate his perverse nature, or

d) permanently leads a dissolute life.

(2) A decedent may also disinherit a forced heir who lacks the capacity to inherit, and therefore excluded from a succession right.

(3) If a disinherited descendant survives the decedent, the descendants of the disinherited descendant shall not inherit either, unless the decedent wishes otherwise. If a disinherited descendant dies before the decedent's death, his descendants shall inherit except those who are specifically excluded from the succession right.

Section 1647 [Recodification]

A decedent may also disinherit a forced heir whose indebtedness or prodigal acts raise concern that the forced share will not be maintained for the descendants. However, he may do so only by leaving his forced share to the children of the forced heir, or, in their absence, to their descendants.

Section 1648 [Recodification]

If a decedent fails to specify the reason for disinheritance, the forced heir has the right to the forced share, unless a statutory reason for disinheritance is proved against him.

Section 1649 [Recodification]

(1) Declaration of disinheritance may be made, or changed or cancelled, in the same manner as making or cancelling a testament.

(2) In the same way, a decedent may declare that one of the heirs who is not a forced heir and who is entitled to statutory succession of heirs will not acquire the decedent's estate.

Division 3

Protection of a forced heir

Section 1650

A forced heir disinherited in an invalid manner is entitled to a forced share; if the net value of his forced share was reduced, he has the right to have the share completed.

Section 1651

(1) A forced heir of whom the decedent knew that he was alive and yet excluded him in the testament shall also have the right to the forced share.

(2) If a person excluded otherwise than accidentally has committed something that fulfils a statutory reason for disinheritance, such exclusion is considered to be disinheritance made tacitly and lawfully.

Section 1652

If a forced heir proves that his exclusion is only attributable to the fact that the decedent did not know about him when making the disposition *mortis causa*, such an heir has the right to the mandatory part to which he is entitled under a statute.

Section 1653

If a forced heir has been excluded or his share reduced, the heirs and legatees shall proportionately contribute to compensate for his right.

Division 4

Calculation of the forced share

Section 1654 [Recodification]

(1) A forced heir is not entitled to a share of the decedent's estate, but only to a sum of money equal to the value of his forced share. If justified by particularly serious reasons on the part of the heirs and if it may be reasonably required from the forced heir, a court may authorise the instalments of the mandatory part or a postponement of its due date; however, the claim bears interest from the date on which it was originally due.

(2) Subsection (1) does not prevent the forced heir from agreeing otherwise with the testamentary heirs or heirs under inheritance contract; however, if it prejudices the rights of other creditors, such a contract is ineffective against them. If, during the succession proceedings, it is stipulated that a forced heir shall, instead of payment, be surrendered from the decedent's estate a thing registered in a public register, the forced heir is registered in that public register directly after the decedent.

Section 1655

(1) To establish a forced share, the property in the decedent's estate is estimated and its inventory made; the debts of the decedent and defects encumbering the property already at the time of the decedent's death is deducted from the value of the property. When calculating the forced share, what is credited against a forced share under Sections 1660 and 1661 is added to the decedent's estate.

(2) A forced heir has the right to be present during the estimation, ask questions and make comments.

Section 1656

A forced share is determined without regard to legacies and other defects arising from the disposition *mortis causa*. Until the forced share has been determined, a forced heir shall proportionately participate in the profit and loss of the decedent's estate. A person who is entitled to a forced share is also entitled to a proportionate account of the share in the profit or loss of the decedent's estate from the death of the decedent until the determination of the forced share.

Section 1657

If a forced heir and other heirs agree on a lump-sum payment, and if such an agreement is approved by a court, the provisions of Sections 1655 and 1656 do not apply.

Division 5

Inclusion in forced share and inheritance share

Section 1658

Inclusion in a forced share or inheritance share does not create a duty to surrender something except as provided under Section 2072.

Section 1659

In the case of inclusion, the value of what was provided and is subject to inclusion is calculated according to the time of delivery. In exceptional cases, a court may decide otherwise.

Inclusion in forced share

Section 1660

(1) Everything that a forced heir has actually acquired from the decedent's estate through a legacy or another act of the decedent is included in the forced share.

(2) Inclusion in a forced share also includes everything that a forced heir has gratuitously acquired from the decedent in the last three years before his death, unless the decedent orders a longer period; in addition, what a decedent's ancestor gratuitously received from the decedent is also included in favour of the descendant. However, usual donations are disregarded in the case of inclusion.

Section 1661

(1) Inclusion in a forced share of a descendant includes what the decedent gave him when he was alive to assist with the costs associated with the establishment of his own household, or marital or similar life, or with starting employment or business; inclusion in the forced share also includes what the decedent used to pay the debts of an adult descendant. If it had occurred earlier than in the last three years before the decedent's death, inclusion is made unless the decedent has expresses his will to the contrary.

(2) Inclusion in a forced share of the descendant who takes the place of his ancestor also includes what the decedent gave the descendant's parents whose place he takes.

Inclusion in inheritance share

Section 1662

Inheritance shares are calculated in the same manner as a forced share.

Section 1663

In succession of heirs under a disposition *mortis causa,* or in statutory succession of heirs, inclusion in an inheritance share is only made if it was ordered by the decedent by an expression of will made in the form prescribed for the making of a testament.

Section 1664

A court may also make inclusion in an inheritance share without an order by the decedent, provided that the forced heir would otherwise be unreasonably disadvantaged; however, usual donations are disregarded.

Chapter 6

Right of certain persons to provision for life

Section 1665 [Recodification]

A person who would otherwise be a forced heir, but is not entitled to a forced share, has a right to essential maintenance, provided he is lacking it, and is unable to provide for himself; in this manner, however, he may not get more from the decedent's estate than what his forced share would be. However, a person whose descendant inherits in his place or where a descendant is designated to be entitled to a forced share in his place does not have the right to essential maintenance.

Section 1666 [Recodification]

(1) A surviving spouse has the right to fair maintenance from the decedent's estate for six weeks after the death of his spouse. If a widow is pregnant, she has the right to fair maintenance until the end of the sixth week after birth; the mother of the decedent's child who was not married to the decedent has the same right.

(2) If a surviving spouse has been denied statutory inheritance or his statutory inheritance has been reduced, the surviving spouse is entitled to the necessary provision for life until he remarries, provided that he otherwise lacks such a provision for life and he is unable to provide for himself; in this manner, however, he may not get more from the decedent's estate than what half of his statutory inheritance share would have been. However, a spouse who, without serious reasons, did not share the family household with the decedent, a spouse lacking the capacity to be an heir or a spouse who renounced or refused inheritance is not entitled to the necessary provision for life.

(3) If the right to fair maintenance under Subsection (1) prejudices the right to essential maintenance under Section 1665, all these rights are prejudiced so that all obligees receive an equal share. Necessary provision for life under Subsection (2) may not be provided if it prejudices the right to essential maintenance under Section 1665.

Section 1667 [Recodification]

The surviving spouse shall acquire the right of ownership in movable things which form the basic equipment of a family household even where he is not an heir. This does not apply if the surviving spouse, without serious reasons, did not share the family household with the decedent.

Section 1668 [Recodification]

(1) If a surviving parent has been denied the statutory inheritance or his statutory inheritance share has been reduced, the surviving parent is entitled to the necessary provision for life, provided that he otherwise lacks such a provision for life and he is unable to provide for himself; in this manner, however, he may not get more from the decedent's estate than what a third of his statutory inheritance share would have been. A parent lacking the capacity to be an heir, a parent who has renounced or refused his inheritance or a parent who has committed an act constituting grounds for disinheritance does not have the right to the necessary provision for life.

(2) Necessary provision for life may not be provided to a parent if it prejudices the right to essential maintenance under Section 1665.

Section 1669 [Recodification]

Persons who enjoyed gratuitous provision for life in the household of the decedent until his death are entitled to the same provision for life for another three weeks after the decedent's death.

Chapter 7

Devolution of the decedent's estate to an heir

Division 1

Acquisition of inheritance

Section 1670

Acquisition of inheritance is confirmed by a court. A court confirms acquisition of inheritance by a person whose succession right has been proved.

Section 1671

(1) If an heir fails to assert his succession right before a court within a time limit determined by the court, the heir's succession right is not extinguished; however, it is disregarded during succession proceedings. This also applies to the succession right of an unknown heir or to an heir of unknown whereabouts who has been notified of his right through a judicial notice and failed to contact the court within a specified time limit.

(2) If an unknown heir or heir of unknown whereabouts has a guardian, the guardian may not make a declaration stating that the heir refuses, does not refuse or accepts the inheritance.

Section 1672

Where the right to inheritance is asserted by multiple persons and if they are contradictory, a court shall advise the heir whose legal cause is weaker to assert his right by filing an application. If the heir does not file the application within the time limit specified by the court, his right is not extinguished but it is disregarded in decedent's estate proceedings.

Section 1673

(1) All testamentary or statutory heirs are advised to file an application against an heir who relies on an inheritance contract undisputed as to its authenticity. All statutory heirs are advised to file an application against an heir who relies on a testament undisputed as to its authenticity.

(2) If a decedent has specified the reason for disinheritance, the descendant who claims to have been disinherited unlawfully is advised to file an application. If the reason for disinheritance is not specified, the person who is to inherit in his place is advised to file an application.

Reservation as to estate inventory

Section 1674 [Recodification]

(1) A decedent may not take away the heir's right to make a reservation as to estate inventory of the decedent's estate. If the parties to an inheritance contract waive this right, it is disregarded.

(2) The right to a reservation as to estate inventory may be asserted by means of a declaration made orally before a court, or a declaration sent to a court in writing. If an heir makes a reservation as to estate inventory with reservations or conditions, it is disregarded. This also applies to an heir's declaration stating that he does not make a reservation as to estate inventory.

Section 1675 [Recodification]

An heir has the right to reserve estate inventory if he does so within one month from the day on which a court informed him of this right. Where justified by important reasons, the court shall extend the time limit.

Section 1676 [Recodification]

(1) An heir having legal capacity who is known and present, is not a spouse, descendant or ancestor of the decedent and who failed to provide a statement within the time limit under Section 1675 is conclusively presumed not to make a reservation as to estate inventory. After summoning and advising the other heirs, a court shall obtain their express statements, unless the effects under Section 1681 have occurred with respect to the decedent's spouse, descendant or ancestor lacking legal capacity.

(2) A person who failed to make a reservation as to estate inventory or declared that he does not assert the right to do so may not subsequently make a reservation as to estate inventory.

Division 2

Administration of the decedent's estate and the decedent's estate inventory

Administration of the decedent's estate

Section 1677

(1) If a decedent has designated an administrator of the decedent's estate or executor of testament, the administrator of the decedent's estate shall administer the decedent's estate until the acquisition of the inheritance is confirmed; after that the decedent's estate is administered by the executor of testament. If a decedent has designated neither of them, the decedent's estate is administered by an heir; where there are multiple heirs and they do not stipulate otherwise, the decedent's estate is administered by all the heirs.

(2) If justified by a serious reason, a court shall order another measure.

Section 1678 [Recodification]

(1) A person who administers the decedent's estate shall perform simple administration thereof.

(2) A person who administers the decedent's estate shall provide payments from the decedent's estate to persons entitled to receive them as provision for life, and deliver to the legatees a report of the legacies allocated to them. He shall surrender legacies which have become due if authorised by a court.

Section 1679

(1) If required by the interest in preserving the value or essence of the property under administration, things from the decedent's estate may be alienated or used as security during the administration, otherwise only if it is for consideration. This also applies where the purpose of the property under administration is to be changed.

(2) An administrator of estate or executor of testament may perform an act exceeding the scope of simple administration only with the consent of the heirs. If the heirs fail to agree or if a person under special protection is an heir, the approval of a court is required.

Section 1680

(1) A court may, even before the end of succession proceedings, allow an heir whose succession right has been clearly established to dispose freely of certain objects which are part of the decedent's estate if the fulfilment of the decedent's last will is ensured or if the other co-heirs, forced heirs and legatees consent to it.

(2) Where the right to inheritance is asserted by multiple persons in contradiction, the measure under Subsection (1) may not be taken. If, however, an heir has been previously provided with an advantage, it may not be taken away from him.

Section 1681 [Recodification]

(1) If an heir assumes full administration of the decedent's estate without being entitled to do so, the effects of a reservation as to estate inventory, where made by the heir, are cancelled with effect from the beginning. This applies even where it is proved that an heir has intentionally concealed the decedent's property by mixing parts of the decedent's estate with parts of his property making it impossible to distinguish what belongs to whom, unless this was already the case before the decedent's death. The same effect with respect to the reservation as to estate inventory also occurs with respect to the heir who administered the decedent's estate in this manner being directly or indirectly represented by someone else. If the decedent's estate is administered in this manner by a close person of the heir, the person is presumed to also act as his representative.

(2) The effects under Subsection (1) shall not occur if, before confirming the acquisition of inheritance, the heirs only divide among them documents, portraits or records and other things of family or commemorative nature.

Closure of the decedent's estate

Section 1682 [Recodification]

(1) A court shall promptly take a measure to secure the decedent's estate (a closure), if:

a) any of the heirs lacks legal capacity,

b) the whereabouts of any of the heirs are unknown,

c) there is concern that the decedent's estate is over-indebted,

d) a creditor has proposed separation of the decedent's estate, or

e) there is another important reason for particular caution.

(2) If any of the heirs only lacks legal capacity, is not present or is unknown, closure of the part of the decedent's estate which is sufficient to satisfy his succession right shall suffice. This applies even where there is a person who has the right to a forced share.

Section 1683

A closure is not necessary if the decedent's estate includes an immovable thing which provides sufficient security.

Decedent's estate inventory

Section 1684 [Recodification]

(1) A decedent's estate inventory aims to ascertain the decedent' assets and liabilities and determine the net value of the property at the time of the decedent's death.

(2) Unless it poses a serious risk to the timely drafting of the inventory, it may be prepared in the presence of, and questions may be asked and comments made by:

a) an executor of testament,

b) an administrator of the estate,

c) anyone who claims and proves his succession right or the right to a forced share, or who is known to be likely to hold such a right,

d) a creditor who has requested separation of decedent's estate,

e) any other person who proves a legal interest therein, if approved by a court; however, this applies to a legatee only if there is a risk that he will be obliged to proportionately contribute to the forced share.

Section 1685 [Recodification]

(1) A court shall order that an estate inventory be made if an heir asserts his right to make a reservation as to estate inventory, or if it is necessary for the calculation of the forced share.

(2) A court shall also order that a decedent's estate inventory be made if:

a) the heirs include a person who lacks full legal capacity, or is unknown or not present, or a publicly beneficial legal person or a legal person established in the public interest (hereinafter a "person under special protection"),

b) there is uncertainty about whether a person is an heir, or who the heir is,

c) it is required by a creditor under Section 1709, or

d) the creditor of the decedent proves that there is another serious reason to draft the inventory.

Section 1686

(1) The costs of making an inventory are paid from the decedent's estate and be proportionately deducted from the inheritance shares of those heirs who benefit from the inventory. If it is not reasonably possible to pay the cost of making a decedent's estate inventory, a court shall order such heirs to proportionately contribute to the payment of these costs.

(2) If a court has ordered that an inventory be made for the calculation of a forced share, the costs are paid from the decedent's estate and be proportionately borne by the heirs and a person entitled to a forced share. If it is not reasonably possible to pay the cost of making a decedent's estate inventory, a court shall order such persons to proportionately contribute to the payment of these costs.

(3) Where a person requires that an inventory be made without having a serious reason to do so, a court shall order the person to bear the cost of making the inventory.

Section 1687

(1) If justified by the circumstances of the case, a court may decide to replace a decedent's estate inventory by an inventory of the decedent's property made by the administrator of the decedent's estate and confirmed by all heirs. Where an administrator of the decedent's estate has not yet been appointed, a court may appoint him for that purpose.

(2) Unless challenged by the heirs, a court may, in simple cases, decide to replace a decedent's estate inventory by a joint statement of the heirs on the decedent's property.

Section 1688 [Recodification]

(1) If it is proved that a statement or list under Section 1687 does not correspond to reality to an extent which is not insignificant:

a) where the heirs made a reservation as to estate inventory, its effects are cancelled with effect from the beginning, where applicable,

b) the person under Section 1685(2) has the right to request that a court order the preparation of a new decedent's estate inventory if he proves that he has a legal interest therein.

(2) The effect under Subsection (1)(a) shall not operate against a person under special protection, unless it is proved that such a person intentionally concealed the decedent's property. This effect shall not even operate against an heir who proves that he was not at fault for the incompleteness of the statement or list.

(3) If an administrator has caused the list under Section 1687 to be incomplete, he shall compensate the resulting damage.

Section 1689

If a creditor is known, a court shall inform him that a decedent's estate inventory has been drafted and allow him to comment thereon.

Division 3

Confirmation of inheritance

Section 1690

(1) A person who has not refused the inheritance and, according to the succession proceedings, has the best succession right shall, receive a confirmation of the acquisition of inheritance issued by a court after the due fulfilment of the decedent's will has been ensured.

(2) If an executor of testament has been selected, he shall provide a court with a confirmation that the decedent's instructions have been fulfilled; if he has not been selected, such a confirmation is provided by the heirs. If the heirs fail to agree, or if they challenge what was confirmed by the executor of testament, a court shall decide on the manner in which it will obtain the proof.

Section 1691

(1) Where legacies have been ordered, a court shall confirm inheritance only after it has been proved to the court that:

a) legatees have been notified of their legacies,

b) due legacies to persons lacking full legal capacity, publicly beneficial legal persons or legal persons established in the public interest, or legacies made for charitable and publicly beneficial purposes, have been carried out, and that carrying out non-due legacies has been ensured,

c) carrying out legacies to unknown persons or persons that are not present has been ensured.

(2) A court may waive a security where such a security is evidently unnecessary.

Section 1692

(1) A court shall provide a sole heir with a confirmation that he has acquired the inheritance. The court shall indicate the identity of the heir, the decedent whose decedent's estate he acquires, for what reason and whether or not this occurs with a reservation as to estate inventory.

(2) In case of several heirs, a court shall also confirm their inheritance shares in the amount after inclusion in inheritance share and inclusion of any legacies, where applicable. When dividing the decedent's estate, a court shall also confirm the legacy which each of the heirs has acquired and the reason for the division of inheritance.

(3) Where a succession of heirs has been ordered by establishing succession by fideicommissum, determination of time or otherwise, a court shall confirm that it has been ordered, who follows as the next heir and on what condition. If a decedent has determined that a preceding heir may freely dispose of the inheritance, it shall also be confirmed by a court.

Section 1693 [Recodification]

(1) Heirs may agree on the amount of their inheritance shares in succession proceedings before a court. The court shall approve the agreement, unless it is contrary to the interests of a person under special protection.

(2) In the case of inheritance based on a disposition *mortis causa,* heirs may agree on an amount of inheritance shares other than that designated for them by the decedent if expressly allowed by the decedent.

(3) In the case of inheritance based on statutory succession of heirs, an heir has the right to require settlement from the other heirs if he cared of the decedent for a longer period or significantly contributed to maintaining or increasing the decedent's property by work, financial support or similar means without having been remunerated. Settlement is provided in an amount appropriate to the duration and scope of his performance and the value of the decedent's estate; his inheritance share shall increase by this amount. This also applies where the heir who is not a surviving spouse performed the duty to maintain and support or a similar duty with respect to the decedent.

Division 4

Division of decedent's estate

Section 1694 [Recodification]

(1) If a decedent has made a disposition *mortis causa*, the decedent's estate is divided according to his will. Heirs may agree before a court that they will divide the entire decedent's estate or a part thereof otherwise, if expressly allowed by the decedent.

(2) Where the decedent has allocated individual things from his assets and liabilities to the heirs without explicitly ordering that the decedent's estate must be divided as he instructed, or that a designated heir may only accept what has been allocated to him, or, where applicable, that a certain thing is to remain co-owned by the heirs, his expression of will is considered to be a wish without legally binding effect.

Section 1695

(1) Where a decedent has made no disposition *mortis causa,* the heirs may agree before a court on the division of the decedent's estate in any manner.

(2) Where a decedent has made no disposition of a part of the decedent's estate or has not instructed how the decedent's estate or part thereof is to be divided, or where the division of the decedent's estate according to the decedent's will is impossible, Subsection (1) applies by analogy.

Section 1696

(1) A court shall approve an agreement of the heirs on division, unless it is contrary to the will of the decedent or, within its scope, to the interests of a person under special protection. If a court does not approve the agreement, it shall provide the heirs with a confirmation of the acquisition of inheritance according to their inheritance shares.

(2) For an agreement on division of decedent's estate to be valid, the entire known decedent's estate must be divided as a result of its conclusion. An agreement may also establish an easement or a pledge or another right *in rem*, even where the decedent has made no disposition thereof.

Section 1697

(1) A court shall divide the decedent's estate in accordance with the instructions of the decedent. If the decedent has made a third person responsible for specifying how the decedent's estate is to be divided, a court shall determine a reasonable time limit of at least two months for that person; however, the court shall disregard such specification which is clearly unjust or made after the time limit has expired.

(2) Unless prevented by the decedent's instruction, a court shall divide the decedent's estate by approving the agreement of the heirs; in the absence of such an agreement, the court shall divide the decedent's estate if requested by all the heirs and if they have no dispute concerning what things form part of the decedent's estate. In doing so, the court has regard to the interests of a person under special protection.

(3) In other cases, a court shall not divide the decedent's estate and provide the heirs with a confirmation of the acquisition of the inheritance according to their inheritance shares.

Section 1698

When dividing the decedent's estate, the right to compensation from the arrangements between the co-heirs may be settled and inclusion in an inheritance share and inclusion of legacies may be made.

Section 1699

(1) Under certain circumstances, a claim or debt may be allocated to a single heir. If a debt is allocated to a single heir, it does not affect the rights of the creditor.

(2) An heir whose share has been reduced by the allocation of a defective thing is entitled to be compensated by the co-heirs for the reduction caused by the defect.

Section 1700

(1) If the decedent's estate is divided by a court on the application of the heirs, the court shall establish a register based on the decedent's estate inventory or an inventory confirmed by all the heirs. If a thing from the decedent's estate has been lawfully sold by the will of an heir, the purchase price obtained is included in the decedent's estate; if the thing was otherwise alienated by the will of an heir, the typical price on the day on which the succession right was created is included in the decedent's estate. Each object is allocated to the share of each of the heirs expressed in money according to the price specified in the register.

(2) If a court does not allocate an object to all the heirs in proportion to their shares, it shall estimate its price where the price is not evident.

Division 5

Debts affecting an heir

Section 1701

(1) A decedent's debts pass to the heirs, unless otherwise provided by a statute.

(2) An heir is obliged to pay the costs of a decedent's burial and the arrangement of the decedent's grave site, unless these costs were paid from the decedent's estate under Section 114(2).

Section 1702

An heir may not be released from the duty imposed on him by a disposition *mortis causa* by rejecting the inheritance and asserting his right as a statutory heir. He may become an heir under the disposition *mortis causa* or reject the inheritance.

Section 1703

Rights of creditors prior to the confirmation of inheritance

Until a court confirms the acquisition of the inheritance by an heir, creditors may only claim a performance against the person who administers the decedent's estate and only claim satisfaction from the property belonging to the decedent's estate.

Legal effects of not making a reservation as to estate inventory

Section 1704 [Recodification]

If an heir has not made a reservation as to estate inventory, he shall pay the decedent's debts in full. If several heirs have not made a reservation as to estate inventory, they shall pay the decedent's debts jointly and severally.

Section 1705 [Recodification]

With respect to an heir who has not made a reservation as to estate inventory, drafting an estate inventory has no legal effects for the scope of his duty to pay debts.

Legal effects of a reservation as to estate inventory

Section 1706 [Recodification]

If an heir has made a reservation as to estate inventory, he shall pay the decedent's debts up to the price of the acquired inheritance. This also applies where a court has ordered the preparation of a decedent's estate inventory in the interests of a person under special protection.

Section 1707 [Recodification]

Each of the heirs who has made a reservation as to estate inventory shall pay the decedent's debts jointly and severally with the other heirs; however, a creditor may require that each heir who has made a reservation as to estate inventory only provide a performance not exceeding his inheritance share.

Section 1708 [Recodification]

Sanctions among co-heirs are governed by the general provisions on joint debts.

Separation of the decedent's estate

Section 1709 [Recodification]

(1) A creditor who proves his concern of an heir's over-indebtedness may, before a court confirms the acquisition of inheritance, apply to the court to keep the decedent's estate separated from the decedent's assets and liabilities and have it managed as separate assets and liabilities. The court shall dismiss the application if there is evidently no reason for the concern.

(2) An application to separate the decedent's estate does not prevent a court from confirming the acquisition of inheritance.

Section 1710 [Recodification]

A creditor who requested separation is satisfied from the separated decedent's estate. However, such a creditor shall lose the right to satisfaction from the other property of the decedent, even where the heir has not made a reservation as to estate inventory.

Ascertaining the debts of the decedent

Section 1711 [Recodification]

An heir who has reserved inventory or administers the decedent's estate may also apply to a court, before the court makes a decision on confirming the inheritance, to request the creditors to report and document their claims within an appropriate time limit in order to ascertain the decedent's debts. Until the proceedings so initiated are closed, the heir or the person administering the decedent's estate is not obliged to satisfy the creditors.

Section 1712

(1) If the decedent's estate has been used up by satisfying registered claims, a creditor who fails to register within the time limit is not entitled to have his claims satisfied by the heir.

(2) Subsection (1) does not apply:

a) if the creditor proves that the heir knew of the claim, or

b) if a creditor's claim is secured by a pledge or another right *in rem* belonging to the decedent's estate.

Section 1713

Where an invitation to creditors has not been applied for, or where the heir satisfies one of the registered creditors without regard to the rights of the others and it results in a creditor's claim from the decedent's estate not being fully satisfied, the heir is obliged to the creditor beyond the scope of Section 1692 up to the amount which would satisfy the creditor's claim in case of liquidation of the decedent's estate under another legal regulation.

Chapter 8

Alienation of inheritance

Section 1714 [Recodification]

(1) An inheritance may be alienated after the decedent's death; if the contract is concluded before that, it is disregarded. By alienating inheritance, the acquirer enters into the rights and duties belonging to the decedent's estate.

(2) Inheritance is alienated by an aleatory contract unless the contract alienating the inheritance was based on the list of rights and duties. If such a list was used as a basis, the extent to which Sections 1716 and 1717 shall also apply shall depend on the contents of the contract and on the stipulation between the parties.

(3) The contract must be in the form of a public instrument.

Section 1715 [Recodification]

The parties shall, without undue delay, notify the court conducting the succession proceedings of the alienation of the inheritance.

Section 1716 [Recodification]

(1) The acquirer is not entitled to a thing belonging to the transferor for a legal cause other than being an heir, or to documents, portraits and records of family nature.

(2) On the other hand, the acquirer is entitled to everything that is added to the inheritance as a result of a decrease in the number of legatees or co-heirs or in any other manner, provided that the transferor would have been entitled thereto.

Section 1717 [Recodification]

An acquirer is entitled to everything that the transferor has already acquired under his succession right. However, the acquirer shall reimburse the transferor for his own property which he expends on accepting the inheritance or on the decedent's estate and, unless the parties stipulate otherwise, also for the costs of the decedent's funeral and cemetery arrangements.

Section 1718 [Recodification]

Where a transferor administered the decedent's estate before it was surrendered to the acquirer, he is obliged with respect to the acquirer as a mandatary.

Section 1719 [Recodification]

The transferor of the inheritance is liable to the transferee for the authenticity of his succession right as it was stated. If the acquirer incurs damage, the transferor shall compensate such damage according to Book Four of this Act.

Section 1720 [Recodification]

The acquirer and the transferor are liable to the creditors for the decedent's debts jointly and severally.