5

Family Law Legislation of the Netherlands

A TRANSLATION INCLUDING
BOOK 1 OF THE DUTCH CIVIL CODE,
PROCEDURAL AND TRANSITIONAL
PROVISIONS AND PRIVATE INTERNATIONAL
LAW LEGISLATION

Ian Sumner and Hans Warendorf





A book series dedicated to the harmonisation and unification of family and succession law in Europe. The European Family Law series includes comparative legal studies and materials as well as studies on the effects of international and European law making within the national legal systems in Europe. The books are published in English, French or German under the auspices of the Organising Committee of the Commission on European Family Law.

With the Netherlands being the first country in the world to open civil marriage to same-sex couples, there has never been a better time to publish the first ever complete English translation of Dutch family law. This book gives the reader, academic and professional practitioner alike, an opportunity to take cognizance of this important field of law. Both the publisher and the translators hope that this book will find its way into the hands of the large number of non-Dutch speaking persons living in the Netherlands whose life is affected by the law, which until now was not readily accessible. This work, thanks to the translation of the rules of Private International Law in the field of family law, also provides lawyers, civil servants and consular officers with insight into the applicable rules in international cases. It is hoped that this work will also further contribute to the development of an international legal discourse on the development of family law in other jurisdictions, whilst allowing the comparison with the law as in force in the Netherlands on the 1st October 2003.



FAMILY LAW LEGISLATION OF THE NETHERLANDS

A translation including Book 1 of the Dutch Civil Code, procedural and transitional provisions and private international law legislation

EUROPEAN FAMILY LAW SERIES

Published by the Organising Committee of the Commission on European Family Law

Prof. Katharina Boele-Woelki (Utrecht)

Prof. Frédérique Ferrand (Lyon)

Dr. Cristina González Beilfuss (Barcelona)

Prof. Maarit Jänterä-Jareborg (Uppsala)

Prof. Nigel Lowe (Cardiff)

Prof. Dieter Martiny (Frankfurt/Oder)

Prof. Walter Pintens (Leuven)

FAMILY LAW LEGISLATION OF THE NETHERLANDS

A translation including Book 1 of the Dutch Civil Code, procedural and transitional provisions and private international law legislation

IAN SUMNER HANS WARENDORF



Distribution for the UK: Hart Publishing Salter's Boat Yard Folly Bridge Abingdon Road

Oxford OX1 4LB

UK Tel: + 44 1865 24 55 33

Fax: + 44 1865 79 48 82

 $Distribution\ for\ Switzerland\ and$

Germany:

Stämpfli Verlag AG Hallerstrasse 7 Postfach CH-3001 Bern

Tel. + 41 31 300 66 77 Fax: + 41 31 300 66 88 Distribution for North America: Transnational Publishers 410 Saw Mill River Road

Ardsley

New York 10502-2615

USA

Tel: + 1 914 693 5100 Fax: + 1 914 693 4430

Distribution for other countries: Intersentia Publishers Churchilllaan 108 2900 Schoten Belgium

Tel: + 32 3 680 15 50 Fax: + 32 3 658 71 21

Family Law Legislation of the Netherlands Ian Sumner & Hans Warendorf

© 2003 Intersentia Antwerp – Oxford – New York http://www.intersentia.com

ISBN 90-5095-340-9 D/2003/7849/36 NUR 822 and 828

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission form the publisher.

A WORD OF INTRODUCTION FROM THE TRANSLATORS

If "words are the physicians of the mind diseased" (Aeschylus, 525-456 B.C.), then the path of a translator is a precarious one. A poor choice of words and the reader may suffer as a consequence. The task of a translator is thus doubly confounded: to accurately convey the wording of the original text, whilst at the same time expressing the meaning in a way able to be comprehended by the other. It is against this background that we began work on this translation more than one and a half years ago. Obviously, choices have had to be made and decisions taken in terms of style and terminology. As much as possible, we have tried to use the prevailing terminology in legislative instruments in the European Union *e.g.* Article instead of Section. Where no close equivalent exists, we have left the Dutch word untranslated in italics *e.g. procureur-generaal*, unless it was considered unnecessary in the context of the translation *e.g.* the term notary has been used for *notaris*, even though the position and functions of a notary differ from those of a notary public.

Difficulty has obviously sometimes been encountered in fully expressing the meaning of the Dutch terminology. For example, the term gezag has been translated as custody, since gezag is used as the overarching term for ouderlijk gezag (parental authority) and voogdij (guardianship). Reference to parental responsibility has thus not been made. The ambtenaar van de burgerlijk stand has been translated as the Registrar of Births, Deaths, Marriages and Registered Partnerships. The concept of civil status being absent in the common law countries, reference has been made to the equivalent system of registration. However, complete adherence to such a term would provide confusion in other areas of the translation, and thus the term "registered partnerships" has been included in the title of the Registry and the occupation of the Registrar. When confusion is possible, a footnote has been used to explain the difference between the two systems e.g. degree and graad. Sometimes the Dutch terminology used is legally imprecise, thus resulting in an equally imprecise English word or phrase being used e.g. life-companion for levensgezel; outlook on life for levensovertuiging.

Problems have also been encountered in basic questions such as the title. We have opted for reference to the Dutch Civil Code instead of the Civil Code of the Netherlands and entitled all statutes in the field of private

international law in a similar manner as the most recent English statute in this field: Private International Law (Miscellaneous Provisions) Act 1995. Since the majority of the private international law legislation refers to recognition and enforcement of judgments as well as conflict of laws, reference to the term private international law was preferable. Whenever the masculine gender has been used, this has been extended to include the feminine gender when the legislator clearly did not intend a distinction to be made. In a similar vein we have also chosen to translate *Koning* as Sovereign (not as King) to indicate the gender-neutral status of the monarch.

Where the enactment of Bills is expected shortly after publication of this Book, the text of the articles to be amended is printed in italics after the relevant Articles. Where reference is made in Book 1 to other Books of the Dutch Civil Code or to the Dutch Code of Civil Procedure, a translation of the pertinent Aricles is included in Part II, which also contains a translation of other significant legislation to which reference is made in Book 1. A translation of the Dutch Penal Code can be found in "The Dutch Penal Code of March 3, 1881" translated by L. Rayar and S. Wadsworth (1997, Fred B.Rothman). A translation of Books 3, 5, and 6, Dutch Civil Code can be found in "Netherlands Business Legislation" translated by P. Haanappel, E. Mackaay, H. Warendorf and R. Thomas (loose-leaf, Kluwer Law International).

Such a work can obviously not be undertaken without the help of others. The translators are indebted to Professor K. Boele-Woelki for her collaboration in this endeavour and the eventual publication in the EFL Series. We would also like to express our gratitude to Professor J. de Boer, Professor S. van Erp, Professor C. Forder and Mr. P.J. Kell. Although every effort has been made to ensure that this translation correctly reflects the law in force, mistakes are inevitable. Please address suggestions, corrections and comments to: I.Sumner@law.uu.nl or warendorf@leidsegr.xs4all.nl. We have sought to take account of developments in the law up to 1st October 2003.

Ian Sumner Hans Warendorf

Vi Intersentia

AN IDEAL TEAM OF TRANSLATORS

It is with great pleasure that I have been asked to write this preface for the English translation of Dutch family law legislation by Ian Sumner and Hans Warendorf. As they have written in their introduction, the "path of a translator is a precarious one". However precarious it may be, Sumner and Warendorf have proven with this translation that if the work is executed with care and precision, the result will be an excellent and accessible translation that clearly conveys the meaning of the original Dutch text.

This translation is the result of co-operation between a native English speaker who is currently undertaking comparative family law research in the Netherlands and also speaks Dutch (Ian Sumner) and a native Dutch speaker who is an experienced practising lawyer and has enormous expertise in translating Dutch legal texts into English (Hans Warendorf). In other words: Sumner and Warendorf are an ideal team of translators! They are both members of the so-called Pinyin Commission, which, under the auspices of the Netherlands Comparative Law Association, translates Dutch legal terms into English, French, German, Russian and Spanish. The Commission consists of both academic comparative lawyers as well as professional translators. The aim of the Commission's work is to offer wellbalanced translations to all those who translate or explain Dutch legal texts to a non-Dutch audience. In this way the Commission aims to promote uniform translations to avoid possible misunderstandings that may result from divergent translations. The results of the Pinyin Commission's work have been published in Nederlandse Rechtsbegrippen Vertaald (1998, 2nd Edition, The Hague, T.M.C. Asser Institute). A forthcoming third edition will include English, French and German translations of terminology in the area of family law and the law of succession. The Russian and Spanish translations will be added in the fourth edition, which is due to be published shortly after the third edition.

A translation of Dutch legal texts into one of the major languages in Europe contributes to the further development of a European legal discourse that not only examines the law of the larger European jurisdictions, but also the law of the smaller ones. The existence of linguistic diversity in Europe does not mean that a truly European legal discourse is impossible, as I have already argued in "Linguistic Diversity and a European Legal Discourse" (editorial), Electronic Journal of Comparative Law (EJCL), Vol. 7.3, September 2003:

Intersentia Vii

http://www.ejcl.org/73/editor73.html. In the area of family law this discourse has already led to the creation of a Commission on European Family Law, chaired by Professor K. Boele-Woelki. The work to be done by this Commission can only benefit from this translation of Dutch family law legislation.

Prof. dr. J.H.M. van Erp, President Netherlands Comparative Law Association Chair Pinyin Commission

viii Intersentia

DUTCH FAMILY LAW IS MORE ACCESSIBLE

The editors of the EFL series are pleased to publish the first integrated English translation of all Dutch statutory provisions in the field of family law. It is the first time in legal history that such a monumental project has been completed. It is my firm belief that this volume prepared by Ian Sumner and Hans Warendorf is of great value for both practitioners and legal scholars alike. Dutch scholars writing in English about Dutch family law and foreign scholars who are not able to read Dutch but who want to study and compare Dutch family law with their own family law provisions can from now on make use of an English translation which - due to the translators' experience and knowledge of both the Dutch and English legal system - is completely reliable. Although it is generally acknowledged that principally a comparative study should not only pay attention to the 'law in the books' but also to the 'law in action', a comparative endeavour will not be successful if the main materials, in the case of the Netherlands, the statutes, are not accessible to those who are unable to read the primary sources. This publication provides the necessary assistance. The same holds true for practitioners dealing with cross-border family relations and officials of Dutch consulates and embassies who are competent to act as Registrars of Births, Deaths, Marriages and Registered Partnerships. Making use of this translation can easily facilitate their task of providing information on Dutch family law in a foreign setting. In addition, the list of publications on Dutch family law in foreign languages will help one to obtain a better insight into Dutch family law. In this respect it is interesting to note that Dutch family law is considered to be both trend-setting and, at the same time, somewhat straggling behind. This proposition seems to be ambiguous. However, to put it succinctly, Dutch family law is unique in two ways. On the one hand, the Netherlands was the first country in the world where two partners of the same sex can enter into a marriage and where they can adopt a child. On the other hand, the Netherlands is still the only country in the world where the universal community of property scheme is the applicable legal matrimonial property regime. In the near future, however, a more modern property relationship law will hopefully come into force. The Bill is included in this volume.

This volume is of enormous value for the work of the Commission on European Family Law whose main objectives are to launch a theoretical and practical exercise in relation to the harmonisation of family and succession law in Europe. It would be greatly appreciated if translations

Intersentia ix

Dutch family law is more accessible

of family and succession law statutes of other European jurisdictions in English but also in French or German could be added to the EFL series.

Due to the magnitude of the project the editors have decided not to include both the Dutch and the English versions in this book, but instead, to publish a printed version of the English text only with the Dutch text being available on the website of the Commission on European Family Law, see www2.law.uu.nl/priv/cefl.

Henceforth, Dutch family law will be substantially more accessible to and be better known by foreign lawyers. The credit for this important achievement must be completely attributed to both of these translators.

Prof. dr. Katharina Boele-Woelki Chair of the CEFL

TABLE OF CONTENTS

A WORD OF INTRODUCTION FROM THE TRANSLATORS \dots . v
AN IDEAL TEAM OF TRANSLATORS vii
DUTCH FAMILY LAW IS MORE ACCESSIBLE ix
PART I. BOOK 1, DUTCH CIVIL CODE FAMILY LAW AND THE LAW OF PERSONS
TITLE 1. GENERAL PROVISIONS
TITLE 2. THE RIGHT TO A NAME
TITLE 3. RESIDENCY
TITLE 4. REGISTRY OF BIRTHS, DEATHS, MARRIAGES AND REGISTERED PARTNERSHIPS
Section 1. The Registrar of Births, Deaths, Marriages and Registered Partnerships
Section 2. The Registers of the Registry of Births, Deaths, Marriages and Registered Partnerships and the Keeping thereof . 12
Section 3. Instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships and Parties to these Instruments 13
Section 4. Birth and Death Certificates
Section 5. Subsequent Records
Section 6. Instruments of Registration of Specific Judicial Decisions
Section 7. The Evidential Force of Instruments of the Register of Births, Deaths, Marriages and Registered Partnerships and Copies and Extracts therefrom
Section 8. Public Accessibility to Instruments of the Register of Births, Deaths, Marriages and Registered Partnerships

Intersentia Xi

	Section 9. Additions to the Registers of the Registry of Births, Deaths, Marriages and Registered Partnerships and the Correction of Instruments to be found therein and of subsequent Records	25
	Section 10. Registration of Foreign Certificates and a Judicial Order to draw up a Substitute Birth Certificate	26
	Section 11. A Declaratory Statement as to the Law in respect of the Legal Validity in the Netherlands of a Foreign Instrument or Decision	30
	Section 12. Remedy against Refusal to draw up an Instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships or to perform any other Act	31
	Section 13. The Judicial Order to Change the Mention of the Sex on the Birth Certificate	32
	Section 14. The Advisory Commission on Matters relating to Legitimate Legal Status and Nationality	34
ГΙ	TLE 5. MARRIAGE	36
	General Provision	36
	Section 1. Requirements for Entry into Marriage	36
	Section 2. Formalities which must precede the Solemnisation of a Marriage	38
	Section 3. Enunciation of Impediments to a Marriage	42
	Section 4. Solemnisation of the Marriage	44
	Section 5. Annulment of a Marriage	46
	Section 5a. Conversion of a Marriage into a Registered Partnership	49
	Section 6. Proof of Existence of the Marriage	49
ГΙ	TLE 5A. REGISTERED PARTNERSHIPS	51

Xii Intersentia

TITLE 6. RIGHTS AND DUTIES OF THE SPOUSES 55
TITLE 7. THE STATUTORY COMMUNITY OF PROPERTY 60
Section 1. General Provisions
Section 2. The Administration of the Community of Property 63
Section 3. Dissolution of the Community of Property 64
Section 4. Dissolution of the Community of Property by Court Order
TITLE 8. MARRIAGE CONTRACTS
Section 1. Marriage Contracts in General
Section 2 75 §1. General Rules for Netting Covenants 75 §2. Periodical Netting Covenants 78 §3. Final Netting Covenants 78
TITLE 9. DISSOLUTION OF A MARRIAGE 80
Section 1. Dissolution of a Marriage in General
Section 2. Divorce
TITLE 10. JUDICIAL SEPARATION AND DISSOLUTION OF THE MARRIAGE AFTER A JUDICIAL SEPARATION
Section 1. Judicial Separation
Section 2. Dissolution of the Marriage after Judicial Separation 87
TITLE 11. PARENTAGE
Section 1. General 89
Section 2. Denial of Paternity by Reason of Marriage 90
Section 3. Recognition

Intersentia XIII

Table of contents

	Section 2	4. Judicial Determination of Paternity	. 93
	Section 2	5. Claim or Contestation of Legitimate Legal Status	. 94
	Section 6	6. The Guardian Ad Hoc	. 95
Γľ	TLE 12.	ADOPTION	. 96
Γľ	TLE 13.	MINORITY	. 99
	Section	1. General Provisions	. 99
	Section 2	2. The Grant of Limited Legal Capacity	. 99
	Section 3	3. Child Care and Protection Board	100
	Section 2	4. Registers in respect of Custody exercised over Minors	103
Γľ	TLE 14.	CUSTODY OVER MINOR CHILDREN	104
	Section	1. General	104
		2. Parental Authority	105
	§1a. §2.	Separation	105 107
	§2a. §3.	Separation	107 110 111
	of Paren	3. Common Provisions with regard to the Exercise ntal Authority by the Parents and the	110
	Conduc	ct of Parental Authority by either one of them	112
		3A. Joint Parental Authority of a Parent together with n other than a Parent	115
	§1.	Joint Parental Authority of a Parent together with a Person other than a Parent by Operation of Law	115

xiv Intersentia

§2.	Person other than a Parent pursuant to a Judicial Decision	۲.
§3.	Common Provisions in respect of Joint Parental Authority of a Parent together with a Person other than)
	a Parent	7
Section	4. Care and Supervision Orders for Minors	8
	5. Consensual and Non-Consensual Discharge of	1
Parent	al Authority	Ŧ
Section	6. Guardianship	
§1.	Guardianship in General	
§2.	Guardianship delegated by one of the Parents 13	
§3.	Appointment of a Guardian by the Court	
§4.	Guardianship of Legal Persons	
§5.	Discharge of Guardianship	
§6. §7.	Incapacity to act as Guardian	U
87.	Guardianship	6
§8.	Non-Consensual Divestment of Guardianship	
§9.	Supervision by the Guardian of the Person of the Minor 140	
§10.	The Administration by the Guardian	
§11.	Accounting for the Administration at the End of	
	the Guardianship	0
TITLE 15	RIGHT TO CONTACT AND INFORMATION 155	2
TITLE 16	APPOINTMENT OF A CURATOR	5
TITLE 17	MAINTENANCE	0
Section	1. General Provisions 160	0
Section	2. Provision for the Cost of Care and Upbringing of	
	Children and Stepchildren 16-	4
	ABSENCE, MISSING PERSONS AND THE	_
DETEKM.	INATION OF DEATH IN SPECIFIC INSTANCES 167	1
Section	1. Administration in the Case of Absence	7

Intersentia XV

Table of contents

Section 2. Persons whose Existence is Uncertain	168
Section 3. Determination of Death in Specific Instances	173
TITLE 19. ADMINISTRATION FOR THE PROTECTION OF ADULTS	175
TITLE 20. JUDICIAL PROTECTION ON BEHALF OF ADULTS	183
PART II. PRINCIPAL LEGISLATION REFERRED TO IN BOOK 1 DUTCH CIVIL CODE AND TRANSITIONAL STATUTORY PROVISIONS	
REFERENCES TO THE DUTCH CODE OF CIVIL PROCEDURE MADE IN BOOK 1, DUTCH CIVIL CODE	191
TRANSITIONAL PROVISIONS	205
PART III. PRIVATE INTERNATIONAL LAW LEGISLATION	213
PRIVATE INTERNATIONAL LAW (NAMES) ACT	215
PRIVATE INTERNATIONAL LAW (NAMES) AMENDMENT ACT	219
PRIVATE INTERNATIONAL LAW (MARRIAGES) ACT	220
PRIVATE INTERNATIONAL LAW (MARRIAGES) AMENDMENT ACT	223
PRIVATE INTERNATIONAL LAW (LEGAL MARITAL RELATIONSHIPS) ACT	224
PRIVATE INTERNATIONAL LAW (MATRIMONIAL PROPERTY REGIME) ACT	226
ACT OF THE REALM OF 20 TH NOVEMBER 1999, RATIFICATION OF THE CONVENTION IN THE HAGUE OF 14 TH MARCH 1978 WITH REGARD TO THE LAW	0.5.1
APPLICABLE TO THE MATRIMONIAL PROPERTY REGIME	229

xvi Intersentia

Table of contents

PART IV. A SELECTION OF ENGLISH, FRENCH AND GER- MAN LANGUAGE ARTICLES IN THE FIELD OF DUTCH FAMILY LAW	53
PRIVATE INTERNATIONAL LAW (REGISTERED PARTNERSHIPS) BILL	14
PRIVATE INTERNATIONAL LAW (ADOPTION) ACT	10
PRIVATE INTERNATIONAL LAW (PARENTAGE) ACT 23	34
PRIVATE INTERNATIONAL LAW (DISSOLUTION OF MARRIAGES AND JUDICIAL SEPARATIONS) ACT	32
EQUALISATION) ACT (SELECTED)	31

Intersentia Xvii

PART I.

BOOK 1, DUTCH CIVIL CODE FAMILY LAW AND THE LAW OF PERSONS

TITLE 1 GENERAL PROVISIONS

Article 1

- 1. All those present in the Netherlands have the freedom and the capacity to enjoy civil rights.
- **2.** Personal servitudes, of whatever nature and however named, are not tolerated.

Article 2

A child with which a woman is pregnant is considered to be already born whenever his or her interest so requires. If the child is stillborn, he or she is deemed never to have existed.

Article 3

- 1. The degree of consanguinity is determined by the number of births which the consanguinity has caused. A recognition, a judicial determination of paternity or an adoption is counted as a birth for this purpose.
- **2.** A marriage or registered partnership establishes affinity between one spouse or registered partner and a blood relative of the other spouse or registered partner to the same degree as the consanguinity that exists between the other spouse or other registered partner and the latter's blood relative.
- **3.** Affinity is not extinguished by the dissolution of the marriage.

TITLE 2 THE RIGHT TO A NAME

Article 4

- 1. Any person shall have the forenames given to him or her on his or her birth certificate.
- **2.** The Registrar of Births, Deaths, Marriages and Registered Partnerships shall refuse to include any forenames in the birth certificate which are inappropriate or correspond to existing surnames unless these are also customary forenames.
- **3.** When the declarant does not state any forenames, or when these are all refused without substitution by the declarant, the registrar shall, *ex officio*, give the child one or more forenames which will be explicitly stated as being given *ex officio*.
- **4.** A change of forenames may be ordered by the district court on the application of the person involved or by his or her statutory representative. The change is effected by the addition of a subsequent amendment, in the court order, to the birth certificate in accordance with Article 20a(1). In the case of a change of forenames of a person born outside the Netherlands, the court making the order shall, where necessary *ex officio*, order either the registration of the birth certificate or of the instrument or decision referred to in Article 25g(1), or of the order referred to in Article 25c.

Article 5

- 1. Where legal familial ties have only been established between a child and its mother, the child takes her surname. Where, as a result of adoption, legal familial ties are established between a child and his or her father, the child takes his surname.
- **2.** Where legal familial ties between a child and his or her father are established by means of recognition, the child shall retain the surname of the mother, unless the mother and the person who recognises the child jointly declare, at the time of recognition, that the child will have the surname of his or her father. Such a declaration shall be noted in the instrument of recognition. The first two sentences shall apply *mutatis mutandis* to the recognition of an unborn child. Where legal familial ties between a child and his or her father are established by way of the judicial determination of paternity, the child shall retain the surname of the mother, unless both the mother and the man whose paternity is established jointly declare, at the time of the judicial determination, that the child will have the surname of the father. The judicial decision as regards the

determination of paternity shall mention the aforementioned declaration of the parents.

- 3. Where legal familial ties are established by means of adoption between a child and adoptive persons of different sex who are married to each other, the child shall take the surname of the father unless both adoptive persons jointly declare, at the time of the adoption, that the child will take the surname of the mother. Where the adoptive persons are unmarried or where they are married and of the same sex, the child shall retain the surname which he or she has, unless both adoptive persons jointly declare, at the time of the adoption, that the child will take one or both of their surnames. Where legal familial ties between a child and a spouse, registered partner or other life-companion¹ of a parent are established by means of adoption, the child will retain his or her surname unless the parent and his or her spouse, registered partner or other life-companion jointly declare that the child will take the surname of the spouse, registered partner or other life-companion, or the surname of that parent. A judicial decision concerning the adoption shall mention the aforementioned declaration of the adoptive persons.
- **4.** Where legal familial ties are established by birth between a child and both his or her parents, the parents shall jointly declare, prior to or at the time of the notification of his or her birth, which of their surnames the child will take. An instrument choosing a surname shall consist of the parents' declarations made prior to the notification of birth. The birth certificate shall mention the declaration made by the parents at the registration of birth. A declaration not made at the registration of birth may be made before any Registrar of Births, Deaths, Marriages and Registered Partnerships.
- **5.** If no choice of surname is made in the cases referred to in paragraph (4) on or before the registration of birth at the very latest, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall record the surname of the child as that of the father on the birth certificate. Where an instrument choosing a surname is made before or at the time of registration of birth, the child will be deemed to have this elected name from birth.
- **6.** Where a mother, after a child's birth, denies the paternity of her deceased spouse pursuant to Article 199(b), and was remarried at the time of birth and at the time of denial, the mother and her new spouse may jointly declare, at the time of denial, which of their surnames the child is to take. An instrument choosing the child's surname shall be drawn up indicating the declaration of the parents. If no declaration has been made the child shall take the surname of the father.

The Dutch term levensgezel has been translated as life-companion. The term should be broadly construed. The term partner has been avoided to avoid confusion with a registered partner.

- 7. A child aged sixteen or older at the time when legal familial ties with both parents are established, shall personally state before the Registrar of Births, Deaths, Marriages and Registered Partnerships or a notary or, in the case of adoption or judicial determination of paternity before the court, which parent's surname his or she will take. This declaration shall be noted in the instrument of recognition or in the judicial decision of adoption or the judicial determination of paternity.
- **8.** A declaration of the parents referred to in paragraphs (2), (3), (4) or (6) may only be made with regard to the surname of the first child where legal familial ties are established with both parents. Without prejudice to paragraph (7), any subsequent children of the same parents will have the same surname as the first child. Where, prior to the birth or at the notification of birth, a choice of surname is made with regard to a child that is or has been stillborn, this election shall be noted in the instrument referred to in Article 19i(1), in which case it shall only apply with regard to that child.
- **9.** Where one of the parents has died prior to the time within which an election of name must be made and no such election of name was made, the other parent shall make a declaration with regard to the election of the name. The same shall apply when a curator is appointed for one of the parents on account of a mental disorder or in the case of a judicial protection order over him or her.
- **10.** If the father or mother of a child is unknown, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall record a provisional forename and surname on the birth certificate in anticipation of a Royal Decree which shall specify the forenames and surname of the child.
- 11. Where, by virtue of paragraphs (2) to (9), inclusive, a child whose father is of noble birth does not acquire his surname, nobility shall not vest in that child.
- **12.** The surname of children born of the marriage of a member of the Royal Family shall be specified by Royal Decree.

Article 6

A birth certificate shall in all cases constitute irrefutable proof of the surname.

Article 7

- 1. A person's surname may be changed, on his or her application or on that of his or her legal representative, by the Sovereign.
- **2.** He or she whose surname or forenames are not known, may apply to the Sovereign to specify a surname or forenames for him or for her.

- **3.** A change or specification of the surname by the Sovereign will not affect the surname of the children of the person involved who attained the age of majority prior to the date of the decree or over whom such persons have no authority.
- **4.** A change or specification of the surname by the Sovereign will remain in effect notwithstanding any later recognition or judicial determination of paternity.
- **5.** The grounds for granting a change of surname, the manner in which applications as referred to in paragraphs (1) and (2) may be lodged and processed, and the fees payable for a change of surname shall be regulated by Regulation.
- **6.** Upon submission of a proposal for a Royal Decree whereby a request referred to in paragraph (1) or (2) is granted, the Minister of Justice shall so inform in writing the applicant and the person whose surname is requested and, where an application relates to the surname of a minor, the minor's parents and the person from whom the surname taken by the infant directly originates. A written notification of such intention shall be considered to be an Order.

Article 8

A person who uses another person's name without the latter's consent is deemed to have acted wrongfully towards such a person when, as a result, a semblance is created of his or her belonging to the family or of being a family member of such other person.

Article 9

- 1. A woman who is or was married or whose partnership is or was registered and who neither married after termination of the registration nor remarried or entered into a registered partnership after termination of the marriage or entered into this same marriage or registered partnership anew, always has the right to continue to use the surname of her spouse or registered partner in conjunction with her own surname, either before or after her own surname.
- 2. Where a marriage is dissolved by means of divorce without there being any living descendants therefrom or where the registered partnership is terminated in the manner referred to in Article 80c(c) or (d), the district court may, where there are well-founded reasons for so doing, divest the wife of her right pursuant to paragraph (1) on the application of the spouse or former registered partner.
- **3.** Paragraphs (1) and (2) shall apply *mutatis mutandis* as regards a man who is or was married or whose registered partnership is or was registered and who neither married after termination of the registration nor

Part I Book 1, Dutch Civil Code – Family Law and the Law of Persons

remarried or entered into a registered partnership after termination of the marriage or entered into this marriage or registered partnership anew.

TITLE 3 RESIDENCY

Article 10

- 1. Natural persons have their residency in the place where they live and, in the absence of such a place, in the place of their actual abode.
- **2.** A legal person has its residence where it has its seat or registered office according to statutory provisions or according to its Articles or by-laws.

Article 11

- 1. Natural persons loose their residency in the place where they live as a result of any acts by which it appears they wish to relinquish their residency.
- **2.** Natural persons are deemed to have changed the place where they live when they have so notified the appropriate municipal authorities in the manner prescribed for by law.

Article 12

- 1. The residency of a minor follows that of the person who exercises custody over him or her. The residency of a person over whom a curator is appointed follows that of the curator. Where both parties jointly exercise custody over their minor child, but do not have the same residency, the child's residency follows that of the parent with whom he or she has his or her actual abode or has stayed most recently.
- **2.** When a person's property is under administration, residency follows the administrator for whatever matters relate to the conduct of such administration.
- **3.** Where a judicial protection order is instituted on behalf of a person, residency follows the person vested with custody to exercise the protection order for whatever matters relate to the exercise of such an order.
- **4.** When a person from whose residency is derived dies or looses his or her custody or capacity, the derived residency shall continue to apply until a new residency is obtained.

Article 13

The last address of a deceased is that where he or she had his last residency.

Part I Book 1, Dutch Civil Code – Family Law and the Law of Persons

Article 14

A person who keeps an office or branch also has his or her residency there for matters relating to such an office or branch.

Article 15

A person may only elect a residency different from his or her actual residency when so obliged by law or when making an election by written agreement for one or more specific legal transactions or legal relations when there is a reasonable interest in having an elected residency.

TITLE 4 REGISTRY OF BIRTHS, DEATHS, MARRIAGES AND REGISTERED PARTNERSHIPS

Section 1 The Registrar of Births, Deaths, Marriages and Registered Partnerships

Article 16

- 1. In every municipality there shall be two Registrars of Births, Deaths, Marriages and Registered Partnerships, or more than two where the Burgomaster and aldermen so approve. Specific duties may, in addition, be delegated to one or more registrars at the Registry with the title of Extraordinary Registrar of Births, Deaths, Marriages and Registered Partnerships.
- **2.** The registrars referred to in paragraph 1 shall be appointed, suspended or dismissed by the Burgomaster and aldermen. An appointment may be made for a specific period.
- **3.** Only a civil servant employed by that municipality or another municipality may be appointed as Registrar of Births, Deaths, Marriages and Registered Partnerships of a municipality. A person who is not a civil servant employed by the municipality may be appointed as an extraordinary registrar.
- **4.** The registrar or extra-ordinary registrar is only permitted to enter into office after first having taken or made the following oath or affirmation before the district court within whose jurisdiction the municipality where he or she is first appointed is located:
 - 'I vow (affirm) to act in office as Registrar of Births, Deaths, Marriages and Registered Partnerships with honesty and punctuality and to act in accordance with the law regarding the registry with the utmost punctuality and, furthermore, not to have made any gift or promise to anyone, directly or indirectly, in order to be so appointed, and not to accept, in future, any promise or gift, directly or indirectly, from any person to do or to refrain from doing anything in this position. So help me Almighty God.' ('This I declare and affirm').

Article 16a

1. The Registrar of Births, Deaths, Marriages and Registered Partnerships is charged with the recording in the registers of the Registry within his or her keeping of all subsequent instruments and records to be added thereto

and to do whatever is required to preserve the registers and to ensure accessibility to the information on file therein.

2. The Extra-ordinary Registrar of Births, Deaths, Marriages and Registered Partnerships may only be delegated the duties described in Articles 45, 45a, 63, 64, 65, 67, 77a, 80a(5) and 80f.

Article 16b

When Registrars of Births, Deaths, Marriages and Registered Partnerships act in accordance with the law during the course of their office pursuant to any provision of this or any other Title in this Book, they may do so without an advocate or member of the local Bar.

Article 16c

The Burgomaster and aldermen shall specify the hours at which each Registry of Births, Deaths, Marriages and Registered Partnerships shall be open to the public each day. When so doing, in order to limit the work of civil servants of the Registry on Saturdays, Sundays, Bank Holidays and other specified days, the Burgomaster and aldermen shall make separate provision for those days on which no or only partial municipal services will be open.

Article 16d

Provisions which the municipal administration must make for the carrying out of duties by the Registrar of Births, Deaths, Marriages and Registered Partnerships and, furthermore, as to whatever shall further fall within the remit of the Registrar shall be regulated by Regulation.

Section 2

The Registers of the Registry of Births, Deaths, Marriages and Registered Partnerships and the Keeping thereof

Article 17

- 1. Every municipality shall have Registers of Births, Deaths, Marriages and Registered Partnerships.
- **2.** Aside from the Registers mentioned in paragraph (1), there shall be a register in the municipality of The Hague for the registration of judicial decisions referred to in Section 6.

Article 17a

- 1. The registers of the Registry of Births, Deaths, Marriages and Registered Partnerships shall be kept in the town hall until their transfer to municipal archives repositories within the meaning of the *Archiefwet 1995* (Archives Act 1995) (*Staatsblad (Bulletin of Acts and Decrees*) 276).
- 2. The transfer of the Registers of Births kept at the town hall to municipal archives repositories should only be made one hundred years after the closing of the Register. The transfer of the Registers of Marriages and Registered Partnerships kept at the town hall to municipal archives repositories should only be made seventy-five years after the closing of the Register. The transfer of the Registers of Deaths kept at the town hall to municipal archives repositories should only be made fifty years after the closing of the Register.

Article 17b

The administrator of municipal archives repositories referred to in Article 17a shall be charged with keeping the registers in his or her safe-keeping and any additions of subsequent records to the instruments recorded therein, and with the issue of certified copies and extracts from these instruments.

Article 17c

Whatever further relates to the layout of the Registers and the acts mentioned in Article 17b with regard to those registers shall be regulated by Regulation.

Section 3 Instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships and Parties to these Instruments

Article 18

- 1. The Registrar of Births, Deaths, Marriages and Registered Partnerships may only mention in the instruments what must be declared or mentioned pursuant to the provisions made by or pursuant to the law.
- 2. Before proceeding to draw up an instrument, the Registrar of Births, Deaths, Marriages and Registered Partnerships may require that the documents required by law be presented to him or her. He or she shall procure that other documents are also presented to him or her which he or she regards as necessary for drawing up the instrument or for determining the information to be included in the instrument. For this purpose

and without any fees to be due on account thereof he or she may procure information from the registers of the Registry of Births, Deaths, Marriages or Registered Partnerships and from other public registers.

3. Whatever relates to the drawing up of the instruments shall be regulated by Regulation.

Article 18a

- 1. Parties to an instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships are the persons who make a notification to the Registrar of Births, Deaths, Marriages or Registered Partnerships or make a declaration before him or her as regards a fact for which the instrument will serve as proof.
- **2.** Interested parties are parties who with their declaration cause any legal effect for themselves or for co-parties.
- **3.** Interested parties may have themselves represented by a person so authorised by an authentic instrument.
- **4.** When an authorised person makes a declaration, both he or she and the person represented by him or her shall be considered parties to the instrument.
- **5.** The Registrar of Births, Deaths, Marriages and Registered Partnerships may not execute an instrument in which he himself or she herself appears as a party or interested party.

Article 18b

- 1. When a party to an instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships or an interested party fails to submit the documents referred to in Article 18(2) or when the Registrar of Births, Deaths, Marriages and Registered Partnerships considers the submitted documents inadequate, the latter shall refuse to proceed to draw up the instrument.
- **2.** The Registrar of Births, Deaths, Marriages or Registered Partnerships shall also refuse to proceed with the drawing up of the instrument, when he or she is of the opinion that this would be contrary to Dutch public policy.
- **3.** The Registrar of Births, Deaths, Marriages or Registered Partnerships shall send the parties to the instrument and the interested parties a reasoned written statement of a refusal referred to in paragraph (1) or (2), mentioning the available remedy of Section 12 of this Title against such refusal. He or she shall send a copy of this statement to the chief of the local police.

Article 18c

- 1. A duly certified copy or true copy shall be kept of all instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships recorded in the registers according to rules laid down by Regulation.
- 2. Whatever relates to the safekeeping of the certified duplicates or true copies and of any later records made with regard thereto shall be regulated by Regulation.
- **3.** When instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships have gone astray or have been damaged, a copy of the certified duplicate instruments shall be made by one or more Central Repositories to be designated by the Minister of Justice to replace such instruments and where the certified duplicates will be kept. The copies take the place of the instruments that have gone astray or have been damaged.
- **4.** A list shall be drawn up of any instruments that are replaced, which shall be published in the Government Gazette.
- **5.** The costs of replacing instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships shall be borne by State, except where it relates to replacement of instruments kept by a municipality, in which case the cost of replacement shall be at the expense of the municipality.
- **6.** The Minister of Justice may set further rules in respect of the manner in which replacement of the instruments must be implemented.

Section 4 Birth and Death Certificates

Article 19

- 1. A birth certificate shall be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality where a child is born.
- **2.** If the place of birth of the child is unknown, the certificate shall be drawn up by the Registrar of Births, Deaths, Marriages or Registered Partnerships of the municipality where the child was found. That municipality shall be considered to be the municipality where the child was born.

Article 19a

1. In the case of birth on Dutch territory in a driven vehicle or on a sailing vessel or during a domestic journey by air in an airplane, the birth certificate shall be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality where such child leaves the vehicle, vessel or airplane, or where the vessel seeks its berth. That

municipality shall also be considered to be the municipality where the child was born.

2. In the case of birth during a voyage at sea with a vessel registered in the Netherlands or during an international voyage by air with an airplane registered in the Netherlands, the captain of the vessel or airplane must, within twenty-four hours, record in the vessel's journal a provisional birth certificate in the presence of two witnesses and, where possible, in the presence of the father. The captain shall send a true copy of that certificate as soon as possible to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague, who shall draw up a birth certificate on the basis of the copy received, provided that, where possible, he or she shall supplement any missing or correct any incorrect information. An extract from the certificate shall be sent to the persons to whom such a certificate relates.

Article 19b

Where the place or date of birth of the child is unknown or the surname, including the forenames, of the mother is unknown, the birth certificate with regard to these matters shall be drawn up pursuant to instructions and in accordance with the directions of the Public Prosecution Service.

Article 19c

Where, pursuant to Article 5(9) of this Book, a provisional forename and surname are noted on the birth certificate, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall without delay send a true and complete copy of the birth certificate to the Minister of Justice.

Article 19d

- 1. Where there is doubt as regards the sex of the child, a birth certificate shall be drawn up stating that the sex of the child could not be established.
- 2. Within three months of the birth or, in the case of death, within such period at a declaration of death, a new birth certificate stating the sex of the child, shall be drawn up and the instrument referred to in paragraph (1) shall be cancelled, if this has meanwhile been established, in accordance with a medical certificate lodged in respect thereof.
- **3.** If no medical certificate is lodged within the period mentioned in paragraph (2) or where it appears from the lodged medical certificate that its sex could not be established, a new birth certificate shall state that the sex of the child could not be established.

Article 19e

- 1. A mother of a child shall have capacity to make a declaration of a birth.
- **2.** The father has the duty of declaration.
- **3.** Where there is no father or where he is prevented from making the declaration, this duty shall be incumbent upon:
- (a) any person present at the birth of the child;
- (b) the inhabitant of the house where the birth took place or, where this took place in a nursing or care institution, in a prison or similar institution, the head of such an institution or a subordinate who the head has especially designated by private instrument to make such a declaration.
- **4.** A person mentioned in paragraph (3) (b) shall have such duty only in the absence or in the case of prevention of a person mentioned in subparagraph a.
- **5.** In the absence of, or in the case of omission by, the persons authorised or obligated to make a declaration, it shall be made by or on the part of the Burgomaster of the municipality where the birth certificate must be drawn up.
- **6.** An obligation to make a declaration must be complied with within three days of the date of childbirth. Where no declaration is made within the three day period referred to in the preceding sentence of this paragraph, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall report this to the Public Prosecution Service.
- **7.** The Registrar shall establish the identity of the declarant on the basis of the document referred to in Article 1 of the *Wet op de identificatieplicht* (Identification Act).
- **8.** When the declaration is made the Registrar of Births, Deaths, Marriages or Registered Partnerships may require the lodging of a certificate of a physician or obstetrician who was present at the child's birth to the effect that the child was born to the person stated as its mother. Where the child was born without the presence of a physician or obstetrician, the Registrar of Births, Deaths, Marriages or Registered Partnerships may require that a certificate made thereafter by an assistant be lodged.
- **9.** Where a request of the Registrar of Births, Deaths, Marriages or Registered Partnerships for the lodging of a certificate referred to in paragraph (8) is not complied with or if the certificate mentions the identity of the mother as being unknown, Article 19b shall apply.

Article 19f

1. A death certificate shall be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality where the death took place.

- **2.** If a corpse is found and the place or date of death cannot be established with sufficient precision, the death certificate shall be drawn up by the Registrar of the municipality where the corpse was found or brought to land.
- **3.** Irrespective of the provisions of paragraph (1), paragraph (2) shall apply *mutatis mutandis* where the death took place on an installation stationed at sea and the corpse is brought to land in the Netherlands.

Article 19g

- 1. In the case of death on Dutch territory in a driven vehicle or in a sailing vessel or during a domestic voyage by air with an airplane, the death certificate shall be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality where the corpse leaves the vehicle, vessel or airplane, or where the vessel seeks its berth. That municipality shall be considered the municipality where the death took place.
- 2. In the case of death during a voyage at sea with a vessel registered in the Netherlands or during an international voyage by air with an airplane registered in the Netherlands, the captain of the vessel or airplane must provisionally record a certificate in respect of the death in the vessel's journal, within twenty-four hours and in the presence of two witnesses. The captain shall send a true copy of such certificate to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague as soon as possible, who shall draw up the death certificate on the basis of the copy received, provided that, where possible, he or she shall supplement any missing or correct any incorrect information. An extract from the certificate shall be sent to the persons to whom such a certificate relates.

Article 19h

- 1. Any person who from his or her own knowledge has notice of a death has the right to make a declaration of death.
- **2.** Within the term for burial or cremation specified by the *Wet op de lijkbezorging* (Corpse Disposal Act) (*Staatsblad (Bulletin of Acts and Decrees*) 1991, No. 130), the person providing for the disposal of the corpse may be authorised by the person referred to in paragraph (1) to make the declaration.
- **3.** In the absence of, or omission by, persons with the right to make a declaration within the term for burial or cremation specified in the *Wet op de lijkbezorging*, this declaration shall be made by or on the part of the Burgomaster of the municipality where the death certificate must be drawn up.

4. In the instances referred to in Article 19f(2) and (3), the declaration shall be made in writing by the assistant public prosecutor.

Article 19i

- 1. When a child is stillborn, a death certificate shall be drawn up which is recorded in the Register of Deaths.
- 2. When a child dies during the term specified in Article 19e(6) before a declaration of birth is made, both a birth certificate and a death certificate shall be drawn up.
- **3.** In the instances referred to in the preceding paragraphs, Article 19h shall apply *mutatis mutandis* in respect of the declaration. In the instance referred to in paragraph (2), Article 19e shall remain inapplicable.

Article 19j

- 1. Everything that relates to the documents to be lodged with the Registrar of Births, Deaths, Marriages and Registered Partnerships and the drawing up of the certificates and, respectively, the provisional birth certificates and death certificates, and their content shall be regulated by Regulation.
- **2.** Regulations shall regulate the situation:
 - (a) if the manner in which and the place where the birth and death certificates should be drawn up and recorded cannot take place in the usual manner due to a traffic prohibition or other extraordinary circumstances; or
 - (b) the manner in which and the place where death certificates shall be drawn up with respect to members of the military and other persons belonging to the armed forces who have died in the field, in battle or in the service of the Kingdom outside the Netherlands.

Section 5 Subsequent Records

Article 20

1. The Registrar of Births, Deaths, Marriages and Registered Partnerships shall make a supplemental record to the instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships in his or her keeping of any subsequent instruments of the Registry and other authentic instruments concerning the choice of names; recognition; denial of paternity by the mother; decisions on a change or establishment of names; naturalisation decrees which include a change or establishment of names; a declaration of differing names possessed and used by a person with more than one nationality in accordance with the law of the country whose

nationality he or she also possesses; instruments for the termination of a registered partnership; instruments for the conversion of a registered partnership into a marriage or *vice versa*; and judicial decisions dated two or more months earlier and which include:

- (a) an order for a change of forenames or surname; an order for a change of the recorded sex; an adoption or revocation of an adoption; the setting aside of a recognition; a judicial determination of paternity; a judicial declaration upholding denial of paternity or a nullification of such a decision;
- (b) the annulment of a marriage or registered partnership or the nullification of such a decision between the spouses or registered partners whose marriage certificate or, respectively, registered partnership certificate is recorded in the Dutch registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.
- 2. The Registrar of Births, Deaths, Marriages and Registered Partnerships shall also make a supplemental record to the instrument of the Registry in his or her keeping of any subsequent judicial decisions which have become final and binding whereby a divorce is decreed or a decree for the dissolution of a registered partnership, a dissolution of a marriage after a legal separation or a nullification of such a decision between spouses whose marriage certificate is recorded in the Dutch registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.

Article 20a

- 1. Any subsequent supplemental record referred to in Article 20, with the exception of records referred to in paragraph (1)(b), and any record of termination of a registered partnership or any record of the conversion of a registered partnership into a marriage or *vice versa*, shall be made to the birth certificate of the persons involved. A subsequent supplemental record of a change or determination of the surname shall also be made to the birth certificates of the children of the person involved insofar as such change or determination extends to them.
- 2. Any subsequent supplemental record referred to in Article 20(1)(b) and in Article 20(2) and the termination referred to in the heading of Article 20 of a registered partnership and the conversion referred to therein shall be made to the marriage certificate or to the instrument of registration of a partnership of the person involved.
- **3.** When, as a result of marriage or divorce, there is a change in a person's surname, a subsequent supplemental record shall be made to the marriage certificate, insofar as this is not mentioned in this certificate. A change of surname shall subsequently also be recorded to the birth certificate of the person involved and the birth certificates of his or her children insofar as their name will also be changed.

4. A subsequent supplemental record shall be made to the instrument of declaration of an instrument of enunciation of an impediment to a marriage or a registration of a partnership, when such instrument is served on the Registrar of Births, Deaths, Marriages and Registered Partnerships, and of court orders or instruments whereby such enunciation of an impediment is lifted.

Article 20b

- 1. Unless it would be contrary to Dutch public policy, a subsequent supplemental record in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships, shall be made, either at the request of an interested party or *ex officio* by the Registrar of Births, Deaths, Marriages and Registered Partnerships, of instruments drawn up and decisions taken outside the Netherlands in accordance with the local regulations by an authorised body whose effect corresponds to that of instruments and judicial decisions referred to in Article 20. At the request of an interested party a subsequent supplemental record shall also be made of any change on the birth certificate to the children's surname of the person involved insofar as their name will also change.
- **2.** When a subsequent supplemental record is made to the certificate *ex officio*, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall send a true copy of the instrument with such subsequent record to the person or persons to which the certificate relates.

Article 20c

Articles 18 and 18b shall apply mutatis mutandis.

Article 20d

Any matters regarding the documents to be lodged with the Registrar of Births, Deaths, Marriages and Registered Partnerships, the drawing up of any subsequent records and the contents thereof shall be regulated by Regulation.

Article 20e

- 1. The clerk of the judicial body before which the case was last pending shall send a certified copy of the decisions mentioned in Article 20(1) to the Registrar of Births, Deaths, Marriages and Registered Partnerships after the passing of two months since the date of the court order.
- **2.** The Minister of Justice shall without delay send a true copy of any decision for a change or specification of names and of naturalisation

decrees which also provide for a change or specification of names to the Registrar of Births, Deaths, Marriages and Registered Partnerships who has the birth certificate of the person involved in his or her keeping.

3. The notary who has drawn up an instrument of recognition shall without delay send a true copy or extract thereof to the Registrar of Births, Deaths, Marriages and Registered Partnerships who has the birth certificate of the child in his or her keeping.

Article 20f

- 1. The Registrar of Births, Deaths, Marriages and Registered Partnerships who records an instrument of the choice of name in a birth certificate of a child shall send a true copy of that instrument to the Registrar of Births, Deaths, Marriages and Registered Partnerships who has drawn up the instrument of the choice of name. That instrument shall be held in safekeeping until eighteen months have expired since the receipt of that copy.
- 2. A Registrar of Births, Deaths, Marriages and Registered Partnerships who makes a subsequent record of a choice of name, or recognition in a birth certificate of the child shall send a true copy of that instrument and of the subsequent record to the persons to whom the instrument relates. He or she shall send a true copy to the Registrar of Births, Deaths, Marriages and Registered Partnerships who has drawn up the instrument of choice of name or recognition. The latter instrument shall be held in safe-keeping until eighteen months have expired since the receipt of the latter copy or, where no such copy was received, until eighteen months have expired since the drawing up of the instrument.

Article 20g

The Registrar of Births, Deaths, Marriages and Registered Partnerships who has made a subsequent record to the birth certificate of a minor from which it appears that the minor was recognised or that the name of such a minor was changed, shall notify the keeper of the public register, referred to in Article 244 of this Book, in which legal facts in respect of such a minor are recorded.

Article 20h

Repealed

Section 6 Instruments of Registration of Specific Judicial Decisions

Article 21

- 1. The Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague shall draw up instruments of registration of judicial decisions which have become final and binding regarding marriages or registered partnerships, in the case where the instruments were not recorded in the Dutch registers of births, deaths, marriages and registered partnerships and these instruments contain an annulment of a marriage or registered partnership; a divorce; the dissolution of a registered partnership; the dissolution of a marriage after a legal separation or the nullification of such a registered decision; or the termination of a registered partnership referred to in Article 80c(c) or the nullification thereof.
- **2.** The instruments referred to in paragraph (1) shall be recorded in the appropriate registers of the Registry of Births, Deaths, Marriages and Registered Partnerships in The Hague.
- **3.** Any matters regarding the documents to be lodged with the Registrar, the drawing up of the instruments of registration and their contents shall be regulated by Regulation.

Section 7

The Evidential Force of Instruments of the Register of Births, Deaths, Marriages and Registered Partnerships and Copies and Extracts therefrom

Article 22

- 1. A birth certificate shall constitute proof against any and all persons that a child of the sex mentioned therein was born to the mother mentioned therein, at the place and on the date and hour mentioned on the certificate. Where the certificate mentions that the place of birth of the child is unknown, the place where it was found shall have the same evidential force.
- 2. The death certificate shall constitute proof against all and any persons that the person mentioned therein has died at the place and on the date and hour mentioned on the certificate or, when the certificate was drawn up by virtue of Article 19f(2) of this Book, that the corpse of the person mentioned therein was found at the place and on the date and hour mentioned on the certificate.
- **3.** Certificates of the Registry of Births, Deaths, Marriages and Registered Partnerships shall further have the same evidential force as other authentic instruments.

Article 22a

Authentic copies or extracts drawn up in legal form and issued by the authorised keeper of the register shall have the same evidential force as the original unless it is proved that these do not correspond.

Section 8 Public Accessibility to Instruments of the Register of Births, Deaths, Marriages and Registered Partnerships

Article 23

The instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships, including certified duplicates of such instruments, are public insofar as no further provision is made in this Section in respect thereof.

Article 23a

Only the keepers and the public prosecution service may inspect the instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships. The court and Public Prosecution Service may further order that instruments be produced.

Article 23b

- 1. Any person has the right to require the Registrar charged with issuing true copies and extracts from instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships to issue an extract from a certificate of birth, marriage, registered partnership or death in the Registrar's keeping. The extract shall contain the information to be specified by Regulation, which shall not show the parentage of the person(s) to which the instrument relates.
- **2.** A true copy of the instruments referred to in paragraph (1) and of the instruments of recognition or of denial of paternity by the mother shall be issued only where the applicant is shown to have a justified interest in obtaining such a copy. A true copy of any other instruments in the keeping of the Registrar referred to in paragraph (1) shall always be issued. This true copy shall contain the information as regulated by Regulation.
- **3.** A request for the issue of an extract or true copy must relate to a specific person or persons.
- **4.** Whatever shall otherwise relate to the drawing up and provision of true copies and extracts shall be regulated by Regulation, which shall also contain rules for the drawing up of extracts from instruments drawn up prior to entry into force of this Book.

5. Where a Registrar referred to in paragraph (1) refuses to issue a true copy or extract, he or she shall give the applicant a reasoned written statement of the grounds for such refusal.

Article 23c

The certified duplicates of the instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships shall be public as long as these are in the keeping of the Registrar of Births, Deaths, Marriages and Registered Partnerships.

Section 9

Additions to the Registers of the Registry of Births, Deaths, Marriages and Registered Partnerships and the Correction of Instruments to be found therein and of subsequent Records

Article 24

- 1. On the application of any interested person or of the Public Prosecution Service the district court may order the addition of an instrument which is lacking in the register of the Registry of Births, Deaths, Marriages and Registered Partnerships or of a subsequent record or a cancellation of an instrument which erroneously appears therein or of a subsequent record, or a correction to an instrument appearing therein or in a subsequent instrument which is incomplete or contains a mistake. When ordering a correction of an instrument or of a subsequent record which is incorrect or contains a mistake, the district court may also order the same correction as regards an instrument or subsequent record in respect of the same person or his or her descendants which is recorded in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships outside its jurisdiction.
- 2. The clerk of the judicial body before which the case was last pending shall send a true copy of the court order to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality in whose registers the instrument or a subsequent record is or should have been recorded no sooner than two months since the date of the decision. Where such municipality no longer exists, he or she shall send the true copy to the Registrar in whose record office the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships of the municipality which no longer exists are kept.

Article 24a

1. Obvious mistakes may be corrected with the consent of the public prosecutor within whose jurisdiction the instrument is recorded in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships. The consent of the public prosecutor may also relate to the same correction in respect of an instrument in respect of the same person or his or her descendants which is recorded in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships in another district.

2. Obvious writing or spelling mistakes may be corrected by the Registrar of Births, Deaths, Marriages and Registered Partnerships *ex officio*.

Article 24b

- 1. By virtue of Article 24, an addition to a register of the Registry of Births, Deaths, Marriages and Registered Partnerships shall be made by means of the drawing up of a new instrument in that register.
- **2.** Any correction or cancellation pursuant to this Section shall be made by means of a subsequent record to the instrument involved according to rules to be laid down by Regulation.

Section 10 Registration of Foreign Certificates and a Judicial Order to draw up a Substitute Birth Certificate

Article 25

- 1. When so ordered by the Public Prosecution Service or on the application of any interested person, certificates of birth, marriage, partnership registration and death drawn up by an authorised body outside the Netherlands in accordance with local provisions shall be registered respectively in the Registers of Births, Deaths, Marriages and Registered Partnerships in the municipality of The Hague, if:
 - (a) the certificate relates to a person who at the time of the application was of Dutch nationality or had at any time been of Dutch nationality or a subject of the Netherlands while not of Dutch nationality; or
 - (b) the certificate relates to a person who has his or her lawful residence in the Netherlands by virtue of Articles 8(c) and 8(d) of the Vreemdelingenwet 2000 (Aliens Act 2000).
- 2. When so ordered by the Public Prosecution Service or on the application of an interested person, birth certificates drawn up by an authorised body outside the Netherlands in accordance with local provisions shall be recorded in the register of births in the municipality of The Hague, where

the certificate relates to a person of foreign nationality and pursuant to any provision of this Book a later record must be added to the birth certificate.

Registry of Births, Deaths, Marriages and Registered Partnerships

- **3.** The Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague may also *ex officio* record the certificates referred to in the preceding paragraphs.
- **4.** Before proceeding to register a marriage certificate or a certificate of registration of a partnership by virtue of paragraph (1) or (3), the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague shall require the lodging of a declaration referred to in Article 44(1)(k) by the chief of police within the meaning of the *Vreemdelingenwet 2000* (Aliens Act 2000). That declaration shall be drawn up on the application of the spouse or registered partner to which it relates. With the application a certified true copy referred to in Article 44(1)(a) must be lodged. Where the applicant does not have an address in the Netherlands, it shall be drawn up on the application of the other spouse or of the other registered partner. No declaration is required if:
 - (a) the spouses or registered partners have given *prima facie* proof that they both reside outside the Netherlands;
 - (b) the spouse or registered person involved who does not have Dutch nationality lawfully resides in the Netherlands by virtue of Article 8(b), (d) or (e) of the *Vreemdelingenwet 2000*;
 - (c) the solemnisation of the marriage or registered partnership took place ten or more years prior to the registration, or
 - (d) the marriage or registered partnership has ended.
- **5.** In the case of adoption, the district court pronouncing the adoption shall give a separate order, *ex officio*, for the registration of the birth certificate referred to in paragraphs (1) and (2).
- **6.** The instrument of registration shall state the information to be required by Regulation.
- 7. Obvious mistakes and writing or spelling errors which the Registrar of Births, Deaths, Marriages and Registered Partnerships discovers in the instrument to be recorded on the basis of an instrument recorded in the Netherlands in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships or on the basis of a judicial decision, may be corrected by him or her *ex officio*. The corrections shall be separately mentioned in the instrument.
- **8.** If an instrument has been registered *ex officio*, a true copy of the instrument of registration shall be sent to the person or persons to whom the instrument relates.

Article 25a

- 1. If, after registration, obvious mistakes in an instrument drawn up outside the Netherlands in accordance with the local provisions are corrected by an authorised body, the corrections shall be made in the instrument of registration by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague, with whom a true copy of the decision to make a correction and of the corrected instrument have been lodged of a later record of the correction to the instrument of registration after consent thereto is obtained from the public prosecutor.
- **2.** Obvious mistakes in writing or spelling which were corrected in an instrument drawn up outside the Netherlands in accordance with local provisions by an authorised body may also be made, *ex officio*, and without the consent of the public prosecutor, by the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague on the basis of a true copy of the corrected instrument in the manner specified in paragraph (1).

Article 25b

Such later statements as must be added to a birth certificate, marriage certificate or death certificate drawn up in the Netherlands by virtue of this Book shall be added to the instrument of registration referred to in Article 25.

Article 25c

- 1. Where no birth certificate with regard to a person born outside the Netherlands was drawn up in accordance with local provisions by an authorised body, the district court in The Hague, on the application of the public prosecution service, an interested person or of the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague, may decide what information will be required for the drawing up of a birth certificate, if:
 - (a) such person is or has been at any time of Dutch nationality or a Dutch subject without being of Dutch nationality;
 - (b) such person lawfully resides in the Netherlands by virtue of Article 8(c) and (d) of the *Vreemdelingenwet 2000* (Aliens Act 2000);
 - (c) a later record must be added to the birth certificate by virtue of this Book.
- **2.** The district court shall take into account any evidence and indications in respect of the circumstances under which, and the time at which, the birth must have taken place. The surname, the forenames and the place

Registry of Births, Deaths, Marriages and Registered Partnerships

and date of birth of the father and of the mother must be determined insofar as indications were obtained in respect thereof.

3. In the case of adoption the court pronouncing the adoption shall give a separate order *ex officio*, as referred to in paragraph (1).

Article 25d

On the application of the Public Prosecution Service, any interested person or of the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague, the district court in The Hague may vary the order given pursuant to Article 25c on the ground that the determined information is incorrect or incomplete.

Article 25e

Repealed

Article 25f

- 1. The clerk of the judicial body before which the case was last pending shall send a true copy of the order to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality of The Hague since the expiry of two or months since its date.
- 2. This civil servant shall draw up an instrument of registration of the order referred to in Article 25c, which shall constitute a birth certificate within the meaning of Article 19 of this Book. This certificate shall be drawn up in accordance with the order and shall be stated explicitly.
- **3.** A later record of the order referred to in Article 25d shall be added to the certificate referred to in the preceding paragraph.

Article 25g

- 1. Articles 25 to 25b, inclusive, shall apply *mutatis mutandis*, to instruments and decisions drawn up or made by an authorised body outside the Netherlands in accordance with local provisions when these correspond to the orders referred to in Article 25c of this Book. No registration referred to in Article 25 shall be made where this would be contrary to Dutch public policy.
- **2.** In the case of adoption of a child born outside the Netherlands with regard to which an instrument or decision referred to in the preceding paragraph was drawn up or made, the district court shall give a separate order, *ex officio*, when pronouncing the adoption for the registration of such instrument or decision.

Section 11

A Declaratory Statement as to the Law in respect of the Legal Validity in the Netherlands of a Foreign Instrument or Decision

Article 26

- 1. Any person with a justified interest therein may apply to the district court for the issue of a declaratory statement that an instrument or decision drawn up or made in his or her respect by an authorised body outside the Netherlands in accordance with the local provisions is, according to its nature, legally capable of being recorded in a Dutch register of the Registry of Births, Deaths, Marriages and Registered Partnerships.
- **2.** The declaratory statement as to the law referred to in paragraph (1) may also be issued on the application of the Registrar of Births, Deaths, Marriages and Registered Partnerships or the Public Prosecution Service.

Article 26a

On application or *ex officio*, the district court may also order, in its declaration as to the law referred to in Article 26(1), that a later record pursuant to Article 24(1) be made to an instrument on record in the Dutch registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.

Article 26b

Where no instrument was recorded with regard to the applicant in the Dutch registers of the Registry of Births, Deaths, Marriages and Registered Partnerships, the district court in The Hague may, on application or *ex officio*, in its order also order the registration in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships in The Hague of an instrument drawn up abroad when this qualifies for such purpose, in accordance with Article 25, and the correction of the instrument of registration pursuant to Article 24(1). In its order it may also make an order referred to in Article 25c, when giving its order to correct the instrument to be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague in accordance with Article 24(1).

Article 26c

Repealed

Article 26d

The lodging of an authentic copy of the foreign instrument or decision to which the application relates may be demanded. Article 986(3) and (4) of the Code of Civil Procedure shall apply *mutatis mutandis*.

Article 26e

The clerk of the judicial body before which the case was last pending shall send a true copy of the order to the Registrar of Births, Deaths, Marriages and Registered Partnerships in whose registers an instrument in respect of the interested person is recorded and to which a later record of the order must be added. Where a court order is given to register an instrument drawn up abroad, the clerk shall send a true copy of the order to the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague.

Article 26f

Repealed

Section 12 Remedy against Refusal to draw up an Instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships or to perform any other Act

Article 27

Within six weeks from the despatch of a decision of the Registrar of Births, Deaths, Marriages and Registered Partnerships whereby he or she refuses to draw up an official instrument on account of Article 18b or 20c, or to add a subsequent record to an instrument, or to co-operate in performing an act, besides from the case of an enunciation of an impediment to a marriage or registered partnership and besides from the issue of a true copy or extract, the interested parties may turn to the district court within whose jurisdiction the office of the Registrar of Births, Deaths, Marriages and Registered Partnerships is located.

Article 27a

On the application of an interested party or *ex officio* the district court may, in its order, also issue a declaration referred to in Article 26 and give an order referred to in Article 26a or 26b, as the case may be.

Article 27b

The clerk shall send a true copy of the court order to the interested parties and to the Registrar of Births, Deaths, Marriages and Registered Partnerships.

Article 27c

Repealed

Section 13 The Judicial Order to Change the Mention of the Sex on the Birth Certificate

Article 28

- 1. Any Dutch national who is convinced to be of a different sex than that stated in the birth certificate and whose body has been physically altered to the desired sex, insofar as this is both possible and safe, may apply to the district court for an order for a change of the sex mentioned on the birth certificate, if such a person is recorded on the birth certificate as male and will never be capable of fathering children or, if such a person is recorded on the birth certificate as female, will never be capable of giving birth to children.
- 2. For the purposes of the provisions in paragraph (1) and Articles 28a and 28b of this Book, a birth certificate includes an instrument of registration of a birth certificate drawn up outside the Netherlands or of a court order referred to in Article 25c of this Book.
- **3.** A person who does not possess Dutch nationality may make an application referred to in paragraph (1), if he or she has already had his or her residence in the Netherlands for one or more years immediately preceding the application and has a valid residence permit and, moreover, satisfies the conditions laid down in paragraph (1). If the birth certificate is not registered in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships in the Netherlands, the district court shall also be requested to order registration of the birth certificate in the register of births of the municipality of The Hague.

Article 28a

1. Along with the application a true copy of the birth certificate must be lodged and a certificate jointly signed by experts nominated by Regulation and issued within six months of the date on which the petition is lodged, establishing:

- (a) the conviction of the applicant to be of a different sex than that mentioned on the birth certificate and the opinion of the expert with competence in respect thereof that such a conviction may be regarded as of an enduring nature, considering the period in which the applicant has lived as such and, where possible, any other factors or circumstances to be stated therein;
- (b) whether and, if so, to what extent the body of the applicant was physically altered to the desired sex, insofar as possible and safe from a medical or psychological viewpoint;
- (c) that the applicant is recorded as male on the birth certificate and will never be able to father children or, that the applicant is recorded as female on the birth certificate and will never be able to give birth to children.
- **2.** The part referred to in paragraph (1)(a) need not be included in the certificate, if the body of the applicant was already physically altered to the desired sex.

Article 28b

- 1. The application shall be granted if the district court considers that it has been sufficiently established that the applicant has the conviction of belonging to a sex other than that mentioned on the birth certificate, that this conviction may be considered being enduring and the applicant satisfies the conditions laid down in Article 28(1).
- **2.** When the district court grants the application for a change of the sex mentioned, it may, when this is so requested, also order a change of the applicant's forenames.

Article 28c

- 1. A recorded change of sex shall have the effects arising from this Book from the date on which the Registrar of Births, Deaths, Marriages and Registered Partnerships adds a subsequent record to the birth certificate of the court order to make an alteration.
- 2. A recorded change of sex shall not affect any legal familial ties which exist on the date mentioned in paragraph (1) and any rights, powers and duties arising therefrom which are based on this Book. Applications in connection with Article 157 and in connection with Article 394 of this Book may also be made after the date mentioned in paragraph (1).

Section 14 The Advisory Commission on Matters relating to Legitimate Legal Status and Nationality

Article 29

There is an Advisory Commission for matters relating to legitimate legal status and nationality.

Article 29a

- 1. The Commission shall consist of not less than nine and not more than fifteen members.
- 2. The Commission shall be composed of at least one member of the judiciary, at least one member from circles of academic research, at least two members from the circle of Registrars of Births, Deaths, Marriages and Registered Partnerships and at least two members from the circle of the Municipal Personal Records Database.
- **3.** The Minister of Justice shall appoint and remove the members referred to in the preceding paragraph in consultation with the Minister of Interior Affairs and shall further appoint a chairperson and a secretary.

Article 29b

- 1. At the request of a Registrar of Births, Deaths, Marriages and Registered Partnerships or of any other administrative body the Commission shall give advice on questions relating to the application of the law in matters of civil status or nationality.
- **2.** Where such advice is of general interest it shall be published. The Commission shall specify the manner of publication.

Article 29c

When a Registrar of Births, Deaths, Marriages and Registered Partnerships has a legitimate doubt as to a question whether information derived from an instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships drawn up outside the Netherlands or from any other written document qualifies for recording in an instrument of the Registry, he or she must seek the advice of the Commission.

Article 29d

If a Registrar of Births, Deaths, Marriages and Registered Partnerships does not follow the advice given by the Commission, he or she shall so inform the Commission and the public prosecutor.

Article 29e

The Minister of Justice may lay down further rules in respect of the remit and procedure of the Commission.

Article 29f

Within every four-year period, the Commission shall report to the Minister of Justice on the manner in which it has carried out its duties and propose changes where these are desired.

TITLE 5 MARRIAGE

General Provision

Article 30

- 1. A marriage may be entered into by two persons of a different or of the same sex.
- **2.** The rules laid down in this Book only extend to the civil effects of marriage.

Section 1 Requirements for Entry into Marriage

Article 31

- 1. In order to be permitted to enter into a marriage a man and a woman must be eighteen years of age or older.
- **2.** There shall be no impediment to marriage as referred to in the preceding paragraph when the persons who wish to enter into marriage with one another have reached the age of sixteen and the woman lodges a certificate from a physician that she is pregnant or has already given birth to her child.
- **3.** The Minister of Justice may, for important reasons, grant dispensation from the requirement mentioned in paragraph (1).

Article 32

A marriage may not be entered into when there is such a disorder of the mental faculties of one of the parties which results in such a party not being able to determine his or her will or to understand the significance of his or her declaration.

Article 33

A person may only be united in marriage with one other person at the same time.

Article 34

Repealed

- 1. A minor may not enter into a marriage without the consent of his or her parents.
- **2.** No consent is required of a parent whose mental faculties are so disturbed as to result in he or she not being able to determine his or her will or to understand the significance of his or her declaration.
- **3.** Moreover, a minor subject to guardianship requires the consent of his or her guardian.

Article 36

Insofar as any consent required according to the preceding Article is not obtained, it may be substituted, on the application of the minor, by that of a sub-district court.

Article 37

- 1. A person over whom a curator is appointed on account of being a spendthrift or alcoholic may not enter into a marriage without the consent of his or her curator.
- **2.** Insofar as such consent is not obtained, it may be substituted by consent from a sub-district court on the application of the person over whom a curator is appointed.

Article 38

A person over whom a curator is appointed on account of a mental disorder may not enter into marriage without the consent of the sub-district court.

Article 39

- 1. Where the sub-district court has granted consent, the period for appeal shall be fourteen days. During this period the court order may not be implemented.
- **2.** A person who protests against a granted consent must serve notice thereof, within the period for appeal, by bailiff's writ on the civil servant(s) of the Registry of Births, Deaths, Marriages and Registered Partnerships before whom the solemnisation of the civil marriage may take place. By failing to do so, he or she shall forfeit the right to apply for an annulment of the marriage based on a lack of his or her consent, if the court of appeal nullifies the order of the sub-district court and the solemnisation of the civil marriage has already taken place.

Repealed

Article 41

- 1. No marriage may be entered into between persons who either by birth or parentage are related to each other in the ascending or descending line or as brothers, sisters or as brother and sister.
- **2.** For important reasons the Minister of Justice may grant dispensation from the prohibition to persons who by means of adoption are brothers, sisters or brother and sister.

Article 42

Persons who wish to enter into a marriage with one another may not already have entered into a registered partnership at the same time.

Section 2 Formalities which must precede the Solemnisation of a Marriage

Article 43

- 1. Persons who wish to enter into a marriage with one another must make a declaration of their intention to do so at the Registry of Births, Deaths, Marriages and Registered Partnerships of the residency of one of the parties and lodge the documents mentioned in Article 44 of this Book. When the prospective spouses, of whom at least one possesses Dutch nationality, have their residency outside the Netherlands and wish to enter into a marriage with one another in a Dutch municipality, the declaration must be made at the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague.
- **2.** After their declaration has been made, the prospective spouses may declare that solemnisation of their marriage will take place in a municipality other than the one in which one of them has his or her residency at the time of the declaration of their intention to marry or, if the second sentence of paragraph (1) applies, in a municipality other than The Hague.
- **3.** The declaration indicating the intention of the prospective spouses with sufficient certainty shall be made in person or in written form.
- **4.** The Registrar of Births, Deaths, Marriages and Registered Partnerships shall draw up an instrument of the declaration.

- 1. Before the declaration of the marriage is made, the following documents must be lodged with the Registrar of Births, Deaths, Marriages and Registered Partnerships:
 - (a) the birth certificate of each of the prospective spouses and a certified true copy from each of them with information from the personal records database except when they need not be registered as a resident in a personal records database;
 - (b) an instrument of consent to the marriage given by the persons whose consent is required for the marriage. The instrument of consent for the marriage shall be drawn up by the Registrar of Births, Deaths, Marriages and Registered Partnerships or a notary. Consent may also be given when the marriage certificate is drawn up. Where consent has been granted by the district court, its order shall be lodged;
 - (c) a death certificate of all those persons whose consent would have been required, if they had been living;
 - (d) in the case of a second or further marriage or a marriage after registration, evidential documents showing that the previous marriage or a previous registered partnership does not present an impediment to a new marriage;
 - (e) the instrument of declaration of the intent to marry;
 - (f) where an enunciation of an impediment to a marriage has been made, proof that the enunciation was discontinued;
 - (g) proof of dispensation or permission from the Minister of Justice, where so required;
 - (h) if an order referred to in Section 12 of Title 4 of this Book or an exemption pursuant to Article 62 of this Book was obtained, these documents must also be lodged;
 - (i) a declaration referred to in Article 31(2) of this Book where so required;
 - a written notification of the names and addresses of the persons asked to be present as witnesses at the solemnisation of the marriage;
 - (k) a certificate issued by the chief of police within the meaning of the *Vreemdelingenwet 2000* (Aliens Act 2000) to the Registrar of Births, Deaths, Marriages and Registered Partnerships indicating that a prospective spouse without Dutch nationality lawfully resides in the Netherlands as referred to in Article 8 of the *Vreemdelingenwet 2000* or does not intend to remain in the Netherlands. The certificate shall be drawn up at the request of the prospective spouse to whom it relates. A certified true copy as referred to in subparagraph a shall be lodged along with the application. Where

he or she has no residency in the Netherlands, it shall be drawn up at the request of the other prospective spouse.

- **2.** The declaration referred to in paragraph (1) (k) is not required where the prospective spouses are able show *prima facie* that both have their residency outside the Netherlands. The declaration shall also not be required if a prospective spouse who does not possess Dutch nationality lawfully resides in the Netherlands by virtue of Article 8(b), (d) or (e) of the *Vreemdelingenwet 2000*.
- 3. Further rules may, by Regulation, be set as regards the contents of the certified true copy referred to in paragraph (1)(a) of information from the personal records database and the certificate referred to in paragraph (1)(k).

Article 45

- 1. A prospective spouse who is unable to furnish the birth certificate required pursuant to the preceding Article may remedy this by means of an instrument of recognition issued by the sub-district court of his or her place of birth or residency on the basis of a declaration made by four adult witnesses.
- **2.** This declaration shall mention the place and, as precisely as possible, the time of birth and the causes which frustrate the lodging of an instrument thereof.
- **3.** The lack of a birth certificate may also be remedied either by such a declaration that is sworn and made by the witnesses present at the solemnisation of the marriage or by a sworn declaration made at the Registry of Births, Deaths, Marriages and Registered Partnerships of the prospective spouse, to the effect that he or she cannot provide a birth certificate or instrument of recognition. The marriage certificate shall mention the declaration made.

Article 45a

Where the parties are unable to lodge the death certificates referred to in Article 44(1)(c) of this Book, such a defect may be remedied in the same manner as in the case referred to in the preceding Article.

Article 46

When no solemnisation of the marriage has taken place within a year from the date of the instrument of declaration of the intention to marry, solemnisation may take place only after a new declaration is made.

- 1. If a minor wishes to enter into a marriage, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall investigate whose consent will be required.
- 2. That Registrar shall further investigate whether the minor has been placed under supervision or under provisional guardianship. Where this proves to be the case, he or she shall notify the children's court judge, in the case of a supervision order, and, in the latter case, the guardianship institution of the intended marriage without delay.

Article 48

When a person who wishes to remarry has parental authority over the children from a previous marriage, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall notify without delay the subdistrict court of the residency of the parent involved of the declaration made.

Article 49

- 1. Engagements to marry do not vest a right of action to enter into marriage nor a right to compensation on account of breach of the engagement. Any stipulations which derogate therefrom shall be null and void.
- 2. However, if an instrument of declaration of marriage has been drawn up, this may constitute a ground for a damages claim for any actual financial losses, without account being taken of any future loss of profit. The right of action shall lapse upon the expiry of eighteen months from the date of the instrument of declaration of marriage.

Article 49a

- 1. A Dutch national who wishes to enter into marriage outside the Netherlands, will be issued with a certificate of legal capacity to marry in accordance with the model appended to the Convention of Munich of 5th September 1980, upon his or her request. (*Tractatenblad (Treaty Series)* 1981, No. 71 and *Tractatenblad (Treaty Series)* 1982, No. 116).
- 2. This certificate shall be issued to:
 - (a) a person with residency in the Netherlands by the Registrar of Births, Deaths, Marriages and Registered Partnerships of his or her residency;

- (b) a person without residency in the Netherlands but who has had one, by the Registrar of Births, Deaths, Marriages and Registered Partnerships of his or her last residency there;
- (c) a person without a present or past residency in the Netherlands, by the head of the diplomatic or consular representation of the Kingdom of the Netherlands within the jurisdiction where the solemnisation of the marriage will take place.
- 3. The competent authority shall only issue the certificate after first having ascertained from the documents mentioned in Article 44(1)(a), (b), (c), (d) and (g), and, where necessary from the documents mentioned in Articles 45 and 45a and in Article 27b that there are no impediments to the marriage under Dutch law.
- **4.** The certificate of legal capacity to marry is valid for six months from the date of its issue.

Section 3 Enunciation of Impediments to a Marriage

Article 50

The enunciation of impediments to a marriage may take place where both parties do not satisfy the requirements for entry into marriage or where both or either of the prospective spouses do not intend to fulfil the obligations arising from the marital status under this Book but have the intention to obtain admission to the Netherlands.

Article 51

- 1. Blood relatives in the direct line, brothers, sisters, guardians and curators of one of the prospective spouses have legal capacity to enunciate impediments to a marriage when both parties do not satisfy the requirements for entry into marriage.
- 2. The persons mentioned in the preceding paragraph also have the right to enunciate impediments to a marriage when a curator has been appointed over the other prospective spouse and it is clear that a marriage would cause misfortune to the party whose blood relative, guardian or curator they are.

Article 52

He or she who is married with one of the parties or has entered into a registered partnership with one of the parties may enunciate impediments to any new marriage to be entered into on the basis of the existence of his or her marriage or registered partnership.

- 1. The Public Prosecution Service must enunciate impediments to an intended marriage whenever it is aware of any marriage impediments described in Articles 31 to 33, inclusive, 41 and 42.
- 2. The Public Prosecution Service has the right to enunciate impediments to a marriage of a minor who is placed under supervision or under provisional guardianship, if opposition to entry into such marriage would be in the interest of such a minor; for this purpose the interest of the other party to the marriage is also taken into consideration.
- **3.** Furthermore, the Public Prosecution Service has the right to enunciate impediments to a marriage on account of it being a sham as it would constitute a breach of Dutch public policy when both or either of the prospective spouses do not intend to fulfil the obligations arising from this Book in respect of the marital status but seek to obtain admission to the Netherlands.

Article 54

- 1. Enunciation of impediments to a marriage shall be made by the service of an instrument on the Registrar of Births, Deaths, Marriages and Registered Partnerships of one of the municipalities where solemnisation of the marriage can take place.
- 2. In order to be valid, the instrument shall state the election of residency in that municipality, the grounds for the enunciation of impediments and the capacity which entitles the party opposing the marriage to make an enunciation of impediments to the marriage.
- **3.** The Registrar of Births, Deaths, Marriages and Registered Partnerships on whom service of the instrument is made shall notify without delay the Registrar of Births, Deaths, Marriages and Registered Partnerships of the other municipalities where solemnisation of the marriage may take place of the enunciation of impediments made.
- **4.** A person opposing the marriage shall procure that a true copy of the instrument of enunciation of impediments is served without delay on the party against whom it is directed.

Article 55

An enunciation of impediments may be lifted:

- (a) in the same manner as in that in which it was made;
- (b) by a declaration made in person before one of the Registrars of Births, Deaths, Marriages and Registered Partnerships mentioned in the preceding Article;

- (c) by a declaration made before a notary;
- (d) by a court order that has become final and binding issued on the petition of an interested party.

The solemnisation of the marriage may not take place before the enunciation of impediments is lifted. Where it has nevertheless taken place while proceedings to lift the enunciation were pending, then such proceedings may be continued where the person opposing the marriage so requires, in which case the marriage shall be annulled if the district court accepts that the enunciation of impediments is well founded.

Article 57

A Registrar of Births, Deaths, Marriages and Registered Partnerships aware of the existence of any marriage impediment described in Articles 31 to 33, inclusive, 41 and 42 may not co-operate with a declaration of a marriage or solemnisation of a marriage, even though no enunciation of impediments to the marriage has taken place.

Section 4 Solemnisation of the Marriage

Article 58

- 1. Where it is established that more than six months will have expired on the date on which solemnisation of the marriage will take place since the declaration referred to in Article 44(1)(k) was issued, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall ensure that such a declaration is again lodged prior to the solemnisation of the marriage, except where this is not required on the basis of paragraph (3).
- 2. If the lodging of a declaration referred to in Article 44(1)(k) is not required on the date of declaration of the intention to marry, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall ensure that such a declaration is still lodged prior to proceeding to solemnise the marriage, except where this is not required on the basis of paragraph (3).
- **3.** The declaration shall be drawn up at the request of the prospective spouse to whom this regards. Where he or she does not reside in the Netherlands, it shall be drawn up at the request of the other prospective spouse. No declaration shall be required if the prospective spouses are able to show *prima facie* that both have their residency outside the Netherlands. No declaration shall be required if the prospective spouse who does not

possess Dutch nationality lawfully resides in the Netherlands on the basis of Article 8(b), (d) or (e) of the *Vreemdelingenwet 2000* (Aliens Act 2000).

Articles 59 - 61

Repealed

Article 62

- 1. Solemnisation of a marriage may not take place prior to the fourteenth day from the date of the instrument of declaration of the intention to marry.
- **2.** The Public Prosecution Service at the district court in whose jurisdiction a declaration of marriage is made may, for important reasons, grant an exemption from the prescribed waiting period.

Article 63

Solemnisation of a marriage shall take place in public in the town hall in the presence of not less than two and not more than four adult witnesses before the Registrar of Births, Deaths, Marriages and Registered Partnerships of:

- (a) the residency of one of the parties at the time of the date of the instrument of declaration of the intention to marry, or
- (b) The Hague, in the instance referred to in the second sentence of Article 43(1) of this Book, or
- (c) the municipality designated at the marriage notification.

Article 64

If either party is prevented on account of a properly proved statutory impediment to render him or herself to the town hall, the solemnisation of the marriage may take place in a special location within the same municipality provided it takes place in the presence of six adult witnesses.

Article 65

Prospective spouses must appear in person at the solemnisation of the marriage before the Registrar of Births, Deaths, Marriages and Registered Partnerships.

The Minister of Justice is empowered, owing to important reasons, to grant permission to the parties to conduct the solemnisation of the marriage represented by a person especially authorised thereto by authentic instrument.

Article 67

- 1. The prospective spouses must declare before the Registrar of Births, Deaths, Marriages and Registered Partnerships and in the presence of the witnesses that they accept each other as spouses and will faithfully carry out all duties which arise by operation of law from their marital status.
- **2.** Immediately after such a declaration, the Registrar of Births, Deaths, Marriages and Registered Partnerships shall declare the parties to be bound to one another in matrimony and shall draw up an instrument thereof in the appropriate register.

Article 68

No religious ceremonies may take place before the parties have ensured that the minister of religion has established that solemnisation of the marriage before the Registrar of Births, Deaths, Marriages and Registered Partnerships has taken place.

Section 5 Annulment of a Marriage

Article 69

- 1. Insofar as not otherwise provided hereinafter, a marriage annulment on the ground that the spouses do not jointly meet the requirements for entry into marriage may be requested by:
 - (a) blood relatives in the ascending line of one of the spouses;
 - (b) each of the spouses;
 - (c) all other persons who have an immediate legal interest in so doing, but only after dissolution of the marriage;
 - (d) the Public Prosecution Service, but only so long as the marriage has not yet been dissolved.
- **2.** He or she who is united by a previous marriage with one of the spouses or by an earlier registered partnership may also apply for annulment of a marriage on account of the existence of such a marriage or registration, when solemnisation of the marriage took place thereafter.

- 1. At the request of the parents, the spouses and the Public Prosecution Service a marriage may be annulled when solemnisation of the marriage took place before a non-authorised Registrar of Births, Deaths, Marriages and Registered Partnerships or without the presence of the required number of witnesses.
- **2.** The right of a spouse to apply for annulment of the marriage on account thereof shall lapse where an external possession of such marital status is present and a certificate of the solemnisation of the marriage was executed before a Registrar of Births, Deaths, Marriages and Registered Partnerships.

Article 71

- 1. A spouse may apply for the annulment of his or her marriage when this was entered into under the influence of an unlawful, grave threat.
- **2.** A spouse who was mistaken at the celebration of the marriage either in the person of the other spouse or as to the significance of the declaration made by him or her shall equally have the right to make such application.
- 3. The right of a spouse to petition for annulment on account of a mistake or threats, shall lapse when the spouses have cohabited for a period of six months since the threats ceased or the mistake was discovered without the petition having been made.

Article 71a

At the instigation of the Public Prosecution Service a marriage may be declared null and void for being a sham on account of a violation of Dutch public policy, if either or both spouses' intent was not directed at fulfilling the duties which form part of the marital status according to this Book but at obtaining admission to the Netherlands.

Article 72

A marriage may not be annulled on account of a curator having been appointed over one of the spouses at the time of the solemnisation of the marriage, and such marriage evidently would cause misfortune to the other spouse.

A petition for a marriage annulment on account of the cessation of a mental disorder may only be made by the spouse with such a mental disorder. If the parties have cohabited for a period of six or more months since the cessation of the disorder then the entitlement to petition will lapse.

Article 74

A petition for a marriage annulment concerning a marriage entered into with a person who lacked the required age may not be made once this person has reached the required age on the date of the petition or if the woman has become pregnant prior to the date of petition.

Article 75

- 1. A petition for annulment of a marriage on the ground that the consent required from a third party was lacking may only be made by such a third party or by the curator, in the case referred to in Article 38 of this Book. This petition shall lapse when the person entitled to petition for the annulment has explicitly or tacitly approved the marriage or on the expiry of a three month period since he or she became aware of the solemnisation of the marriage.
- **2.** A person entitled to a petition for annulment is assumed to have become aware of the marriage when the solemnisation of the marriage took place in the Netherlands or, if the marriage was entered into outside the Netherlands, when it was registered in the Netherlands in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.

Article 76

Without prejudice to the provisions of Article 56 of this Book, a court shall only annul a marriage on the basis of a petition made in accordance with the provisions of this Section.

Article 77

1. A marriage annulment shall have effect as soon as the court order has become final and binding; it shall have retrospective effect to the date of the solemnisation of the marriage.

- **2.** Nevertheless the court order shall have no retrospective effect and will have the same effect as a divorce:
 - (a) as regards the children of the spouses;
 - (b) as regards the spouse who acted in good faith; the latter may, however, not claim any community of property when the marriage is annulled on account of the existence of a prior marriage or an earlier registered partnership;
 - (c) as regards persons other than the spouses and their children, insofar as they acquired rights in good faith prior to registration of the annulment.

Section 5a Conversion of a Marriage into a Registered Partnership

Article 77a

- 1. When two persons notify the Registrar of Births, Deaths, Marriages and Registered Partnerships of their wish to convert their marriage into a registered partnership, the Registrar of Births, Deaths, Marriages and Registered Partnerships of the residency of either one of the parties may draw up an instrument of conversion in respect thereof. If the spouses, of whom at least one possesses Dutch nationality, have their residency outside the Netherlands and wish to convert their marriage in the Netherlands into a registered partnership, the conversion shall be made at the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague.
- 2. Articles 65 and 66 shall apply mutatis mutandis.
- **3.** A conversion shall cause the marriage to end and the registered partnership to commence on the date of drawing up of the instrument of conversion in the register of registered partnerships. Conversion shall not result in any change in the legal familial ties, which may or may not exist with children born prior to the conversion.

Section 6 Proof of Existence of the Marriage

Article 78

The existence of a marriage entered into in the Netherlands may be proved only by means of a marriage certificate or the instrument of conversion referred to in Article 80f, except in the instances provided in the following Articles.

Part I Book 1, Dutch Civil Code – Family Law and the Law of Persons

Article 79

Where no marriage register has existed, it has been lost or the marriage certificate is missing, the marriage may be proved by witnesses or documents provided that an external possession of the marital status is present.

Article 80

Where the legitimacy of a child born in a marriage is contested in legal proceedings, the fact that the parents openly lived as husband and wife is sufficient evidence.

TITLE 5A REGISTERED PARTNERSHIPS

Article 80a

- 1. A person may only be involved in one registered partnership with one other person whether of the same or of opposite sex at any one time.
- **2.** Persons who enter into a registered partnership may not at the same time be married.
- **3.** The registration of a partnership shall be made by an instrument of registration of partnership drawn up by a Registrar of Births, Deaths, Marriages and Registered Partnerships.
- **4.** Persons wishing to enter into a registered partnership must notify the Registrar of Births, Deaths, Marriages and Registered Partnerships of the residency of one of the parties and lodge information with respect to their civil status. If they have previously been involved in a registered partnership or marriage, then they must declare the names of the previous partner or spouse. If the prospective registered partners, of whom at least one possesses Dutch nationality, have their residency outside the Netherlands and wish to enter into a registered partnership in a Dutch municipality, they must notify the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague. Articles 43(2) to (4), inclusive, and 46 shall apply *mutatis mutandis*.
- **5.** Enunciation of impediments to a partnership registration may take place where the parties do not satisfy the requirements for entry into the registration or where both or either or the prospective registered partners do not intend to fulfil the obligations arising from the partnership registration arising from this Book but have the intention to obtain admission to the Netherlands. Articles 51, 52, 53(2) and (3), and 54 to 56, inclusive, shall apply *mutatis mutandis* to an enunciation of impediments. The public prosecution service must make an enunciation of impediments to a partnership registration when it is aware of any of the impediments described in Articles 31, 32, 41, 80a(1) and (2). If the Registrar of Births, Deaths, Marriages and Registered Partnerships is aware of any of the impediments mentioned in the preceding sentence, he or she may not give his co-operation to a notification of registration even if no enunciation of impediments is made.
- **6.** Articles 31, 32, 35 to 39, inclusive, 41, 44 to 49, inclusive, 58 and 62 to 66, inclusive, shall apply *mutatis mutandis* to a registered partnership.
- 7. Articles 69 to 73, inclusive, 74, 75 to 77(1), 77(2) (b) and (2) (c), shall apply *mutatis mutandis* to the annulment of a registered partnership.
- **8.** Articles 78 and 79 shall apply *mutatis mutandis* to the proof of the existence of a registered partnership.

Article 80b

Titles 6, 7 and 8 shall apply *mutatis mutandis* to a registered partnership.

Article 80c

A registered partnership shall end:

- (a) due to death;
- (b) if the person who has gone missing, who has been declared to be presumed dead or to be dead in accordance with the provisions of Section 2 or 3 of Title 18 of this Book, is still alive on the date on which the other registered partner has entered into a new registered partnership or marriage: by the solemnisation of such a registered partnership or marriage;
- (c) by reason of the mutual consent of the partners by means of the registration of a dated declaration signed by both partners and one or more advocates or notaries by the Registrar of Births, Deaths, Marriages and Registered Partnerships from which it appears that and at what time, the partners have entered into a contract in respect of the termination of their registered partnership;
- (d) by dissolution at the request of one of the partners;
- (e) by conversion of a registered partnership into a marriage.

Article 80d

- 1. The contract referred to in Article 80c(c) shall include at least the declaration of both partners that their registered partnership has irretrievably broken down and that they wish to terminate it. Furthermore, the contract shall provide, without this being a condition of its validity:
 - (a) the maintenance payment for the support of the registered partner without sufficient means for his or her maintenance or who is not able to acquire such means, within reason;
 - (b) which registered partner will be the lessee of the accommodation which served as their principal residence or which registered partner will have the right, during a period to be specified in the contract, to use the dwelling and the household effects which belong to either or both of them or which they are entitled to use;
 - (c) the division of any community entered into by the partners on the registration or the netting agreed pursuant to the conditions referred to in Title 8;
 - (d) the equalisation or netting of superannuation rights.
- **2.** Articles 155, 159(1) and (3), 159a, 160 and 164 shall apply *mutatis mutandis*, to a termination of a registered partnership with mutual consent.

3. A declaration referred to in Article 80c(c) shall only be registered in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships if it is received by the Registrar of Births, Deaths, Marriages and Registered Partnerships within three months after the contract was entered into.

Article 80e

- 1. Articles 151, 153, 155, 157 to 160, inclusive, 164 and 165 shall apply *mutatis mutandis* to a dissolution of a registered partnership referred to in Article 80c(d).
- **2.** A dissolution shall take effect on the registration in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships of a judicial decision at the request of either or both of the parties. Article 163(3) shall apply *mutatis mutandis*.

Article 80f

If the parties whose registered partnership has been terminated enter into a registered partnership with one another again or enter into a marriage with one another, all consequences of the registered partnership shall revive by operation of law as if no termination had taken place. Nevertheless, the validity of legal transactions made between the registration of the termination and the new registration or the marriage, shall be considered to be concluded at the time of the transaction. Article 119 shall apply *mutatis mutandis* to the making or changing of the conditions referred to in Title 8 prior to entry into the new registration or the marriage.

Article 80g

- 1. If two persons have notified the Registrar of Births, Deaths, Marriages and Registered Partnerships that they wish their registered partnership to be converted into a marriage, the Registrar of Births, Deaths, Marriages and Registered Partnerships of the residency of one of the parties may draw up an instrument of conversion in respect thereof. If the registered partners, of whom at least one possesses Dutch nationality, have their residency outside the Netherlands and wish to convert their registered partnership into a marriage in The Netherlands, the conversion shall be made at the Registrar of Births, Deaths, Marriages and Registered Partnerships in The Hague.
- **2.** Articles 65 and 66 shall apply *mutatis mutandis*.
- **3.** A conversion shall cause the registered partnership to end and the marriage to commence on the date of drawing up of the conversion instrument in the register of marriages. The conversion shall not change

Part I Book 1, Dutch Civil Code – Family Law and the Law of Persons

any possibly existing legal familial ties with children born prior to the conversion.

TITLE 6 RIGHTS AND DUTIES OF THE SPOUSES

Article 81

The spouses owe each other a duty of fidelity, support and assistance and must provide for each other's needs.

Article 82

The spouses have a mutual duty of care for the minor children who form part of the family and to bear the cost of such care and raising.

Article 83²

Repealed

The spouses shall provide each other, when so requested, with information on the administration conducted by them and on the position of their assets and liabilities.

Article 84

- 1. The cost of maintaining the household, including the cost of the care and upbringing of the children, shall be chargeable to the common income of the spouses and, insofar as this is insufficient, to their own income *pro rata*; insofar as their income is insufficient, such costs shall be chargeable to the common capital and, insofar as this is also insufficient, to their own capital *pro rata*. This shall not apply insofar as special circumstances oppose this.
- **2.** The spouses owe each other a duty to contribute correspondingly to cover the expenditure referred to in paragraph (1) from the property under their control insofar as special circumstances do not oppose this.
- **3.** Provisions in a written contract which differ from paragraphs (1) and (2) may be made.
- **4.** Disputes between the spouses in applying paragraphs (1) and (2) shall be decided by the district court at the request of either or both spouses.
- **5.** At the request of either or both spouses the district court may vary a given court order or mutual contractual provisions on the ground of a change in circumstances.

The text of Articles 83, 87, 93-97, 99, 102, 122-128, 130, 131, 133, 134 and 142 is expected to be enacted shortly and has thus been included in this Book in italics, *Proceedings of the Second Chamber*, 2002-2003, No. 28 867.

1. Each spouse is wholly and jointly liable, together with the other spouse, for obligations entered into by the other for the benefit of the ordinary running of the household, including obligations arising from employment contracts entered into by the spouse as employer on behalf of the household.

Article 86

- 1. Where there are well-founded reasons a district court may, at the request of one of the spouses, determine that such a spouse shall not be liable for obligations subsequently entered into by the other spouse as referred to in paragraph (1) of the preceding Article.
- **2.** A judicial order given in accordance with this Article may, in the case of changed circumstances, be varied or lifted in the same manner as it was made.
- **3.** A court order may only be used against third parties who were unaware of its existence, when registered in the matrimonial property register specified in Article 116 of this Book and after fourteen days have passed since its registration.
- **4.** A court order may provide that it must further be published in one or more daily newspapers specified by the court, in which case the order shall not prejudice third persons' interests unaware thereof even prior to its publication.

Article 87³

Repealed

- 1. If a spouse acquires an asset at the expense of the capital of the other spouse which will belong to his or her capital or if a debt regarding an asset belonging to his or her own capital is settled or redeemed at the expense of the other spouse's capital, the first mentioned spouse shall have a duty to compensate the other.
- 2. The compensation shall amount to such a part of the value of the asset at the time of its payment as shall be proportionate to the share originating from the capital of the other spouse or to what was paid or redeemed out of such capital, either as countervalue for which the asset is acquired or as value of the asset at the time of payment or redemption from the capital of the other spouse. The compensation shall amount to at least the nominal value if, without his or her consent, the capital of

See footnote to Article 83.

the other spouse was applied by his or her spouse in a manner referred to in paragraph (1).

3. The spouses may derogate from paragraphs (1) and (2) by contract.

Article 88

- **1.** A spouse requires consent of the other spouse for the following legal transactions:
 - (a) contracts for the disposal, encumbrance or the giving in use and legal transactions for discontinuation of the use of a dwelling in which the spouses live jointly or in which the other spouse is living alone or of things pertaining to such a dwelling or to the household effects;
 - (b) gifts, with the exception of normal, non-excessive gifts and of those for which nothing is drawn from his or her own capital during the life of the spouse;
 - (c) contracts which claim that a spouse, other than in the normal conduct of his or her profession or business, commits him or herself as surety or joint and several co-obligor, or will answer for a third party or bind him or herself as collateral for an obligation of a third person;
 - (d) hire-purchase contracts, except for things which only or mainly serve for the normal conduct of his or her profession or business.
- **2.** A spouse does not need consent, where the legal transaction must be performed on the grounds of a rule of law or of a preceding legal transaction for which consent was granted or was not required.
- **3.** Consent must be given in writing where a formality is prescribed by law for performing the legal transaction.
- **4.** In derogation from paragraph (1) (b), no consent shall be required for gifts purporting to be executed after the death of the donor and not already during his or her lifetime. Where a gift consists of the designation as a beneficiary, which was or can be accepted during the life of the insured, then consent therefore will be required.
- **5.** No consent for a transaction as referred to in paragraph (1)(c) is required, if it is performed by a director of a company limited by shares or of a private company with limited liability who alone or jointly with his or her co-directors holds a majority of shares, provided it is made in the normal conduct of the business of such a company.
- **6.** If the other spouse finds it impossible to declare on account of absence or any other cause his or her will or does not grant consent, an application may be made to the sub-district court for a decision.

- 1. A legal transaction performed by a spouse in breach of the preceding Article is voidable. Only the other spouse may claim a ground for avoidance.
- **2.** The preceding paragraph shall not apply in respect of any other transaction than a gift where the other party was in good faith.
- **3.** The end of the marriage and a judicial separation do not affect the right to claim a ground for avoidance in order to avoid a legal transaction of a spouse, which arose prior thereto. If as a result, the other spouse becomes an obligor on account of such a legal transaction, Article 51(3) of Book 3 shall only apply to him or her as long as the period mentioned in Article 52(1) of Book 3 has not expired.
- **4.** A declaration or right of action for avoidance need not, in derogation from Articles 50(1) and 51(2) of Book 3, also be directed to the spouse who performed the transaction.
- **5.** A spouse who has invoked a ground for avoidance may also institute rights of action arising from the nullity.

Article 90

- 1. A spouse has the right to administer his or her own property and, in accordance with the rules of Article 97, to administer the community property.
- 2. The administration by a spouse of any property includes the exercise of their rights pertaining thereto, with the exclusion of the other spouse, including the right of disposal and the right to perform and allow factual acts in respect of such property, without prejudice to the rights of enjoyment and use which vest in the other spouse in accordance with the marital relationship.
- **3.** The provisions in respect of mandate shall apply between a spouse who leaves the administration to which he or she is entitled to the other spouse and the latter spouse, with due observance of the nature of the marital relationship and the nature of the type of property.
- 4. A spouse who administers any property may, jointly with the other spouse, be a party to a legal transaction which the other spouse performed as regards such property. The declaration of his or her joining as a party shall be addressed to the persons who are a party to the legal transaction; Article 56 of Book 3 shall apply *mutatis mutandis*. Where a specific form is prescribed for the performance of a legal transaction, the same requirement shall apply for joining as a party. A spouse may exclude the joining as a party to accessory rights and obligations and to those whose performance may already be demanded. He or she is deemed to have only bound him or herself while respecting rights previously granted to third persons.

- 1. If, as a result of absence or another cause, a spouse finds it impossible to administer his or her own property or the community property or, to a serious extent, fails to administer the community property, the district court may, at the request of the other spouse, order him or her to administer such property or a part thereof while excluding the first mentioned spouse. When giving such mandate, the district court may set further rules in respect of the administration and representation within the meaning of paragraph (4).
- 2. Articles 86(2) to (4) inclusive and 90(3) shall apply mutatis mutandis.
- **3.** The court shall order both parties to be heard and, where the first mentioned spouse in paragraph (1) has appointed a representative, also the latter.
- **4.** A spouse delegated with the administration of property has a right of representation of the spouse whose administration is removed in respect of transactions other than those relating to the administration of such property.

Article 92

- 1. Where a third person cannot ascertain which of the spouses has the right of administration of a moveable thing which is not registered property or a right to bearer, he or she may consider the spouse who holds the thing or document issued to bearer as having such a right.
- **2.** A spouse who, due to a legal transaction of the other spouse, is hindered by a third party in good faith in the administration of any property shall lose the right to terminate such a hindrance, if he or she has not opposed such a hindrance within a reasonable period after having become aware thereof. The right of a spouse to terminate the hindrance shall also lapse, if the third person has given him or her a reasonable period to exercise such a right and he or she has not made use thereof.
- 3. The fact that no payment may be demanded of a claim for compensation arisen during the marriage as a result of an adjustment of capital between the spouses mutually or between one of the spouses and a community which exist between them, may not be used against a third party

Article 92a

This Title shall not apply to spouses who are judicially separated.

TITLE 7 THE STATUTORY COMMUNITY OF PROPERTY

Section 1 General Provisions

Article 934

A general community of property exists between the spouses by operation of law from the time of the solemnisation of the marriage insofar as no derogation is made therefrom by a marriage contract.

This Title shall apply to spouses. Unless otherwise provided, derogation from this Title may only be made by a marriage contract either explicitly or as a result of the nature of the stipulations therein.

Article 94⁵

- 1. The community comprises, where its assets are concerned, all present and future property of the spouses, with the exception of property as regards to which it was provided by last will of the testator or when a gift was made stating that it would fall outside the community of property and with the exception of the right of usufruct in Section 2 of Title 3 of Book 4.
- 1. A community of property shall exist between the spouses from the moment of the solemnisation of the marriage by operation of law.
- **2.** It comprises, where its liabilities are concerned, all the debts of both spouses.
- 2. The community of property shall comprise, where its assets are concerned, all property assets of the spouses acquired during the existence of the community, with the exception of:
 - (a) property acquired pursuant to a hereditary succession, a testamentary disposition, the vesting of a beneficial interest subject to a testamentary obligation or a gift;
 - (b) pension rights in respect of which the Wet verevening pensioenrechten bij scheiding (Pension Rights Equalisation (Separation) Act) applies and rights to dependents' pensions relating to such pension rights;

⁴ See footnote to Article 83.

See footnote to Article 83.

- (c) rights to the establishment of a usufruct as referred to in Articles 29 and 30 of Book 4 and a usufruct established pursuant to such provisions.
- **3.** Property and debts which have a close affinity to one of the spouses in any particular manner only fall within the community of property insofar as this would not be contrary to such an affinity.
- 3. Assets and liabilities which the spouses have contributed to the marital property shall not constitute a part of the community of property unless it is provided that these will constitute part of the community of property prior to the marriage by a notarial instrument, which shall include an instrument recording a marriage contract or a description appended to the notarial instrument signed by the future spouses and the notary.
- **4.** Without prejudice to the provision in Article 155 of this Book, pension rights covered by the *Wet verevening pensioenrechten bij scheiding* (Pension Rights Equalisation (Separation) Act) (*Staatsblad (Bulletin of Acts and Decrees*) 1994, No. 342) and rights to a pension for dependants connected with such pension rights do not fall in the community.
- 4. Assets and the benefits of such assets with regard to which it has been provided by last will or when the gift was made that these shall remain outside the community of property, shall fall outside the community of property even if the spouses agree in their marriage contract that assets acquired pursuant to hereditary succession, testamentary disposition, the vesting of a beneficial interest subject to a testamentary obligation or a gift or the benefits therefrom shall constitute part of the community of property.
- 5. Assets and liabilities with which a spouse has a particular personal affinity shall only constitute part of the community of property insofar as this is not barred by such a personal affinity.
- **6.** Benefits from assets which do not constitute part of the community of property, shall also not constitute part of the community of property.
- 7. A community of property shall, where its burdens are concerned, comprise all liabilities of the spouses that have arisen during the existence of the community of property, with the exception of liabilities which pertain to assets excluded from the community of property.
- 8. Where there is a dispute between the spouses as to whom an asset belongs and neither can prove his or her right to such an asset, such an asset shall be considered to be a community asset. The presumption does not apply where this would be to the detriment of the creditors of the spouses.

Article 95⁶

- 1. A levy for execution may be made both against the property of the community and against a spouse's own property in respect of a debt of a spouse which has fallen within the scope of the community.
- 1. An asset acquired by the spouse otherwise than gratuitously shall remain outside the community of property if over one half of the countervalue for which it was acquired was at the expense of his or her own capital. In that case this spouse shall be bound to compensate the community. The amount of the compensation shall be determined in accordance with Article 87(2).
- **2.** A spouse who has paid a community debt from his or her own property has a right to compensation from the community property on account thereof.
- 2. If an asset has become part of the community of property and a spouse has contributed in paying the countervalue on its acquisition from his or her own capital, a claim for compensation for an amount determined in accordance with Article 87(2) shall vest in such a spouse.
- 3. The spouses may by contract make different provisions regarding the established amount of compensation.

Article 96⁷

- 1. A levy for execution may also be made against the community property for a debt of a spouse which did not fall in the community of property, unless the other spouse designates property owned by the first mentioned spouse which will constitute sufficient recourse.
- 1. A levy for execution may be made for a debt of a spouse that has become part of the community of property both against the assets of the community of property and his or her own assets.
- **2.** A spouse whose debt which did not fall in the community is paid from community property must compensate the community on account thereof.
- 2. If a creditor seeks recovery against assets of the community of property for a debt which has not become part of the community of property, the other spouse may

⁶ See footnote to Article 83.

See footnote to Article 83.

designate the separate assets of his or her spouse where these will provide sufficient recourse.

- 3. Recovery for a spouse's debt against assets of the community of property which are not part of the community of property shall be limited to one half of the proceeds from the assets in respect of which levy for execution is made. The other half shall vest in the other spouse and shall from then on remain outside the community of property. If a creditor seeks recovery of an asset of the community of property on account of a debt which does not form part of the community of property, the other spouse is entitled to acquire the asset against which the creditor seeks recovery by paying one half of the value of the asset from his or her own capital. This asset belongs to this spouse's own estate from the moment of it's acquisition and does not fall into the community of property.
- **4.** A spouse from whose own assets a debt of the community of property is paid shall have a right to compensation on account thereof from the assets of the community of property.

Section 2 The Administration of the Community of Property

Article 978

- 1. Property of the community is subject to the administration of the spouse from whom it originated insofar as the spouses did not otherwise agree in a marriage contract or the court has not otherwise determined when applying Article 91 of this Book. Property that is considered to have substituted other property shall be administered by the spouse who administered the substituted property. Property that has been put in the name of one of the spouses shall, however, be subject to the administration of that spouse. Each of the spouses has the right to interrupt prescription for the benefit of the community.
- 1. An asset registered in the name of a spouse shall be subject to the administration of that spouse. In all other cases, each of the spouses is entitled to administer the assets and liabilities of the community of property. Article 170(1) of Book 3 applies mutatis mutandis.
- 2. Where property of the community, with the consent granted by the spouse which had its administration, serves for a profession or business of the other spouse, the administration of that property, insofar as transactions are concerned which are to be considered to constitute normal

⁸ See footnote to Article 83.

conduct of that profession or business, shall vest in the latter spouse and, for the rest, in the spouses jointly. When consent is granted, this shall be valid for the entire duration of the profession or business unless the spouses otherwise agree, provided that the district court may always terminate such use for well-founded reasons at the request of a spouse.

- 2. Where an asset of the community, with the consent of the spouse under whose exclusive or joint administration the asset fell, serves for a profession or business of the other spouse, the administration of that asset, insofar as transactions are concerned, which may be considered to constitute normal conduct of that profession or business, shall vest exclusively in the latter spouse and, in all other cases, in the spouses jointly. When consent is granted, this shall be valid for the entire duration of the profession or business unless the spouses otherwise agree, provided that the district court, on the request of the spouse who has given consent, may always terminate for well-founded reasons.
- 3. Disputes between the spouses in respect of the administration regarding assets and liabilities pertaining to the community of property, may be submitted to the district court at the request of the spouses or either one of them.

Article 98

When so requested, the spouses shall provide each other with information regarding the conduct of the administration and the condition of the property and debts of the community.

Section 3 Dissolution of the Community of Property

Article 999

- 1. The community of property shall be dissolved by law:
 - (a) upon the ending of the marriage;
 - (b) on a judicial separation;
 - (c) by a court order which terminates the community of property;
 - (d) by its ending as a result of a subsequent marriage contract.
- 1. The time and date at which the community of property shall be dissolved by operation of law, shall be:
 - (a) where the marriage or the registered partnership ends by death: the time and date of death;

See footnote to Article 83.

- (b) where the marriage is terminated by divorce or where the registered partnership is dissolved by the court: the time and date of the lodging of the divorce petition or, as the case may be, the lodging of the petition for termination of the registered partnership;
- (c) in the case of a judicial separation: the time and date of the lodging of the petition for judicial separation;
- (d) in the case of termination of the community of property by a court order: the time and date of the lodging of the petition for the termination of the community of property;
- (e) in the case of dissolution of a registered partnership by mutual consent: the time and date on which the agreement for its dissolution is made;
- (f) in the case where a spouse has gone missing followed by a marriage or registered partnership: the time and date on which the court order referred to in Article 417(1) becomes final and binding;
- (g) in the case of termination by a subsequent marriage contract: the time and date referred to in Article 120(1).
- **2.** Whenever a community of property is dissolved, a claim for the division of the community of property or for an order on the manner of its division and the determination of the division may already be instituted in accordance with Title 7 of Book 3 together with a request which, when granted, will result in its dissolution.
- 2. The dissolution of the community of property by the lodging of a petition referred to in paragraph (1)(b), (c) and (d) and by the entry into of a contract referred to in paragraph (1)(e), may only be raised as a defence as against third parties, if the petition concerned or the contract was registered in the Matrimonial Property Register referred to in Article 116.
- 3. The withdrawal of a petition referred to in paragraph (1)(b), (c) and (d), or the notice of termination of a contract referred to in paragraph (1)(e) shall revive by operation of law all the consequences of the community of property as if no petition had been lodged or as if no contract had been entered into. Nevertheless the validity of any legal transaction performed since one of the petitions was lodged or the contract was entered into until the withdrawal of the petition or, as the case may be, the termination of the contract shall be considered as at the time and date the transaction took place.
- **4.** A claim for the division of the community of property or for an order on the manner of its division and the determination of the division may already be instituted in accordance with Title 7 of Book 3 together with a petition referred to in paragraph (1)(b), (c) or (d).

- 1. Spouses have an equal share in a dissolved community of property unless otherwise provided for by a contract or by an agreement entered into between the spouses in writing with a view to the impending dissolution of the community of property otherwise than by death or as a result of its ending by contract.
- **2.** Persons who are an obligee on dissolution of the community of property shall retain the right of recourse to which they are entitled against the community property as long as such property is not divided.

Article 101

After the dissolution of the community of property each spouse has the right to take over the clothing and small objects which serve for personal use and capital assets used in the conduct of a profession or business and family papers and mementoes.

Article 10210

After dissolution of the community of property each spouse remains wholly liable for the debts of the community for which the spouse was liable prior thereto and for half of the other debts of the community, for which the spouse is jointly and severally liable together with the other spouse.

Repealed

Article 103

- 1. Each of the spouses has the right to renounce the community of property; any contracts in breach thereof shall be null and void.
- **2.** The part of the community of property which is renounced shall accrue to the part of the other spouse.
- **3.** A spouse who has made a renunciation may not lay claim to anything from the community of property other than the spouse's bed and bedding pertaining thereto and the clothing needed for personal use. The spouse may take over family papers and mementoes at the appraised price.
- **4.** By such renunciation a spouse shall be released from liability and the obligation to contribute to the debts of the community of property for which he or she was not liable prior to the dissolution of the community of property.

See footnote to Article 83.

- **5.** The spouse shall remain liable for the debts of the community of property for which he or she was liable prior to dissolution of the community of property. A spouse who has paid more than one-half of a debt for which both spouses were fully liable prior to dissolution of the community of property may have recourse against the other spouse for the part exceeding such half.
- **6.** If the other spouse has paid a debt of the community of property, in full or in part, for which he or she was not liable prior to dissolution of the community of property, such a spouse shall have recourse on account thereof against the spouse who has made a renunciation. A spouse who paid more than one-half of a debt for which both spouses were wholly liable prior to dissolution of the community of property may have recourse for such excess against the spouse who has made a renunciation.

- 1. A spouse who wishes to use the privilege described in the preceding Article must, within three months from the dissolution of the community of property, procure registration of an instrument of renunciation in the Matrimonial Property Register designated in Article 116 of this Book, failing which this privilege will lapse.
- 2. If the community of property is dissolved on the death of the other spouse, the three-month period shall commence on the date on which the spouse wishing to use the privilege has knowledge of the death. Where the community of property is dissolved by termination or by judicial separation, the three-month period will end when the court order has become final and binding.

Article 105

- 1. The heirs of a spouse, whose death dissolved the community of property or who has died within the period laid down in the preceding Article without having made a renunciation, each have the right, for their share, to make a renunciation in the manner described in the preceding Article within three months after having knowledge of the death.
- **2.** A spouse's claim to claim back his bed, bedding and clothing from the community of property cannot be assigned and is also not transmitted to his or her heirs.

Article 106

The district court of the place where the instrument of renunciation must be recorded may extend the period set for registration prior to the expiry thereof once or more often on account of special circumstances.

- 1. A spouse or a spouse's heir who has appropriated property of the community of property or has mislaid or misappropriated property belonging to it may no longer make a renunciation. Acts of day-to-day administration or for the preservation of property shall not have this effect.
- **2.** A spouse who, after having made a renunciation, mislays or misappropriates property of the community looses the right granted by Article 103(4) of this Book.

Article 108

- 1. A renunciation of the community of property by a spouse or heir of a spouse made after a renunciation by the other spouse or one or more of the latter's heirs shall not have the consequences described in Article 103(2) and (3) of this Book and obliges persons entitled to the community of property to liquidate it. Section 3 of Title 6 of Book 4 in respect of the liquidation of the deceased's estates shall apply *mutatis mutandis* where possible.
- 2. If a person who must liquidate the community of property fails to comply with this obligation, after having been warned to account for the liquidation, he or she no longer has the right granted by Article 103(4) of this Book.

Section 4 Dissolution of the Community of Property by Court Order

Article 109

Aspouse may apply for the termination of the community of property when the other spouse rashly incurs debts, squanders the property of the community, performs acts which manifestly run counter to the administration of the other spouse in respect of the community property or refuses to give the necessary information on the condition of the community property and the debts for which recourse may be obtained against such property and the administration conducted in respect of such property.

Article 110

1. The application must be recorded in the Matrimonial Property Register designated in Article 116 of this Book and must be published in a national daily newspaper or in a daily newspaper with a circulation in the region where the court having jurisdiction to hear the application is located. The publication shall mention the date of the application and the surname,

forenames, profession and address of each of the spouses. The court order may not be given within one month after the publication was made.

2. A spouse who applies for the termination of the community of property may take the steps for preserving his or her rights which are further indicated in the Code of Civil Procedure.

Article 111

- 1. The court order granting the application to terminate the community of property has retrospective effect to the date on which paragraph (1) of the preceding Article is complied with, from which date the spouses will be deemed to have married with exclusion of any community of property, with all such covenants as are specified in the court order.
- **2.** A spouse against whom the application is granted and who has prejudiced the community of property by having rashly incurred debts since the commencement of the proceedings or within six months prior thereto, has squandered community property or has performed a legal act referred to in Article 88 of this Book without the required consent or authorisation, must compensate the loss caused to the community of property.
- **3.** A right of action based on the preceding paragraph may not be instituted after three years or more from the date on which the court order became final and binding.

Article 112

- 1. In order to be effective as against third persons not aware thereof, the termination of the community of property must be publicly announced and, after the court order has become final and binding, it must be registered in the Matrimonial Property Register designated in Article 116 of this Book.
- 2. Publication shall be made by insertion of an extract from the court order in the Government Gazette and in one or more daily newspapers specified in the court order. The extract shall list the information referred to in Article 110(1) and the date of the court order and an indication of the court which gave it. The grounds on which the court order is based may not be included in the extract.

Article 113

When a community of property is dissolved by termination, the spouses may only agree to enter into a new community of property by a marriage contract.

TITLE 8 MARRIAGE CONTRACTS

Section 1 Marriage Contracts in General

Article 114

Marriage contracts may both be made by the prospective spouses prior to their marriage and by the spouses during their marriage.

Article 115

- 1. In order to be valid, marriage contracts must be entered into by notarial instrument.
- **2.** Power of attorney to enter into a marriage contract must be given in writing and contain the provisions to be included in the marriage contract.

Article 116

- 1. Provisions in marriage contracts may be used against persons who were unaware thereof only if these provisions were registered in the public Matrimonial Property Register kept at the clerk's office of the district court within whose jurisdiction the marriage is entered into or, where a marriage is entered into outside the Netherlands, at the clerk's office of the district court in The Hague.
- **2.** The manner of the layout and consultation of the register shall be further regulated by Regulation.

Article 117

- 1. Marriage contracts made or altered prior to a marriage shall only be valid if the persons whose consent necessary for a marriage have given their consent to the marriage contract or its alteration, at the time the instrument is made; where consent of the sub-district court is necessary, it will be sufficient if its order is appended to the original instrument. Article 39(1) of this Book shall apply *mutatis mutandis* to an application for consent from the sub-district court.
- **2.** Marriage contracts made prior to a marriage shall enter into force from the date of solemnisation of the marriage; no other date may be specified for such a purpose.

A spouse over whom a curator is appointed may only make or alter a marriage contract after solemnisation of the marriage with the consent of the curator.

Article 119

- 1. District court approval is required for making or altering marriage contracts during a marriage. The spouses must lodge a draft notarial deed along with the petition. The petition may be lodged without intervention of a member of the local Bar.
- **2.** The full or partial approval shall be refused only where there is a risk that creditors may be prejudiced or if one or more terms are in breach of the rules of mandatory law, *bonos mores* or Dutch public policy.
- **3.** The instrument shall lapse if it is not executed within three months after the court order granting approval became binding and final.

Article 120

- 1. Marriage contracts made or altered during the marriage enter into force on the date following that on which the instrument is executed unless the instrument specifies a later date.
- **2.** Provisions in these marriage contracts may only be used against third persons unaware thereof if these provisions had been registered for fourteen days or more in the Matrimonial Property Register.

Article 121

- 1. The parties may derogate in their marriage contracts from the provisions of the statutory community property regime provided the stipulations do not conflict with provisions of mandatory law, *bonos mores* or Dutch public policy.
- **2.** The parties may not provide that a spouse is committed to a larger share of the liabilities than that spouse shares in the community property.
- **3.** The parties may not derogate from the rights arising from parental authority or from the rights conferred by law to a surviving spouse.

Article 122¹¹

The provisions of the preceding Title shall apply insofar as there has been no derogation, explicitly or by implication, from the clauses made in the marriage contract.

Repealed

Article 123¹²

Where a community of benefits and income is agreed in the marriage contract, Articles 124-127, inclusive, of this Book shall apply insofar as there has been no derogation therefrom, explicitly or by implication.

Repealed

Article 124¹³

- 1. A community of benefits and income shall comprise, insofar as its assets are concerned, all property which the spouses acquire during the lifetime of the community other than as a result of hereditary succession, bequests or gifts, with the exception of what shall fall outside the community of property pursuant to the following paragraphs.
- 2. An asset gratuitously acquired by a spouse shall remain outside the community if more than one-half of its price is for his or her own personal account.
- **3.** Any amount collected on a claim which does not form part of the community and a claim for compensation which arises in lieu of a spouse's asset, including a claim on account of a reduction in value of such an asset, shall remain outside the community.

Repealed

Article 125¹⁴

A community of benefits and income shall comprise, insofar as its burdens are concerned, all liabilities of the spouses, except those which existed at the commencement of the community, either in respect of what was acquired by hereditary succession, bequests or gifts or which only relate to the person or assets of one of the spouses and are not customarily paid

See footnote to Article 83.

from income, in full or in part. A debt entered into by a spouse in connection with the acquisition of an asset with the knowledge of the creditor shall not fall in the community.

Repealed

Article 12615

- 1. Assets and liabilities which belong to a business or profession conducted by one of the spouses fall outside the community of benefits and income. This provision does not apply to registered property in the name of the other spouse.
- 2. Indemnifications in the amount of the profits and losses of the business or profession shall accrue to the benefit or shall be at the expense of the community according to standards which are generally considered reasonable.
- 3. Insofar as a spouse has a dominant position allowing the spouse to provide that the profits of a business which is not conducted in his or her own name will accrue, directly or indirectly, to his or her benefit, such business is deemed, for the purposes of the preceding paragraph, as a business conducted by the spouse.

Repealed

Article 127¹⁶

Insofar as the assets of the community, at the dissolution of a community of benefits and income, taking into account the indemnifications referred to in the preceding Article and in Articles 95(2) and 96(2) of this Book, are not sufficient to satisfy the liabilities of the community, these liabilities shall be borne by the spouse from whose side these have fallen into the community insofar as the nature of the liabilities does not give rise to a different obligation to contribute.

Repealed

Article 128¹⁷

When a community of profits and losses is agreed by a marriage contract, Articles 124-126, inclusive, of this Book shall apply mutatis mutandis insofar

Intersentia

73

¹⁵ See footnote to Article 83.

See footnote to Article 83.

See footnote to Article 83.

as there was no explicit derogation or derogation on account of the nature of the covenants.

Repealed

Article 129

Repealed

Article 130¹⁸

As against third persons a spouse can only prove his or her contribution pursuant to the marriage contract of assets which remain outside the community, insofar as rights to bearer and unregistered property assets are concerned, by them being mentioned in the instrument containing the marriage contract or on a list signed by the parties and the notary which is appended to the original instrument. If an asset that is so mentioned was not conclusively described, supplementary evidence may be given by any means; as regards assets which vested in a spouse without such a spouse's knowledge, the proof may be given by any means.

A spouse may only prove vis-à-vis a third party the contribution of assets which constitute part of the community of property insofar as these are rights to bearer and things which are not registered property by a notarial instrument, including an instrument recording a marriage contract, when these are mentioned in the instrument or in a description appended to the notarial instrument signed by the parties and the notary. If an asset that is so mentioned was not conclusively described, supplementary evidence may be given by any means; as regards assets which vested in a spouse without such a spouse's knowledge, the proof may be given by any means.

Article 131¹⁹

1. Where there is a dispute between the spouses concerning the ownership of a right to bearer or a thing which is not registered property and neither can prove the entitlement to such an asset, such an asset will be deemed community property when there is a community property regime between them which could comprise such an asset. Where there is no such community regime, each of the spouses will be deemed to own one-half.

See footnote to Article 83.

See footnote to Article 83.

- 1. Where there is a dispute between the spouses who have not been married with a community of property as to whom a right to bearer or a thing which is not registered property belongs and neither can prove his or her right to such an asset, the asset will be considered to belong to each of the spouses in equal halves.
- **2.** The presumption does not apply to the detriment of creditors of the spouses.

Section 2

§1. General Rules for Netting Covenants

Article 132

- 1. This Section shall apply to marriage contracts which provide for one or more obligations in respect of netting income or capital.
- **2.** Unless otherwise provided, there may be derogation from this Section by marriage contract, either explicitly or on account of the nature of the covenants.

Article 133²⁰

- 1. An obligation to net income or capital shall be mutual.
- **2.** The obligation to net shall relate exclusively to income or capital acquired by the spouses while such an obligation in existence. Netting obligations apply neither to capital acquired pursuant to hereditary succession, bequest or gifts nor to benefits therefrom or assets obtained in substitution for such capital or benefits.
- 2. The obligation to net shall relate exclusively to income or capital acquired by the spouses while such an obligation in existence. Netting obligations apply neither to capital acquired pursuant to hereditary succession, bequest, the vesting of a beneficial title under a testamentary obligation or gifts nor to benefits thereof or assets obtained in substitution for such capital or benefits.

Article 134²¹

It may be provided by testament of the testator or when a gift is made, that no netting is permitted of capital acquired pursuant to hereditary succession, bequest or gift and of benefits thereof, if the marriage contract provides for netting.

See footnote to Article 83.

See footnote to Article 83.

It may be provided by testament of the testator or when a gift is made, that no netting is permitted of capital acquired pursuant to hereditary succession, bequest, the vesting of a beneficial title under a testamentary obligation or gift and of benefits thereof, if the marriage contract provides for netting.

Article 135

- 1. The netting of income or of capital shall be made in halves.
- **2.** Articles 181, 183 and 195 to 200, inclusive, of Book 3 of the Civil Code shall apply *mutatis mutandis* to netting provided that the dates specified in Article 142 shall be conclusive for determining whether there is a detriment referred to in Article 196 of Book 3 of this Code. Articles 677 to 680, inclusive, of the Code of Civil Procedure shall apply *mutatis mutandis*.
- 3. Where a spouse wilfully conceals an asset that forms part of the nettable capital or causes its loss or keeps it hidden as a result of which its value is not included when the netting is made, there shall be no netting of its value but it shall be compensated in full to the other spouse.

Article 136

- 1. Where an asset is acquired using nettable capital, the acquired asset is deemed to be part of such nettable capital for such a share as corresponds to the part of the consideration applied at the time of the acquisition from the nettable capital divided by the total consideration. If a spouse has incurred a liability in connection with an acquisition of an asset, the asset is deemed to form part of the nettable capital on the basis of the first sentence insofar as the liability is deemed part thereof or is redeemed or paid therefrom.
- 2. Where there is a dispute between the spouses as to whether an asset is deemed to form part of the nettable capital and neither can prove it not to be deemed part of the nettable capital, the asset is deemed to form part of the nettable capital. This presumption does not apply where this would be to the detriment of the creditors of the spouses.

Article 137

- 1. Notwithstanding paragraph (3), netting shall be made in money.
- **2.** When claims arise which, on account of a netting covenant, are mutually due and payable, both claims shall be netted by operation of law up to their common amount.
- **3.** A spouse need only accept property in payment or may only demand property in lieu of netting in money, where netting in money would be unacceptable according to the standards of reasonableness and fairness.

- 1. The spouses are not mutually bound to account for the administration of their property. Bad administration of property does not give rise to an obligation to pay compensation.
- **2.** Each year the spouses may request from each other an itemised written and signed statement of the nettable income and capital. There may be no derogation from this provision.
- **3.** Disputes between the spouses in respect of the statement shall be settled by the district court on the application of either spouse.

Article 139

- 1. A spouse may apply for termination of the mutual netting obligation when the other spouse rashly incurs debts, squanders his or her assets or refuses to provide the obligatory statement referred to in Article 138(2) on his or her nettable income or capital.
- 2. When the spouse, against whom the application is directed, causes a loss to the nettable capital by incurring rash debts after or within six months prior to the commencement of proceedings, has squandered nettable assets or has performed a legal transaction referred to in Article 88 without the required consent or authorisation, he or she must compensate the loss caused.
- **3.** There may be no derogation from paragraphs (1) and (2).

Article 140

- 1. On the application of the spouse who is obliged to net, the court may, for important reasons, order that the sum of money due, increased with the interest to be specified in the court order, or without such an increase, be paid in instalments or only on expiry of a specific period, either in a lump-sum or in instalments. The court shall consider the interests of both parties. The court may oblige the spouse who is obliged to net to put up security, within a specific period, *in rem* or personal security for payment of the sum due.
- **2.** Whatever is provided in paragraph (1) in respect of a spouse shall apply *mutatis mutandis* upon his or her death to his or her assignees under universal title.
- 3. There may be no derogation from paragraphs (1) and (2).

§2. Periodical Netting Covenants

Article 141

- 1. Where a netting obligation relates to a period of the marriage described in the marriage contract and no netting took place over such a period, the netting obligation shall remain applicable over that period and extend to the balance from investment and reinvestment of whatever was not netted and over the benefits therefrom.
- **2.** Where a netting obligation relates to a period of the marriage described in the marriage contract, the netting obligation shall end at the time specified in Article 142, if such period is still running.
- **3.** When, at the end of the marriage, a periodical netting obligation agreed by marriage contract referred to in paragraph (1) is not complied with, the then present capital is presumed to have been formed from what had to be netted unless there is a different obligation on account of the requirements of reasonableness and fairness in the light of the nature and extent of the netting obligation. Article 143 shall apply *mutatis mutandis*.
- **4.** Where a spouse has a dominant position allowing the spouse to provide that the profits of an undertaking conducted in his or her own name will accrue, directly or indirectly, to his or her benefit and a netting covenant was made which would include profits from an undertaking, the non-distributed profits from such an undertaking, to the extent that this is generally considered reasonable, shall also be taken into account when determining the netting obligation of such a spouse, without prejudice to paragraph (1).
- **5.** Paragraph (4) shall apply *mutatis mutandis* if a spouse conducts an undertaking in his or her own name.
- **6.** A netting claim referred to in paragraph (1) shall not be prescribed within three years from the termination of the marriage or from the court order for a legal separation becoming irrevocable. This period may not be shortened.

§3. Final Netting Covenants

Article 142²²

- 1. The applicable date at which the composition and extent of the nettable capital shall be determined, shall be:
 - (a) where the marriage or registered partnership ends by death: the time of death;

See footnote to Article 83.

- (b) where the marriage is terminated by divorce: the date of the lodging of the divorce petition;
- (c) in the case of a legal separation: the date of the lodging of the petition for a legal separation;
- (d) in the case of discontinuation of the mutual netting obligation referred to in Article 139: the date of the lodging of the petition to discontinue such an obligation;
- (e) in the case of termination by mutual consent of a registered partnership: the date on which the agreement for its termination is made;
- (f) in the case of dissolution, on application, of a registered partnership: the date of the lodging of the application;
- (g) in the case where a spouse has gone missing and the other spouse has remarried or entered into a registered partnership: the date on which the court order referred to in Article 417(1) becomes final and binding.
- (h) in the case of termination of the mutual netting obligation in the case of a marriage contract: at the time referred to in Article 120(1).
- **2.** A derogation made by written contract may be made from the introduction of paragraph (1) and (1)(b) to (f), inclusive.

- 1. From the dates mentioned in Article 142(1) each spouse may request a description of the nettable capital of the other spouse.
- **2.** Articles 671 to 676, inclusive, and 679 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- **3.** Whatever is provided in the preceding paragraphs in respect of a spouse applies *mutatis mutandis* on his or her death to such spouse's assignees under universal title.
- **4.** There may be no derogation from paragraphs (1) to (3), inclusive.

Articles 144-148

Repealed

TITLE 9 DISSOLUTION OF A MARRIAGE

Section 1 Dissolution of a Marriage in General

Article 149

A marriage shall end:

- (a) due to death;
- (b) if one of the partners goes missing and this is followed by a new marriage or registered partnership of the other partner in accordance with the provisions of Section 2 or 3 of Title 18 of this Book;
- (c) by divorce in accordance with the provisions of Section 2 of this Title;
- (d) by dissolution of the marriage after a judicial separation in accordance with the provisions of Section 2 of Title 10 of this Book;
- (e) by conversion of a marriage into a registered partnership.

Section 2 Divorce

Article 150

A divorce between spouses not judicially separated shall be pronounced on the petition of one of the spouses or on their joint application.

Article 151

Divorce shall be pronounced on the petition of one of the spouses on the irretrievable breakdown of the marriage.

Article 152

Repealed

Article 153

1. If, as a result of the petition for divorce, in the case where a spouse who petitioned for a divorce predeceases the other spouse, an existing prospect of distributions to the other spouse would be lost or would seriously be diminished, and the other spouse raises a defence against the petition for that reason, the petition cannot be granted before provision has been made

in respect thereof which, having regard to the circumstances of the case, may be considered fair to both spouses. The court may set the period for such a purpose.

- **2.** Paragraph (1) is inapplicable:
 - (a) when it may reasonably be expected that the other spouse can arrange sufficient provisions for such instance;
 - (b) where the irretrievable breakdown of the marriage is predominantly due to the other spouse.

Article 154

- 1. A divorce shall be pronounced upon the joint petition of the spouses, where this is based on the opinion of both that their marriage has irretrievably broken down.
- **2.** Each of the spouses may withdraw the petition up until the time of the decision.

Article 155

In the case of divorce and to the extent either spouse after solemnisation of the marriage and prior to the divorce has accrued pension rights, the other spouse shall have the right to an equalisation of his or her pension in accordance with the provisions of or made pursuant to the Wet verevening pensioenrechten bij scheiding (Pension Rights Equalisation (Separation) Act), unless the spouses have excluded its application in the manner provided for in that Act.

Article 156

Repealed

Article 157

- 1. In a divorce decree or in a later decision, the district court may grant a right to maintenance chargeable to the other spouse to a spouse without sufficient income for his or her support who cannot reasonably acquire such income.
- **2.** When determining maintenance, the court may take into account the need for maintenance in the case of the death of the person who must pay it.
- **3.** On the application of either spouse the court may grant maintenance subject to conditions and a period to be fixed by it, provided that the right to maintenance does not expire more than twelve years from the date of

registration of the decree in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.

- **4.** If the court has not fixed a period, the obligation to provide maintenance shall end by law on expiry of a twelve-year period commencing on the date of registration of the decree in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.
- **5.** If termination of the maintenance on expiry of the period referred to in paragraph (4) is so far reaching that it would be unreasonable and unfair as against the spouse entitled to maintenance to keep to such without alteration, the court may, on the latter's application, still fix a period. An application for such purpose must be lodged within three months from the date of the termination. In its decision the court shall specify whether an extension of the period after its expiration will be possible or not.
- **6.** Where a marriage has lasted for not more than five years and no children were born from such a marriage, the maintenance obligation ends by operation of law on the expiry of a period equal to the duration of the marriage, commencing on the date of registration of the decree in the register of the Registry of Births, Deaths, Marriages and Registered Partnerships. If the court fixes a period, this may not result in the maintenance ending later than would have been the case pursuant to the preceding sentence. Paragraph (5) applies *mutatis mutandis* provided that the words 'the period referred to in paragraph (4) in the first sentence read: the period referred to in the first sentence.

Article 158

Prior to or after the divorce decree, the spouses may provide by contract whether and, if so, up to which amount one shall be bound to the other to provide for his or her maintenance after the divorce. Where no such period is laid down in the contract, Article 157(4) to (6), inclusive, applies *mutatis mutandis*.

Article 159

- 1. It may be stipulated in the contract that it may not be varied by judicial decision on account of any change of circumstances. Such a covenant may only be made in writing.
- **2.** The covenant shall lapse if the contract is entered into prior to the lodging of the divorce petition unless this was lodged within three months after the contract. The foregoing shall apply *mutatis mutandis* in the case of a joint application.
- **3.** Notwithstanding such a covenant, the district court may, on the application of one of the parties, vary the contract when the divorce decree is given or in a subsequent order because of such a far reaching change

of circumstances that the applicant may not be required to comply with the covenant according to standards of reasonableness and fairness.

Article 159a

A contract referred to in Articles 158 and 159 of this Book does not bar recourse pursuant to Article 93 of the *Algemene Bijstandswet* (National Assistance Act) and does not affect the fixing of the amount for which there shall be recourse.

Legislative enactment, Staatsblad (Bulletin of Acts and Decrees) 2003, No. 376, not yet in force

A contract referred to in Articles 158 and 159 of this Book does not bar recourse pursuant to Article 13 of the Invoeringswet Werk en Bijstand (Work and Assistance Act) and does not affect the fixing of the amount for which there shall be recourse.

Article 160

An obligation of a former spouse to provide for maintenance to the other party on account of a divorce shall end when the latter remarries, enters into a registered partnership or has begun to live with another as if they are married or as if they had entered into a registered partnership.

Articles 161-162a

Repealed

Article 163

- 1. A divorce shall take effect by registration of the decree in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships.
- **2.** Registration shall be made on the joint application of the parties or by either one of them.
- **3.** If no application for registration is made within six months of the date on which the decree became final and binding, the decree shall become invalid.

Article 164

1. If a community of property existing between the spouses is prejudiced because one of the spouses has incurred rash debts after commencement of the lawsuit, or within six months prior thereto, has squandered property of the community, or has performed legal transactions referred to in Article

88 of this Book without the required consent or authorisation, he or she must compensate the loss caused to the community after registration of the divorce decree.

2. A right of action based on the preceding paragraph may no longer be instituted three years after registration of the decree.

Article 165

- 1. On the application of a spouse, the court may provide in the divorce decree or in a subsequent decision that, if such a spouse resides in a dwelling which at the registration of the decree belonged exclusively to or was co-owned by the other spouse or which the spouse was entitled to use, he or she has the right as against the other spouse to continue to live there and to use the things pertaining to the dwelling and its household effects for a period of six months after registration of the decree against a reasonable indemnification.
- **2.** A legal transaction performed by the other spouse without his or her consent during such a period may not be raised against him or her where this would detrimentally effect the right set out in the preceding paragraph.
- **3.** If the spouse refuses consent or is unable to state his or her wish, the district court which gave its decision in the first instance on the divorce petition, shall provide, on the application of the other designated spouse that the preceding paragraph shall remain inapplicable.

Article 166

If the divorced parties remarry or enter into a registered partnership with one another, all consequences of the marriage shall revive by operation of law as if no divorce had taken place. Nevertheless, the validity of legal transactions made between the dissolution of the marriage and the new marriage or registered partnership, shall be considered to be concluded at the time of the transaction. Article 119 shall apply *mutatis mutandis* to the making or changing of the conditions referred to in Title 8 in order to enter into the new marriage or the registration.

Article 167

Repealed

TITLE 10 JUDICIAL SEPARATION AND DISSOLUTION OF THE MARRIAGE AFTER A JUDICIAL SEPARATION

Section 1 Judicial Separation

Article 168

Repealed

Article 169

- 1. A judicial separation may be applied for on the same ground and in the same manner as a divorce.
- **2.** Articles 151, 154 to 159a, inclusive, shall apply *mutatis mutandis* provided that the periods referred to in Article 157(3) to (6), inclusive, commence on the date on which the judicial separation decree is registered in the Matrimonial Property Register designated in Article 116 and that the lifetime of the marriage is calculated up to such a date.
- **3.** An obligation of a spouse to provide maintenance to the other spouse on account of a judicial separation shall end upon the dissolution of the marriage.

Articles 170-172

Repealed

Article 173

- 1. A judicial separation shall take effect by registration of the decree in the Matrimonial Property Register designated in Article 116.
- **2.** Registration shall be made upon the joint application of the spouses or by either one of them.
- **3.** If no application is made within six months from the date on which the decree became final and binding, the decree shall become invalid.

- 1. If a community of property subsisting between the spouses is prejudiced because one of the spouses has incurred rash debts after commencement of the lawsuit, or within six months prior thereto, has squandered property of the community or has performed legal transactions referred to in Article 88 of this Book without the required consent or authorisation, he or she must compensate the loss caused to the community after registration of the decree ordering the judicial separation.
- **2.** A right of action based on paragraph (1) may no longer be instituted after three years from registration of the judicial separation decree.

Article 175

- 1. On the application of a spouse, the court may provide in the judicial separation decree or in a subsequent decision that, if such a spouse resides in a dwelling which at the time of registration of the decree exclusively belonged to or was co-owned by the other spouse or which the spouse was entitled to use, he or she has the right as against the other spouse to continue to live there and to use the things pertaining to the dwelling and its household effects for a period of six months after registration of the decree against a reasonable indemnification.
- 2. A legal transaction performed by the other spouse without his or her consent during such a period may not be used against him or her where this would detrimentally affect the rights set out in the preceding paragraph.
- 3. If the spouse refuses consent or is unable to state his or her wish, the district court which gave its decision in the first instance on the judicial separation petition, shall provide, on the application of the other designated spouse that the preceding paragraph shall remain inapplicable.

Article 176

- 1. A judicial separation shall end as a result of the reconciliation of the spouses, at the time when they have procured registration, on their identical request, in the Matrimonial Property Register designated in Article 116 that the judicial separation has ceased to exist.
- **2.** Upon registration all consequences of the marriage revive by law as if no judicial separation had taken place. Nevertheless the validity of legal transactions performed between the judicial separation and the reconciliation shall be considered according to the time of the transaction.

Articles 177-178

Repealed

Section 2 Dissolution of the Marriage after Judicial Separation

Article 179

- 1. Dissolution of the marriage of spouses judicially separated shall be pronounced on the petition of one of the spouses, if the judicial separation has lasted for three years or more.
- **2.** On the petition of a spouse, the three year period may be shortened to one year or more, if the other spouse has continuously been guilty of misconduct to such a degree that the spouse who made the petition cannot be required to continue with the marriage.

Article 180

- 1. If, as a result of the petition for dissolution of the marriage, in the case where a spouse who made such a petition predeceases the other spouse, an existing prospect of distributions to the other spouse would be lost or would seriously be diminished, and the other spouse raises a defence against the petition for that reason, the petition cannot be granted before provision has been made in respect thereof which, having regard to the circumstances of the case, may be considered fair to both spouses. The court may set the period for such a purpose.
- **2.** Paragraph (1) is inapplicable:
 - (a) when it may reasonably be expected that the other spouse can arrange sufficient provisions for such instance;
 - (b) if the other spouse is continuously guilty of misconduct to such a degree that the spouse who made the petition cannot reasonably be required to make any provision for maintenance.

Article 181

Dissolution of the marriage of spouses who are judicially separated shall be pronounced on their joint petition.

Article 182

Articles 154(2) and 157 to 160, inclusive, of this Book apply *mutatis mutandis* provided that the periods referred to in Article 157(3) to (6), inclusive, will be reduced by the time during which there was an obligation towards the

Part I Book 1, Dutch Civil Code – Family Law and the Law of Persons

other spouse to provide maintenance during the judicial separation and that the duration of the marriage will be calculated until the date of registration of the judicial separation decree in the Matrimonial Property Register designated in Article 116.

Article 183

- 1. The dissolution of the marriage shall take effect by the registration of the decree in the register of the Registry of Births, Deaths, Marriages Registered Partnerships.
- **2.** Articles 163(2) and (3) and 166 of this Book apply *mutatis mutandis*.

Articles 184-196

Repealed

TITLE 11 PARENTAGE

Section 1 General

Article 197

Legal familial ties exist between a child, its parents and his or her blood relatives.

Article 198

The mother of a child is the woman who gives birth to a child or who has adopted the child.

Article 199

The father of a child is the man:

- (a) who, at the time of a child's birth, was married to the woman who gave birth to the child unless subparagraph b applies;
- (b) whose marriage with the woman who gave birth to the child is dissolved as a result of his death within 306 days prior to the child's birth even if the mother remarried; if, however, the woman was judicially separated since the 306th day prior to the child's birth or if she and her spouse have lived separate since that date, the woman may declare, within one year of the child's birth, before the Registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships that her deceased husband is not the father of the child. An instrument of this declaration shall be prepared. If the mother had remarried at the time of the birth, then the present spouse shall, in such case, be the father of the child;
- (c) who has recognised the child;
- (d) whose paternity has been established judicially; or
- (e) who has adopted the child.

Section 2 Denial of Paternity by Reason of Marriage

Article 200

- 1. The paternity referred to in Article 199(a) and (b) may be denied on the ground that the man is not the biological father of the child:
 - (a) by the father or the mother of the child;
 - (b) by the child itself.
- 2. The father and mother may not deny the paternity referred to in Article 199(a) and (b), if the man became aware of the pregnancy prior to the marriage.
- **3.** The father or mother may also not deny the paternity referred to in Article 199(a) and (b), if the man agreed to an act which could have resulted in the begetting of the child.
- **4.** Paragraphs (2) and (3) do not apply to the father if the mother has deceived him as to the person who fathered the child.
- **5.** The mother shall lodge the application to declare the denial well founded at the district court within one year after the child's birth. The father shall lodge such an application within one year after he became aware of the fact that he was presumed to be the biological father of the child.
- **6.** The child shall lodge the application to declare the denial well founded with the district court within three years after it became aware of the fact that the man was presumed not to be his or her biological father. However, if, during his or her minority, the child became aware of this fact, the application may be lodged within three years after the child has reached the age of majority.

Article 201

- 1. When the father or mother dies prior to the expiry of the period laid down in Article 200(5), a descendant of such a spouse in the first degree, ²³ or in the absence of a descendant, a parent of such a spouse may apply to the district court to declare the denial of paternity well founded. The application shall be made within one year after the date of death or after the applicant had become aware of the death.
- **2.** When the child dies prior to the expiry of the period laid down in Article 200(6), a descendant of the child in the first degree²⁴ may apply to the district court to declare the denial of paternity well-founded. When the

²³ In civil law, the point of computation begins at either of the persons in question and is then counted upwards to the common ancestor and then downwards to the other person.

See footnote to Article 201(1).

child has reached the age of majority at the time of death, the application shall be made within one year from the date of death or within one year after the applicant became aware of the death. Where the child died during its minority, the application must be made within one year after the child, had it been alive, could have independently made the application or if the applicant became aware of the death at a later time, within one year after his or her having become so aware.

Article 202

- 1. After the court order declaring a denial of paternity by reason of marriage well-founded has become final and binding, the paternity stemming from the marriage shall be deemed never to have had effect.
- **2.** Rights acquired by third persons in good faith shall, however, not be prejudiced as a result thereof.
- **3.** A declaratory ruling that the denial is well-founded shall not give rise to a claim for reimbursement of the cost of care and upbringing or of maintenance and study or for reimbursement of what was enjoyed pursuant to a right of usufruct. No obligation shall further arise to reimburse proprietary benefits that were enjoyed to the extent that the person who enjoyed such benefits did not benefit thereby at the time the application was made.

Section 3 Recognition

Article 203

- 1. Recognition can be made:
 - (a) by an instrument of recognition prepared by a Registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships;
 - (b) by notarial instrument.
- **2.** Recognition shall have effect from the time it was made.

Article 204

- **1.** A recognition is null and void, if it is made:
 - (a) by a man who may not enter into a marriage with the mother pursuant to Article 41;
 - (b) by a minor who has not yet reached the age of sixteen;
 - (c) where the child has not yet reached the age of sixteen, without the prior written consent of its mother;
 - (d) without the prior written consent of the child who is twelve or older;

- (e) by a man who is married at the time of the recognition to another woman, unless the district court has held it to be plausible that there is or has been a bond between the man and the mother which may, to a sufficient degree, be regarded as sufficiently like a marriage or that there is a close personal relationship between the man and the child;
- (f) while there are two parents.
- **2.** The consent required pursuant to subparagraphs (c) and (d) of the preceding paragraph may also be given on the occasion of the preparation of the instrument of recognition.
- **3.** The consent of a mother whose child has not yet reached the age of sixteen or the consent of a child of twelve or older may, at the request of the man wishing to recognise the child, be replaced by the consent of the district court, if the recognition would not prejudice the interests of the mother in an undisturbed relationship with the child or the interests of the child and the man who fathered the child.
- **4.** A man over whom a curator has been appointed on account of a mental disorder may only recognise the child after consent thereto is obtained from the sub-district court.

Article 205

- 1. An application to nullify a recognition may be lodged with the district court on the ground that the person who made recognition is not the biological father of the child:
 - (a) by the child itself, unless the recognition took place during his or her majority;
 - (b) by the person who had recognised the child if he had been induced thereto by threats, mistake, deceit or, during his minority, by duress;
 - (c) by the mother if she was induced to give consent for the recognition by threats, mistake, deceit or during her minority, by duress.
- **2.** The Public Prosecution Service may apply for nullification of the recognition on account of a breach of Dutch public policy, if the person who made the recognition is not the biological father of the child.
- **3.** In the case of threats or duress the application shall be lodged by the person who made the recognition or by the mother within one year after such duress has ceased to operate and, in the case of deceit or mistake, within one year after the applicant discovered the deceit or mistake.
- **4.** The application shall be lodged by the child within three years after it became aware of the fact that the man who was presumed to be his or her biological father, was not his or her biological father. However, if the child became aware of this fact while he or she was a minor, the application

may be lodged at the latest within three years after the child has reached the age of majority.

5. In the case when either the person who made the recognition or the mother dies prior to expiry of the period laid down in paragraph (3), Article 201(1) shall apply *mutatis mutandis*. In the case where the child dies prior to expiry of the period laid down in paragraph (4), Article 201(2) shall apply *mutatis mutandis*.

Article 206

- 1. After the court order nullifying the recognition has become final and binding the recognition shall be deemed never to have had any effect.
- **2.** However, rights acquired by third persons in good faith shall not be prejudiced.
- **3.** The nullification shall not give rise to a claim for reimbursement of the cost of care and upbringing or of maintenance and study, or for the reimbursement of the benefit enjoyed pursuant to a right of usufruct. No obligation shall further arise to reimburse proprietary benefits that were enjoyed to the extent that a person who enjoyed such benefits did not benefit thereby at the time the application was made.

Section 4 Judicial Determination of Paternity

Article 207

- 1. The paternity of a man may be established, also where he has died, by the district court on the ground that he fathered the child or on the ground that the man, as life-companion of the mother, agreed to an act which could have resulted in the begetting of the child, on the application of:
 - (a) the mother, unless the child has reached the age of sixteen;
 - (b) the child.
- 2. Paternity may not be established, if:
 - (a) the child has two parents;
 - (b) no marriage would be permitted to be entered into between the man and the mother of the child pursuant to Article 41; or
 - (c) the man referred to in the introduction of paragraph (1) is a minor who has not yet reached the age of sixteen, unless he died before having reached this age.
- **3.** The application shall be lodged by the mother within five years from the birth of the child or, where the identity of the presumed begetter or his abode is unknown, within five years from the date on which the mother became aware of the identity and abode.

- **4.** If the child dies before the establishment of the paternity could have taken place, a descendant of the child in the first degree²⁵ may apply to the district court for a ruling to establish the paternity provided the man referred to in paragraph (1) is still living. The application must be made within one year from the date of death or within one year after the applicant became aware of the death.
- **5.** Provided the court order in respect thereof has become final and binding, the establishment of paternity shall have retrospective effect until the moment of birth of the child. Rights acquired by third persons in good faith shall, however, not be prejudiced thereby. No obligation shall further arise to reimburse proprietary benefits to the extent the person who has enjoyed these was not benefited at the time the application was made.

Article 208

In the decision establishing paternity the district court may, on an application thereto, grant a contribution on behalf of the child to the cost of care and upbringing referred to in Article 404 or in the cost of maintenance and study referred to in Article 395a.

Section 5 Claim or Contestation of Legitimate Legal Status

Article 209

A person's parentage as it appears on his or her birth certificate may not be contested, if such a person has a legitimate legal status according to such a certificate.

Article 210

An application to declare the claim or contestation of a legitimate legal status well founded is not subject to prescription.

Article 211

- 1. An application to declare the claim of a legitimate legal status well founded may be lodged:
 - (a) by the child itself;
 - (b) by the heirs of the child, when the child has died during his or her minority or within three years thereafter.

See the footnote to Article 201(1).

2. If the child had lodged an application referred to in paragraph (1), his or her heirs may continue the proceedings.

Section 6 The Guardian Ad Hoc

Article 212

In matters of parentage the minor child, acting as applicant or interested person, shall be represented by a guardian *ad hoc* appointed for such a purpose by the district court.

Articles 213-226

Repealed

TITLE 12 ADOPTION

Article 227

- 1. Adoption shall be declared by means of a district court decision on the joint application of two persons or on the application of one person alone. Two persons may not jointly apply for adoption, if they would not be permitted to enter into a marriage with each other pursuant to Article 41.

 2. A joint application by two persons may only be made when they have cohabited for a continuous period of three years or more immediately preceding the lodging of the application. The application by an adopter who is a spouse, registered partner or other life-companion of the parent, may only be made if he or she has cohabited with such a parent for a continuous period of three years or more immediately preceding the lodging of the application.
- **3.** The application can only be granted if the adoption is manifestly in the best interests of the child, if it is established at the time of the application for adoption and it is reasonably foreseeable that, in the future, the child has nothing further to expect from his or her parent or parents in the capacity of a parent and if the conditions mentioned in Article 228 are fulfilled.
- **4.** Where the forenames of the child are not known, the court shall also specify in its adoption order one or more forenames, after having heard the adopter or adopters and the child, when the child is twelve or older.
- **5.** In matters of adoption, a minor parent has legal capacity to act at law.

Article 228

- 1. The conditions for adoption are:
 - (a) that the child is a minor on the date of the first application and that the child, if it is twelve or older on the date of the application, did not manifest objections against the application being granted on the occasion of it being heard. The same shall apply if in the view of the court there appears to be no objections against granting the application of a minor who has not yet reached the age of twelve on the date of the application but who may be considered able to reasonably assess his or her interests in the matter;
 - (b) that the child is not a grandchild of an adopter;
 - (c) that the adopter or each of the adopters is at least eighteen years older than the child;
 - (d) that neither of the parents contradict the application;

- (e) that the minor mother of the child on the date of the application has reached the age of sixteen;
- (f) that the adopter has cared and raised the child for a continuous period of not less than three years or, in the case of a joint adoption by two persons, that they have cared and raised the child for at least one year; if the spouse, registered partner or other life-companion of the parent wishes to adopt the child, the adopter and that parent must have cared for and raised the child for at least one year, unless the child is born from the relationship of the mother with a life-companion of the same sex;
- (g) that the parent or parents do not or no longer have parental authority over the child. If, however, the spouse, registered partner or other life-companion of the parent will adopt the child, it is required that such a parent alone or jointly with the aforementioned spouse, registered partner or other life-companion has parental authority.
- **2.** Any contradiction of a parent referred to in paragraph (1) (d) may be disregarded:
 - (a) if the child and a parent did not or hardly ever lived together as a family; or
 - (b) if the parent abuses his or her parental authority over the child or has grossly neglected the care and upbringing of the child; or
 - (c) if the parent has been irrevocably convicted of the commission of any of the criminal offences against the minor described in Titles XIII to XV, inclusive and XVIII to XX, inclusive, of Book 2 of the Penal Code.

Article 229

- 1. Legal familial ties between the adopted child, the adopting parent and his or her blood relatives or the adoptive parents and their blood relatives shall be vested as a result of the adoption.
- **2.** Legal familial ties between the adopted child, his or her original parents and their blood relatives shall simultaneously cease to exist.
- **3.** By derogation from paragraph (2), legal familial ties between the adopted child and his or her parent or the latter's blood relatives shall continue to exist, if the spouse, registered partner or other life-companion of such a parent adopts the child.
- **4.** If the child, at the time of the adoption, has access to a parent as regards whom legal familial ties cease to exist, the court may rule that there shall continue to be a right of access. Articles 377a(2) and (3), 377e and 377g shall apply *mutatis mutandis*.

Article 230

- 1. The adoption has effect from the day on which the decision becomes binding and final.
- **2.** The adoption shall also remain in effect where it would appear that the court wrongly assumed fulfilment of the conditions laid down in Article 228 of this Book.

Article 231

- 1. The adoption may be revoked by a decision of the district court on the application of the adopted child.
- 2. The application may be granted only if the revocation is manifestly in the best interests of the adopted child and if the court is convinced, in all conscience, that such a revocation is reasonable and the application is lodged two years or more but no later than five years from the date on which the adopted child reaches the age of majority.

Article 232

- 1. Upon revocation of the adoption, legal familial ties shall cease to exist both between the adopted child and his or her children, and the adoptive parent or adoptive parents and his or her blood relatives.
- **2.** Legal familial ties that have ceased to exist as a result of the adoption shall revive as a result of the revocation.
- **3.** Article 230 applies *mutatis mutandis* in respect of the revocation.

TITLE 13 MINORITY

Section 1 General Provisions

Article 233

Minors are persons who have not reached the age of eighteen and are not married or registered nor have been married or registered or have been declared of age pursuant to Article 253ha.

Article 234

- 1. Minors have the capacity to perform legal transactions provided they act with the consent of their legal representative to the extent the law does not otherwise provide.
- **2.** Consent may be granted only for a specific legal transaction or for a specific purpose.
- **3.** Consent is presumed to have been granted to a minor if it relates to a legal transaction in respect of which it is generally accepted practice that these are performed independently by minors of their age.

Section 2 The Grant of Limited Legal Capacity

Article 235

- 1. A grant of limited legal capacity whereby a minor is granted specific powers of a person who has reached majority may be granted at the minor's request by the sub-district court, when the minor has reached the age of sixteen.
- **2.** With due observance of Article 253a, limited legal capacity is not granted against the wish of the parents to the extent they exercise parental authority over the minor.
- **3.** When granting a limited legal capacity, the sub-district court shall explicitly provide which powers of an adult are granted to the minor. These powers may not extend to more than the right to receive his or her income, in full or in part, and the disposal thereof, the entry into leases as lessor in respect of property and land, the participation in a partnership and the conduct of a profession or business. However, a minor granted limited legal capacity shall not be vested legal capacity to dispose of registered property, transferable securities or claims secured by a mortgage.

4. He or she may act judicially as a claimant or defendant in respect of the grant of limited legal capacity itself and in respect of transactions for which he or she has capacity pursuant to the grant of limited legal capacity. Article 12(1) of this Book shall not apply to such transactions.

Article 236

- 1. A granted limited legal capacity may be revoked by the district court, if the minor abuses it or where there is a well-founded fear that he or she will do so.
- **2.** The revocation shall take place at the request of one of the minor's parents provided they exercise parental authority over him or her and with observance of Article 253a, or on the application of the guardian.

Article 237

- 1. A court order whereby limited legal capacity to act is granted or revoked must be announced in the Government Gazette and in two daily newspapers to be specified in the order.
- **2.** The announcement must precisely state the granted legal capacity and its purpose. Prior to the announcement neither the limited grant of capacity nor its revocation shall be operative vis-à-vis third parties who were unaware thereof.

Section 3 Child Care and Protection Board

Article 238

- 1. There is one Child Care and Protection Board.
- **2.** The duties and powers of the Child Care and Protection Board shall be laid down by law. These will be executed by the Child Care and Protection Board on behalf of the Minister of Justice.
- **3.** For the purpose of implementing its duties, the Board shall always keep itself informed of the development of the protection of children and promote collaboration with institutions for the protection of children and juvenile assistance and render advice when so requested or on its own initiative to authorities and institutions.
- **4.** Its involvements do not encompass the religious or ideological bases of the institutions for the protection of children.
- **5.** The seat, working procedure, insofar as the co-operation with the advisory and reporting units for maltreatment of children referred to in Chapter IVA of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act)

is concerned, and the organisation of the Board shall be regulated by Regulation.

Article 239

- 1. The Child Care and Protection Board may act on behalf of minors who have their residency, last residency or their actual abode in the Netherlands. The Board may also act on behalf of Dutch minors without a residency, last residency or an actual abode in the Netherlands.
- **2.** On behalf of minors with their residency, last residency or their actual abode within a court district the operating units of the Board within that district shall act for the Child Care and Protection Board.
- **3.** If, on account of the preceding paragraph, there are more operating units in several districts with authority to act on behalf of the same minor, the action of one of such operating units shall cause the authority of the other units to end.
- **4.** On behalf of Dutch minors without a residency, a last residency or an actual abode in the Netherlands the operating units of the Board in the district of Amsterdam shall act for the Child Care and Protection Board.
- **5.** The dealing with complaints in respect of a matter of protection of children that is or has been dealt with by the Board shall be regulated by Regulation.

Article 240

Repealed

Article 241

- 1. If the Child Care and Protection Board establishes that a minor is not subject to legally required custody or that such custody is not exercised over him or her, it shall apply to the court for a provision for the conduct of custody over such a minor.
- **2.** When the moral or mental interests or the health of a minor so urgently require and where, in order to stave-off a serious risk, no delay can be afforded, the children's court judge may delegate the provisional guardianship in respect of the minor to an institution for guardianship referred to in Article 60 of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act). The Child Care and Protection Board shall in that case turn to the judge within six weeks in order to obtain a provision for custody over such a minor.
- **3.** The measure referred to in paragraph (2) may also be taken if a minor who has not yet reached the age of six months and is not subject to the

guardianship of a legal person, has been taken up as a foster child without the prior written consent of the Child Care and Protection Board.

- **4.** On the application of the Child Care and Protection Board or of the public prosecutor, the children's court judge shall give an order and shall specify which powers be conferred in respect of the person and capital of such a minor and the duration of the measure.
- **5.** The measure shall lapse on expiry of six weeks unless, prior to the end of that period, the judge has been requested to provide for custody over the minor.
- **6.** The measure may be revoked or altered by the children's court judge which has ordered it unless an application is lodged as referred to in paragraph (5), in which case the judge shall decide before whom such an application is pending.

Article 241a

Article 243 of this Book shall apply *mutatis mutandis* to the conduct of the provisional guardianship by an institution for guardianship.

Article 242

The Child Care and Protection Board shall ensure that it is informed of all cases in which measures with regard to custody over minors need to be considered.

Article 243

- 1. The municipal authorities and registrars of the Registry of Births, Deaths, Marriages and Registered Partnerships shall provide the Child Care and Protection Board with all information at no cost and with any true copies and extracts from their registers without charge which the Board requests in the exercise of its duties. When the Child Care and Protection Board carries out its duties or exercises its authority on account of any provisions of this Title or of Titles 9, 10, 14, 15 and 17 of this Book and on account of the provisions of the Code of Civil Procedure relating thereto, the authorities or persons to be specified by Regulation shall provide the Board at no charge with such information as will be necessary for duly carrying out their duties.
- **2.** All requests addressed to the judge by the Child Care and Protection Board in the implementation of its duties shall be heard at no charge; the execution copies, true copies and extracts which are applied for such a purpose shall be issued to it by the clerks of the district court free of any charge.

- **3.** Writs served by bailiffs at the instigation of the Child Care and Protection Board shall be paid for according to the ordinary rate scale. Members of the local Bar may charge a salary for services rendered by them to the Child Care and Protection Board.
- **4.** When the Child Care and Protection Board acts at law on the basis of any provisions of this Title or of Titles 9, 10, 12, 14, 15 and 17 of this Book, it may do so without a local member of the Bar or advocate, except in lawsuits which are commenced by a writ of summons.

Section 4 Registers in respect of Custody exercised over Minors

Article 244

The district courts shall keep a public register in which a record is made of legal facts relating to custody exercised over minors. It shall be provided by Regulation which legal facts shall be recorded and in which manner this shall be made.

TITLE 14 CUSTODY OVER MINOR CHILDREN

Section 1 General

Article 245

- 1. Minors shall be subject to custody.
- 2. Custody includes parental authority as well as guardianship.
- **3.** Parental authority is exercised by the parents jointly or by one parent. Guardianship is exercised by a person other than a parent.
- **4.** Custody relates to the person of a minor, the administration of his or her estate and his or her representation in civil acts, both judicially and extra-judicially.
- **5.** Parental authority of a parent who exercises this pursuant to Article 253sa or, pursuant to a judicial decision in accordance with Article 253t, jointly with a person other than a parent is considered to exercise joint parental authority unless the contrary follows from a statutory provision.

Article 246

Minors over whom a guardian has been appointed and persons whose mental capacity is disturbed to such extent that they find themselves in a position where they are unable to exercise custody, do not have capacity to exercise custody unless such disturbance is of a temporary nature.

Article 246a

Repealed

Article 247

- 1. Parental authority comprises the duty and the right of the parent to care for and raise his or her minor child.
- **2.** Care and upbringing include the care and responsibility for the mental and corporal well-being of the child and fostering the development of its personality.

Article 248

Article 247(2) of this Book applies *mutatis mutandis* to the guardian and to the person who cares for and raises a minor without having custody over such a minor.

Article 249

A minor must take into account the powers vested in the parent or guardian within the framework of the exercise of custody and the interests of the other members of the family of which he or she forms a part.

Article 250

When in matters regarding the care and upbringing or in respect of the capital of the minor there is a conflict between the interests of the minor and the parents entrusted with parental authority or of either of them or of the guardian or both guardians, the sub-district court shall appoint a special guardian to represent the minor in respect thereof, both judicially and extra-judicially at the request of an interested person or *ex officio*, if it considers this necessary in the best interests of the minor, having regard to the nature of the conflict of interests.

Section 2 Parental Authority

§1. Joint Parental Authority of Parents inside and outside Marriage and Parental Authority of one Parent after a Separation²⁶

Article 251

- 1. During their marriage the parents exercise joint parental authority.
- 2. After dissolution of the marriage, other than by death or after a judicial separation, parents who exercised joint parental authority shall continue to exercise such parental authority jointly unless the parents or either of them request the district court to provide that parental authority over a child or the children shall vest in only one of them, in the best interests of the child.
- **3.** A decision based on paragraph (2) shall be given by a court order for a judicial separation, divorce or dissolution of the marriage after a judicial separation or by a subsequent order. Until the parental authority of one

The Dutch term *scheiding* is used, thus this includes judicial separation as well as divorce.

of both parents commences, this shall vest in the person who also exercised parental authority during the proceedings and this with the same powers and subject to the same obligations as were incumbent on that parent at that time.

4. If a decision on the basis of paragraph (2) did not relate to all of the children of the spouses, the court shall supplement it on the application of one of the parents, the Child Care and Protection Board or *ex officio*.

Article 251a

The court may give an order *ex officio* on the basis of Article 251(2), when it appears to the court that a minor aged twelve or older would appreciate this. The same shall apply if the minor has not yet reached the age of twelve but may be deemed able to reasonably consider his or her interests in the matter.

Article 252

- 1. Parents who are not and have not been married to each other and who never jointly exercised parental authority over their minor children, shall jointly exercise this if this has been recorded in the register referred to in Article 244 of this Book at the request of both of them.
- **2.** The clerk of the court shall refuse to make the record if, at the time of the request:
 - (a) either or both parents do not have capacity to exercise parental authority; or
 - (b) one of both partners has been divested consensually or nonconsensually of parental authority and the other parent exercises parental authority; or
 - (c) custody over the child has been entrusted to a guardian; or
 - (d) the provision in the custody of the child has ceased to exist; or
 - (e) the parent who has parental authority exercises it jointly with a person other than a parent.
- **3.** An appeal is only possible against the refusal of the making of a record if this took place on the ground that either or both parents lacked authority either on account of minority or the appointment of a guardian. In that case the sub-district court may be requested to order that a record be made. It shall reject the application if there is a well-founded fear that the best interests of the child would be neglected if it were to be granted.

Article 253

1. If former spouses remarry each other or enter into a registered partnership and immediately prior thereto one of the spouses exercised parental authority over the minor children, joint parental authority shall

revive by operation of law unless one of the spouses lacks capacity for such parental authority or has been consensually or non-consensually divested therefrom or exercises joint parental authority with a person other than the parent.

- **2.** A spouse whose parental authority has not revived may apply to the district court to entrust him or her therewith. This application shall be rejected only if there is a well-founded fear that the best interests of the children would be neglected if it were to be granted.
- **3.** Paragraphs (1) and (2) shall apply *mutatis mutandis* if a judicial separation ends by the reconciliation of the spouses.
- **4.** Paragraphs (1) and (2) shall apply *mutatis mutandis* if former registered partners who exercised joint parental authority over a child enter into a registered partnership with one another anew or marry one another.

Article 253a

In the case of the exercise of joint parental authority, disputes between the partners in respect thereof may, on the application of both or either of them, be submitted to the district court. The district court shall first attempt to reach an agreement between the parents prior to taking a decision. The court shall give such an order as it shall consider desirable in the best interests of the child.

§1a. Joint Parental Authority of Parents within a Registered Partnership

Article 253aa

- 1. The parents shall exercise joint parental authority over a child born during a registered partnership.
- 2. The provisions with regard to joint parental authority shall apply hereto, with the exception of Articles 251(2), (3) and (4) and 251a.

§2. Parental Authority of one Parent otherwise than after a Separation²⁷

Article 253b

1. If only maternity is established in respect of a child or if the parents of a child are not married with one another or have been married and do not exercise joint parental authority, the mother shall exercise parental

The Dutch term *scheiding* is used, thus this includes judicial separation as well as divorce.

authority in respect of the child alone by operation of law unless she lacked capacity for parental authority at her confinement.

- 2. A mother referred to in paragraph (1) who lacked capacity for parental authority at the time of her confinement shall acquire this by operation of law at the time when such capacity is vested in her unless another is granted parental authority at that time.
- **3.** If at the said time another person has parental authority, the parent with capacity for parental authority shall apply to the sub-district court to entrust him or her with such parental authority.
- **4.** When the other parent exercises parental authority over the child this application shall be granted only if the sub-district court considers this desirable in the best interests of the child.
- **5.** When a guardian exercises custody over the child, the application shall be rejected only if there is a well founded fear that the best interests of the child would be neglected if it were to be granted.

Article 253c

- 1. A father of the child with capacity for parental authority who never exercised joint parental authority with the mother may apply to the sub-district court to charge him with parental authority over the child.
- **2.** When the mother exercises parental authority over the child, this application is granted only if the sub-district court considers this desirable in the best interests of the child.
- **3.** When parental authority has not been provided or when a guardian exercises custody, the application shall be rejected only if there is a well-founded fear that the best interests of the child would be neglected if it were to be granted.

Article 253d

- 1. If the provision in the parental authority of a child referred to in Article 253b(1) of this Book shall cease to exist, both its mother and its father or both, to the extent they have capacity for parental authority, may apply to the sub-district court to be charged with parental authority or joint parental authority, as the case may be. If the provision in the parental authority shall cease to exist on account of the consensual or non-consensual discharge of parental authority, the application shall be addressed to the district court.
- **2.** The application referred to in paragraph (1) shall be rejected only if there is a well-founded fear that the best interests of the child would be neglected if it were to be granted.
- **3.** Where both have lodged an application other than for the exercise of joint parental authority, the court shall grant the application of the person

whose parental authority in respect of the child he or she considers to be most in the best interests of the child.

4. If, prior to a decision on the application of one parent, the other parent obtains the parental authority in respect of the child by operation of law, the court shall grant the application only if it considers this desirable in the best interests of the child.

Article 253e

Where an application of one of the parents referred to in Articles 253b, 253c and 253d of this Book is granted and the other parent exercised parental authority until that time, this shall cause the latter to lose such parental authority.

Article 253f

After the death of one of the parents the surviving parent shall exercise parental authority over the children by operation of law, if and to the extent that he or she exercises parental authority at the time of death.

Article 253g

- 1. If the parent who dies exercised sole parental authority over their minor children, the court shall order that the surviving spouse or a third person be charged with custody over the children.
- **2.** The court shall do so on the application of the Child Care and Protection Board, the surviving spouse or *ex officio*.
- **3.** The application to charge the surviving spouse with parental authority shall be rejected only if there is a well-founded fear that the best interests of the children would be neglected where it to be granted.
- **4.** The provision in the preceding paragraph shall also apply if the deceased parent had designated a guardian in accordance with Article 292 of this Book.
- **5.** The district court shall have jurisdiction to give the orders referred to in this Article, if:
 - (a) it relates to the death of the parent who exercised sole parental authority after the judicial dissolution of the marriage or after a judicial separation or who was charged with sole parental authority after exercising joint parental authority as referred to in Article 252(1) of this Book;
 - (b) the surviving spouse was consensually or non-consensually vested with parental authority and an application is made to charge this parent with parental authority.

In other instances the sub-district court has jurisdiction.

Article 253h

- 1. If a guardian is appointed after the death of one of the parents, the court may alter such an order at any time in such a manner that the surviving parent, provided that such a parent has capacity thereto, is still charged with parental authority.
- 2. It shall only proceed hereto on the application of the surviving spouse and only on the basis that there has been a change of circumstances thereafter or that, when the decision was taken, it was based on incorrect or incomplete information.
- **3.** When the other parent had designated a guardian in accordance with Article 292 of this Book and the latter has meanwhile acted as such, this Article shall apply *mutatis mutandis* provided, when this application of the surviving spouse is made within one year after commencement of the guardianship, that it is only rejected if there is a well-founded fear that the best interests of the children would be neglected were it to be granted.
- **4.** Article 253g(5) of this Book shall apply *mutatis mutandis*.

§2a. Parental Authority after the Declaration of Majority

Article 253ha

- 1. Where a minor woman with parental authority wishes to care for and raise her child, she may, when having reached the age of sixteen, apply to the children's court judge to declare her of age.
- **2.** The application can also be made on behalf of the woman by the Child Care and Protection Board. It needs her written consent hereto. The application shall lapse if the woman withdraws her consent.
- **3.** The application may also be made by or on behalf of the woman prior to the confinement and when the woman will only reach the age of sixteen around the time of her confinement. In this case a decision on the application shall not be made before the confinement or, if the woman is still not sixteen at that time, after she has reached that age.
- **4.** The children's court judge shall only grant the application, if he or she considers this desirable in the best interests of the mother and her child. If another person is charged with custody, the mother is charged therewith.
- **5.** A minor woman has legal capacity to act at law and to institute an appeal against such a decision.

§3. The Administration by the Parents

Article 253i

- 1. In the case of the exercise of joint parental authority, the parents shall jointly conduct the administration of the capital of a child and shall jointly represent the child in civil law acts provided that a parent shall also have capacity to do so alone provided there have appeared to be no objections from the other parent.
- **2.** Article 253a of this Book applies *mutatis mutandis* provided that where mention is made of 'the district court' this shall read 'the sub-district court'.
- **3.** Where a parent exercises sole parental authority, that parent shall conduct the administration of the capital of the child and represent the child in civil law acts.
- **4.** There may be derogation from the provisions in paragraphs (1) and (3):
 - (a) if the court has provided in the order whereby it entrusts the exercise of parental authority over the child to one of the parents on the uniform application of the parents or on the application of either one of them, provided the other does not oppose it, that the parent who does not exercise parental authority over the child will conduct the administration of the capital of the child;
 - (b) in the case of consensual or non-consensual discharge of parental authority pursuant to Article 276(2) of this Book;
 - (c) if he or she who donates or bequeaths property to a minor or, as the case may be, by last will and testament, has provided that another will conduct the administration of such property.
- **5.** In the latter case the parents or, when a parent exercises parental authority alone, that parent, shall have capacity to request the administrator to account for his or her administration.
- **6.** On the lapse of the administration instituted by the donor or testator paragraphs (1) and (2) and, as the case may be, paragraph (3) shall apply.

Article 253j

The parents or a parent must act as good administrators in administrating the capital of their child. In the case of bad administration they shall be liable for the loss attributable thereto, except for the benefits from such a capital to the extent that the enjoyment thereof is conferred to them by law.

Article 253k

Articles 342(2), 344 to 357, inclusive, and 370 of this Book apply *mutatis mutandis* to the administration by the parents or a parent.

Article 2531

- 1. Each parent who exercises parental authority over his or her child has a right of usufruct over the child's capital. If the child lives with the parent and enjoys income from labour other than incidentally, the child is obliged to contribute in accordance with its means to the cost of the household of the family.
- **2.** Paragraph (1) applies *mutatis mutandis* in the case where a parent is divested of parental authority, unless the other parent exercises parental authority.
- 3. The duties incumbent on usufructaries shall apply to the said usufruct.

Article 253m

A parent does not have a right of usufruct in respect of a capital in respect of which the testator has provided by last will and testament or when making the gift that the parents will not have a right of usufruct in respect thereof.

Section 3

Common Provisions with regard to the Exercise of Parental Authority by the Parents and the Conduct of Parental Authority by either one of them

Article 253n

- 1. On the application of parents who are not married to one another or of either one of them the district court may terminate the joint parental authority referred to in Articles 251(2), 252(1), 253q(5) or 277(1), if the circumstances have changed thereafter or if its decision was based, when taken, on incorrect or incomplete information. In this case the district court shall lay down which of the parents shall thereafter have parental authority over each of the minor children in the best interests of the child.
- **2.** Article 251(4) of this Book applies *mutatis mutandis*.

Article 253o

- 1. Decisions, whereby one parent alone is vested with parental authority, pursuant to the provisions of §1, §2 and §2a of this Title and pursuant to Article 253n of this Book may, on the application of the parents or of either one of them, be varied by the district court on the ground that there has been a change of circumstances thereafter or that when the decision was taken, it was based on incorrect or incomplete information. An application to still be charged with joint parental authority over their minor children may only originate from both parents.
- **2.** The district court may also take cognisance of applications for a variation of decisions in respect of or connected to the parental authority issued by a foreign authority after a divorce or judicial separation effected outside the Netherlands, if the minor has his or her ordinary abode in the Netherlands. This court may also provide for parental authority or take a decision connected with parental authority, if the foreign decision does not lend itself to recognition or if, after the divorce or judicial separation, no such decision has been given and the minor has his or her ordinary abode in the Netherlands.
- **3.** An application to vary a decision on parental authority shall be made to the sub-district court, if the sub-district court had given the decision to be varied.

Article 253p

- 1. In the instances in which both parents or either parent was vested with sole parental authority, this shall commence as soon as the decision involved has become final and binding or, when it was declared enforceable notwithstanding appeal, on the day after the decision was issued or dispatched.
- **2.** After a judicial dissolution of the marriage or after a judicial separation, parental authority shall, however, not commence prior to registration of the order for a dissolution of the marriage in the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships or prior to the recording of the order for a judicial separation in the Matrimonial Property Register specified in Article 116.
- 3. If a record was made as referred to in Article 252(1) of this Book, parental authority with which one of the parents is charged shall, however, commence only after such a record was struck by the clerk of the court. The clerk shall inform both parents in writing of such a cancellation.

Article 253q

- 1. When one of the parents who exercise joint parental authority over their minor children does not have capacity thereto on one of the grounds mentioned in Article 246, the other parent shall exercise sole parental authority over the children. When the ground for the incapacity has ceased, joint parental authority shall revive by operation of law.
- 2. When both parents who exercise joint parental authority over their minor children lack capacity thereto on one of the grounds mentioned in Article 246, the sub-district court shall appoint a guardian.
- 3. When a parent who exercises parental authority lacks capacity thereto on one of the grounds mentioned in Article 246, the sub-district court shall charge the other parent with parental authority unless there is a well-founded fear that the best interests of the children would be neglected. In that case it shall appoint a guardian.
- **4.** The decisions referred to in paragraphs (2) and (3) shall be given at the request of a parent, relatives by blood or marriage of the minor, the Child Care and Protection Board or *ex officio*.
- 5. When the ground for the lack of capacity of the parent first mentioned in paragraph (3) has ceased, he or she shall again be vested with parental authority upon his or her request, if the sub-district court is convinced that the child may again be confided to the parent. If the parents wish to be charged with joint parental authority, the application thereto must originate from both of them.

Article 253r

- 1. The provision in Article 253q of this Book applies *mutatis mutandis*, if:
 - (a) it is impossible, with respect to one or both of the parents, whether or not temporarily, to exercise parental authority; or
 - (b) the existence or abode of one or both parents is unknown.
- **2.** Parental authority vested in one or both parents shall be suspended during the period in which one of the circumstances referred to in paragraph (1) occurs.

Article 253s

- 1. If the child, with the consent of it's parents who exercise parental authority over it, has been cared for and raised for at least one year by one or more other persons as a member of the family, the parents may only make a change in the abode of the child with the consent of the persons who have assumed the responsibility for his or her care and upbringing.
- **2.** To the extent that consent is required pursuant to the preceding paragraphs and is not obtained, this may be replaced by that of the district

court if the parents so request. Such a request shall be rejected only if there is a well-founded fear that the best interests of the child would be neglected if it were to be granted.

3. In the case of a rejection of the request, the court order shall remain in force for a period, not exceeding six months, to be specified by the district court. However, if prior to the end of this period an application for a care and supervision order is made in respect of the child or for the consensual or non-consensual discharge of parental authority of one or both parents, the order shall remain in force until a final and binding decision has been taken.

Section 3A Joint Parental Authority of a Parent together with a Person other than a Parent

§1. Joint Parental Authority of a Parent together with a Person other than a Parent by Operation of Law

Article 253sa

- 1. A parent and his or her spouse or registered partner who is not the parent, exercise joint parental authority over a child born during a marriage or registered partnership, unless legal familial ties exist between the child and another parent.
- **2.** The provisions with regard to joint parental authority of parents apply hereto *mutatis mutandis* with the exception of Articles 251(2), (3) and (4), and 251a
- **3.** Article 5(4), (5) and (7) applies *mutatis mutandis* with regard to the child over whom the parent, jointly with his or her registered partner who is not the parent, exercise or will exercise parental authority provided that, if the parent and his or her partner have not made a choice of name at the latest on the occasion of the declaration of birth, the registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships shall record the surname of the mother as the surname of the child on the birth certificate.

§2. Joint Parental Authority of a Parent together with a Person other than a Parent pursuant to a Judicial Decision

Article 253t

1. If parental authority over a child vests in one parent, the district court may, on the joint application of the parent who is charged with parental authority and a person other than the parent who has a close personal

relationship with the child, jointly charge them with parental authority over the child.

- **2.** If legal familial ties exist between the child and another parent, the application shall only be granted, if:
 - (a) on the date of the application the parent and the other person have jointly cared for the child for at least a continuous one year period immediately preceding the application; and
 - (b) on the date of the application the parent who makes the application is vested with sole parental authority for at least a continuous three year period.
- **3.** The application shall be rejected if, also in the light of the interests of another parent, there is a well-founded fear that the best interests of the child would be neglected if it were granted.
- **4.** Joint parental authority referred to in paragraph (1) may not be conferred in the instances referred to in Article 253q(1) and Article 253r. Legal persons shall not qualify for parental authority.
- **5.** An application referred to in paragraph (1) may be accompanied by an application to alter the surname of the child to the surname of the parent charged with parental authority or of the other person. Such an application shall be rejected, if:
 - (a) a child aged twelve or older has not agreed with the application at the hearing;
 - (b) the application referred to in paragraph (1) is rejected; or
 - (c) the best interests of the child oppose it being granted.

Article 253u

Joint parental authority commences on the date on which the order whereby the appointment is made becomes final and binding or, when it is declared enforceable notwithstanding appeal on the day after the order has been issued or dispatched.

Article 253v

- 1. Articles 246, 247, 249, 250, 253a, 253j to 253m, inclusive, 253q (1) and 253r applies *mutatis mutandis* to the exercise of joint parental authority by the parent and the other person.
- **2.** Article 253i applies *mutatis mutandis* unless the parent charged with parental authority does not conduct the administration pursuant to Article 253i(4)(a) or (c).
- **3.** Article 253n applies *mutatis mutandis* provided the district court shall not give an order for the termination of joint parental authority referred to in Article 253t without first having given the parent not charged with parental authority or both parents jointly an opportunity to apply, in the

best interests of the child, to charge him or her with parental authority over the child or to charge them jointly therewith.

- **4.** If the district court, after termination of joint parental authority of the parent and the other person, has charged such another person with guardianship, it may at any time, on account of a change of circumstances, charge a parent with parental authority on his or her application in the best interests of the child or charge the parents with joint parental authority when they have jointly exercised parental authority, on their application and in the best interests of the child.
- **5.** Article 253q(2) applies *mutatis mutandis* provided that the sub-district court shall not appoint a guardian without first having given the parent not charged with parental authority an opportunity to apply to be charged with parental authority over the child in the best interests of the child. The application referred to in Article 253q(2) may also be made by a person other than the parent.
- **6.** Sections 4 and 5 of this Title shall apply *mutatis mutandis* to joint parental authority of the parent and the other person provided that in the case of consensual or non-consensual discharge of parental authority of the parent who, jointly with the other, exercises parental authority, the other person shall not be vested with sole parental authority without the district court first having given the parent not charged with parental authority an opportunity to apply to charge him or herself with parental authority over the child.

§3. Common Provisions in respect of Joint Parental Authority of a Parent together with a Person other than a Parent

Article 253w

The other person who, with the parent, exercises joint parental authority is obliged to provide maintenance for the child subject to his or her parental authority. If joint parental authority ends as a result of the child reaching the age of majority, the maintenance obligation shall continue until the child has reached the age of twenty-one. After a judicial decision for termination of joint parental authority has become final and binding or after the death of the parent with whom parental authority was jointly exercised until the time of death, such a maintenance obligation shall continue over the period that joint parental authority has lasted, unless, in special circumstances, the court on the application of the parent or of the other person, has specified a longer period. It shall end no later than at the time the child has reached the age of twenty-one. Articles 392(3), 395a(1), 395b, 397, 398, 399, 400, 401(1), (4) and (5), 402, 402a, 403, 404(1), 406 and 408 apply mutatis mutandis.

Article 253x

- 1. After the death of a parent who, with another person, exercises joint parental authority, such another person will act as guardian over the children by operation of law.
- **2.** On the application of the surviving parent the district court may provide at any time that he or she shall still be charged with parental authority if he or she has capacity thereto.
- 3. Articles 253g and 253h shall not apply.

Article 253y

- 1. Joint parental authority referred to in Articles 253sa and 253t ends on the date on which the order has become final and binding whereby the parents were jointly charged with parental authority or joint parental authority of the parent and of the other person has ended.
- 2. When the order referred to in paragraph (1) has been declared enforceable notwithstanding appeal, joint parental authority of the parent and the other person shall end after the order has been issued or dispatched.

Section 4 Care and Supervision Orders for Minors

Article 254

- 1. If a minor grows up in a manner which constitutes a serious threat to his or her moral or mental interests or his or her health and other means for aversion of such threats have failed or, if it is foreseeable that these will fail, the children's court judge may vest an institution for family guardianship referred to in Article 60 of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act) (*Bulletin of Acts and Decrees 1989*, No. 360) with his or her care and supervision.
- **2.** The judge may do so on the application of a parent, another person who cares for and raises the minor as a member of the family, the Child Care and Protection Board or the Public Prosecution Service.
- **3.** When applying paragraph 1, the children's court judge shall have regard to the religious conviction and the minor's outlook on life²⁸ and of the family of which he or she is a member.
- **4.** On the application of the institution for family guardianship, the parents charged with parental authority or of a minor aged twelve or older,

The term levensovertuiging is translated as outlook on life, a loose translation of an equally loose term in Dutch.

the children's court judge may replace the institution for family guardianship which has the care and supervision by another. The Child Care and Protection Board is entitled lodge an application referred to in the preceding sentence, if it remains of the opinion that a care and protection order²⁹ based on Article 263(1) should not be terminated.

Article 255

The children's court judge may, pending an investigation, issue an interim care and supervision order in respect of a minor, if this is urgently needed and no delay can be afforded. The judge shall specify the duration of such an interim care and supervision order which may not exceed three months and may revoke the decision at any time.

Article 256

- 1. The children's court judge shall specify the duration of the care and supervision although this may not exceed one year.
- **2.** A children's court judge may each time extend the duration for at most one year and may do so on the application of the institution for family guardianship, a parent, another person who cares for and raises the minor as a member of the family, the Child Care and Protection Board or the public prosecution service.
- **3.** If the institution for family guardianship does not proceed to apply for an extension, it shall notify the Child Care and Protection Board as soon as possible while submitting a progress report of the care and supervision.
- **4.** The children's court judge may discontinue the care and supervision when there is no longer a ground therefor. The judge may do so on the application of the institution for family guardianship, the parent charged with parental authority or of a minor aged twelve or older.

Article 257

- 1. The institution for family guardianship shall supervise the minor and ensure that assistance and support is offered to the minor and the parent charged with parental authority in order to avert the threat to moral or mental interests or the health of the minor.
- 2. Such help and support shall be directed to ensure that the parent charged with parental authority shall as much as possible remain responsible for the care and upbringing.

The term *uithuisplaatsing* is translated as care and protection order, which is to be construed as an order for the removal of a minor from the family home.

- **3.** If the level of age and development of the minor and the capability and need to act independently and to give direction to his or her life in accordance with his or her own insight so necessitate, the help and support shall be directed at enhancing the independence of the minor more than enhancing the possibilities of the parents to care for and raise their child.
- **4.** The institution for family guardianship shall foster the family ties between the parent charged with parental authority and the minor.

Article 258

- 1. The institution for family guardianship may, when fulfilling its tasks, give written directions with regard to the care and upbringing of the minor.
- **2.** The parent who is charged with parental authority and the minor must act in accordance with such directions.
- **3.** The minor shall only be placed outside the family pursuant to Article 261 during the day and overnight, except in the instances where the parent charged with parental authority proceeds thereto without objection of the institution for family guardianship.

Article 259

- 1. On the application of the parent charged with parental authority or of a minor aged twelve or older, the children's court judge may declare that a direction shall lapse, in full or in part. The application has no suspensive effect unless the children's court judge provides otherwise.
- **2.** When the application is lodged, the decision of the institution for family guardianship shall be submitted.
- **3.** An application with the children's court judge may be lodged within two weeks commencing from the day following the day on which the decision was sent or given.
- **4.** An application made after the expiry of this term shall not be inadmissible on account thereof, if the applicant cannot reasonably be considered to have been in default.

Article 260

- 1. The parent charged with parental authority and a minor aged twelve or older may request the institution for family guardianship to withdraw a designation on account of a change of circumstances, in full or in part.
- **2.** The institution for family guardianship shall give a written decision within two weeks from receipt of the request.
- **3.** Article 259 applies *mutatis mutandis*.
- **4.** Where the institution for family guardianship does not or does not timely take a decision, this shall be deemed to constitute a rejection of the

application for the purpose of this provision. The term within which the application must be lodged with the children's court judge shall, in that case, continue as long as the institution for family guardianship has not taken a decision and ends when the institution for family guardianship still takes a decision, two weeks thereafter.

Article 261

- 1. Where this is necessary, in the interest of the care and upbringing of the minor or for an examination of his or her mental or physical condition, the children's court judge may authorise the institution for family guardianship, on its application, to instruct the minor to stay elsewhere during the day and overnight. In the application it shall be stated for which provision, kind of provision or other place of accommodation authorisation is requested.
- **2.** The authorisation may also be granted on the application of the Child Care and Protection Board or of the Public Prosecution Service. Paragraph (1) applies *mutatis mutandis*.
- **3.** For a care order whereby the minor is placed in a closed institution, an explicit authorisation for such a purpose of the children's court judge is required. Such an authorisation shall only be granted, if so required because of serious problems in the minor's conduct. As soon as an application for such an authorisation or extension is lodged with the children's court judge, the judge shall, *ex officio*, instruct the Legal Aid Office to assign a counsellor to the minor.
- **4.** The Minister of Justice shall designate institutions which are to be considered closed institutions within the meaning of this Article. This designation shall be published in the Government Gazette.
- **5.** When granting and implementing such an authorisation, the children's court judge and institution for family guardianship shall have regard to the religious persuasion and minor's outlook on life and the family of which the minor is a member.
- **6.** The placement in a home of a category mentioned in Section II(1) to (4), inclusive, or Section III(2) of the Annex to the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act), insofar as it is maintained by the Minister of Justice, shall also end by a decision of the Minister of Justice, having heard the institution for family guardianship, when the Minister of Justice considers this necessary in connection with a correct apportionment of the accommodation available in such homes.

Article 262

1. The children's court judge shall specify the duration of the care and protection order for the minor although this may not exceed one year. On the application of the institution for family guardianship or of the Child

Care and Protection Board, the judge may always extend such duration for no more than one year.

- **2.** If the institution for family guardianship does not proceed to apply for an extension, it shall so notify the Child Care and Protection Board as soon as possible and submit a report on the progress of the child under a care and protection order.
- **3.** An authorisation shall lapse if it is not implemented within three months.

Article 263

- 1. The execution of a care and protection order may be terminated by the institution for family guardianship. The institution for family guardianship shall inform the Child Care and Protection Board hereof as soon as possible and submit a report on the progress of the child under a care and protection order.
- 2. The parent charged with parental authority, another person who cares for and raises the minor as a member of the family and a minor aged twelve or older may request the institution for family guardianship on account of a change in circumstances:
 - (a) to terminate the execution of the care and protection order;
 - (b) to shorten its duration;
 - (c) to desist from a change of accommodation of the minor which is permitted pursuant to the authorisation. A change of accommodation includes a placement of the minor with the parent who has parental authority.
- **3.** The institution for family guardianship shall make a written decision within two weeks from receipt of the request.
- **4.** At the request of the person mentioned in paragraph (2) the children's court judge may revoke the authorisation in full or in part or shorten its duration. Article 259(1), second sentence, (2), (3) and (4) and Article 260(4) apply.

Article 263a

- 1. Insofar as necessary, having regard to the object of the care and protection order of a minor referred to in Article 261, the institution for family guardianship may limit contact between the parent charged with parental responsibility and the child for the duration of the care and protection order.
- **2.** The decision of the institution for family guardianship is considered a direction. Article 259 and Article 260 apply *mutatis mutandis* provided that the children's court judge may adopt such an arrangement as the court considers desirable in the best interests of the child.

Article 263b

- 1. For the duration of the measure the children's court judge may, at the request of the institution for family guardianship, vary a judicial decision for adoption of an arrangement on the exercise of the right of access insofar as necessary, having regard to the object of the care and supervision order.
- **2.** At the request of the parent charged with parental authority, a person with a right of access, a minor aged twelve or older and the institution for family guardianship may apply to the children's court judge to vary the decision mentioned in paragraph 1 on account of a subsequent change of circumstances or that when the decision was taken it was based on incorrect or incomplete information.
- **3.** As soon as the care and supervision order has ended, an arrangement referred to in Article 377a or 377f shall apply as an arrangement adopted pursuant to this provision.

Article 264

If medical treatment of a minor who is less than twelve years old is necessary in order to prevent a serious risk to it's health and a parent charged with parental authority refuses consent thereto, such consent may be replaced by that of the children's court judge on the application of the institution for family guardianship.

Article 265

- 1. Applications made on the basis of Article 254(4) and Articles 256 to 264, inclusive, must be made in writing. Insofar as they are addressed to the children's court judge, they may be lodged without the need for a member of the local Bar.
- 2. When the institution for family guardianship lodges an application or is summoned to appear, the institution for family guardianship shall send, together with the application or without delay after the summons, the plan of assistance and a progress report of the care and supervision order to the children's court judge.
- **3.** The plan and report referred to in paragraph (2) shall also be sent to Child Care and Protection Board.
- **4.** The applications addressed to the court by the institution for family guardianship in the implementation of its remit may be lodged without the need of a member of the local Bar and shall be heard at no cost; the execution copies, the signed copies and extracts which are applied for such a purpose shall be issued to it by the clerks of the court without charge.

Section 5 Consensual and Non-Consensual Discharge of Parental Authority

Article 266

Provided this is not contrary to the best interests of the children, the district court may discharge a parent of parental authority over one or more of his or her children on the ground that such a parent is unfit or unable to fulfil the duty of caring or raising the child.

Article 267

- 1. Consensual discharge may only be pronounced on the application of the Child Care and Protection Board or of the Public Prosecution Service.
- 2. In the instance referred to in Article 268(2)(d) of this Book the consensual discharge may also be applied for by the person who has cared for and raised the child for one or more years at the time of the application, if the children's court judge has rejected a request of the parents for consent to change the place where their child will reside. If the child has been cared for and raised by more than one person, may only be made on their joint request. Where a consensual discharge is applied for, Article 253s(2) of this Book shall not apply until a final and binding decision has been made on the application.

Article 268

- 1. A consensual discharge may not be pronounced when this is opposed by the parent.
- **2.** There shall be an exception to this rule:
 - (a) if it appears after the implementation of a care and supervision order of six months or more, or from the execution of a care and protection order pursuant to Article 261 of more than eighteen months, that there is a well-founded fear that such a measure, due to the parent being unfit or powerless to fulfil his or her duty of care and upbringing of the child, will be insufficient to remove the threat referred to Article 254;
 - (b) if, without the consensual discharge of one parent, the discharge of the other parent would not prevent the children from being subjected to the latter's influence;
 - (c) if the mental faculties of the parent are so disturbed that he or she is unable to determine his or her will or the significance of his or her statement;

(d) if, after the care and upbringing of the child with the consent of the parent, otherwise than pursuant to a care and supervision order or a placement under an interim guardianship of one or more years by a family other than the parental family, a continuation thereof is necessary since if the child were to return to the parent serious prejudice to the child's interests must be feared.

Article 269

- 1. If the district court considers this necessary in the best interests of the children, it may discharge a parent non-consensually of parental authority over one or more of such a parent's children on grounds of:
 - (a) abuse of parental authority, or gross neglect of the care or raising of one or more children;
 - (b) of irresponsible behaviour;
 - (c) irrevocable conviction:
 - (1) on account of wilful participation in a criminal offence with a minor under his or her authority;
 - (2) on account of the commission of a criminal offence vis-à-vis the minor described in Titles XIII-XV and XVIII-XX of Book 2 of the Penal Code:
 - (3) to a custodial sentence of two years or more;
 - (d) the serious disregard of the directions of the institution for family guardianship or obstruction of a care and protection order pursuant to the provision of Article 261;
 - (e) the existence of a well-founded fear of neglect of the best interests of the child because of the parent reclaiming or taking back the child from others who had assumed the care and upbringing of the child.
- **2.** A criminal offence in this Article includes being an accessory to and an attempt to commit a criminal offence.

Article 270

- 1. Non-consensual discharge of parental authority shall be pronounced only at the request of the other parent, one the relatives by blood or marriage of the children up to and including the fourth degree, ³⁰ the Child Care and Protection Board or the Public Prosecution Service.
- 2. In the case referred to in paragraph (1)(e) of the preceding Article, the non-consensual discharge of parental authority may further be applied for by the person who has assumed the care and upbringing of the child.

See footnote to Article 201(1).

- 1. Where this is urgently necessary and no delay can be afforded, the district court may suspend, wholly or in part, a parent in whose respect the non-consensual discharge is applied for, pending the inquiry, from exercising parental authority over one or more of such a parent's children. It shall have equal power as regards a parent whose consensual discharge is applied for in the instances referred to in Article 268(2) of this Book.
- **2.** If the other parent also exercises parental authority, parental authority shall be exercised by such parent alone during the suspension.
- **3.** When, in the latter case, the court considers a suspension of the parent who is to be discharged on a non-consensual basis insufficient to prevent the children from being subjected to such a parent's influence, it may also suspend the other parent.
- **4.** Where a suspension relates to both parents or a parent who exercises sole parental authority, the court shall charge an institution for family guardianship referred to in Article 60 of the Wet op de jeugdhulpverlening (Juvenile Assistance Act) with the interim guardianship over the child. It shall specify the powers to be conferred as regards the person and capital of this child.
- **5.** The court orders referred to in this Article shall remain in effect until the decision in respect of the non-consensual or consensual discharge has become final and binding. However, the district court may revoke such an order with effect from an earlier date.

Article 271a

Instead of suspension of both parents or a parent in exercising parental authority and a provision for interim guardianship referred to in Article 271, the district court may issue a care and supervision order referred to in Article 254 of this Book in respect of the child.

Article 272

- 1. On the basis of facts which may give rise to a non-consensual discharge or to a consensual discharge referred to in Article 268(2) of this Book and if this is urgent and no delay can be afforded, the children's court judge may suspend the parents, wholly or in part, in their exercising parental authority over a child and charge an institution for family guardianship as referred to in Article 60 of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act) with interim provisional guardianship over a child.
- 2. The children's court judge shall give an order on the application of the Child Care and Protection Board or the public prosecutor. It shall specify

the powers to be conferred with regard to the person and capital of this child and the duration of the measure.

- **3.** The measure shall lapse on expiry of a six-week period unless an application for non-consensual or consensual discharge of parental authority was made prior to the end of the term. In the latter case the measure shall remain in force until a decision made by an order in respect of the non-consensual or consensual discharge of parental authority has become final and binding, unless the judge has laid down a shorter term.
- **4.** The measure can be repealed or varied by the children's court judge who ordered it, unless an application referred to in paragraph (3) has been lodged. In that case the decision shall be taken by the judge before whom this application is pending.

Article 272a

The district court which rejects an application for non-consensual or consensual discharge of parental authority is competent to place a minor under supervision as referred to in Article 254 of this Book.

Article 273

Repealed

Article 274

- 1. If, after consensual or non-consensual discharge of parental authority of one of the parents, the parents exercise joint parental authority, joint parental authority shall from then on only be exercised by the other parent.
- **2.** In the case of consensual or non-consensual discharge of parental authority of a parent who exercises sole parental authority, the other parent may request the district court at any time to be charged with the exercise of parental authority. This request shall be rejected only if there is a well founded fear that the best interests of the children would be neglected if it were to be granted.
- **3.** The district court which has rejected a request referred to in the preceding paragraph may always vary such an order. It will only do so, however, at the request of the parent involved and only on the ground that circumstances existed which the court could not take into account when issuing the order.

Article 275

1. If, from then on, the other parent does not exercise parental authority alone, the court shall appoint a guardian over the minors.

- **2.** Each person who, during the investigation, may exercise guardianship may request the court in writing to be charged with guardianship.
- **3.** In the case of consensual discharge with application of Article 268(2)(d) of this Book, the district court shall preferably appoint a person or persons who have cared for and raised the child for one year or more at the time of the request as a guardian, provided they have capacity to act as a guardian.

- 1. If a consensually or non-consensually discharged parent administered the capital of the children, such a parent shall also be ordered to account for the administration to the successor in such administration.
- **2.** Where the children have property in common but become subject to the custody of different persons, the district court may designate any of these persons or a third person to administer such property until its division. The designated administrator shall give such guarantees as the district court requires.
- **3.** Article 253k shall apply to the administration pursuant to the preceding paragraph, if one of the parents is designated as administrator, otherwise §10 of Section 6 of this Title shall apply. The administrator shall have the exclusive right to avoid legal transactions of minor owners for the administration or disposal with regard to property which is subject to administration.

Article 277

- 1. Where the district court is convinced that a minor may again be confided to his or her consensually or non-consensually discharged parent, it may reinstate such a parent with parental authority on the parent's request. If parents who are not married to each other wish to exercise joint parental authority, they shall both make the application thereto.
- **2.** If, on the occasion of the non-consensual or consensual discharge of parental authority the other parent was vested with parental authority, the district court shall not vest the consensually or non-consensually divested parent who alone makes the application referred to in paragraph (1) with parental authority, unless the circumstances have changed since the order vesting the other parent with the responsibility or, unless at the time of the order, it was based on incorrect or incomplete information. Article 253e of this Book applies *mutatis mutandis*.

- 1. An application referred to in Article 277 of this Book may also be made by the Child Care and Protection Board.
- 2. Pending the investigation both the Child Care and Protection Board and the parent to be reinstated may apply to the district court to stay a decision until the end of a trial period of no more than six months to be specified by the court; during such a period the child shall stay with the parent whose parental authority was reinstated. The district court may at any time bring the trial period to an end.

Section 6 Guardianship

§1. Guardianship in General

Article 279

Repealed

Article 280

Guardianship commences:

- (a) for a guardian appointed by a parent: at the time when the guardian declares, after the death of such a parent, to be prepared to accept the guardianship. The declaration must be made in person by the person involved or by a special attorney at the clerk's office of the district court having jurisdiction in accordance with Section 2 of Title 3 of Book 1 of the Code of Civil Procedure in matters relating to minors. The declaration must be made within fourteen days or, if the person who makes the declaration is outside the Netherlands, within two months after having been served with notice of the appointment. Any interested person and the Child Care and Protection Board may give instructions for such service.
- (b) for a guardian who, after having declared to be willing to accept the guardianship, is appointed by the district court: on the date on which the decision for the appointment has become binding and final or, where it is declared enforceable notwithstanding appeal, on the day after the decision for the appointment has been issued or dispatched. An oral declaration of willingness shall be made before the district court which makes the appointment; a written declaration of willingness shall be lodged at the clerk's office where the appointment will take place.

- 1. Guardianship shall end on the date on which the court order has become binding and final whereby:
 - (a) the guardian is dismissed or discharged without consent;
 - (b) custody over a minor subject to guardianship has been vested in one or both parents; or
 - (c) the guardianship in accordance with Article 299a or 302(4) of this Book has been vested in another guardian.
- **2.** Where a court order referred to in paragraph (1) has been declared enforceable notwithstanding appeal, the guardianship shall end on the day after the court order has been issued or dispatched.

Article 282

- 1. On the uniform request of the guardian and another person who has a close personal relationship with the child, the court may determine that the guardianship shall be exercised by them jointly.
- **2.** For the duration of the joint exercise of guardianship both persons referred to in paragraph 1 shall be considered to be guardians.
- **3.** The request shall be rejected if there is a well founded fear that the best interests of the child would be neglected were it to be granted.
- **4.** Joint exercise of guardianship is not possible with regard to a temporary guardianship referred to in Articles 296 and 297. Legal persons shall not qualify for guardianship.
- **5.** Article 253a applies *mutatis mutandis*.
- **6.** By derogation from Article 336 two guardians who exercise joint guardianship both have the duty and the right to care for and raise the minor child. Article 253w applies *mutatis mutandis* in respect of both as long as the joint guardianship continues.
- **7.** A request as referred to in paragraph (1) may be accompanied by a request to alter the surname of the child to that of one of the guardians. Such a request shall be rejected, if:
 - (a) a child aged twelve or older did not agree to the request at the hearing;
 - (b) the request for a joint guardianship is rejected; or
 - (c) the best interests of the child oppose it being granted.

Article 282a

The joint exercise of guardianship shall end on the date on which the court order has become final and binding by which the exercise of joint guardianship is terminated or pursuant to which the guardianship has ended pursuant to Article 281, and on the death of one of the guardians.

Article 282b

After the death of a guardian who exercised joint guardianship with another person, the other guardian shall from then on exercise the guardianship over the children alone.

Articles 283-291a

Repealed

§2. Guardianship delegated by one of the Parents

Article 292

- 1. A parent may provide by last will and testament which person or which two persons will exercise custody over his or her children after the parent's death as guardian or joint guardians, as the case may be.
- 2. He or she may not nominate a legal person as guardian.
- **3.** Where both parties have availed themselves of this right and die without there being a possibility to ascertain who died first, the sub-district court shall provide *ex officio* whose disposition shall take effect.

Article 293

The arrangement made by the parent shall not have effect or shall lapse:

- (a) if, after his or her death, the other parent by operation of law or pursuant to a judicial order exercises parental authority over his or her children;
- (b) if and to the extent the parent, at the time of death, does not have parental authority over his or her children;
- (c) if the other person who exercises joint parental authority with the parent becomes guardian over the children by operation of law.

Article 294

Repealed

§3. Appointment of a Guardian by the Court

Article 295

The sub-district court shall appoint a guardian over all minors who are not subject to parental authority and for whose guardianship no provision has

been lawfully made unless such appointment has been delegated to the district court.

Article 296

- 1. Where a provision is necessary when the commencement of the guardianship is awaited in accordance with Article 280 of this Book, the sub-district court shall appoint a guardian for the duration of such circumstances.
- **2.** As soon as such circumstances have ceased, the appointment as guardian shall be brought to an end by the sub-district court at the request of the person whom he or she replaces.

Article 297

- 1. The sub-district court shall likewise appoint a guardian when a provision is necessary because of:
 - (a) the guardian being in a situation in which it is temporarily impossible for him or her to exercise custody; or
 - (b) the existence or abode of the guardian is unknown; or
 - (c) the guardian fails to exercise custody.
- 2. Where there are grounds for appointment on the basis of paragraph (1)(c), the sub-district court may grant the appointed guardian a right to remuneration, while a guardian who is in default shall be liable towards the minor for the cost caused by the replacement and, save for recourse against the appointed guardian, for work performed by the latter.
- **3.** As soon as the circumstances mentioned in paragraph (1) have ceased, the appointed guardian shall be discharged by the sub-district court upon his or her own request or at the request of the person whom he or she replaces unless there is a well-founded reason to fear that the best interests of the children would be neglected were it to be granted.
- **4.** If, in the case of the exercise of joint guardianship, one of the circumstances referred to in paragraph (1) occur as regards either guardian, the other guardian shall exercise sole custody over the children. As soon as such circumstances have ceased, joint custody shall revive. Paragraph (2) shall not apply.

Article 298

During a guardianship referred to in both preceding Articles the exercise of guardianship shall be suspended with regard to the guardian concerned.

Except for Article 282a, the sub-district court shall appoint the guardian on the application of relatives by blood or marriage of the minor, the Child Care and Protection Board, creditors or other interested persons, or *ex officio*.

Article 299a

- 1. A person who has cared for and raised a minor as a member of the family for one or more years with the consent of the guardian, other than under a supervision order or under an interim guardianship, may apply to the children's court judge to appoint him, her or a legal person referred to in Article 302 of this Book as a guardian.
- 2. Where the minor is cared for and raised as a member of the family by more than one persons, the application may only be made by them jointly.
- **3.** The application may also be made by the Child Care and Protection Board.
- **4.** The children's court judge shall grant the application only if the judge considers this in the best interests of the minor and is satisfied that the guardian is not prepared to be discharged from office. In this case the judge shall preferably appoint the person whose appointment is requested as a guardian provided the latter has capacity to exercise the guardianship.
- **5.** Where an application referred to in paragraph (1) is made, Article 336a(2) of this Book shall remain inapplicable until a decision on the application has become final and binding.
- **6.** Where guardianship is exercised jointly, the consent referred to in paragraph (1) must be given by both guardians.

Article 300

Repealed

Article 301

- 1. The registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships shall without delay notify the sub-district court:
 - (a) of the death of any person leaving minor children;
 - (b) a declaration of birth of any child over which the mother does not exercise parental authority by operation of law.
- 2. Where a marriage of the deceased leaving minor children was judicially dissolved or the deceased was judicially separated, the registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships shall also, if the other parent is still alive, inform the sub-district court of such

circumstances; the latter shall then send the notification received to the district court which has decided on the application for a dissolution of the marriage or for a judicial separation.

§4. Guardianship of Legal Persons

Article 302

- 1. The court may appoint an institution for guardianship which is subsidised thereto by the Minister of Justice by virtue of Article 60(1) (a) of the Wet op de jeugdhulpverlening (Juvenile Assistance Act) as guardian.
- **2.** The court which appoints a legal person as guardian shall take into account the religious persuasion or minor's outlook on life and of the family of which he or she is a member.
- **3.** Guardianship of a legal person which ceases to exist as a result of a merger or division shall devolve on the transferee legal person or, as the case may be, in accordance with the proposed terms of the division, on one of the transferee legal persons, provided the transferee legal person is a legal person which the court may appoint as a guardian pursuant to paragraph (1).
- **4.** Nevertheless the sub-district court may subsequently appoint another person as guardian, on the application of relatives by blood or marriage of the minor, of the Child Care and Protection Board, of interested persons or *ex officio*.

Article 303

- 1. To the extent not otherwise provided by law, a legal person which is appointed as guardian shall have the same rights and obligations as other guardians.
- **2.** The board shall exercise the guardianship. It may authorise one or more of its members in writing to exercise the guardianship over minors named in the authorisation.

Article 304

- 1. The directors shall be jointly and severally liable, together with the legal person, for any loss attributable to the improper performance of the guardianship.
- **2.** Each director may, however, exonerate him or herself from liability by proving not to be at fault for the loss.
- **3.** If the board has authorised one or several of its members in particular to exercise the guardianship in accordance with paragraph (2) of the preceding Article, the loss shall be presumed to be exclusively attributable to the fault of such members.

- 1. A legal person which places minors confided to it elsewhere shall keep the Child Care and Protection Board informed in writing of the locations where they are to be found.
- **2.** The locations where legal persons charged with guardianship have placed minors shall be visited by the Child Care and Protection Board as often as it considers this necessary in order to determine the condition of the minors.
- **3.** Articles 261(3) to (6), inclusive, 262(1) and (3), 263(1), first sentence and (4), first sentence and 265(1) apply *mutatis mutandis*.

Article 306

- 1. Without the consent of the sub-district court a legal person may not place a minor confided to it outside the Netherlands.
- **2.** The sub-district court shall grant such consent only where it deems the placement desirable for the minor.

Article 306a

Section 6 of this Title does not apply to the exercise of interim guardianship referred to in Articles 241, 271, 272, 331 and 332 of this Book.

Articles 307-319

Repealed

§5. Discharge of Guardianship

Articles 320-321

Repealed

Article 322

- 1. Each guardian may have him or herself discharged from office, if:
 - (a) he or she shows to be no longer able to act as such due to a mental or bodily defect arising since taking up office;
 - (b) he or she has reached the age of sixty-five;
 - (c) a person with capacity thereto has declared in writing to be willing to take over the guardianship, which assumption the sub-district court considers in the best interests of the minors.

2. In the case of the exercise of joint guardianship, paragraph (1) shall apply only if both guardians wish to be removed from their office.

Article 323

At the joint request of the guardians or of either of them the court shall bring the exercise of joint guardianship to an end. The court shall then specify in which of them custody shall from then on vest over each of the minor children.

§6. Incapacity to act as Guardian

Article 324

- 1. When a guardian does not have capacity to act as a guardian on one of the grounds mentioned in Article 246 of this Book, the sub-district court shall remove him or her and replace him or her with another guardian.
- **2.** It shall do so at the request of the guardian, relatives by blood or marriage of the minor, the Child Care and Protection Board, creditors or other interested persons or *ex officio*.
- **3.** If, in the case of the exercise of joint guardianship, one of the grounds mentioned in paragraph (1) occurs with regard to either one of the guardians, sole custody over the children shall be exercised by the other guardian.
- **4.** As soon as the ground for such incapacity has ceased, joint guardianship shall revive.

Article 325

Repealed

§7. Care and Supervision Order for Minors subject to Guardianship

Article 326

- 1. A care and supervision order may be made in respect of children subject to the guardianship of natural persons.
- **2.** The provisions of Articles 254-265, of this Book apply *mutatis mutandis* to such supervision, provided, however, that the supervision and any extension thereof may also be applied for by the guardian.

§8. Non-Consensual Divestment of Guardianship

Article 327

- 1. If the district court considers this necessary in the best interests of such minors, it may divest a guardian without the latter's consent of the guardianship over one or several minors subject to the same guardianship, on the ground:
 - (a) of irresponsible behaviour;
 - (b) of abuse of the capacity, neglect of obligations or of no longer being able to properly act as guardian;
 - (c) that the guardian was discharged against his or her will, on either of the aforementioned grounds, of another guardianship or, on corresponding grounds, of parental authority;
 - (d) that the guardian is declared bankrupt or that a debt rescheduling scheme for natural persons is applicable in the guardian's respect;
 - (e) that the guardian personally or that the guardian's parent, spouse or child conducts litigation with a minor involving the latter's legitimate legal status or a considerable part of the of minor's capital;
 - (f) an irrevocable conviction:
 - (1) on account of wilful participation in a criminal offence with a minor under the guardian's authority;
 - (2) on account of the commission of a criminal offence vis-à-vis the minor described in Titles XIII-XV and XVIII-XX of Book 2 of the Penal Code;
 - (3) of a custodial sentence of two years or more;
 - (g) of the serious disregard of the directions of the institution for family guardianship or obstruction of a care and supervision order pursuant to the provision of Article 261;
 - (h) of the existence of a well-founded fear of neglect of the best interests of the child subject to guardianship because of the parent reclaiming or taking back the child from others who assumed its care and upbringing;
 - (i) that the guardian does not have the required consent in principle pursuant to Article 2 of the Wet opneming builtenlandse pleegkinderen ter adoptie vereiste beginseltoestemming (Act containing Rules Concerning the Placement in the Netherlands of Foreign Children with a view to Adoption Act).
- **2.** A criminal offence in this Article includes being accessory to an offence and an attempt thereto.

A non-consensual discharge of a legal person vested with guardianship may only be made on the grounds enumerated in paragraphs (1)(b)-(e), inclusive, of the preceding Article. Its discharge without its consent may also take place, if it neglects to keep the Child Care and Protection Board informed in accordance with Article 305 of this Book of the whereabouts of the minors confided to it or if it obstructs or impedes the Child Care and Protection Board in exercising supervision.

Article 329

- 1. Non-consensual discharge of guardianship may only be pronounced on the application of a guardian, one of the relatives by blood or marriage of the minor up to and including the fourth degree, ³¹ the Child Care and Protection Board or the Public Prosecution Service.
- **2.** In the case referred to in Article 327(1)(h) of this Book, the non-consensual discharge may, moreover, be requested by the person who has assumed the care and upbringing of the minor.
- **3.** In the case referred to in Article 367 of this Book, the district court may also order the non-consensual discharge when not applied for by the Child Care and Protection Board.

Article 330

Repealed

Article 331

- 1. When this is urgently needed and no delay can be afforded, the district court may suspend a guardian whose non-consensual discharge is applied for, in full or in part, and pending its investigation in the exercise of the guardianship over one or more minors.
- **2.** If the district court, in the case of joint guardianship, considers a suspension of the guardian who is to be non-consensually discharged of custody insufficient to keep the children beyond the influence of that guardian, it may also suspend the other guardian.
- **3.** If, in the case of the exercise of joint guardianship, only one of the guardians is suspended, custody shall be exercised alone by the other guardian during the suspension.
- **4.** In the instances referred to in paragraphs (1) and (2), the district court shall confide the interim guardianship over the minor to an institution for

See footnote to Article 201(1).

family guardianship referred to in Article 60 of the *Wet op de jeugdhulpverle*ning (Juvenile Assistance Act). It shall specify the powers which are confided with regard to the person and capital of such a minor.

5. The orders referred to in this Article shall remain in effect until a decision in respect of the non-consensual discharge has become final and binding. The district court may, however, revoke such an order as from an earlier date.

Article 331a

In the case of suspension of a guardian in the exercise of guardianship and a provision for interim guardianship referred to in Article 331, the district court may order the minor's supervision referred to in Article 254 of this Book.

Article 332

On the basis of facts which may give rise to non-consensual discharge of guardianship and where this is urgently necessary and no delay can be afforded, the children's court judge may suspend the guardian or guardians in full or in part, in the exercise of custody over a minor and vest an institution for family guardianship referred to in Article 60 of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act) with the interim guardianship over such a minor. Article 272(2), (3) and (4) of this Book applies *mutatis mutandis*.

Article 332a

A district court which rejects an application for a non-consensual discharge may issue a care and supervision order in respect of a minor as referred to in Article 254 of this Book.

Article 333

Repealed

Article 334

- 1. If the district court pronounces a non-consensual discharge, it shall also provide for custody, save for the provision in paragraph (3).
- **2.** Any person who has capacity to exercise custody may request the district court to be charged therewith during the investigation.
- **3.** When guardianship is exercised jointly and the non-consensual discharge only relates to one of the guardians, the guardianship shall be exercised alone from then on by the other guardian.

A person who has been divested of guardianship over a certain minor without such a person's consent may not again be appointed as guardian over such a minor.

§9. Supervision by the Guardian of the Person of the Minor

Article 336

A guardian shall ensure that the minor shall be cared for and raised in accordance with his or her capital.

Article 336a

- 1. The guardian cannot change the residence of the minor, if a minor is cared for and raised as a family member by one or more persons other than such minor's guardian, with the consent of the guardian, for one year or more, except with the consent of the persons who have assumed the care and upbringing of the minor.
- **2.** Insofar as the consent required pursuant to the preceding paragraph is not obtained, it may be substituted for that of the district court at the request of the guardian. Such a request shall be granted only if the district court considers this in the best interests of the minor.
- **3.** In the case of rejection of the request, the court order shall be in force for a period not to exceed six months to be specified by the court. Where, however, a request for a care and supervision order in respect of the child is made prior to the end of this period, or for a non-consensual discharge of the custody of the guardian or an application referred to in Article 299a of this Book is pending, the order shall remain in force until a decision has been made on the request by a final and binding order.
- **4.** In the case of the exercise of joint guardianship the consent referred to in paragraph (1) shall be given by both guardians.

§10. The Administration by the Guardian

Article 337

- 1. The guardian represents the child in civil law transactions.
- **2.** The guardian must conduct the administration of the estate of the child as a good guardian. In the case of bad administration the guardian is liable for the loss caused thereby.

3. If property donated or bequeathed to the minor has been placed under administration, the guardian is entitled to demand that the administrator shall account for his or her administration. When such administration lapses, the property shall fall under the administration of the guardian.

Article 337a

- 1. When the guardianship is exercised jointly, the rights of the guardian pursuant to §10 and §11 shall be exercised by the guardians jointly, provided that the rights shall also vest in a guardian severally, unless there have appeared objections of the other guardian.
- **2.** The obligations mentioned in the said Paragraphs shall be incumbent on each of the guardians.

Article 338

- 1. The guardian ensures that an inventory of the estate of the minor as at the commencement of his or her guardianship shall be made as soon as possible.
- 2. Within eight weeks from the commencement of the guardianship, the guardian shall lodge a written report at the clerk's office of the court within the district in which the minor has its residence of any readily available monies, transferable bearer securities and bank savings books present at such commencement.
- **3.** Within eight months from the commencement of the guardianship, the guardian shall lodge an inventory of the estate signed for confirmation of its reliability at the clerk's office of the court within the district in which the minor resides.
- **4.** The inventory of the estate shall include a report on the changes in the composition of the estate until the time when it is prepared.

Article 339

- 1. When the value of the property of the minor does not exceed $\le 11,250$ the guardian may lodge a declaration in respect thereof instead of a description of a signed inventory of the estate in accordance with the form adopted by the Minister of Justice. Such a declaration will suffice when the guardian acts for two or more minors of the same parents and the property of the minors does not exceed $\le 22,500$ in value in the aggregate.
- **2.** The sub-district court may always specify that an inventory of a minor's estate as at the date of its order, shall be prepared and lodged in accordance with the preceding Article *mutatis mutandis*.

- 1. Where this has appeared necessary, the sub-district court may set a longer period for the lodging of an inventory of the estate or a declaration referred to in the preceding Article.
- **2.** If no inventory of the estate nor a declaration referred to in the preceding Article is lodged within the period set therefor, the sub-district court shall arrange that the guardian is summoned for a hearing within ten days from the end of such a period.

Article 341

- 1. In the inventory of the estate or in the declaration referred to in Article 339 of this Book the guardian must state what he or she has to claim from the child. In the absence hereof, the guardian will not be able to exercise a right of action prior to the former's majority.
- **2.** As long as a guardian cannot exercise a right of claim there shall be no interest due on the principal of the guardian's claim.

Article 342

- 1. The four preceding Articles shall apply *mutatis mutandis* when the minor acquires capital during the guardianship as a result of a donation, succession or bequest.
- **2.** The inspector with whom a declaration for succession duty must be lodged on account of a transmission or donation and who, *ex officio*, is aware that the minor has acquired capital, must notify the sub-district court of the minor's residence.

Article 343

Notwithstanding the guardian's liability for loss caused by bad administration, the guardian may perform all transactions for the minor which the guardian considers necessary, useful or desirable in the best interests of the minor, except for the provisions in the following Articles.

Article 344

1. Insofar as the sub-district court does not otherwise provide, a guardian shall deposit the bearer securities of the minor in the safe custody of *De Nederlandsche Bank* or a credit institution which is registered pursuant to Article 52 of the *Wet toezicht kredietwezen 1992* (Credit System (Supervision) Act 1992) (*Staatsblad, Bulletin of Acts and Decrees* 1992, No. 722).

- **2.** The sub-district court may give directions on the manner of safekeeping of bank savings books and monies of the minor. When the sub-district court must give approval for effecting a division, it may give directions as referred to herein. The sub-district court designated in Section 2 of Title 3 of Book 1 of the Code of Civil Procedure shall have jurisdiction in the matter.
- **3.** The provisions in the preceding paragraphs shall apply to transferable bearer securities, bank savings books and monies to which the minor is jointly entitled with one or more other persons, when these are held by the guardian.

- 1. The guardian requires authorisation from the sub-district court for the performance of the following transactions for the account of a minor:
 - (a) entry into contracts for the disposal of property of the minor, unless the transaction relates to money, or when it may be regarded as a normal administrative transaction, or when made pursuant to a judicial order;
 - (b) a bequest or gift, except if it is usual and not excessive;
 - (c) the acceptance of a bequest or gift subject to burdens or conditions;
 - (d) money loans or binding the minor as surety or several co-obligor;
 - (e) agreeing that an estate to which the minor is entitled remains undivided for a specific period.
- **2.** The sub-district court may specify that the guardian requires its authorisation for the collection of claims of the minor, including disposing of balances at giro or credit institutions.
- **3.** For the entry into a contract to bring a dispute to an end in which the minor is involved, the guardian does not require authorisation in the case of Article 87 of the Code of Civil Procedure or if the object of the uncertainty or the dispute does not exceed a value of €700 or if the contract may be considered as an administrative act.

Article 346

- 1. The guardian may not purchase, rent or lease property or land of the minor without approval by the sub-district court of the contract to be entered into.
- **2.** In the case of a public sale, letting of property or lease of land the approval must be applied for within one month thereafter.

- 1. A legal transaction performed in the name of the minor in breach of Article 345 or 346 may be nullified; the ground for nullification may only be invoked on the part of the minor.
- **2.** The preceding paragraph does not apply to a legal transaction other than where this is gratuitous, when the other party was in good faith and for a legal transaction which did not cause the minor any prejudice.

Article 348

- 1. A guardian may not acquire for the account of a minor any outstanding debt or a limited right to property of the minor from a third person without the approval of the contract by the sub-district court.
- **2.** Where there is no such approval the contract shall be null and void.

Article 349

- **1.** A guardian who acts at law or appeals a judicial decision as claimant for the minor without authorisation of the sub-district court shall be declared to lack *locus standi*.
- **2.** Without authorisation of the sub-district court the guardian may not acquiesce in a claim instituted against the minor or in a given decision.
- **3.** The guardian may procure prior authorisation by the sub-district court justifying a defence at law for the minor or for an action to set aside a decision in default of appearance.

Article 350

- 1. The guardian shall ensure the effective investment of the estate of the minor.
- 2. The guardian requires the sub-district court's authorisation for any investment of the minor's monies. Nevertheless the guardian may, insofar as the sub-district court does not rule otherwise, invest monies in the minor's name without such authorisation at a credit institution registered pursuant to Article 52 of the *Wet toezicht kredietwezen 1992* (Credit System (Supervision) Act 1992) in accounts earmarked for investment of monies of minors, with a stipulation that the monies are repaid only upon authorisation of the sub-district court.

Article 351

1. When the estate or part of the estate of a minor is invested in a commercial, agricultural or industrial enterprise, the guardian may only

continue the business for the account either of the minor alone or of such a minor together with others with authorisation of the sub-district court.

2. Without authorisation of the sub-district court the guardian may not leave an estate undivided to which the minor is entitled.

Article 352

Transactions performed by a guardian in breach of Article 350 or Article 351 shall be valid, notwithstanding the lack of the required authorisation.

Article 353

A guardian may not renounce a share in dissolved matrimonial property accruing to a minor without authorisation from the sub-district court.

Article 354

The sub-district court may at any time arrange that the guardian is summoned for a hearing, at which the guardian is obliged to provide the sub-district court with any desired information.

Article 355

- 1. A parent in whom the parental authority is vested or a parent who only has the duty to administer the estate and has declared the intention to enter into a marriage or a registered partnership may be ordered by the sub-district court to prepare an inventory of the estate of the children within a specified period and to lodge such an inventory or a signed copy at the clerk's office of the district court.
- 2. Articles 339, 340 and 341 of this Book shall apply mutatis mutandis.

Article 356

- 1. Directions and authorisations referred to in §10 shall be given by the sub-district court only where this appears necessary, useful or desirable in the best interests of the minor. It may give a special or general authorisation subject to such conditions as it considers appropriate.
- **2.** It may revoke any given direction or authorisation at any time or vary the conditions connected therewith.

Article 357

If the expenditure of a measure ordered on behalf of a minor by a judicial decision is charged to the minor's account following a directive of the sub-district court, and, as a result, such cost needs to be paid out of the minor's

estate, the authorisation of the sub-district court referred to in Article 345 of this Book shall be substituted by the court's designation of the property that must be sold or encumbered.

Article 358

- 1. The guardian may charge the minor all necessary, proper and properly justified expenses.
- **2.** If the sub-district court specifies an amount which may annually be spent on the care and upbringing of the minor or for the cost of administration of the minor's estate, the guardian need not present itemised accounts how that amount was spent.
- **3.** The sub-district court may grant a guardian a remuneration payable by the minor if it considers this necessary having regard to the extent to which the administration constitutes a burden. Apart from this case, a guardian may not charge remuneration for him or herself unless it is conferred by a parent to the guardian by the instrument of the guardian's appointment by a parent.

Article 359

- 1. The sub-district court may at any time impose an obligation on the guardian, at the request of the other guardian or *ex officio*, to lodge at the clerk's office of the district court an account for the administration of the minor's property, annually or once every two or three years.
- **2.** The sub-district court shall specify the date on which the account must be lodged.
- **3.** If, when guardianship is exercised jointly, one of the guardians has lodged an account alone, he or she must at the same time provide the other guardian with a true copy of such an account. The other guardian may, within two months, lodge objections.

Article 360

- **1.** Where there is a difference of opinion in respect of the account the sub-district court may order a correction thereof.
- 2. It may appoint one or more experts for an audit of the lodged account.
- **3.** The sub-district court may charge the guardian the cost of such an audit, in full or in part, if bad administration has come to light.
- **4.** The guardian shall receive a true copy of the written report to be lodged by the experts.
- **5.** Where guardianship is exercised jointly, both guardians shall receive the true copy referred to in paragraph (4), while the court may also charge the cost referred to in paragraph (3) to the guardians jointly.

The periodically made account by the guardian or a true and identical copy thereof shall remain in the keeping of the clerk's office of the district court.

Article 362

At the request of the other guardian or *ex officio*, the sub-district court may assess the loss suffered by the minor according to the account as a result of bad administration of the guardian and order the latter to indemnify such a loss.

Article 363

- 1. The sub-district court may order the guardian at any time to put up security for his or her administration. It shall assess the amount and specify the nature of the security. A pledge of transferable bearer securities by the guardian shall be effective by putting these in safe custody with *De Nederlandsche Bank*.
- **2.** The sub-district court shall specify a reasonable period within which the guardian must show to the sub-district court's satisfaction to have put up the required security.
- **3.** The sub-district court may permit the guardian to replace put up security by other security. If the interest of the guardian requires that a security must be released or if it is no longer necessary to maintain it, the sub-district court may authorise the guardian to waive it for and on behalf of the minor.

Article 364

- 1. Security put up by the guardian shall be released as soon as the guardian's account has been approved or as soon as any rights of action relating to the guardian's administration have been prescribed in accordance with Article 377 of this Book.
- **2.** In that case any mortgage registrations shall be deregistered at the expense of the minor and rights of pledge to registrations in the debt registers for National debentures shall be cancelled.

Article 365

The sub-district court may notify the Child Care and Protection Board if the guardian fails:

(a) to comply with a summons of the sub-district court to appear before it;

- (b) to lodge an inventory of the estate or a declaration referred to in Article 339 of this Book;
- (c) to lodge a periodical account on the date specified by the subdistrict court;
- (d) to keep in safekeeping in the prescribed manner bank savings books, monies or transferable bearer securities belonging to the minor, which have not been registered in the minor's name;
- (e) to provide the sub-district court with proof of having put up the required security; or
- (f) to pay the indemnification ordered by the sub-district court pursuant to Article 362 of this Book,

Similarly the sub-district court may notify the Child Care and Protection Board that:

- (a) the guardian on his or her own authority conducts the administration in instances for which the authorisation of the sub-district court is required;
- (b) the guardian appears to be guilty of unfaithful administration, neglect of duty or abuse of power.

Article 367

The Child Care and Protection Board which receives such information from the sub-district court shall, within six weeks from the date of such information, apply to the district court, after having examined the other conduct of the guardian vis-à-vis the minor, to consider whether this should result in the non-consensual discharge of custody of the guardian on the basis of Article 327(1)(b) of this Book.

Article 368

Repealed

Article 369

- 1. If minors who are subject to guardianship of different guardians have joint property, the sub-district court of the residency of one of the minors may designate one of the guardians or a third person to conduct the administration over such property until its division. The designated administrator shall give the guarantees required by the court.
- **2.** Where several courts are competent as described in paragraph (1), this shall lapse when one court has acted in accordance with it.

3. The provisions in respect of the administration by a guardian apply *mutatis mutandis* to the administration. The administrator shall exclusively be entitled to nullify legal transactions of the minor relating to the management or disposal of property subject to administration.

Article 370

- 1. At the request of the guardian or *ex officio*, the sub-district court may place an estate or a part of an estate of a minor under administration, including the benefits, for the duration of the minority, where this is regarded necessary in the best interests of the minor. Where guardianship is exercised jointly, the placement under administration shall only be decided, if both guardians make the request jointly.
- 2. The sub-district court shall appoint the administrator and specify the remuneration to which the administrator will be entitled. On instituting the administration it may provide that the guardian must indemnify the minor, in full or in part, for the cost caused by the estate being placed under administration, including the remuneration and that the guardian, save for the right of recovery against the administrator, shall be liable for the latter's conduct vis-à-vis the minor. In the case of the exercise of joint guardianship, these obligations shall be imposed on both guardians.
- **3.** The provisions on the administration of a guardian shall apply to the administration *mutatis mutandis*. The administrator shall exclusively be entitled to nullify legal transactions of the minor pertaining to the management or disposal of property subject to administration.
- **4.** The sub-district court shall specify which payments the administrator must make to the guardian from the property subject to administration and its benefits and, in the case of joint guardianship, to the guardians for the care and upbringing of the child or for management of property not subject to administration. It may vary such orders at any time on the application of a guardian or the administrator, or *ex officio*.
- **5.** The administrator must at all times provide any information which the sub-district court requires.
- **6.** The administrator shall further account for the administration to the sub-district court each year and, at the end of the administration, to the guardian and, in the case of joint guardianship, to the guardians and to the minor when it has reached the age of majority or to the heirs of the minor upon the latter's death.
- **7.** Disputes which arise in respect of the account shall be settled by the sub-district court.
- **8.** Where one of the parties fails to give its cooperation in respect of such an account, Articles 771 *et seq* of the Code of Civil Procedure shall apply.
- **9.** The sub-district court may, at any time, on the application of the administrator, a guardian or *ex officio*, bring the administration to an end

or remove the administrator and replace the administrator by someone else.

Article 371

The guardian must notify the clerk's office of the district court of any change of residency.

Article 371a

- 1. The clerk of the sub-district court which appoints a guardian must, without delay, notify the sub-district court section of the district court within whose district the guardian resides.
- **2.** When the guardian no longer lives in the district or is succeeded by a guardian in another district, the clerk of the court shall, without delay, send the records relating to the guardianship to the clerk of the court in whose district the guardian or successor-guardian resides, with mention of the latter's residency.

§11. Accounting for the Administration at the End of the Guardianship

Article 372

When the administration ends the guardian shall account therefor without delay. The guardian shall pay for the costs. These are, however, for the account of the minor unless the administration ends on account of the nonconsensual discharge of custody of the guardian. To the extent that the cost cannot be recovered from the minor, these shall be for the account of the parents and, when no recovery from them is possible, for the account of the State.

Article 373

- 1. The guardian shall account either to the person who has attained the age of majority or to the heirs of the minor when the latter has died or to the guardian's successor in the administration.
- **2.** Where guardianship is exercised jointly has ended and, as a result thereof, custody is exercised by one of the guardians alone, the person whose guardianship has ended shall account to the person who exercises sole guardianship.

- 1. The aforementioned account of the administration shall be made before the sub-district court within whose jurisdiction the guardian whose administration ends resides.
- **2.** Disputes which may arise when the accounting is made shall be settled by the sub-district court.
- **3.** Where one of the parties fails to co-operate to account for the administration, Articles 771 *et seq* of the Code of Civil Procedure shall apply.

Article 375

When a person, who has attained majority, addresses or performs a legal transaction vis-à-vis or with the guardian concerning the guardianship on the account thereof, such a transaction may be nullified, if it is made prior to the lodging of the account. A right to claim nullification may only be made on the part of the person who has reached the age of majority.

Article 376

No interest shall be payable by the minor to the guardian on what remains due so long as after the closure of the accounts the minor is not in default with the payment of what is due.

Article 377

Any right of action on account of the conducted administration during the guardianship, both on the part of the minor and of that of the guardian, is prescribed by the expiry of five years from the date on which the guardianship of the latter has ended.

TITLE 15 RIGHT TO CONTACT AND INFORMATION

Article 377a

- 1. The child and the parent in whom no parental authority is vested have the right to contact with each other.
- **2.** On the application of the parents or either one of them, the court shall issue an arrangement for exercising the right of contact, whether or not for a specific period or shall disallow a right of contact, whether or not for a specific period.
- **3.** The court shall only disallow a right of contact if:
 - (a) contact would cause a serious detriment to the mental or physical development of the child, or
 - (b) the parent is manifestly unfit or clearly must be considered not to be in a position to have contact, or
 - (c) a child aged twelve or older has demonstrated, on its being heard, to seriously object against contact with the parent, or;
 - (d) contact is otherwise contrary to the paramount interests of the child.
- **4.** The district court is competent to take cognisance of applications referred to in this Article. If, however, proceedings for the granting of custody are pending at the sub-district court, an application to provide for an arrangement of contact in connection therewith may be made to the sub-district court.

Article 377b

- 1. A parent in whom parental authority is vested must inform a parent not vested with parental authority of important matters as regards the person and estate of the child and must consult such a parent, where necessary through the intermediary of third persons, on decisions to be taken in his or her respect. This may be regulated by the court at the request of the parent.
- **2.** If this is required in the best interests of the child, the court may, both on the application of the parent in whom parental authority is vested and *ex officio*, provide that paragraph (1) of this Article will remain inapplicable.
- 3. Articles 377a(4) and 377e of this Book shall apply mutatis mutandis.

Article 377c

- 1. Without prejudice to the provision in Article 377b of this Book, third persons who, on account of their profession, dispose of information in respect of important facts and circumstances relating to the person of the child or the child's care and upbringing shall inform a parent who is not vested with parental authority, when so requested, unless they would not equally provide such information to the person in whom authority over the child is vested or with whom the child has ordinarily abode or unless provision of the information is against the best interests of the child.
- **2.** If the information is refused, the court may order, on the application of the parent referred to in paragraph (1) of this Article, that the information be provided in a manner to be specified by it. In any event the court shall refuse the application if provision of the information is against the best interests of the child.
- 3. Article 377a(4) of this Book applies mutatis mutandis.

Article 377d

- 1. Without prejudice to the provision in the second paragraph of this Article, the right of contact may be exercised as soon as the court order concerned has become final and binding or, in the case where it was declared enforceable notwithstanding appeal, as from the date of the issue or dispatch of the order.
- 2. The right of contact may be exercised, if the court order includes or included an order on parental authority, no earlier than at the time when parental authority has commenced for the other parent or custody for the guardian.

Article 377e

- 1. On the application of the parents or either one of them the district court may vary the right of contact and a mutual contact arrangement made by the parents on the ground of a change of circumstances since then or that, when the decision was taken, it was based on incorrect or incomplete information.
- **2.** An application to vary a decision in respect of a right of contact shall be made to the sub-district court when the decision to be varied was made by the sub-district court.

Article 377f

- 1. Without prejudice to the provisions of Article 377a, the court may order provisions for a right of contact between the child and the person who has a close personal relationship with the child. The court may disallow the application if it is against the best interests of the child that it be granted or if the child aged twelve or older objects.
- **2.** The provisions of Articles 377a(4), 377d and 377e of this Book apply *mutatis mutandis*.

Article 377g

If it appears to the court that a minor aged twelve or older would appreciate this, it may issue a decision, *ex officio*, on the basis of Articles 377a, 377b or 377f or vary it on the basis of Article 377e of this Book. The same shall apply if the minor has not yet reached the age of twelve but may be considered able to reasonably appraise his or her interests in the matter.

Article 377h

- 1. Where parental authority is exercised jointly the court may, on the application of the parents or either one of them, make an arrangement for the right of contact between the child and the parent with whom the child does not have his or her ordinary abode or in respect of the provision of information to, or the consultation with, such a parent as is referred to in Article 377b(1) or with regard to the provision of information referred to in Article 377c(1) and (2) of this Book.
- 2. Articles 377a(4), 377e and 377g of this Book apply mutatis mutandis.

TITLE 16 APPOINTMENT OF A CURATOR

Article 378

- 1. The district court may appoint a curator over a person who has attained the age of majority:
 - (a) on account of a mental disorder as a result of which the mentally disturbed person, whether or not intermittently, is unable or is impeded from looking after his or her interests properly;
 - (b) on account of being a spendthrift;
 - (c) on account of habitual alcohol abuse as a result of which such a person:
 - (1) does not properly attend to his or her interests;
 - (2) repeatedly causes a public offence; or
 - (3) endangers his or her own safety and that of others.
- **2.** A curator may already be appointed before a person has reached the age of majority, if it is to be expected that one of the grounds enumerated in the preceding paragraph for the appointment of a curator will apply to a minor when he or she attains the age of majority.

Article 379

The appointment of a curator may be applied for by the person involved, the spouse or other life-companion, registered partner, one of the relatives by blood or marriage up to and including the fourth degree, ³² a guardian or the Public Prosecution Service.

Article 380

- 1. The court before which an application for the appointment of a curator is or was last pending may, when so requested or *ex officio*, appoint an interim administrator; the court order shall state the time when it will enter into force.
- **2.** The court shall provide in its order the powers of the administrator. It may delegate the administration of specific or all property to the administrator. The court may also confer other powers to the administrator but not those which a curator does not have. To the extent the court does not otherwise provide the person for whom the appointment of a curator

See footnote to Article 201(1).

is applied for may not perform acts of administration and disposal as regards such property without the co-operation of the administrator.

- **3.** The court order may also provide that, during such administration and the curatorship, if this follows there shall be no recourse possible against property subject to administration for debts made by the person for whom the appointment of a curator is applied for after publication of the appointment.
- **4.** The court order may be varied or revoked at any time by the court before which the application for the appointment of a curator is or was last pending.
- **5.** The administrator shall be entitled to a remuneration of five percent of the net proceeds of the property administered by him, unless the subdistrict court, for special reasons, specifies a different amount.

Article 381

- 1. The appointment of a curator shall take effect from the date on which it is ordered. In the instance referred to in Article 378(2) the appointment of a curator shall take effect from the time at which the person over whom a curator is appointed attains majority.
- **2.** From these times the person over whom a curator is appointed will not have legal capacity to perform legal transactions insofar as the law does not otherwise provide.
- **3.** A person over whom a curator is appointed has legal capacity to perform legal transactions with the consent of the curator insofar the latter may perform such legal transactions for the person over whom a curator is appointed. The consent may be granted only for a specific legal transaction or for a specific purpose. Consent for a specific purpose must be given in writing.
- **4.** Articles 453 and 454 of this Book apply *mutatis mutandis* with regard to matters relating to the care, nursing, treatment and counselling of a person over whom a curator is appointed.
- **5.** The person has legal capacity in respect of monies made available by the curator for support in accordance with such a purpose.
- **6.** In matters relating to the appointment of a curator the person over whom a curator is appointed has legal capacity to act judicially and to appeal from a decision.

Article 382

A person over whom a curator is appointed on account of being a spendthrift or a habitual abuser of alcohol remains legally capable to perform acts relating to family law insofar as the law does not otherwise provide.

- 1. At the time when pronouncing its orders the court shall appoint the curator or, where it was not yet sufficiently informed, as soon as possible thereafter.
- **2.** When appointing a curator the court shall act in accordance with the explicit preference of the person involved unless there are well-founded reasons which oppose such an appointment.
- **3.** Unless the preceding paragraph is applied, the spouse, registered partner or other life-companion shall preferably be appointed as curator where the person over whom a curator is appointed is married, has entered into a registered partnership or has a life-companion. Where the preceding sentence is not applicable, one of the parents, children, brothers or sisters will preferably be appointed. Where a person over whom a curator is appointed marries, enters into a registered partnership or finds another life-companion, the spouse who is not subject to a curator, the registered partner or the other life partner may apply to be appointed in lieu of the present curator.
- **4.** The duties of the curator commence on the day after the decision taken for the appointment is issued or dispatched. As from that day the interim administration shall end. The interim administrator must account for the administration to the curator before the sub-district court; where the interim administrator is an appointed curator, the former shall account to the sub-district court. If the curator was appointed before the person over whom he or she was appointed a curator attained majority, the duties commence at the time when the appointment as curator takes effect.
- **5.** Where an application for the appointment of a curator is rejected, the administration of the interim administrator shall end on the day following that decision, unless the court orders otherwise, and in any case no later than on the date after the rejection became final and binding.

Article 384

Where a court order for the appointment of a curator is nullified on appeal or on appeal to the Supreme Court and the application for the appointment of a curator is rejected, the duties of the curator shall end on the day following such a decision. Acts performed in the interim by the curator or with the curator's consent shall remain binding for the person over whom a curator has been appointed.

- 1. Except for the provisions in Articles 383 and 384, Articles 250 and 280(b), 281(1)(a) and (2), 297-299, 322(a) and (c), 324, 336 and 372-377 shall apply *mutatis mutandis* in the case of an appointment of a curator, provided that
 - (a) in the case of appointment of a parent as curator no declaration of preparedness as referred to in Article 280(b) will be required;
 - (b) sub-district court shall read district court, except in the case of the corresponding application of Article 250;
- (c) no powers shall vest in the Child Care and Protection Board; the curator may be discharged by the district court at any time on account of important reasons at the curator's own request, at the request of a person over whom a curator has been appointed on account of being a spendthrift or habitual alcohol abuse, on the application of the public prosecution service or *ex officio*.
- **2.** A curator who is not the spouse, registered partner or other life-companion or blood relative in the direct line of the person over whom a curator is appointed, may also apply for a discharge after having acted as curator for eight or more years; a discharge shall be granted as soon as the court considers itself able to appoint a suitable successor.

Article 386

- 1. The provisions in respect of the administration of a guardian shall apply *mutatis mutandis* to the administration by a curator. Unless different arrangements were made as to the remuneration when the appointment of a curator was made, the curator—which includes a parent-curator—shall be entitled to a remuneration of five percent of the net proceeds of the administered property. On account of special circumstances the sub-district court may provide, *ex officio* or at the request of the curator or of the person over whom a curator is appointed for a different remuneration for a specific or indeterminate period other than when the appointment of a curator was ordered or as provided by law.
- 2. The income of a person over whom a curator is appointed on account of a mental disorder must first be used for the sufficient care of the person involved.
- **3.** For the purposes of Articles 365 to 367, inclusive, the Public Prosecution Service shall be substituted for the Child Care and Protection Board and the discharge referred to in Article 385(d), shall be substituted for the non-consensual discharge of custody of the guardian pursuant to Article 327(1)(b).
- 4. Where a curator has been appointed over a married person or a registered partner and the management and administration of their

property and the property of the community is divided between the spouses or the registered partners other than according to the rules of law and the marriage contract, the court shall specify when ordering the appointment of a curator whether, and to what extent, such division shall also apply for the curator.

Articles 387-388

Repealed

Article 389

- 1. The appointment of a curator shall end when it is established by a final and binding judicial decision that the causes which gave rise to the appointment are no longer present.
- **2.** An application thereto may be made by the same persons who can apply for the appointment of a curator.
- 3. The appointment of a curator shall further end when an administration referred to in Title 19 is instituted or a judicial protector referred to in Title 20 of this Book is appointed on behalf of the person involved by a final and binding judicial decision.

Article 390

- 1. All decisions for the appointment of a curator or for its termination, for the institution of an interim administration or a decision nullifying the appointment of a curator shall be published within ten days after such decisions could be implemented, for the account of the applicants, in the Government Gazette as well as in two daily newspapers to be specified by the court. Where the applicants fail to do so, they shall be jointly and severally bound to indemnify third persons for any loss.
- **2.** The publication of the appointment of a curator at his or her own request or on application of the Public Prosecution Service shall be made on behalf of the curator, when so appointed when an appointment of a curator was decided or otherwise by the clerk of the court.

Article 391

Public registers shall be kept at the clerk's office of the district court in The Hague in which legal facts relating to the appointment of a curator shall be recorded. It shall be provided by regulation which legal facts must be recorded and in what manner such records shall be made.

TITLE 17 MAINTENANCE

Section 1 General Provisions

Article 392

- 1. On the ground of a relationship by blood or marriage:
 - (a) the parents;
 - (b) the children;
- (c) the children-in-law, parents-in-law and stepparents, are obliged to provide maintenance.
- 2. Such an obligation exists only when the person entitled to maintenance is in need, except where it relates to parents and stepparents vis-à-vis their children and stepchildren and vis-à-vis their children referred to in Article 395a of this Book.
- **3.** The persons mentioned in paragraph (1) need not provide maintenance insofar this may be obtained from the spouse or a former spouse or the registered partner or former registered partner in accordance with the provisions of Title 5A, 6, 9 or 10 of this Book.

Article 393

Repealed

Article 394

The begetter of a child that only has a mother and the man who, as life-companion of the mother, has agreed to an act which could have resulted in the begetting of the child, must provide, as if he were a parent, for the cost of the care and upbringing of the child or, after the child has reached the age of majority, for the cost of maintenance and study in accordance with Articles 395a and 395b. Thereafter there should only be such an obligation if the child is in need.

Article 395

Except for Article 395a of this Book, a stepfather need only provide maintenance during his marriage or his registered partnership to the minor children of his spouse or registered partner who are members of the family.

Article 395a

- 1. Parents must provide for the cost of maintenance and study of their children who have not yet reached the age of twenty-one.
- **2.** During his or her marriage or registered partnership a stepparent is obliged, towards the children who have attained the age of majority that are members of the family of his or her spouse or registered partner who have not reached the age of twenty-one, to provide for the cost referred to in the preceding paragraph.

Article 395b

- 1. Where the court has specified the amount that a parent or stepparent or, in accordance with Article 394, the begetter or the man who is equated therewith in Article 394, must pay for the care and upbringing of his or her minor child or stepchild and such an obligation has been in effect until the child has attained the age of majority, then the judicial decision shall from that time onwards apply as a specification of the amount for maintenance and study as referred to in Article 395a of this Book.
- **2.** The same shall apply, if with the application of Chapter VII of the *Wet op de jeugdhulpverlening* (Juvenile Assistance Act) the amount has been assessed which the parent or stepparent must pay to cover the cost of the measures referred to in Article 41f(2) of that Act to the National Bureau for Collection of Maintenance.

Article 396

- 1. The obligation of children-in-law and parents-in-law to provide maintenance shall lapse when the marriage of the child-in-law is dissolved.
- **2.** There shall be no obligation vis-à-vis a child-in-law who is judicially separated and vis-à-vis a parent-in-law after the latter has remarried.

Article 397

- 1. In determining the amount due for maintenance by relatives by blood and marriage according to the law, account shall be taken of the needs of the person entitled to maintenance as well as the financial means of the person obliged to pay.
- **2.** Where several relatives by blood or marriage must provide maintenance to the same person, each shall be obliged to pay part of the amount needed by the person entitled to maintenance. In determining such a part, account shall be taken of each one's financial means and the relationship of each person to the person with the entitlement.

- 1. When a person who must provide maintenance is unable to manage to provide the money required for such a purpose, the district court may order that he or she must take in the relative by blood or marriage to whom he or she owes maintenance and to provide the necessaries there.
- **2.** Parents may always apply to the court for permission to acquit themselves of their obligation to provide maintenance to their needy child who has attained majority in the manner described in paragraph (1).

Article 399

The court may moderate the obligation of relatives by blood and marriage to provide maintenance where, having regard to the conduct of the person entitled to maintenance, the provision of maintenance may not reasonably be required or not in full; except for the following Section in respect of the provision for the cost of maintenance and upbringing of minor children and stepchildren.

Article 400

- 1. Where a person must provide maintenance to two or more persons and his or her financial means are insufficient to provide this in full to all of them, his or her spouse, former spouse, registered partner, former registered partner, parents, children and stepchildren take precedence over the children-in-law and the parents-in-law.
- **2.** Contracts whereby maintenance due according to the law is renounced are null and void.

Article 401

- 1. Ajudicial decision or a contract regarding maintenance may be varied or revoked by a subsequent judicial decision when it no longer meets the legal standards on account of a change of circumstances. The preceding sentence does not apply to an application for a change of a period fixed by the court on the ground of Article 157 or which is incorporated in a contract referred to in Article 158.
- 2. The period fixed by the court on the ground of Article 157(3), (5) or (6), second sentence or incorporated in a contract referred to in Article 158 may, on the application of one of the former spouses, be changed in the case of such a far-reaching change of circumstances that it may not be required from the applicant, on bases of reasonableness and fairness, that it be maintained unchanged. Extension is not possible, if this is so provided

by the court pursuant to Article 157(5). Article 157(5), second and third sentences applies *mutatis mutandis* to an application for an extension.

- **3.** The parties may agree in writing that the first sentence of paragraph 1 shall apply to an application for a variation of a period incorporated in a contract referred to in Article 158.
- **4.** A judicial decision regarding maintenance may also be varied or revoked, if it did not meet the statutory standards from the outset because the decision was based on incorrect or incomplete information.
- **5.** A contract regarding maintenance may also be varied or revoked, if it was entered into with a gross misjudgement of the statutory standards.

Article 402

- 1. The court that specifies, varies or revokes the amount of a maintenance payment, shall also specify the date as from which this amount is or ceases to be due.
- **2.** When determining the amount of maintenance, the court shall also specify whether it must be paid weekly, monthly or quarterly.
- **3.** Should more than one instalment already have become due and payable on the date on which the decision may be enforced, or on which more than one instalment must be repaid, the court may also allow to payment in instalments thereof.

Article 402a

- 1. Amounts of maintenance fixed by judicial decision or by contract shall be changed annually, by operation of law, with a percentage to be specified by the Minister of Justice which, except for the provision in paragraphs (3) and (4), shall correspond to the difference in percentage between the index figure for wages as of the 30th September of any year and the corresponding index figure of the preceding year.
- **2.** The change shall commence on the 1st January following the date mentioned in paragraph (1). The order whereby the percentage is fixed shall be published in the Government Gazette.
- **3.** The index figure for wages shall be determined by Regulation.
- **4.** The percentage change in the maintenance amounts may be rounded off to the nearest tenth of one percent. If the percentage difference referred to in paragraph (1), the second or following figure after the decimal point amounts to five, the amount shall, insofar as such figures are concerned, be rounded off downwards.
- **5.** A change by operation of law may be excluded by judicial decision or by contract, wholly or for a specific duration. It may then also be provided that and in which manner the amount of maintenance will be changed periodically other than by operation of law.

- **6.** In the decision whereby the second sentence of the preceding paragraph has been applied, and also thereafter, the court may regulate the manner and dates on which the person obliged to make a payment must provide information for the purpose of determining and changing the amount of maintenance to the person entitled to such a payment. Such decisions may be given and changed later on the application of the person obliged to make the payment or the person entitled thereto.
- 7. The exclusion of a change by operation of law may be revoked by judicial decision. Insofar as it relates to an exclusion without application of the second sentence of paragraph (5), such revocation may be made only in the instances referred to in Article 401 of this Book.
- **8.** When a writ of execution for maintenance payment is enforced account shall be taken of any changes in the law at the time of such enforcement, or as the case may be, any changes in accordance with the second sentence of the fifth paragraph of this Article.

No payment shall be due after the passing of a period of more than five years since the time the application is lodged.

Section 2 Provision for the Cost of Care and Upbringing of Minor Children and Stepchildren

Article 404

- 1. Parents must provide for the cost of care and upbringing of their minor children according to their means.
- **2.** There shall be an equal obligation for a stepparent in the case of Article 395 of this Book.

Article 405

Repealed

Article 406

- 1. Where a parent or stepparent does not or does not properly perform his or her obligation to provide for the cost of care and upbringing, the other spouse or guardian may apply to the district court to specify the amount that such a parent or stepparent must pay on behalf of the child.
- **2.** At the same time as deciding questions relating to custody, the district court may already specify the amount referred to in the preceding paragraph.

Article 406a

An application based on Article 394 may be made on behalf of a minor child by the person who has custody of the child. The parent or guardian of the child does not need the authorisation referred to in Article 349(1) and (2).

Articles 406b-40d

Repealed

Article 407

The district court may, on the application of a parent, alter the amount of a specific periodical payment for the cost of care and upbringing, in connection with the preceding provision for custody, at the same time as the district court's decision with regard to the custody to be exercised over the children after dissolution of the marriage after a legal separation.

Article 408

- 1. Payment for the provision in the cost of care and upbringing or for the provision in the cost of maintenance and study in respect of which the amount has been laid down in a judicial decision, including a decision based on Article 822(1)(c) of the Code of Civil Procedure, shall be made on behalf of the minor to the parent who cares for and raises the child or to the guardian or the child of age, respectively.
- **2.** The National Bureau for Collection of Maintenance shall assume responsibility for the collection of maintenance when so requested by a person obliged to pay maintenance or on the joint request of a person with an entitlement and the person who is obliged to pay it. The person entitled to maintenance shall then hand the writ of execution to the Bureau. The handing over thereof authorises the Bureau to collect payment.
- **3.** The cost of collection by the National Bureau for Collection of Maintenance may be recovered from the person from whom maintenance is due, in addition to the cost of judicial proceedings and execution. The recourse for costs shall be made by a change of the amount referred to in paragraph (1), according to rules to be laid down by Regulation.
- **4.** Collection on the application of a person entitled to maintenance shall only be undertaken when the person with an entitlement at the time when the application is lodged has shown *prima facie* that the person obliged to pay maintenance has failed to fulfil his or her obligations as regards at least one periodical payment within at most six months preceding the lodging of the application. In such instances collection of amounts due shall be

made from a date that does not predate the lodging of the application by more than six months.

- **5.** Prior to proceeding to recover costs, the person obliged to pay maintenance must be notified by letter of the intention thereto, with the request to acknowledge receipt and the reason therefor, stating the amount including the costs of collection. The Board may proceed to collect on the fourteenth day after the letter has been sent.
- **6.** Collection made on the application of the person entitled to maintenance shall end only if payment is regularly made for at least half a year to the National Bureau for Collection of Maintenance and there are no amounts still due as referred to in the second sentence of paragraph (4). The half-year period shall be doubled each time if a previous collection period had commenced at the request of the person entitled to maintenance.
- 7. Collection, which applies at the time when the child attains majority, shall be continued on behalf of the person of age unless it is brought to an end at his or her request.
- **8.** The enforcement of a writ of execution as regards the payment of the cost of care and upbringing or maintenance and study shall be made with due observance of the change referred to in paragraph (3).
- **9.** Any action for collection which has not been realised by the National Bureau for Collection of Maintenance ten years after the child has reached the age of twenty-one, may be brought to an end. The person entitled to maintenance shall be notified hereof in writing.
- 10. A payment by the person obliged to pay maintenance shall first serve to reduce the cost referred to in paragraph (3), subsequently to reduce interest due, if any, and, finally, to reduce the maintenance due and current interest if any.
- 11. The National Bureau for Collection of Maintenance shall ensure that monies distributed for the maintenance of children are paid to entitled persons. If payment is made to an entitled municipality, such a part shall be deducted from the money distributed to the Bureau as the Minister of Justice specifies to cover the costs involved with collection of the money.
- **12.** Article 243(2) to (4), inclusive, apply mutatis mutandis.

TITLE 18 ABSENCE, MISSING PERSONS AND THE DETERMINATION OF DEATH IN SPECIFIC INSTANCES

Section 1 Administration in the Case of Absence

Article 409

- 1. When a person who has left his or her residency without having first arranged his or her affairs in relation to the administration of his or her property and there is a necessity for provisions to be made, wholly or partially, or for procuring representation of the absent person, the district court shall appoint an administrator, on the application of any interested persons or the Public Prosecution Service, to administer all or part of the property of the absent person and to take charge of that person's other affairs.
- **2.** For the purposes of this Section a person whose existence has become uncertain or who cannot be reached is equated with a person who has left his or her residency, also where it has not been established that the person has left his or her address.

Article 410

- 1. To the extent that the district court does not otherwise provide, Articles 338, 339, 340, 342-357, 358(1) and 359-363 of this Book apply *mutatis mutandis*, provided that the administrator must lodge an account of his or her administration each year at the office of the clerk of the district court.
- **2.** The administrator shall be entitled to a remuneration of five percent of the net proceeds of the property administered by him or her unless the sub-district court specifies a different amount for special reasons.
- **3.** Approval of lodged accounts by the sub-district court shall not affect the right of the persons with an entitlement to apply, insofar as this is not unreasonable, for an account over the same period after the administration has ended.
- **4.** The administrator may also act in respect of the interests other than those relating to the capital of the absent person except to the extent that this is excluded by the district court.
- **5.** The district court may at any time discharge the administrator and replace him or her by another.

The administration shall end:

- (a) by a joint decision of the beneficiary and the administrator;
- (b) by a termination with one month's notice to the administrator by the beneficiary;
- (c) when the death of the beneficiary is established.

Section 2 Persons whose Existence is Uncertain

Article 412

- 1. When a person whose existence is uncertain becomes entitled to a share in an inheritance or a legacy to which other persons would be entitled if the person should not be alive, the district court shall authorise such other persons, on their application, to exercise their right as an heir or legatee.
- **2.** Where necessary, the district court may order that public notice be given and prescribe means for the preservation of rights on behalf of the interested persons.
- **3.** If it should appear, after authorisation is granted, that the missing person was alive on the date on which the deceased's estate fell open, a claim may be made for the return of property of which possession was taken and of the benefits, on the basis of and subject to the restrictions indicated hereinafter on the certificate of presumed death.
- **4.** Paragraphs (1) to (3), inclusive, apply *mutatis mutandis* to a life insurance payment to which the person whose existence is uncertain is the first named beneficiary.

Article 413

- 1. Where a person's existence is uncertain and the time indicated in the following paragraph has expired, any interested person may apply to the district court to order them to give notice to the missing person to appear in order to show that he or she is still alive and, where this is not so shown, to declare that there is a legal presumption of death of the missing person.
 - (a) The time referred to in the preceding paragraph shall be five years as from the departure of the missing person or since the last sign of his or her being alive.
 - (b) The period shall be shortened to one year, if the person involved was missing during such period and the circumstances make it likely that he or she is dead.

3. An order to publish notice to the missing person and a declaration of legal presumption of death referred to in paragraph (1) may also be applied for by the Public Prosecution Service.

Article 414

- 1. The district court shall specify the day and hour at which the missing person must be given notice to appear. A period of one month or so much longer as the district court may order shall apply for such notice. The convening notice shall be made in accordance with Section 3 of Title 3 of Book 1 of the Code of Civil Procedure.
- 2. If neither the missing person nor anyone else appears to assert his or her right, according to the proper means, that the missing person is alive, the district court shall declare that there is a legal presumption of death, notwithstanding its right to once more give the order referred to in paragraph (1) and to hear witnesses and to order the lodging of evidentiary documents proving that the requirements of Article 413 were satisfied.
- **3.** The order containing a declaration that there is a legal presumption of death shall mention the date on which the missing person is presumed to have died; the date following the day of the last sign of his or her being alive shall be deemed that date unless there are sufficient indications that the person was still alive for some time thereafter.
- **4.** The district court may also order that the costs incurred by an applicant referred to in Article 413(1) be paid from the capital of the missing person.

Article 415

Repealed

Article 416

There shall be no higher remedy against court orders allowing an order to serve notice on a missing person.

Article 417

1. As soon as the court order declaring that there is a legal presumption of death has become final and binding, the clerk of the body before which the case was last pending shall send a true copy of the order to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the residency from which the missing person left or, where there is no such residency left in the Netherlands, of the municipality in The Hague. From such an order the civil servant shall draw up an instrument of registration corresponding to the order, which shall state this explicitly.

2. This death certificate shall constitute binding proof *ergo omnes* that the missing person died on the date stated on the certificate.

Article 418

- 1. Before heirs and legatees of a person declared presumably dead are able to take possession of the property of the deceased's estate, they must put up security, to the satisfaction of the sub-district court, for what they will have to hand over to the person declared presumably dead, should the latter return or to heirs or legatees, should they have a better right.
- **2.** The heirs must, after taking possession, draw up a proper inventory of the estate.
- **3.** Registered property may not be disposed of or encumbered, except for important reasons and with the leave of the sub-district court. Where no division is possible at a division of the estate without a sale, then it shall be placed under administration of a third person who shall distribute the income from such property in accordance with what has been determined in that respect at the division.
- **4.** The division shall be made by an authentic instrument, which must also indicate what was distributed to the legatees or other beneficiaries.
- **5.** The property of the deceased's estate may not be squandered and no excessive gifts may be made therefrom.
- **6.** Heirs and legatees must, when so requested, provide the sub-district court with the necessary information.
- 7. The obligations mentioned in this Article shall lapse at a time specified by the sub-district court and no later than on expiry of five years from the date on which the death certificate has been drawn up in accordance with Article 417. The district court, which gives the order that there is a legal presumption of death, may, having regard to the circumstances of the case, also specify therein that there shall be no obligation or obligations mentioned in this Article.

Article 419

An original or a certified true copy of the instrument whereby security is advanced, the inventory of the estate and the instrument of division must be lodged at the clerk's office of the district court.

Article 420

1. When it appears to the sub-district court that an heir or legatee has not fulfilled the obligations imposed by the two preceding Articles, it may appoint an administrator for the property to which such an heir or legatee becomes entitled from the deceased's estate. The administration ends when

the sub-district court decides that the person involved has fulfilled his or her statutory obligations.

- **2.** To the extent the sub-district court does not otherwise provide, Articles 338, 339, 340, 342-357, 358(1) and 359-363 of this Book apply *mutatis mutandis* to the administration of the administrator provided that the administrator must lodge an account for his or her administration each year at the office of the clerk of the district court.
- **3.** The administrator shall be entitled to a remuneration of five percent of the net proceeds of the property administered by him or her unless the sub-district court specifies a different amount for special reasons.
- **4.** The sub-district court may discharge the administrator at any time and replace him or her by someone else.

Article 421

The provisions in the preceding three Articles in respect of heirs who receive property from the deceased's estate shall apply *mutatis mutandis* to the spouse or registered partner who receives property as a result of the dissolution of any community of property or the termination of any partnership. No security need be put up, however, for what is received in this respect.

Article 422

- 1. When the missing person returns or it appears that the date of death stated on the death certificate was incorrect, any person in the possession of or holding property of the missing person under administration pursuant to the preceding Articles must account for and hand over the property to the returned person or to the persons who then appeared to be entitled to the property.
- **2.** Rights acquired by third persons in good faith shall be respected. However, where property is disposed of gratuitously, the court may order that compensation, to be determined with regard to the fairness of the situation, be granted to the persons with an entitlement for the account of the person who enjoyed the benefit of it.
- **3.** Where the life of the missing person was insured for the benefit of third persons, these shall then retain their right to what was paid to them at the time of the return of the insured or which had already become due and payable at that time; in that case no other rights to payment may be derived from the insurance.

- 1. If, within five years from the date on which the death certificate was drawn up in accordance with Article 417 of this Book, it is proved that this certificate is incorrect, the persons who in good faith enjoyed the benefits of the deceased's estate need only return half thereof; where the incorrectness is proved later, they need not return any benefits.
- 2. If only after more than ten years from the date on which the certificate is drawn up, it is proved that the certificate is incorrect, the persons who took possession of their property in good faith need only return the then still present property in its present state, in addition to the price of any disposed property or property substituted therefor; everything without any benefits or compensation for property no longer present and without an obligation to provide an account.
- **3.** Any obligation to return property shall lapse on the expiry of twenty years from the date on which the certificate was drawn up.

Article 424

Repealed

Article 425

- 1. If the wife left behind by a missing person entered into a new marriage while the missing person was still alive after the date mentioned as the date of death on the certificate drawn up in accordance with Article 417 of this Book, as worded at the solemnisation of the new marriage, the marriage with the missing person will nevertheless be deemed dissolved on the date mentioned in that instrument for the purpose of determining the legal status of her children born prior to the new marriage.
- 2. A person who was declared presumably dead whose parental authority over his or her minor child did not revive upon his or her return may apply to the district court to vest him or her with parental authority. When the latter, jointly with the other parent, requests to vest them with joint parental authority, in the best interests of their child, or where no provision for parental authority was made or a guardian is vested with custody, the application shall be rejected only if there is a well-founded fear that the best interests of the child would be neglected if the application were to be allowed. In other cases, the application will be granted only if the district court considers this desirable in the best interests of the child.

Section 3 Determination of Death in Specific Instances

Article 426

- 1. If the body of a missing person could not be found but, taking all circumstances into consideration, his or her death may be deemed certain, the district court may declare the missing person to be dead, on the petition of the Public Prosecution Service or on the application of any interested person:
 - (a) if the disappearance took place in the Netherlands;
 - (b) if the disappearance took place during a voyage with a vessel or aircraft with its home base in the Netherlands;
 - (c) if the missing person was of Dutch nationality;
 - (d) if the missing person had his or her abode or residency in the Netherlands.
- 2. If a person has died outside the Netherlands and no death certificate was drawn up or can be lodged, the district court may declare such a person to be dead on the petition of the Public Prosecution Service or on the application of any interested person:
 - (a) if the death took place during a voyage with a vessel or aircraft with its home base in the Netherlands;
 - (b) if the deceased was of Dutch nationality;
 - (c) if the deceased had his or her abode or residency in the Netherlands.
- **3.** The documents lodged with the petition or application referred to in paragraphs (1) and (2) shall, as far as possible, provide the information mentioned in Article 427 of this Book.

Article 427

- 1. The court order whereby a person referred to in Article 426 is declared to be dead shall mention the date and, where possible, the hour of death. If the date of death is unknown, this shall be established by the district court and stated in the order. The district court shall take into account any proof and indications in respect of the circumstances under, or the time at, which the death must have taken place.
- **2.** Furthermore, the court order shall state the surname, the forenames, the sex and, where possible, the place of death, the address of the deceased, the place and date of birth of the deceased and the surname and forenames of the person or persons with whom the deceased had been married or with whom the deceased had entered into a registered partnership.

Repealed

Article 429

The clerk of the body before which the case was last pending shall send a true copy of the order as soon as it becomes final and binding to the Registrar of Births, Deaths, Marriages and Registered Partnerships of the civil registry of the municipality of The Hague. The latter shall prepare an instrument of registration of the order which shall be recorded in the Register of Deaths.

Article 430

- 1. The instruments drawn up in accordance with Article 429 shall be deemed death certificates within the meaning of Article 19f(1).
- **2.** Articles 422, 423 and 425 apply *mutatis mutandis* if a person returns who was declared dead, with application of Article 426, and also if it is proved that the date of death was stated incorrectly in the instrument referred in Article 429.

TITLE 19 ADMINISTRATION FOR THE PROTECTION OF ADULTS

Article 431

- 1. If a person who has attained majority is no longer able, temporarily or permanently, as a result of his or her physical or mental condition to properly attend to his or her proprietary rights and interests, the subdistrict court may institute administration over all or part of the property which belongs or will belong to such a person with an entitlement thereto. Property belonging to a person who has attained majority as referred to in this Title includes property belonging to a matrimonial community of property in which such a person is married and which is not exclusively subject to the administration of the person's spouse.
- **2.** If, when a minor is due to attain majority, it can be expected that he or she will be in the state referred to in the preceding paragraph, the administration may already be instituted prior to his or her attaining majority.
- **3.** The court with whom an application to grant an interim authorisation for a continued sojourn as referred to in the *Wet bijzondere opnemingen in psychiatrische ziekenhuizen* (Psychiatric Hospitals (Special Commitments) Act) or an authorisation referred to in Article 33(1) of that Act is pending, is also competent to take cognisance of an application for the establishment of administration.

Article 432

- 1. The establishment of administration may be applied for by the person entitled thereto, the spouse, registered partner or other life-companion, blood relatives in the direct line and those in the collateral line up to and including the fourth degree, ³³ the guardian, the court appointed guardian or protector as referred to in Title 20 of this Book or by the Public Prosecution Service.
- **2.** The court before whom an application or a court appointment of a guardian is pending may, in the case of rejection, proceed to establish administration of its own initiative.
- **3.** An application to establish administration on behalf of a person with an entitlement over whom a guardian was appointed shall be lodged with the court competent to decide on bringing the appointment of a guardian

See footnote to Article 201(1).

to an end. This court may, when bringing such an appointment to an end, also proceed, of its own initiative, to establish the administration.

4. In the case of an order for the administration or an application thereto as referred to in Article 91 of this Book, paragraphs (2) and (3) shall apply *mutatis mutandis*.

Article 433

- 1. Unless it is otherwise provided when the establishment of administration takes place, the administration shall include those items of property which must be deemed to have been substituted property subject to administration as well as the benefits and other advantages accruing from the property subject to administration.
- **2.** On the application of a person referred to in Article 432(1) or of an administrator or on the requisition of the Public Prosecution Service or *ex officio*, the sub-district court may extend the established administration to other property of the person with an entitlement thereto or release property from the administration. It may also specify transactions referred to in Article 441(2)(f) and revoke the designation of such transactions.

Article 434

- 1. In its orders as referred to in Articles 432 and 433(2) of this Book the court shall specify, *ex officio*, over which property the administration has been established or, as the case may be, which property is released from the administration.
- 2. The administration of property and the release of property from administration shall become operative the day after the court order is issued or despatched, unless the order states a later time of commencement. In the case referred to in Article 431(2) the administration shall become operative at the time when the person with the entitlement attains majority.

Article 435

- 1. The district court shall appoint an administrator at the time the administration is established or as soon as possible thereafter. In all other instances the sub-district court shall make the appointment. The district court shall satisfy itself of the willingness of the person to be appointed by it.
- **2.** If necessary, an interim administrator may be appointed.
- **3.** When appointing the administrator the court shall follow the explicit preference of the person with an entitlement unless there are well-founded reasons which oppose such an appointment.

- **4.** Unless the preceding paragraph is applied, the spouse, registered partner or other life-companion is appointed administrator where the person entitled is married, has entered into a registered partnership or otherwise has a life-companion. Where the preceding sentence is not applied, one of the parents, children, brothers or sisters will preferably be appointed administrator. Where a person with an entitlement marries, enters into a registered partnership or enters into a relationship with a different life-companion, each may apply for the appointment of the spouse, registered partner or a different life-companion of the person with an entitlement instead of the present administrator.
- **5.** Persons without legal capacity, persons from whom one or more items of property were placed under administration as referred to in this Title, persons who are declared bankrupt and as regards to whom a debt repayment scheme for natural persons apply, may not become an administrator.
- **6.** Legal persons with full legal capacity may be appointed as administrator.
- 7. The person appointed becomes administrator on the day after the court order is issued or despatched unless the order states a later date.

- 1. The administrator must prepare an inventory of the property subject to administration and lodge a true copy thereof at the office of the clerk of the competent district court pursuant to Article 266 of the Code of Civil Procedure as soon as possible.
- 2. Articles 339, 363 and 364 of this Book apply mutatis mutandis.
- **3.** If registered property forms part of the administration, the administrator must procure registration of the judicial orders involved and his or her appointment in the public registers referred to in Section 2 of Title 1 of Book 3 as soon as possible. Where an enterprise or a share in a partnership firm has been placed under administration, the administrator must procure registration in the Commercial Register of the judicial orders involved for the appointment.
- **4.** Unless the sub-district court otherwise decides, the administrator must open an account as soon as possible with a credit institution registered pursuant to Article 52 of the *Wet toezicht kredietwezen 1992* (Credit System (Supervision) Act 1992), as referred to in Article 1(1)(a)(1) of the *Wet toezicht kredietwezen 1992*; the administrator must further use such an account whenever exclusively for payments made or received in the implementation of his or her duties.
- **5.** The sub-district court may at any time procure that the administrator be ordered to be heard. The latter must provide the sub-district court with all information desired by it.

- 1. The court may appoint two or more administrators where it considers this necessary in the interest of good administration.
- **2.** Where there are two or more administrators each may, unless the court otherwise provides, severally perform all activities which form part of the administration.
- **3.** Any difference in the case of a difference of opinion between the administrators shall be settled by the sub-district court at the request of either one of them. The sub-district court may also determine a splitting of the remuneration.

Article 438

- 1. During the administration the administrator and not the beneficiary has the right to administer property subject to administration.
- **2.** During the administration the beneficiary may only dispose of property subject to administration with the co-operation of the administrator or, when the latter refuses to do so, with the authorisation of the sub-district court.

Article 439

- 1. If a legal transaction is invalid because it was performed notwithstanding the administration by or directed at the person entitled thereto, such invalidity may only be opposed to the other party where the latter was or ought to have been aware of the administration.
- 2. If property has been disposed of or encumbered by a person who was not competent thereto on account of the administration, such incompetency may only be invoked as against a transferee of the property or of a limited right thereto, where the latter was or ought to have been aware of such administration.

Article 440

- 1. No recovery against assets subject to administration may be made by a creditor, during the administration for debts arising from an act performed during the administration, otherwise than in conformity with Article 438(2), with a beneficiary when the creditor was or ought to have been aware of the administration.
- **2.** If the administration relates to all property that qualifies therefor pursuant to Article 431(1), the preceding paragraph shall apply *mutatis mutandis*, with regard to property not subject to administration against which recovery would be possible.

- 1. In the performance of his or her duties during the administration, the administrator shall represent the beneficiary, both judicially and extrajudicially. The administrator shall ensure that the capital of the beneficiary which is subject to administration is invested effectively insofar as it is not needed for payment for the care of the latter.
- **2.** However, he or she needs the consent of the beneficiary or, where the latter is unable or refuses to give this, authorisation from the sub-district court for the following transactions:
 - (a) the disposal of, and the entry into contracts for, the disposal of property subject to administration unless the transaction may be considered a normal act of administration or is made pursuant to a judicial order;
 - (b) acceptance of a disposition or gift subject to burdens or conditions;
 - (c) lending or borrowing³⁴ of money or committing the beneficiary as a surety or several co-debtor;
 - (d) agreeing that an estate to which the beneficiary is entitled will remain undivided for a specific period;
 - (e) entry into a contract for terminating a dispute, except in the case of Article 87 of the Code of Civil Procedure, unless the object of the dispute does not exceed a value of €700;
 - (f) other transactions specified on institution of the administration or thereafter.
- **3.** The sub-district court may also grant the administrator a continuous authorisation to perform transactions referred to in the preceding paragraph, subject to such terms as it considers fit, and may change or repeal a granted authorisation at any time.
- **4.** The administrator shall be competent, with the exclusion of the beneficiary, to demand the division of property of which an undivided share forms part of the administration. For a division, even where this is made pursuant to a judicial order, the administrator requires consent or authorisation in accordance with paragraph (2). Instead of granting authorisation, the sub-district court, with corresponding application of Article 181 of Book 3, may appoint a neutral person who in lieu of the administrator will represent the beneficiary at the division.
- **5.** The administrator is competent, with the exclusion of the beneficiary, to accept a deceased's estate to which the beneficiary becomes entitled. Unless the acceptance is made with the consent of the beneficiary, the administrator may not accept otherwise than subject to the privilege of inventory.

The term 'lenen' can be interpreted as meaning 'to lend' or 'to borrow'.

- 1. Where a person has performed a legal transaction as administrator, the rights and obligations of the other party shall be subject to the provisions in respect thereof in Title 3 of Book 3. Rules regarding the competence of an administrator and facts which are of importance for considering his or her competence may not be used against the other party, if the latter was or ought not to have been aware thereof.
- 2. The beneficiary is liable, without prejudice to the provision in Article 172 of Book 6, for all obligations arising from legal transactions performed by the administrator in that capacity in the name of the beneficiary. When the person designates property subject to administration which will provide sufficient recourse for the obligation, he or she need not pay the debt out of other capital.

Article 443

Prior to entering an appearance at court, the administrator may obtain authorisation from the beneficiary or, where the latter is unable or refuses to give this, from the sub-district court in order to account for his or her conduct.

Article 444

An administrator is liable towards the beneficiary if he or she fails in the care of a good administrator unless the failure is not attributable to the administrator.

Article 445

- 1. Unless other times were specified, the administrator shall account to the beneficiary annually and at the end of the administration for his or her administration and, at the end of his or her duties, to the successor. The accounts shall be rendered before the sub-district court.
- **2.** If the beneficiary is unable to produce the account or it is uncertain who is the beneficiary, account shall be rendered to the sub-district court. Approval of such accounts by the sub-district court shall not bar a beneficiary from still demanding an account after the end of the administration over the same period where this is not unreasonable.
- **3.** The sub-district court may exempt the administrator, either on request or *ex officio*, from the obligation to periodically account before it; it may also specify that the rendering of this account will only take place every number of years to be specified by it.

4. For the remainder, the provisions in §10 and §11 of Section 6 of Title 14 with regard to the rendering of an account for guardianship shall apply *mutatis mutandis*.

Article 446

- 1. Insofar as the sub-district court does not otherwise provide, the net benefits produced by any property, after deduction of the remuneration due, shall be distributed to the person with an entitlement when a periodic accounting is made. On the application of the beneficiary the sub-district court may fix other dates for the distribution.
- **2.** At the final accounting for the administration, the administrator shall hand over all property to the person who will be competent, after the administrator, to administer the property. The administrator may suspend such a handing over until any balance due to the administrator is paid.
- **3.** Where an account is rendered to the sub-district court, the net proceeds or the property to be handed over shall remain under the administration of the administrator, unless the sub-district court otherwise provides, until the beneficiary is able to take receipt or the uncertainty as to who is entitled has ended.

Article 447

- 1. Unless, on establishment of the administration, different provisions were made for the remuneration, the administrator or, where there are several administrators, the administrators jointly, shall be entitled to five percent of the net proceeds of any property subject to administration. On account of special circumstances, the sub-district court may, either on its own initiative or at the request of the administrator or the beneficiary, make other arrangements for the remuneration for a determinate or an indeterminate period different from what was provided on the establishment or by law.
- **2.** Where there are two or more administrators, the remuneration due to them jointly shall be divided pro rata to the significance of the activities performed by each.

Article 448

- 1. The duties of the administrator shall end:
 - (a) at the end of the administration;
 - (b) by expiry of the period in the case of an appointment for a determinate period;

- (c) by death, the applicability of a debt recovery scheme for natural persons or declaration of bankruptcy in respect of the administrator or the court appointment of a guardian over the administrator;
- (d) by the institution of an administration as referred to in this Title over one or several items of property of the administrator;
- (e) by a discharge granted by the sub-district court as from a date to be specified by it.
- **2.** An administrator shall be discharged either at the request of the administrator or on account of important reasons or because the administrator no longer meets the requirements for becoming an administrator, and this at the request of a co-administrator, the beneficiary or the Public Prosecution Service or *ex officio*. Pending the investigation the sub-district court may make interim provisions for the administration and suspend the administrator.
- **3.** A former administrator shall remain obliged to do whatever cannot be postponed without prejudice to the beneficiary until the person who succeeds the administrator with competence to administer the property has agreed to act as administrator. In the instances mentioned in paragraph (1) (c) this obligation shall be incumbent on his or her heirs, or, as the case may be, the administrator in a debt recovery scheme for natural persons or the curator, if they are aware of the administration; in the instance mentioned in paragraph (1) (d) this shall apply to the administrator to whom the administration referred to therein is delegated.
- **4.** Article 384 of this Book shall apply *mutatis mutandis*.

- 1. The administration ends on the expiry of the time for which it is instituted and by the death or court appointment of a guardian for the beneficiary.
- 2. The sub-district court may, if the causes occasions the administration no longer exist, bring the administration to an end on the application of the beneficiary or of the Public Prosecution Service. The order shall take effect as soon as it has become final and binding unless it specifies an earlier date of commencement.

TITLE 20 JUDICIAL PROTECTION ON BEHALF OF ADULTS

Article 450

- 1. If, as a result of his or her mental or physical condition, an adult is temporarily or permanently unable or impeded from properly attending to his or her interests of a non-financial nature, the sub-district court may grant a judicial protection order on behalf of such a person.
- 2. If it is to be expected that a minor will be in the situation referred to in paragraph (1) at the time when the minor attains majority, the protection order may be instituted prior to the minor attaining majority.
- **3.** The protection order may also be instituted, if an adult is expected to be in the situation referred to in paragraph (1) within a foreseeable period.
- **4.** The court at which a claim is pending for an order to grant a provisional authorisation or an authorisation for a continued commitment as referred to in the *Wet bijzondere opnemingen in psychiatrische ziekenhuizen* (Psychiatric Hospitals (Special Commitments) Act) or an authorisation as referred to in Article 33(1) of that Act may also take cognisance of a claim to institute a protection order.

Article 451

- 1. The protection order may be applied for by the person involved, the spouse, registered partner or another life-companion, the blood relatives in the direct line and those in the collateral line up to and including the fourth degree,³⁵ the guardian, the court appointed guardian or the administrator as referred to in Title 19 of this Book. In the instance referred to in Article 450(3) of this Book the protection order may exclusively be applied for by the person involved.
- **2.** Except from the instance referred to in Article 450(3) of this Book, a protection order may further be applied for by the Public Prosecution Service or by the person who commercially manages the institution where the person involved is permanently cared for. In the latter case the petition shall also state why the persons mentioned in paragraph (1), not including the blood relatives in the collateral line in the third and fourth degree, did not proceed to lodge an application.

See footnote to Article 201(1).

See footnote to Article 201(1).

- **3.** The court at which an application for its appointment of a guardian is pending may, when rejecting this, proceed *ex officio* to institute a protection order.
- **4.** An application to convert the appointment of a curator in a protection order on behalf of a person over whom a curator is appointed shall be made at the court which has competence to decide on the termination of the appointment of a curator. When terminating the appointment of a curator the court may also *ex officio* proceed to institute a protection order.
- **5.** A protection order shall take effect on the day after the issue or despatch of the court order unless the order states a later time of commencement. In the case referred to in Article 450(2) of this Book the protection order takes effect at the time when the person involved attains majority.

- 1. The court, which institutes a protection order, shall appoint a mentor or shall do so as soon as possible thereafter. In the case of replacement of a mentor, the appointment shall be made by the sub-district court. The court shall satisfy itself of the willingness, and form an opinion on the suitability, of the person to be appointed.
- 2. If necessary, an interim mentor may be appointed.
- **3.** The court shall follow the explicit preference of the person involved when appointing the mentor unless there are well-founded reasons which oppose such an appointment.
- **4.** Unless the preceding paragraph is applied and the person involved is married, has entered into a registered partnership or otherwise has a life companion, the spouse, registered partner or other life-companion shall preferably be appointed as mentor. Where the preceding sentence does not apply, preferably one of the parents, children, brothers or sisters will be appointed. Where a person involved marries, enters into a registered partnership or enters into a relationship with a different life-companion, each may apply for the appointment of the spouse, the registered partner or the other life companion in lieu of the present mentor.
- **5.** If a provision has been made for an administration as referred to in Title 19 of this Book on behalf of the person involved, the administrator shall preferably be appointed as mentor where the administrator is a natural person.
- **6.** The following persons may not become a mentor:
 - (a) those who do not have legal capacity;
 - (b) those on behalf of whom a court protection order is instituted;
 - (c) legal persons;
 - (d) a provider of assistance who is directly involved or who gives treatment;

- (e) persons who form part of the management or staff of the institution where the person involved resides.
- 7. The duties of a mentor commence on the date after the order with the appointment is issued or despatched unless the order mentions a later date.

- 1. Unless the law or a Convention gives rise to another provision, the person involved shall not be competent during the protection order to perform legal transactions in matters concerning his or her care, nursing, treatment and guidance programme.
- 2. As regards legal transactions referred to in paragraph (1), the mentor represents the person involved judicially and extra-judicially unless representation is excluded on the basis of the law or a Convention. The mentor may grant consent to the person involved to perform such legal transactions himself or herself.
- **3.** As regards other acts than legal transactions regarding matters mentioned in paragraph (1), the mentor shall act in lieu of the person involved insofar as the nature of the act involved so permits.
- **4.** The protector shall counsel the person involved in matters which regard such a person and which are of a non-financial nature and shall look after his or her interests in respect thereof.
- **5.** Where the person involved opposes an act of a far-reaching nature in matters referred to in paragraphs (2) and (3), this may take place only if it is clearly necessary in order to prevent a serious prejudice for the person involved.

Article 453a

- 1. Where the court considers this necessary it shall also decide that Article 246 of this Book shall apply *mutatis mutandis*.
- **2.** During the life of the protection order the court may take a decision as referred to in paragraph (1) at the request of a person referred to in Article 451(1) and (2), at the request of the mentor or on the petition of the Public Prosecution Service or *ex officio*.

Article 454

1. The mentor must involve the person on whose behalf the protection order is instituted as much as possible in the implementation of the mentor's duties. The mentor shall promote that the person involved performs legal transactions and other acts when the latter may be regarded to be able to reasonably assess his or her interests in the matter. The mentor shall act as a good mentor.

2. The mentor shall be liable towards the person involved in the case of failure in the care of a good mentor unless the failure is not attributable to the mentor.

Article 455

A person on whose behalf a protection order is instituted is liable, without prejudice to the provision in Article 172 of Book 6, for all obligations arising from legal transactions performed by the mentor in that capacity in the name of the person involved.

Article 456

Prior to entering an appearance at court, a mentor may, for the purpose of justification, procure authorisation by the person involved or, where the latter is unable or refuses to give this, by the sub-district court.

Article 457

- 1. A legal transaction performed in breach of Article 453 of this Book shall be voidable in accordance with paragraphs (2) and (3).
- **2.** If the legal transaction is performed by or directed at the person involved, the fact that the transaction is voidable may only be claimed vis-à-vis a person who was or ought to have been aware of the court protection order; vis-à-vis such a person the person involved is presumed not to have had capacity.
- **3.** If the legal transaction is performed by or directed at the mentor, the fact that the transaction is voidable may only be claimed vis-à-vis a person who was or ought to have been aware of the lack of capacity of the mentor.

Article 458

Insofar as one or more items of property of the person involved are subject to administration as referred to in Title 19 of this Book, the administrator if not also the mentor, is not competent to act as regards matters referred to in Article 453(1) of this Book.

Article 459

1. When so requested, the mentor shall report to the sub-district court on the mentor's activities. The sub-district court may order the mentor at any time to appear in person before it. The latter is obliged to provide all information desired by the sub-district court.

2. At the end of the term of appointment as mentor, the mentor shall report in writing on the mentor's activities to the successor, to the subdistrict court and to the person involved, if the court protection order ends by expiry of the period for which it is instituted or by its being terminated.

Article 460

- 1. The mentor may charge necessarily incurred costs for carrying out the mentor's duties to the person involved.
- **2.** The court may grant the mentor a remuneration to be borne by the person involved where it considers this necessary, taking into consideration the financial means of the person involved.

Article 461

- 1. The duties of the mentor end:
 - (a) at the end of the protection order;
 - (b) by expiry of the period of appointment when appointed for a determinate period;
 - (c) by the death of the mentor;
 - (d) by the court appointment of a curator over the mentor or by the institution of a protection order on the mentor's behalf;
 - (e) by a discharge granted by the sub-district court with effect from a date to be specified by the latter.
- **2.** The discharge shall be granted to the mentor either on application of the mentor or for important reasons or because the mentor no longer meets the requirements for becoming a mentor, at the request of the person involved, on the petition of the Public Prosecution Service or *ex officio*. Pending the investigation, the sub-district court may make interim provisions with regard to the protection order and suspend the mentor.
- **3.** A former mentor shall remain obliged to do whatever cannot be postponed without causing prejudice to the person involved until someone else will have competence as regards matters referred to in Article 453(1) of this Book. In the instances mentioned in paragraph (1)(d), this obligation shall be incumbent on the curator or mentor, where the latter is aware of the protection order.
- 4. Article 384 of this Book shall apply mutatis mutandis.

Article 462

1. The court protection order ends by expiry of the period for which it is instituted and by the death or court appointment of a curator over the person involved.

2. If there no longer is any necessity therefor, the sub-district court may terminate the court protection order at the request of the person involved, or of the mentor or on the petition of the Public Prosecution Service. The order shall take effect as soon as it has become final and binding unless it sets an earlier time at which it will take effect.

PART II.

PRINCIPAL LEGISLATION REFERRED TO IN BOOK 1, DUTCH CIVIL CODE AND TRANSITIONAL STATUTORY PROVISIONS

REFERENCES TO THE DUTCH CODE OF CIVIL PROCEDURE MADE IN BOOK 1, DUTCH CIVIL CODE

Article 45 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. Notice of service of process shall be given by a duly authorised bailiff in the manner provided for in this Section.
- **2.** The bailiff's notice of service of process shall in any event specify:
 - (a) the date of service:
 - (b) the name and, in the case of a natural person, also the forenames and the address of the person at whose request the service takes place;
 - (c) the forenames, the surname and the office address of the bailiff;
 - (d) the surname and address of the person for whom the notice of service is intended;
 - (e) the person with whom a copy of the notice of service has been left and a mention of the capacity of such person.
- **3.** ... (not applicable to family law)
- **4.** The notice of service of process and the copies thereof shall be signed by the bailiff.

Article 46 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. The bailiff shall leave a copy of the notice of service of process with the person for whom it is intended either in person or at the place of residence with a member of the person's household or with another person who is present and who can reasonably be expected to ensure that the copy reaches on time the person for whom the notice of service is intended. Where the notice of service is intended for several persons, he or she shall provide a copy for each of them.
- **2.** For the person for whom the notice of service is intended the copy shall be deemed to be an original notice of service.
- **3.** If the person for whom the notice of service is intended refuses to take receipt of the copy, the bailiff shall mention such a refusal on the notice of service, in which case the person for whom the notice is intended will be deemed to have received the copy in person. The bailiff shall also leave a copy in a closed envelope at the place of residence or else shall send a copy by post. Article 47(1), third sentence and (2) shall apply *mutatis mutandis*.

Article 47 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. If the bailiff cannot leave a copy with any of the persons referred to in Article 46(1), he or she shall leave a copy at the place of residence in a sealed envelope. If that is also impossible in practice, he shall at once post the copy. In either case the bailiff shall also mention these acts in the notice of service and shall state the reason for the practical impossibility.
- 2. The name and place of residence of the person for whom the notice of service is intended shall be stated on the envelope in which the copy is posted pursuant to paragraph (1). The envelope shall also mention the name, professional function, office address and telephone number of the bailiff and indicate that the contents require immediate attention.

Article 54 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. Service on persons who have no known address in the Netherlands shall be effected at the place of their actual abode.
- **2.** Where the place of residence and actual abode are unknown and the bailiff's notice of service of process relates to proceedings to be conducted or pending and holders of shares or other securities, which are not registered or whose holders are not known by name, are summoned to appear at law, service shall be effected at the public prosecution service's office at the court where the case is being or must be heard. If the case is or must be heard by the Dutch Supreme Court, service shall be effected at the office of the *procureur-generaal* at the Dutch Supreme Court. An extract from the bailiff's notice of service of process, together with the surname and office address of the bailiff or attorney-at-law from whom a copy of the notice of service can be obtained, shall also be published as quickly as possible in a national daily newspaper or in a daily paper with a circulation in the region where the aforementioned court holds its sessions.

Article 55 (referred to in: Article 771(2), Code of Civil Procedure)

1. Service on persons who have no known place of residence or no known actual abode in the Netherlands but whose place of residence or actual abode outside the Netherlands is known shall be effected at the Public Prosecution Service's office or, as the case may be, the *procureur-generaal* referred to in Article 54(2) and (4), who will send a copy of the notice of service for the person for whom it is intended to the Ministry of Foreign Affairs or, if the place of residence or actual abode of the person concerned is in the Netherlands Antilles or on Aruba, to the office of the Minister Plenipotentiary of the Netherlands Antilles or, as the case may be, of Aruba in the Netherlands. A second copy shall be sent by the bailiff without delay

by registered letter to the place of residence or actual abode of the person concerned.

2. Where a person for whom the notice of service is intended and who has a known place of residence or known actual abode outside the Netherlands in a State which is a party to the Hague Convention of 15th November 1965 on the service abroad of judicial and extra-judicial documents in civil or commercial matters (*Tractatenblad Bulletin of Treaties* 1966, No. 91) receives the copy in a manner which is considered there as service in person, the notice of service shall be deemed to have been given to him or her in person.

Article 56 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. Notwithstanding the other provisions of this Section, service on persons who have no known place of residence or no known actual abode in the Netherlands but do have a known address or known actual abode in a State to which Regulation (EC) No. 1348/2000 of the Council of the European Union of 29th May 2000 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters (*Official Journal*, L-160/37) applies, shall, insofar as necessary, be effected with due observance of paragraphs (2) to (4) inclusive.
- 2. A bailiff designated as transmitting agency as referred to in Article 2(1) of the Regulation shall send a copy of the document to be served to a receiving agency as referred to in Article 2(2) of the Regulation for service on the person for whom the document is intended. Instead of a copy the bailiff may send a translation of the document in the language referred to in Article 8(1)(a) of the Regulation. In the document the bailiff shall mention the transmission and the following information:
 - (a) the date of transmission;
 - (b) the name and address of the receiving agency;
 - (c) the manner of transmission;
 - (d) whether a translation is sent and, if so, in which language;
 - (e) the language in which the form referred to in Article 4(3) of the Regulation has been completed;
 - (f) the requested manner of service.
- 3. When service must be effected within a fixed term, the date of transmission in conformity with paragraph (2) shall be deemed to be the date of service with regard to the person at whose request the service is effected. Where a writ of summons is served in accordance with Article 63(1) at the office of the attorney-at-law, member of the local Bar or bailiff last chosen by the person for whom the writ is intended as his or her address for service, the date of such service shall be decisive when determining whether an opposition, appeal, or appeal to the Dutch Supreme Court has been instituted on time, provided that the bailiff also sends a copy of

the writ, or a translation thereof in the language referred to in Article 8(1)(a) of the Regulation, to a receiving agency as referred to in Article 2(2) of the Regulation for service on the person concerned.

4. Where the person for whom the document is intended receives the copy or translation in a manner deemed to constitute service in person in the State concerned, the document shall be deemed to have been served on him or her in person.

Article 63 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. A notice of service of process in connection with an opposition, appeal or appeal to the Dutch Supreme Court may also be given at the office of the attorney-at-law, member of the local Bar or bailiff last chosen by the person for whom the notice is intended as his or her address for service in the matter. This attorney, member of the local Bar or bailiff must ensure that the notice of service reaches the person for whom it is intended on time.
- **2.** All notices of service of process may be given at an address for service chosen in connection with enforcement pursuant to a statutory provision, even where the process relates to an opposition, appeal or appeal to the Dutch Supreme Court.

Article 64 (referred to in: Article 771(2), Code of Civil Procedure)

- 1. No notice of service of process may be given between eight o'clock in the evening and seven o'clock in the morning.
- 2. Nor may any notice of service of process be given on a Sunday or official public holiday. If the last day of the period within which the notice may be given falls on a Sunday or official public holiday the notice may be given on the following day.
- **3.** The interim measures judge or, in sub-district court cases, the sub-district court of the court before which the person concerned is summoned to appear by writ or otherwise and in all other instances the interim measures judge of the district court within whose jurisdiction the notice of service of process is given may, in derogation from paragraphs (1) and (2), grant leave to issue the notice of service on all days and at all hours.

Article 87 (referred to in: Articles 345(3) and 441(2)(e))

1. On the application of the parties or of any one party or of its own motion, the court may order, in all cases and at each stage of the proceedings, the appearance of the parties at a court hearing for the purpose of attempting to reach a settlement.

- 2. The parties shall appear at the court hearing in person or represented by an attorney. In cases in which they cannot litigate in person, they shall appear in person or represented by a member of the local Bar. The court may order an appearance in person. Parties who appear at the court hearing in person may arrange to be assisted by their legal counsel. In cases in which the parties cannot litigate in person, the legal counsel shall be an attorney-at-law or member of the local Bar.
- **3.** If a settlement is concluded, an official report recording the obligations assumed by the parties as a result of such settlement shall, when a party so requires, be drawn up and countersigned by the parties or by the persons specially authorised by them for such purpose. This official report shall be issued in a form capable of enforcement.
- **4.** If no settlement is arrived at, the court shall specify the date on which the case will again be entered on the roll.

Article 224 (referred to in: Article 680(3), Code of Civil Procedure)

- 1. All persons without a place of residence or habitual residence in the Netherlands who institute a claim before a Dutch court or join or intervene in proceedings here, shall put up security, when so claimed by the adverse party, in respect of a possible order for costs against them in the proceedings and for damages.
- **2.** There shall be no obligation to put up security:
 - (a) when this follows from a convention or an EC Regulation;
 - (b) if an order for costs of the proceedings and damages is capable of execution under the Charter for the Kingdom of the Netherlands, a convention or an EC Regulation in the place where the person from whom security is claimed has his or her address or habitual residence;
 - (c) if it is reasonably plausible that an order for costs of the proceedings and damages can be enforced in the Netherlands;
 - (d) if the person from whom security is claimed would thereby be prevented from having effective access to the court.
- **3.** The adverse party may institute the claim referred to in paragraph (1) before all defences.
- **4.** The party who claims that security be put up is not deemed to have thereby recognised the jurisdiction of the court.
- **5.** A judgment ordering the putting up of security shall mention the sum for which security must be put up.

Article 262 (referred to in: Articles 280(a) and 344(2))

Unless the law otherwise provides the following court shall have jurisdiction:

- (a) the court of the residence of either the applicant or one of the applicants, or one of the interested parties mentioned in the application or, where there is no known residence in the Netherlands, the court of the actual abode of any one of them;
- (b) if the application relates to proceedings commenced or to be commenced by writ of summons, the court which has jurisdiction to take cognisance of such proceedings, unless the application does not fall within its absolute jurisdiction.

Article 263 (referred to in: Articles 280(a) and 344(2))

In cases exclusively relating to an addition to the registers of the Registry of Births, Deaths, Marriages and Registered Partnerships or the registration, deregistration or amendment of instruments recorded or to be recorded therein, the court within whose jurisdiction the instrument was or must be registered shall have jurisdiction.

Article 265 (referred to in: Articles 280(a) and 344(2))

In cases relating to minors the court of the residence or, in the absence of a residence in the Netherlands, of the actual abode of the minor shall have jurisdiction.

Article 266 (Articles 280(a), 344(2) and 436(1))

In cases relating to guardianship, administration for the protection of persons who have attained the age of majority or judicial protection for the benefit of persons who have attained majority, the district court of the residence or, where there is no residence in the Netherlands, the district court of the actual abode of the person whose guardianship or, as the case may be, whose property or judicial protection is involved, shall have jurisdiction.

Article 267 (referred to in: Articles 280(a) and 344(2))

In cases where persons are absent or missing the court of the residence left by the absent or missing person shall have jurisdiction. The court in The Hague shall have jurisdiction as regards the establishment of the presumption of death.

Article 268 (referred to in: Articles 280(a) and 344(2))

In cases regarding the estate of the deceased, the district court of the last residence of the deceased shall also have jurisdiction.

Article 269 (referred to in: Articles 280(a) and 344(2))

Where Articles 262 to 268, inclusive, do not designate a court having jurisdiction, the court in The Hague shall have jurisdiction.

Article 270 (referred to in: Article 280(a) and 344(2))

- 1. Where one or more interested parties who have been summoned to appear have not entered an appearance in the proceedings or where an interested party who has entered an appearance contests the jurisdiction and where, in either case, the court decides that not it but another court of equal rank has jurisdiction, the court shall refer the matter as it stands at that time to such an other court. The clerk of the court shall send a copy of the order to the court to which the case is referred.
- **2.** In cases relating to divorce, judicial separation, dissolution of a marriage after a judicial separation and dissolution of a registered partnership and any applications relating thereto for an interim or ancillary measure, a referral as referred to in paragraph (1) shall be made only if the other spouse or registered partner contests the jurisdiction.
- **3.** No appeal shall lie against a decision rejecting the contesting of the jurisdiction or referring the case to another court. A court to which a case is referred shall be bound by such referral. The preceding sentence shall not apply where the court also holds that it lacks absolute jurisdiction and refers the case to a higher court.

Legislative proposal of 13th May 2002. Current paragraph (3) would, as a result of this change, become paragraph (4).

3. In cases relating to an individual employment contract and in cases referred to in Article 101 and Article 264, a referral as referred to in paragraph (1) shall also be made where an interested party who has entered an appearance does not contest the jurisdiction, provided that no such a referral will be made against the wishes of the applicant and the interested parties who have been summoned to appear.

Article 271 (referred to in: Article 414(1))

Applicants or interested parties who have entered an appearance in the proceedings shall be summoned to appear by the clerk of the court by ordinary letter, unless the court provides otherwise.

Article 272 (referred to in: Article 414(1))

Interested parties who have not entered an appearance in the proceedings shall be summoned to appear by the clerk of the court by registered letter, unless the court provides otherwise.

Article 273 (referred to in: Article 414(1))

A judicial authority, the Public Prosecution Service or the Child Care and Protection Board shall be summoned to appear by the clerk of the court by ordinary letter.

Article 274 (referred to in: Article 414(1))

When a summons is sent by letter it shall specify the date of dispatch. This shall not be specified on the envelope alone.

Article 275 (referred to in: Article 414(1))

If a summons sent by registered letter is returned to the clerk of the court and it appears to him or her that the addressee was entered in the appropriate registers on the date of dispatch, or no later than one week thereafter, as living at the address stated on the summons, he or she shall dispatch the summons by ordinary letter without delay. In other cases in which the summons is returned to the clerk of the court, the clerk shall, where possible, correct the address stated on the summons and send the summons anew by registered letter, unless the court provides otherwise.

Article 276 (referred to in: Article 414(1))

Summonses shall state the venue, date and hour of the court session. They shall be sent as soon as possible and no later than one week prior to that date, unless the court provides otherwise.

Article 277 (referred to in: Article 414(1))

A summons by letter to applicants or interested parties who have no known place of residence or no known actual abode in the Netherlands, but who do have a known place of residence or known actual abode in a State where Regulation (EC) No. 1348/2000 of the Council of the European Union of 29th May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (*Official Journal*, L160/37) applies, shall be served in accordance with the conditions

referred to in Article 14(2) of the Regulation under which the State concerned will accept service of judicial documents by post.

Article 671 (referred to in: Article 143(2))

If all parties are in agreement and may freely dispose of their property, a prescribed inventory of the estate may be made by instrument under hand. In all other cases it shall be made by notarial instrument.

Article 672 (referred to in: Article 143(2))

- 1. The sub-district court in whose jurisdiction the whole or a major part of the estate is situated may order, on the application of one of the persons referred to in Article 660(1) and (3)(a) or of a person with a sufficient interest therein on any other ground, that an inventory of the estate will be made by a notary to be designated in its order. No appeal lies against such an order.
- **2.** The application may be made jointly with an application for the affixing or removal of seals.
- **3.** The order shall be given only if the applicant has *prima facie* established his right and interest.

Article 673 (referred to in: Article 143(2))

If the notary considers it necessary personally to view the things to be listed, Articles 444, 444a and 444b(2) and (3) shall apply *mutatis mutandis*.

Article 674 (referred to in: Article 143(2))

The inventory of the estate shall contain:

- (1) the name, first name and address of the parties who have appeared or been summoned to appear and of the designated valuers;
- (2) a brief description of all assets and liabilities of the estate and, where one of the parties so wishes, a valuation of the movables by one or more valuers designated by the parties, together with proof of their having been sworn;
- (3) a statement of the place where the things described are to be found or to which they have been moved;
- (4) a statement of the sums of money belonging to the estate;
- (5) a statement of the estate books and registers, which will be initialled on the first and last pages by the notary in the case of a notarial description and by the parties in the case of a description under hand;

- (6) mention of the instruments relating to the assets and the liabilities of the estate;
- (7) in the case of a notarial description: mention of the oath to be sworn before the notary by the persons who had the control of the property prior to the description, or who lived in the house where it was found, to the effect that they did not embezzle anything and did not see or know of anything being embezzled.

Article 675 (referred to in: Article 143(2))

If the parties do not reach agreement on the designation of the valuers, the latter shall be appointed by the notary or, in the case of a private description of the estate drawn up under hand, by the sub-district court referred to in Article 672.

Article 676 (referred to in: Article 143(2))

Any disputes that arise in connection with the affixing or removal of seals or the description of the estate shall be submitted in interim measure proceedings to the interim measures judge of the district court within whose jurisdiction the seal has been affixed or in which all or most of the estate concerned is situated.

Article 677 (referred to in: Article 135(2))

- 1. A judgment which allows a claim for the division of a community of property but does not specify how the division is to be made shall include an order for a division before a notary and, if the parties are unable to agree on the choice, the appointment of such notary. The court which appoints a notary may stay the case, insofar as it concerns the other matters claimed in respect of the division, until it appears whether the notary has succeeded in having the parties reach agreement. The clerk of the court that appointed the notary shall send the latter a signed copy of the decision without delay.
- **2.** At the request of each of the parties the judgment may also provide for the appointment of an impartial person as referred to in Article 181 of Book 3 of the Civil Code.
- **3.** The notary shall set the day and hour when the parties must appear before him and shall summon them to appear at the fixed time. If all of them do not appear, he may summon the parties once or more to appear on a new date.
- **4.** The provisions of this Part shall apply *mutatis mutandis* to applications and orders in respect of the division of a community of property which has come into being by or during a marriage or a registered partnership.

Article 678 (referred to in: Article 135(2))

- 1. If the notary is unable to get the parties to reach agreement, he or she shall note this in a notarial record in which he or she will specify, on request, the points on which the parties have already reached agreement.
- 2. Until such time as complete agreement has been reached, any party willing to take the initiative may apply to the courts for an order regulating the manner of division or itself determining the division or for any other order that may be necessary as regards the matters on which the parties are divided.
- **3.** Until such time as a true copy of the notarial record referred to in paragraph (1) has been submitted to it, the court may defer the case at the request of any of the parties in order to allow the notary a fresh opportunity to apply paragraph (3) of the preceding article.

Article 679 (referred to in: Articles 135(2) and 143(2))

- 1. If the parties do not reach agreement on the appointment of an expert to value any item or items of property to be divided, the appointment shall be made on the application of any interested party by the sub-district court in whose jurisdiction such property is situated. If the property is situated abroad, the sub-district court in Amsterdam shall have jurisdiction.
- **2.** If proceedings are pending with regard to the division, the appointment may also be made, at the request of one of the parties or *ex officio*, by the court before which the case is heard at first instance or on appeal or by the court before which a hearing of witnesses or appearance of the parties has been ordered.

Article 680 (referred to in: Article 135(2))

- 1. Where an application for division or for an order regulating the manner of division or determination of a division does not extend to the entire community of property capable of division, each of the defendants may, in accordance with the powers conferred under Articles 179 and 185 of Book 3 of the Civil Code, demand either the division of the entire community of property capable of division or determination of the division by the court itself.
- **2.** Where application is made for an order regulating the division or manner of division of the entire community of property capable of division, each defendant may apply for the division to be determined by the court itself.
- **3.** The demand referred to in the preceding paragraphs must be made before all defences not relating to the competence of the court or the putting up of security in accordance with Article 224.

- **4.** Where one or more parties have not entered an appearance, the person who has made the demand shall arrange for it to be served on such parties with due observance of the time limits prescribed for writs of summons, and summoning them to appear on the date on which he wishes the case to be set down for hearing again on the roll. This date may not be fixed later than three months after the date on which the party to whom the longest period for service of a writ of summons applies may be summoned to appear at the earliest. The court may permit, no later than on the date on which appearance must be entered pursuant to the summons, the issue of a summons to appear on a later date.
- **5.** If not all persons who are required to cooperate in the division are involved in the proceedings, each of the defendants may still summon them to enter an appearance in the proceedings in accordance with the provisions of the preceding paragraph, and shall also serve them with a copy of the writ of summons served on himself.

Article 771 (referred to in: Articles 370(8) and 374(3))

- 1. When account must be rendered to interested parties some or all of whom are unknown or absent, the person who must render account shall have all of them summoned to appear in order to consider and approve the account in the manner mentioned in Article 54(2).
- **2.** The interested parties who are known shall, moreover, be summoned in the manner provided for each of them in Section 6 of Title 1 of Book 1.
- **3.** The writ of summons must give not less than three months' notice.

Article 772 (referred to in: Articles 370(8) and 374(3))

A person who must render account shall lodge the account with the records pertaining thereto at the court registry, where these shall be available for inspection by the interested parties. The person who must render account shall give notice of such lodging in the notice of service accompanying the writ of summons.

Article 773 (referred to in: Articles 370(8) and 374(3))

Article $140\,(1)$ and (2) shall apply, subject to the proviso that the court will examine of its own motion the lawfulness and merits of the claim when leave has been given to proceed against one or more defendants in default of their appearance.

Article 774 (referred to in: Articles 370(8) and 374(3))

- 1. If leave to proceed is given against all interested parties in default of their appearance, the court shall examine of its own motion the lawfulness and merits of the claim. If this examination does not result in a rejection of the claim, the court shall establish the balance on the basis of the submitted records and close the account. No remedy lies against this judgment.
- **2.** The court shall make such order for costs as it considers fit. No order for costs shall be made against a defendant against whom leave to proceed in default of appearance was given.

Article 775 (referred to in: Articles 370(8) and 374(3))

A person who must render account may discharge himself from liability for the balance in his keeping by depositing by way of tender of payment and deposit to the special 'consignation' account at the Ministry of Finance. Such deposit may also be ordered on the application of interested parties.

Article 776 (referred to in: Articles 370(8) and 374(3))

Where no agreement is reached between the interested parties on the division of a credit balance, the party willing to take this initiative may apply for a ranking in accordance with the provisions of Section 3 of Title 2 of Book 2.

Article 822 (referred to in: Article 408(1))

- 1. The court may make the following orders pending the suit:
 - (a) ...
 - (b) ...
 - (c) an order providing to which of the spouses each minor child of both the spouses will be entrusted, and directing, if the child is not already under the control of such spouse, the handing over of that child to the spouse, and, moreover, specifying the amount that the other spouse must pay for the care and upbringing of each of the children.

Article 986 (referred to in: Article 26d)

- 1. ...
- 2. ...
- 3. The court may require legalisation of the true copy of the decision and of the other documents referred to in paragraph (2). It may also demand

Part II Principal Legislation referred to in Book 1, Dutch Civil Code and Transitional Statutory Provisions

that the decision and the other lodged documents be translated into Dutch and that this translation be certified a true translation by a sworn translator admitted in the Netherlands or by a sworn translator admitted in the country where the decision was rendered, or by the diplomatic or consular representative of the said country in the Netherlands.

4. If the lodged documents are inadequate the petitioner shall be given an opportunity to supplement them.

TRANSITIONAL PROVISIONS37

Introductory Provision

The statutory provisions quoted in this Act without any further reference refer to provisions from the new Books of the Civil Code.

Title 1 Transitional Provisions in connection with Book 1

Article 1

- 1. Article 4(4) of Book 1 also applies to applications that are pending or still need to be lodged for a change of forenames acquired prior to the date of entry into force of Book 1, with the proviso that whether the court has jurisdiction shall be considered on the basis of the law applicable when the application was lodged.
- **2.** Article 4(2) of Book 1 also applies to applications for a change of forenames acquired prior to the entry into force of Book 1.

Article 2

Article 6 of Book 1 also applies to birth certificates prepared prior to the date of entry into force of Book 1.

Article 3

- 1. Article 7(1)-(4) of Book 1 also applies to applications that are pending or still need to be lodged for a change or determination of surnames of persons born prior to the date of entry into force of Book 1.
- **2.** Moreover, Article 7(3) and (4) of Book 1 is applicable in the case where the change or determination of the surname has taken place prior to the date of entry into force of Book 1.
- **3.** Article 7(5) of Book 1 and the Regulation referred to therein are not applicable to applications lodged prior to the date of entry into force of Book 1.

Act of 3rd April 1969 (Staatsblad (Bulletin of Acts and Decrees) 1969, 167), in force as of 1st January 1970, last amended by Act of 12th June 2003, Staatsblad (Bulletin of Acts and Decrees) 2003, 239.

Part II
Principal Legislation referred to in Book 1,
Dutch Civil Code and Transitional Statutory Provisions

Article 4

Article 9 of Book 1 also applies if the marriage was dissolved prior to the date of entry into force of Book 1.

Article 5

- 1. Articles 10-12 and 14 of Book 1 shall also apply from the date of entry into force of Book 1, if the facts which, according to these provisions, determine the acquisition or loss of a place of residence occurred prior to that date.
- **2.** With respect to a place of residence elected prior to that date, Article 81 of the Civil Code, as in force until that date, remains applicable.

Article 6

- 1. Articles 16-20 and 22-25 of Book 1 exclusively apply to instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships drawn up after the date of entry into force of Book 1.
- **2.** Article 21 of Book 1 applies only to declarations of legitimation, decisions for a alteration or determination of surnames, authentic instruments of recognition of an unlawful child prepared without the Registry of Births, Deaths, Marriages and Registered Partnerships and judicial decisions dated after the date of entry into force of Book 1.
- **3.** However, Article 23 of Book 1 also applies to annotations to be made on instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships prepared prior to the date of entry into force of Book 1.
- **4.** Annotations in the margin in respect of instruments prepared prior to the date of entry into force of Book 1 and prescribed or customary prior to that date shall be placed on instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships, irrespective whether the latter were prepared prior to or after such date.
- **5.** Articles 26-28 of Book 1 also apply to instruments of the Registry of Births, Deaths, Marriages and Registered Partnerships drawn up prior to the date of entry into force of Book 1.
- **6.** Article 29 of Book 1 does not apply to applications and any requisition lodged or made prior to the date of entry into force of Book 1.

Article 7

Articles 50-57 of Book 1 also apply to intended marriages the publication of which were made prior to the date of entry into force of Book 1.

Article 8

- 1. After the date of entry into force of Book 1 annulment of a marriage entered into prior to that date may no longer be claimed on a ground that is no longer known by the law or by persons no longer considered entitled by law to institute such a claim.
- **2.** The annulment of a marriage entered into prior to the date of entry into force of Book 1 may only be claimed, on account of a spouse not having attained the required age, by the spouse who lacked the required age, and by the Public Prosecution Service.
- **3.** The provisions in the preceding paragraphs also apply if the right of action was instituted prior to the date mentioned in paragraph 1 and no annulment was pronounced prior to that date.
- **4.** If the decree whereby a marriage is annulled has become final and binding after the date mentioned in paragraph (1), Article 77 of Book 1 applies even if the right of action was instituted prior to that date.

Article 9

Articles 84, 86, 88, 89 and 90 of Book 1 apply only to facts that occurred after the date of entry into force of Book 1.

Article 10

- 1. As regards a community of property created prior to the date of entry into force of Book 1, Articles 94-98, 100, 102(2), 103(4)-(6), 104, 106, 108, 109 and 112 of Book 1 only apply to the facts that have occurred since that date.
- **2.** Article 179(2) of the Civil Code, as in force until the date of entry into force of Book 1, remains applicable as regards assets acquired prior to that date.

Article 11

- 1. Articles 163, 165, 180, 185, 186, 300 and 304 of the Civil Code, remain applicable with respect to the records in the Matrimonial Property Register made prior to the date of entry into force of Book 1, as referred to in the aforementioned articles.
- 2. As regards registrations in the Matrimonial Property Register as referred to in Articles 86, 90, 104, 105, 110, 112, 189 and 196 of Book 1 which were only made after the date of entry into force of Book 1, those articles also apply when the judicial decision was made prior to that date, the instrument of renunciation relates to a community of property dissolved prior to that date, the claim for termination of the community of property was

instituted prior to that date or when the reconciliation took place prior to that date.

3. If a statutory period that has commenced prior to the date of entry into force of Book 1 for the registration of an instrument of renunciation of a community of property is still running on that date, Article 106 of Book 1 also applies.

Article 12

- 1. As regards records in the Matrimonial Property Register made prior to the date of entry into force of Book 1 of provisions in a marriage contract, Article 207(1) of the Civil Code, as in force until that date, remains applicable. However, if after that date a change in those provisions has been registered, Article 116 of Book 1 applies after such registration to all provisions in the marriage contract of the spouses concerned.
- 2. Article 116 of Book 1 applies to provisions in a marriage contract made prior to the date of entry into force of Book 1, which were not registered in the Matrimonial Property Register prior to that date in accordance with Article 207 (1) of the Civil Code, as in force until that date.
- **3.** Article 120(2) of Book 1 also applies to provisions in marriage contracts made or changed during the marriage prior to the date of entry into force of Book 1, when these were not registered in the Matrimonial Property Register prior to that date in accordance with Article 207(1) of the Civil Code, as in force until that date.
- **4.** Articles 118 and 120(1) of Book 1 apply to the making of or any change in marriage contracts which take place after the date of entry into force of Book 1, also if the marriage had been solemnised prior to that date.

Article 13

- 1. Article 130 of Book 1 also applies with regard to marriage contracts made prior to the date of entry into force of Book 1.
- 2. In respect of communities of gains and losses and of benefits and income agreed prior to the date of entry into force of Book 1, Articles 210-222 of the Civil Code, as in force until that date, also remain applicable to the extent no derogation was made from those statutory provisions in the marriage contract, either explicitly or due to the nature of the stipulations.
- **3.** As regards matrimonial netting agreements existing on the date of entry into force of Book 1, the provisions of Section 2 of Title 8 of Book 1 apply from that date onwards, to the extent that the marriage contract did not otherwise provide, either explicitly or in accordance with the nature of the provisions, with this proviso that proof of the value referred to in Article 143(a) of Book 1 of an asset present on the entry into a netting agreement and mentioned in the instrument recording the marriage contract or in

a description not stating its value appended thereto may be given by all lawful means.

Article 14

From the date of entry into force of Book 1 the previously applicable Articles 236-240a, 899a and 949-949b of the Civil Code, only apply if either the remarried spouse or the new spouse died prior to that date.

Article 15

- 1. Article 197 of Book 1 only applies as regards children born after the date of entry into force of Book 1.
- **2.** Article 198 of Book 1 also applies as regards children born prior to the date of entry into force of Book 1.
- **3.** Articles 199-204 of Book 1 only apply as regards children born after the date of entry into force of Book 1.

Article 16

A natural child that has been recognised by the spouse of the mother prior to the date of entry into force of Book 1, either during the marriage with the mother or after dissolution of the marriage as a result of its mother's death, shall be legitimised by operation of law; the legitimation operates from the entry into force of Book 1.

Article 17

- 1. Article 224 of Book 1 does not apply to any recognitions made prior to the date of entry into force of Book 1.
- **2.** Articles 225 and 226 of Book 1 also apply to any recognitions made prior to the date mentioned in paragraph (1).

Article 18

- 1. A mother of a child which, according to the statutory provisions in force prior to the entry into force of Book 1, did not have any legal familial ties with its mother, shall have the guardianship as from that date, provided the mother was competent thereto and no one else was appointed its guardian prior thereto.
- **2.** The mother of a child as referred to in paragraph (1), which was not competent on the date mentioned there to have the guardianship over the child, acquires such guardianship by operation of law if this had not been provided for on the date on which she becomes competent thereto.

3. If the guardianship was provided for on the date mentioned in paragraph (1), a mother who is competent to be the guardian may apply to the sub-district court to appoint her as guardian; Article 287(4) and (5) of Book 1 apply to such an application.

Article 19

The provisions of Articles 307(1), 319, 322(3), 324(1), 327(1) (b, at the end), 336(3) of Book 1 apply from the date of entry into force of Book 1 also to any guardianship or supervisory guardianship which has commenced prior to such date.

Article 20

- 1. The provisions of the Civil Code in respect of the incapacity of persons placed under guardianship, as these will read from the date of entry into force of Book 1, apply to transactions performed by persons subject to guardianship from that date even though the pronouncement of their guardianship took place in accordance with the law applicable prior to that date.
- **2.** As regards transactions performed prior to the date mentioned in the preceding paragraph, the provisions of Articles 501 and 502 of the Civil Code, as in effect prior thereto, apply from that date.

Article 21

- 1. From the date of entry into force of Book 1 guardianship may be pronounced only on the ground of any of the circumstances mentioned in Article 378 of Book 1, even when the petition or claim was made prior to that date.
- **2.** Article 390 of Book 1 applies when the decision is made after the date of entry into force of Book 1, even when it had already been applied for or demanded prior to that date.
- **3.** In the case a interim administrator was appointed pursuant to the then applicable Article 495 of the Civil Code prior to the date of entry into force of Book 1, the provisions of Article 380(2) and (3) of Book 1 only apply after this decision was varied with corresponding application of Article 380(4) of Book 1.

Article 22

1. Title 17 of Book 1 is also applicable, to the extent that the law does not otherwise provide, from the date of entry into force of Book 1, to any obligations to provide, and any rights to, support under a contract or which

were established by a court decision which became final and binding either prior to that date or, failing opposition, appeal or appeal to the Dutch Supreme Court, since that date.

2. As regards claims to provide support which were not yet decided by a court decision which has become final and binding on the date of entry into force of Book 1, Title 17 of Book 1 applies from that date onwards, with the proviso that no higher amount over a period prior to that date may be granted than permitted according to the law then applicable over such period.

Article 23

- 1. Any obligations and rights under a contract or pursuant to a final and binding court decision made prior to entry into force of Book 1 for the provision of support by grandparents vis-à-vis grandchildren or from grandchildren vis-à-vis grandparents shall also after that date remain valid, with the proviso that the law applicable at the time of their provision or determination will remain applicable as regards applications to vary such rights and obligations.
- **2.** The preceding paragraph applies *mutatis mutandis* to obligations in respect of, and rights to, support of parents-in-law against children-in-law or of children-in-law against their parents-in-law that do not accord with the provisions of Article 396 of Book 1.
- **3.** Court decisions made prior to the date of entry into force of Book 1 that, in the absence of appeal or appeal to the Supreme Court, have become final and binding after that date remain binding.
- **4.** Without prejudice to the provisions of Article 401 of Book 1, persons who must provide support as referred to in the preceding paragraphs may apply to the court for the termination of the obligation to provide support with effect from a date to be specified by the court. This date may not be set earlier than six months from the entry into force of Book 1.

Article 24

The previously applicable Article 344c of the Civil Code and the pertinent previously applicable provisions of Articles 344d-344f and of the Code of Civil Procedure apply also after the date of entry into force of Book 1, if the childbirth took place prior to that date.

Article 25

In the case an administrator was appointed over the assets of a person absent prior to the date of entry into force of Book 1, the applicable law

Part II
Principal Legislation referred to in Book 1,
Dutch Civil Code and Transitional Statutory Provisions

at the time of the appointment will also remain applicable in respect of its legal consequences after that date.

Article 26

- 1. If, prior to the date of entry into force of Book 1, a declaration of presumed death was pronounced, the law applicable prior thereto will also remain applicable in respect of its legal consequences after that date.
- 2. If, in proceedings for a declaration of presumed death, the introductory petition was filed without there having been a final decision prior to the date of entry into force of Book 1, Articles 413-425 of Book 1 and the pertinent applicable provisions of the Code of Civil Procedure will apply as from the first decision following such date.

Article 27

- 1. Proceedings in which the introductory writ of summons was served or the introductory petition or the first petition to be heard by the presiding judge of the district court was lodged prior to the date of entry into force of Book 1 shall be decided in all respects according to the procedural provisions applicable prior to that date, subject to the provisions of the preceding Article.
- **2.** The provision in the preceding paragraph also applies in respect of a final decision of a requisition or application made by way of a cross-claim in the proceedings.

Article 28

Repealed

PART III. PRIVATE INTERNATIONAL LAW LEGISLATION

PRIVATE INTERNATIONAL LAW (NAMES) ACT³⁸

Article 1

- 1. The surname and the forenames of an alien shall be determined according to the law of the State of his or her nationality. The term 'law' shall also be taken to include the rules of private international law. The circumstances surrounding the establishment of a surname and forename, shall be considered under the term 'law', only for the purposes of establishing the surname and forename.
- **2.** If a person involved possesses the nationality of more than one State, the law of the country of his or her nationality with which he or she has the closest link, having regard to all circumstances, shall apply.

Article 2

The surname and forename of a person who has Dutch nationality shall be determined according to Dutch internal law irrespective of whether he or she still possesses another nationality. This shall also apply if the creation or loss of legal familial ties will have consequences for a person's surname.

Article 3

Persons who possess the nationality of more than one State may request the Registrar of Births, Deaths, Marriages and Registered Partnerships to add a record to their birth certificate of the surname which they later use in accordance with the law of one of the states which was not applied pursuant to Article 1(2) or Article 2 of this Act.

Article 4

- 1. In the case of a change of nationality, the law of the State of the new nationality shall apply, including the rules of law in respect of the consequences of such a change of nationality for the surname.
- **2.** The acquisition by an alien of Dutch nationality shall not change his or her surname and forename, except for the provision of Article 5b(b) of this Act and Articles 6(5) and 12 of the *Rijkswet op het Nederlandschap* (Kingdom of the Netherlands Nationality Act).

Act of 3rd July 1989, in force as of 1st January 1990, last amended by Act of 18th December 2001, Staatsblad (Bulletin of Acts and Decrees) 2001, No. 581.

Article 5

- 1. The Registrar of Births, Deaths, Marriages and Registered Partnerships shall apply Dutch law whenever it is impossible to establish the law applicable in respect of the establishment of the surname and forename, if when drawing up such an instrument such names of an alien must be mentioned. He or she shall inform the public prosecutor at the district court within whose jurisdiction the instrument has been recorded in the Registry of Births, Deaths, Marriages and Registered Partnerships of his or her decision without delay.
- **2.** An instrument drawn up in this manner may be corrected, with a corresponding application of Article 24 of Book 1, Dutch Civil Code, on the application of any interested person or the Public Prosecution Service. With reference to the *Wet op de rechtsbijstand* (Legal Aid Act), an application from an interested person shall be dealt with at no charge by operation of law.

Article 5a

- 1. Recognition shall be given in the Netherlands to a recorded surname or forenames of a person born outside the Netherlands, or any alteration thereof due to a change in their personal status effected outside the Netherlands, with due observance of the locally applicable rules of private international law, when so recorded in an instrument drawn up by a competent authority in accordance with the local provisions. The recognition may not be refused as being in conflict with public policy on the sole ground that another law was applied than that following from the provisions of this Act.
- **2.** The provisions of paragraph (1) shall not affect the application of Articles 5b and 5c.

Article 5b

The following shall apply with regard to the application of Article 5 of Book 1, Dutch Civil Code:

(a) If a child with Dutch nationality has been lawfully recognised or legitimated outside the Netherlands, and a parent-child relationship with the father has been created as a result of such a recognition or legitimation and as a result has obtained or retained Dutch nationality, and if, the surname of that child has not been determined in accordance with the choice of name within the meaning of Article 5(2) of Book 1, Dutch Civil Code, the mother and the person who has recognised the child may still jointly declare, within two years from the recognition or legitimation, which of

- their surnames the child will take. Where, at the time of recognition or legitimation, the child has attained the age of sixteen, it may itself declare, within two years of the recognition or legitimation, whether it take the surname of its father or mother.
- (b) A child who has been recognised by a person of Dutch nationality during his or her minority or who has become the child of a person of Dutch nationality by legitimation without recognition, obtains Dutch nationality by exercising an option and at the time of the option legal familial ties exist with both parents, the parents may jointly declare on the occasion of the option which of either of their surnames the child will take. When the child, at the time of the option, has attained the age of sixteen, it shall itself declare whether it will take the surname of the father or of the mother.
- (c) If, as a result of an adoption pronounced outside the Netherlands, a child has acquired Dutch nationality and if the surname of such a child has not been determined after the adoption pursuant to a choice of name within the meaning of Article 5(3) of Book 1, Dutch Civil Code, the parents may still jointly declare, within two years from the decision having become binding and enforceable, which of their family names the child will take. A child who, at the time at which the decision becomes binding, has attained the age of sixteen, may itself declare within two years thereafter whether it will take the surname of the father or mother. The declaration shall be made before the Registrar of Births, Deaths, Marriages and Registered Partnerships.
- (d) A declaration in respect of a choice of name referred to in Article 5(4) of Book 1, Dutch Civil Code may be made prior to the birth of the child, if at the time of the declaration, at least one of the parents possesses Dutch nationality.
- (e) If legal familial ties are established with both parents at birth of a child born outside the Netherlands, and the child possesses Dutch nationality and if the surname of that child has not been specified on the birth certificate pursuant to a choice of name within the meaning of Article 5(4) of Book 1, Dutch Civil Code, the parents may jointly declare, within two years after the birth, which of their surnames the child will take.
- (f) If the paternity of a child has been lawfully established outside the Netherlands and that child has obtained or retained Dutch nationality as a result thereof and if the surname of that child after determination of paternity has not been established with due observance of a choice of name within the meaning of Article 5(2) of Book 1, Dutch Civil Code, the mother and the man whose paternity has been judicially established may jointly declare, within two years from the date on which the judicial decision whereby the

paternity was determined has become binding and enforceable, which of either of their surnames the child will take. If the child, at the time at which the decision whereby the determination of paternity has become binding and enforceable, has attained the age of sixteen, then within two years from that time it may itself still declare whether it will take the surname of the father or of the mother.

Article 5c

In the instances referred to in Article 5b(a), (c), (e) and (f) the declaration of the choice of name may be made before any Registrar of Births, Deaths, Marriages and Registered Partnerships. In the case referred to in Article 5b(b) the declaration for a choice of name shall be made before the Registrar of Births, Deaths, Marriages and Registered Partnerships of the municipality where the option for Dutch nationality is received.

Article 6

- 1. The provisions of this Act shall not apply by operation of law with regard to the surnames and forenames shown on the certificates of Births, Deaths, Marriages and Registered Partnerships which were recorded in the registers prior to the date of its entry into force.
- 2. The surnames and forenames shown on certificates of the Registry of Births, Deaths, Marriages and Registered Partnerships as referred to in paragraph (1) shall be altered on the application of any interested person in accordance with the provisions of this Act. Where an application relates to an alien, the alteration must appear from a document drawn up by a competent authority of the country whose nationality he or she possesses.
- **3.** The alterations referred to in paragraph (2) shall be made by adding a later annotation in the appropriate certificates of the Registry of Births, Deaths, Marriages and Registered Partnerships.

Article 7

This Act may be cited as *Wet conflictenrecht namen* (Private International Law (Names) Act).

Article 8

This Act shall enter into force on a date to be specified by Royal Decree.

PRIVATE INTERNATIONAL LAW (NAMES) AMENDMENT ACT³⁹

Article I

Altered Wet conflictenrecht namen (Private International Law (Names) Act).

Article II

- 1. If, in the case referred to in Article 5b(a), the acknowledgment or legitimation took place after the entry into force of the Act amending Articles 5 and 9 of Book 1, Dutch Civil Code and, in this connection, any other articles of this Code and prior to the entry into force of this Act, a declaration of choice of name may be made within two years from the entry into force of this Act.
- 2. If, in the case referred to in Article 5b(d), the child was born after the entry into force of the Act amending Articles 5 and 9 of Book 1, Dutch Civil Code and, in this connection, any other articles of this Code, and prior to the entry into force of this Act, the parents may jointly make a declaration of choice of surname within two years from the entry into force of this Act.
- **3.** If, on account of the international nature of the case, an application by the parties involved to make a declaration as referred to in Article IV of the Act amending Articles 5 and 9 of Book 1, Dutch Civil Code and, in this connection, any other articles of this Code, is disallowed, such a declaration may still be made within two years from the entry into force of this Act, if the conditions of paragraph (1) of the abovementioned Article IV are met and if all living children of the same parents possess Dutch nationality at the time of the declaration. Paragraph (3) of the abovementioned Article IV applies insofar as the children whose legal relationship with their parents is established later, possess Dutch nationality at the time of their birth.

Act of 24th December 1998, in force as of 15th February 1999, Staatsblad (Bulletin of Acts and Decrees) 1999, No. 2.

PRIVATE INTERNATIONAL LAW (MARRIAGES) ACT⁴⁰

Article 1

This Act applies to the solemnisation of marriages in the Netherlands if, in connection with the nationality or the domicile of the future spouses, a choice must be made as to which law will govern the requirements for marriages and it applies to the recognition in the Netherlands of marriages solemnised outside the Netherlands. This Act does not apply to the powers of the Registrar of Births, Deaths, Marriages and Registered Partnerships.

Article 2

The marriage shall be solemnised

- (a) where each of the future spouses meet the requirements of Dutch law for entry into a marriage and one of them possesses Dutch nationality or has his or her habitual residence in the Netherlands; or
- (b) where each of the future spouses meets the requirements for entry into a marriage in the State whose nationality he or she possesses. Where a spouse possesses more than one nationality, the law of the State of which the person concerned possesses the nationality and with which, having regard to all the circumstances, he or she has the closest connections, shall apply.

Article 3

- 1. Notwithstanding Article 2, no marriage may be solemnised if such a solemnisation would be incompatible with Dutch public policy and in any case if:
 - (a) the future spouses have not attained the age of fifteen;
 - (b) the future spouses are related to one another by blood or by adoption in the direct line or, by blood, as brother and sister;
 - (c) the free consent of either future spouse is absent or one of the spouses has a mental capacity so disturbed as to render him or her unable to determine his or her own will or the significance of his or her statement;
 - (d) if it would be in breach of the provision that a person may only be united in marriage with one person at any one time.

Act of 7th September 1989, in force as of 1st January 1990, last amended by Act of 20th March 2001, Staatsblad (Bulletin of Acts and Decrees) 2001, no. 128.

2. A solemnisation of a marriage may not be refused on the ground that, under the law of a State of which one of the future spouses possesses the nationality, there is an impediment to such solemnisation which is in breach of Dutch public policy.

Article 4

Where formal validity is concerned, a marriage may only be lawfully celebrated in the Netherlands before the Registrar of Births, Deaths, Marriages and Registered Partnerships in accordance with Dutch law, except for the right of foreign diplomatic and consular civil servants, in accordance with the provisions of the law of the State represented by them, to co-operate in the solemnisation of a marriage if neither party exclusively possesses Dutch nationality or possesses Dutch nationality in addition to another.

Article 5

- 1. A lawful marriage contracted outside the Netherlands or a marriage which has become lawful thereafter according to the law of the State where the marriage took place shall be recognised as such.
- **2.** A marriage solemnised outside the Netherlands before a diplomatic or consular civil servant, which satisfies the requirements of the law of the State represented by such a civil servant, shall be recognised as lawful unless such a solemnisation in the State where it took place was not permitted.
- **3.** For the purposes of paragraphs (1) and (2) 'law' shall include the rules of private international law.
- **4.** A marriage is presumed to be lawful if a marriage certificate has been issued by a competent authority.

Article 6

Notwithstanding Article 5, a marriage contracted outside the Netherlands shall not be recognised if such a recognition would be incompatible with Dutch public policy.

Article 7

Articles 5 and 6 apply irrespective of whether a decision is made on the recognition of the lawfulness of a marriage as a principal issue or as a preliminary question in connection with another issue.

Part III Private International Law Legislation

Article 8

This Act shall not apply to the recognition or validity of marriages solemnised prior to the date of its entry into force.

Article 9

This Act will enter into force on a date to be specified by Royal Decree.

Article 10

This Act may be cited as *Wet conflictenrecht huwelijk* (Private International Law (Marriages) Act).

PRIVATE INTERNATIONAL LAW (MARRIAGES) AMENDMENT ACT⁴¹

Article I

Alters the Wet conflictenrecht huwelijk (Private International Law (Marriages)).

Article II

- 1. Article 4 of the *Wet conflictenrecht huwelijk* (Private International Law (Marriages) Act), as this will read pursuant to that Act, applies to marriages solemnised before foreign diplomatic and consular civil servants after the date of entry into force of this Act.
- **2.** Marriages solemnised before foreign diplomatic and consular civil servants in accordance with the law of the State represented by them after the 1st January 1990 and prior to the date of entry into force of this Act shall be considered valid, unless this would be irreconcilable with public policy, if one of the parties exclusively or also possesses Dutch nationality while the other exclusively or also has the nationality of the State represented by the diplomatic or consular civil servant.

Article III

Not included

Act of 17th December 1998, in force as of 19th January 1999, Staatsblad (Bulletin of Acts and Decrees) 1999, No. 1.

PRIVATE INTERNATIONAL LAW (LEGAL MARITAL RELATIONSHIPS) ACT⁴²

Article 1

- 1. The legal personal relationships between the spouses themselves are governed:
 - (a) by the law of the State of the common nationality of the spouses, or where they have no common nationality
 - (b) by the law of the State where they have their habitual residence, or in the absence of such habitual residence
 - (c) by the law of the State with which, having regard to all the circumstances, they have the closest connection.
- **2.** The provision in paragraph (1) (a) does not apply if the spouses possess more than one common nationality.
- **3.** When, as a result of a change in the circumstances mentioned in paragraph (1), the application of its provisions will result in the application of a law other than the one previously applicable, that other law will apply from the date of such a change.

Article 2

Whether and to what extent a spouse is liable for obligations entered into by the other spouse made in the ordinary course of the household shall be governed, if both that spouse and the other party had their habitual residence in the same State at the time of entry into force of the obligation, by the law of that State.

Article 3

Whether a spouse needs the consent of the other spouse for a transaction and, if so, in which form such consent must be granted, or whether it may be replaced by a judicial decision or of that of another authority and what the consequences will be of the lack of any such consent shall be governed by the law of the State where the other spouse has his or her habitual residence at the time when such a transaction is performed.

⁴² Act of 16th September 1993, in force as of 1st January 1994, Staatsblad (Bulletin of Acts and Decrees) 1993, No. 514.

Article 4

The provisions of Articles 2 and 3 apply irrespective of the law governing the matrimonial property regime of the spouses and irrespective of the law applicable to the legal personal relationships between the spouses.

Article 5

This act enters into force on a date to be set by Royal Decree.

Article 6

This Act may be cited as *Wet conflictenrecht huwelijksbetrekkingen* (Private International Law (Legal Marital Relationships) Act).

PRIVATE INTERNATIONAL LAW (MATRIMONIAL PROPERTY REGIME) ACT⁴³

Article 1

The law applicable to the matrimonial property regime is designated by the provisions of the Convention on the Law applicable to Matrimonial Property Regimes, concluded in the Hague on 14th March 1978, of which the French and English text and its translation into Dutch were published in *Tractatenblad (Treaty Series)* 1988, No. 130.

Article 2

In the absence of a choice of law, the matrimonial property regime of spouses who both possess Dutch nationality is governed, in accordance with Article 4(2)(1) of the Convention mentioned in Article 1, by Dutch law, irrespective of whether they also possess another nationality.

Article 3

The consequences of the matrimonial property regime with regard to a legal relationship between a spouse and a third person is governed by the law applicable to the matrimonial property regime.

Article 4

A spouse whose matrimonial property regime is governed by a foreign law may lodge a notarial instrument for registration in the Register referred to in Article 116 of Book 1, Dutch Civil Code, containing a declaration that the matrimonial property regime is not governed by Dutch law.

Article 5

1. A third person who has performed a legal act during the marriage with the spouse whose matrimonial property regime is governed by foreign law may, if both he or she and both spouses had their habitual residence in the Netherlands at the time of the legal act, take recourse in respect of a debt arising from such legal act also after dissolution of the marriage as if there was a general community of property between the spouses under Dutch law.

Act of 20th November 1991, in force as of 1st September 1992, last amended by Act of 11th January 2001, Staatsblad (Bulletin of Acts and Decrees) 2001, No. 12.

2. The provision in paragraph (1) does not apply if, at the time of the legal act, the third person was or ought to have been aware that foreign law governed the matrimonial property regime of the spouses. This will be deemed to be the case if the legal act was performed on expiry of fourteen days from the registration of an instrument as referred to in Article 4 in the register referred to therein.

Article 6

Where, due to the application of the law of the country of its situs, designated pursuant to the rules of private international law, to a capital asset located abroad, one of the spouses has enjoyed an advantage vis-à-vis the other spouse to which he or she would not have been entitled if the law had been applied designated by the Convention mentioned in Article 1 of this Act, then the other spouse may claim that this be netted or claim compensation when an account is made between the spouses in connection with the termination or alteration of the matrimonial property regime.

Article 7

Article 92(3) of Book 1, Dutch Civil Code only applies in respect of recovery exercised in the Netherlands against

- (a) a spouse whose matrimonial property regime is governed by Dutch law, or
- (b) a spouse against whom recovery is possible pursuant to the provision of Article 5 of this Act.

Article 8

The provision in Article 119 of Book 1, Dutch Civil Code does not apply if the spouses designate a law governing their matrimonial property regime that is different from the law that was previously applicable thereto.

Article 9

Refers to the amendment of other regulations.

Article 10

The provision of Article 131 of Book 1, Dutch Civil Code also applies when the matrimonial property regime of the spouses is governed by a foreign law.

Article 10a

Whether, by reason of a divorce or a judicial separation, a spouse is entitled to part of the pension rights accrued by the other spouse is governed by the law applicable to the matrimonial property regime of the spouses, except for Article 1(7) of the *Wet verevening pensioenrechten bij scheiding* (Equalisation of Pension Rights Rules in the case of Separation).

Article 11

This Act may be cited as *Wet conflictenrecht huwelijksvermogensregime* (Private International Law (Matrimonial Property Regime) Act).

Article 12

- 1. This Act shall enter into force on a date to be specified by Royal Decree.
- **2.** This Act applies to the matrimonial property regime of spouses who enter into a marriage after the date of its entry into force.
- **3.** The provisions of this Act in respect of the designation of the applicable law apply to a matrimonial property regime of spouses who entered into a marriage prior to the date of the entry into force and who designate the law applicable thereto after such date.

Article 13

A designation by the spouses of the law applicable to their matrimonial property regime or an alteration of such a designation made prior to entry into force of this Act may not be considered invalid on the sole ground that such a designation was not then regulated by the Act. This does not apply to instances where the provisions of the Convention relating to the settlement of the conflict of laws and jurisdictions as regards to divorce and separation (*Staatsblad (Bulletin of Acts and Decrees*) 1912, No. 285) are applicable to the matrimonial property regime and the designation was made prior to 23rd August 1977, on which date that Convention ceased to be in force for the Netherlands.

ACT OF THE REALM OF 20TH NOVEMBER 1999, RATIFICATION OF THE CONVENTION IN THE HAGUE OF 14TH MARCH 1978 WITH REGARD TO THE LAW APPLICABLE TO THE MATRIMONIAL PROPERTY REGIME⁴⁴

Article 1

The Convention concluded in The Hague on 14th March 1978 with regard to the law applicable to the matrimonial property regime the French and English text of which and the Dutch translation were published in *Tractatenblad (Treaty Series)* 1988 No. 130 are approved for the entire Realm.

Article 2

It is approved that, in accordance with Article 28 of the Convention mentioned in Article 1, the declaration referred to in Article 5 of the Convention is made for the Netherlands so that in accordance with Article 4(2)(1) of the Convention, the Dutch internal law becomes applicable.

Article 3

It is approved that, in accordance with Article 28 of the Convention mentioned in Article 1, a declaration is made for the Netherlands that, in accordance with the provision of Article 9(2) and (3) of the Convention the following will apply in respect of the relations of property law of the spouses in respect of third persons in the Netherlands:

- (a) the consequences of the matrimonial property regime with regard to a legal relation between a spouse and a third person are governed by the law applicable on the basis of Dutch law in respect of the matrimonial property regime, save for the provisions in subparagraphs (b) and (c);
- (b) a spouse whose matrimonial property regime is governed by foreign law may cause registration in the register referred to in Article 116 of Book 1, Dutch Civil Code, of a notarial instrument with a declaration that his or her matrimonial property regime is governed by foreign law;
- (c) a third person who has performed a legal transaction, during the marriage, with a spouse whose matrimonial property regime is

⁴⁴ Act of 20th November 1991, in force as of 21st November 1991, Staatsblad (Bulletin of Acts and Decrees), 1991, 627

governed by foreign law may take recourse in respect of a debt arising from such legal transaction also after dissolution of the marriage as if there is a general community of property between the spouses under Netherlands law if both he or she and both spouses at the time of such legal transaction had their habitual residence in the Netherlands;

(d) the provision of subparagraph (c) does not apply if the third person at the time of the legal transaction was or ought to have been aware that the matrimonial property regime of the spouses was governed by foreign law. This will be deemed to be the case if the legal transaction was performed after expiry of fourteen days after an instrument as referred to in subparagraph (b) was recorded in the register referred to in that subparagraph.

Article 4

It is approved that, on ratification of the Convention referred to in article 1, a declaration is made for the Netherlands reading: 'The Articles 85 (1), 86, 88 and 89 of Book 1 of the Civil Code do not form part under Dutch law of the matrimonial property regime within the meaning of the Convention.'

Article 5

(Not included)

PRIVATE INTERNATIONAL LAW (PENSION RIGHTS EQUALISATION) ACT⁴⁵ (SELECTED)

Article 1

- **7.** Paragraph (4), (5) and (6) apply irrespective of the law applicable to the matrimonial property regime of the spouses.
- **8.** If Dutch law applies to the matrimonial property regime of the spouses that law shall further apply to pensions pursuant to a foreign pension scheme which is not a pension schemes as referred to in paragraphs (4), (5) or (6) with the proviso that a right to payment as referred to in Article 2 only exists vis-à-vis the other spouse.

Act of 28th April 1994, in force as of 1st May 1995, last amended by Act of 13th December 2000, Staatsblad (Bulletin of Acts and Decrees) 2001, No. 12.

PRIVATE INTERNATIONAL LAW (DISSOLUTION OF MARRIAGES AND JUDICIAL SEPARATIONS) ACT⁴⁶

Article 1

- 1. Whether dissolution of a marriage or judicial separation may be petitioned or demanded, and if so on what grounds, is determined,
 - (a) when the parties have a common national law, by that law;
 - (b) when there is no common national law, by the law of the country in which the parties have their habitual residence;
 - (c) when the parties have no common national law, and no habitual residence in the same country, by Dutch law.
- **2.** For the purposes of the preceding paragraph, the parties shall be considered to have no common national law, if one of them manifestly lacks a real societal connection with the country of the common nationality. In that case the common national law shall nevertheless be applied if a choice for that law was made jointly by the parties or such a choice remains uncontested by one of the parties.
- **3.** If a party possesses the nationality of more than one country, his or her national law shall be understood to be the law of that country of which he or she possesses the nationality and with which, taking into account all the circumstances, he or she has the closest connections.
- **4.** Notwithstanding the preceding paragraphs, Dutch law shall be applied if the parties jointly chose such a law or such a choice by one of the parties remains uncontested.

Article 2

- 1. A dissolution of a marriage or judicial separation obtained outside the Kingdom of the Netherlands, after a proper process shall be recognised in the Netherlands, if it has become absolute following a decision of a court or other authority having jurisdiction.
- 2. A dissolution of a marriage or judicial separation obtained outside the Kingdom of the Netherlands, which does not satisfy one or more of the conditions imposed by the preceding paragraph, shall nevertheless be recognised in the Netherlands, if it is evident that the other party in the foreign proceedings has, expressly or implicitly, either during the proceedings agreed with or acquiesced either during or after the proceedings in the dissolution or judicial separation.

⁴⁶ Act of 25th March 1981, in force as of 10th April 1981, Staatsblad (Bulletin of Acts and Decrees) 1981, No. 186.

A dissolution of a marriage, effected outside the Kingdom of the Netherlands by a unilateral declaration of the husband alone, shall not be recognised, unless

- (a) the dissolution of marriage in such form is in conformity with the law of the nationality of the husband; and
- (b) the dissolution is legally valid at the place where it was effected;and
- (c) it is evident that the wife has, expressly or implicitly, agreed with or acquiesced to the dissolution of the marriage.

Article 4

- 1. This Act shall enter into force as from the date after publication in the *Staatsblad (Bulletin of Acts and Decrees)*.
- **2.** This Act applies to the recognition of foreign decisions concerning dissolution of marriage or judicial separation which have been decreed after the date of entry into force.

PRIVATE INTERNATIONAL LAW (PARENTAGE) ACT⁴⁷

Chapter 1 Legal Familial Ties by Birth

Article 1

- 1. Whether legal familial ties are created between a child and the woman who gave birth to it and the man with whom she is or has been married, shall be determined according to the law of the state of the common nationality of the woman and the man or, where such a common nationality does not exist, according to the law of the state where both the woman and the man each have their habitual residence, or where such an habitual residence does not exist, according to the law of the state of the habitual residence of the child.
- **2.** For the purposes of paragraph (1), the time of birth of the child or, if the marriage of the parents was dissolved prior to that time, the time of the dissolution shall be determinative.
- **3.** Where the woman and the man possess more than one common nationality, they will be deemed, for the purposes of paragraph 1, not to have a common nationality.

Article 2

- 1. Whether the legal familial ties referred to in Article 1 may be annulled in legal proceedings for a declaration that the denial is well-founded, shall be determined according to the law which, pursuant to that Article, will apply in respect of the existence of such ties.
- 2. When a denial is not or will no longer be possible according to the law referred to in paragraph (1), the court may, where this is in the best interests of the child and on the joint application of the parents and the child for such a purpose, apply a law other than that mentioned in Article 1 or apply the law of the state where the child has its habitual residence at the time of the denial or Dutch law.
- **3.** Notwithstanding the applicable law pursuant to paragraph (1) or (2), Article 212 of Book 1 of the Dutch Civil Code applies to the legal procedure referred to therein.
- **4.** Whether legal familial ties between a child and the man who is or has been married to his or her mother may be annulled by a declaration of

Act of 14th March 2002, in force as of 1st May 2003, Staatsblad (Bulletin of Acts and Decrees) 2002, No. 153.

denial by the mother before the Registrar of Births, Deaths, Marriages and Registered Partnerships shall be determined according to the applicable law pursuant to Article 1 in respect of the existence of such ties. Notwithstanding paragraphs (1) and (2), such a declaration may be made only if the man, who must also still be living and is or has been married to the mother, consents thereto and if legal familial ties are or will be established at the same time between the child and another man.

Article 3

- 1. Whether legal familial ties are created between a woman and a child to whom she gave birth outside of marriage, shall be determined according to the law of the state of the nationality of the woman. In any event such ties shall be created if the woman has her habitual residence in the Netherlands.
- **2.** For the purposes of paragraph (1) the time of birth shall be determinative.
- **3.** Paragraphs (1) and (2) shall not affect the application of the Convention on the establishment of maternal descent of natural children signed in Brussels on 12th September 1962 (*Tractatenblad (Treaty Series)* 1963, No. 93).

Chapter 2 Legal Familial Ties by Recognition or Judicial Determination of Paternity

Article 4

- 1. Whether recognition by a man causes legal familial ties to be established between him and a child shall be determined, where the right of the man and the conditions for recognition are concerned, according to the law of the state whose nationality the man possesses. If recognition is not or no longer possible according to such a law, the law of the state of the habitual residence of the child shall be determinative. If according to that law this is not or is no longer possible, then the law of the state whose nationality the child possesses shall be determinative. If according to such a law this will also not or no longer be possible, then the law of the state of the habitual residence of the man shall be determinative.
- 2. Notwithstanding the applicable law pursuant to paragraph (1), Dutch law shall determine whether a Dutch married man has the right to recognise a child of a woman other than his spouse.
- **3.** The instrument of recognition and any later mention of the recognition shall state the law that was applied pursuant to paragraph (1) or (2).

- **4.** Notwithstanding the applicable law pursuant to paragraph (1), the law of the state whose nationality the mother possesses or, as the case may be the child possesses, shall apply to the consent of the mother or, as the case may be of the child, for the purposes of the recognition. If the mother or, as the case may be the child, possesses Dutch nationality, Dutch law shall apply. If the applicable law does not provide for recognition, the law of the state of the habitual residence of the mother or, as the case may be of the child, shall apply. Whether the consent, when this is absent, may be replaced by a judicial decision, shall also be determined according to the law applicable to the consent.
- **5.** For the purposes of the preceding paragraphs the time of recognition and of the consent shall be determinative.

Whether and in which manner a recognition may be annulled shall be determined, insofar as the right of the man and the conditions for recognition are concerned, according to the law applied pursuant to Article 4(1) and (2) and, where the consent of the mother or, as the case may be, of the child is concerned, according to the applicable law pursuant to Article 4(4).

Article 6

- 1. Whether and according to which conditions the paternity of a man may be judicially determined shall be decided according to the law of the state of the common nationality of the man and the mother or, where no such common nationality exists, according to the law of the state of their common habitual residence or, where no such common habitual residence exists, according to the law of the state of the habitual residence of the child.
- 2. For the purposes of paragraph (1), the time of the lodging of the application shall be determinative. If the man or the mother has already died at that time, then, in the absence of common nationality at the time of his death, the law of the state of the common habitual residence of the man and the mother at that time shall apply, or when no such common habitual residence exists, the law of the state of the habitual residence of the child at the time of the lodging of the application.
- **3.** Where both the man and the woman have more than one common nationality, they will be deemed, for the purposes of the preceding paragraphs, not to have a common nationality.

Chapter 3 Legal Familial Ties by Legitimation

Article 7

- 1. Whether a child is legitimised by the marriage of one of its parents or by a later decision of a judicial or other competent authority shall be determined according to the Convention on the legitimation resulting from marriage signed in Rome on 10th December 1970 (*Tractatenblad (Treaty Series*) 1972, No. 61).
- **2.** If application of paragraph (1) does not result in legitimation, legal familial ties may be established by legitimation according to the law of the state of the habitual residence of the child.
- **3.** Paragraphs (1) and (2) do not apply where one of the parents possesses Dutch nationality and the marriage was not validly solemnised in accordance with the provisions of Articles 4 and 5 of the *Wet conflictenrecht huwelijk* (Private International Law (Marriages) Act).
- **4.** For the purposes of the preceding paragraphs, the time of the marriage of the parents or, at the establishment of legal familial ties by a decision of a judicial or other competent authority, the time of the lodging of the application or claim shall be determinative.

Chapter 4 The Contents of the Legal Familial Ties on Account of Parentage

Article 8

- 1. Notwithstanding the provisions on special subject matters, the content of the legal familial ties between the parents and the child shall be determined according to the law of the state of the common nationality of the parents or, where no such common nationality exists, according to the law of the state of their common habitual residence or, where no such common habitual residence exists, according to the law of the state of the habitual residence of the child.
- 2. Where legal familial ties exist only between the child and its mother, the consequences of such legal familial ties shall be determined according to the law of the state of the common nationality of the mother and the child. Where no such common nationality exists it shall be determined according to the law of the habitual residence of the child.
- **3.** Where the woman and the man have more than one common nationality, they will be deemed, for the purposes of the preceding paragraphs, not to have a common nationality.

Chapter 5

Recognition of Judicial Decisions, Legal Facts and Legal Acts Established Abroad whereby Legal Familial Ties on Account of Parentage were Established or Altered

Article 9

- 1. An irrevocable foreign judicial decision whereby legal familial ties on account of parentage are established or altered, shall be recognised in the Netherlands, unless
 - (a) there has been a manifestly insufficient connection with the Netherlands to found the jurisdiction of the Dutch court;
 - (b) there is, by operation of law, a lack of a proper investigation or proper legal process undertaken, or
 - (c) the recognition of the decision would be manifestly contrary to Dutch public policy.
- **2.** A recognition of the decision may not be refused on account of a breach of Dutch public policy on the sole ground that another law had been applied thereto than would have resulted under the provisions of this Act, even if a Dutch national is involved in the matter.
- **3.** No decision shall be capable of recognition where this would be irreconcilable with a decision of a Dutch court that has become irrevocable as regards the determination or alteration of the same legal familial ties.
- **4.** The preceding paragraphs shall not affect the application of the Convention referred to in Article 7(1).

Article 10

- 1. The provisions of Article 9(1)(b) and (c), (2) and (3) apply mutatis mutandis to legal facts or legal acts established abroad for the determination or alteration of legal familial ties when these were recorded in an instrument drawn up by a competent authority in accordance with local provisions.
- **2.** In any event, the following shall constitute a ground for refusal as referred to in Article 9(1)(c) with respect to a recognition,
 - (a) if the recognition is made by a Dutch national who, according to Dutch law, would not have been entitled to recognise the child;
 - (b) if, where the consent of the mother or the child is concerned, the legal requirements applicable pursuant to Article 4(4) were not complied with, or
 - (c) if the instrument manifestly relates to a sham transaction.
- **3.** The preceding paragraphs shall not affect the application of the Convention mentioned in Article 7(1).

This Act applies to legal ties that were established or altered abroad after its entry into force and to the recognition of legal ties, which after its entry into force, were established or altered abroad.

Article 12

This Act shall enter into force on a date to be specified by Royal Decree.

Article 13

This Act may be cited as *Wet conflictenrecht afstamming* (Private International Law (Parentage) Act).

PRIVATE INTERNATIONAL LAW (ADOPTION) ACT⁴⁸

Chapter 1 General Provisions

Article 1

The application of the Convention on Protection of Children and Cooperation in respect of Inter-country Adoption (*Tractatenblad (Treaty Series)* 1933, No. 197), the Act of 14th May 1998 implementing that Convention (*Staatsblad (Bulletin of Acts and Decrees)* No. 302) and the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption is not affected by this Act.

Article 2

Notwithstanding Article 1, 'adoption' in this Act means a decision of a competent authority whereby legal familial ties are established between a minor child and two persons jointly or one person alone.

Chapter 2 Law Applicable to an Adoption to be Pronounced in the Netherlands and its Legal Effects

Article 3

- 1. Dutch law applies to an adoption to be pronounced in the Netherlands, except for the provisions of paragraph (2).
- 2. The law of the State whose nationality the child possesses applies to the consent or consultation of or to the information given to the parents of the child or of other persons or institutions. Where the child possesses more than one nationality, the law of the State whose nationality the child possesses with which, having regard to all of the circumstances, it has the closest connection will apply. If no provision is made for the legal concept of adoption in the law so designated, Dutch law applies. Whether the lack of consent may be replaced by a judicial decision shall also be determined according to the law applicable pursuant to this paragraph.
- **3.** Dutch law applies to the revocation of an adoption pronounced in the Netherlands.

Act of 3rd July 2003, not yet in force, Staatsblad (Bulletin of Acts and Decrees) 2003, No. 283.

An adoption pronounced in the Netherlands shall have the legal effects conferred by Dutch law as regards the legal familial ties between a child and its adoptive parents and the cessation of any pre-existing legal familial ties of the child.

Chapter 3 Recognition of a Foreign Adoption and its Legal Effects

Article 5

The provisions of this Chapter govern adoptions pronounced in States which are not a party to the Convention mentioned in Article 1.

Article 6

- 1. A decision made abroad whereby an adoption is pronounced shall be recognised in the Netherlands by operation of law when it is pronounced by a locally competent authority of the foreign State
 - (a) where both the adoptive parents and the child had their habitual residence both at the time of the petition for adoption as well as at the time of the decision; or
 - (b) where either the adoptive parents or the child had their habitual residence both at the time of the petition for adoption and at the time of the decision.
- 2. Recognition shall be withheld from a decision providing for adoption,
 - (a) if there was manifestly no prior proper investigation or proper legal process before the decision was made, or
 - (b) in the instance referred to in paragraph (1)(b), if this decision is not recognised in the State where the child or, as the case may be, the State where the adoptive parents, had their habitual residence both at the time of the application for adoption and at the time of the decision: or
 - (c) if the recognition of such a decision would be manifestly in breach of Dutch public policy.
- **3.** On the ground mentioned in paragraph (2)(c) recognition of a decision for adoption shall always be withheld, if the decision manifestly pertains to a sham transaction.
- **4.** Recognition of a decision may, also when a Dutch person is involved, not be refused on the ground mentioned in paragraph (2) (c) only because another law was applied than would have followed from the provisions of Chapter 2.

- 1. A decision made abroad whereby an adoption has been pronounced and which is pronounced by a locally competent authority in the foreign State where the child had its habitual residence both at the time of the application for adoption and at the time of the decision, while the adoptive parents had their habitual residence in the Netherlands, shall be recognised:
 - (a) if the provisions of the Act containing rules concerning the placement in the Netherlands of foreign children were observed, and
 - (b) if recognition of the adoption is manifestly in the best interests of the child, and
 - (c) if recognition would not be withheld on the ground referred to in Article 6(2) or (3) of this Act.
- **2.** An adoption as referred to in paragraph 1 shall be recognised only if the court has established that the conditions for recognition mentioned in that paragraph were satisfied. The procedure of Article 26 of Book 1, Dutch Civil Code applies.
- **3.** The court which determines that the conditions for recognition of the adoption were satisfied shall order *ex officio* that the adoption shall be subsequently recorded in the appropriate instrument of the Registry of Births, Deaths, Marriages and Registered Partnerships. Articles 25(6), 25c(3) and 25g(2) of Book 1, Dutch Civil Code apply *mutatis mutandis*.

Article 8

- 1. A recognition as referred to in Articles 6 and 7 also includes a recognition of:
 - (a) the legal familial ties between the child and its adoptive parents;
 - (b) the authority of the adoptive parents over the child;
 - (c) the cessation of any prior existing legal familial ties between the child and its mother and father, if the adoption will have this effect in the State where it took place.
- **2.** Where adoption in the State where it was effected will not result in the cessation of previously existing legal familial ties, the adoption shall also not have that effect in the Netherlands.

Article 9

In the instance referred to in Article 8(2), if the child has its habitual residence in the Netherlands and was given permission to permanently stay there with its adoptive parents, an application for conversion into an adoption under Dutch law may be lodged. Article 11(2) of the Act

implementing the Hague Convention of 29th May 1993 for the Protection of Children and Co-operation in respect of Inter-country Adoption applies *mutatis mutandis*. Article 3(2) of this Act applies *mutatis mutandis* in respect of the consent of the parents whose consent for the adoption was required.

Chapter 4 Final Provisions

Article 10

This Act applies to adoption petitions lodged on or after the date of its entry into force in the Netherlands and to the recognition of adoptions pronounced abroad on or after the date of its entry into force.

Article 11

This Act will enter into force on a date to be specified by Royal Decree.

Article 12

This Act shall be cited as *Wet conflictenrecht adoptie* (Private International Law (Adoption) Act).

PRIVATE INTERNATIONAL LAW (REGISTERED PARTNERSHIPS) BILL⁴⁹

Chapter 1 The Entry into a Registered Partnership in the Netherlands

Article 1

- 1. The entry into a registered partnership in the Netherlands is subject to the provisions of Article 80a of Book 1, Dutch Civil Code.
- **2.** Dutch law governs the capacity of each of the partners to enter into a registered partnership in the Netherlands.
- **3.** In terms of formal validity, a registered partnership may only be lawfully entered into in the Netherlands before a Registrar of the Registry of Births, Deaths, Marriages and Registered Partnerships in accordance with Dutch law, except for the right of foreign diplomatic and consular civil servants to give their co-operation to the entry into of registered partnerships according to the statutory provisions of the law of the State represented by them, if neither party exclusively possesses Dutch nationality or also possesses Dutch nationality.

Chapter II The Recognition of a Registered Partnership Entered into outside the Netherlands

Article 2

- 1. Recognition shall be given to a registered partnership lawfully entered into outside the Netherlands or that has subsequently become lawful under the law of the State where the registered partnership was entered into.
- **2.** A registered partnership entered into outside the Netherlands before diplomatic or consular civil servants shall be recognised as lawful when it meets the requirements of the law of the State represented by that civil servant, unless it was not permitted to enter into such a registered partnership in the State where it was entered into.
- **3.** For the purposes of paragraphs (1) and (2), the term 'law' includes the rules of private international law.

Pursuant to Article 29(1) of the Act, the Act is not applicable to registered partnerships entered into prior to entry into force of the Act. In derogation from paragraph (1) Article 21 of the Act applies to the netting of pension rights in the case a registered partnership is terminated or dissolved after the date of entry into force of this Act.

- **4.** A registered partnership is presumed lawful if a competent authority has issued a declaration in respect of the registered partnership.
- **5.** Notwithstanding paragraphs (1) and (2), a registered partnership entered into outside the Netherlands will only be recognised as such, if it forms a legally regulated form of cohabitation between two persons who maintain a close personal relationship, and the cohabitation, at least, was registered by an authority competent to do so in the place where it was entered into;

excludes the existence of a marriage or other form of cohabitation with a third person regulated by law; and

creates obligations between the partners which, in essence, correspond with those in connection with marriage.

Article 3

Notwithstanding Article 2, a registered partnership entered into outside the Netherlands will not be recognised, if such a recognition would be irreconcilable with Dutch public policy.

Article 4

Articles 2 and 3 apply irrespective of whether a decision on recognition of the legal validity of a registered partnership is taken as a principal or as a preliminary issue in connection with any other issue.

Chapter III

Legal Personal Ties between the Registered Partners and their Mutual Relations as to their Property insofar as not constituting part of the Regime of Property of the Partnership

Article 5

- 1. Dutch law governs the legal personal ties between partners who enter into a registered partnership in the Netherlands.
- **2.** The legal personal ties between partners who have entered into a registered partnership outside the Netherlands are also governed by the law, including the rules of private international law, of the State where the registered partnership was entered into.
- **3.** Whether and to what extent one partner is liable for obligations accrued by the other partner during the ordinary course of the household shall be governed by Dutch law, if both the latter and the other party had their habitual residence in the Netherlands at the time of entry into the obligation.

- **4.** Whether one partner requires the consent of the other partner for a legal transaction and, if so, in what form such consent must be granted or whether it may be replaced by a court decision or that of another authority and what its consequences are in the absence of such consent is governed by Dutch law, if the other partner has his or her habitual residence in the Netherlands when such a transaction was performed.
- **5.** Paragraphs (3) and (4) apply notwithstanding the law governing the regime of partnership property of the partners and irrespective of the law applicable to the legal personal relations between the partners.

Chapter IV The Partnership Property Regime

Article 6

- 1. The law that the partners designated prior to their registered partnership applies to the property regime of a registered partnership entered into in or outside the Netherlands.
- **2.** The partners may only designate a legal system which recognises the concept of registered partnership.
- **3.** The law so designated applies to all of their property.
- 4. However, notwithstanding the designation made by the parties referred to in paragraph (1), the partners may designate the law of the situs where all or part of the immoveable property is located, provided that this legal system recognises the concept of registered partnership. They may also provide that the law of the situs where such property is located will apply to immoveable property which is subsequently acquired provided that legal system recognises the concept of registered partnership.

Article 7

- 1. If a registered partnership is entered into in the Netherlands without the partners having designated the applicable law prior to their registered partnership, the partnership property regime will be governed by Dutch law.
- **2.** If the registered partnership has been entered into outside the Netherlands without the partners having designated the applicable law prior to their registered partnership, their regime of partnership property is governed by the law, including the rules of private international law, of the State where they entered into their registered partnership.

- 1. During a registered partnership entered into in or outside the Netherlands the partners may provide that their partnership property regime shall be subject to another internal law than the law applicable prior thereto.
- **2.** The partners may only designate a system of law that recognises the concept of a registered partnership.
- **3.** The law designated in this manner applies to all of their property.
- 4. Notwithstanding the fact that the parties made a designation referred to in paragraph (1) or Article 6, the partners may designate the law of the situs where all or part of the immoveable property is located, provided that this system of law recognises the concept of registered partnership. They may also provide that the law of the situs where such assets are located will apply to immoveable property subsequently acquired, provided that such a system of law recognises the concept of registered partnership.

Article 9

- 1. The law which, based on the provisions of this Act, applies to the partnership property regime of a registered partnership entered into in or outside the Netherlands remains applicable as long as the partners have not designated any other applicable law, even in the case of a change of their nationality or habitual residence.
- 2. The law which the partners have lawfully designated as the applicable law in respect of the partnership property regime for their partnership registered outside the Netherlands remains applicable so long as the partners have not designated any other applicable law even in the case of a change of their nationality or habitual residence.

Article 10

The applicable law to the partnership property regime as designated by the parties, also governs the conditions for the agreement of the partners with regard to that law.

Article 11

The designation of the law applicable to the partnership property regime must be explicitly agreed or must follow unambiguously from their partnership contract.

Partnership contracts will be formally valid, if made in accordance either with the internal law applicable to the partnership property regime or with the internal law of the place where the contracts were entered into. In any case they must be stated in a dated, written document which has been signed by both partners.

Article 13

An explicitly agreed designation of the law applicable to the partnership property regime must be made in the form prescribed for partnership contracts either pursuant to the designated internal law or pursuant to the internal law of the place where such a designation is made. The designation must in any case be stated in a dated, written document which is signed by both partners.

Article 14

The consequences of the partnership property regime with regard to a legal relationship between a partner and a third person are governed by the law applicable to the partnership property regime.

Article 15

A partner whose partnership property regime is governed by foreign law may request registration of a notarial instrument in the register referred to in Article 116 of Book 1, Dutch Civil Code stating that the partnership property regime is not governed by Dutch law.

Article 16

- 1. A third person who has performed a legal transaction during the registered partnership with a partner whose partnership property regime is governed by foreign law may, if both he and both partners had their habitual residence in the Netherlands at the time of such legal act, take recourse for a debt arising from the legal act also after termination of the registered partnership as if there was a general community of property between the partners under Dutch law.
- **2.** The provision of paragraph (1) does not apply if the third person, at the time of the legal transaction, was or ought to have been aware that a partnership property regime of the partners was governed by foreign law. This will be deemed to be the case if the legal transaction was performed

after the expiry of fourteen days from the registration of an instrument as referred to in Article 15 in the register referred to therein.

Article 17

Where as a result of the application in respect of any part of the property located abroad of the law designated pursuant to rules of private international law of the country of the situs one of the partners has enjoyed an advantage as regards the other partner to which the former would not have been entitled on account of such law on application of the designated law, then the other partner may claim a netting or compensation when an accounting is made between the partners in connection with a termination or a change of regime of partnership property.

Article 18

Article 92(3) of Book 1, Dutch Civil Code only applies with regard to recovery sought in the Netherlands against:

- (a) a partner whose partnership property regime is governed by Dutch law, or
- (b) a partner against whom recovery is possible pursuant to the provisions of Article 16 of this Act.

Article 19

The provisions of Article 119 of Book 1, Dutch Civil Code do not apply if the partners designate a law applicable to their partnership property regime other than the previously applicable law.

Article 20

The provisions of Article 131 of Book 1, Dutch Civil Code also apply when foreign law governs the partnership property regime of the partners.

Article 21

Whether a partner is entitled to part of the pension rights accrued by the other partner upon the termination of a registered partnership with mutual consent or by its rescission, is governed by the law applicable to the partnership property regime of the partners, except for the provisions of Article 1(7) of the *Wet verevening pensioenrechten bij scheiding* (Pension Rights Equalisation Separation Rules).

Chapter V Termination of a Registered Partnership in The Netherlands

Article 22

Dutch law determines whether a registered partnership entered into in the Netherlands may be terminated by mutual consent or by dissolution and on which grounds.

Article 23

- 1. Dutch law determines whether a registered partnership entered into outside the Netherlands may be terminated by mutual consent or by dissolution and on which grounds.
- 2. In derogation from the provisions of paragraph (1), the law of the State where the registered partnership has been entered into will apply if they have jointly made a choice of that law in the contract made between the partners in respect of the termination by mutual consent of the registered partnership.
- **3.** As regards the termination by dissolution and in derogation from the provisions of paragraph (1), the law of the State where the registered partnership has been entered into will be applied if, in the proceedings:
 - (a) the partners jointly chose this law or such a choice made by one of the partners has not been revoked; or
 - (b) either partner chose such law and both partners have actual ties with the State where their registered partnership was entered into.
- **4.** Dutch law governs the manner in which termination by mutual consent or the dissolution of a registered partnership entered into outside the Netherlands is made.

Chapter VI Recognition of Termination of a Registered Partnership decreed outside the Netherlands

Article 24

- 1. A registered partnership terminated outside the Netherlands by mutual consent will be recognised when it has been lawfully decreed.
- **2.** Dissolution of a registered partnership obtained outside the Netherlands after a proper legal process will be recognised in the Netherlands, if pronounced by a court decision or a decision of another authority with jurisdiction in respect thereof.
- **3.** Dissolution of a registered partnership obtained outside the Netherlands which does not meet any of the terms laid down in the preceding

paragraph, will nevertheless be recognised in the Netherlands when it is evident that the other party to the foreign proceedings agreed, explicitly or implicitly, either during or after such proceedings to have acquiesced to such a dissolution.

Chapter VII Maintenance

Article 25

As regards a registered partnership entered into in or outside the Netherlands the law applicable to maintenance obligations during the registered partnership and after termination by mutual consent or by dissolution of the registered partnership is determined by the Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations concluded on 2nd October 1973 (*Tractatenblad (Treaty Series)* 1974, No. 86).

Changes to Other Pieces of Legislation

Article 80c, Book 1, Dutch Civil Code

The number 1. will be placed in front of the present text of Article 80c. Thereafter a new paragraph will be inserted:

2. The Registrar of Births, Deaths, Marriages and Registered Partnerships shall always be competent to register declarations made as referred to in paragraph (1)(c), if the registered partnership was entered into in the Netherlands. If the partnership was entered into outside the Netherlands, the Registrar of Births, Deaths, Marriages and Registered Partnerships may register declarations referred to in paragraphs (1)(c), if the conditions of Article 4(4), Dutch Code of Civil Procedure for jurisdiction of the court in the case of a dissolution of a registered partnership have been satisfied.

Wet conflictenrecht huwelijk (Private International Law (Marriages) Act)

A semi-colon is inserted at the end of Article 3(1)(d) and will be followed by:

(e) this would constitute conduct in breach of the statutory provision that the persons who wish to enter into a marriage may not be simultaneously bound by a registered partnership.

PART IV.

A SELECTION OF ENGLISH, FRENCH AND GERMAN LANGUAGE ARTICLES IN THE FIELD OF DUTCH FAMILY LAW

General

- C. Forder, "An identity crisis the outer limits of euthanasia, the abolition of chivalry and other adventurous provisions" *In* A. Bainham (ed.), *International Survey of Family Law 1994* (1996, Martinus Nijhoff, Dordrecht) pp. 345-363
- P. Vlaardingerbroek, "Child care and protection measures and minor foreigners. The legal position of minors" *In* N. Lowe and G. Douglas (eds.), *Families Across Frontiers* (1996, Martinus Nijhoff, The Hague) pp. 499-512
- C. Forder, "Re-thinking marriage, parenthood and adoption" *In A. Bainham (ed.)*, *International Survey of Family Law 1995* (1997, Martinus Nijhoff, Dordrecht) pp. 359-382
- C. Forder, "An undutchable family law: Partnership, parenthood, social parenthood, names and some Article 8 ECHR case law" *In* A. Bainham (ed.), *International Survey of Family Law 1997* (1999, Martinus Nijhoff, Dordrecht) pp. 259-307
- C. Forder, "Opening up marriage to same-sex partners and providing for adoption by same-sex couples, managing information on sperm donors and lots of private international law" *In A. Bainham* (ed.), *International Survey of Family Law 2000 Edition* (2000, Jordans, Bristol) pp. 239-277
- C. Forder, "To marry or not to marry: that is the question" *In* A. Bainham (ed.), *International Survey of Family Law 2001 Edition* (2001, Jordans, Bristol) pp. 301-320
- W. Schrama, "Reforms in Dutch family law during the course of 2001: Increased pluriformity and complexity" *In* A. Bainham (ed.), *International Survey of Family Law 2002 Edition* (2002, Jordans, Bristol) pp. 277-303
- M. Antokolskaia and K. Boele-Woelki, "Dutch family law in the 21st Century: Trend-setting and straggling behind at the same time" *In* E.W. Hondius and C. Joustra (eds.), *Netherlands Reports to the 16th International Congress of Comparative Law* (2002, Intersentia, Brussels) pp. 53-74
- B. Reinhartz, "The Netherlands" *In C.* Hamilton and A. Perry (eds.), *Family Law in Europe* (2002, Butterworths, London) pp. 439-467
- I. Sumner and C. Forder, "Bumper Issue: Everything you ever wanted to know about Dutch family law (and were afraid to ask)" *In* A. Bainham (ed.),

International Survey of Family Law 2003 Edition (2003, Jordans, Bristol) pp. 263-321

Marriage and Registered Partnership

- K. Boele-Woelki, "IPR-Gesetzgebung in den Niederlanden Das Namenkollisions- und das Ehekollisionsgesetz (1990) *Praxis des Internationalen Privat- und Verfahrensrechts* pp. 337-342
- P. Vlaardingerbroek, "Marriage, divorce and living arrangements in the Netherlands" (1995) Family Law Quarterly pp. 635-644
- K. Boele-Woelki, "Registered partnerships: Legislation of the Netherlands, *In* Proceedings of the colloquy organised to mark the 50th Anniversary of the ICCS, Strasbourg 26th March 1999, International Commission on Civil Status (1999), pp. 43-53
- W. Schrama, "Registered partnership in the Netherlands" (1999) 13 International Journal of Law, Policy and the Family pp. 315-327
- K. Boele-Woelki, "Private international law aspects of registered partnerships and other forms of non-marital cohabitation in Europe" (2000) *Louisiana Law Review* pp. 1053-1059
- K. Boele-Woelki and W. Schrama, "Die Stellung von Menschen mit homosexueller Veranlagung im niederländischen Recht", *In J. Basedow*, K.J. Hopt, H. Kötz and P. Dopffel (eds.), *Die Rechtsstellung gleichgeschlechtlicher Lebensgemeinschaften* (2000, Mohr, Siebeck-Tübingen) pp. 51-112
- H.U.Jessurun D'Oliveira, "Freedom of movement of spouses and registered partners in the European Union" *In J. Basedow et al, Private International Law in the International Arena* (2000, TMC Asser Series) pp. 527-543
- N. Maxwell, "Opening civil marriage to same-gender couples. A Netherlands-United States comparison" (2001) 18 Arizona Journal of International and Comparative Law pp. 141-207
- K. Waaldijk, "Small change: How the road to same-sex marriage got paved in the Netherlands" *In R. Wintemute and M. Andenæs (eds.)*, *Legal Recognition of Same-Sex Partnerships* (2001, Hart, London) pp. 437-464
- I. Sumner, "Comparative analysis and assessment of the gradual recognition of homosexuality with respect to the Netherlands and England" (2002) 9 *Maastricht Journal* pp. 29-56

K. Boele-Woelki, "Registered Partnership and Same-Sex Marriage in the Netherlands" *In* K. Boele-Woelki and A. Fuchs (eds.), *Legal Recognition of Same Sex Couples in Europe* (2003, Intersentia, Antwerp) pp. 41-53

Divorce

K. Boele-Woelki, L. Coenraad and O. Cherednychenko, "The Netherlands Report" *In* K. Boele-Woelki, B. Braat and I. Sumner (eds.), *European Family Law in Action. Volume I: Grounds for Divorce* (2003, Intersentia, Antwerp)

I. Sumner, "Transformers: Marriages in Disguise?" (2003) 1 *International Family Law* pp. 15-23

K. Boele-Woelki, "Ehescheidung und nachehelicher Unterhalt im niederländischen Recht" In D. Henrich, D. Schwab and S. Hofer, Symposium für europäisches Familienrecht, Ehescheidung und Unterhalt im europäischen Vergleich (2003, Gieseking Verlag)

Matrimonial Property Law

G. Van der Burght, Dutch matrimonial property and inheritance law and its fiscal implications (1990, Kluwer, Deventer)

Parentage and Adoption

A. Mattijssen, C. Smith and N. Maxwell, "Legal protection for all children: Dutch-American comparison of lesbian and gay parent adoptions" (1999) 3.1 *Electronic Journal of Comparative Law*, http://law.kub.nl/ejcl/index.html

M. Antokolskaia, "Recent developments in Dutch filiation, adoption and joint custody law" (2002) *Familia* pp. 781-804

D. van Iterson, "La nouvelle loi néerlandaise réglant les conflits de lois en matière de filiation" (2002) 91 *Revue critique de droit internationale privé* pp. 895-900

D. van Iterson, "La traduction française de la loi de la filiation" (2002) 91 Revue critique de droit international privé pp. 389-393

C. van Nijnatten and W. de Graaf, "Legal management of (social) parenthood, adoption and Dutch family policy" (2002) 24 *Journal of Social Welfare and Family Law* pp. 263-277

Maintenance

Part IV A Selection of English, French and German Language Articles in the Field of Dutch Family Law

A.E Von Overbeck, "Obligations 'alimentaires' entre épux après divorce: autonomie, ou rattachment objectif? A propos d'un arrêt de la cour de cassation des Pays-Bas" *In, Le role de la volonté dans les actes juridiques, Études à la mémorie du professeur Alfred Rieg* (2000, Bruylant, Brussels) pp. 839-854

K. Boele-Woelki, L. Coenraad and O. Cherednychenko, "The Netherlands Report" *In* K. Boele-Woelki, B. Braat and I. Sumner (eds.), *European Family Law in Action. Volume II: Maintenance Between Former Spouses* (2003, Intersentia, Antwerp)

EUROPEAN FAMILY LAW SERIES

- 1. Legal Recognition of Same-Sex Couples in Europe, K. Boele-Woelki and A. Fuchs (eds.)
- 2. European Family Law in Action Volume I: Grounds for divorce, K. Boele-Woelki, B. Braat and I. Sumner (eds.)
- 3. European Family Law in Action Volume II: Maintenance Between Former Spouses, K. Boele-Woelki, B. Braat and I. Sumner (eds.)
- 4. Perspectives for the Unification and Harmonisation of Family Law in Europe, K. Boele-Woelki (ed.)
- 5. Family Law Legislation of the Netherlands, I. Sumner and H. Warendorf