

Inheritance Law Legislation of the Netherlands

**A TRANSLATION OF BOOK 4
OF THE DUTCH CIVIL CODE, PROCEDURAL
PROVISIONS AND PRIVATE INTERNATIONAL
LAW LEGISLATION**

Ian Sumner and Hans Warendorf



intersentia



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.

The 1st January 2003 saw the introduction of a new inheritance law in the Netherlands. 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 in and also outside 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 inheritance law, also provides lawyers, civil servants and consular officers with insight into the applicable rules in international cases. The Europeanisation of civil law necessitates that the ultramodern Dutch inheritance law is readily accessible. This work will give scholars and professional practitioners not able to speak Dutch an opportunity to take cognizance of this important field of law. It is hoped that it will further contribute to the development of an international legal discourse on the development of inheritance law in other jurisdictions, whilst allowing the comparison with the law as in force in the Netherlands on the 1st January 2005.

ISBN 90-5095-444-8



9 789050 954440

INHERITANCE LAW LEGISLATION OF THE NETHERLANDS

**A translation of Book 4 of the Dutch Civil Code,
procedural provisions and
private international law legislation**

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**IAN SUMNER
HANS WARENDORF**

With an introduction, "Dutch Law and the Europeanisation of
Inheritance Law", by Professor WALTER PINTENS



Antwerp – Oxford

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
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Tel: + 41 31 300 66 77
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Distribution for North America:

Gaunt Inc.
Gaunt Building
3011 Gulf Drive
Holmes Beach
Florida 34217-2199
USA
Tel: + 1 941 778 5211
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Distribution for other countries:

Intersentia Publishers
Groenstraat 31
BE-2640 Mortsel
Belgium
Tel: + 32 3 680 15 50
Fax: + 32 3 658 71 21

Inheritance Law Legislation of the Netherlands
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© 2005 Intersentia
Antwerp – Oxford
<http://www.intersentia.com>

ISBN 90-5095-444-8
D/2005/7849/42
NUR 822 and 828

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A WORD OF INTRODUCTION FROM THE TRANSLATORS

In 2003 the first ever English translation of Dutch family law legislation was published in the fifth volume of this EFL series. This publication takes that process one step further by providing a translation of the new inheritance law legislation of the Netherlands, as in effect since 1st January 2003.

Although at first glance the law, which is enacted as Book 4, Dutch Civil Code, may seem modern and innovative, the legislative process leading to this enactment commenced in 1947 when Professor E.M. MEIJERS was commissioned to draft a new Civil Code. The crucial element of discussion in the years before agreement on the text of the inheritance law was finally reached centred around the position of the surviving spouse in relation to any children of the deceased. Should the surviving spouse and the children be protected from disinheritance and, if so, in what form and to which extent? Although having taken more than fifty years to see the light of day, the new Book 4 has been met with enthusiasm in the Netherlands.

Although, our task as translators was somewhat eased by the use of modern terminology, we encountered many difficulties. Take, for example, the term *erflater*, which refers to the deceased regardless of whether he or she died testate or intestate, its closest translation, *testator*, only refers to the situation where the deceased had died testate. We have resolved this by using the term *deceased*, which in Dutch is often translated as *overledene* (although this term is not used in legal terminology). We have refrained from using the term *de cuius* due to its archaic reference, despite its use in academic publications. Further choices have also had to be made, for example, with reference to the *Register of Deceased's Estates* as a translation for *boedelregister*.

Moreover, difficulties were encountered with translating words such as *notaris* and *executeur*. In both cases, although a seemingly comparable translation has been found, it must be borne in mind that the meaning of these words can differ enormously between various legal systems. In order to gain a more complete understanding of Dutch inheritance law it is essential to refer to commentaries and explanatory texts. At present the only commentary in English on the new Dutch inheritance law is Professor NUYTINCK'S 'A short introduction to the new Dutch succession law' (Deventer: Kluwer, 2002), which deals with salient

issues. In our translation *erfrecht* has, however, been translated as inheritance law.

As far as possible we selected terminology on a consistent basis, not only with respect to the terms used throughout Book 4, but also to those in Book 1, Dutch Civil Code.

Where reference is made in Book 4 to provisions in other Books of the Dutch Civil Code or to the Insolvency Act (*Faillissementswet*), the reader may find their translation in:

Book 1, Dutch Civil Code

I. SUMNER and H. WARENDORF

Family law legislation of the Netherlands, Antwerp: Intersentia, 2003

Books 2, 3, 6 and 7, Dutch Civil Code and the Dutch Insolvency Act

P. HAANAPPEL, E. MACKAAY, H. WARENDORF and R. THOMAS

Netherlands Business Legislation, Deventer: Kluwer, 1999 onwards, looseleaf

We would like to take this opportunity to extend our thanks to Professor KATHARINA BOELE-WOELKI and the other editors of the EFL series for giving us the opportunity to publish this book in this Series. Although every effort has been made to faithfully translate the law, only the Dutch version, as construed at law, is authoritative. Any suggested corrections or comments would be welcomed by us and may be sent to I.Sumner@law.uu.nl or warendorf@leidsegracht.org.

This issue contains the law as in effect up to and including 1st January 2005.

25th March 2005

Ian Sumner

Hans Warendorf

DUTCH LAW AND THE EUROPEANISATION OF INHERITANCE LAW

Historically, the law of succession has rarely been the object of profound comparative legal studies. Unification in this field was mostly restricted to private international law. This is quite understandable for a difficult, technical and particularistic field, where a mixture of Roman, customary and common law led to very diverse regulations.¹ The particular impact of succession law and especially international succession law was rather small. Earnings were modest. Real wealth was for the happy few. Property in foreign countries was seldom owned.

Times have changed. Succession law has grown in importance. In the next few decades the transmission of wealth through inheritance will be very important throughout Europe. Small estates have increased, in addition to those of large and medium size. In Germany the average value of an inheritance will increase to €287,000 by 2010, representing a fifty percent increase on the average value in 1998.² This capital growth is due to a number of causes. The revenue of elderly people has increased due to the revalorisation of pensions.³ As a result they dispose of a regular and stable income and often do not need to use their assets for their maintenance and care. In times of increasing economic activity stock exchange profits have led to considerable capital gains. Quite often there are also investments abroad, so that international and foreign succession law is becoming more important.

These developments result in an awakening interest in comparative succession law. Differences between the legal systems are seen as obstacles to the circulation of capital and to the acquisition of foreign property, with the result that legal authors are searching for a common core, preparing the way for a careful and prudent harmonisation. Within this search for a *ius commune*, notwithstanding all the differences in detail, strong tendencies emerge:⁴ the horizontalisation of succession

¹ HERETO NEUMAYER, "Einheit in der Vielfalt. Bewegung und Bewahrung im Erbrecht der Nationen", in: *Festschrift für Murad Ferid*, Munich 1978, p. 659 *et seq.* and "Eigenartiges und Altertümliches aus dem vergleichenden Erbrecht", in: *Mélanges Piotet*, Bern, 1990, p. 485 *et seq.*

² BRANCHEREPORT ERBSCHAFTEN, *BBE-Unternehmensberatung*, Cologne 1999.

³ PESTIAU, *Héritage et transferts entre générations*, Brussels 1994, p. 9.

⁴ See CÁMARA LAPUENTE, "Derecho europea de sucesiones? Un apunte", in: CÁMARA LAPUENTE (ed.), *Derecho Privado Europeo*, Madrid 2003, p. 1185 *et seq.*; PINTENS, "Die Europäisierung des Erbrechts" (2001) *ZEuP* 628 *et seq.*

law, *i.e.* the strong position of the surviving spouse to the detriment of the children's position, equality of all children regardless of their affiliation, reduction of the forced inheritance share or at least the conversion of a forced inheritance share *in natura* into a forced inheritance share in value, and finally, to a certain extent, an awareness of the position of the surviving non-married partner.

When one considers Dutch succession law against this *ius commune* background, then it is quite apparent that this new codification cannot be classified as an offspring of the French *Code civil* or of the German BGB, but that it meets, to a large extent, the comparative analysis of the European succession laws. Dutch succession law is a modern codification that reflects European tendencies in such a way that it cannot be neglected in the search for a *ius commune*, because, in a certain sense, it is already the *ius commune*.

For all these reasons it is absolutely necessary to make this new codification, written in a not widely spoken language, accessible through an English translation. Achieving success in this task requires many qualities and skills. The translator has to be a lawyer with a profound knowledge of all the technical aspects of succession law, he has to be aware of the links with many other fields of law, especially family law and property law. He has to find the necessary balance between the restraint of a word for word translation and the creation of neologisms without which juridical terminology cannot develop. The explanations in the introduction on the translation of the term *erflater* already demonstrate that the translators of this publication combine all those qualities. They have proceeded very thoughtfully and have considered and evaluated all the possibilities, making a careful choice for every legal term. These high standards are upheld from the beginning to the end. Every term is well chosen and accurate. The translation reads extremely fluently.

Two experienced and talented lawyers are responsible for all these merits: IAN SUMNER and HANS WARENDORF. They contribute marvellously to the circulation of Dutch law in the world.

Walter Pintens
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Honorary Professor at the University of the Saarland

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PART I.

BOOK 4, DUTCH CIVIL CODE

INHERITANCE LAW

TITLE 1

GENERAL PROVISIONS⁵

Article 1

1. Heirs are called to a deceased's estate by rules of intestacy or pursuant to a last will.
2. There may be derogation from the rules of intestate succession by a last will providing for the appointment or disinheritance of an heir.

Article 2

1. When the order of death of two or more persons cannot be determined, they shall be considered to have died simultaneously so that no benefit shall accrue to either or any of them from the estate of the other or others.
2. If, due to circumstances not attributable to such a person, an interested person experiences difficulties in proving the order of death, the court may grant one or more extensions to the extent it may reasonably be assumed that such proof can be provided within such an extended term.

Article 3

1. By operation of law the following persons shall be deemed unworthy to reap a benefit from a deceased's estate:
 - (a) a person who has been irrevocably convicted of taking the life of the deceased, of attempting or preparing to do so or who is an accessory thereto;
 - (b) a person who has been irrevocably convicted of an intentionally committed offence against the deceased for which offence, according to the Dutch statutory definition, a maximum prison sentence of at least four years is set, or on account of any attempt thereto, preparation thereof or participation in such an offence;
 - (c) a person who is established by irrevocable judicial decision to have defamatorily accused the deceased of a crime for which,

⁵ Book 4, Dutch Civil Code, which was enacted by Act of 16th August 2002, *Staatsblad* (Bulletin of Acts and Decrees) 2002, N^o. 230 and has been in force since 1st January 2003, was last amended by Act of 13th May 2004, *Staatsblad* (Bulletin of Acts and Decrees) 2004, N^o. 215, with effect from the 1st July 2004.

according to the Dutch statutory definition, a maximum prison sentence of at least four years is set;

- (d) a person who in actual fact or by threat has compelled the deceased to make a last will or has impeded the deceased from so doing;
- (e) a person who has misappropriated, destroyed or falsified the last will of the deceased.

2. Rights acquired in good faith by third persons prior to the establishment of the unworthiness shall be respected. However, in the instance that assets were not acquired for money or money's worth, the court may grant persons with an entitlement a right to compensation specified by it in fairness and payable by the person who has enjoyed a benefit therefrom.

3. Unworthiness shall lapse when the deceased has unambiguously forgiven the conduct of the unworthy person.

Article 4

1. A legal act performed prior to the devolvement of the deceased's estate shall be null and void to the extent that its necessary implication is to restrain a person in the freedom from exercising any powers conferred pursuant to this Book as regards such a deceased's estate.

2. Agreements which have as their necessary implication the disposal of a deceased's estates which have not yet devolved in their entirety or for a proportionate part shall be null and void.

Article 5

1. At the request of a debtor, the district court may determine, where there are important reasons to do so, that any sum of money due pursuant to this Book or, in connection with the division of a deceased's estate, pursuant to Title 7 of Book 3, whether or not increased with interest to be specified in its order, need be paid only after the expiry of a determinate time, either in one lump sum or in instalments. The district court shall thereby have regard to the interests of both parties and may impose, when allowing the request and in order to provide secure payment of the principal sum and interest, a condition that security *in rem* or personal security be approved by the district court be put up.

2. At the request of any one of the parties, an order referred to in the preceding paragraph may be varied by the district court referred to in the preceding paragraph on account of circumstances not foreseen at the time when such an order was made.

Article 6

In this Book 'the value of the assets of the deceased's estate' means the value of such assets at the time immediately following the death of the deceased without account being taken of the usufruct to which it may become subject pursuant to Section 1 or 2 of Title 3.

Article 7

1. Liabilities and obligations of the deceased's estate shall be:
 - (a) liabilities and obligations of the deceased which are not extinguished by the deceased's death, to the extent that these are not included under subparagraph (i);
 - (b) the costs of the funeral arrangements, to the extent these are in conformity with the circumstances of the deceased;
 - (c) the costs of liquidation of the deceased's estate, including the remuneration of the liquidator;
 - (d) the cost of personal representation, including the remuneration of the personal representative;
 - (e) the tax liabilities imposed on account of the devolvement of the deceased's estate to the extent that these will be incumbent upon the heirs;
 - (f) liabilities and obligations arising out of the application of Section 2 of Title 3;
 - (g) liabilities and obligations on account of shares of forced heirs which are claimed pursuant to Article 80;
 - (h) liabilities and obligations arising from bequests incumbent upon one or more heirs;
 - (i) liabilities and obligations arising from gifts and other acts considered bequests pursuant to Article 126.
2. When settling liabilities and obligations from the estate of the deceased, payment by ranking shall be made in the following order:
 - (1) the liabilities and obligations referred to in paragraph (1), (a)-(e), inclusive;
 - (2) the liabilities and obligations referred to in paragraph (1)(f);
 - (3) the liabilities and obligations referred to in paragraph (1)(g).

Where there are no liabilities and obligations as referred to in paragraph (1)(f), the liabilities and obligations referred to in paragraph (1)(a) to (c), inclusive shall be paid first and subsequently those referred to in paragraph (1)(d), (e) and (g), with priority ranking.

3. In the estate of the surviving parent referred to in Article 20 and of the step-parent referred to in Article 22, an obligation to transfer assets

as referred to in those articles shall be equated to a liability or obligation as referred to in paragraph (1)(a).

Article 8

1. In this Book registered partners shall be equated with spouses.
2. For the purposes of paragraph (1), the following terms shall include:
 - (a) marriage: registered partnership;
 - (b) married: registered as a partner;
 - (c) matrimonial community of property: community of property of a registered partnership;
 - (d) engagements to marry: promise to enter into a registered partnership;
 - (e) divorce: termination of a registered partnership in the manner referred to in Article 80c(c) or (d) of Book 1.⁶
3. A stepchild of the deceased shall include in this Book a child of a spouse or registered partner of the deceased where the latter is not a parent of the child. Such a child shall remain a stepchild if the marriage or registered partnership has ended.

⁶ This paragraph would be changed to read: "separation: registration of a joint declaration in the manner referred to in Article 149(c) of Book 1 or divorce or termination of a registered partnership in the manner referred to in Article 80c or 80d of Book 1", if a current Bill before Parliament is passed, *Parliamentary Documentation, Second Chamber, 2004-2005, 29 676, No. 5*.

TITLE 2

INTESTATE SUCCESSION

Article 9

In order to qualify as an intestate heir one must be alive or exist at the time the deceased's estate devolves.

Article 10

1. Heirs who are called personally by law to inherit a deceased's estate are, in the following order:
 - (a) the deceased's spouse who is not judicially separated, together with the deceased's children;
 - (b) the deceased's parents together with the deceased's brothers and sisters;
 - (c) the deceased's grandparents;
 - (d) the deceased's great-grandparents.
2. The descendants of a child, brother, sister, grandparent or great-grandparent shall inherit pursuant to a right of representation.
3. Only persons with legal familial ties to the deceased are considered to be blood relatives as mentioned in the preceding paragraphs.

Article 11

1. Heirs who are called personally and jointly to inherit from a deceased's estate inherit in equal shares.
2. In derogation from paragraph (1), the share in the inheritance of a half-brother or half-sister shall be half of the share of the estate of a full brother, a full sister or a parent.
3. When, on application of paragraphs (1) and (2), the share in the estate of a parent would be less than one-quarter of the estate, it shall be increased to one-quarter and the shares of the estate of the other heirs shall then be reduced *pro rata*.

Article 12

1. Inheritance by right of representation shall take place in the case of persons who are no longer alive or exist at the moment at which the deceased's estate devolves or who are unworthy, disinherited or who renounce a right to the estate or whose right of succession has lapsed.

2. Persons who inherit by right of representation shall have an entitlement *per stirpes* to the share in the deceased's estate of the person whose place they take.
3. Persons further removed from the deceased than in the sixth degree do not inherit.⁷

⁷ 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.

TITLE 3

INTESTATE SUCCESSION OF A SPOUSE WHO IS NOT JUDICIALLY SEPARATED, OF THE CHILDREN AND OTHER STATUTORY RIGHTS

Section 1

Intestate Succession of a Spouse who is not Judicially Separated, and of the Children

Article 13

1. The estate of a deceased who leaves behind a spouse and one or more children as heirs shall be divided in accordance with the following paragraphs, unless the deceased provided by last will that this entire Section would be inapplicable.

2. The spouse shall acquire the assets of the deceased's estate by operation of law. Settlement of the liabilities of the estate shall be for the account of the spouse. For this purpose the 'liabilities of the estate' shall also include any expenditure due by the joint heirs for settling testamentary obligations imposed by the last will.

3. Each of the children shall acquire as an heir by operation of law a right to a pecuniary claim due by the spouse corresponding to the value of the child's share in the deceased's estate. This claim shall be exigible:

(a) if the spouse is declared bankrupt or if a debt repayment scheme for natural persons has been declared applicable with respect to the spouse;

(b) when the spouse has died.

The claim shall also be exigible in the instances mentioned in the testamentary disposition of the deceased.

4. Unless otherwise provided by the deceased or by the spouse and child together, the pecuniary sum referred to in paragraph (3) shall be increased by a percentage corresponding to that of the legal interest.⁸ To the extent that such a percentage exceeds six percent, it shall be calculated on an annual basis from the date upon which the deceased's estate devolved. Only the principal sum shall be taken into consideration each time for such a calculation.

5. When the claim referred to in paragraph (3) becomes exigible on account of a debt repayment scheme for natural persons having been declared applicable in respect of the spouse, then payment of the claim may again no longer be demanded to the extent it remained unsettled on account of the application of the debt repayment scheme for natural

⁸ The legal rate of interest, as from 1st February 2004, is 5% per annum.

persons pursuant to Article 356(2) of the *Faillissementswet* (Insolvency Act). Article 358(1) of the *Faillissementswet* shall not apply as regards the claim.

6. In this Title a 'spouse' shall not include a spouse who is judicially separated.

Article 14

1. If the deceased's estate has been divided in accordance with Article 13, the deceased's spouse shall be obliged to settle the liabilities of the deceased's estate with respect to the creditors and obligees and the children. The liabilities of the deceased's estate shall be for the account of the spouse where this concerns the relationship between the spouse and children.

2. When a creditor has the right to have recourse both for liabilities of the deceased's estate and for liabilities of the spouse against the assets of the community of property subject to a netting agreement between the spouses, he or she shall have priority ranking when taking recourse against the assets belonging to the spouse pursuant to Article 13(2) before persons who take recourse for other liabilities of the spouse.

3. A levy of execution may not be made against the assets of a child for liabilities of the deceased's estate, except for a pecuniary claim referred to in Article 13(3). A levy of execution against such assets may be made to the extent that the child's pecuniary claim is reduced by payment or by transfer of assets, unless the child designates assets of the spouse which provide sufficient recourse.

4. Without prejudice to Article 184(2) the legal obligation arising for a spouse from the second sentence of paragraph (1) shall also apply when the liabilities of the deceased's estate exceed the assets.

Article 15

1. Should the heirs not be able to reach an agreement on the determination of the extent of the pecuniary claim referred to in Article 13(3), the sub-district court shall determine the outcome on the application of any party taking the initiative on such a procedure. Articles 677 to 679, inclusive, of the Dutch Code of Civil Procedure apply *mutatis mutandis*.

2. On the application of a child or of the spouse, the sub-district court shall vary the determination *pro rata* if, at the determination of the pecuniary claim referred to in Article 13(3):

- (a) a mistake was made as to the value of the assets and the liabilities of the deceased's estate as a result of which an heir was prejudiced for more than one quarter;
- (b) the balance of the deceased's estate was otherwise incorrectly calculated, or
- (c) the pecuniary claim was not calculated in accordance with the share which the child could claim.

The provisions of Articles 196(2), (3) and (4), 199 and 200 of Book 3 apply *mutatis mutandis* to the determination.

3. Articles 229 to 233, inclusive, apply *mutatis mutandis* to the determination of the pecuniary claim.

4. Articles 187 and 188 of Book 3 apply *mutatis mutandis* to the determination.

Article 16

1. The spouse and each child may require the drawing up of an inventory of the estate. The inventory of the estate shall include a valuation of the assets and liabilities of the deceased's estate.

2. Where a spouse or child does not have the right to freely administer his or her capital, his or her legal representative shall, within one year of the death of the deceased, lodge an inventory of the estate with the clerk's office of the sub-district court of the residency of the spouse or of the child, as the case may be, which he or she has signed to confirm that it is true and fair. The sub-district court may specify that the inventory of this estate must be made by notarial instrument.

3. Articles 673 to 676, inclusive, of the Dutch Code of Civil Procedure apply *mutatis mutandis* to an inventory of the estate and its valuation. The spouse and each child are parties to the inventory of the estate for the purpose of the provisions mentioned in the preceding sentence.

4. A spouse and each child have the right vis-à-vis each other to inspect and to receive a true copy of all documents, records and other data carriers which they need for determining their claims. They shall be provided with all the information which they request pertaining thereto. They shall be obliged to co-operate with one another in the provision of information by third persons.

Article 17

1. The spouse may settle, subject to the provisions of paragraphs (2) and (3), the pecuniary claim referred to in Article 13(3) and the increment referred to in paragraph (4) of that Article at any time in full or in part. Payment shall first be applied to reduce the principal and,

subsequently to reduce the increment, unless the deceased or the spouse and the child together, have otherwise provided.

2. If a child is entitled to make an application as referred to in Articles 19, 20, 21 or 22, the spouse or the spouse's heirs shall not proceed to settlement without first having acted in accordance with Article 25(3).

3. If a child referred to in paragraph (2) is a minor or having attained the age of majority does not have the right to freely administer its capital, settlement shall require the approval of the sub-district court, which shall decide according to the standard laid down in Article 26(1).

Article 18

1. A spouse may reverse a division in accordance with Article 13 within three months from the date of devolution of the deceased's estate by declaration made by notarial deed followed by registration in the Register of Deceased's Estates within that term. The declaration may be made in the name of the spouse only pursuant to an explicit written power of attorney issued for this purpose.

2. The declaration shall have retrospective effect as from the time at which the deceased's estate devolved. Rights acquired by third persons, co-heirs included, prior to expiry of the term mentioned in paragraph (1) shall be respected. If the spouse has made payments prior to making the declaration on the basis of Article 13(2), these shall be settled between the spouse and the children.

3. The fact that a curator has been appointed over the spouse or that the assets acquired by the spouse from the estate of the deceased are subject to administration, shall not bar the spouse from exercising the right referred to in paragraph (1). The right shall in this case be exercised in accordance with the rules applying to curatorship or administration respectively. Where the spouse has been declared bankrupt or a debt repayment scheme for a natural person applies in respect of that spouse or a suspension of payments was granted to the spouse, this right shall be exercised by the curator, the administrator or by the spouse with the co-operation of the administrator, respectively.

4. If Section 2 or 3 of Title 18 of Book 1 has been applied with regard to the deceased, the three-month term mentioned in paragraph (1) shall commence at the date on which the order referred to in Article 417(1) or Article 427(1) of Book 1, respectively, has become final and binding.

Article 19

If a child has acquired a pecuniary claim in accordance with Article 13(3) against his or her surviving parent with respect to the estate of

that first deceased parent and his or her parent has made the declaration of their intention to marry again, the latter shall be obliged, when the child so requests, to transfer to it assets with a value not exceeding such a pecuniary claim, increased by the increment referred to in paragraph (4) of that Article. The transfer shall be made subject to the usufruct of the assets, unless the parent waives this.

Article 20

If a child has acquired a pecuniary claim against his or her surviving parent in accordance with Article 13(3) with respect to the estate of the first deceased parent and the surviving parent was married at the former's death, the step-parent must transfer to the child, when it so requests, assets with a value not exceeding such a pecuniary claim, increased by the increment referred to in paragraph (4) of that Article. If the estate of the surviving parent is not divided in accordance with Article 13, the obligation referred to in the preceding sentence shall be incumbent on the heirs of the surviving parent.

Article 21

If a child has acquired a pecuniary claim against his or her step-parent in accordance with Article 13(3) with respect to the estate of its deceased parent, the step-parent must transfer to the child, when it so requests, assets with a value not exceeding such a pecuniary claim, increased by the increment referred to in paragraph (4) of that Article. The transfer shall be made subject to the usufruct of the assets, unless the step-parent waives this.

Article 22

If a child has acquired a pecuniary claim against his or her step-parent in accordance with Article 13(3) with respect to the estate of its deceased parent and the step-parent has died, the latter's heirs must transfer to the child, when it so requests, assets with a value not exceeding such a pecuniary claim, increased by the increment referred to in paragraph (4) of that Article.

Article 23

1. The provisions of Title 8 of Book 3 apply to the usufruct referred to in Articles 19 and 21, with the proviso that:

- (a) the spouse shall be freed from the obligation to make the annual statement referred to in Article 205(4) and from putting up security as referred to in Article 206(1), while Article 206(2) shall not apply;
 - (b) an authorisation referred to in Article 212(3) may be given also to the extent that the need for support of the spouse or the performance of its obligation in accordance with Article 13(2) so requires.
2. The sub-district court may grant the spouse on grounds of paragraph (1)(b), at his or her request, in full or in part, the right of alienation and of drawing on the capital as referred to in Article 215 of Book 3. The person with a principal entitlement shall be summoned to join in the proceedings. The sub-district court may make further regulations in its order.
3. In derogation from the first sentence of Article 213(1) of Book 3 and of Article 215(1) of Book 3, the person with a principal entitlement shall acquire a claim against the spouse at the time of alienation for the value which the asset had at that time unless he or she otherwise agrees with the spouse. Paragraphs (3) and (4) of Article 13 and paragraph (1) of Article 15 apply *mutatis mutandis* to such a claim, with the proviso that the increment referred to in Article 13(4) shall be calculated as from the time at which the claim arose.
4. Further regulations may be made by the spouse and the person with a principal entitlement or by the sub-district court at the request of either of them at the establishment of the usufruct or thereafter.
5. The spouse may not assign or encumber the usufruct.
6. The usufruct may not be invoked as against creditors who take recourse against assets subject thereto on account of liabilities of the deceased's estate or liabilities of the spouse in respect of which recourse could be taken against the assets of a community of property subject to a netting agreement between the spouse and the deceased. In the case of such a levy of execution Article 282 of Book 3 shall not apply.

Article 24

1. The transfer obligation referred to in Articles 19, 20, 21 and 22 extends to assets which formed part of the estate of the deceased or of the matrimonial community of property that is dissolved as a result of his or her death. In derogation from the first sentence, the transfer obligation referred to in Articles 21 and 22 shall not extend to assets which became part of the matrimonial community of property from the side of the step-parent.

2. The transfer obligation referred to in Articles 19, 20, 21 and 22 also extends to assets which have been substituted for assets referred to in the first sentence of paragraph (1). An asset which is acquired with means less than one half of which derive from the deceased's estate or from the dissolved matrimonial community of property referred to in paragraph (1) shall not form part of the obligation referred to in the first sentence. Where an asset is also acquired with means deriving from a loan, such means shall not be taken into account for the purpose of the second sentence.
3. An asset which belongs to the capital of a person who must make a transfer or which forms part of the matrimonial community of property governing the marriage shall be presumed to have formed part of the deceased's estate or of the dissolved matrimonial community of property referred to in the first sentence of paragraph (1) or to have been substituted for such an asset.

Article 25

1. The value of the assets to be transferred, to be determined as at the time of the transfer, shall first be used to reduce the principal sum due to the child and thereafter to reduce the increment, unless this has otherwise been provided by the deceased or at the transfer. For the purposes of Articles 19 and 21, the value of the assets shall be determined without the usufruct being taken into account.
2. A child who contemplates making an application as referred to in Articles 19, 20, 21 and 22 must timely notify the other children who can make such a request of his or her intention in such good time so that they will also be able to decide to make such a request on time.
3. A person who may be obliged to transfer assets may set a child a reasonable term within which an application as referred to in Articles 19, 20, 21 and 22 may be made. If the person proceeds thereto, he or she shall also so notify the other children who can make such a request.
4. Where there is no agreement between the person who is obliged to make a transfer of assets and the child or between two or more children in respect of the transfer of an asset, then this shall be decided by the sub-district court at the request of any one of them taking into account, in fairness, each one's interest.
5. The right referred to in Articles 19, 20, 21 and 22 shall lapse if and to the extent a child assigns the claim referred to in Article 13(3) to another person.
6. By testamentary disposition the deceased may extend, limit or lift the obligations referred to in Articles 19 to 22, inclusive.

Article 26

1. If a minor child has a right as referred to in Articles 19, 20, 21 and 22 its legal representative must inform the sub-district court in writing of his or her intention with regard to exercising such a right within three months of obtaining such a right. Where a child has no legal representative, this term shall commence from the date of the appointment. The sub-district court shall grant its approval to the intention or withhold it, taking into account, in fairness, the best interests of the child, those of the other children who also have such a right and of the person against whom such a right exists. Conditions may be imposed by the sub-district court to its approval. Where necessary, the sub-district court shall take its own decision.
2. The same shall apply to a child who has attained the age of majority but does not have the right to freely administer its capital. Where a pecuniary claim referred to in Article 13(3) is subject to administration, the right referred to in paragraph (1) shall be exercised in accordance with the rules applicable to the administration concerned. If a child is declared bankrupt, or a debt repayment scheme for natural persons is declared applicable with respect to the child or if it has been granted a suspension of payments, the obligation shall be incumbent on the curator, on the administrator or on the child with the co-operation of the administrator, respectively.
3. If the making of a request mentioned in Articles 19, 20, 21 and 22 has been waived with the approval of the sub-district court, such an application may not still be made thereafter. The sub-district court may provide otherwise when giving its approval.

Article 27

The deceased may provide by testamentary disposition that a step-child shall be involved in the division as referred to in Article 13 as if it were his or her own child. In that case this Section shall apply except to the extent that the deceased has otherwise provided. The descendants of the stepchild shall inherit by right of representation.

Section 2 ***Other Statutory Rights***

Article 28

1. When a dwelling in which the spouse of the deceased is living at the latter's death constitutes part of the deceased's estate or of the

dissolved matrimonial community of property or the deceased had a right to its use otherwise than pursuant to a tenancy, the spouse shall have a right as against the heirs to continue to live there for a period of six months on the same terms as were previously applicable. The spouse may continue to use the household effects in the same manner and for an equal duration to the extent that these form part of the deceased's estate or of the dissolved matrimonial community of property or when the deceased had a right to their use.

2. A person who, until the deceased's death, had a long-term joint household with the deceased shall have corresponding rights as against the heirs and the deceased's spouse, with regard to use of the dwelling and the household effects which form part of the deceased's estate or the dissolved matrimonial community of property.

Article 29

1. To the extent, as a result of any testamentary disposition of the deceased, the deceased's spouse is not or is not solely entitled to the dwelling which forms part of the deceased's estate in which the deceased and the spouse had lived together or where the spouse was living alone at the time of the death or to the household effects which constitute part of the deceased's estate, the heirs must co-operate in establishing a usufruct on behalf of the spouse to that dwelling and those household effects to the extent the latter requires them to do so. The first sentence does not apply to the extent the sub-district court has applied Article 33(2)(a) when it was requested to do so.

2. As long as a spouse may claim application of paragraph (1), the heirs are not empowered to dispose of any of such property nor to let it or to let it by means of an agricultural lease; during that period, a levy of execution of any such assets may be made only for liabilities and obligations mentioned in Article 7(1)(a)-(f), inclusive.

3. Paragraphs (1) and (2) apply *mutatis mutandis* to the legatees and the beneficiaries of a testamentary obligation as regards any property which they acquired as such from the deceased's estate.

Article 30

1. When so required from them, the heirs must co-operate in establishing a usufruct with respect to any other assets of the deceased's estate other than that referred to in Article 29 on behalf of the spouse of the deceased, to the extent, having regard to the circumstances, the spouse needs their co-operation for the spouse's support, which shall

include the performance of any obligations incumbent upon the spouse in accordance with Article 35(2).

2. Paragraph (1) also applies to that which must be considered to have replaced any assets of the deceased's estate. Paragraph (1) shall further apply to a pecuniary claim referred to in Article 13(3), if the deceased by testamentary disposition extended the grounds for exigibility. A usufruct of a pecuniary claim referred to in the second sentence shall always end if the spouse is declared bankrupt or a debt repayment scheme for natural persons is declared applicable with regard to the spouse. In the latter case the usufruct on the claim, to the extent that no settlement was made thereof, shall revive upon termination of the applicable debt repayment scheme for natural persons on the ground of Article 356(2) of the *Faillissementswet* (Insolvency Act). Article 358(1) of the *Faillissementswet* does not apply to the claim.

3. The preceding paragraphs apply *mutatis mutandis* to the legatees and the beneficiaries of a testamentary obligation as regards any assets which they acquired as such from the deceased's estate. Assets as referred to in the first sentence include sums of money acquired pursuant to a bequest or a testamentary obligation and limited rights to assets of the deceased's estate.

4. By testamentary disposition a deceased may designate assets eligible of being encumbered with a usufruct before or after any other assets.

5. To the extent a deceased has not exercised the right conferred by the preceding paragraph, any assets bequeathed or devised and acquired pursuant to a testamentary obligation may be encumbered with a usufruct only if the other assets of the deceased's estate will be insufficient for the support of the spouse. To the extent a bequest must be regarded as having been made in compliance with a moral obligation of the deceased that is not legally enforceable, it shall be capable of encumbrance with a usufruct only after other bequests.

6. To the extent that the spouse and the persons who must give their co-operation in establishing a usufruct cannot reach an agreement on the assets to be encumbered with it, the sub-district court, at the request of any one of them, shall order the designation of such assets or shall itself designate the same, taking into account, in fairness, the interests of each one of them.

7. In determining whether there is a need for support, the entitlement of the spouse shall be reduced by such assets from the deceased's estate as the spouse could have obtained pursuant to inheritance law, except for the usufruct that the spouse could have had established pursuant to the preceding Article. A deduction shall further be made of what the

spouse could have obtained under an capital sum insurance policy which becomes payable on the deceased's death.

Article 31

1. Paragraphs (1), (2), (4) and (5) of Article 23 apply *mutatis mutandis* to a usufruct pursuant to Articles 29 and 30. The right to a usufruct may not be raised as a defence against obligees who take recourse against any assets subject to a usufruct for liabilities and obligations referred to in Article 7(1)(a)-(f), inclusive. No levy of execution shall be permitted, however, if the spouse designates assets of the deceased's estate not encumbered with a usufruct that will provide sufficient recourse.

2. The possibility to claim the establishment of a usufruct shall lapse when the spouse has failed to claim the establishment of a usufruct within a reasonable period, to be set by any interested person in the case of application of Article 29, within six months at the latest, and, in the case of application of Article 30, within one year after the deceased's death.⁹

3. A prescription period of one year and three months from the devolution of the deceased's estate applies to a legal claim pursuant to Articles 29 and 30.

4. Where a deceased has provided by a testamentary disposition that the spouse will not have the right to reserve a usufruct at the transfer of any asset pursuant to Articles 19 and 21, the possibility, in derogation of paragraph (2), of making a claim pursuant to Article 29 or 30 to the establishment of the usufruct on such an asset shall lapse, on expiry of three months from a claim for transfer of the asset having been made. In such a case, the legal claim for the establishment of the usufruct shall be statute-barred upon the expiry of one year and three months from a claim for the transfer of the asset having been made.

Article 32

A spouse may not claim establishment of a usufruct pursuant to Articles 29 and 30, when proceedings for a divorce or a judicial separation between the deceased and the spouse were commenced one year prior to devolution of the deceased's estate and as a result of the deceased's death the divorce or judicial separation could be completed. The first sentence remains inapplicable if the fact that no divorce or

⁹ The Dutch term *belanghebbende* has been translated as *interested person*. However, the Dutch term includes legal persons.

judicial separation could be effected is not principally attributable to the spouse.¹⁰

Article 33

1. At the request of a bare owner the sub-district court may, provided the person with an entitlement has an important interest therein and compared thereto the interest of the spouse would not be detrimentally affected:

- (a) allocate to such a bare owner an asset subject to a usufruct from the deceased's estate, subject or not subject to the burden of the usufruct;
- (b) terminate the usufruct on one or more assets;
- (c) limit the rights of the spouse under the usufruct or disallow the spouse the rights thereto;
- (d) place the usufruct under administration, in the interest of the bare owner.

2. Notwithstanding paragraph (1) and having regard to the circumstances, to the extent a spouse will have no further need for the usufruct for his or her care, including for the performance of the obligations incumbent upon the spouse in accordance with Article 35(2), the sub-district court may:

- (a) lift the obligation to co-operate with the establishment of a usufruct, at the request of a person with an entitlement, or
- (b) terminate the usufruct, at the request of a person with a principal entitlement.

3. The other persons with an entitlement must be summoned to join in the proceedings. The sub-district court may make further provisions in its order.

4. At any time a person with an entitlement may raise at law the ground for lifting the obligation mentioned in paragraph (2) as a defence against a claim or other legal measure directed at the performance of an obligation to co-operate with the establishment of a usufruct.

5. When applying paragraph (2) the sub-district court must always take into account:

- (a) the age of the spouse;
- (b) the composition of the household of which the spouse is a member;

¹⁰ In this Article the word "divorce" would be replaced by "separation" if a Bill before Parliament is passed, *Parliamentary Documentation, Second Chamber, 2004-2005, 29 676, N° 5*.

- (c) the spouse's possibilities to provide for his or her own care by means of work, a pension, own capital or other means or provisions;
- (d) whatever, in the given circumstances, may be considered a fitting level of support for the spouse.

Article 34

1. To the extent that the deceased's estate is not sufficient to cover the spouse's entitlement pursuant to Articles 29 and 30, the spouse may proceed to a proportionate abatement of any gifts capable thereof, with corresponding application of Article 89(2) and (3), and Article 90(1) and (3). Articles 66, 68 and 69 apply *mutatis mutandis*. A spouse may also have recourse to what a forced heir has acquired as a result of proportionate abatement when a spouse does not obtain his or her entitlement by virtue of such a proportionate abatement.
2. By exercising the rights referred to in paragraph (1) a spouse will acquire the usufruct of the pecuniary sum for which the proportionate abatement was made or for which the spouse has had recourse. Paragraphs (1), (2), (4) and (5) of Article 23 apply *mutatis mutandis* to the usufruct.
3. Where necessary, the usufruct of a spouse may extend to all assets of the deceased's estate and all pecuniary sums in respect of which proportionate abatement of the gifts referred to in paragraph (1) is possible.
4. The sub-district court, at the request of the party taking the initiative on such a procedure, shall decide any disputes with regard to the application of the present Article and Articles 35 to 37, inclusive.

Article 35

1. A child of a deceased, including a child referred to in Article 394 of Book 1, may claim a lump sum, to the extent that this is required:
 - (a) for the child's care and upbringing until the child has attained the age of eighteen; and furthermore:
 - (b) for his or her maintenance and education until the child has turned twenty-one.
2. A child shall not be entitled to such a sum for his or her care and upbringing to the extent that the spouse or an heir of the deceased is legally or contractually obliged to provide for the cost thereof. A child shall not be entitled to the sum on account of maintenance and education to the extent that the spouse of the deceased must provide for the cost thereof pursuant to Article 395a of Book 1.

3. Whatever a person with an entitlement could have received from the deceased pursuant to a bequest or a capital sum insurance policy of the deceased shall be deducted from the lump sum.

Article 36

1. A child, a step-child, a foster-child, child-in-law or grandchild of the deceased who, having attained the age of majority, performed work in the deceased's household or in the conduct of the deceased's profession or business without having received a fitting remuneration for such work, may claim a lump sum constituting fair compensation.
2. Whatever the person with such an entitlement has or could have received from the deceased pursuant to a bequest or capital sum insurance policy of the deceased shall be deducted from such a sum, to the extent that this may be regarded as remuneration for such a person's activities.

Article 37

1. A person who, pursuant to Articles 35 and 36, may make a claim for a lump sum has a claim against the joint heirs. The possibility to claim a lump sum shall lapse if the person with an entitlement does not express the wish to receive the lump sum within a reasonable term set by an interested person and, in any case, within nine months from the death of the deceased at the latest.
2. The claim will not become exigible until the expiry of six months from the death of the deceased.
3. A prescription of one year from the death of the deceased shall apply to the legal claim. If that deceased leaves a spouse, this term shall be extended to one year from the death of such a spouse, in the case of a lump sum claimed pursuant to Article 36.
4. The lump sums shall not exceed, in the aggregate, one-half of the value of the deceased's estate; to the extent necessary, they shall be subject to proportionate reduction. The 'value of the deceased's estate' in this Article shall mean the value of the assets of the deceased's estate after deduction of the liabilities and obligations mentioned in Article 7(1)(a)-(e), inclusive.
5. Settlement of the lump sums shall be made out of such a part of the deceased's estate as was not disposed of by testamentary disposition, and subsequently, when it is insufficient, out of the bequests; the second sentence of Article 87(2) applies *mutatis mutandis* to an abatement.

Article 38

1. On the application of a child or step-child of the deceased, provided the child or step-child has an important interest therein and, compared therewith, this will not be to the serious detriment of any person with an entitlement, the sub-district court may order the person with an entitlement to transfer to the child or step-child or to the deceased's spouse, at a reasonable price, assets belonging to the deceased's estate or the dissolved matrimonial community of property used in the conduct of a profession or business by the deceased, when the child or step-child or the deceased's spouse will continue the same. The sub-district court may make further provisions in its order.
2. The preceding paragraph applies *mutatis mutandis* with respect to shares in a company limited by shares or a private company with limited liability of which the deceased was a director and in which the deceased, alone or together with his or her co-directors, held a majority of the shares, if, at the time of death, the child or step-child or the deceased's spouse was a director of such a company or thereafter continues the position of the deceased.
3. The preceding paragraph shall apply only to the extent this is not barred by the provisions in the articles of association on the transfer of shares.
4. The right to make an application referred to in paragraphs (1) and (2) shall lapse on the expiry of one year from the death of the deceased.
5. Paragraphs (1) to (4), inclusive, apply *mutatis mutandis* where a spouse of the deceased continues the profession or business conducted by the deceased, also in the case where the spouse has obtained or may obtain the usufruct of the assets involved pursuant to this Section.

Article 39

A person who, while not being an heir, has a right referred to in Articles 29 to 33, inclusive, 35, 36 and 38 will have the same rights as those conferred on a forced heir by Article 78.

Article 40

Where Section 2 or 3 of Title 18 of Book 1 is applied as regards the deceased, the periods mentioned in paragraph (1) of Article 28, Article 31(2) and (3), the second sentence of paragraph (1), the first sentence of paragraph (2) and the first sentence of paragraph (3) of Article 37, and Article 38 (4) shall commence on the date on which the order referred to

in Article 417(1) or Article 427(1), respectively, of Book 1, has become final and binding.

Article 41

There may be no derogation from the provisions in this Section by testamentary disposition.

TITLE 4 LAST WILLS

Section 1 *Testamentary Dispositions in General*

Article 42

1. A testamentary disposition is a unilateral legal act whereby a deceased makes a disposition which will become operative only upon his or her death and which is regulated in this Book or is so considered by law.
2. A deceased can unilaterally revoke a testamentary disposition at any time.
3. A testamentary disposition may only be made by last will and may only be made and revoked personally by the deceased.

Article 43

1. A testamentary disposition may not be nullified on the ground that it was effected by an abuse of circumstances.
2. A testamentary disposition made as a result of undue influence may only then be nullified when there is an indication in the last will itself of the circumstance which the deceased had incorrectly presumed and which prompted him or her to make the disposition and when the deceased would not have made the disposition if he or she would have been aware of the incorrectness of such a presumption.
3. A testamentary disposition may not be nullified on grounds of a threat, deceit or incorrect motives when the deceased has confirmed it after the influence of the threat had ceased or the deceit or incorrectness of the motive had been discovered.

Article 44

1. A testamentary disposition whose contents are contrary to *bonos mores* or public policy shall be null and void.
2. A testamentary disposition shall also be null and void when a motive stated in the last will which is contrary to *bonos mores* or public policy was decisive for it.

Article 45

1. A condition or testamentary obligation which is impossible to fulfil or is contrary to *bonos mores*, public policy or a mandatory statutory provision shall be deemed not to have been written. A disposition subject to the condition or burden shall be null and void, if this was its decisive motive for such a disposition.
2. A condition or burden which has as its necessary implication the exclusion of the right to alienate or encumber assets shall be deemed not to have been written.

Article 46

1. In interpreting the meaning of a testamentary disposition, attention shall be given to the relationships for which the last will manifestly intended to provide and to the circumstances under which the last will was made.
2. Acts or statements of the deceased outside the last will may only be used for the interpretation of the meaning of a disposition if it would clearly not make sense without such acts or statements.
3. When a deceased obviously made a mistake in the indication of a person or asset, the disposition shall be executed in accordance with the deceased's intention if such an intention can be unambiguously determined with the aid of the last will or with other information.

Article 47

When execution of a disposition, otherwise than as a result of a fact which occurred after the death of the deceased, shall remain permanently impossible, the disposition shall lapse without it being substituted by another disposition, unless the law provides for the contrary or it may be deduced from the last will itself that the deceased would have made such another decision if and when aware of the impossibility.

Article 48

When according to the same last will two or more persons become heirs, whether or not for determinate shares, and the disposition does not have effect with regard to an heir under the will, then accretion shall take place in favour of the other heirs *pro rata* to the shares to which they are entitled unless the contrary may be deduced from the last will itself.

Article 49

1. A bequest made of a determinate asset which is due by an heir or of a right to be established to a determinate asset shall lapse, if the asset does not belong to the deceased's estate on its devolvement unless it may be deduced from the last will itself that the deceased nevertheless wished such a disposition.
2. Where, in the latter case, the person on whom the obligation is incumbent is not able or only at the cost of a disproportionately large sacrifice to acquire the bequeathed asset, such persons shall be obliged to distribute the value of the asset.
3. For the purposes of paragraph (1) an asset will be deemed not to belong to the deceased's estate if the deceased was obliged to transfer the asset and such an obligation was not extinguished by his or her death.

Article 50

1. Delivery of a bequeathed asset shall be made in the condition in which it is at the time of death of the deceased, unless the deceased made another disposition.
2. Therefore an heir shall not be obliged to discharge the bequeathed asset from any limited right established thereon.
3. Where a bequest is made of a claim of the deceased against an heir, a limited right of the deceased to an asset of an heir, or of an asset of the deceased on which a limited right of an heir is established, there shall be no merger unless the bequest is renounced.

Article 51

1. When a spouse has charged the joint heirs to execute a bequest of a determinate asset from the matrimonial community of property, the legatee may claim delivery from them of the entire asset. However, they need only distribute the value of the asset to the extent that the asset is allotted to the other spouse or his or her heirs at the division of the matrimonial community of property. Such a right shall also vest in the other spouse who is a sole heir and in his or her heirs.
2. The preceding paragraph shall only apply if the matrimonial community of property was not yet dissolved at the time when the disposition was made.

Article 52

A disposition made in favour of the person with whom the deceased was married at the time of making the last will or with whom an engagement to marry had already been made shall lapse by the divorce or judicial separation that took effect thereafter unless the contrary may be deduced from the last will itself.

Article 53

A testamentary disposition in favour of the closest blood relatives or the closest next-of-kin of the deceased without any further indication is presumed to have been made in favour of the deceased's blood relatives who will be heirs according to the law proportionate to each one's intestate share.

Article 54

1. A prescription of one year shall apply to legal claims for nullification after the deceased's death and after the testamentary disposition and after the ground for nullification have become known by the person who may raise this ground as a defence or by his or her predecessor in title.
2. The right to raise a ground as a defence for the purposes of nullification of a testamentary disposition shall lapse, aside from the case referred to in Article 51 (3) of Book 3, three years at the latest after the deceased's death and after the testamentary disposition has become known by the person who may raise this ground as a defence or by his or her predecessor in title.

Section 2

Those Entitled to Make Testamentary Dispositions and Those Entitled to Enjoy a Benefit Therefrom

Article 55

1. Apart from persons with legal capacity, testamentary dispositions may also be made by minors who have attained the age of sixteen as well as by persons over whom a guardian has been appointed on a ground other than on account of a mental disorder.
2. The person over whom a guardian has been appointed on account of a mental disorder may only make testamentary dispositions with the

consent of the sub-district court. Conditions may be attached by the sub-district court to its consent.

3. The capacity of the deceased shall be considered according to his or her actual legal status at the time when the disposition was made.

Article 56

1. In order to derive a right from a testamentary disposition one must be alive or exist at the time the estate devolves. Rights from a testamentary disposition in favour of a legal person which has ceased to exist prior to that time as a result of a merger or division, shall accrue to the transferee legal person or, as the case may be, the transferee legal person so provided in the description appended to the instrument of division. Article 334s of Book 2 applies *mutatis mutandis*, if, on the basis of the description appended to the instrument of division, it is not possible to determine which legal person takes the place and accedes to the rights of the divided legal person.

2. If a deceased has provided that what he or she leaves to a descendant of the deceased's parent shall accrue *per stirpes*, on the death of the person with an entitlement or at an earlier moment, to the latter's then living descendants, then a right from the testamentary disposition shall vest in them even if they were not yet alive at the deceased's death.

3. Where a deceased has provided that what he or she leaves to somebody shall accrue on the death of the person with an entitlement or at an earlier moment to a descendant of the deceased's parent, and also, if such a descendant will not survive such a time, that the latter's then existing descendants shall be substituted for him or her *per stirpes*, then such a right shall vest in them even if they were not yet alive at the deceased's death.

4. If a deceased has provided that the capital remaining at the time of the deceased's death without a withdrawal from capital having then been made by the person with an entitlement or having been made earlier shall accrue to a then living blood relative of the deceased in the hereditary degree, the latter shall acquire this right even if he or she was not alive at the deceased's death.

Article 57

1. A deceased may not make a testamentary disposition in favour of a person who is his or her guardian at the time when the disposition is made.

2. A person who has been the guardian of the deceased may not enjoy any benefit from the latter's testamentary dispositions, if the deceased has died within the year after attaining the age of majority and prior to the lodging and closing of the accounts of the guardianship.
3. The provisions in the preceding paragraphs shall not apply to blood relatives of the deceased in the ascending line who are or have been his or her guardians.

Article 58

Minors may make no testamentary disposition in favour of their teachers with whom they live together.

Article 59

1. Professionals in the field of individual healthcare who have provided assistance to a person during the illness from which he or she died and the mental carers who have assisted such a person during such an illness may not reap a benefit from the testamentary dispositions made to their benefit by such a person during the treatment or assistance.
2. A person who commercially exploits an institution for the care or nursing of aged or mentally disturbed persons or who acts as management thereof or is working at such an institution may not reap any benefit from the testamentary dispositions made to their benefit by such a person during a stay at such an institution.

Article 60

There shall be an exception from the two preceding Articles in respect of:

- (a) dispositions made by way of a bequest for the purpose of compensating services rendered, however with due observance of both the solvency of the maker and of the services rendered to him or her;
- (b) dispositions in favour of a person who is a relative by blood or marriage to the fourth degree or of the spouse of the deceased.¹¹

¹¹ 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.

Article 61

The notary or other person who has executed a last will or an instrument for safekeeping of an open secret last will and witnesses present thereby may not be benefited by such a last will.

Article 62

1. A last will that is in breach of the provisions of Articles 57-61, may be nullified. Nullification shall only take place to the extent necessary to remove the prejudice of the person who invokes the ground for nullification.
2. A disposition on behalf of a person serving as an intermediary may equally be nullified as one made on behalf of the excluded person.
3. The father, mother, descendants and the spouse of an excluded person shall be considered an intermediary except when they are a blood relative in the direct line or the spouse of the deceased.
4. Article 54 of Book 3 applies *mutatis mutandis* if a legatee is obliged to perform a counter-obligation in connection with a bequest which is subject to nullification pursuant to the preceding paragraphs.

Section 3
Share of a Forced Heir

§1. General Provisions

Article 63

1. The forced share to which a forced heir is entitled shall be the part of the value of the deceased's estate which the forced heir may claim despite any gifts and testamentary dispositions made by the deceased.
2. Forced heirs are such descendants of the deceased as the law designates as intestate heirs to the deceased's estate, either based on their own right or by a right of representation with regard to persons who are no longer alive or are unworthy at the time of devolvement of the deceased's estate.
3. A forced heir who renounces the deceased's estate forfeits the right to a share of a forced heir except when he or she also states to wish to receive a forced heir's share when making the declaration referred to in Article 191.

Article 64

1. The forced share of a child of the deceased amounts to one half of the value over which the shares of forced heirs are calculated divided by the number of persons left behind by the deceased as mentioned in Article 10(1)(a).
2. Descendants of a child of the deceased who is no longer alive at the time when the deceased's estate devolves shall, for the purposes of paragraph (1), be jointly counted as one child left by the deceased. Descendants of a child of the deceased who are forced heirs may each only make a claim for their share.

§2. The Extent of the Share of a Forced Heir

Article 65

The shares of forced heirs shall be calculated according to the value of the assets of the deceased's estate, as increased by the gifts to be taken into consideration for the purpose of such calculation and reduced by the liabilities mentioned in Article 7(1)(a) to (c), inclusive, and (f). Gifts from which liabilities and obligations as referred to in Article 7(1)(i) have arisen shall remain outside the scope of this provision.

Article 66

1. For the purposes of this Section gifts shall be valued as at the time of the performance of the obligation except for the provisions made in the following paragraphs. A possibility that the deceased could have revoked the gift shall not be taken into account.
2. Gifts whereby the deceased reserved the right during his or her lifetime to enjoy what was given and other gifts of a benefit destined to be fully enjoyed only after his or her death shall be estimated at their value immediately after his or her death. The same shall apply to gifts consisting of an agreement to perform an obligation not yet performed by the deceased at the time of his or her death provided that such gifts as well as the obligations left on account thereof shall not be taken into account to the extent that the deceased's estate is insufficient. A gift consisting of the designation as a person with an entitlement under an capital sum insurance policy shall be taken into consideration up to its value in accordance with Article 188(2) and (3) of Book 7.
3. Gifts consisting of the alienation of an asset by the deceased against the provision by the other party of a right connected to the life of the deceased shall be valued as a gift of such an asset, as reduced by the

value of the performance of the obligation received or still due by the deceased at the time of his or her death, to the extent that these did not consist of enjoyment of such an asset.

Article 67

At the calculation of the shares of forced heirs the following gifts made by the deceased shall be taken into account:

- (a) gifts manifestly made and accepted with the prospect that these would be to the detriment of forced heirs;
- (b) gifts which the deceased could have revoked during his or her lifetime at any time or which the deceased declared when making the gift that these would qualify for abatement;
- (c) gifts of a benefit destined to be fully enjoyed only after the death of the deceased;
- (d) gifts by the deceased made to a descendant provided the latter or a descendant of the latter is a forced heir of the deceased;
- (e) other gifts to the extent the performance of the obligation was made within five years prior to the death of the deceased.

Article 68

Gifts of the deceased to his or her spouse shall not be taken into account when applying this Section to the extent that there was no enrichment to the debit of the capital of the donor as a result of a community of property in which the deceased and the spouse were married or as a result of a netting agreement between them, at the time of the gift.

Article 69

1. For the purposes of this Section the following shall not be considered as gifts:
 - (a) gifts to persons to whose support the deceased was morally obliged to contribute during his or her life or after his or her death to the extent that these could be considered to have arisen from such an obligation and were in conformity with the income and capital of the deceased;
 - (b) customary gifts to the extent these were not excessive.
2. Paragraph (1) does not apply to gifts referred to in Article 7(1)(i).

Article 70

1. The value of gifts made by the deceased to a forced heir shall be deducted from the latter's share as a forced heir.
2. For the purpose of the preceding paragraph gifts to a descendant who would have been a forced heir if he or she had survived the deceased or would not have been unworthy, shall be considered as gifts to the forced heirs who are his or her descendants *pro rata* to their share as forced heir.
3. What a forced heir acquires or may acquire from an capital sum insurance policy, which is not a pension insurance which the deceased had contracted in order to comply with a natural obligation and which becomes payable on the death of the deceased, shall be equated with a gift.

Article 71

The value of whatever is acquired by a forced heir pursuant to the law of inheritance shall be deducted from his or her share as a forced heir.

Article 72

The value of what a forced heir can acquire as an heir shall also be deducted from the share as a forced heir when he or she renounces the deceased's estate, unless

- (a) the assets were left to him or her subject to a condition, a testamentary obligation or subject to administration, or
- (b) bequests were made to be settled by and for the account of the forced heir which will result in an obligation other than the payment of a pecuniary sum or the transfer of assets of the deceased's estate, and the renunciation takes place within three months after the deceased's death.

Article 73

1. The value of a bequest to a forced heir of a determinate pecuniary sum or of assets of the deceased's estate not consisting of a right of claim shall also be deducted from the forced share when the forced heir renounces the bequest, unless
 - (a) the bequest was made subject to a condition, a testamentary obligation or subject to administration, or

- (b) sub-bequests were made which would have to be settled by and for the account of the forced heir and would oblige something other than the payment of a pecuniary sum, or
 - (c) payment of the bequest will be due more than six months after the death of the deceased or, if the forced heir is a co-heir, only after the division of the deceased's estate, or
 - (d) the bequest would have to be settled by and for the account of one or more heirs whose share in the inheritance will be insufficient for settling the bequest therefrom and the renunciation takes place within three months after the deceased's death.
2. Where the deceased has provided that a forced heir shall not have the right referred to in Article 125(2), then the latter may renounce the bequest within three months after the death of the deceased without deduction of its value from his or her forced share.

Article 74

1. The cash value of a bequest of a pecuniary sum payable in instalments to a forced heir shall also in the case of renunciation be deducted from the forced share, if the last will provides that without such a disposition it would make it difficult to continue a profession or business of the deceased to a serious extent. An undertaking conducted by a company limited by shares or a private limited liability company of which the deceased was a director and in which the deceased, alone or jointly with the co-directors, held a majority of the shares shall be equated to a profession or business of the deceased.
2. A forced heir may, within three months after the death of the deceased, declare to demand payment of the cash value in a lump sum, if the ground stated is incorrect. The burden of proof rests with a person who maintains that the ground is correct. Where the stated ground is correct but allows payment to be made earlier in instalments, then the court may alter the obligation arising from the bequest in such a manner.
3. If a forced heir so requests within three months after the death of the deceased, the sub-district court may order the persons burdened with the bequest to put up security. The sub-district court shall set the amount and type of the security. Where this is not complied with, within the term set by the sub-district court for this purpose, the bequest shall not be deducted from the forced share if the forced heir then still renounces the bequest.

Article 75

1. The value of what a forced heir can obtain, subject to administration, pursuant to a right of inheritance, shall be deducted from his or her forced share, also in the case of renunciation if the administration was instituted on the ground stated in the last will:

- (a) that the forced heir is unfit or unable to provide for its management, or
- (b) that without such administration the assets would principally benefit the forced heir's creditors.

2. A forced heir who has accepted the deceased's estate or bequest has the right within three months after the death of the deceased, to contest the correctness of the stated ground, whereby the burden of proof rests with the person who maintains it. If the stated ground is correct but does not justify the rules set by the deceased for the administration, the court may alter such rules or even partially set these aside.

3. The forced heir may notify the administrator in writing, if the ground stated is incorrect, within one month after the decision establishing the incorrectness has become final and binding, that he or she wishes to receive payment of the forced share in money. The administrator shall for that purpose and to the extent necessary convert into cash everything which is subject to administration with corresponding application of Article 147 and distribute the balance of the assets to the persons who would have been entitled thereto if the forced heir had renounced the deceased's estate or the bequest.

4. Paragraphs (2) and (3) apply *mutatis mutandis* in respect of assets subject to administration, the value of which must be deducted pursuant to Article 70 from the forced share when the instrument instituting the administration states a ground as referred to in paragraph (1). Where the instrument does not state a ground as referred to in paragraph (1), the forced heir has a claim to receive the forced share in money in the manner provided in paragraph (3), provided the declaration referred to in that paragraph must be made within three months after the death of the deceased.

5. At the establishment of the value attributable to the forced share the administration shall be taken into account only if the stated ground has been declared incorrect without the forced heir having exercised the right conferred on him or her by the first sentence of paragraph (3).

Article 76

At the establishment of the value of whatever needs to be deducted from the forced share in accordance with Articles 70 to 75, inclusive, no

account shall be taken of the usufruct to which it may be subject pursuant to Section 1 or 2 of Title 3.

Article 77

The sub-district court may extend the terms referred to in Articles 72, the last part of the sentence of 73(1), and (2), 74(2) and (3) and 75(2) and (4), once or more on account of special circumstances even in the case a term has already lapsed.

Article 78

1. A forced heir who is not an heir is entitled to demand from the heirs and the personal representatives charged with the administration of the deceased's estate to be given the right to inspect and to obtain a true copy of all documents and records required for calculating his or her forced share. When so required they shall provide the forced heir with all information pertaining thereto.
2. At the request of a forced heir the sub-district court may procure that one or more heirs and personal representatives charged with the administration of the deceased's estate be summoned to appear for the purpose of affirming under oath, in the presence of the petitioner, that the description of the inventory is true and fair.

§3. Exercising the Right to the Share of a Forced Heir

Article 79

In respect of his or her forced share the forced heir may acquire a claim:

- (a) against the joint heirs or the spouse of the deceased, by exercising a claim thereto in accordance with Article 80(1) or
- (b) against a donee, by abatement as referred to in Article 89.

Article 80

1. A forced heir exercising a claim thereto shall have a pecuniary claim with respect to his or her entitlement to a forced share subject to the provisions in Articles 70 to 76, inclusive, against the joint heirs or, when the deceased's estate is divided in accordance with Article 13, against the spouse left behind by the deceased as his or her heir.
2. The heirs and, after a division in accordance with Article 13 the spouse, shall not be obliged to settle the claims to the extent these exceed, in the aggregate, the value of the deceased's estate; to the extent

necessary, the claims shall each be reduced *pro rata*. The 'value of the deceased's estate' shall here be considered to be the value of the assets of the deceased's estate less the liabilities and obligations mentioned in Article 7(1)(a), (b), (c) and (f).

Article 81

1. The claim shall not be exigible before six months have lapsed since the death of the deceased.
2. To the extent necessary in derogation from paragraph (1), the claim shall be exigible, if the deceased's estate has been divided in accordance with Article 13, if:
 - (a) the spouse has been declared bankrupt or a debt repayment scheme for natural persons has been declared applicable in the spouse's respect;
 - (b) the spouse has died.

To the extent the claim shall be settled for the account of a bequest to a person other than the spouse, the first sentence shall not result in the exigibility at a later date than that which will arise from paragraph (1).

3. The claim shall not be exigible so long as the assets of the deceased's estate may be charged with a usufruct pursuant to Article 29 or Article 30. For the purpose of the first sentence, the first sentence of Article 31(4) shall not be taken into consideration.
4. As long as a usufruct exists pursuant to Article 29 or Article 30 the claim shall not be exigible to the extent there is a commitment for the spouse in respect thereof. In the case of the bankruptcy of the spouse or should a debt repayment scheme for natural persons have been declared applicable in the spouse's respect, the claim shall become exigible to the extent that the spouse is committed thereto.
5. To the extent there is a commitment in respect of the claim by persons other than the spouse and as long as a usufruct exists pursuant to Article 29 or Article 30, a demand for payment may be made from each of such other persons only for the part of the claim corresponding with the part of his or her share in the assets of the deceased's estate which have not been charged with a usufruct.
6. Where a claim referred to in Article 80(1) has become exigible as a result of a debt repayment scheme for natural persons having been declared applicable in respect of the spouse, then such a claim, to the extent that it remained unsettled, shall not become exigible again by termination of the application of the debt repayment scheme for natural persons on the basis of Article 356(2) of the *Faillissementswet* (Insolvency Act). Article 358(1) of the *Faillissementswet* shall not apply as regards the claim.

Article 82

A deceased may make a testamentary disposition for the benefit of his or her spouse, where they are not judicially separated, subject to the condition that the claim of a forced heir, to the extent that it would be payable by the spouse, will only become exigible after the spouse's death. A testamentary disposition for the benefit of another life-companion, if the latter has a joint household with the deceased and a cohabitation agreement was entered into by a notarial instrument, may be made subject *mutatis mutandis* to a condition as referred to in the preceding sentence.

Article 83

The deceased may provide by a testamentary disposition that the exigibility of the claim of the forced heir, to the extent that this would be settled for the account of the spouse or the other life-companion referred to the second sentence of Article 82, shall also be dependent on circumstances other than those mentioned in Articles 81 (2) and 82.

Article 84

The claims shall be increased by a percentage corresponding to the legal interest,¹² which, to the extent that it exceeds six percent, shall be calculated on an annual basis from the date on which a claim to the forced share was made. For the purposes of this calculation only the principal sum shall be taken into account each time.

Article 85

1. The possibility to make a claim to the forced share shall lapse if, within a reasonable term set by any interested person and no later than five years after the death of the deceased, the forced heir has not declared a desire to receive the forced share.
2. If within nine months after the death of the deceased it has not been established to what extent the spouse will claim the establishment of a usufruct pursuant to Article 30, the part of the claim that would be settled for the account of the spouse shall lapse unless within such a term the forced heir has declared to the spouse a desire to receive the forced share. Article 77 applies *mutatis mutandis* to this term.

¹² The legal rate of interest, as from the 1st February 2004, is 5% per annum.

Article 86

If Section 2 or 3 of Title 18 of Book 1 is applied as regards the deceased, the terms mentioned in paragraph (1) of Article 81 and paragraphs (1) and (2) of Article 85 shall commence from the date on which the order referred to in Article 417(1) or Article 427(1), respectively, of Book 1 have become final and binding.

Article 87

1. The settlement of the debts to the forced heirs shall first be charged against the share of the deceased's estate which the deceased did not dispose of by leaving shares in the estate or bequests. Where a descendant inherits from a disinherited forced heir by way of representation, then abatement shall first be made of the share in the estate to which the descendant is entitled unless something different arises out of the last will.
2. If abatement in accordance with paragraph (1) will be insufficient, the testamentary disposition shall be abated. Unless something different arises out of the last will, the value of all inherited shares and bequests shall be equally taken into account for *pro rata* abatement to their value provided that, to the extent a testamentary disposition is to be regarded as having been made to comply with a moral obligation of the deceased, it shall be taken into account only for abatement after the other testamentary dispositions.
3. To the extent that the share in the deceased's estate to which a forced heir is entitled does not exceed his or her forced share, it shall be abated only at last instance, in derogation from paragraphs (1) and (2). The abatement of such a part shall then be made after deduction of the claim for which abatement is made in such a manner that both forced heirs will receive the same *pro rata* part of their forced shares.
4. Abatement of a bequest shall be made by a declaration to the legatee which shall be made by the heirs charged with the bequest or by the spouse of the deceased, if the deceased's estate has been divided in accordance with Article 13. The second sentence of Article 120(4) applies *mutatis mutandis*.
5. To the extent that a debt to a forced heir is payable out of the share in the deceased's estate inherited by the spouse or other life-companion of the deceased and its settlement may be demanded only at a date to be determined by application of Article 81(2), 82 or 83, the spouse or other life-companion shall be liable in respect thereof with his or her entire capital even if he or she had accepted the deceased's estate beneficially.

6. To the extent that a debt to a forced heir shall be settled for the account of a bequest made to the spouse or other life-companion which is subject to a condition as referred to in Article 82 or 83, it shall become incumbent on the spouse or other life-companion, subject to the said condition, by settlement of the bequest and a declaration in accordance with paragraph (4).
7. For the purpose of this Article a burden which gives rise to a pecuniary expenditure or the giving in payment of an asset from the deceased's estate shall be equated to a bequest.

Article 88

To the extent that a claim of the forced heir pursuant to Article 81 (2) or a condition as referred to in Article 82 is not exigible, the spouse or other life-companion referred to in Article 82 must settle, on the latter's behalf, the tax levied on account of the acquisition or his or her claim, when the forced heir so requests. The claim of the forced heir shall be reduced by the amount settled for the forced heir pursuant to the first sentence.

Article 89

1. A forced heir may abate the gifts capable of abatement to the extent that these would impinge upon the share of the forced heir should that which be available on the ground of his or her claim referred to in Article 80(1) be insufficient to provide for his or her forced share. At the determination of the claim referred to in the first sentence, any possible reduction pursuant to Articles 80(2) and 87(3) shall be taken into account. The increment referred to in Article 84 and such part of the claim as has lapsed pursuant to Article 85(2) shall be disregarded.
2. Abatement may be made of gifts referred to in Article 67.
3. A gift shall be taken into account for abatement only to the extent that the forced heir cannot obtain his or her forced share by abatement against more recent gifts. For this purpose gifts of a benefit destined only to be fully enjoyed after the death of the deceased shall be considered to be gifts made at the moment of his or her death.

Article 90

1. Abatement of a gift shall be made by a declaration to the donee, who must compensate the forced heir for the value of the abated part of the gift to the extent that this is not unreasonable having regard to all of the circumstances.

2. A gift may not be abated to the extent that this will result in reduction of the forced share of a fellow forced heir.
3. A forced heir's right to abatement of a gift shall lapse on expiry of a reasonable term set for the forced heir by the donee for such a purpose, but no later than five years after the death of the deceased.

Article 91

1. If the deceased has made testamentary dispositions or gifts to a step-child, no abatement of such dispositions and gifts shall be made, in derogation from Articles 80 to 89, inclusive, except to the extent that the value would exceed twice what the forced share of a child of the deceased would have amounted to if the step-children which the deceased had so benefited had been his or her own children. The value referred to in the first sentence shall be increased in such cases by the value of what would have been equated to a gift in accordance with Article 70 (3).
2. A reduction shall be made to the extent that no abatement in conformity with Article 87 for the claim of the forced heir referred to in Article 80 can be made in connection with paragraph (1).
3. A gift to a step-child or by testamentary disposition by the deceased may provide that paragraph (1) shall remain inapplicable in full or in part.

Article 92

1. The rights of a forced heir shall vest on his or her death in the persons entitled to his or her estate.
2. The rights of a forced heir may be exercised by the curator of the bankruptcy or the administrator of the debt repayment scheme, respectively, in the case of bankruptcy of a forced heir or where a debt repayment scheme for natural persons has been declared applicable in his or her respect.
3. The rights of a forced heir may be assigned only together with his or her inherited share.

Section 4 ***Form of Last Wills***

Article 93

A last will made by two or more persons by the same instrument shall be null and void.

Article 94

Except for the provisions in Articles 97-107, a last will may be made only by a notarial instrument or by a holograph instrument given to a notary for safekeeping.

Article 95

1. A last will in holograph form made by a person who, as a result of ignorance or other causes, has not been in a position to read the last will shall not be valid.
2. A last will made in holograph form must be signed by the deceased. Where the last will is written by a person other than the deceased or by mechanical means, and if the will consists of more than one page, each page must be numbered and certified with the signature of the deceased.
3. A last will in holograph form shall be handed to a notary by the deceased. The deceased must thereby declare that the presented document contains his or her last will and that the requirements of the preceding paragraph were complied with. If the document is presented in a closed form, the deceased may also declare when it is presented that the document may be opened only if determinate conditions mentioned by him or her have been fulfilled upon the date of his or her death.
4. The notary shall draw up an instrument for safe-keeping and declarations of the deceased, which shall be signed by the deceased and the notary.
5. When the deceased declares to be prevented from signing the instrument of safe-keeping due to a specific cause mentioned by him or her, which arose after the signing of the last will, such a declaration shall replace his or her signing of the instrument of safe-keeping, provided it is included therein.
6. The last will in holograph form shall remain with the minutes of the notary who has received such an instrument.

Article 96

A person who contests the validity of a last will given in safe-keeping on the ground that the deceased did not sign or write the will by his or her own hand or did not certify the pages himself or herself which the will comprises, shall have the burden of proof.

Article 97

Dispositions may be made by a holograph document written in its entirety by the deceased by hand, which is dated and signed, without further formalities, for:

- (a) making bequests of:
 - (1) clothing, items of personal property and determinate personal jewellery;
 - (2) determinate things belonging to the household effects and determinate books;
- (b) a provision that assets referred to in subparagraph (a) shall remain outside a matrimonial community of property;
- (c) the designation of a person referred to in Article 25(2) and (4) of the *Auteurswet* 1912 (Copyright Act 1912) and Article 5(2) of the *Wet op de naburige rechten* (Neighbouring Rights Act).

Article 98

1. In the case of war or civil war persons serving in the military forces and other persons belonging to the armed forces may make a last will before an officer of the armed forces.
2. Also otherwise than in the case of war or civil war, a last will may be made in this manner by persons serving in the military forces and other persons who belong to a part of the armed forces which has been designated:
 - (a) for participation in a military expedition;
 - (b) to combat an enemy force;
 - (c) for preserving the neutrality of the State;
 - (d) for any action either in self-defence on a collective or individual basis or for the maintenance or restoration of international order and safety; or
 - (e) for compliance with an order of the competent authority in the case of riots and civil commotion.
3. In the case of prisoners of war a subaltern may also act in the place of an officer.
4. Officers and their subalterns may render their co-operation only if the deceased cannot turn to a competent notary or consular officer. Non-observance of this provision will not impair the validity of the last will.

Article 99

*Repealed.*¹³

Article 100¹⁴

1. The possibility mentioned in Article 98(1) shall continue to exist until the Sovereign has determined that, for the purposes of this provision, the war or civil war must be considered to have ended.
2. The possibility mentioned in Article 98(2) shall continue to exist until an announcement is made in the manner to be specified by Regulation that the designation has ended.

Article 101

Persons who are on a voyage on board a seagoing vessel or aircraft may make a last will before the captain or first officer or, in the absence of such persons, before the person who takes their place.

Article 102

In places where the deceased is prohibited from having normal contact with a notary or competent consular officer or such contact is disrupted as a result of disasters, acts of battle, contagious diseases or other extraordinary circumstances, the deceased may make a last will before a Dutch consular officer, even if the latter would not be competent thereto pursuant to the normal rules, or the burgomaster, the secretary or an alderman of the municipality, a notary awaiting appointment, an advocate, a member of the local Bar, an officer of the armed forces or an emergency guard or staff member of the emergency guard or a civil servant who was declared competent thereto by the Minister of Justice.

Article 103¹⁵

1. Last wills referred to in Articles 98, 101 and 102 shall be executed in the presence of two witnesses. They shall be written in a proper manner and shall be signed by the deceased and by the witnesses and the person before whom they are executed.

¹³ Repealed by the General Amendment Act I, *Staatsblad* (Bulletin of Acts and Decrees) 2004, N^o. 50, with effect from the 1st May 2004.

¹⁴ Amended by the General Amendment Act I, *Staatsblad* (Bulletin of Acts and Decrees) 2004, N^o. 50, with effect from the 1st May 2004.

¹⁵ See footnote to Article 100.

2. The witnesses must be of age and understand the language in which the last will has been drawn up. In the instances of Articles 98 and 102 members of the military forces and emergency guards who act as witness need not be of age.
3. If the deceased or one of the witnesses declares not to be able to sign as a result of ignorance or for another reason specifically mentioned by him or her, such a declaration shall replace his or her signature, provided it is included in the instrument.

Article 104¹⁶

1. In the instances of Articles 98, 101 and 102 the deceased is also competent to make a holograph last will which is signed by him or her, which he or she hands for safe-keeping, in the presence of two witnesses, to a person before whom he or she may cause the last will to be executed pursuant to those Articles. This person shall immediately draw up an instrument of the safe-keeping either on the paper of the last will or on the cover thereof or on a separate piece of paper; the preceding Article shall apply *mutatis mutandis* to such an instrument.
2. Articles 98(4) and 100 apply *mutatis mutandis*.
3. The burden of proof rests with a person who wishes to contest the validity of a last will given in safe-keeping on the ground that the will was not signed by the deceased by his or her own hand.

Article 105

If, in an instance as referred to in the preceding Article, the holograph last will is dated and the deceased dies without the last will having been handed in safe-keeping according to the law, the last will shall nevertheless be valid unless the deceased could still have reasonably made a last will in accordance with the preceding Articles of this Section.

Article 106¹⁷

1. A person who has in his or her keeping an instrument containing a last will, or for safe-keeping or of repossession as referred to in Articles 95, 100-105 and 113 shall send the instrument as soon as possible in a closed envelope to the Registry of Last Wills in The Hague.

¹⁶ See footnote to Article 100.

¹⁷ See footnote to Article 100.

2. The preceding paragraph shall not apply to instruments drawn up by or before a notary or consular officer who is competent according to the normal rules and for instruments containing a last will which have been held in safe-keeping by them.

Article 107¹⁸

1. The last wills referred to in Articles 98 and 100-104 may be nullified if the deceased dies more than six months since the possibility to make a last will in any of the manners mentioned in those Articles has passed.

2. The term shall always be extended by one month if the deceased was not reasonably in a position to make a last will in the month that last ended.

Article 108¹⁹

A last will made in a manner mentioned in any of the Articles 98, 101, 102 and 104 but not under the circumstances indicated therein shall not be null and void by operation of law if the deceased dies within six months thereafter, but it may be nullified.

Article 109²⁰

1. A last will shall be null and void if the required signature of the deceased to the instrument containing a last will or to the instrument of safekeeping where this is prescribed is absent.

2. A last will which must be made before a notary shall be null and void if the instrument containing the last will has not been signed by a notary. A last will handed for safe-keeping to a notary is null and void if an instrument of the handing for safe-keeping signed by a notary is absent. However, in the latter case, if the instrument holding a last will is signed by a notary, it may be nullified.

3. The preceding paragraph shall apply *mutatis mutandis* to a last will which must be made before a person mentioned in Articles 98, 101 and 102 or which must be handed for safe-keeping to a person mentioned therein.

4. Last wills made without observance of other requirements as to the form required by law for the validity of a last will may be nullified.

¹⁸ See footnote to Article 100.

¹⁹ See footnote to Article 100.

²⁰ See footnote to Article 100.

Article 110

The provisions of Article 54 apply *mutatis mutandis* to the right of nullification of a last will.

Section 5 ***Revocation of Testamentary Dispositions***

Article 111

For revocation of a testamentary disposition the same requirements as to form apply as for making such a disposition.

Article 112

A subsequent testamentary disposition which does not explicitly revoke a prior disposition shall cause the latter to be considered to have been repealed to the extent that it will no longer be capable of being executed or is replaced as a result of such a subsequent disposition.

Article 113

A deceased may at any time demand that the notary or other such person before whom the instrument was executed returns his or her last will in holograph form handed for safe-keeping, provided that the deceased, in order to enable the notary or another person who has the instrument in safekeeping pursuant to a statutory provision to account therefor, causes such return to be established by an instrument executed before that notary or another person before whom the instrument was executed in accordance with Article 103, which applies *mutatis mutandis*. The last will in holograph form is revoked by virtue of such a return.

Article 114

A testamentary disposition, which is validly found with a private document not held in safe-keeping, is revoked when the deceased destroys such a document. When the document has been destroyed this will be presumed to have been done by the deceased.

TITLE 5 VARIOUS TYPES OF TESTAMENTARY DISPOSITION

Section 1 Appointment of Heirs

Article 115

An appointment of an heir is a testamentary disposition pursuant to which a deceased leaves his or her entire estate or a share therein to one or more persons who are thereby designated.

Article 116

Heirs appointed by testamentary disposition have the same rights and obligations as intestate heirs.

Section 2 Bequests

§1. General Provisions

Article 117

1. A bequest is a testamentary disposition by which a deceased grants one or more persons a right of claim.
2. The settlement of a bequest shall be for the account of the joint heirs unless it is imposed on one or more determinate heirs or legatees.
3. Where the performance is divisible, the heirs upon whom an obligation is imposed shall each be bound for a share proportionate to his or her share in the estate unless otherwise determined by the deceased.

Article 118

1. Where an obligation is imposed on a determinate person as heir to execute a bequest and such a person has not become an heir or his or her right to inherit has lapsed without a provision having been made herefor in the last will, such an imposed obligation shall then be incumbent on the persons in whom his or her share in the estate vests unless something else flows forth from its nature. It will however suffice if they distribute to the legatee what they instead of the person

upon whom the obligation is imposed enjoy from the deceased's estate or the value thereof.

2. Where a person is subject to a sub-bequest and has not become a legatee or his or her right from the bequest made to him or her has lapsed without there being a provision for this in the last will, then the imposed obligation shall be incumbent on the persons who were subject to make the bequest, unless something different flows forth from its nature. It will however suffice if they settle with the sub-legatee what was bequeathed to the person subject to the sub-bequest or the value thereof, instead of the person burdened with the obligation.

Article 119

Both the persons charged with a bequest and the personal representative shall ensure that the legatee is notified as soon as possible of the bequest. Where they have remained unaware of the address of a legatee, they shall so inform the sub-district court that may order them to make investigations or issue a summons to appear in a determinate manner.

Article 120

1. Liabilities and obligations of the deceased's estate arising from a bequest shall be settled from the deceased's estate only if all other liabilities and obligations of the estate can be settled therefrom in full.

2. A reduction shall be made to the extent that the deceased's estate is not sufficient for settlement of the liabilities and obligations arising from bequests out of the shares in the estate of the heirs burdened therewith.

3. Unless it follows from the last will that the reduction must be made in another way, all such obligations shall be reduced *pro rata* provided, to the extent that the performance is to be considered as complying with a moral obligation of the deceased, that such an obligation shall be subject to reduction after the other obligations.

4. A reduction shall be made by a declaration to the legatee by the heirs burdened with the bequest or, if the deceased's estate is divided in accordance with Article 13, by the spouse of the deceased. To the extent that the performance has already taken place, the legal cause therefor shall remain in effect, except for the possibility to claim it back and recourse as referred to in Articles 216 and 220 (3).

5. Notwithstanding the reduction, heirs whose liability extends to their entire capital shall be liable for settlement in full.

Article 121

1. A legatee shall be entitled to reduce sub-bequests imposed on him or her and burdens which require an expenditure in money or an asset, to the extent the value of what is bequeathed to him or her is or will be insufficient to perform the obligations imposed on him or her as a result of the abatement or reduction.
2. Unless it follows from the last will that a reduction must be made in any other way such obligations shall be subject to a *pro rata* deduction, provided that, to the extent the performance of the obligation is to be considered as compliance with a moral obligation of the deceased, such obligation shall be considered for a reduction after the other obligations.

Article 122

1. A legatee whose bequest is abated or reduced is entitled to demand settlement in full of the bequest, provided he or she puts up in money the amount of the abatement or reduction.
2. Where a legatee does not exercise this right, then the other party may merely distribute the value of the abated or reduced bequest.

Article 123

1. At the request of the legatee or the person burdened with the bequest the court may alter or terminate the obligations arising from a bequest, in full or in part, on the ground of circumstances which occurred after the death of the deceased of such a nature that the other party, according to standards of reasonableness and fairness, may not expect these obligations to remain in effect without alteration.
2. In the case of an alteration or discharge, the court shall take into account as much as possible the intention of the deceased.
3. Articles 258(1), second sentence, (2) and (3) of Book 6 and 260(1) and (2) of Book 6 apply *mutatis mutandis*.

Article 124

Unless the deceased has made another disposition, a legatee to whom a determinate asset of the deceased's estate or to whom the usufruct of such an asset or the usufruct of the entire deceased's estate or of a share therein was left, has a right to distribution of the benefits of what was left to him or her which the heirs have collected after his or her claim became exigible. The cause of action to a distribution of such benefits

shall be prescribed by the expiry of three years after these were collected.

Article 125

1. A payment of a pecuniary bequest shall become exigible six months from the death of the deceased unless the deceased made a different disposition.
2. Nevertheless an heir to whom an asset of the deceased's estate was bequeathed against compensation of the value or part thereof may suspend payment of such compensation until the division of the deceased's estate, unless the deceased has made a different disposition.
3. A person on whom the liability from a pecuniary bequest is incumbent shall not be in default by the mere expiry of a determinate term for its settlement.
4. Article 5 applies *mutatis mutandis* to bequests of a pecuniary sum.

§2. Gifts and Other Acts Considered to be Bequests

Article 126

1. A donation or other gift, to the extent that its necessary implication is that it is to be executed only after the death of the donor or giver and was not already executed during the life of the donor or giver, shall be considered, for the purpose of what has been provided in this Book regarding abatement and reduction, as a bequest with which the joint heirs are burdened. By derogation from Articles 87(2) and 120(3), a donation or other gift shall be considered last for the purposes of abatement or reduction, unless otherwise provided for when made. The second sentence shall not be applicable where a donation or other gift can be revoked until the death of the donor or giver.
2. Paragraph (1) applies *mutatis mutandis* to:
 - (a) a stipulation that an asset of one of the parties shall or can devolve under a suspensive condition or under a suspensive term without a reasonable *quid pro quo* to the extent the stipulation is applied in the case of death of the person to whom the asset belongs; reciprocity of the stipulations shall not be considered as a *quid pro quo*;
 - (b) the appointment of a person with an entitlement in the case of a capital sum insurance policy to the extent that the payment which falls due by the death of the insured is deemed a gift;
 - (c) a transformation of a moral obligation which is not legally enforceable into a legally enforceable obligation, to the extent

that its necessary implication is that the obligation will be performed only after the death of the obligor and such obligation was not already performed during his or her life.

3. Articles 66 and 68 apply *mutatis mutandis*.

Article 127

Where the abatement or reduction concerns a person with an entitlement under a capital sum insurance policy or another appointment as person with an entitlement in a stipulation made on behalf of a third person, the person with an entitlement shall be obliged to compensate the joint heirs for the value of the abated or deducted part, to the extent that this is not unreasonable when all the circumstances are taken into account. If the deceased's estate has been divided in accordance with Article 13, the compensation referred to in the first sentence shall be due to the deceased's spouse. A benefit derived from an appointment as a person with an entitlement referred to in the first sentence may be abated or reduced only within three years after the person with an entitlement has received the performance of the obligation.

Article 128

Whatever is provided with regard to legatees in Articles 29(3) and 30(3) applies *mutatis mutandis* to the persons who have benefited as a result of an act as referred to in Article 126. Assets acquired pursuant to an act as referred to in Article 126 shall be equated to bequeathed assets as referred to in Article 30(5). Whatever is provided with regard to legatees in Articles 216 and 220(3) applies *mutatis mutandis* to persons who have been advantaged by an act as referred to in Article 126(1) and (2)(b) and (c).

Article 129

By testamentary disposition a condition as referred to in Article 82 may be attached to an act as referred to in Article 126.

Section 3

Testamentary Obligations

Article 130

1. A testamentary obligation is a disposition by last will whereby the deceased imposes an obligation on the joint heirs or on one or more determinate heirs or legatees not consisting in the execution of a bequest.
2. A testamentary obligation may also be imposed on a personal representative. The obligation imposed on him or her shall also be incumbent on the joint heirs unless, because of its nature or the provisions of the last will, a different obligation arises therefrom.
3. Article 120 applies *mutatis mutandis* to an obligation, the necessary implication of which will require a pecuniary expenditure or the handing over of an asset from the deceased's estate; these shall be reduced together with the bequest and to an equal extent.

Article 131

1. An heir or legatee incumbent with a testamentary obligation shall acquire his or her right under the condition subsequent that the court shall declare it to have lapsed on account of non-execution of the testamentary obligation.
2. A declaration that the obligation has lapsed may be pronounced by the court at the request of any person directly interested in such a declaration.
3. An heir who, with his or her entire capital, was liable vis-à-vis obligees of the deceased and legatees shall remain bound towards them after the right to settlement was declared to have lapsed, without this affecting his or her right of recourse against persons who become entitled to what he or she inherited.

Article 132

Where an obligation was imposed on a determinate person as heir or legatee and he or she did not become an heir or legatee or his or her right has lapsed, then, unless a different obligation arises on account of its nature or the provisions of the last will, the obligation imposed on him or her shall be incumbent on the persons in whom his or her share in the estate will vest or who were incumbent with the bequest made to him or her.

Article 133

1. Where the fulfilment of a suspensive condition attached to a testamentary obligation is frustrated by the person incumbent with the obligation, the condition shall be considered as having been fulfilled if reasonableness and fairness so require.
2. Where fulfilment of a condition subsequent attached to a testamentary obligation has been caused by the person incumbent with the obligation, the condition shall be considered not to have been fulfilled if reasonableness and fairness so require.
3. Article 140(1) applies *mutatis mutandis*.

Article 134

1. On the request of a person charged with the testamentary obligation or of the Public Prosecution Service the court may alter or discharge the obligation in full or in part:
 - (a) on the ground of circumstances which occurred after the death of the deceased and are of such a nature that the unaltered maintenance of the obligation would be unjustified having regard to the personal and societal interests involved;
 - (b) on the ground that the obligation has become cumbersome or impossible to execute as a result of the abatement or reduction of the obligation or of the testamentary disposition to which it is connected;
 - (c) in the case the obligation became incumbent pursuant to Article 132 on a person other than the persons on whom the obligation was imposed by the testamentary disposition.
2. In the case of an alteration or discharge, the court shall take the intention of the deceased into consideration as much as possible.
3. Articles 258(1), second sentence, (2) and (3) of Book 6 and 260(1) and (2) of Book 6 apply *mutatis mutandis*.

Section 4 Foundations

Article 135

1. When a deceased has left by last will something to a foundation which he or she has created by a testamentary disposition made by notarial deed, the foundation will be heir or legatee, depending on whether what was left constitutes appointment as an heir or a bequest.

2. Where by last will made in any other form, the deceased has declared to create a foundation, such a disposition shall be considered as an obligation imposed on the joint heirs to establish such a foundation.

3. A person on whom a testamentary obligation has been imposed to establish a foundation may be ordered, on the requisition of the Public Prosecution Service, by the district court of the last address of the deceased or, where the deceased did not have his or her last address in the Netherlands, by the district court in The Hague. The court may determine that its judgment shall have the same force of law as an instrument made in the statutory form by the person who is bound to perform the legal act, or that a representative to be designated by the court shall perform the act.

Section 5

Testamentary Dispositions Subject to a Time Period and Subject to a Condition

Article 136

1. Where a last will provides for the appointment of an heir subject to a time period, then such a disposition shall be considered as an appointment of an heir with immediate effect of the person who would be called last to inherit the share in the estate at the execution of the last will as it reads, subject to a bequest of the usufruct of the share in the estate for the time set in favour of the person who would be called first to inherit the share in the estate.

2. In the case of the appointment of an heir subject to a condition subsequent which is subject to a time period without immediately being followed by the appointment of an heir under a suspensive condition as to time, the person first called shall be entitled to the usufruct with a right of alienation and a right to draw on capital, to the extent the deceased did not exclude such a right.

Article 137

In order to qualify for a right to a testamentary disposition under a suspensive condition, one must still be alive or exist at the time when the condition is fulfilled unless the contrary follows from the last will or the nature of the disposition.

Article 138

1. When an appointment of an heir is made subject to a condition, the person entitled to what was left to him or her until fulfilment of the condition shall be considered as a person with sole entitlement to the extent rights and causes of action to be exercised by and against third persons are concerned.
2. For the rest, the statutory provisions with regard to usufruct laid down in Title 8 of Book 3 shall apply *mutatis mutandis* as long as fulfilment of the conditions is uncertain. As a result he or she must reserve and maintain what was left as if he or she was a usufructuary unless the deceased granted him or her the unconditional right to draw on the assets and to the right of alienation.
3. In the case of appointment of an heir subject to a condition subsequent without being immediately followed by the appointment of an heir subject to a suspensive condition, he or she has the right vis-à-vis the person in whom what was left on fulfilment of the condition, to dispose and to draw on the assets on the same basis as a usufructuary whom was given such right, to the extent that the deceased did not otherwise provide.

Article 139

1. Where fulfilment of a condition attached to the appointment of an heir is frustrated by someone entitled to what was left as long as the condition is not fulfilled, then it will be deemed to have been fulfilled if reasonableness and fairness so require.
2. Where fulfilment of the condition is caused by someone entitled to what was left on fulfilment of the condition, then it shall be deemed as not having been fulfilled, if reasonableness and fairness so require.

Article 140

1. Where a condition attached to an appointment as heir is not fulfilled thirty years from the death of the deceased, then the disposition shall lapse when it is a suspensive condition; if it is a condition subsequent, then the condition shall lapse. Any dispositions by the deceased which are contrary hereto shall be null and void.
2. The preceding paragraph shall apply also to a bequest of a determinate asset of the deceased's estate or of a limited right to such an asset.

Article 141

The preceding Article shall not apply to a testamentary disposition subject to a condition subsequent and a testamentary disposition which immediately follows, subject to a suspensive condition according to which what was left or the undrawn part thereof at the time of death of the person on whom it was incumbent or at an earlier moment shall accrue to the ultimate heir if the latter was still living at the designated time.

Section 6 ***Personal Representatives***

Article 142

1. By testamentary disposition a deceased may appoint one or more personal representatives. He or she may grant a personal representative the right to appoint one or more other personal representatives in addition or in his or her place; he or she may also make a disposition that, in the absence of an appointed personal representative, the sub-district court shall be empowered to appoint a substitute at the request of any interested person.
2. Where there are two or more personal representatives, each may perform all activities alone unless the deceased has otherwise provided.
3. Where there is a difference of opinion between the personal representatives, the sub-district court shall give its decision at the request of any of them. It may determine a division of the activities or of the remuneration to which they will be entitled.

Article 143

1. One becomes a personal representative by acceptance of the appointment after the death of the deceased. At the request of any interested person the sub-district court may set a term on expiry of which acceptance of the appointment shall no longer be possible.
2. Persons without legal capacity or of whom one or more assets were placed under administration as referred to in Title 19 of Book 1, and persons who are declared bankrupt or with regard to whom a debt repayment scheme for natural persons is declared applicable may not become a personal representative.

Article 144

1. Notwithstanding testamentary obligations imposed by the deceased on a personal representative, the latter will be under the duty, to the extent the deceased did not otherwise dispose, to administer the assets of the deceased's estate and to settle the liabilities of the deceased's estate which should be settled out of such assets during his or her administration.
2. Unless otherwise regulated by last will, the personal representative, or where there is more than one, they shall be jointly entitled to one percent of the value of the capital of the deceased on the latter's date of death.
3. Article 159(2) and (3) applies *mutatis mutandis*.

Article 145

1. Where a personal representative is appointed whose task will be to administer assets of the deceased's estate, the heirs, unless the former does not accept his or her appointment, may not without his or her co-operation or the authorisation of the sub-district court dispose of such assets or their share therein before his or her administrative powers have ended.
2. The personal representative will represent the heirs during the administration, judicially and extra-judicially, in the implementation of his or her duties.

Article 146

1. A personal representative who is charged to administer the deceased's estate may appoint a notary acting for the deceased's estate, who shall notify the heirs of the acceptance of his or her instructions.
2. With due expedience the personal representative must prepare an estate inventory, including a provisional statement of the liabilities of the deceased's estate and notify the creditors who are known to him or her that they must file their claims with the notary acting for the estate or, where there is no such notary, with one of the personal representatives. Notification of a claim shall interrupt the prescription.

Article 147

1. The personal representative shall be empowered to convert into cash the assets which are administered by him or her to the extent this is required for the settlement of liabilities of the deceased's estate while

he or she shall dutifully discharge the obligations imposed on him or her.

2. Unless the deceased has made a different disposition, the personal representative shall consult the heirs, whenever possible, on the choice of the assets to be sold for cash and the manner in which this shall take place and give an heir the opportunity to call in the decision of the sub-district court where such heir objects to an intended sale.

3. The deceased may provide that the personal representative will require consent of the heirs for the sale for cash of an asset. Such consent may however be replaced by an authorisation from the sub-district court.

4. The provisions in the preceding paragraphs as regards the heirs shall also apply as regards persons to whom a usufruct of the deceased's estate or of a share therein has been left.

Article 148

The personal representative must provide an heir with all the information required by the heir in respect of the exercise of his or her duties.

Article 149

1. The duties of a personal representative shall end:
 - (a) on completion of his or her activities as such;
 - (b) on expiry of time if he or she was appointed for a determinate period;
 - (c) by his or her death, the declaration of applicability of a debt repayment scheme for natural persons in his or her regard, or on his or her being declared bankrupt, or on appointment of a curator over him or her or by institution of an administration as referred to in Title 19 of Book 1 over one or more of his or her assets;
 - (d) when the deceased's estate must be liquidated in accordance with Section 3 of Title 6;
 - (e) in the instances provided by last will;
 - (f) by a discharge granted by the sub-district court as from a determinate date.
2. The discharge shall be granted to the personal representative either upon his or her own request or, for important reasons, at the request of a fellow personal representative, an heir or the Public Prosecution Service or *ex officio*. Pending the investigation, the sub-district court

may take provisional measures and suspend the personal representative.

3. A former personal representative shall remain obliged to do whatever cannot be postponed without detriment to the liquidation of the deceased's estate until the person to be empowered to administer the deceased's estate after him or her will have accepted this.

4. Where the capacity of a personal representative ends as a result of his or her bankruptcy or the appointment of a curator, then the obligation referred to in the preceding paragraph shall be incumbent upon the curator, if the latter has cognisance of the appointment of a personal representative; where the capacity of the personal representative ends as a result of a declaration in his or her respect of a debt repayment scheme for natural persons or the placing under administration of one or more of his or her assets, then the same shall apply for the personal representative who will act in those instances. Where the capacity of a personal representative ends as a result of his or her death, the heirs will be obliged, if they have cognisance of the appointment of a personal representative, to notify the heirs of the person who appointed him or her of the death of the personal representative.

Article 150

1. A personal representative who has completed the duties to administer with which he or she was instructed, is empowered to terminate to administer the estate by placing the assets at the disposal of the heirs.

2. The heirs may terminate the powers to administer of a personal representative:

- (a) after settlement of the liabilities of the deceased's estate and performance of the testamentary obligations the liquidation of which already forms or which could form part of his or her duties within the year after the deceased's death;
- (b) when one year and six months have expired since one or more personal representatives could have commenced to administer the deceased's estate. The sub-district court may extend this term once or more, also after its expiration, at the request of a personal representative.

3. When the heirs place the means required for the liquidation referred to in paragraph (2)(a) at the disposal of the personal representative, they may terminate his or her powers to administer the estate for the rest.

4. Articles 225 and 226 shall apply *mutatis mutandis* when all heirs are not known or all are not prepared to take receipt of the assets.

Article 151

A personal representative whose powers to administer the deceased's estate have ended must account to the person who after him or her will be empowered to administer the estate in the manner provided for administrators.

Article 152

For the purposes of the provisions of this Section the spouse of the deceased with a right of usufruct pursuant to Section 2 of Title 3 is considered an heir. The powers referred to in Article 150(2) and (3) shall also vest in such a spouse.

Section 7 Testamentary Administration

§1. General Provisions

Article 153

1. By testamentary disposition a deceased may institute administration over one or more assets which have been left by him or her or in respect of which he or she made a testamentary disposition.
2. Unless the deceased has otherwise provided, the administration shall become operative at the time of his or her death.

Article 154

Unless otherwise provided on its institution, the administration shall also comprise the assets which must be considered to have taken the place of an asset subject to administration, including the benefits and advantages from such asset as long as the benefits were not distributed to the person entitled thereto pursuant to Article 162.

Article 155

1. The administration of a share in the deceased's estate or a bequest is presumed to have been instituted in the interest of the person with an entitlement unless one of the following paragraphs applies.

2. The administration over a usufruct is presumed to have been instituted both in the interest of the usufructuary and of the person with a principal entitlement. The same shall apply in respect of the administration over the rights of use and occupancy.
3. The administration over a conditional testamentary disposition is presumed to have been instituted in the interest of both the person who will acquire the asset on fulfilment of the condition and of the person who will then lose this.
4. The administration over assets or shares in assets which must be administered in common is presumed to have been instituted in a common interest.

Article 156

If the administration has exclusively or has also been instituted in the interest of a person with an entitlement other than the person entitled to the assets subject to administration, then such other person, as long as it is not established who such a person is, shall be considered for the purposes of this Section as a person not in a position to determine his or her will.

§2. The Administrator

Article 157

1. If the last will does not provide for a regulation of the appointment of an administrator, the sub-district court shall designate one or more administrators at the request of the person with an entitlement, an heir, a legatee or any other interested person or of the personal representative. The sub-district court shall ascertain whether the third persons are prepared to accept appointment.
2. Persons without legal capacity, persons whose asset(s) have been placed under administration as referred to in Title 19 of Book 1, persons who are in bankruptcy or as regards to whom a debt repayment scheme for natural persons has been declared applicable and the persons mentioned in Article 59 may not be appointed as an administrator.
3. Legal persons with full legal capacity may be appointed as an administrator.
4. If necessary an interim administrator may be appointed.
5. The person appointed by the court shall become the administrator the day after having been notified by the clerk of the court of his or her appointment unless the order states a later date.

6. A person who is not appointed by the court shall become an administrator the day after his or her acceptance of the appointment.

Article 158

1. Where there are two or more administrators, each may perform all activities which pertain to the administration unless the last will or the sub-district court specifies otherwise.

2. Where there is a difference of opinion between the administrators, the sub-district court shall give its decision at the request of any of them unless this is regulated differently by the last will.

3. If so requested and where there is an important reason therefor, the sub-district court may adopt or alter a division of the activities.

Article 159

1. Unless regulated otherwise by last will, the administrator or, where there are more than one, the administrators shall jointly be entitled each year to one percent of the value of the capital subject to administration at the end of that year.

2. Where there are two or more administrators and the last will does not otherwise provide for a division of their remuneration, each shall receive an equal remuneration unless the sub-district court otherwise provides or they jointly otherwise agree.

3. On account of unforeseen circumstances the sub-district court may regulate, either *ex officio* or at the request of the administrator, a person with an entitlement or someone in whose interest the administration has been instituted, the remuneration for a determinate or an indeterminate period differently from that indicated by last will or by statute.

Article 160

1. The administrator must prepare an inventory of the assets to be administered as soon as possible. Where the administrator is appointed by the court, he or she must lodge a true copy of the inventory against a receipt at the clerk's office of the court of the residency of the person with an entitlement. He or she shall only be bound to put up security if this was provided at the institution of the administration.

2. Unless otherwise provided on the institution of the administration, the administrator must cause registration of the administration and his or her appointment to be made:

- (a) in the public registers referred to in Section 2 of Title 1 of Book 3, if the administration relates to registered assets;
- (b) in the register of shareholders referred to in Articles 85 and 194 of Book 2, if the administration relates to registered shares in a company limited by shares or a private limited liability company;
- (c) in the commercial register, if the administration relates to an undertaking or to a share in a company.

Article 161

1. Unless other dates were specified, the administration shall account each year and at the end of his or her administration to the person with an entitlement and to the persons in whose interest the administration was instituted. At the end of his or her administration the administrator shall also account to the person who succeeds him or her as administrator of the assets. Where an administrator is appointed by the court, he or she shall account to such a court for his or her administration.
2. If a person with an entitlement or interest therein is not in the position to examine the account or when it is uncertain who is the party with an entitlement or is an interested party, the administrator shall account to the sub-district court unless the last will provides otherwise. Approval of the rendering of such an account by the sub-district court shall preclude the person with an entitlement or interest therein to ask for a rendering of the account, again at the end of the administration over the same period to the extent that this is not unreasonable.
3. The sub-district court may give dispensation to the administrator, either at his or her request or *ex officio*, from the obligation to periodically account to it; it may also order that the administrator need account in this manner only once in a determinate number of years.
4. For the rest, the provisions in respect of the guardianship account in paragraphs 10 and 11 of Section 6 of Title 14 of Book 1 shall apply *mutatis mutandis*.

Article 162

1. To the extent no different provision is made on institution of the administration, whenever account is rendered a distribution shall be made to the person entitled thereto of the net proceeds from the benefits of the assets, after deduction of the remuneration due. Upon request of the latter, the sub-district court may specify other dates for such distribution.

2. As long it is uncertain who the person with an entitlement is or when a person with an entitlement is not in a position to take receipt, the net proceeds shall remain under the administration of the administrator unless the last will or the sub-district court provides otherwise.

Article 163

The administrator shall be liable towards the person with an entitlement if he or she fails in the care of a good administrator unless the shortcoming is not attributable to him or her.

Article 164

1. The capacity of administrator ends:
 - (a) at the end of the administration;
 - (b) by expiry of the time if he or she was appointed for a determinate period;
 - (c) by his or her death, the declaration of applicability of a debt repayment scheme for natural persons in his or her regard, his or her declaration of bankruptcy, the appointment of a curator over him or her or by the institution of an administration as referred to in Title 19 of Book 1 over one or more of his or her assets;
 - (d) in the instances specified by last will;
 - (e) by a discharge granted by the sub-district court with commencement of a determinate date.
2. The discharge shall be granted to the administrator either on his or her own request or for important reasons, at the request of a co-administrator, of the person with an entitlement or of someone in whose interest the administration was instituted or on the requisition of the Public Prosecution Service or *ex officio*. Pending the investigation the sub-district court may take provisional measures in the administration and suspend the administrator.

Article 165

1. The former administrator shall transfer the assets administered on account of the administration to the person who thereafter will be empowered to conduct the administration thereof. He or she may suspend the transfer until settlement has been made of the balance to which he or she is entitled.

2. The former administrator shall further remain competent to do whatever cannot be postponed without detriment to the person with an entitlement or interest therein until the person who is next empowered to administer the assets has accepted this.

3. Where the capacity of the administrator ends as a result of his or her bankruptcy or the appointment of a curator, the obligation referred to in paragraph (2) shall be incumbent on the curator, if he or she has cognisance of the administration; where the capacity of the administrator ends by the declaration of application of a debt repayment scheme for natural persons or the placing of one or more of his or her assets under administration, then the same shall apply in respect of the administrator who will act in those instances. Where the capacity of the administrator ends by his or her death, then the heirs shall be obligated, if they have cognisance of the administration, to request the sub-district court to appoint another administrator.

§ 3. The Consequences of the Administration

Article 166

The person with an entitlement is, along with the administrator, empowered to perform acts that serve for the ordinary maintenance of the assets that he or she has in use and which acts cannot be postponed. For the rest, the administrator is solely entitled to administer the assets.

Article 167

1. If the administration is instituted in the interest of the person with an entitlement, he or she is empowered only with the co-operation or consent of the administrator to perform acts other than referred to in the preceding Article that directly relate to an asset subject to administration. The same applies to the powers of a usufructuary as regards assets subject to administration which are subject to a usufruct and which go further than its use.

2. If the administration is instituted in the interest of a person other than the person with an entitlement or in a common interest, the person with an entitlement is only empowered to perform an act as referred to in paragraph (1) subject to the administration.

3. If the administration has been instituted both in the interest of the person with an entitlement, and of one or more others or in a common interest, the person with an entitlement is only empowered to perform an act as referred to in paragraph (1) with the co-operation or consent of the administrator and subject to such administration.

Article 168

1. A legal act that has been performed by or addressed to the person with an entitlement notwithstanding the lack of power thereto arising from Articles 166 and 167 shall nevertheless be valid, if the other party neither was nor needed to be aware of the administration. Nevertheless it will not be possible to obtain an order to perform an obligation arising from the legal act to alienate or encumber an asset subject to administration.
2. The invalidity on account of the administration of a disposal by the person with an entitlement of an asset as referred to in Article 88 of Book 3 shall not constitute an obstacle to the validity of any later transfer thereof, if the third person-transferee is in good faith. The preceding sentence applies *mutatis mutandis* to the establishment, transfer and renunciation of a limited right to such an asset.

Article 169

1. With the consent of the person with an entitlement the administrator may:
 - (a) perform the acts referred to in Article 167(1);
 - (b) lend money or bind the person with an entitlement as surety or several co-obligor;
 - (c) enter into a contract for termination of a dispute; no such consent is needed in the case of Article 87 of the Dutch Code of Civil Procedure, or if the value of the object of the dispute does not exceed € 700.
2. Where the administration is instituted exclusively or also in the interest of a person other than the person with an entitlement or in their common interest, then the consent of such a person is also required.
3. Where no consent is granted by a person whose consent is required, then the sub-district court may, when so requested, replace this with its authorisation. The sub-district court may grant the authorisation under such conditions as it shall deem fit.

Article 170

1. Where assets, which are subject to administration or to a limited right that is subject to administration, belong to a community of property, then the administrator is empowered to demand a division and is empowered, with the consent of the person with an entitlement, to enter into a contract for exclusion of a division for a determinate period.

2. With the consent of the person with an entitlement the administrator is empowered to co-operate with the division.
3. Paragraphs (2) and (3) of Article 169 apply *mutatis mutandis*.

Article 171

1. A last will may further regulate the powers and obligations of the administrator that may be adopted with a wider or more limited scope than would follow from the preceding paragraphs of this Section.
2. At the request of the administrator, the person with an entitlement or a person in whose interest the administration has also or exclusively been instituted, the sub-district court may alter the rules in respect of the conduct of the administration on account of unforeseen circumstances. The sub-district court may allow the request under conditions to be set by it.

Article 172

1. An administrator who, otherwise than in the form of co-operation or consent, carries out his or her duties is empowered to represent the person with an entitlement in so doing or to act in his or her own name on his or her behalf.
2. In the case of representation the provisions of Title 3 of Book 3 shall apply *mutatis mutandis* to the rights and obligations of counterparty. Rules relating to the empowerment of the administrator and facts that are of importance for an opinion on his powers may not be raised against the other party, if the latter was not or ought not to have been aware of such rules or facts.

Article 173

The administrator represents the person with an entitlement in proceedings on account of assets subject to administration. Before acting at law he or she may obtain authorisation in order to cover his or her own risk from the person with an entitlement and the persons in whose interest the administration was also or exclusively instituted. Where no authorisation is granted the sub-district court may replace it by its authorisation.

Article 174

1. Notwithstanding the provision of Article 172 of Book 6 the person with an entitlement is liable for all liabilities and obligations that arise

from legal acts performed by the administrator in that capacity in the name of the person with an entitlement.

2. To the extent that the person with an entitlement designates assets subject to administration that will provide sufficient recourse, no levy of execution may be made of other assets for the liabilities and obligations referred to in paragraph (1).

Article 175

1. During the administration levy of execution may only be made of the assets subject to administration at the expense of the person with an entitlement for:

- (a) the liabilities and obligations of the deceased's estate to the extent that the proceeds may be used for settlement thereof;
- (b) the liabilities and obligations that relate to the assets;
- (c) the liabilities and obligations arising from legal acts performed by the person with an entitlement within the confines of the right referred to in Articles 166 and 167;
- (d) the liabilities and obligations arising from legal acts which, notwithstanding the person with an entitlement not having the right pursuant to Article 168(1), are valid, unless the administrator designates assets of the person with an entitlement not subject to administration which offer recourse in full or in part;
- (e) the liabilities and obligations for which the person with an entitlement is liable in accordance with Article 174 on account of conduct of the administrator.

2. Levy of execution of the assets may also take place for liabilities and obligations referred to in paragraph (1)(e) after they have been transmitted to another person with an entitlement subject to the burden of administration.

3. Levy of execution of the assets shall take place free of administration unless this was also or exclusively instituted in the interest of a person other than the person with an entitlement or in a common interest.

Article 176

If the administration has exclusively been instituted in the interest of a person other than the person with an entitlement or in a common interest, levy of execution of the assets placed under administration may also take place for other liabilities and obligations at the expense of

the person with an entitlement but then only subject to the burden of the administration.

§4. End of the Administration

Article 177

1. The administration ends upon the expiry of the term for which it was instituted.
2. The administration ends upon the renunciation of the deceased's estate or of the bequest whereby the assets were bequeathed, if the interest served by the administration has lapsed as a result thereof. A termination by renunciation shall not have retrospective effect.

Article 178

1. The administration shall end upon the death of the person with an entitlement if the administration was exclusively instituted in the latter's interest. Where the person with an entitlement is a legal person, it shall end upon its dissolution and, furthermore, when it gives notice of termination when thirty years have elapsed since the death of the deceased.
2. The district court may also terminate such an administration at the request of the administrator on account of unforeseen circumstances and, furthermore, if it is plausible that the person with an entitlement will be able to manage and administer the assets subject to administration in a responsible manner. After expiry of five years from the death of the deceased the administration may also be discontinued on the latter ground at the request of the person with an entitlement. In the case of rejection of a request for discontinuation, the district court may, upon request, alter the rules for the administration whether or not subject to conditions to be determined by it.

Article 179

1. To the extent the administration was instituted in the interest of a person other than the person with an entitlement, it shall end when that interest shall lapse and when the person with an entitlement and the person in whose interest the institution took place notify the administrator in writing of a joint resolution for its discontinuation. A resolution for discontinuation may also relate only to one or more of the assets placed under administration.

2. Where the administration was instituted in the interest of a person who is benefited by a bequest under a suspensive provision as to time or a suspensive condition or subject to a testamentary obligation, then it may be terminated by notice of termination when thirty years have lapsed since the death of the deceased.

Article 180

1. To the extent that the administration was instituted in the common interest of the person with an entitlement and one or more others, it shall end when that interest lapses.

2. The administration may also be terminated by notice of termination when five years have elapsed since the death of the deceased.

Article 181

1. The notice of termination referred to in the preceding Articles may take place only by the person with an entitlement and in writing with one month's notice.

2. The notice of termination must be addressed to the administrator and to the beneficiaries, if any.

TITLE 6 CONSEQUENCES OF THE SUCCESSION

Section 1 General Provisions

Article 182

1. On the death of the deceased, the heirs succeed by operation of law to the rights capable of transmission and to whatever the deceased possessed or held. The first sentence does not apply when the deceased's estate is divided pursuant to Article 13; in that case the spouse shall succeed by law to whatever the deceased possessed or held.
2. By operation of law, they become obligor of the liabilities and obligations of the deceased that are not extinguished by his or her death. If the performance of an obligation is divisible, each shall be bound for a share *pro rata* to his or her share in the deceased's estate unless when they are jointly and severally bound.

Article 183

An heir may demand the assets of the deceased's estate, including those which the deceased held at the time of his or her death for third persons, from any third person who holds such assets without right. Where the deceased's estate is divided in accordance with Article 13, the right referred to in the preceding sentence vests exclusively in the deceased's spouse.

Article 184

1. Creditors and obligees of the deceased's estate may have recourse for their claims against the assets of the deceased's estate.
2. An heir is not bound to settle a liability or obligation of the deceased's estate out of his or her other capital, unless he or she:
 - (a) has simply accepted the appointment as heir, except to the extent the liability or obligation shall not be incumbent upon him or her and notwithstanding Articles 14(3) and 87(5);
 - (b) prevents settlement of the liability or obligation for which he or she may be reproached;
 - (c) intentionally causes assets of the deceased's estate to be lost, hides or otherwise withdraws these from recourse by creditors of the deceased's estate; or

(d) is liquidator and seriously fails to fulfil his or her duties as such for which he or she may be reproached.

3. When a distribution has been made out of the deceased's estate to an heir who has beneficially accepted the deceased's estate, the creditors and obligees of the deceased's estate may have recourse in any case against the capital of such an heir up to the value of what he or she has acquired from the deceased's estate. Article 223(1) shall then apply *mutatis mutandis*.

4. A person who has become liable pursuant to paragraph (2)(b) or (c) with his or her entire capital shall remain so also after renunciation of the deceased's estate.

5. Paragraph (2) applies *mutatis mutandis* to the obligation of an heir to perform a testamentary obligation consisting of a pecuniary expenditure or of an asset not belonging to the deceased's estate.

Article 185

1. For three months after the death of the deceased no recourse may be had against assets of a deceased's estate when this was not accepted unconditionally by all heirs, unless the creditor or obligee could have also proceeded thereto in the case of bankruptcy of the deceased.

2. During this period the sub-district court may, at the request of any interested person, prescribe the measures which it regards necessary in the latter's interest.

3. The sub-district court may extend the term once or more prior to its expiration as regards determinate creditors on account of special circumstances. The extension shall be registered in the Register of Deceased's Estates.

Article 186

1. The clerks of the district courts shall keep a public Register of Deceased's Estates in which a record shall be made of facts pursuant to statutory regulations which are of interest for the legal position of deceased's estates that have devolved.

2. A notary involved in the liquidation of a deceased's estate shall procure his or her registration in the Register of Deceased's Estates.

3. The manner of the layout and consultation of the Register of Deceased's Estates shall be laid down by Regulation.

4. It may be provided by Regulation that the public Registers of Deceased's Estates referred to in paragraph (1), will be kept, in derogation from paragraph (1), by one or more persons other than the clerks of the district courts. It may also be provided by Regulation that

the provision of information for recording in the public Register of Deceased's Estates by persons competent or bound thereto, shall only take place in a manner specified by such Regulation.

Article 187

1. A person who has relied on facts stated in a declaration of inheritance shall be considered in this respect as being in good faith.
2. An debtor who, based on facts stated in the declaration of inheritance, has paid someone who had no authority to receive payment, may claim that the payment has been discharged vis-à-vis the person to whom payment had to be made.
3. There shall be an exception to the provisions in the preceding paragraphs if on account of special circumstances a person who relied on the declaration could have made a further investigation which would have shown the incorrectness of the declaration.

Article 188

1. A declaration of inheritance is a notarial instrument in which a notary states one or more of the following facts:
 - (a) that one or more persons mentioned in the declaration, whether or not for determinate shares in the estate, are heir or the sole heirs, mentioning whether they have already accepted the deceased estate;
 - (b) that the spouse of the deceased is or is not entitled to the usufruct of one or more assets belonging to the deceased's estate pursuant to Section 2 of Title 3, mentioning whether authorisation has been granted to the spouse to alienate or encumber or an authorisation to alienate and draw on capital and also whether and until which moment the spouse may invoke Article 29(1) and (3);
 - (c) that the deceased's estate has been divided in accordance with Article 13, mentioning whether and up to which moment the spouse has the right referred to in Article 18(1);
 - (d) whether or not the administration of the deceased's estate has been delegated to personal representatives, administrators or liquidators appointed pursuant to Section 3 of this Title, mentioning their powers; or
 - (e) that one or more persons mentioned in the declaration are personal representative, administrator or liquidator.
2. Further provisions may be adopted by Regulation in respect of the contents and the drawing up of the declarations.

Article 189

If and to the extent a deceased does not have heirs, the assets of the deceased's estate at the time of his or her death are acquired by the State under universal title.

Section 2 ***Acceptance and Renunciation of Deceased's Estates and of Bequests***

Article 190

1. An heir may accept or renounce a deceased's estate. Acceptance may take place unconditionally or subject to the privilege of an inventory of the estate.
2. A deceased may not restrict the heirs in their choice. An heir may also not take a decision in that respect prior to the devolvement of the deceased's estate.
3. The choice may be made only unconditionally and without a time clause. It may not relate to a part of the share in the deceased's estate. However when an heir who has already accepted obtains an entitlement by fulfilling a condition added by the deceased to the appointment of an heir, this can still be accepted or renounced separately.
4. A choice once made shall be irrevocable and have retrospective effect to the time when the deceased's estate devolved. An acceptance or renunciation may not be nullified on account of mistake or on the ground that it is to the detriment of one or more creditors.

Article 191

1. The choice referred to in the preceding Article shall be made by the making of a declaration for such purpose at the clerk's office of the district court of the deceased's last address. The declaration shall be recorded in the Register of Deceased's Estates.
2. As long as the deceased's estate is not accepted by all the heirs, the sub-district court may prescribe the measures which it considers necessary for the preservation of the assets.

Article 192

1. An heir who unambiguously and without reservation conducts himself or herself as an heir who has accepted unconditionally, thereby accepts the deceased's estate unconditionally unless he or she has already made the choice earlier.
2. If an heir has not yet made his or her choice, the sub-district court may set a term therefor at the request of any interested person, which term shall commence on the day after the interested person has procured service of notice of this order on the heir and has procured registration of the order in the Register of Deceased's Estates. At the request of the heir, the sub-district court may extend the term once or more prior to its expiry; the extension shall be registered in the Register of Deceased's Estates.
3. Where the term has expired without the heir meanwhile having made a choice, he or she is deemed to have accepted the deceased's estate unconditionally.
4. An heir who has not yet made a choice shall be deemed to have accepted beneficially when one or more of his or her co-heirs accept beneficially by a declaration, unless he or she still accepts the deceased's estate unconditionally or renounces it within three months after having taken cognisance of such a beneficial acceptance or, if a term set in conformity with paragraph (2) or an extended term was still running for him or her at the date of such beneficial acceptance, within such a term. Unconditional acceptance may only be made in the manner provided for in paragraph (1) of the preceding Article.

Article 193

1. A legal representative of an heir may not accept unconditionally for such an heir and requires authorisation from the sub-district court for renunciation. He or she is obliged to make a declaration of beneficial acceptance or of renunciation within three months from the moment when the deceased's estate or a share therein vests in the heir. This term may be extended in accordance with Article 192(2), second sentence.
2. Where he or she has allowed the term to lapse, the deceased's estate is deemed to have been accepted beneficially by the heir. The sub-district court may cause a record to be made hereof in the Register of Deceased's Estates.
3. Paragraphs (1) and (2) do not apply in the instance referred to in Article 41 of the *Faillissementswet* (Insolvency Act).

Article 194

1. An heir who, after having accepted unconditionally, becomes aware of a last will pursuant to which the bequests and testamentary obligations which he or she must settle must be covered by a smaller amount of his or her share of the deceased's estate than would have been the case without such a last will, may be authorised by the sub-district court, on his or her application, to nevertheless accept beneficially within three months after such a discovery. Nevertheless the liabilities of the deceased's estate, with the exception of the bequests of which he or she was not aware prior thereto and the testamentary obligation of which he or she was already aware before such a time, shall be recoverable from his or her entire capital, to the extent that these could not have been settled from his or her share in the deceased's estate without such last will.

2. An heir who becomes aware after an unconditional acceptance of a last will according to which his or her share in the estate will exceed that which it would have been without such a last will or of an event which occurred after his or her acceptance as a result of which such a share as heir to the estate has increased, may be authorised by the sub-district court, on his or her application, to nevertheless accept beneficially within three months after such a discovery. Nevertheless he or she must settle the liabilities of the deceased's estate and the testamentary obligations from his or her entire capital, to the extent that this also would have been the case without such a last will or without such an event.

Article 195

1. Where a deceased's estate is beneficially accepted by one or more heirs and, as a result, must be liquidated in accordance with the following Section of this Title, all of the heirs shall be liquidator.

2. For the purpose of the provisions of this and the following Section in respect of liquidation the spouse of the deceased who has a right of usufruct pursuant to Section 2 of Title 3 shall be considered an heir except when this will be contrary to the necessary implication of the provisions.

Article 196

The sub-district court may order the heirs, when so requested by an interested person or *ex officio*, to publish the beneficial acceptance in the

Staatscourant (Government Gazette) and in one or more newspapers designated by it.

Article 197

1. A notary who, at the request of an heir, acts as notary for the deceased's estate which was accepted beneficially, shall procure to be registered as such in the Register of Deceased's Estates and shall notify the other heirs thereof as soon as possible.
2. At a request made by a majority of the heirs or by one of more heirs who are jointly entitled to more than one-half of the deceased's estate and within one month after such notification, the sub-district court may designate as notary of the deceased's estate another notary who is willing to act as such. The latter shall procure registration of such a replacement and shall notify the first designated person and the heirs thereof as soon as possible.
3. In the case of publication of the beneficial acceptance in accordance with the preceding Article, the designation of a notary of the deceased's estate shall be published in the same manner with mention of his or her name and address.

Article 198

Unless the sub-district court otherwise provides, the heirs shall exercise their powers as liquidators of the beneficially accepted estate jointly, but each may, if necessary, independently perform acts of ordinary maintenance and for preservation of the assets and, generally, acts which cannot be postponed.

Article 199

1. At the request of an interested person or of the notary of the deceased's estate, the sub-district court may order one or more heirs of a deceased estate which has been beneficially accepted to put up security for their administration and the due performance of their other obligations. The sub-district court shall fix the amount and the type of security.
2. When it appears to an heir that the liabilities of the estate which has been beneficially accepted will exceed the assets, he or she shall so notify the sub-district court at the earliest possible occasion.

Article 200

1. The provisions in the following paragraphs apply until the end of the liquidation as regards an heir who has accepted subject to the privilege of an inventory, unless he or she is liable with his or her entire capital for any liabilities and obligations of the estate which are incumbent upon him or her.
2. Claims of the deceased against the heir and limited rights of the deceased to an asset of the heir, as well as claims of the heir against the deceased and limited rights of the heir to an asset of the deceased, shall not be extinguished by the merger of property.
3. An heir who has settled a liability or obligation of the deceased's estate from his or her other capital shall act as obligee of the deceased's estate for the amount of such a liability with the ranking which it had. The preceding sentence shall apply *mutatis mutandis* to a testamentary obligation which obliges the outlay of a pecuniary expenditure out of the deceased's estate which the heir made from his or her other capital.

Article 201

1. A bequest is obtained without its acceptance being necessary, except for the right of the legatee to renounce the bequest as long as he or she has not accepted it.
2. At the request of any interested party, the sub-district court may set a term for the legatee within which he or she must state whether or not he or she renounces; failing a declaration within the term set the legatee will forfeit the right to renounce.
3. Renunciation of a bequest must be made unambiguously but is not bound to any form.

Section 3 ***Liquidation of the Deceased's Estate***

Article 202

1. A deceased's estate shall be liquidated in accordance with the provisions in this Section, except for the provision in Article 221:
 - (a) when it is accepted by one or more heirs subject to the privilege of an inventory, unless there is a personal representative authorised to settle the liabilities and bequests which are due and payable and the latter can show that the assets of the deceased's estate amply suffice to settle all exigible debts of the

deceased's estate; disputes in respect thereof shall be decided by the sub-district court;

(b) when the district court has appointed a liquidator.

2. If the balance of the deceased's estate is positive, the statutory representative of an heir who has accepted the deceased's estate beneficially for the heir, may request the sub-district court for dispensation of such an obligation to liquidate according to the law.

3. In derogation from paragraph (1)(a) a deceased's estate which is divided in accordance with Article 13 shall be liquidated only in accordance with the law when the spouse of the deceased has accepted it beneficially.

Article 203

1. After an acceptance subject to the privilege of an inventory the district court may appoint a liquidator:

(a) at the request of an heir;

(b) at the request of any interested person or of the Public Prosecution Service when a person who is charged to administer the deceased's estate seriously fails to fulfil his or her obligations, is unfit thereto or does not comply with a testamentary obligation to put up security when the liabilities of the deceased's estate appear to exceed the assets or when division of the estate is commenced prior to its liquidation.

2. The person appointed by the court shall act as liquidator instead of the heirs.

Article 204

1. Where a deceased's estate has not been accepted subject to the privilege of an inventory, the district court may appoint a liquidator:

(a) at the request of an interested person or on the requisition of the Public Prosecution Service when there are no heirs, when it is not known whether there are heirs or when the deceased's estate is not administered by a personal representative and the known heirs leave it unadministered, in full or in part;

(b) at the request of a creditor of the deceased's estate when division of the deceased's estate is commenced prior to settlement of its exigible liabilities or when the creditor runs the risk of not being paid in full or not within a reasonable period either because the deceased's estate is not sufficient or because it is not properly administered or liquidated or because a

creditor commences to obtain recourse against the assets of the deceased's estate;

- (c) at the request of one or more other creditors of an heir, when their interests are seriously prejudiced by conduct of the heirs or of the executor.

2. If the deceased's estate is divided in accordance with Article 13, paragraph (1)(b) and (c) apply *mutatis mutandis* to the entirety of the assets which have belonged to the matrimonial community of property of the deceased and his or her spouse, the liabilities of which vested in such a community or for which recourse was possible against these and whatever was substituted therefor.

Article 205

When the renunciation by an heir of the deceased's estate is evidently to the detriment of a creditor, the district court may, at the creditor's request, provide that the deceased's estate shall be liquidated also in the interest of the creditors of the person who renounced it and it can, if necessary, appoint a liquidator.

Article 206

1. The district court shall only decide on the request for the appointment of a liquidator after having heard the applicant or after having properly summoned him or her to appear and, if there are any heirs and to the extent that they are known, after having heard such heirs or summoned them to appear, the notary of the deceased's estate and the personal representative to appear.

2. Subject to the required safeguards to be specified by it, the district court may designate an heir, personal representative or another person as liquidator. Where two or more liquidators are appointed each may perform all work on his or her own unless otherwise provided at the appointment or later by the sub-district court.

3. A liquidator appointed by the court is entitled to remuneration to be determined by the sub-district court prior to the drawing up of the list of distributions.

4. He or she becomes liquidator on the date on which the order providing for the appointment will become final and binding or, if declared enforceable notwithstanding appeal, on the date after being informed by the clerk of the court of the appointment.

5. A liquidator may be discharged either upon his or her own request or for important reasons, at the request of a co-liquidator, an heir, a creditor of the deceased's estate or the Public Prosecution Service or *ex*

officio. Pending the investigation the district court may take provisional measures and suspend the liquidator. The duties of the liquidator shall end upon his or her death, the declaration in his or her respect of a debt repayment scheme for natural persons, on being declared bankrupt, the appointment of a curator or on the establishment of an administration as referred to in Title 19 of Book 1 over one or more of his or her assets. The court shall appoint one or more liquidators where there are none in office before the liquidation has ended; it may cause a vacancy to be filled.

6. Without delay the clerk of the court shall procure registration in the Register of Deceased's Estates of the appointment of a liquidator and of when the liquidator ceases to be in office as such. The liquidator shall publish this in the *Staatscourant* (Government Gazette) and in one or more newspapers specified at the appointment.

Article 207

A person who has been succeeded as liquidator by someone else must account to his or her successor in the manner provided for administrators.

Article 208

1. At the appointment of a liquidator or by a later order the district court may appoint one of its members as a supervisory judge.
2. If a supervisory judge is appointed:
 - (a) the duties and powers vested in accordance with this Section in the sub-district court shall be exercised by the supervisory judge unless otherwise provided by law;
 - (b) the documents referred to in Articles 211(3), 214(5) and 218(1) shall be lodged, where there is no notary of the deceased's estate, at the clerk's office of the district court.

Article 209

1. If the insignificant value of the assets of a deceased's estate gives rise thereto, the sub-district court may order, at the request of the liquidator or of an interested person, either the liquidation of the deceased's estate at no cost or the discontinuation of the liquidation. At a request for discontinuation the applicant shall be heard or be properly summoned to appear and, to the extent that there are any and are known, the heirs, the liquidator and the notary of the deceased's estate. If a supervisory judge has been appointed, the power referred to in the

first sentence shall vest in the district court on the proposal of the supervisory judge.

2. In its order to discontinue the liquidation, the sub-district court or, as the case may be, the district court, shall also fix the amount of the cost of the liquidation already incurred and order that these be paid from the estate or, if the estate is insufficient for such a purpose, by the heirs to the extent they are liable with their entire capital.

3. Article 226 applies *mutatis mutandis* after the discontinuation.

4. The discontinuation shall be registered and published in the same manner as the appointment of a liquidator.

5. If, after discontinuation of a liquidation, a request for the appointment of a liquidator is made, the applicant must show that there are sufficient assets to cover the cost of the liquidation.

Article 210

1. The liquidators shall provide the sub-district court with all information that it desires and are bound to follow its directions at the liquidation.

2. If a supervisory judge has been appointed, he or she shall be authorised, in order to clarify all circumstances relating to the liquidation, to hear witnesses and experts in the same manner as provided for a supervisory judge in the case of bankruptcy.

Article 211

1. The duty of the liquidator is to administer and liquidate the deceased's estate as a good liquidator. For the purpose of the liquidation a testamentary obligation which obliges the outlay of an expenditure or of an asset from the estate shall be equated with a bequest.

2. The liquidator shall represent the heirs in the fulfilment of his or her duties, judicially and extra-judicially. Without his or her co-operation or the authorisation of the sub-district court they may not dispose of the assets of the deceased's estate or of their share therein.

3. With due expedition the liquidator must draw up or cause the drawing up of a private or notarial inventory listing the liabilities of the deceased's estate by way of a provisional list, which must be lodged at the office of the notary of the estate or, where there is no such notary, at the clerk's office of the sub-district court for inspection by the heirs and the creditors of the deceased's estate; other creditors of an heir, even when they have renounced the deceased's estate, may be authorised by the sub-district court to inspect it.

4. In the case of acceptance subject to the privilege of inventory the sub-district court may provide dispensation for the heirs of the obligation to lodge an inventory for inspection.
5. A liquidator appointed by the court may designate a notary for the deceased's estate if this has not already been done. A notary who accepts such instructions shall notify the heirs thereof and shall procure the registration in the Register of Deceased's Estates.

Article 212

When the statutory representative of an heir or a liquidator appointed by the court has caused a loss to creditors of the deceased's estate by the intentional withdrawal of assets of the deceased's estate from recourse by the creditors, they may demand settlement from him or her of their claim to the extent he or she does not prove that their loss must be set at a lower amount.

Article 213

If the deceased has been married in a community of property, the district court may appoint a liquidator of the dissolved matrimonial community of property at the request of the liquidator of the deceased's estate, in which case it shall be liquidated with corresponding application of the provisions in this Section. The first sentence shall not apply if the matrimonial community of property had already been divided prior to the death of the deceased.

Article 214

1. A liquidator shall publicly summon the creditors of the estate, where this has not yet been done, to lodge their claims with the notary of the deceased's estate prior to a date set by the sub-district court or, when there is no such notary, with the liquidator. The convening notice shall be issued in the same manner as for the publication of the beneficial acceptance or the appointment of the liquidator and, where possible, simultaneously.
2. Moreover, the liquidator must notify, by letter, the creditors of the deceased's estate who are known to him or her. Where the address of a creditor of the deceased's estate has remained unknown, the liquidator shall so notify the sub-district court.
3. The filing of a claim shall interrupt the prescription.

4. The liquidator shall notify, without delay and while stating the reasons, notify the person who lodged the claim if he or she cannot agree with a lodged claim or a claimed ranking.

5. As soon as possible after the expiry of the term set in the notice to the creditors, the liquidator must lodge the list of the claims and claimed ranking which has been recognised and contested by him or her at the office of the notary of the deceased's estate or, where there is no such office, at the clerk's notary of the sub-district court for inspection by the heirs, legatees and all persons who have been registered as creditor. The liquidator shall notify each of them of such a lodging.

Article 215

1. The liquidator shall convert the assets of the deceased's estate into cash, to the extent this will be required for settlement of the liabilities of the deceased's estate. Assets which may be claimed by a creditor of the deceased's estate shall be converted, as far as possible, into cash last.

2. The liquidator shall consult the heirs as much as possible on the choice of the assets to be converted into cash and the manner in which this shall be done. Where an heir or a creditor who claims such an asset objects to its intended conversion into cash, the liquidator shall provide him or her with an opportunity to call in the decision of the sub-district court.

3. The provision in the preceding paragraph as regards heirs shall also apply as regards persons to whom the usufruct of the deceased's estate or a share therein was left.

4. Article 68 of Book 3 applies to the liquidator *mutatis mutandis*.

5. As regards capital sum insurance policies taken out by the deceased without the designation of a third person as person with an entitlement which has become irrevocable, Article 21(a) of the *Faillissementswet* (Insolvency Act) shall apply *mutatis mutandis* whereby the following terms shall be read as follows:

- (a) curator: the liquidator;
- (b) supervisory judge: the sub-district court;
- (c) policyholder: the heirs or, if the deceased's estate has been divided in accordance with Section 1 of Title 3, the spouse of the deceased.

Article 216

A liquidator appointed by the court may claim back what was distributed to a legatee from the deceased's estate within three years

thereafter, to the extent this will be necessary to settle liabilities and as referred to in Article 7(1)(a) to (g), inclusive. Article 122(1) applies *mutatis mutandis*.

Article 217

1. If a person is both obligor and obligee of the deceased's estate, the provisions of the *Faillissementswet* (Insolvency Act) in respect of the right to set-off shall apply *mutatis mutandis*.
2. If a person together with the deceased shared an interest in common property which is divided during the liquidation, Article 56 of the *Faillissementswet* applies *mutatis mutandis*.

Article 218

1. Within six months from the expiry of the time set for the lodging of claims, a liquidator must account for and lodge a list of distributions at the office of the notary of the deceased's estate or, where there is none, at the clerk's office of the sub-district court, for public inspection. The sub-district court may extend this term.
2. The liquidator shall publish the lodging in the same manner as a notice for filing claims and shall, moreover, inform the heirs, the legatees and all persons who have filed a claim as a creditor, of such a lodging.
3. Within one month after such public notification each interested party may file opposition against the account given or against the list of distributions with the sub-district court or, if a supervisory judge has been appointed, at the district court.
4. Obligations which oblige delivery of an asset from the deceased's estate or the establishment of a limited right to such an asset shall be converted into a pecuniary liability to the extent that this is required because of a shortfall. Other obligations not expressed in money terms and obligations under a suspensive condition shall be included only in the list of distributions when so requested by the obligee. In that case they shall be converted into a pecuniary debt. No inclusion in the list of distributions shall be made of the claim of a forced heir, if it is not exigible pursuant to Article 81(2), as a result of a condition as referred to in Article 82 or on account of an order as referred to in Article 83.
5. For the rest, the provisions of the *Faillissementswet* (Insolvency Act) shall apply as much as possible *mutatis mutandis* for the purpose of the calculation of each one's claim, the drawing up of the list of distributions and the opposition that may be made.

Article 219

When the court has provided that the deceased's estate shall be liquidated also in the interest of the creditors of someone who has renounced it, these creditors may also file their claims. They shall be listed in the list of distributions but their claims shall only be specified as being payable to the extent their obligor would be entitled to a surplus, if the latter would not have renounced it; for that purpose the liquidator may claim, to the extent necessary, a division of the deceased's estate and participate in the division.

Article 220

1. After a list of distributions has become binding the liquidator must distribute the amount to which each shall be entitled according to the list of distributions. Pecuniary sums not disposed of within six months or which have been reserved shall be paid at the place designated for the tender and deposit of funds held for judicial safekeeping.
2. Creditors and obligees of the deceased's estate who only appear after a list of distributions has become binding have, without prejudice to their recourse against assets of heirs who are liable with their entire capital, a right of recourse only to assets which are then unsold and against the balance of the deceased's estate. Settlement shall be made to them as and when they file their claim.
3. Moreover, creditors and obligees as referred to in Article 7(1)(a) to (g), inclusive, whose claim has not been settled still have a right of recourse against legatees, to the extent that the latter have received a distribution and do not designate sufficient assets for recourse as referred to in the preceding paragraph. The right of recourse against a legatee shall lapse three years from the date on which the list of distributions according to which the distribution was made to the legatee became binding.
4. When a claim not listed in the list of distributions pursuant to Article 218(4), third sentence becomes exigible, the forced heir may, without prejudice to recourse in accordance with paragraphs (2) and (3) for the part of the debt for which an heir or legatee in accordance with Article 87(5) and (6) is liable, make a claim against such an heir or legatee.

Article 221

1. The obligations described in Articles 214(1) and (5) and 218 are incumbent on the heirs who are liquidator on account of their

acceptance subject to the privilege of an inventory, only if the sub-district court so provides.

2. A liquidator appointed by the court need not lodge an account and a list of distributions when all liabilities of which he or she became aware prior to the end of the term referred to in Article 218(1) were settled in full or when the sub-district court has granted him or her an exemption of such a lodging. Such an exemption shall not be granted when a creditor objects thereto.

3. Where no account is deposited it shall be made to the persons entitled to the surplus in the manner provided for administrators.

Article 222

During the liquidation only Articles 166, 167, 169, 170(1) and 194(2) of Title 7 of Book 3 apply.

Article 223

1. During the liquidation a creditor shall only be empowered to enforce his or her claim against assets of the deceased's estate if he or she would have been so entitled in the case of bankruptcy of the deceased. Articles 57 to 60, inclusive, of the *Faillissementswet* (Insolvency Act) apply *mutatis mutandis*, with the proviso that the powers of the supervisory judge referred to in Articles 58(1), 59a(3) and (5) and 60(3), are exercised by the sub-district court if no supervisory judge was appointed on account of the liquidation.

2. A creditor of the deceased's estate may also during the liquidation have his or her right of claim or ranking of the claim be determined by judgment. A judgment whereby a claim against a liquidator is determined may be executed only against the personal assets of an heir who is liable with his or her entire capital, if the latter was a party to the proceedings.

3. At the request of a liquidator seizures already made may be lifted by the sub-district court to the extent this is necessary for the liquidation.

Article 224

Only after the known creditors of a liquidated deceased's estate have been paid in full, will the other creditors of an heir have a right of recourse against the assets of the deceased's estate.

Article 225

1. When not all heirs are known or there is uncertainty in respect thereof, a liquidator shall be bound to trace the heirs by notices in widely read daily newspapers or by any other effective means.
2. Where a liquidator has been appointed because the deceased's estate was left wholly or partially unadministered, the liquidation shall end once all heirs have accepted the way the estate was administered and have settled the cost of liquidation already incurred.

Article 226

1. Where the liquidation is completed and has ended with a surplus, the liquidator appointed by the court shall surrender the remaining assets to the heirs or, if the deceased's estate was divided in accordance with Article 13, to the deceased's spouse. Where there are no heirs, where it is unknown whether there are heirs or where the heirs are not prepared to take receipt of the assets, the liquidator shall surrender these to the State.
2. Where the heirs who appear have shown themselves prepared to take receipt are only entitled to part of the deceased's estate, the liquidator shall ensure that the deceased's estate shall first be divided, whereupon he or she shall give to the State whatever was allotted to heirs who are unknown or failed to co-operate with the division.
3. The State is authorised to sell the surrendered assets; registered property may be sold only by public sale unless the sub-district court has authorised a sale by private treaty.
4. Where no one has claimed an asset of the deceased's estate or what has taken its place twenty years from the devolvement of the deceased's estate, it shall accrue to the State.

Section 4 ***Division of the Deceased's Estate***

Article 227

Notwithstanding the provisions applicable to a division of community property, the following provisions shall apply to a division of a deceased's estate.

Article 228

1. The liabilities of an heir to be allocated against his or her share at the division, when so demanded by one or more of the remaining heirs, shall include the balance that remained due by him or her to the deceased.
2. Liabilities and obligations as referred to in Article 7(1)(f) to (h), inclusive, of an heir to a co-heir shall also be allocated against the share of the obligor, when so demanded and on behalf of the co-heir, to the extent that their payment may be demanded at the division.

Article 229

1. Heirs must put in hotchpot in favour of their co-heirs the value of gifts which the deceased had made to them, to the extent that this was so prescribed by the deceased either at the time of making the gift or by testamentary disposition.
2. An obligation to put in hotchpot imposed when the gift was made may be cancelled by last will.

Article 230

Heirs who inherit by right of representation must bring in hotchpot not only the gifts received by them, each according to the extent of their respective share in the estate, but also gifts which each would have had to bring in hotchpot for the person in whose place he or she has become an heir, had that person become an heir.

Article 231

When a donee was married in a community of property or with a netting agreement, the entire gift shall also qualify for bringing in hotchpot unless the deceased has provided for the contrary.

Article 232

1. The liability of the heirs towards the creditors of the deceased's estate shall not be altered as a result of an obligation to bring in hotchpot.
2. At the transmission of a share in the deceased's estate of an heir, his or her right or obligation to bring in hotchpot shall also be transmitted.

Article 233

1. An obligation to bring in hotchpot at the division of the deceased's estate means that the value of the gift must be deducted from the share of the entitled part of the deceased's estate of the heir who is obliged to bring into hotchpot and the heirs, on whose behalf such bringing into hotchpot is required, increased by the amounts to be mutually brought into hotchpot. The value of the gifts are calculated in the manner following from Article 66; this value shall be increased with interest at the rate of six percent per annum from the date of devolvement of the deceased's estate. Articles 68 and 70(3) apply *mutatis mutandis*.
2. The bringing in hotchpot is not obliged to the extent the value of the gift exceeds the share of the heir.

PART II.

**REFERENCES TO THE DUTCH CODE OF CIVIL
PROCEDURE MADE IN BOOK 4, DUTCH CIVIL
CODE**

REFERENCES TO THE DUTCH CODE OF CIVIL PROCEDURE MADE IN BOOK 4, DUTCH CIVIL CODE

Article 87

1. On the application of the parties or of one or more parties or *ex officio* the court may order the parties, in all cases and at each stage of the proceedings, to appear before the court for the purpose of a possible settlement.
2. The parties shall appear in court in person or represented by a person who is so authorised. In cases in which they may not litigate in person, they must appear in person or represented by a member of the local Bar. The court may order an appearance in person. Parties who appear in court in person may be assisted by their counsellor. In cases in which the parties may not litigate in person the counsellor must be an advocate or member of the local Bar.
3. If a settlement is reached and a party so demands, an official record shall be drawn up, which shall be signed by the parties or by the persons who they specifically so authorised, stating the obligations arising from such settlement which the parties have undertaken. This official record shall be issued in an immediately enforceable form.
4. If no settlement is reached, the court shall set the date on which the case shall again be placed on the role.

Article 444

1. For the purposes of seizure, the bailiff has access to every place insofar as reasonably necessary for performing his or her duties.
2. If the doors are closed or opening of the doors is refused, including a refusal to open any room or item of furniture, as well as when the person under whom seizure for execution is made is not present and no-one is found to represent such a person, the bailiff shall apply to the burgomaster of the municipality in whose presence the doors and furniture will be opened to the extent reasonably necessary. The burgomaster may be represented by a police officer who is also an assistant public prosecutor. In the official report of the seizure the presence of such an official and what was done in his or her presence pursuant to this and the following three Articles shall be mentioned.
3. In the case of an entry in a dwelling without the consent of the occupant Articles 10 and 11(2) of the *Algemene wet op het binnentreden* (General Entry Act) apply to the official report of the seizure *mutatis*

mutandis. These Articles also apply in case no seizure is made after the entry.

Article 673

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

Article 674

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

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 deceased's estate drawn up by hand, by the sub-district court referred to in Article 672.²¹

Article 676

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

Article 677

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 Dutch 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

1. If the notary is unable to get the parties to reach agreement, he shall note this in a notarial record in which he will specify, on request, the points on which the parties have already reached agreement.

²¹ The translation of Article 672, Dutch Code of Civil Procedure can be found in I. SUMNER and H. WARENDORF, *Family law legislation of the Netherlands*, Antwerp: Intersentia, 2003.

2. Until such time as complete agreement has been reached, any party willing to take the initiative may apply for a court order in respect of the manner the division must be made or whereby the division is determined or for any other court 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 stay 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

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.

PART III.

**PRIVATE INTERNATIONAL LAW LEGISLATION IN
THE FIELD OF INHERITANCE LAW**

PRIVATE INTERNATIONAL LAW (INHERITANCE) ACT²²

Article 1

The law applicable to inheritance shall be designated by the provisions of the Convention on the Law Applicable to Succession to the Estates of Deceased Persons, concluded in The Hague on 1st August 1989, of which the French and English texts and its Dutch translation were published in *Tractatenblad* (Treaty Series) 1994, N^o. 49.

Article 2

1. If any beneficiary to a deceased's estate which is to be liquidated is prejudiced vis-à-vis any other beneficiary by the application of the applicable law to an asset situated abroad pursuant to the private international law of the State where the good is located, the assets so acquired in accordance with such a law by that other beneficiary or by third persons shall be recognised as having been lawfully acquired.
2. The prejudiced beneficiary may, however, claim a netting at the winding up of the deceased's estate between him or her and the beneficiary who obtained an advantage for no more than the prejudice sustained. Netting may only be made with regard to assets of the deceased's estate or by a reduction of a burden imposed.
3. The beneficiary referred to in the preceding paragraphs means an heir, a legatee or a person in favour of whom a testamentary obligation was imposed.

Article 3

The revocation by the testator of any previously made testamentary obligations shall be presumed to comprise any earlier designation made by the testator of the law governing the succession of his or her estate.

Article 4

1. The winding up of the deceased's estate shall be governed by Dutch law if the testator had his or her last habitual residence in the Netherlands. The Dutch provisions shall apply in particular with

²² Act of 4th September 1996, in force as of 1st October 1996, *Staatsblad* (Bulletin of Acts and Decrees) 1996, N^o. 457. Last amended 6th December 2001, in force as of 1st January 2002, *Staatsblad* (Bulletin of Acts and Decrees) 2001, N^o. 584.

regard to the obligations of the heirs designated according to the law applicable pursuant to Article 1 of the said Convention for the obligations of the testator and with regard to the conditions under which they may exclude or limit their obligations.

2. The manner in which the deceased's estate is divided shall be governed by Dutch law if the testator had his last habitual residence in the Netherlands, unless the participants jointly designate the law of another State to be applicable. Account shall be taken of the requisites of the law of property of the place where the assets are situated.

Article 5

1. The duty and powers of a liquidator designated by the testator shall be governed by Dutch law if the testator had his or her last habitual residence in the Netherlands.

2. Without prejudice to the powers of the provisional measures court in interim relief proceedings, the court may order measures, on the claim of any interested person, in order to ensure observance of the law applicable according to the Convention referred to in Article 1 as regards the succession to component parts of the deceased's estate situated in the Netherlands. It may order that security be put up in connection therewith.

Article 6

This Article contains provisions amending other legislation.

Article 7

1. This Act applies to the succession of persons who have died after the date of its entry into force.

2. If at a time prior to entry into force of this Act, the testator has designated the law governing his or her succession, such a designation shall be considered valid, if it satisfies the provisions of Article 5 of the Convention mentioned in Article 1.

3. If the parties to an agreement in respect of the succession have designated the law governing such agreement at a time prior to the entry into force of this Act, such designation shall be considered valid, if it satisfies the provisions of Article 11 of the Convention mentioned in Article 1.

4. Without prejudice to the provision in the preceding paragraphs, a designation by the testator of the law governing the succession of his or her estate or any change of such a designation made prior to entry into

force of this Act shall not be considered invalid on the sole ground that the Act did not provide for such a designation.

Article 8

This Act shall enter into force on a date to be specified by Royal Decree.

Article 9

This Act may be cited as *Wet conflictenrecht erfopvolging* (Private International Law (Inheritance) Act).

PRIVATE INTERNATIONAL LAW (TRUSTS) ACT²³

Article 1

For the purposes of this Act the following terms mean:

- (a) 'Convention': the Convention on the Law Applicable to Trusts and to their Recognition concluded in The Hague on 1st July 1985, the English and French texts of which and its Dutch translation were published in *Tractatenblad* (Treaty Series) 1985 N^o. 141.
- (b) 'trust': a trust as defined in Article 2 of the Convention, which has been created by an expression of will and is evidenced by a document.

Article 2

The Convention applies to the designation of the law that will govern trusts and to the recognition of trusts.

Article 3

As regards an asset in respect of which any registration may be made in a register kept pursuant to the Act and which forms part of the assets of a trust which constitutes separate capital, the trustee may require that a record be made in the trustee's name and in his or her capacity or in such other manner as will show the existence of a trust.

Article 4

Provisions of Dutch law as regards the transfer of title of ownership, security rights, or the protection of creditors in the case of insolvency shall not affect the juridical consequences of the recognition of a trust as defined in Article 11 of the Convention.

Article 5

This Act may be cited as *Wet conflictenrecht trusts* (Private International Law (Trusts) Act).

²³ Act of 4th October 1995, in force as of 1st February 1996, *Staatsblad* (Bulletin of Acts and Decrees) 1995, N^o. 508.

Article 6

This Act shall enter into force on a date to be specified by Royal Decree.

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