

SUBSTANTIVE LAW

1. SYSTEM AND ORGANIZATION OF THE CODES

INTRODUCTORY NOTE

The materials which follow deal with the codes, especially the civil and commercial codes, of leading civil-law countries. In studying these materials, the reader should keep in mind that in each of the countries in question the enactment of the codes constituted (a) the culmination of a long historical evolution, and (b) the starting point of new, code-oriented (and presently continuing) developments in the national legal system. Thus it goes without saying that the materials which follow must be placed into the historical context outlined *supra* in ch. III, sec. 2.

FRENCH CIVIL CODE—TABLE OF CONTENTS

PRELIMINARY TITLE: Publication, Effects and Application of Laws in General

*Book I. Persons*¹

Title

I. Civil Rights²

1. Book One of the Code was subjected to very heavy revision beginning in 1965. Details are indicated in connection with the subdivisions particularly affected. See also the discussion *infra* at nn. 149–154, and B. Audit, *Recent Revisions of the French Civil Code*, 38 *La.L.Rev.* 747 (1978).

2. Title I originally was called "On the Enjoyment and Loss of Civil Rights." The 1993 statute mentioned in n. 6 *infra* removed the words "and loss"; a Law No. 94–653 of July 29, 1994, also removed the words "Enjoyment of," leaving only "Civil Rights" as a heading for Title I. In French legal terminology, the expression "civil rights" (*droits civils*) does not have the same connotation as it has in American legal usage; "rights of citizens in their private relationships" might come somewhat closer. Article 7 of the Code distinguishes between "civil" and "political rights," stating that the latter are acquired

in conformity with the constitution and the election laws, implying that the former do not include the latter. In a matter raising the same issue as the *König* case mentioned *supra* ch. IV, sec. 2E, for instance, the French Conseil d'Etat ruled that proceedings to determine conscientious objector status, handled by a special commission set up for that purpose, did not involve "civil rights" within the meaning of the European Convention on Human Rights. *Mr. V.*, Cons. d'Etat, Dec. 21, 1979, 1981 *Y.B.Eur.Conv.Hum. Rights* 512. But, for a somewhat broader definition under the terms of the European Convention on Human Rights, which in Article 6 requires the member countries to determine "civil" cases with reasonable speed, by the European Court on Human Rights itself, see Cons. Beaumartin v. France, Nov. 24, 1994, Case 35–1993–340–509, 1995 *D.J.* 273, where that court held that a dispute about indemnifica-

Title

- Chapter 1. Civil Rights³
- Chapter 2. Respect for the Human Body⁴
- Chapter 3. Genetic studies of the characteristics of individuals and their identification by genetic means⁵
- I.bis French Nationality⁶
 - (Division into Chapters omitted)
- II. Records of Civil Status⁷
 - (Division into Chapters omitted)
- III. Domicile⁸
- IV. Absent (Missing) Persons⁹
 - (Division into Chapters omitted)
- V. Marriage¹⁰

tion for property seized in a former French protectorate was a civil matter, to which Art. 6 of the Convention was applicable; that the case had been brought before the administrative courts was not material, the conflict involved property rights—to indemnity—and was thus civil. See also, with an extensive collection of cases, the annotation by Prof. P. Lagarde, to M'Baye, July 7, 1995, French Council of State, 85 Rev.cr.d.i.p. 84 (1996). Of course, the definition given by the European Court of Human Rights to the expression "civil rights" in the context of the European Convention on Human Rights is not relevant in matters of French internal law when that Convention is not applicable.

3. Among the more important changes and additions to this part, one should note Article 9 on the right of privacy, added in 1970; Article 9-1 on the protection of the presumption of innocence against publications in the media, added in 1993; and Article 10 about the duty of everyone to provide information to the courts, added in 1972.

4. This chapter was added by Law No. 94-653 of July 29, 1994, which was brought about by concerns relating to recent developments, such as surrogate motherhood, genetic engineering affecting humans, experiments with humans, and the like. It prohibits, inter alia, payment as compensation for participation in human experimentation or for the gift of a body part and also prohibits contracts relating to surrogate motherhood.

5. This chapter was added by the law mentioned in the preceding footnote and was due to somewhat similar considerations, in particular, it would seem, to a fear that insurance companies might force applicants for insurance to be studied for their genetic characteristics and on that basis make insurance unavailable for, perhaps, a large number of persons. It prohibits such studies except for

medical reasons or as part of a judicial proceeding.

6. Title I of the Civil Code, as originally enacted, contained rules as to the acquisition and loss of French nationality. These rules were later incorporated in a special, often modified statute, called the Code of French Nationality (*Code de la Nationalité française*). The modern tendency in civil-law countries is to treat citizenship as a public-law subject, not to be covered in a civil code. Nevertheless, because in France nationality has a significant impact on the jurisdiction of courts (see *supra* ch. IV, sec. 1E, on jurisdiction) and, to some extent, on choice of law, commercial publishers tended to include excerpts from the Nationality Code in their versions of the Civil Code. Law No. 93-933 of July 22, 1993, 1993 J.O. 10342, 1994 D.L. 400, then integrated the Code of French Nationality into the Civil Code as its Title Ibis.

7. The subdivisions of this title deal essentially with birth, death, and marriage records and with related matters, such as names. There have been some recent changes to make the former, very strict rules on names somewhat more flexible and to provide for greater equality among men and women in that regard. See in particular, Law No. 93-22 of January 8, 1993, 1993 J.O. 495, 1993 D.L. 179.

8. A 1975 amendment provides, inter alia, that spouses may have separate domiciles.

9. This Title, as amended in 1977, deals with the protection of the interests of missing persons and judicial declarations of death after an absence of ten years.

10. This Title deals with the capacity to marry, form requirements for a marriage, annulment, and the mutual obligation of

- (Division into Chapters omitted)
- VI. Divorce¹¹
 - (Division into Chapters omitted)
- VII. Filiation¹²
 - Chapter 1. Common rules relating to legitimate and illegitimate children¹³
 - Chapter 2. Legitimate children¹⁴
 - Chapter 3. Illegitimate children¹⁵
- VIII. Adoption¹⁶
 - Chapter 1. Plenary Adoption
 - Chapter 2. Simple Adoption
- IX. Parental Authority¹⁷
 - (Division into Chapters omitted)
- X. Minority, Guardianship and Emancipation¹⁸
 - (Division into Chapters omitted)
- XI. Majority and Legal Protection of Adults¹⁹

spouses, children, and to some extent other family members. There have been numerous amendments, in particular concerning the age of consent, equality between spouses, etc. See Law No. 93-22, *supra* n. 7.

11. This Title was profoundly changed by a Law No. 75-617 of July 11, 1975, which liberalized the French divorce legislation; in addition to divorce based on fault (misconduct), the law authorizes divorce based on common consent or the effective end of the marriage relationship. The Title also deals with separation and with the effects of divorce and separation on the custody of children and on the financial relations and support obligations of the spouses.

12. This Title was profoundly revised by Law No. 71-3 of January 3, 1972, improving, *inter alia*, the status of illegitimate children and adding provisions on choice of law in filiation matters.

13. To this Chapter as revised in 1972 was added a section on "medically assisted procreation" (Arts. 311-19 and 311-20) by Law No. 94-653 on the protection of the human body, mentioned *supra* nn. 4 & 5. The provision prohibits, in case of the use of a donor of sperm, any paternity actions against the latter, requires spouses (or concubines) wishing to resort to this procedure to give their consent before a judge or notary and, generally speaking, prohibits both of them from later contesting their parental relation with the child.

14. This chapter, as revised in 1972, was further amended, mainly as to procedural matters, by Law No. 93-22, mentioned *supra* n. 7.

15. This chapter, as revised earlier, was further revised by Law No. 93-22, *supra* n. 7, to provide, *inter alia*, for greater rights for illegitimate children. The rules on illegitimate children in French law are quite different from those in most American States.

16. This Title was substantially amended by Law No. 66-500 of July 11, 1966, Law No. 76-1179 of December 22, 1976, and Law No. 93-22, *supra* n. 7. The plenary adoption mentioned in Chapter 1 makes the child a full member of the adopting parents' family and cancels the ties with the natural family; the simple adoption gives the adopting parent custody of the child and entails a duty of support, but otherwise leaves the child's family ties intact.

17. This Title was profoundly amended by Law No. 70-459 of June 4, 1970, in particular to give equal rights as to children to both father and mother (an earlier heading of the Title was "Paternal Authority"); there were some subsequent, less significant amendments.

18. This Title was revised by Law No. 74-631 of July 5, 1974, which reduced the age of majority to eighteen years; an earlier Law No. 64-1230 of December 14, 1964 dealing in particular with guardianship; Law No. 85-1372 of December 22, 1985; and Law No. 94-22, *supra* n. 7. Rules on the management of children's property should not be assumed to be similar to those in American law.

19. This Title was substantially revised by Law No. 68-5 of January 3, 1968, and by Law No. 74-631, mentioned *supra* n. 18. In line with modern thinking, it provides not

- Chapter 1. General Rules
- Chapter 2. Adults under court protection
- Chapter 3. Adults under guardianship
- Chapter 4. Adults under Curatorship

Book II. Property and Different Kinds of Property Rights ²⁰

- I. Distinctions Among Types of Property
 - Chapter 1. Immovables
 - Chapter 2. Movables
 - Chapter 3. Property and its Relation to those Possessing it
- II. Ownership
 - (Division into Chapters omitted) ²¹
- III. Usufruct, Use and Habitation
 - Chapter 1. Usufruct ²²
 - Chapter 2. Use and Habitation ²³
- IV. Servitudes or Easements
 - (Division into Chapters omitted) ²⁴

Book III. The Different Ways By Which one Acquires Property

General Provisions

- I. Successions
 - Chapter 1. "Opening" of the Succession; the Heirs' Right of "seizin" ²⁵
 - Chapter 2. Conditions required for inheriting
 - Chapter 3. The different classes of persons entitled to inherit
 - Chapter 4. Rights of the State
 - Chapter 5. Acceptance and rejection of the inheritance
 - Chapter 6. Partition

only for the situation of persons totally unable to act for themselves, on whose behalf a guardian must act, but also for individuals capable to act, but needing some supervision to avoid harm to their interests.

20. Some minor amendments have not been indicated. The Civil Code does not regulate a number of matters that are practically very important, such as condominium ownership of apartment buildings; a substantial number of apartment buildings are owned in that fashion. The basic rules are found in an often amended Law No. 65-557 of July 10, 1965.

21. This Title contains some general definitions not part of any chapter and then, in Chapters 1 and 2, rules on the acquisition of ownership by merger, accession, incorporation, etc.

22. Minor amendments to this chapter have been omitted. Usufruct involves the right for life or for a fixed term less than life

to use and enjoy the proceeds of property. It thus resembles more or less a legal life estate, but the "usufructuary" (analogous to the life tenant) and the owner of the "naked title" (analogous to remainderman) are considered as having concurrent, not successive rights in the property.

23. Use resembles usufruct, but involves only the right to use the property, not to enjoy any proceeds; habitation is the right to live in a place for life or a term.

24. Some minor amendments have been omitted.

25. This chapter, and in particular Article 724, restate the principle of "universal succession" mentioned supra ch. I, sec. 2A(1), reflected in the French legal proverb *le mort saisit le vif* (the dead person gives seizin (possession) to the live person). Minor amendments affecting this and the following chapters have been omitted.

II. Gifts Inter Vivos and Wills

Chapter 1. General Provisions

Chapter 2. Capacity to make gifts or bequests and to receive property by gift or bequest

Chapter 3. Property available for bequests; their reduction ²⁶

Chapter 4. Gifts

Chapter 5. Wills ²⁷

Chapter 6. Provisions permitted in favor of the donor or testator's grandchildren and children of brothers or sisters ²⁸

Chapter 7. Partition by ascendants ²⁹

Chapter 8. Gifts made to spouses by antenuptial agreement

Chapter 9. Gifts and bequests between spouses by antenuptial agreement or otherwise ³⁰

III. Contracts or Obligations due to Agreement in General

Chapter 1. General Provisions

Chapter 2. Essential Conditions for the Validity of Agreements ³¹

Chapter 3. Effect of Obligations ³²

Chapter 4. Different kinds of obligations ³³

26. This Chapter was substantially revised by Law No. 72-3 of January 3, 1972. It contains the provisions relating to what is sometimes called the *légitime* which prohibits an individual from bequeathing or giving by gift inter vivos more than a specified portion of the estate if the individual has children or other descendants and, in some cases, ascendants. In France if there is one child, it is entitled to half, if there are two or more children, they are entitled to two thirds of the estate. This has an obvious impact on what we would call estate planning.

27. Rules on the form of wills were amended in particular by Law No. 50-1513 of December 8, 1950, and some further minor amendments.

28. Civil Code Art. 896, an expression of the revolutionary spirit opposed to schemes intended to keep property in the same family, prohibits essentially all devices analogous to "future interests." Chapter 6 (amended in 1959) makes some limited exceptions to that rule in favor of the individuals mentioned in its title.

29. This Chapter (amended in particular by Law No. 71-523 of July 3, 1971) permits individuals by will, or even by gift, to divide up their property (or at least the share they must leave their descendants). This procedure, especially if made by gift, with the donor reserving a "usufruct" for himself/herself is popular because it has substantial succession tax advantages (the gift tax is normally based on the value of the "remainder,"

not the total value of the property and there is no "succession" tax since technically the donee receives nothing at death—the usufructuary's interest just comes to an end) and because it avoids proceedings for a partition of the property after death.

30. This Chapter, substantially revised in 1967 and, in particular in 1972 by Law No. 72-3 of January 3, 1972, provides a limited exception in favor of spouses to the rule requiring descendants to receive at least half the decedent's property. A spouse could, for instance, leave one fourth of the estate to the other spouse, as well as the "usufruct" of the balance, or even the "usufruct" of the entire estate.

31. This Chapter deals with issues such as consent, capacity to contract, etc. It was amended to conform to the rules on the protection of incompetents, etc. mentioned *supra* n. 19.

32. Changes in this Chapter were effected, *inter alia*, by legislation affecting the rules on penalty clauses (see *infra* ch. V, sec. 3A(2)), some related amendments in the event of defaults concerning money debts and on interest on judgments, and by some conforming amendments due to Law No. 91-650 of July 9, 1991, on the enforcement of judgments, mentioned *supra* ch. IV, sec. 1, at n. 6.

33. This Chapter deals with obligations subject to conditions and similar matters. Minor amendments have been omitted.

- Chapter 5. Extinction of obligations³⁴
- Chapter 6. Proof of obligations, and of payment³⁵
- IV. Obligations which arise without Contract
 - Chapter 1. Quasi-contracts
 - Chapter 2. Torts³⁶
- V. Ante-nuptial Contracts and Matrimonial Regimes³⁷
(Division into Chapters omitted)
- VI. Sales³⁸

34. This Chapter deals with various matters, such as performance, by which an obligation due in particular to a contract comes to an end. It has been amended, *inter alia*, by some provisions of Law No. 91-650 of July 9, 1991 on the enforcement of judgments, mentioned *supra*, in ch. IV, sec. 1, at n. 6. The provision replaced with some changes legislation adopted in 1936 providing that, although under the original Code provision the debtor could not force the creditor to accept partial performance, the court could grant permission for payment in installments, even at a reduced rate of interest. Some minor amendments have been omitted.

35. The matters contained in this Chapter, and the amendments of the Civil Code involved, have been discussed in ch. IV, secs. 1I & 1K. (The Chapter also contains the rules on *res judicata*, included among those on presumptions).

36. The provisions on tort have been amended only to a limited extent by laws adopted in 1922, 1937, and 1970 dealing with the liability of owners of buildings in case of fire, of parents for the wrongs of their children, and of teachers and employers of apprentices for the acts of young people under their control. There has, however, been a massive amount of complementary legislation (auxiliary statutes and statutes on related matters such as compulsory insurance). See the material on torts, *infra* this section.

37. This Title was fundamentally revised by Law No. 65-570 of July 13, 1965, to provide for much greater equality between spouses in their property relations. There were some further minor amendments and a more substantial one, intended to improve equality, by Law No. 85-1372 of December 23, 1985, on equality between spouses in their matrimonial régimes and in the administration of the property of their minor children. For discussions, in English, of the drastic revisions which this title underwent in 1965, see I. Soubbotich, *Recent Important Reforms in the French Matrimonial Regime*,

12 N.Y.Law Forum 245 (1966); L. N. Brown, *The Reform of French Matrimonial Property Law*, 14 Am.J.Comp.L. 308 (1965); M. A. Glendon, *State, Law and Family: Family Law in Transition in the United States and Western Europe* 143-47 (1977).

In the last-cited work, and in the same author's previous article, *Matrimonial Property: A Comparative Study of Law and Social Change*, 49 Tul.L.Rev. 21 (1974), the French reforms of 1965 are compared with developments in Germany, England, and the United States. For a more comprehensive comparative treatment (covering Belgium, England, France, Germany, Italy, and the Netherlands), see A. Kiralfy (ed.), *Comparative Law of Matrimonial Property* (1972).

The various chapters in the Title mention the different property régimes spouses may choose, a form of community property which also comes into effect in the absence of an express choice, separate property or community property limited to post-marriage acquisitions.

38. The title "Sales" may be somewhat misleading to an American reader, since the sales encompassed by that Title concern sales of real property as well as of personal property. The reader should be aware of Civil Code Art. 1883 according to which titles pass immediately, once there is agreement on the price and on the object of the sale. A contract by which the parties agree to sell and buy something, but with title to pass in the future, is called in French a *promesse de vente*; the expression "promesse" thus does not have the same meaning at all as the term "promise" in American law when distinguished from a condition or a warranty. There have been a number of minor amendments to the Title and there is a massive amount of related legislation, especially in the Consumer Code. In addition, a Chapter 3-1 on the sale of buildings to be constructed, was added by Law No. 67-3 of January 3, 1967.

(Division into Chapters omitted)

- VII. Exchanges
- VIII. Contracts of Hiring³⁹
 - Chapter 1. General Provisions
 - Chapter 2. Lease of things⁴⁰
 - Chapter 3. Hiring of labor and of work⁴¹
 - Chapter 4. Loan of [farm] animals⁴²
- VIIIbis. Real Estate Development Contracts⁴³
- IX. Companies⁴⁴
 - Chapter 1. General Rules⁴⁵
 - Chapter 2. [Registered] partnership under civil law⁴⁶
 - Chapter 3. Unregistered partnerships⁴⁷

39. In civil-law systems, a lease (even of immovable property) generally is treated as a type of *contract* rather than as an estate in land. This accounts for the fact that leases (treated as a species of hiring) are dealt with in Book III, and not in Book II, of the French Civil Code. The expression "hiring" has been used here as a translation of the French term *louage* because that French term encompasses not only a lease of real property or of a chattel but also a "hiring of work," that is, a contract by which one party agrees to perform work of some kind for the other in an employee or independent contractor capacity.

40. This Chapter deals with both the lease of chattels and of real property. There have been a number of amendments to this Chapter and, in addition, a massive amount of special legislation for the protection of tenants of apartments, renters of commercial property, and farmers renting agricultural property, each of which has led to a large amount of litigation.

41. This Chapter, combining in its relatively brief provisions the rules on the employment relationship, on work by independent contractors (such as crafts people), and of carriers, reflects the still predominantly rural and pre-industrial nature of the French economy at the time of the adoption of the Civil Code. In addition to a number of amendments (e.g., by Law No. 78-12 of January 4 1978, dealing with building construction), the provisions of the Chapter have been added to by a very large number of auxiliary statutes, some of which have eventually been transformed into separate Codes, such as, e.g., the French Labor Code, the Urban Planning Code, and the Construction and Dwellings Code.

42. This Chapter was amended by legislation adopted in 1941.

43. This Title was added by Law No. 71-579 of July 16, 1971. There have been some minor subsequent amendments. In addition, substantial auxiliary statutes are now codified in the Construction and Dwellings Code.

44. This Title was drastically revised in by Law No. 78-9 of January 4, 1978, subsequently amended on several occasions, in particular by Law No. 85-697 of July 11, 1985, providing, in accordance with European Community rules, that a company may, under some circumstances, consist of only one person. The expression "company" has been used as a translation of the French term *société* because not all entities potentially covered by some of the provisions of the Title correspond exactly to an American partnership. For a more detailed discussion, see *infra* ch. VII.

45. The provisions of this Chapter apply to all types of companies, whatever their form, unless specific rules applicable to a certain type of company provide otherwise.

46. This Chapter concerns companies under civil rather than commercial law, such as partnerships for the exercise of a profession, or the ownership of real estate. The registered partnership (that is, registered in the commercial and company register) is deemed to have legal personality, but this does not mean limited liability. There are a number of complementary statutes dealing, e.g., with partnerships for the exercise of a profession, mentioned in more detail in the material on legal professions, *supra* ch. IV, sec. 1A.

47. These partnerships, which can be created for "commercial" purposes also, are not deemed to have legal personality.

IXbis. Agreements Concerning the Exercise of Rights in Undivided Property⁴⁸

(Division into Chapters omitted)

X. Loan

Chapter 1. Loan for use⁴⁹

Chapter 2. Loans of consumable goods

Chapter 3. Interest bearing loans⁵⁰

XI. Bailment and Escrow⁵¹

(Division into Chapters omitted)

XII. Aleatory Contracts⁵²

(Division into Chapters omitted)

XIII. "Mandate" (Agency)⁵³

Chapter 1. Nature and form of the agency⁵⁴

Chapter 2. Obligations of the agent

Chapter 3. Obligations of the principal

Chapter 4. Different ways in which the agency terminates

XIV. Suretyship

(Division into Chapters omitted)⁵⁵

XV. Compromise (Settlement)

XVI. Arbitration⁵⁶

48. This Title was added in by Law No. 76-1286 of December 31, 1976, to facilitate the management of undivided property arising, e.g., from an inheritance.

49. This Chapter deals essentially with bailments where the main purpose is to enable the bailee to use the bailed object. Other forms of bailment are covered in the following Title.

50. There are a number of auxiliary statutes, e.g., on the legal rate of interest (i.e., the rate applicable to judgments and in some other instances), and on the protection of the borrower, now mostly codified in the Consumer Code.

51. This Title deals with bailments other than those mentioned in Chapter 1 of the preceding Title (loans for use) and with escrow type arrangements made, e.g., in connection with interpleader actions, some other judicial proceedings, etc. Amendments have been made in particular by Law No. 73-1141 of December 24, 1973, on the liability of hotel or inn keepers for the property of their guests and by the Law No. 80-525 of July 12, 1980, referred to *supra* in connection with Civil Code Art. 1341, in ch. IV, sec. 1I.

52. Civil Code Art. 1964 defines "aleatory" contracts as contracts where an essential element depends on an uncertain event (from *alea* Latin for dice). The article includes among such contracts, wagering agreements, insurance policies, and annuities, but the further provisions regulate only, in two chapters, wagers and annuities, the Article stating

that insurance is governed by the law of admiralty, reflecting its limited significance at the time of the adoption of the Civil Code outside the maritime field. There was, eventually, a substantial amount of legislation concerning the various forms of non-maritime insurance, codified as the Insurance Code in 1976. For annuities, the relatively high rate of inflation, especially shortly after the Second World War, but at other times as well, has led to the enactment of legislation providing for the indexing of certain types of annuities.

53. The Code provisions deal essentially only with the relationship between principal and agent, not with the extent of the agent's power to bind the principal. For a more detailed discussion, see *infra* ch. VI.

54. The Code provisions on proof of the agency agreement have been amended by the Law No. 80-525 of July 12, 1980, mentioned *supra* in ch. IV, sec. 1I, in connection with the discussion of French Civil Code Art. 1341.

55. Legislation intended to facilitate the establishment of small businesses and legislation on arrangements with creditors contains a certain number of auxiliary statutes.

56. This Title was added in 1972 by Law No. 72-626 of July 5, 1972. Former Title XVI, which dealt mainly with imprisonment for debt, had been abrogated in 1867. For a discussion of some details, see *supra* ch. IV, sec. 2B, on arbitration.

- XVII. Pledges ⁵⁷
(Division into Chapters omitted)
- XVIII. Liens and Mortgages ⁵⁸
 - Chapter 1. General rules
 - Chapter 2. Liens
 - Chapter 3. Mortgages
 - Chapter 4. Registration of Liens and Mortgages ⁵⁹
(Some further Chapters omitted)
- XIX. Forced Sale and Priorities Among Creditors
- XX. Prescription and Possession ⁶⁰
 - Chapter 1. General Rules
 - Chapter 2. Possession
 - Chapter 3. Reasons which prevent the running of limitation periods
 - Chapter 4. Reasons which interrupt or toll the limitation periods
 - Chapter 5. Time periods needed for prescription to operate ⁶¹
 - Chapter 6. The protection of possession

NOTES AND QUESTIONS

(1) The organizational scheme of the French Civil Code is similar to that of Gaius' *Institutiones*. See the Note on Some Features of Pre-Code Law, *supra* ch. III, sec. 2A, at n. 27. Whether this similarity is accidental or due to the Roman law learning of the Code's draftsmen is somewhat controversial.⁶²

(2) Compare the organization of the French Civil Code of 1804 with that (a) of the Spanish Code of 1889, (*supra* ch. III, sec. 1), and (b) of the German Civil Code, reproduced below.⁶³ Do you find, in the French and Spanish Codes,

57. Rules on the proof of pledges have been amended by Law No. 80-525 of July 12, 1980, mentioned in the section on evidence, *supra* ch. IV, sec. 1I., in connection with Civil Code Art. 1341. Article 2071 contemplates the transfer of possession of the pledged item. Auxiliary legislation permits, however, the creation of what amounts to security interests in certain types of property (e.g., motor vehicles) without dispossession, but subject to registration. However, there exists no general provision on security interests similar to those of the Uniform Commercial Code.

58. This Title was substantially amended by Law No. 91-650 of July 9, 1991, on enforcement procedures, cited *supra*, in the General References at the beginning of ch. IV, at n. 6. There are many relevant provisions in related legislation, such as the insolvency laws, the Labor Code, etc.

59. Chapters 3 and 4, and some of the following chapters, have been substantially affected by a reform of the French land registration system by a Decree No. 55-22 of January 4, 1955, since amended on several

occasions. Originally, only mortgages, but not titles, were recorded. The French official in charge of land records is still referred today as the *conservateur des hypothèques*, literally, the keeper of mortgages.

60. Some changes were made by a Law No. 75-596 of July 9, 1975.

61. The rules on limitation periods have repeatedly been changed. As to torts generally, the normally applicable thirty year limitation period (which also applies to most contracts) was reduced to ten years by the statute which instituted a compensation system for automobile accidents, Law No. 85-677 of July 5, 1985, discussed in more detail *infra* this section, in the material on tort liability.

62. See S. Herman, *The Uses and Abuses of Roman Law*, 29 *Am.J.Comp.L.* 671, 686-87 (1981).

63. Much comparative material on organization of codes can be found in general discussions of law as a system and of its division and classification. See 5 R. Pound, *Jurisprudence*, sec. 131 (1959).

anything resembling the German Code's "General Part"?⁶⁴ Who, among the several possible participants in the original drafting process (legal practitioners, judges, government bureaucrats, legal scholars) appear to have been dominant in the preparation of the French Code? Of the German Code? Are there external (non-legal) factors that may have affected some of the differences between the two codes?

(3) Look at the notes to the French Civil Code indicating major amendments and significant auxiliary (supplemental) legislation. Which parts of the Code seem to have been affected more by amendments, which parts more by supplemental legislation? Is there a difference in that regard with the German Civil Code?

GERMAN CIVIL CODE—DETAILED SYNOPSIS⁶⁵

(Translation by Forrester, Goren, and Ilgen).⁶⁶

64. The historical roots of the "General Part" have been traced in an earlier chapter of this book. For a more extensive discussion of the "General Part" from a comparative and historical point of view, see F. Schmidt, *The German Abstract Approach to Law—Comments on the System of the Bürgerliches Gesetzbuch*, 9 *Scandinavian Studies in Law* 131 (1965).

The basic organizational differences between the French and German Civil Codes, and the recurrent French debates concerning the desirability of a "General Part," are discussed by I. Zajtay, *Rechtsvergleichende Bemerkungen über den Code civil und das Bürgerliche Gesetzbuch*, 157 *Arch.Civ.Pr.* 479, especially 483–86 (1959).

65. Enacted in 1896 and effective as of January 1, 1900, this Civil Code (as amended) is still the law of the German Federal Republic. In the former German Democratic Republic the bulk of the provisions of the 1896 Code, except for those on family law, remained in force until 1975. On June 19, 1975, that State adopted a new socialist Civil Code, which in style and organization as well as in substance differed from the "capitalist" Code of 1896. According to the Unification Treaty of August 31, 1991, BGBl 1991.II.889, Art. 8, the laws of the German Federal Republic became the law of the former German

Democratic Republic, whose (former) territory is now generally referred to as the "New Länder (States)"; the former East German legislation was abrogated, except for a number of provisions listed in the Unification Treaty (mainly by way of Annex). The reestablishment of the pre-1945 legal rules (as amended in the interim), has created certain difficulties, in part because the former régime had transferred all ownership of land to the State, leaving to firms and individuals only a right to use, and had, in addition, ceased all entries in the land records. For comments on the legislation adopted to deal with the problems resulting from this distinction between ownership and right to use in the former East Germany, see B. Grün, *Das Sachenrechtsänderungsgesetz*, 47 *N.J.W.* 2641 (1994); B. Messerschmidt, *Das Schuldrechtsänderungsgesetz*, 47 *N.J.W.* 2648 (1994); J. Schmidt-Räntsch, *Zur Neuordnung der Nutzung fremden Grund und Bodens*, 1994 *Deutsch-Deutsche Rechtszeitschr.* 322.

66. By permission of the publisher, Fred B. Rothman & Co., this translation is reproduced from I.S. Forrester, S.L. Goren & H.M. Ilgen, *The German Civil Code*, at v–ix (1975); subsequent legislative modifications reflected in this outline have been translated by one of the editors of this volume. Minor amendments have not been indicated in the notes.