LOUISIANA CODE OF CIVIL PROCEDURE 2019

NICHOLAS M. GRAPHIA, ESQ.
GULF COAST LEGAL PUBLISHING, LLC

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ABSTRACT

The goal of this 2019 edition of the Louisiana Code of Civil Procedure[1] is to provide the practitioner with a convenient copy to bring to court or the office. It contains all articles as amended through the 2018 legislative sessions. Other titles such as Louisiana Code of Evidence, Louisiana Civil Code, Louisiana Code of Criminal Procedure, and Federal Rules of Evidence and Civil Procedure are available at **www.gulfcoastlegalpublishing.com**. For bulk and academic discount inquiries, email **info@gulfcoastlegalpublishing.com**.

ISBN: 9781726705783

Nicholas M. Graphia, Attorney/Publisher
Gulf Coast Legal Publishing, LLC

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ABSTRACT

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BOOK I. COURTS, ACTIONS, AND PARTIES

TITLE I. COURTS

CHAPTER 1. JURISDICTION

Art. 1. Jurisdiction defined

Jurisdiction is the legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled.

Art. 2. Jurisdiction over subject matter

Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted.

Art. 3. Same; cannot be conferred by consent

The jurisdiction of a court over the subject matter of an action or proceeding cannot be conferred by consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void.

Art. 4. Same; determination when dependent on amount in dispute or value of right asserted

When the jurisdiction of a court over the subject matter of an action depends upon the amount in dispute, or value of the right asserted, it shall be determined by the amount demanded, including damages pursuant to Civil Code Articles 2315.3 and 2315.4, or value asserted in good faith by the plaintiff, but the amount in dispute does not include interest, court costs, attorney fees, or penalties, whether provided by agreement or by law.

Acts 1995, No. 409, §1.

Art. 5. Same; effect of reduction of claim

When a plaintiff reduces his claim on a single cause of action to bring it within the jurisdiction of a court and judgment is rendered thereon, he remits the portion of his claim for which he did not pray for judgment, and is precluded thereafter from demanding it judicially.

Art. 6. Jurisdiction over the person

A. Jurisdiction over the person is the legal power and authority of a court to render a personal judgment against a party to an action or proceeding. The exercise of this jurisdiction requires:

(1) The service of process on the defendant, or on his agent for the service of process, or the express waiver of citation and service under Article 1201.

(2) The service of process on the attorney at law appointed by the court to defend an action or proceeding brought against an absent or incompetent defendant who is domiciled in this state.
(3) The submission of the party to the jurisdiction of the court by commencing an action or by the waiver of objection to jurisdiction by failure to timely file the declinatory exception.

B. In addition to the provisions of Paragraph A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and with the Constitution of the United States.
Acts 1997, No. 578, §1; Acts 1999, No. 1263, §1, eff. Jan. 1, 2000.

Art. 7. Repealed by Acts 1997, No. 578, §5.

Art. 8. Jurisdiction over property; in rem

A court which is otherwise competent under the laws of this state has jurisdiction to enforce a right in, to, or against property having a situs in this state, claimed or owned by a nonresident.
Acts 1995, No. 1104, §1.

Art. 9. Same; quasi in rem; attachment

A court which is otherwise competent under the laws of this state has jurisdiction to render a money judgment against a nonresident if the action is commenced by an attachment of his property in this state. Unless the nonresident subjects himself personally to the jurisdiction of the court, the judgment may be executed only against the property attached.
Acts 1995, No. 1104, §1.

Art. 10. Jurisdiction over status

A. A court which is otherwise competent under the laws of this state has jurisdiction of the following actions or proceedings only under the following conditions:

(1) An adoption proceeding in accordance with Title XII of the Children's Code, if the surrendering parent of the child, a prospective adoptive parent, the adoptive parent or parents, or any parent of the child has been domiciled in this state for at least eight months, or if the child is in the custody of the Department of Children and Family Services; and an adoption proceeding in accordance with Civil Code Article 212, if either party to the adoption of an adult is domiciled in this state.

(2) An emancipation proceeding if the minor is domiciled in this state.

(3) An interdiction proceeding brought pursuant to the provisions of the Louisiana Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(4) A tutorship or curatorship proceeding if the minor or absentee, as the case may be, is domiciled in this state or has property herein.

(5) A proceeding to obtain the legal custody of a minor if he is domiciled in, or is in, this state.

(6) An action to annul a marriage if one or both of the parties are domiciled in this state.

(7) An action of divorce, if, at the time of filing, one or both of the spouses are domiciled in this state.

(8) Unless otherwise provided by law, an action to establish parentage and support or to disavow parentage if the child is domiciled in or is in this state, and was either born in this state,

born out of state while its mother was domiciled in this state, or acknowledged in this state. However, regardless of the location of the child or its place of birth, an action to disavow may be brought if the person seeking to disavow was domiciled in this state at the time of conception and birth and is presumed to be its parent under the laws of this state.

(9) A proceeding for support of an adult child with a disability, as provided in R.S. 9:315.22(E), if he is domiciled in, or is in, this state.

B. For purposes of Subparagraphs (6) and (7) of Paragraph A of this Article, if a spouse has established and maintained a residence in a parish of this state for a period of six months, there shall be a rebuttable presumption that he has a domicile in this state in the parish of such residence.

Amended by Acts 1968, No. 172, §1; Acts 1980, No. 764, §1; Acts 1990, No. 1009, §4, eff. Jan. 1, 1991; Acts 1999, No. 1243, §1, eff. Jan. 1, 2000; Acts 1999, No. 1263, §1, eff. Jan. 1, 2000; Acts 2001, No. 567, §2; Acts 2001, No. 1064, §1; Acts 2008, No. 351, §2, eff. Jan. 1, 2009; Acts 2015, No. 379, §2, eff. Aug. 1, 2016; Acts 2016, No. 333, §2.

Art. 11. Military personnel

For the purpose of status jurisdiction provided for in Article 10, a person not domiciled elsewhere in this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least six months and has resided in the parish where an action has been filed in which he is a party, for at least ninety days immediately preceding the filing of such action, is considered to be a domiciliary of this state and of the parish during the period of his service at such installations.

Acts 2008, No. 801, §2, eff. Jan. 1, 2009.

Art. 12. to Art. 40 [Repealed]

CHAPTER 2. VENUE

SECTION 1. GENERAL DISPOSITIONS

Art. 41. Definition

Venue means the parish where an action or proceeding may properly be brought and tried under the rules regulating the subject.

Art. 42. General rules

The general rules of venue are that an action against:

(1) An individual who is domiciled in the state shall be brought in the parish of his domicile; or if he resides but is not domiciled in the state, in the parish of his residence.

(2) A domestic corporation, a domestic insurer, or a domestic limited liability company shall be brought in the parish where its registered office is located.

(3) A domestic partnership, or a domestic unincorporated association, shall be brought in the parish where its principal business establishment is located.

(4) A foreign corporation or foreign limited liability company licensed to do business in this state shall be brought in the parish where its principal business establishment is located as designated in its application to do business in the state, or, if no such designation is made, then in the parish where its primary place of business in the state is located.

(5) A foreign corporation or a foreign limited liability company not licensed to do business in the state, or a nonresident who has not appointed an agent for the service of process in the manner provided by law, other than a foreign or alien insurer, shall be brought in the parish of the plaintiff's domicile or in a parish where the process may be, and subsequently is, served on the defendant.
(6) A nonresident, other than a foreign corporation or a foreign or alien insurer, who has appointed an agent for the service of process in the manner provided by law, shall be brought in the parish of the designated post office address of an agent for the service of process.
(7) A foreign or alien insurer shall be brought in the parish of East Baton Rouge.
Amended by Acts 1961, No. 23, §1; Acts 1990, No. 487, §1; Acts 1999, No. 145, §2; Acts 2001, No. 23, §1; Acts 2003, No. 545, §1; Acts 2012, No. 126, §1.

Art. 43. Exceptions to general rules

The general rules of venue provided in Article 42 are subject to the exceptions provided in Section 2 of Chapter 2 of Title 1 of Book 1 of this Code and otherwise provided by law.
Amended by Acts 1982, No. 649, §1; Acts 2013, No. 78, §1.

Art. 44. Waiver of objections to venue

A. An objection to the venue may not be waived prior to the institution of the action.

B. The venue provided in Articles 2006, 2811, 2812, 3941, 3993, 4031 through 4034, and 4542 may not be waived.

C. Except as otherwise provided in this article or by other law, any objection to the venue, including one based on any article in this Chapter, is waived by the failure of the defendant to plead the declinatory exception timely as provided in Article 928.
Amended by Acts 1961, No. 23, §1; Acts 2010, No. 185, §1.

Art. 45. Conflict between two or more articles in Chapter

The following rules determine the proper venue in cases where two or more articles in this Chapter may conflict:
(1) Article 78, 79, 80, 81, 82, 83, 84, 86, or 87 governs the venue exclusively, if this article conflicts with any of Articles 42 and 71 through 77;
(2) If there is a conflict between two or more of Articles 78, 79, 80, 81, 82, 83, 84, 86, or 87, the plaintiff may bring the action in any venue provided by any applicable article; and
(3) If Articles 78, 79, 80, 81, 82, 83, 84, 86, and 87 are not applicable, and there is a conflict between two or more of Articles 42 and 71 through 77, the plaintiff may bring the action in any venue provided by any applicable article.
Amended by Acts 1982, No. 649, §1; Acts 2013, No. 78, §1.

Art. 46. to Art. 70 [Repealed]

SECTION 2. EXCEPTIONS TO GENERAL RULES

Art. 71. Action against individual who has changed domicile

An action against an individual who has changed his domicile from one parish to another may be brought in either parish for a period of one year from the date of the change, unless he has filed a declaration of intention to change his domicile, in the manner provided by law.

Art. 72. Certain actions involving property

An action in which a sequestration is sought, or an action to enforce a mortgage or privilege by an ordinary proceeding, may be brought in the parish where the property, or any portion thereof, is situated.

Acts 1997, No. 1055, §1.

Art. 73. Action against joint or solidary obligors

A. An action against joint or solidary obligors may be brought in a parish of proper venue, under Article 42 only, as to any obligor who is made a defendant provided that an action for the recovery of damages for an offense or quasi-offense against joint or solidary obligors may be brought in the parish where the plaintiff is domiciled if the parish of plaintiff's domicile would be a parish of proper venue against any defendant under either Article 76 or R.S. 13:3203.

B. If the action against this defendant is compromised prior to judgment, or dismissed after a trial on the merits, the venue shall remain proper as to the other defendants, unless the joinder was made for the sole purpose of establishing venue as to the other defendants.

Acts 1989, No. 117, §1.

Art. 74. Action on offense or quasi offense

An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.

As used herein, the words "offense or quasi offense" include a nuisance and a violation of Article 667 of the Civil Code.

Amended by Acts 1962, No. 92, §1.

Art. 74.1. Action to establish or disavow filiation

An action to establish filiation and support of a child may be brought in the parish: (1) of the domicile of the child, (2) where conception occurred, (3) where either parent resided at the time of conception, (4) where an act of acknowledgement of the child occurred, or (5) where the birth of the child occurred.

An action to disavow filiation may be brought in the parish of the child's birth, or where either parent resided at the time of that birth.

Added by Acts 1980, No. 764, §3. Amended by Acts 1981, No. 722, §1.

Art. 74.2. Custody proceedings; support; forum non conveniens

A. A proceeding to obtain the legal custody of a child or to establish an obligation of support may be brought in the parish where a party is domiciled or in the parish of the last matrimonial domicile.

B. A proceeding for change of custody may be brought in the parish where the person awarded custody is domiciled or in the parish where the custody decree was rendered. If the person awarded custody is no longer domiciled in the state, the proceeding for change of custody may be brought in the parish where the person seeking a change of custody is domiciled or in the parish where the custody decree was rendered.

C. A proceeding for modification of support may be brought in any of the following:

(1) The parish where the person awarded support is domiciled if the award has been registered in that parish pursuant to the provisions of Article 2785 et seq., regardless of the provisions of Article 2786(A) relative to the domicile of the parties.

(2) The parish where the support award was rendered if it has not been registered and confirmed in another court of this state, pursuant to the provisions of Article 2785 et seq.

(3) The parish where the support award was last registered if registered in multiple courts of this state.

(4) Any of the following, if the person awarded support is no longer domiciled in the state:

(a) The parish where the other person is domiciled.

(b) The parish where the support award was rendered if not confirmed in another court of this state pursuant to Article 2785 et seq.

(c) The parish where the support order was last confirmed pursuant to the provisions of Article 2785 et seq.

D. A proceeding to register a child support, medical support, and income assignment order, or any such order issued by a court of this state for modification, may be brought in the parish where the person awarded support is domiciled.

E. For the convenience of the parties and the witnesses and in the interest of justice, a court, upon contradictory motion or upon its own motion after notice and hearing, may transfer the custody or support proceeding to another court where the proceeding might have been brought.

F. Notwithstanding any other provision of law, if after August 26, 2005, and before August 15, 2007, a party has changed his domicile within the state and the other party resided in another state prior to the hurricanes, the custody or support proceeding shall be transferred to the parish of the domicile, upon motion made prior to December 31, 2007.

Acts 1987, No. 417, §1; Acts 1997, No. 603, §1; Acts 2007, No. 99, §1; Acts 2010, No. 689, §1, eff. June 29, 2010; Acts 2015, No. 379, §2, eff. Aug. 1, 2016.

Art. 74.3. Marriage of persons related by adoption

Persons related by adoption seeking judicial authorization to marry in accordance with Civil Code Article 90 shall request authorization of the district court in the parish of either party's domicile.

Acts 1987, No. 886, §2, eff. Jan. 1, 1988.

Art. 74.4. Action on an open account or a promissory note

A. An action to collect an open account may be brought in the parish where the open account was created or where the services that formed the basis of such open account were performed, or in the parish of the domicile of the debtor.

B. An action on a promissory note may be brought in the parish where the promissory note was executed or in the parish of the domicile of the debtor.

Acts 2007, No. 433, §1; Acts 2008, No. 357, §1, eff. June 26, 2008.

Art. 74.5. Adult adoption

An action to authorize an adult adoption in accordance with the second paragraph of Civil Code Article 212 may be brought in the parish of the domicile of either party to the adoption.

Acts 2008, No. 351, §2, eff. Jan. 1, 2009.

Art. 74.6. Actions to seek court approval by parents during marriage

During the marriage of a minor's parents, an action to seek court approval to alienate, encumber, or lease the property of the minor, incur an obligation of the minor, or compromise a claim of the minor may be brought in the domicile of the minor, or if the parents seek to compromise a claim of the minor in a pending action, in that action.

Acts 2015, No. 260, §2, eff. Jan. 1, 2016.

Art. 75. Action on judicial bond

A. An action against the principal or surety, or both, on a bond filed in a judicial proceeding may be brought in the court where the bond was filed.

B. An action against a legal surety may be brought in any parish where the principal obligor may be sued.

Acts 1987, No. 409, §2, eff. Jan. 1, 1988.

Art. 76. Action on insurance policy

An action on a life insurance policy may be brought in the parish where the deceased died, the parish where he was domiciled, or the parish where any beneficiary is domiciled.

An action on a health and accident insurance policy may be brought in the parish where the insured is domiciled, or in the parish where the accident or illness occurred.

An action on any other type of insurance policy may be brought in the parish where the loss occurred or the insured is domiciled.

Art. 76.1. Action on contract

An action on a contract may be brought in the parish where the contract was executed or the parish where any work or service was performed or was to be performed under the terms of the contract.

Acts 1991, No. 217, §2.

Art. 77. Action against person doing business in another parish

An action against a person having a business office or establishment in a parish other than that where he may be sued under Article 42 only, on a matter over which this office or establishment had supervision, may be brought in the parish where this office or establishment is located.

Acts 1989, No. 117, §1.

Art. 78. Action against partners of existing partnership

Except as provided in Article 79, an action against a partner of an existing partnership on an obligation of the latter, or on an obligation growing out of the partnership, shall be brought in any parish of proper venue as to the partnership.

Art. 79. Action to dissolve partnership

An action for the dissolution of a partnership shall be brought in the parish where it has or had its principal business establishment.

Art. 80. Action involving immovable property

A. The following actions may be brought in the parish where the immovable property is situated or in the parish where the defendant in the action is domiciled:

(1) An action to assert an interest in immovable property, or a right in, to, or against immovable property, except as otherwise provided in Article 72;

(2) An action to partition immovable property, except as otherwise provided in Articles 81, 82, and 83; and

(3) An action arising from the breach of a lease of immovable property, including the enforcing of a lessor's privilege or seeking the payment of rent. The venue authorized by this Subparagraph shall be in addition to any other venue provided by law for such action.

B. If the immovable property, consisting of one or more tracts, is situated in more than one parish, the action may be brought in any of these parishes.

C. Any action by the sheriff after rendition of judgment shall be by the sheriff of the parish in which the immovable property is situated; however, if the immovable property, consisting of one or more tracts, is situated in more than one parish, the action may be brought by the sheriff of any of the parishes in which a portion of the immovable property is situated.

D. Any action to revoke a donation of immovable property shall be brought in the parish in which the property is located. If the property is located in more than one parish, the action may be brought in any one of them. When such an action is filed a notice of pendency shall be filed in accordance with the provisions of Article 3751.

Amended by Acts 1984, No. 732, §1; Acts 1989, No. 393, §1; Acts 1989, No. 541, §1.

Art. 81. Action involving succession

When a succession has been opened judicially, until rendition of the judgment of possession, the following actions shall be brought in the court in which the succession proceeding is pending:

(1) A personal action by a creditor of the deceased; but an action brought against the deceased prior to his death may be prosecuted against his succession representative in the court in which it was brought;
(2) An action to partition the succession;
(3) An action to annul the testament of the deceased; and
(4) An action to assert a right to the succession of the deceased, either under his testament or by effect of law.

Art. 82. Action to partition community property

A. Except as otherwise provided in this Article, an action to partition community property and to settle the claims between the parties arising from either a matrimonial regime or from co-ownership of former community property shall be brought either as an incident of the action which would result in the termination of the community property regime or as a separate action in the parish where the judgment terminating the community property regime was rendered.

B. If the spouses own community immovable property, the action to partition the community property, movable and immovable, and to settle the claims between the parties arising either from a matrimonial regime or from co-ownership of former community property may be brought in the parish in which any of the community immovable property is situated.

C. If the spouses do not own community immovable property, the action to partition the community property and to settle the claims between the parties arising either from a matrimonial regime or from co-ownership of former community property may be brought in the parish where either party is domiciled.
Acts 1997, No. 1055, §1.

Art. 83. Action to partition partnership property

Except as otherwise provided in the second paragraph of this article, an action to partition partnership property shall be brought either as an incident of the action to dissolve the partnership, or as a separate action in the court which rendered the judgment dissolving the partnership.

If the partnership owns immovable property, the action to partition the partnership property, movable and immovable, may be brought in the parish where any of the immovable property is situated.

Art. 84. Action involving certain retirement systems and employee benefit programs

Actions involving the Louisiana State Employees' Retirement System, Office of Group Benefits, State Police Pension and Relief Fund, Louisiana School Employees' Retirement System, Louisiana School Lunch Employees' Retirement System, Teachers' Retirement System of Louisiana, Assessors' Retirement Fund, Clerks of Court Retirement and Relief Fund, District Attorneys' Retirement System, Municipal Employees' Retirement System of Louisiana, Parochial Employees' Retirement System of Louisiana, Registrar of Voters Employees' Retirement System, Sheriffs' Pension and Relief Fund, Municipal Police Employees' Retirement System, or the Firefighters' Retirement System shall be brought in the parish of East Baton Rouge or in the parish of the domicile of the retirement system or employee benefit program.
Added by Acts 1980, No.164, §1.

Amended by Acts 1982, No.103, §1; Acts 2001, No. 1178, §8, eff. June 29, 2001.

Art. 85. Action against domestic corporation; charter revoked by secretary of state

An action against a domestic corporation, the charter and franchise of which have been administratively revoked by the secretary of state in accordance with R.S. 12:163, may be brought in any parish where the suit could have been brought prior to revocation.
Added by Acts 1982, No.649, §1.

Art. 86. Action involving voting trusts

An action against a voting trust or trustee of the voting trust, or both, may be brought:
(1) In the parish or parishes where the document or documents creating the voting trust were executed.
(2) If stock transferred to the voting trust was held by an inter vivos trust, in the parish or parishes where the inter vivos trust documents were executed.
(3) If stock transferred to the voting trust was held by a mortis causa trust, in the parish having jurisdiction over the settlor's estate.
Acts 1998, 1st Ex. Sess., No. 102, §2, eff. May 5, 1998.

Art. 87. Action involving application for compensation for wrongful conviction and imprisonment

An application for compensation based upon wrongful conviction and imprisonment filed pursuant to R.S. 15:572.8 shall be brought in the parish of East Baton Rouge, Nineteenth Judicial District Court.
Acts 2005, No. 486, §2, eff. Sept. 1, 2005.

Art. 88. to Art. 120 [Repealed]

SECTION 3. CHANGE OF VENUE

Art. 121. Action brought in improper venue; transfer

When an action is brought in a court of improper venue, the court may dismiss the action, or in the interest of justice transfer it to a court of proper venue.

Art. 122. Change of proper venue

Any party by contradictory motion may obtain a change of venue upon proof that he cannot obtain a fair and impartial trial because of the undue influence of an adverse party, prejudice existing in the public mind, or some other sufficient cause. If the motion is granted, the action shall be transferred to a parish wherein no party is domiciled.

Art. 123. Forum non conveniens

A.(1) For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory

hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.

(2) For purposes of Subparagraph (1) of this Paragraph, domicile shall be the location pursuant to Article 42 where the plaintiff would be subject to suit had he been a defendant.

B. Upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated upon acts or omissions originating outside the territorial boundaries of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article.

C. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription that has matured since the commencement of the action in Louisiana, provided that a suit on the same cause of action or on any cause of action arising out of the same transaction or occurrence is commenced in a court of competent jurisdiction in an appropriate foreign forum within sixty days from the rendition of the judgment of dismissal. Such waiver shall be null and of no effect if such suit is not filed within this sixty-day period. The court may further condition the judgment of dismissal to allow for reinstatement of the same cause of action in the same forum in the event a suit on the same cause of action or on any cause of action arising out of the same transaction or occurrence is commenced in an appropriate foreign forum within sixty days after the rendition of the judgment of dismissal and such foreign forum is unable to assume jurisdiction over the parties or does not recognize such cause of action or any cause of action arising out of the same transaction or occurrence.

Added by Acts 1970, No. 294, §1; Acts 1988, No. 818, §1, eff. July 18, 1988; Acts 1999, No. 536, §1, eff. June 30, 1999; Acts 2012, No. 713, §1.

Art. 124. Forum non conveniens; transfer to city court

If a party has filed separate suits in a district court and a city court within the territorial jurisdiction of the district court relating to the same cause of action but placing a claim for property damage in one court and a claim for personal injury in the other court, the district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer the suit in its court to the city court if the transfer serves the convenience of the parties and the witnesses and is in the interest of justice.

Acts 1985, No. 600, §1.

Art. 125. to Art. 150 [Repealed]

Art. 151. Grounds

A. A judge of any court, trial or appellate, shall be recused when he:

(1) Is a witness in the cause;

(2) Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause;
(3) Is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or
(4) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

B. A judge of any court, trial or appellate, may be recused when he:
(1) Has been associated with an attorney during the latter's employment in the cause;
(2) At the time of the hearing of any contested issue in the cause, has continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in this case the employment shall be disclosed to each party in the cause;
(3) Has performed a judicial act in the cause in another court; or
(4) Is related to: a party or the spouse of a party, within the fourth degree; an attorney employed in the cause or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

C. In any cause in which the state, or a political subdivision thereof, or a religious body or corporation is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, or is a member of the religious body or corporation, is not a ground for recusation.
Acts 1983, No. 106, §1; Acts 1987, No. 579, §1; Acts 1988, No. 515, §2, eff. Jan. 1, 1989; Acts 2008, No. 663, §1.

Art. 152. Recusation on court's own motion or by supreme court

A. A judge may recuse himself, whether a motion for his recusation has been filed by a party or not, in any cause in which a ground for recusation exists.

B. A district judge may recuse himself in any cause objecting to the candidacy or contesting the election for any office in which the district or jurisdiction of such office lies wholly within the judicial district from which the judge is elected.

C. On the written application of a district judge, the supreme court may recuse him for any reason which it considers sufficient.

D. If a judge recuses himself pursuant to this Article, he shall provide in writing the specific grounds under Article 151 for which the recusal is ordered within fifteen days of the rendering of the order of recusal.
Acts 1985, No. 967, §1; Acts 2001, No. 932, §1.

Art. 153. Judge may act until recused or motion for recusation filed

Until a judge has recused himself, or a motion for his recusation has been filed, he has full power and authority to act in the cause. The judge to whom the motion to recuse is assigned shall have full power and authority to act in the cause pending the disposition of the motion to recuse.
Acts 2010, No. 262, §1.

Art. 154. Procedure for recusation

A party desiring to recuse a judge of a district court shall file a written motion therefor assigning the ground for recusation. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the ground for recusation thereafter, in which event it shall be filed immediately after these facts are discovered, but prior to judgment. If a valid ground for recusation is set forth in the motion, the judge shall either recuse himself, or refer the motion to another judge or a judge ad hoc, as provided in Articles 155 and 156, for a hearing.

Art. 155. Selection of judge to try motion to recuse; court having two or more judges

A. In a district court having two judges, the judge who is sought to be recused shall have the motion to recuse referred to the other judge of the court for trial of the motion to recuse.

B. In a district court having more than two judges, the motion to recuse shall be referred to another judge of the district court for trial through the random process of assignment in accordance with the provisions of Code of Civil Procedure Article 253.1.

Acts 2001, No. 417, §1.

Art. 156. Same; court having single judge

When a ground assigned for the recusation of the judge of a district court having a single judge is his interest in the cause, the judge shall appoint a district judge of an adjoining district to try the motion to recuse. When any other ground is assigned for the recusation of such a district judge, he may appoint either a district judge of an adjoining district, or a lawyer domiciled in the judicial district who has the qualifications of a district judge, to try the motion to recuse.

The order of court appointing the judge ad hoc shall be entered on its minutes, and a certified copy of the order shall be sent to the judge ad hoc.

Amended by Acts 1962, No. 409, §1.

Art. 157. Judge ad hoc appointed to try cause when judge recused; power of judge ad hoc

A. After a trial judge recuses himself under the authority of Article 152(A), a judge ad hoc shall be assigned to try the cause in the manner provided by Articles 155 and 156 for the appointment of a judge ad hoc to try the motion to recuse. When a trial judge is recused after a trial of the motion therefor, the case shall be reassigned to a new judge for trial of the cause under the provisions of Code of Civil Procedure Articles 155 and 156.

B. After a trial judge recuses himself under the authority of Article 152(B) he shall make written application to the supreme court for the appointment of another district judge as judge ad hoc to try the cause. The supreme court shall appoint a judge from a judicial district other than the judicial district of the recused judge as judge ad hoc to try the cause.

C. The judge ad hoc has the same power and authority to dispose of the cause as the recused judge has in cases in which no ground for recusation exists.

Acts 1985, No. 967, §1; Acts 2001, No. 417, §1.

Art. 158. Supreme court appointment of district judge to try cause when judge recused

In a cause in which the district judge is recused, even when a judge ad hoc has been appointed for the trial of the cause under Article 157, a party may apply to the supreme court for

the appointment of another district judge as judge ad hoc to try the cause. If the supreme court deems it in the interest of justice, such appointment shall be made.

The order of the supreme court appointing a judge ad hoc shall be entered on its minutes. The clerk of the supreme court shall forward two certified copies of the order, one to the judge ad hoc appointed and the other to the clerk of the district court where the cause is pending, for entry in its minutes.

Art. 159. Recusation of supreme court justice

When a written motion is filed to recuse a justice of the supreme court, he may recuse himself or the motion shall be heard by the other justices of the court.

When a justice of the supreme court recuses himself, or is recused, the court may (1) have the cause argued before and disposed of by the other justices, or (2) appoint a judge of a district court or a court of appeal having the qualifications of a justice of the supreme court to act for the recused justice in the hearing and disposition of the cause.

Art. 160. Recusation of judge of court of appeal

When a written motion is filed to recuse a judge of a court of appeal, he may recuse himself or the motion shall be heard by the other judges on the panel to which the cause is assigned, or by all judges of the court, except the judge sought to be recused, sitting en banc.

When a judge of a court of appeal recuses himself, or is recused, the court may (1) have the cause argued before and disposed of by the other judges of the panel to which it is assigned, or (2) appoint another of its judges, a judge of a district court or a lawyer having the qualifications of a judge of a court of appeal to act for the recused judge in the hearing and disposition of the cause.

Art. 161. Recusation of judge ad hoc

A judge ad hoc appointed to try a motion to recuse a judge, or appointed to try the cause, may be recused on the grounds and in the manner provided in this Chapter for the recusation of judges.

Art. 162. to Art. 190 [Repealed]

CHAPTER 4. POWER AND AUTHORITY

SECTION 1. GENERAL DISPOSITIONS

Art. 191. Inherent judicial power

A court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law.

Art. 192. Appointment of expert witnesses; expenses

A. The appointment of expert witnesses is controlled by Louisiana Code of Evidence Article 706.

B. The reasonable fees and expenses of these experts shall be taxed as costs of court.
Amended by Acts 1988, No. 515, §2, eff. Jan. 1, 1989.

Art. 192.1. Interpreters for deaf and severely hearing-impaired persons

A. In all civil cases and in the taking of any deposition where a party or a witness is a deaf or severely hearing-impaired person, the proceedings of the trial shall be interpreted to him in a language that he can understand by a qualified interpreter appointed by the court. The qualification of an interpreter as an expert is governed by the Louisiana Code of Evidence.

B. In any case in which an interpreter is required to be appointed by the court under the provisions of this Article, the court shall not commence proceedings until the appointed interpreter is in court. The interpreter so appointed shall take an oath or affirmation that he will make a true interpretation to the deaf or severely hearing-impaired person of all the proceedings of the case in a language that he understands, and that he will repeat the deaf or severely hearing-impaired person's answer to questions to counsel, court or jury to the best of his skill and judgment.

C.(1) Interpreters appointed in accordance with the provisions of this Article shall be paid an amount determined by the judge presiding. In the event travel of the interpreter is necessary, all of the actual expenses of travel, lodging, and meals incurred by the interpreter in connection with the case at which the interpreter is appointed to serve shall be paid at the same rate applicable to state employees.

(2) The costs of such interpreter shall be borne by the court.
Added by Acts 1968, No. 319, §1. Acts 1988, No. 515, §2, eff. Jan. 1, 1989; Acts 1989, No. 109, §1; Acts 1995, No. 285, §1, eff. June 14, 1995.

Art. 192.2. Appointment of interpreter for non-English-speaking persons

A. If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony.

B. The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount, and that amount shall be taxed by the court as costs of court.
Acts 2008, No. 882, §1.

Art. 193. Power to adopt local rules; publication

A court may adopt rules for the conduct of judicial business before it, including those governing matters of practice and procedure which are not contrary to the rules provided by law. When a court has more than one judge, its rules shall be adopted or amended by a majority of the judges thereof, sitting en banc.

The rules may provide that the court may call a special session of court during vacation, and that any action, proceeding, or matter otherwise required by law to be tried or heard in open court during the regular session may be tried or heard during the special session.

The rules shall be entered on the minutes of the court. Rules adopted by an appellate court shall be published in the manner which the court considers most effective and practicable. Rules

adopted by a district court shall be printed in pamphlet form, and a copy shall be furnished on request to any attorney licensed to practice law in this state.

Art. 194. Power of district court to act in chambers; signing orders and judgments

The following orders and judgments may be signed by the district judge in chambers:

(1) Order directing the taking of an inventory; judgment decreeing or homologating a partition, when unopposed; judgment probating a testament ex parte; order directing the execution of a testament; order confirming or appointing a legal representative, when unopposed; order appointing an undertutor or an undercurator; order appointing an attorney at law to represent an absent, incompetent, or unrepresented person, or an attorney for an absent heir; order authorizing the sale of property of an estate administered by a legal representative; order directing the publication of the notice of the filing of a tableau of distribution, or of an account, by a legal representative; judgment recognizing heirs or legatees and sending them into possession, when unopposed; all orders for the administration and settlement of a succession, or for the administration of an estate by a legal representative;

(2) Order to show cause; order directing the issuance and providing the security to be furnished by a party for the issuance of a writ of attachment or sequestration; order directing the release of property seized under a writ of attachment or sequestration and providing the security to be furnished therefor; order for the issuance of a temporary restraining order and providing the security therefor; order for the issuance of a writ, or alternative writ, of habeas corpus, mandamus, or quo warranto;

(3) Order for the seizure and sale of property in an executory proceeding;

(4) Order for the taking of testimony by deposition; for the production of documentary evidence; for the production of documents and things for inspection, copying, or photographing; for permission to enter land for the purpose of measuring, surveying, or photographing;

(5) Order or judgment deciding or otherwise disposing of an action, proceeding, or matter which may be tried or heard in chambers;

(6) Order or judgment that may be granted on ex parte motion or application, except an order of appeal on an oral motion; and

(7) Any other order or judgment not specifically required by law to be signed in open court.

Acts 2018, No. 195, §1.

Art. 195. Same; judicial proceedings

The following judicial proceedings may be conducted by the district judge in chambers:

(1) Hearing on an application by a legal representative for authority, whether opposed or unopposed, and on a petition for emancipation;

(2) Homologation of a tableau of distribution, or of an account, filed by a legal representative, so far as unopposed;

(3) Trial of a rule to determine the nonexempt portion of wages, salaries, or commissions seized under garnishment and to direct the payment thereof periodically by the garnishee to the sheriff;

(4) Examination of a judgment debtor; and

(5) Trial of or hearing on any other action, proceeding, or matter which the law expressly provides may be tried or heard in chambers.

Art. 196. Power of district court to act in vacation

The following judicial acts or proceedings may be performed or conducted by the district court during vacation:

(1) Signing of an order or judgment which, under Article 194, may be signed in chambers; and signing of any order or judgment in an action or proceeding which is tried in vacation;

(2) Trial of or hearing on an action, proceeding, or matter which, under Article 195, may be tried or heard in chambers;

(3) Trial of a rule for a preliminary injunction, or for the dissolution or modification of any injunctive order;

(4) Trial of a habeas corpus, mandamus, quo warranto, or partition proceeding;

(5) Trial of a motion for a change of venue;

(6) Trial of or hearing on any other action, proceeding, or matter which the law expressly provides may be tried or heard during vacation, or in which the parties thereto have consented to the trial or hearing thereof during vacation;

(7) Signing of an order of appeal requested by petition, providing the security therefor, and trying a rule to test the surety on an appeal bond; and

(8) Trial of or hearing on an action, proceeding, or matter in a special session which, under the rules of the court, may be tried or heard therein.

Art. 196.1. Power of courts to act during emergencies

A. A district court or a court of limited jurisdiction may sign orders and judgments while outside of its territorial jurisdiction during an emergency or disaster declared as such pursuant to R.S. 29:724(B) if the emergency or disaster prevents the court from operating in its own jurisdiction.

B. The court shall indicate the location where the order or judgment was signed on any order or judgment signed outside of the court's territorial jurisdiction pursuant to this Article.

Acts 2018, No. 275, §1.

Art. 197. Testimony of inmates

A. As used in this Article, "inmate" means a person confined in any prison, jail, correctional or training institution operated by the state, any of its political subdivisions, or any sheriff either while awaiting disposition of contemplated or pending criminal charges, pursuant to a sentence imposed by a court following the conviction of a crime, or pursuant to the judgment of a juvenile court.

B. When in any judicial proceeding the testimony of an inmate is required by law to be given in open court, when an inmate is a party to a judicial proceeding under circumstances giving him the legal right to be present in open court at any stage of the proceeding, or when the presence of an inmate witness in open court is requested timely by a party to litigation and is justified under the facts and circumstances of the case, the trial judge, in his discretion, may order any of the following:

(1) The court be convened and the testimony of the inmate be taken, or the proceedings conducted at the institution wherein the inmate is confined.

(2) The testimony of the inmate be taken, or the proceedings conducted, by teleconference, video link, or other available remote technology approved by the judge, or by telephone if agreed to by all parties and approved by the judge.
(3) If the interests of justice require the presence of the inmate in open court and if no other methodology authorized hereunder is feasible, the court may order that the prisoner be transported to the courthouse pursuant to R.S. 15:706(D).
Added by Acts 1975, No. 403, §1; Acts 2001, No. 842, §1, eff. June 26, 2001.

Art. 198. to Art. 220 [Repealed]

SECTION 2. POWER TO PUNISH FOR CONTEMPT

Art. 221. Kinds of contempt

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.

Contempts of court are of two kinds, direct and constructive.

Art. 222. Direct contempt

A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record.

Any of the following acts constitutes a direct contempt of court:
(1) Contumacious, insolent, or disorderly behavior toward the judge, or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;
(2) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;
(3) Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a pleading, brief, or other document filed with the court in irrelevant criticism of another attorney or of a judge or officer of the court;
(4) Violation of a rule of the court adopted to maintain order and decorum in the court room;
(5) Contumacious failure to comply with a subpoena, proof of service of which appears of record, or refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a non-incriminating question when ordered to do so by the court; and
(6) Contumacious failure to attend court to serve as a juror after being accepted as such, or to attend court as a member of a jury venire, when proof of service of the summons appears of record.

Art. 222.1. Direct contempt; fingerprinting and photographing; exception

No person arrested or found guilty for the first offense of direct contempt of court either for failure to attend court as a member of a jury venire when proof of service of the summons appears on the record or for failure to comply with a subpoena to attend court to serve as a witness when proof of service of the subpoena appears on the record shall be subject to fingerprinting or have his photograph taken in any arrest or postsentence procedure.

Acts 1985, No. 937, §1.

Art. 223. Same; procedure for punishing

A person who has committed a direct contempt of court may be found guilty and punished therefor by the court forthwith, without any trial other than affording him an opportunity to be heard orally by way of defense or mitigation. The court shall render an order reciting the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment imposed.

Art. 224. Constructive contempt

A constructive contempt of court is any contempt other than a direct one.

Any of the following acts constitutes a constructive contempt of court:

(1) Wilful neglect or violation of duty by a clerk, sheriff, or other person elected, appointed, or employed to assist the court in the administration of justice;

(2) Wilful disobedience of any lawful judgment, order, mandate, writ, or process of the court;

(3) Removal or attempted removal of any person or property in the custody of an officer acting under authority of a judgment, order, mandate, writ, or process of the court;

(4) Deceit or abuse of the process or procedure of the court by a party to an action or proceeding, or by his attorney;

(5) Unlawful detention of a witness, party, or his attorney, while going to, remaining at, or returning from the court where the action or proceeding is to be tried;

(6) Improper conversation by a juror or venireman with a party to an action which is being, or may be, tried by a jury of which the juror is a member, or of which the venireman may be a member, or with any person relative to the merits of such an action; or receipt by a juror or venireman of a communication from any person with reference to such an action, without making an immediate disclosure to the court of the substance thereof;

(7) Assuming to act as a juror, or as an attorney or other officer of the court, without lawful authority;

(8) Comment by a newspaper or other medium for the dissemination of news upon a case or proceeding, then pending and undecided, which constitutes a clear, present, and imminent danger of obstructing or interfering with the orderly administration of justice, by either influencing the court to reach a particular decision, or embarrassing it in the discharge of its judicial duties;

(9) Wilful disobedience by an inferior court, judge, or other officer thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court, rendered in connection with an appeal from a judgment or order of the inferior court, or in connection with a review of such judgment or order under a supervisory writ issued by the appellate court; and

(10) Any other act or omission punishable by law as a contempt of court, or intended to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority, and which is not a direct contempt.

(11) Knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact in order to apply for or receive support enforcement services for the purpose of securing an order of paternity, child support, medical support, an income assignment order, or a notice of income assignment against another person.

Acts 2004, No. 159, §1, eff. June 10, 2004.

Art. 225. Same; procedure for punishing

A. Except as otherwise provided by law, a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt and punished accordingly. The rule to show cause may issue on the court's own motion or on motion of a party to the action or proceeding and shall state the facts alleged to constitute the contempt. A person charged with committing a constructive contempt of a court of appeal may be found guilty thereof and punished therefor after receiving a notice to show cause, by brief, to be filed not less than forty-eight hours from the date the person receives such notice why he should not be found guilty of contempt and punished accordingly. The person so charged shall be granted an oral hearing on the charge if he submits a written request to the clerk of the appellate court within forty-eight hours after receiving notice of the charge. Such notice from the court of appeal may be sent by registered or certified mail or may be served by the sheriff. In all other cases, a certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena at least forty-eight hours before the time assigned for the trial of the rule.

B. If the person charged with contempt is found guilty the court shall render an order reciting the facts constituting the contempt, adjudging the person charged with contempt guilty thereof, and specifying the punishment imposed.

Amended by Acts 1984, No. 530, §2.

Art. 226. Same; imprisonment until performance

When a contempt of court consists of the omission to perform an act which is yet in the power of the person charged with contempt to perform, he may be imprisoned until he performs it, and in such a case this shall be specified in the court's order.

Art. 227. Punishment for contempt

A person may not be adjudged guilty of a contempt of court except for misconduct defined as such, or made punishable as such, expressly by law.

The punishment which a court may impose upon a person adjudged guilty of contempt of court is provided in R.S. 13:4611.

Art. 228. to Art. 250 [Repealed]

CHAPTER 5. CLERKS

SECTION 1. GENERAL DISPOSITIONS

Art. 251. Custodian of court records; certified copies; records public

A. The clerk of court is the legal custodian of all of its records and is responsible for their safekeeping and preservation. He may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original. Except as otherwise provided by law, he

shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk's office is required by law to be open. However, notwithstanding the provisions of this Paragraph or R.S. 44:31 et seq., the use, placement, or installation of privately owned copying, reproducing, scanning, or any other such imaging equipment, whether hand-held, portable, fixed, or otherwise, within the offices of the clerk of court is prohibited unless ordered by a court of competent jurisdiction.

B. Notwithstanding the provisions of Paragraph A of this Article, a judge issuing a court order may certify a copy of that order for service of process, if the order is issued in an emergency situation and at a time when the clerk of court's office is not open. A determination of when an emergency situation exists shall be made by the judge issuing the order.

Acts 1986, No. 218, §1; Acts 1995, No. 372, §1, eff. July 1, 1995; Acts 2005, No. 193, §1.

Art. 252. Issuance of process

The clerk of a court shall issue all citations, writs, mandates, summons, subpoenas, and other process of the court in the name of the State of Louisiana. He shall indicate thereon the court from which they issue, sign them in his official capacity, and affix the seal of the court thereto. If service by the sheriff is required, the clerk shall deliver or mail them to the sheriff who is to make the service.

Art. 253. Pleadings, documents, and exhibits to be filed with clerk

A. All pleadings or documents to be filed in an action or proceeding instituted or pending in a court, and all exhibits introduced in evidence, shall be delivered to the clerk of the court for such purpose. The clerk shall endorse thereon the fact and date of filing and shall retain possession thereof for inclusion in the record, or in the files of his office, as required by law. The endorsement of the fact and date of filing shall be made upon receipt of the pleadings or documents by the clerk and shall be made without regard to whether there are orders in connection therewith to be signed by the court.

B. The filings as provided in Paragraph A of this Article and all other provisions of this Chapter, may be transmitted electronically in accordance with a system established by a clerk of court. When a clerk of court establishes such a system, he shall adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit. The official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the clerk of court. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.

C. A judge or justice presiding over a court in this state may sign a court order, notice, official court document, and other writings required to be executed in connection with court proceedings, by use of an electronic signature as defined by R.S. 9:2602. The various courts shall provide by court rule for the method of electronic signature to be used and to ensure the authenticity of the electronic signature.

D. Any pleading or document in a traffic or criminal action may be filed with the court by facsimile transmission in compliance with the provision of the Code of Criminal Procedure Article 14.1.

E. The clerk shall not refuse to accept for filing any pleading or other document signed by electronic signature, as defined by R.S. 9:2602, and executed in connection with court proceedings, solely on the ground that it was signed by electronic signature.
Amended by Acts 1980, No. 355, §1; Acts 1985, No. 457, §1; Acts 2001, No. 319, §2; Acts 2010, No. 461, §1; Acts 2014, No. 606, §1; Acts 2017, No. 419, §4, eff. Jan. 1, 2018.

Art. 253.1. Pleadings; random assignment of cases

All pleadings filed shall be randomly assigned to a particular section or division of the court by either of the following methods:
(1) By drawing indiscriminately from a pool containing designations of all sections or divisions of court in the particular jurisdiction in which the case is filed.
(2) By use of a properly programmed electronic device or computer programmed to randomly assign cases to any one of the sections or divisions of court in the particular jurisdiction in which the case is filed.
Acts 1995, No. 829, §1.

Art. 253.2. Transfer and reassignment of pending cases

After a case has been assigned to a particular section or division of the court, it may not be transferred from one section or division to another section or division within the same court, unless agreed to by all parties, or unless it is being transferred to effect a consolidation for purpose of trial pursuant to Article 1561. However, the supreme court, by rule, may establish uniform procedures for reassigning cases under circumstances where an expeditious disposition of cases may be effectuated.
Acts 1997, No. 968, §1.

Art. 253.3. Duty judge exceptions; authority to hear certain matters

A. In any case assigned pursuant to Article 253.1, a duty judge shall only hear and sign orders or judgments for the following:

(1) Domestic relations emergency matters and protective orders concerning physical safety.

(2) Temporary restraining orders.

(3) Entry of preliminary defaults, confirmation of defaults, stipulated matters, examination of judgment debtors, orders to proceed in forma pauperis, orders allowing the filing of supplemental and amending petitions when no trial date has been assigned, orders allowing incidental demands when no trial date has been assigned, orders allowing additional time to answer, and judicial commitments.

(4) Uncontested cases in which all parties other than the plaintiff are represented by an attorney appointed by the court.

(5) Uncontested judgments of divorce pursuant to Civil Code Article 102.

(6) Orders directing the taking of an inventory; judgments decreeing or homologating a partition, when unopposed; judgments probating a testament ex parte; orders directing the execution of a testament; orders confirming or appointing a legal representative, when unopposed; orders appointing an undertutor or an undercurator; orders appointing an attorney at law to represent an absent, incompetent, or unrepresented person, or an attorney for an absent heir; orders

authorizing the sale of property of an estate administered by a legal representative; orders directing the publication of the notice of the filing of a tableau of distribution, or of an account, by a legal representative; judgments recognizing heirs or legatees and sending them into possession, when unopposed; and all orders for the administration and settlement of a succession, or for the administration of an estate by a legal representative.

(7) Orders for the seizure and sale of property in an executory proceeding.

B. In any case assigned pursuant to Article 253.1, a duty judge shall only sign orders for issuing the following: orders to show cause; orders directing the issuance and providing the security to be furnished by a party for the issuance of a writ of attachment or sequestration; orders directing the release of property seized under a writ of attachment or sequestration and providing the security to be furnished therefor; orders for the issuance of a writ, or alternative writ, of habeas corpus, mandamus, or quo warranto; and orders for appeal.

C. In any case assigned pursuant to Article 253.1, a duty judge may sign any order specifically and expressly authorized by the judge to whom the case is assigned.

D. When a duty judge hears any matter or signs any order or judgment pursuant to this Article, he shall not acquire jurisdiction over additional matters in the case. Following the ruling of the duty judge, the judge assigned pursuant to Article 253.1 shall hear the other matters in the case, including but not limited to discovery matters, preliminary injunctions, and injunctions.

Acts 2000, 1st Ex. Sess., No. 24, §1; Acts 2017, No. 419, §1.

Art. 254. Docket and minute books

A. In addition to other record books required by law, each court shall keep docket and minute books.

B. The clerk of the court shall enter in the docket book the number and title of each action or proceeding filed in the court, the date of filing of the petition, exceptions, answers, and other pleadings, and the court costs paid by and the names of counsel of record for each of the parties.

C. All orders and judgments rendered, all motions made, all proceedings conducted, and all judicial acts of the court during each day it is in session shall be entered in the minute book.

D. An electronic record of the minutes which is not capable of alteration without indication that a change has been made may be maintained in lieu of a written entry.

Acts 1995, No. 1003, §1.

Art. 255. Deputy clerks and other employees

Except as otherwise provided by law, a deputy clerk of a court possesses all of the powers and authority granted by law to the clerk, and may perform any of the duties and exercise any of the functions of the clerk.

Deputy clerks and other employees of a clerk of court are subject to his direction and supervision, and shall perform the duties assigned to them by law, the court, and the clerk.

The clerk of a court is responsible for the performance or nonperformance of their official duties by his deputies and other employees.

Art. 256. Minute clerk

The minute clerk of a court shall keep the minutes of the court daily when in session and transcribe them into the minute book, as required by Article 254; shall file all pleadings and

documents tendered for filing in open court; and shall perform such other duties as are assigned to him by law, the court, and the clerk with the approval of the court.

The minute clerk of a trial court shall administer the oath to jurors and witnesses and shall file all exhibits offered in evidence, when directed to do so by the court. If there are two or more judges on a trial court, its rules may require a minute clerk for each division thereof.

When a court has no minute clerk, and there is no deputy clerk available for such duty, the clerk shall perform all of the duties of the minute clerk.

Art. 257. Neglect, failure, or refusal of clerk, deputy, or other employee to perform duty subjects him to punishment for contempt

The neglect, failure, or refusal of a clerk, deputy clerk, or other employee of a clerk of court to perform any ministerial duty subjects him to punishment for contempt of court.

Art. 258. Electronic filing and recording of written instruments

A. Notwithstanding any provision of law to the contrary, a clerk of court, as ex officio recorder, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages or its successor, hereinafter referred to as "recorder", is authorized to adopt and implement a published plan which shall include a written contract between the clerk of court, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages, or its successor, and the filer, which complies with the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq., and which provides for the acceptance of an electronic record of any recordable written instrument except original maps, plats, property descriptions, or photographs as related to the work of a professional surveyor engaged in the "Practice of Land Surveying" as defined in R.S. 37:682 for filing and recording submitted by any person, department, political subdivision, agency, branch, entity, or instrumentality of Louisiana or of the federal government or of a state-chartered or federally chartered financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. The filer of such an electronic record shall certify to the recorder that the written instrument from which the electronic record is taken conforms to all applicable laws relating to the form and content of instruments which are submitted in writing.

B. Immediately after acceptance of an electronic record for filing, the recorder shall endorse such record with the date, hour, and minute it is filed. An electronic filing received on a legal holiday or at any time other than during the normal business hours of the recorder shall be accepted for filing on the next business day by the same procedure followed when a paper document is received in the mail of the recorder at any time other than during normal business hours.

C. An electronic record shall be effective with respect to a third person from the time of its filing in the same manner as if the written instrument had been filed.

D. On or before January 1, 2022, each clerk of court, including the Orleans Parish register of conveyances or its successor and the Orleans Parish recorder of mortgages or its successor, shall adopt and implement a plan for recording electronic documents in accordance with Paragraph A of this Article.

Acts 2005, No. 125, §1; Acts 2008, No. 368, §1; Acts 2017, No. 173, §5

Art. 259. Liability of clerk of court

The clerk of court shall not be liable for any damages caused by any third party to any information included in pleadings or documents filed of record by the clerk of court.
Acts 2017, No. 173, §5.

Art. 260. to Art. 280 [Repealed]

SECTION 2. CLERKS OF DISTRICT COURTS

Art. 281. Certain articles not applicable to Civil District Court for the Parish of Orleans

The provisions of Articles 282 through 286 do not apply to the clerk and the deputy clerks of the Civil District Court for the Parish of Orleans.

Art. 282. Acts which may be done by district court clerk

The clerk of a district court may:

(1) Grant an appeal and fix the return day thereof; fix the amount of the bond for an appeal, or for the issuance of a writ of attachment or of sequestration, or for the release of property seized under any writ, unless fixed by law; appoint an attorney at law to represent a nonresident, absent, incompetent, or unrepresented defendant; or dismiss without prejudice, on application of plaintiff, an action or proceeding in which no exception, answer, or intervention has been filed; and

(2) Probate a testament, when there is no opposition thereto; homologate an inventory; confirm or appoint a tutor, undertutor, undertutor ad hoc, curator, undercurator, undercurator ad hoc, administrator, executor, or dative testamentary executor, when there is no opposition thereto; appoint an attorney for absent heirs; and approve and accept the bond required of a legal representative for the faithful performance of his duties.

Art. 283. Orders and judgments which may be signed by district court clerk

A. The clerk of a district court may sign any of the following orders or judgments:

(1) An order or judgment effecting or evidencing the doing of any of the acts authorized in Article 282;

(2) An order for the issuance of executory process, of a writ of attachment or of sequestration, or of garnishment process under a writ of fieri facias, attachment, or of sequestration; the release under bond of property seized under a writ of attachment or of sequestration; or to permit the filing of an intervention;

(3) An order for the execution of a probated testament; the affixing of seals; the taking of an inventory; the public sale of succession property to pay debts, on the written application of the succession representative accompanied by a list of the debts of the succession; the advertisement of the filing of a tableau of distribution or of an account by a legal representative; or requiring a legal representative to file an account; or

(4) An order to permit a party to institute and prosecute, or to defend, a suit without the payment of costs, under the provisions of Articles 5181 through 5188.

B. When an order signed by the clerk requires the services of a notary, the clerk shall appoint the notary suggested by the party obtaining the order.
Acts 2010, No. 175, §1.

Art. 284. Judicial powers of district court clerk

The clerk of a district court may render, confirm, and sign final default judgments or judgments by confession in cases where the jurisdiction of the court is concurrent with that of justices of the peace, as provided in Article 5011.

Amended by Acts 1979, No. 46, §2, eff. Jan. 1, 1980; Acts 2017, No. 419, §1.

Art. 285. Powers of district court clerk may be exercised whether judge absent from parish or not

The powers and authority granted to the clerk of a district court under Articles 282 through 284 may be exercised by him whether the judge of the district court is absent from the parish or not.

Art. 286. Powers of district court clerk which may not be exercised by deputy; powers of chief deputy clerk

A. No deputy clerk of a district court, except the chief deputy clerk, may exercise any of the powers and authority granted to the clerk of the district court under Articles 282 and 283.

B. Whether the judge or the clerk, or both, are absent from the parish or not, the chief deputy clerk of a district court may exercise all of the powers and authority granted to the clerk of a district court under Articles 282 and 283.

Acts 1991, No. 174, §1.

Art. 287. District court clerk ex officio notary

The clerk of a district court is ex officio a notary; and, as such, may administer oaths and exercise all of the other functions, powers, and authority of a notary.

Art. 288. Functions which district court clerk may exercise on holiday

The only functions which a clerk of a district court may exercise on a legal holiday are:

(1) The signing of an order for the issuance of a writ of attachment or of sequestration by a clerk of a district court other than the Civil District Court for the Parish of Orleans; and

(2) The issuance of a writ of attachment, sequestration, or injunction.

Art. 289. to Art. 320 [Repealed]

CHAPTER 6. SHERIFFS

Art. 321. Executive officer of district court; serves process, executes writs and mandates directed to him by courts

The sheriff is the executive officer of the district court.

He shall serve citations, summons, subpoenas, notices, and other process, and shall execute writs, mandates, orders, and judgments directed to him by the district courts, the courts of appeal, and the supreme court.

Art. 322. Exercises civil functions only in own parish; exception

Except as otherwise provided in Article 1291, the sheriff may exercise his civil functions only in the parish for which he was elected.

Art. 323. Writs executed on holiday

The sheriff shall not execute any writ, mandate, order, or judgment of a court in a civil case on a legal holiday, except a writ of attachment, sequestration, fieri facias, or seizure and sale under executory process, or an injunction.

Amended by Acts 1978, No. 169, §1.

Art. 324. Returns on process served, and writs and judgments executed

The sheriff shall make a return to the issuing court on citations, summons, subpoenas, notices, and other process, and on writs, mandates, orders, and judgments, showing the date on which and the manner in which they were served or executed.

Art. 325. Right of entry for execution; may require assistance of others if resistance offered or threatened

In the execution of a writ, mandate, order, or judgment of a court, the sheriff may enter on the lands, and into the residence or other building, owned or occupied by the judgment debtor or defendant. If necessary to effect entry, he may break open any door or window. If resistance is offered or threatened, he may require the assistance of the police, of neighbors, and of persons present or passing by.

Art. 326. Protection and preservation of property seized

The sheriff shall take actual possession of all movable property seized which is susceptible of actual possession and may remove it to a warehouse or other place of safekeeping.

He may take actual possession of all immovable property seized, unless it is under lease or occupied by an owner.

He shall safeguard, protect, and preserve all property seized of which he has taken or is required to take actual possession; and for such purposes may appoint a keeper of the property.

Art. 327. Seizure of rents, fruits, and revenue of property under seizure

The seizure of property by the sheriff effects the seizure of the fruits and issues which it produces while under seizure. The sheriff shall collect all rents and revenue produced by property under seizure.

Art. 328. Power of administration of property under seizure

The sheriff has the power of administration of all property under seizure, regardless of the type of writ or mandate under authority of which the property was seized.

If immovable property is not occupied by an owner and is not under lease, the sheriff may lease it for a term not beyond the date of judicial sale. He cannot lease movable property under seizure unless authorized by the court with the consent of the parties.

The sheriff may, and if the necessary funds therefor are advanced or satisfactory security is furnished him by any interested person shall, continue the operation of any property under seizure, including a business, farm, or plantation. For such purposes, the sheriff may employ a manager and such other employees as he may consider necessary.

Art. 329. Disbursements for protection, preservation, and administration of seized property

The sheriff may make all necessary disbursements for the protection, preservation, and administration of property under seizure, which shall be taxed as costs of the seizure.

Art. 330. Collection of fines from, and imprisonment of, persons found guilty of contempt of court

The sheriff shall collect the fines which persons found guilty of contempt of court are sentenced to pay, and pay them over to the official entitled by law to receive them. He shall take into custody and imprison individuals found guilty of contempt of court and sentenced to imprisonment in the parish jail.

Art. 331. Deputy sheriffs and other employees

Except as otherwise provided by law, a deputy sheriff possesses all of the powers and authority granted by law to the sheriff, and may perform any of the duties and exercise any of the functions of the sheriff.

Deputy sheriffs and other employees of the sheriff are subject to his direction and supervision, and shall perform the duties assigned to them by law, and by the sheriff.

The sheriff is responsible for the performance or nonperformance of their official duties by his deputies and other employees.

Art. 332. Service or execution by constable or marshal

When authorized to do so by the sheriff, a constable of a justice of the peace court, or a constable or marshal of a city court, within the territorial jurisdiction of his court, may serve any process and execute any writ or mandate which the sheriff is authorized to serve or execute.

For such purpose, the constable or marshal possesses the powers and authority of the sheriff; a service or execution so made has the same effect as if made by the sheriff; and the latter is responsible for the performance or nonperformance of his duties by a constable or marshal in such cases.

Art. 333. Crier

The crier of a court shall attend all sessions thereof; under the direction of the judge shall open and close court at each session, and maintain order and decorum in the court room; and shall perform such other duties as are assigned to him by law, the court, or the sheriff.

The crier of a trial court, when requested to do so, shall call all witnesses in the building whose testimony is desired by the court or by a party.

When a court has no crier, and there is no deputy sheriff available for such duty, the sheriff shall perform the duties of crier.

Art. 334. Neglect, failure, or refusal of sheriff, deputy sheriff, or employee to perform duty subjects him to punishment for contempt

The neglect, failure, or refusal of a sheriff, deputy sheriff, or other employee of a sheriff to perform any ministerial duty subjects him to punishment for contempt of court.

Art. 335. to Art. 370 [Repealed]

CHAPTER 7. OTHER OFFICERS OF THE COURT

Art. 371. Attorney

An attorney at law is an officer of the court. He shall conduct himself at all times with decorum, and in a manner consistent with the dignity and authority of the court and the role which he himself should play in the administration of justice.

He shall treat the court, its officers, jurors, witnesses, opposing party, and opposing counsel with due respect; shall not interrupt opposing counsel, or otherwise interfere with or impede the orderly dispatch of judicial business by the court; shall not knowingly encourage or produce false evidence; and shall not knowingly make any misrepresentation, or otherwise impose upon or deceive the court.

For a violation of any of the provisions of this article, the attorney at law subjects himself to punishment for contempt of court, and such further disciplinary action as is otherwise provided by law.

Art. 372. Court reporter

A. The court reporter of a trial court, when directed by the court, shall report verbatim in shorthand by stenography or stenotype, or by voice recording or any other recognized manner when the equipment therefor has been approved by the court, the testimony of all witnesses, the other evidence introduced or offered, the objections thereto, and the rulings of the court thereon, on the trial of any appealable civil case or matter.

B. When the court so directs, or the fees therefor have been paid or secured, or when an appeal has been granted in cases in which a party has been permitted to litigate without the payment of costs, he shall transcribe verbatim in a manner approved by the supreme court, all of his notes taken at the trial, or such portion thereof as is designated. He shall file one copy of the transcript in the trial court; shall deliver a copy thereof to each of the parties who has paid therefor; and, when an appeal has been granted, he shall furnish to the clerk of the trial court the number of copies of the transcript required by law.

C. The court reporter shall retain all notes and tape recordings in civil cases for a period of not less than five years after the end of the trial. However, if the record of the trial is fully transcribed, the court reporter shall retain all notes and tape recordings which have been fully transcribed for a period of not less than two years after transcription is completed. The court reporter shall destroy any notes and tape recordings of any matter upon order of a court of competent jurisdiction.

D. The notes and tape recordings of any civil case which are retained by a court reporter pursuant to the provisions of this Article shall be the property of the court in which the case was heard. The court reporter shall have the duty to retain and maintain all such notes and tape

BOOK II. ORDINARY PROCEEDINGS

TITLE I. PLEADING

CHAPTER 1. GENERAL DISPOSITIONS

Art. 851. Three modes of procedure; Book II governs ordinary proceedings

Three different modes of procedure are used in civil matters in the trial courts of this state: ordinary, summary, and executory.

The articles in this Book govern ordinary proceedings, which are to be used in the district courts in all cases, except as otherwise provided by law.

Summary and executory proceedings are regulated by the provisions of Book V.

Art. 852. Pleadings allowed; replicatory pleadings prohibited

The pleadings allowed in civil actions, whether in a principal or incidental action, shall be in writing and shall consist of petitions, exceptions, written motions, and answers. No replicatory pleadings shall be used and all new matter alleged in exceptions, contradictory motions, and answers, whether in a principal or incidental action, shall be considered denied or avoided.

Art. 853. Caption of pleadings; adoption by reference; exhibits

Every pleading shall contain a caption setting forth the name of the court, the title and number of the action, and a designation of the pleading. The title of the action shall state the name of the first party on each side with an appropriate indication of other parties.

A statement in a pleading may be adopted by reference in a different part of the same pleading or in another pleading in the same court. A copy of any written instrument that is an exhibit to a pleading is a part thereof.

Acts 2018, No. 195, §1.

Art. 854. Form of pleading

No technical forms of pleading are required.

All allegations of fact of the petition, exceptions, or answer shall be simple, concise, and direct, and shall be set forth in numbered paragraphs. As far as practicable, the contents of each paragraph shall be limited to a single set of circumstances.

Art. 855. Pleading special matters; capacity

Except as otherwise provided by law, it is not necessary to allege the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of a legal entity or an organized association of persons made a party. Such procedural capacity shall be presumed, unless challenged by the dilatory exception.

Acts 2018, No. 195, §1.

Art. 856. Same; fraud, mistake, or condition of the mind

In pleading fraud or mistake, the circumstances constituting fraud or mistake shall be alleged with particularity. Malice, intent, knowledge, and other condition of mind of a person may be alleged generally.

Art. 857. Same; suspensive conditions

In pleading the performance or occurrence of suspensive conditions, it is sufficient to allege generally that all such conditions have been performed or have occurred. A denial of performance or occurrence shall be alleged specifically and with particularity.

Art. 858. Same; official document or act

In pleading an official document or official act, it is sufficient to allege that the document was issued or the act done in compliance with law.

Art. 859. Same; judgment or decision

In pleading a judgment of a domestic or foreign court, or a decision of a judicial or quasi judicial tribunal, or of a board, commission, or officer, it is sufficient to allege the judgment or decision without setting forth matter showing jurisdiction to render it.

Art. 860. Same; time and place

For the purpose of testing the sufficiency of a pleading, allegations of time and place are material and shall be considered as all other allegations of material matter.

Art. 861. Same; special damage

When items of special damage are claimed, they shall be specifically alleged.

Art. 862. Relief granted under pleadings; sufficiency of prayer

Except as provided in Article 1703, a final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings and the latter contain no prayer for general and equitable relief.

Art. 863. Signing of pleadings, effect

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies all of the following:

(1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

(2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

(3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a

reasonable opportunity for further investigation or discovery.(4) Each denial in the pleading of a factual assertion is warranted by the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

C. If a pleading is not signed, it shall be stricken unless promptly signed after the omission is called to the attention of the pleader.

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.

F. A sanction authorized in Paragraph D shall not be imposed with respect to an original petition which is filed within sixty days of an applicable prescriptive date and then voluntarily dismissed within ninety days after its filing or on the date of a hearing on the pleading, whichever is earlier.

G. If the court imposes a sanction, it shall describe the conduct determined to constitute a violation of the provisions of this Article and explain the basis for the sanction imposed.

Acts 1988, No. 442, §1, eff. Jan. 1, 1989; Acts 2010, No. 540, §1.

NOTE: SEE ACTS 1988, NO. 442, §2.

Art. 864. Attorney subject to disciplinary action

An attorney may be subjected to appropriate disciplinary action for a wilful violation of any provision of Article 863, or for the insertion of scandalous or indecent matter in a pleading.

Art. 865. Construction of pleadings

Every pleading shall be so construed as to do substantial justice.

Art. 866 to Art. 890 [Repealed]

CHAPTER 2. PETITION

Art. 891. Form of petition

A. The petition shall comply with Articles 853, 854, and 863, and, whenever applicable, with Articles 855 through 861. It shall set forth the name, surname, and domicile of the parties; shall contain a short, clear, and concise statement of all causes of action arising out of, and of the material facts of, the transaction or occurrence that is the subject matter of the litigation; shall designate an address, not a post office box, for receipt of service of all items involving the litigation; and shall conclude with a prayer for judgment for the relief sought. Relief may be prayed for in the alternative.

B. For petitions involving domestic violence brought pursuant to R.S. 46:2131 et seq., R.S. 9:361 et seq., Children's Code Article 1564 et seq., or Code of Civil Procedure Article 3601 et

seq., the address and parish of the residence of each petitioner and each person on whose behalf the petition is filed may remain confidential with the court.
Acts 1990, No. 521, §2, eff. Jan. 1, 1991; Acts 1991, No. 48, §1; Acts 1997, No. 1156, §2.

Art. 892. Alternative causes of action

Except as otherwise provided in Article 3657, a petition may set forth two or more causes of action in the alternative, even though the legal or factual bases thereof may be inconsistent or mutually exclusive. In such cases all allegations shall be made subject to the obligations set forth in Article 863.

Art. 893. Pleading of damages

A.(1) No specific monetary amount of damages shall be included in the allegations or prayer for relief of any original, amended, or incidental demand. The prayer for relief shall be for such damages as are reasonable in the premises except that if a specific amount of damages is necessary to establish the jurisdiction of the court, the right to a jury trial, the lack of jurisdiction of federal courts due to insufficiency of damages, or for other purposes, a general allegation that the claim exceeds or is less than the requisite amount is required. By interrogatory, an opposing party may seek specification of the amount sought as damages, and the response may thereafter be supplemented as appropriate.
(2) If a petition is filed in violation of this Article, the claim for a specific monetary amount of damages shall be stricken upon the motion of an opposing party and the court may award attorney's fees and costs against the party who filed the petition.

B. The provisions of Paragraph A shall not be applicable to a suit on a conventional obligation, promissory note, open account, or other negotiable instrument, for alimony or child support, on a tax claim, or in a garnishment proceeding.

C. The prohibitions in Paragraph A apply only to an original, amended, or incidental demand. Evidence at trial or hearing of a specific monetary amount of damages shall be adduced in accordance with the Louisiana Code of Evidence or other applicable law.
Added by Acts 1988, No. 443, §1, eff. Jan. 1, 1989. Amended by Acts 1989, No. 724, §1, eff. July 8, 1989; Acts 1992, No. 332, §1; Acts 2004, No. 334, §1.

Art. 894 to Art. 920 [Repealed]

CHAPTER 3. EXCEPTIONS

Art. 921. Exception defined

An exception is a means of defense, other than a denial or avoidance of the demand, used by the defendant, whether in the principal or an incidental action, to retard, dismiss, or defeat the demand brought against him.

Art. 922. Kinds of exceptions

Three exceptions and no others shall be allowed: the declinatory exception, the dilatory exception, and the peremptory exception.

Art. 923. Functions of exceptions

The function of the declinatory exception is to decline the jurisdiction of the court, while the dilatory exception merely retards the progress of the action, but neither exception tends to defeat the action. The function of the peremptory exception is to have the plaintiff's action declared legally nonexistent, or barred by effect of law, and hence this exception tends to dismiss or defeat the action.

Art. 924. Form of exceptions

All exceptions shall comply with Articles 853, 854, and 863, and, whenever applicable, with Articles 855 through 861. They shall set forth the name and surname of the exceptor, shall state with particularity the objections urged and the grounds thereof, and shall contain a prayer for the relief sought.

Art. 925. Objections raised by declinatory exception; waiver

A. The objections which may be raised through the declinatory exception include but are not limited to the following:

(1) Insufficiency of citation.

(2) Insufficiency of service of process, including failure to request service of citation on the defendant within the time prescribed by Article 1201(C), or failure to request service of petition within the time prescribed by Article 3955.

(3) Lis pendens under Article 531.

(4) Improper venue.

(5) The court's lack of jurisdiction over the person of the defendant.

(6) The court's lack of jurisdiction over the subject matter of the action.

B. When two or more of these objections are pleaded in the declinatory exception, they need not be pleaded in the alternative or in any particular order.

C. All objections which may be raised through the declinatory exception, except the court's lack of jurisdiction over the subject matter of the action, are waived unless pleaded therein.

Acts 1990, No. 521, §2, eff. Jan. 1, 1991; Acts 1997, No. 578, §1; Acts 2006, No. 750, §1; Acts 2010, No. 407, §1; Acts 2017, No. 419, §1.

Art. 926. Objections raised by dilatory exception; waiver

A. The objections which may be raised through the dilatory exception include but are not limited to the following:

(1) Prematurity.

(2) Want of amicable demand.

(3) Unauthorized use of summary proceeding.

(4) Nonconformity of the petition with any of the requirements of Article 891.

(5) Vagueness or ambiguity of the petition.

(6) Lack of procedural capacity.

(7) Improper cumulation of actions, including improper joinder of parties.

(8) Discussion.

B. All objections which may be raised through the dilatory exception are waived unless pleaded therein.

Acts 1995, No. 662, §1.

Art. 927. Objections raised by peremptory exception

A. The objections which may be raised through the peremptory exception include but are not limited to the following:

(1) Prescription.
(2) Peremption.
(3) Res judicata.
(4) Nonjoinder of a party under Articles 641 and 642.
(5) No cause of action.
(6) No right of action, or no interest in the plaintiff to institute the suit.
(7) Discharge in bankruptcy.

B. The court may not supply the objection of prescription, which shall be specially pleaded. The nonjoinder of a party, peremption, res judicata, the failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit, or discharge in bankruptcy, may be noticed by either the trial or appellate court on its own motion.

Acts 1995, No. 662, §1; Acts 2008, No. 824, §1, eff. Jan. 1, 2009.

Art. 928. Time of pleading exceptions

A. The declinatory exception and the dilatory exception shall be pleaded prior to or in the answer and, prior to or along with the filing of any pleading seeking relief other than entry or removal of the name of an attorney as counsel of record, extension of time within which to plead, security for costs, or dissolution of an attachment issued on the ground of the nonresidence of the defendant, and in any event, prior to the signing of a final default judgment. When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.

B. The peremptory exception may be pleaded at any stage of the proceeding in the trial court prior to a submission of the case for a decision and may be filed with the declinatory exception or with the dilatory exception, or both.

Acts 1983, No. 60, §1; Acts 1997, No. 1055, §1; Acts 1999, No. 983, §1, eff. July 1, 2000; Acts 2017, No. 419, §1.

Art. 929. Time of trial of exceptions

A. The declinatory exception, the dilatory exception, and the peremptory exception when pleaded before or in the answer shall be tried and decided in advance of the trial of the case.

B. If the peremptory exception has been filed after the answer, but at or prior to the trial of the case, it shall be tried and disposed of either in advance of or on the trial of the case. If the peremptory exception has been pleaded after the trial of the case, the court may rule thereon at any time unless the party against whom it has been pleaded desires and is entitled to introduce evidence thereon. In the latter event, the peremptory exception shall be tried specially.

Acts 1987, No. 169, §1; Acts 1997, No. 1055, §1.

Art. 930. Evidence on trial of declinatory and dilatory exceptions

On the trial of the declinatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition, the citation, or return thereon.

On the trial of the dilatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition.

Art. 931. Evidence on trial of peremptory exception

On the trial of the peremptory exception pleaded at or prior to the trial of the case, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition.

When the peremptory exception is pleaded in the trial court after the trial of the case, but prior to a submission for a decision, the plaintiff may introduce evidence in opposition thereto, but the defendant may introduce no evidence except to rebut that offered by plaintiff.

No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action.

Art. 932. Effect of sustaining declinatory exception

A. When the grounds of the objections pleaded in the declinatory exception may be removed by amendment of the petition or other action of plaintiff, the judgment sustaining the exception shall order the plaintiff to remove them within the delay allowed by the court; if the court finds, on sustaining the objection that service of citation on the defendant was not requested timely, it may either dismiss the action as to that defendant without prejudice or, on the additional finding that service could not have been timely requested, order that service be effected within a specified time.

B. If the grounds of the objection cannot be so removed, or if the plaintiff fails to comply with an order requiring such removal, the action, claim, demand, issue, or theory subject to the exception shall be dismissed; except that if an action has been brought in a court of improper jurisdiction or venue, the court may transfer the action to a proper court in the interest of justice.
Acts 2003, No. 545, §1; Acts 2006, No. 750, §1.

Art. 933. Effect of sustaining dilatory exception

A. If the dilatory exception pleading want of amicable demand is sustained, the judgment shall impose all court costs upon the plaintiff. If the dilatory exception pleading prematurity is sustained, the premature action, claim, demand, issue or theory shall be dismissed.

B. When the grounds of the other objections pleaded in the dilatory exception may be removed by amendment of the petition or other action by plaintiff, the judgment sustaining the exception shall order plaintiff to remove them within the delay allowed by the court; and the action, claim, demand, issue or theory subject to the exception shall be dismissed only for a noncompliance with this order.
Acts 2003, No. 545, §1.

Art. 934. Effect of sustaining peremptory exception

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.

Acts 2003, No. 545, §1.

Art. 935 to Art. 960 [Repealed]

CHAPTER 4. WRITTEN MOTIONS

Art. 961. Written motion required; exception

An application to the court for an order, if not presented in some other pleading, shall be by motion which, unless made during trial or hearing or in open court, shall be in writing.

Art. 962. Form of written motion

A written motion shall comply with Articles 853 and 863, and shall state the grounds therefor, and the relief or order sought. It must also comply with Article 854 if the motion is lengthy, and whenever applicable, with Articles 855 through 861.

Art. 963. Ex parte and contradictory motions; rule to show cause

If the order applied for by written motion is one to which mover is clearly entitled without supporting proof, the court may grant the order ex parte and without hearing the adverse party.

If the order applied for by written motion is one to which the mover is not clearly entitled, or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party.

The rule to show cause is a contradictory motion.

Art. 964. Motion to strike

The court on motion of a party or on its own motion may at any time and after a hearing order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter.

Acts 1997, No. 1055, §1.

Art. 965. Motion for judgment on pleadings

Any party may move for judgment on the pleadings after the answer is filed, or if an incidental demand has been instituted after the answer thereto has been filed, but within such time as not to delay the trial. For the purposes of this motion, all allegations of fact in mover's pleadings not denied by the adverse party or by effect of law, and all allegations of fact in the adverse party's pleadings shall be considered true.

Art. 966. Motion for summary judgment; procedure

A.(1) A party may move for a summary judgment for all or part of the relief for which he has prayed. A plaintiff's motion may be filed at any time after the answer has been filed. A defendant's motion may be filed at any time.

(2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.

(3) After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.

(4) The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. The court may permit documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of the court.

B. Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions:

(1) A motion for summary judgment and all documents in support of the motion shall be filed and served on all parties in accordance with Article 1313 not less than sixty-five days prior to the trial.

(2) Any opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.

(3) Any reply memorandum shall be filed and served in accordance with Article 1313 not less than five days prior to the hearing on the motion. No additional documents may be filed with the reply memorandum.

(4) If the deadline for filing and serving a motion, an opposition, or a reply memorandum falls on a legal holiday, the motion, opposition, or reply is timely if it is filed and served no later than the next day that is not a legal holiday.

C.(1) Unless otherwise agreed to by all of the parties and the court:

(a) A contradictory hearing on the motion for summary judgment shall be set not less than thirty days after the filing and not less than thirty days prior to the trial date.

(b) Notice of the hearing date shall be served on all parties in accordance with Article 1313(C) or 1314 not less than thirty days prior to the hearing.

(2) For good cause shown, the court may order a continuance of the hearing.

(3) The court shall render a judgment on the motion not less than twenty days prior to the trial.

(4) In all cases, the court shall state on the record or in writing the reasons for granting or denying the motion. If an appealable judgment is rendered, a party may request written reasons for judgment as provided in Article 1917.

D.(1) The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

(2) The court may consider only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made. Any objection to a document shall be raised in a timely filed opposition or reply memorandum. The court shall consider all objections prior to rendering judgment. The court shall specifically state on the record or in writing which documents, if any, it held to be inadmissible or declined to consider.

E. A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

F. A summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time.

G. When the court grants a motion for summary judgment in accordance with the provisions of this Article, that a party or non-party is not negligent, is not at fault, or did not cause in whole or in part the injury or harm alleged, that party or non-party shall not be considered in any subsequent allocation of fault. Evidence shall not be admitted at trial to establish the fault of that party or non-party. During the course of the trial, no party or person shall refer directly or indirectly to any such fault, nor shall that party or non-party's fault be submitted to the jury or included on the jury verdict form.

H. On review, an appellate court shall not reverse a trial court's denial of a motion for summary judgment and grant a summary judgment dismissing a case or a party without assigning the case for briefing and permitting the parties an opportunity to request oral argument.

Amended by Acts 1966, No. 36, §1; Acts 1983, No. 101, §1, eff. June 24, 1983; Acts 1984, No. 89, §1; Acts 1992, No. 71, §1; Acts 1996, 1st Ex. Sess., No. 9, §1, eff. May 1, 1996; Acts 1997, No. 483, §§1, 3, eff. July 1, 1997; Acts 2001, No. 771, §1; Acts 2003, No. 867, §1; Acts 2010, No. 690, §1; Acts 2012, No. 257, §1; Acts 2012, No. 741, §1; Acts 2013, No. 391, §1; Acts 2014, No. 187, §1; Acts 2015, No. 422, §1, eff. Jan. 1, 2016.

NOTE: See Acts 2015, No. 422, §2, "The provisions of this Act shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of this Act."

Art. 967. Same; affidavits

A. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The supporting and opposing affidavits of experts may set forth such experts' opinions on the facts as would be admissible in evidence under Louisiana Code of Evidence Article 702, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits.

B. When a motion for summary judgment is made and supported as provided above, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided above, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.

C. If it appears from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

D. If it appears to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Article are presented in bad faith or solely for the purposes of delay, the court immediately shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees. Any offending party or attorney may be adjudged guilty of contempt.

Amended by Acts 1966, No. 36, §1; Acts 2003, No. 545, §1.

Art. 968. Effect of judgment on pleadings and summary judgment

Judgments on the pleadings, and summary judgments, are final judgments and shall be rendered and signed in the same manner and with the same effect as if a trial had been had upon evidence regularly adduced. If the judgment does not grant mover all of the relief prayed for, jurisdiction shall be retained in order to adjudicate on mover's right to the relief not granted on motion.

An appeal does not lie from the court's refusal to render any judgment on the pleading or summary judgment.

Art. 969. Judgment on pleadings and summary judgment not permitted in certain cases; exception

A. Judgments on the pleadings and summary judgments shall not be granted in any action for divorce or annulment of marriage, nor in any case where the community, paraphernal, or dotal rights may be involved in an action between husband and wife.

B.(1) Notwithstanding the provisions of Paragraph A, judgments on the pleadings and summary judgments may be granted without hearing in any action for divorce under Civil Code Article 103(1) under the following conditions:

(a) All parties are represented by counsel;

(b) Counsel for each party, after answer is filed, file a written joint stipulation of facts, request for judgment, and sworn verification by each party; and

(c) Counsel for each party file a proposed judgment containing a certification that counsel and each party agree to the terms thereof.

(2) The court may render and sign such judgments in chambers without a hearing and without the taking of testimony.

Acts 1986, No. 219, §2; Acts 1987, No. 271, §1; Acts 1990, No. 1009, §4, eff. Jan. 1, 1991.

Art. 970. Motion for judgment on offer of judgment

A. At any time more than twenty days before the time specified for the trial of the matter, without any admission of liability, any party may serve upon an adverse party an offer of judgment for the purpose of settling all of the claims between them. The offer of judgment shall be in writing and state that it is made under this Article; specify the total amount of money of the settlement offer; and specify whether that amount is inclusive or exclusive of costs, interest, attorney fees,

and any other amount which may be awarded pursuant to statute or rule. Unless accepted, an offer of judgment shall remain confidential between the offeror and offeree. If the adverse party, within ten days after service, serves written notice that the offer is accepted, either party may move for judgment on the offer. The court shall grant such judgment on the motion of either party.

B. An offer of judgment not accepted shall be deemed withdrawn and evidence of an offer of judgment shall not be admissible except in a proceeding to determine costs pursuant to this Article.

C. If the final judgment obtained by the plaintiff-offeree is at least twenty-five percent less than the amount of the offer of judgment made by the defendant-offeror or if the final judgment obtained against the defendant-offeree is at least twenty-five percent greater than the amount of the offer of judgment made by the plaintiff-offeror, the offeree must pay the offeror's costs, exclusive of attorney fees, incurred after the offer was made, as fixed by the court.

D. The fact that an offer is made but not accepted does not preclude a subsequent offer or a counter offer. When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the damages remains to be determined by future proceedings, either party may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than thirty days before the start of hearings to determine the amount or extent of damages.

E. For purposes of comparing the amount of money offered in the offer of judgment to the final judgment obtained, which judgment shall take into account any additur or remittitur, the final judgment obtained shall not include any amounts attributable to costs, interest, or attorney fees, or to any other amount which may be awarded pursuant to statute or rule, unless such amount was expressly included in the offer.

F. A judgment granted on a motion for judgment on an offer of judgment is a final judgment when signed by the judge; however, an appeal cannot be taken by a party who has consented to the judgment.

Acts 1996, 1st Ex. Sess., No. 60, §1, eff. May 9, 1996; Acts 1997, No. 354, §1; Acts 2012, No. 557, §1.

Art. 971. Special motion to strike

A.(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs.

C.(1) The special motion may be filed within ninety days of service of the petition, or in the court's discretion, at any later time upon terms the court deems proper.

(2) If the plaintiff voluntarily dismisses the action prior to the running of the delays for filing an answer, the defendant shall retain the right to file a special motion to strike within the delays provided by Subparagraph (1) of this Paragraph, and the motion shall be heard pursuant to the provisions of this Article.

(3) The motion shall be noticed for hearing not more than thirty days after service unless the docket conditions of the court require a later hearing.

D. All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this Article. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. Notwithstanding the provisions of this Paragraph, the court, on noticed motion and for good cause shown, may order that specified discovery be conducted.

E. This Article shall not apply to any enforcement action brought on behalf of the state of Louisiana by the attorney general, district attorney, or city attorney acting as a public prosecutor.

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) "Act in furtherance of a person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue" includes but is not limited to:

(a) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.

(b) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official body authorized by law.

(c) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(2) "Petition" includes either a petition or a reconventional demand.

(3) "Plaintiff" includes either a plaintiff or petitioner in a principal action or a plaintiff or petitioner in reconvention.

(4) "Defendant" includes either a defendant or respondent in a principal action or a defendant or respondent in reconvention.

Acts 1999, No. 734, §1; Acts 2004, No. 232, §1; Acts 2012, No. 449, §1.

Art. 972 to Art. 1000 [Repealed]

CHAPTER 5. ANSWER

Art. 1001. Delay for answering

A defendant shall file his answer within fifteen days after service of citation upon him, except as otherwise provided by law.

When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within ten days after the exception is overruled or referred to the merits, or ten days after service of the amended petition.

The court may grant additional time for answering.

Art. 1002. Answer filed prior to confirmation of default

Notwithstanding the provisions of Article 1001, the defendant may file his answer or other pleading at any time prior to the signing of a final default judgment against him.
Acts 2017, No. 419, §1.

Art. 1003. Form of answer

The answer shall comply with Articles 853, 854, and 863 and, whenever applicable, with Articles 855 through 861. It shall admit or deny the allegations of the petition as required by Article 1004, state in short and concise terms the material facts upon which the defenses to the action asserted are based, and shall set forth all affirmative defenses as required by Article 1005. It shall also contain a prayer for the relief sought. Relief may be prayed for in the alternative.

Art. 1004. Denials

The answer shall admit or deny the allegations of fact contained in each paragraph of the petition, and all such allegations, other than those as to the amount of damages, are admitted if not denied in the answer. If the defendant is without knowledge or information sufficient to justify a belief as to the truth of an allegation of fact made in the petition, he shall so state and this shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. When the defendant intends in good faith to deny only a part of or to qualify an allegation of fact, he shall admit so much of it as is true and material and shall deny or qualify the remainder.

Art. 1005. Affirmative defenses

The answer shall set forth affirmatively negligence, or fault of the plaintiff and others, duress, error or mistake, estoppel, extinguishment of the obligation in any manner, failure of consideration, fraud, illegality, injury by fellow servant, and any other matter constituting an affirmative defense. If a party has mistakenly designated an affirmative defense as a peremptory exception or as an incidental demand, or a peremptory exception as an affirmative defense, and if justice so requires, the court, on such terms as it may prescribe, shall treat the pleading as if there had been a proper designation.
Acts 2008, No. 824, §1, eff. Jan. 1, 2009.

Art. 1006. Alternative defenses

An answer may set forth two or more defenses in the alternative, even though the factual or legal bases thereof may be inconsistent or mutually exclusive. All allegations in such cases are made subject to the obligations set forth in Article 863.

Art. 1007 to Art. 1030 [Repealed]

CHAPTER 6. INCIDENTAL ACTIONS

SECTION 1. GENERAL DISPOSITIONS

Art. 1031. Incidental demands allowed

A. A demand incidental to the principal demand may be instituted against an adverse party, a co-party, or against a third person.

B. Incidental demands are reconvention, cross-claims, intervention, and the demand against third parties.

Acts 1983, No. 63, §1.

Art. 1032. Form of petition

An incidental demand shall be commenced by a petition which shall comply with the requirements of Articles 891, 892 and 893. An incidental demand instituted by the defendant in the principal action may be incorporated in his answer to the principal demand. In this event, the caption shall indicate appropriately the dual character of the combined pleading.

Amended by Acts 1988, No. 443, §2, eff. Jan. 1, 1989.

{{NOTE: SEE ACTS 1988, NO. 443, §3.}}

Art. 1033. Delay for filing incidental demand

An incidental demand may be filed without leave of court at any time up to and including the time the answer to the principal demand is filed.

An incidental demand may be filed thereafter, with leave of court, if it will not retard the progress of the principal action, or if permitted by Articles 1066 or 1092.

An incidental demand that requires leave of court to file shall be considered as filed as of the date it is presented to the clerk of court for filing if leave of court is thereafter granted.

Amended by Acts 1970, No. 473, §1.

Art. 1034. Exceptions and motions

A defendant in an incidental action may plead any of the exceptions available to a defendant in a principal action, and may raise any of the objections enumerated in Articles 925 through 927, except that an objection of improper venue may not be urged if the principal action has been instituted in the proper venue. Exceptions pleaded by the defendant in an incidental action shall be subject to all of the provisions of Articles 924 through 934.

A party to an incidental action may plead any of the written motions available to a party to a principal action, subject to the provisions of Articles 961 through 969.

Art. 1035. Answer

The answer in an incidental action shall be filed within the delay allowed by Article 1001, and shall be subject to all of the rules set forth in Articles 1001 and 1003 through 1006.

Acts 2014, No. 655, §1.

Art. 1036. Jurisdiction; mode of procedure

A. Except as otherwise provided in Article 4845, a court shall have jurisdiction over an incidental demand only if it would have had jurisdiction over the demand had it been instituted in a separate suit. The only exceptions to this rule are those provided in the state constitution.

B. The mode of procedure employed in the incidental action shall be the same as that used in the principal action, except as otherwise provided by law.

Acts 1995, No. 202, §1.

Art. 1037. Action instituted separately

When a person does not assert in an incidental demand the action which he has against a party to the principal action or a third person, he does not thereby lose his right of action, except as provided in Article 1113, and except as provided in Article 1061.

Acts 1990, No. 521, §2, eff. Jan. 1, 1991.

Art. 1038. Separate trial; separate judgment

The court may order the separate trial of the principal and incidental actions, either on exceptions or on the merits; and after adjudicating the action first tried, shall retain jurisdiction for the adjudication of the other.

When the principal and incidental actions are tried separately, the court may render and sign separate judgments thereon. When in the interests of justice, the court may withhold the signing of the judgment on the action first tried until the signing of the judgment on the other.

Art. 1039. Effect of dismissal of principal action

If an incidental demand has been pleaded prior to motion by plaintiff in the principal action to dismiss the principal action, a subsequent dismissal thereof shall not in any way affect the incidental action, which must be tried and decided independently of the principal action.

Art. 1040. Words "plaintiff" and "defendant" include plaintiff and defendant in an incidental action

Unless the context clearly indicates otherwise, wherever the words "plaintiff" and "defendant" are used in this Code, they respectively include a plaintiff and a defendant in an incidental demand.

Art. 1041 to Art. 1060 [Repealed]

SECTION 2. RECONVENTION

Art. 1061. Actions pleaded in reconventional demand; compulsory

A. The defendant in the principal action may assert in a reconventional demand any causes of action which he may have against the plaintiff in the principal action, even if these two parties are domiciled in the same parish and regardless of connexity between the principal and reconventional demands.

B. The defendant in the principal action, except in an action for divorce under Civil Code Article 102 or 103 or in an action under Civil Code Article 186, shall assert in a reconventional demand all causes of action that he may have against the plaintiff that arise out of the transaction or occurrence that is the subject matter of the principal action.
Acts 1990, No. 521, §2, eff. Jan. 1, 1991; Acts 1991, No. 367, §2; Acts 2006, No. 344, §2, eff. June 13, 2006.

Art. 1062. Pleading compensation

Compensation may be asserted in the reconventional demand.

Art. 1063. Service of reconventional demand; citation unnecessary

The petition in reconvention, whether incorporated in the answer to the principal action or filed separately, shall be served on the plaintiff in the principal action in the manner prescribed by Article 1314. Citation of the plaintiff in the principal action shall not be necessary.
Amended by Acts 1972, No. 662, §1.

Art. 1064. Additional parties

Persons other than those made parties to the original action may be made parties to the reconventional demand.
Acts 1995, No. 858, §1.

Art. 1065. Reconventional demand exceeding principal demand

The reconventional demand may or may not diminish or defeat the recovery sought in the principal demand. It may claim relief exceeding in amount that sought in the principal demand.

Art. 1066. Action matured or acquired after pleading

An action which either matured or was acquired by the defendant in the principal action after answer may be presented, with the permission of the court, as a reconventional demand by supplemental pleading.

Art. 1067. When prescribed incidental or third party demand is not barred

An incidental demand is not barred by prescription or peremption if it was not barred at the time the main demand was filed and is filed within ninety days of date of service of main demand or in the case of a third party defendant within ninety days from service of process of the third party demand.
Added by Acts 1970, No. 472, §1. Amended by Acts 1974, No. 86, §1.

Art. 1068 to Art. 1070 [Repealed]

SECTION 3. CROSS-CLAIMS

Art. 1071. Cross-claims

A party by petition may assert as a cross-claim a demand against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or a reconventional demand or relating to any property that is the subject matter of the original action. The cross-claim may include a demand that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of the demand asserted in the action against the cross-claimant.

Added by Acts 1983, No. 63, §1.

Art. 1072. Service of cross-claim, citation unnecessary

The petition in a cross-claim shall be served on the co-party in the manner prescribed by Article 1314. Citation of the co-party shall not be necessary.

Added by Acts 1983, No. 63, §1.

Art. 1073. Additional parties

Persons other than those made parties to the original action may be made parties to a cross-claim.

Added by Acts 1983, No. 63, §1.

Art. 1074 to Art. 1090 [Repealed]

SECTION 4. INTERVENTION

Art. 1091. Third person may intervene

A third person having an interest therein may intervene in a pending action to enforce a right related to or connected with the object of the pending action against one or more of the parties thereto by:

(1) Joining with plaintiff in demanding the same or similar relief against the defendant;
(2) Uniting with defendant in resisting the plaintiff's demand; or
(3) Opposing both plaintiff and defendant.

Art. 1092. Third person asserting ownership of, or mortgage or privilege on, seized property

A third person claiming ownership of, or a mortgage or privilege on, property seized may assert his claim by intervention. If the third person asserts ownership of the seized property, the intervention may be filed at any time prior to the judicial sale of the seized property, and the court may grant him injunctive relief to prevent such sale before an adjudication of his claim of ownership.

If the third person claims a mortgage or privilege on the entire property seized, whether superior or inferior to that of the seizing creditor, the intervention may be filed at any time prior to the distribution by the sheriff of the proceeds of the sale of the seized property, and the court shall

order the sheriff to hold such proceeds subject to its further orders. When the intervener claims such a mortgage or privilege only on part of the property seized, and the intervention is filed prior to the judicial sale, the court may order the separate sale of the property on which the intervener claims a mortgage or privilege; or if a separate sale thereof is not feasible or necessary, or the intervener has no right thereto, the court may order the separate appraisement of the entire property seized and of the part thereof on which the intervener claims a mortgage or privilege.

An intervener claiming the proceeds of a judicial sale does not thereby admit judicially the validity, nor is he estopped from asserting the invalidity, of the claim of the seizing creditor.
Amended by Acts 1962, No. 92, §1.

Art. 1093. Service of petition; citation unnecessary

When the intervention asserts ownership of, or a mortgage or privilege on, the seized property, the petition shall be served on the sheriff and all parties to the principal action as provided in Article 1313. Any other petition of intervention shall be served on all parties to the principal action as provided in Article 1314. Citation is not necessary in intervention.

Art. 1094. Intervener accepts proceedings

An intervener cannot object to the form of the action, to the venue, or to any defects and informalities personal to the original parties.

Art. 1095 to Art. 1110 [Repealed]

SECTION 5. DEMAND AGAINST THIRD PARTY

Art. 1111. Defendant may bring in third person

The defendant in a principal action by petition may bring in any person, including a codefendant, who is his warrantor, or who is or may be liable to him for all or part of the principal demand.

In such cases the plaintiff in the principal action may assert any demand against the third party defendant arising out of or connected with the principal demand. The third party defendant thereupon shall plead his objections and defenses in the manner prescribed in Articles 921 through 969, 1003 through 1006, and 1035. He may reconvene against the plaintiff in the principal action or the third party plaintiff, on any demand arising out of or connected with the principal demand, in the manner prescribed in Articles 1061 through 1066.

Art. 1112. Defendant in reconvention may bring in third person

The defendant in reconvention likewise may bring in his warrantor, or any person who is or may be liable to him for all or part of the reconventional demand, and the rules provided in Articles 1111, and 1113 through 1115 shall apply equally to such third party actions.

Art. 1113. Effect of failure to bring in third party

A defendant who does not bring in as a third party defendant a person who is liable to him for all or part of the principal demand does not on that account lose his right or cause of action against such person, unless the latter proves that he had means of defeating the action which were not used, because the defendant either failed to bring him in as a third party defendant, or neglected to apprise him that the suit had been brought. The same rule obtains with respect to a defendant in reconvention who fails to bring in as a third party defendant a person who is liable to him for all or part of the reconventional demand.

Art. 1114. Service of citation and pleadings

A citation and a certified copy of the third party petition shall be served on the third party defendant in the manner prescribed by Articles 1231 through 1293. Unless previously served on or filed by the third party defendant, certified copies of the following pleadings shall also be served on him in the same manner: the petition in the principal demand; the petition in the reconventional demand, if any; and the answers to the principal and reconventional demands filed prior to the issuance of citation in the third party action.

Amended by Acts 1964, No. 4, §1.

Art. 1115. Defenses of original defendant available to third party defendant

The third party defendant may assert against the plaintiff in the principal action any defenses which the third party plaintiff has against the principal demand.

Art. 1116. Third party defendant may bring in third person

A third party defendant may proceed under Articles 1111 through 1115 against any person who is or may be liable to him for all or any part of the third party demand.

Art. 1117 to Art. 1150 [Repealed]

CHAPTER 7. AMENDED AND SUPPLEMENTAL PLEADINGS

Art. 1151. Amendment of petition and answer; answer to amended petition

A plaintiff may amend his petition without leave of court at any time before the answer thereto is served. He may be ordered to amend his petition under Articles 932 through 934. A defendant may amend his answer once without leave of court at any time within ten days after it has been served. Otherwise, the petition and answer may be amended only by leave of court or by written consent of the adverse party.

A defendant shall plead in response to an amended petition within the time remaining for pleading to the original pleading or within ten days after service of the amended petition, whichever period is longer, unless the time is extended under Article 1001.

Art. 1152. Amendment of exceptions

A defendant may amend his declinatory or dilatory exceptions by leave of court or with the written consent of the adverse party, at any time prior to the trial of the exceptions, so as to amplify or plead more particularly an objection set forth or attempted to be set forth in the original exception. A declinatory or a dilatory exception may not be amended so as to plead an objection not attempted to be set forth in the original exception.

A defendant may amend his peremptory exception at any time and without leave of court, so as to either amplify an objection set forth or attempted to be set forth in the original exception, or to plead an objection not set forth therein.

Art. 1153. Amendment relates back

When the action or defense asserted in the amended petition or answer arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of filing the original pleading.

Art. 1154. Amendment to conform to evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleading. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby, and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense on the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Art. 1155. Supplemental pleadings

The court, on motion of a party, upon reasonable notice and upon such terms as are just, may permit mover to file a supplemental petition or answer setting forth items of damage, causes of action or defenses which have become exigible since the date of filing the original petition or answer, and which are related to or connected with the causes of action or defenses asserted therein.

Art. 1156. Amended and supplemental pleadings in incidental action

The petition, the answer, and the exceptions filed in an incidental action may be amended or supplemented in the manner provided in Articles 1151 through 1155.

Art. 1157 to Art. 1200 [Repealed]

BOOK III. PROCEEDINGS IN APPELLATE COURTS

TITLE I. APPELLATE PROCEDURE

CHAPTER 1. GENERAL DISPOSITIONS

Art. 2081. Applicability of Title

The provisions of this Title are applicable to all appeals to the supreme court and the courts of appeal, except as otherwise provided by law.

Art. 2082. Definition of appeal

Appeal is the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court.

Art. 2083. Judgments appealable

A. A final judgment is appealable in all causes in which appeals are given by law, whether rendered after hearing, by default, or by reformation under Article 1814.

B. In reviewing a judgment reformed in accordance with a remittitur or additur, the court shall consider the reasonableness of the underlying jury verdict.

C. An interlocutory judgment is appealable only when expressly provided by law.

Amended by Acts 1984, No. 59, §1; Acts 1989, No. 173, §1; Acts 2005, No. 205, §1, eff. Jan. 1, 2006.

Art. 2084. Legal representative may appeal

A legal representative may appeal any appealable judgment rendered against him or affecting the property which he is administering, for the benefit of the person whose property he administers or whom he represents, whenever he considers an appeal necessary or advisable.

Art. 2085. Limitations on appeals

An appeal cannot be taken by a party who confessed judgment in the proceedings in the trial court or who voluntarily and unconditionally acquiesced in a judgment rendered against him. Confession of or acquiescence in part of a divisible judgment or in a favorable part of an indivisible judgment does not preclude an appeal as to other parts of such judgment.

Art. 2086. Right of third person to appeal

A person who could have intervened in the trial court may appeal, whether or not any other appeal has been taken.

Art. 2087. Delay for taking devolutive appeal

A. Except as otherwise provided in this Article or by other law, an appeal which does not suspend the effect or the execution of an appealable order or judgment may be taken within sixty days of any of the following:

BOOK IV. EXECUTION OF JUDGMENTS

TITLE I. GENERAL DISPOSITIONS

Art. 2251. Execution only in trial court; appellate court judgment

A judgment can be executed only by a trial court.

A party seeking to execute a judgment of an appellate court must first file a certified copy with the clerk of the trial court. This filing may be made without prior notice to the adverse party.

Art. 2252. Delay before proceeding with execution

A judgment creditor may proceed with the execution of a judgment only after the delay for a suspensive appeal therefrom has elapsed; however, recordation of a judgment in the mortgage records prior to the lapsing of the delay for a suspensive appeal does not begin proceedings for the execution of the judgment.

Acts 1985, No. 523, §1, eff. July 12, 1985.

Art. 2253. Writ from clerk to sheriff

At the request of a judgment creditor, the clerk shall issue a writ bearing his signature, the seal of the court, and the date, and directing the sheriff of the parish where the judgment is to be executed to enforce it in the manner set forth in the writ. Concurrent writs may be directed to sheriffs of several parishes.

Art. 2254. Execution by sheriff; return; wrongful seizure

A. The sheriff shall proceed promptly to execute the writ and make a return to the clerk who issued it, stating the manner in which it was executed.

B. Since secured collateral subject to a security interest under Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) need only be reasonably described in the debtor's security agreement (R.S. 10:9-110), the sheriff shall have no liability to the debtor or to any third party for wrongful or improper seizure of the debtor's or third party's property of the same general type as described in the debtor's security agreement. If necessary, the sheriff shall request the secured creditor to identify the property subject to the security agreement and shall act pursuant to the secured creditor's instructions. The debtor's and other owner's sole remedy for the wrongful or improper seizure of the property shall be for actual losses sustained under R.S. 10:9-507(1) against the secured creditor on whose behalf and pursuant to whose instructions the sheriff may act.

Acts 1989, No. 137, §18, eff. Sept. 1, 1989.

Art. 2255 to Art. 2290 [Repealed]

BOOK V. SUMMARY AND EXECUTORY PROCEEDINGS

TITLE I. SUMMARY PROCEEDINGS

Art. 2591. Proceedings conducted with rapidity

Summary proceedings are those which are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings.

Art. 2592. Use of summary proceedings

Summary proceedings may be used for trial or disposition of the following matters only:

(1) An incidental question arising in the course of judicial proceedings, including the award of and the determination of reasonableness of attorney fees.

(2) An application for a new trial.

(3) An issue which may be raised properly by an exception, contradictory motion, or rule to show cause.

(4) An action against the surety on a judicial bond after judgment has been obtained against the principal, or against both principal and surety when a summary proceeding against the principal is permitted.

(5) The homologation of a judicial partition, of a tableau of distribution or account filed by a legal representative, or of a report submitted by an auditor, accountant, or other expert appointed by the court; and an opposition to any of the foregoing, to the appointment of a legal representative, or to a petition for authority filed by a legal representative.

(6) A habeas corpus, mandamus, or quo warranto proceeding.

(7) The determination of the rank of mortgages, liens, and privileges on property sold judicially, and of the order of distribution of the proceeds thereof.

(8) The original granting of, subsequent change in, or termination of custody, visitation, and support for a child; support for a spouse; injunctive relief; support between ascendants and descendants; use and occupancy of the family home or use of community movables or immovables; or use of personal property.

(9) An action to compel an accounting at termination of parental authority; and an action to seek court approval to alienate, encumber, or lease the property of a minor, to incur an obligation of a minor, or to compromise the claim of a minor.

(10) An action to annul a probated testament under Article 2931.

(11) An action to enforce the right to a written accounting provided for in R.S. 9:2776.

(12) An action for dissolution or specific performance of a compromise entered pursuant to Article 1916(B) or by consent judgment.

(13) All other matters in which the law permits summary proceedings to be used.

Amended by Acts 1964, No. 4, §1; Acts 1974, No. 130, §1; Acts 1976, No. 321, §1; Acts 1984, No. 90, §1; Acts 1986, No. 116, §1; Acts 1987, No. 565, §2; Acts 1988, No. 817, §3, eff. July 18, 1988; Acts 1989, No. 118, §1; Acts 1990, No. 1008, §4, eff. Jan. 1, 1991; Acts 1990, No. 1009, §4, eff. Jan. 1, 1991; Acts 1992, No. 688, §1, eff. July 6, 1992; Acts 2008, No. 824, §3, eff. Jan. 1, 2009; Acts 2015, No. 260, §2, eff. Jan. 1, 2016; Acts 2015, No. 379, §2, eff. Aug. 1, 2016.

BOOK VI. PROBATE PROCEDURE

TITLE I GENERAL DISPOSITIONS

CHAPTER 1. JURISDICTION

Art. 2811. Court in which succession opened

A proceeding to open a succession shall be brought in the district court of the parish where the deceased was domiciled at the time of his death.

If the deceased was not domiciled in this state at the time of his death, his succession may be opened in the district court of any parish where:

(1) Immovable property of the deceased is situated; or,

(2) Movable property of the deceased is situated, if he owned no immovable property in the state at the time of his death.

Art. 2812. Proceedings in different courts; stay; adoption of proceedings by court retaining jurisdiction

If proceedings to open the succession of a deceased person who was not domiciled in this state at the time of his death are brought in two or more district courts of competent jurisdiction, the court in which the proceeding was first brought shall retain jurisdiction over the succession, and the other courts shall stay their proceedings.

The court retaining jurisdiction may adopt by ex parte order any of the proceedings taken in any other Louisiana court of competent jurisdiction, with the same force and effect as if these proceedings had been taken in the adopting court.

CHAPTER 2. EVIDENCE OF JURISDICTION AND HEIRSHIP

Art. 2821. Evidence of jurisdiction, death, and relationship

The deceased's domicile at the time of his death, his ownership of property in this state, and all other facts necessary to establish the jurisdiction of the court may be evidenced by affidavits.

The deceased's death, his marriage, and all other facts necessary to establish the relationship of his heirs may be evidenced either by official certificates issued by the proper public officer, or by affidavits.

Art. 2822. Requirements of affidavit evidence

The affidavits referred to in Article 2821 shall be executed by two persons having knowledge of the facts sworn to. These affidavits shall be filed in the record of the succession proceeding.

Art. 2823. Additional evidence

In any case in which evidence by affidavit is permitted under Article 2821, the court may require further evidence of any fact sworn to therein by the introduction of evidence as in ordinary cases.

Art. 2824. No affidavit evidence of factual issues

No fact which is an issue in a contradictory proceeding in a succession may be proved by affidavit under Articles 2821 and 2822. In all such contradictory proceedings, issues of fact shall be determined on the trial thereof only by evidence introduced as in ordinary cases.

Art. 2825. Costs

In all succession proceedings conducted ex parte, the court costs are to be paid as administration expenses. In all contradictory succession proceedings, the court costs are to be paid by the party cast, unless the court directs otherwise.
Amended by Acts 1997, No. 1421, §3, eff. July 1, 1999.

Art. 2826. Definition of certain terms used in Book VI

Except where the context clearly indicates otherwise, as used in the Articles of this Book:

(1) "Residuary legatee" includes a recipient of a universal legacy or a general legacy, and also includes a residuary heir.

(2) "Residuary heir" is a successor who inherits the residue of a testamentary succession in default of a valid disposition thereof by the testator.

(3) "Succession representative" includes an administrator, provisional administrator, administrator of a vacant succession, executor, and dative testamentary executor.
Acts 1997, No. 1421, §3, eff. July 1, 1999.

CHAPTER 3. PROBATE AND REGISTRY OF TESTAMENTS

SECTION 1. PROCEDURE PRELIMINARY TO PROBATE

Art. 2851. Petition for probate

If the deceased is believed to have died testate, any person who considers that he has an interest in opening the succession may petition a court of competent jurisdiction for the probate and execution of the testament.

Art. 2852. Documents submitted with petition for probate

A. The petitioner shall submit with his petition evidence of the death of the decedent, and of all other facts necessary to establish the jurisdiction of the court.

B. If the testament is one other than a statutory testament, a notarial testament, or a nuncupative testament by public act, and is in the possession of the petitioner, he shall present it to the court, and pray that it be probated and executed.
Acts 1997, No. 1421, §3, eff. July 1, 1999.

Art. 2853. Purported testament must be filed, though possessor doubts validity

If a person has possession of a document purporting to be the testament of a deceased person, even though he believes that the document is not the valid testament of the deceased, or has doubts concerning the validity thereof, he shall present it to the court with his petition praying that the document be filed in the record of the succession proceeding.

A person so presenting a purported testament to the court shall not be deemed to vouch for its authenticity or validity, nor precluded from asserting its invalidity.

Art. 2854. Search for testament

If the testament is not in the possession of the petitioner, he shall pray that the court direct that a search be made for the testament by a notary of the parish. In its order directing the search, the court may order any person having in his possession or under his control any books, papers, or documents of the deceased, or any bank box, safety deposit vault, or other receptacle likely to contain the testament of the deceased, to permit the examination of the books, papers, and documents, and of the contents of the bank box, safety deposit vault, or other receptacle, by the notary.

Art. 2855. Return to order to search for testament

If the notary finds any document which purports to be a testament of the deceased, he shall take possession of it, and produce it in court with his written return to the order directing the search. The original petitioner, or any other interested person, may petition for the probate of the testament so produced.

If the search is unsuccessful, despite diligent effort, the notary shall make his written return to this effect to the court.

Art. 2856. Probate hearing; probate forthwith if witness present

When a testament that is required to be probated has been produced, the court shall order it presented for probate on a date and hour assigned. If all necessary witnesses are present in court at the time the testament is produced, the court may order it presented for probate forthwith.
Acts 1997, No. 1421, §3, eff. July 1, 1999.

Art. 2857. Proponent must produce witnesses; subpoenas

The petitioner for the probate of the testament shall produce all necessary witnesses at the time assigned for the probate hearing, and may cause them to be subpoenaed to appear and testify.

SECTION 2. EX PARTE PROBATE OF TESTAMENTS

Art. 2881. Ex parte probate if no objection

The court shall proceed to probate the testament ex parte as provided in Article 2882, unless an objection thereto is made at the hearing.

An objection to the ex parte probate of a testament may be presented in an opposition, or made orally at the hearing. The opposition must comply with the provisions of Article 2902, and must be filed prior to the hearing. The oral objection must specify the grounds of invalidity of the testament asserted, and must be urged immediately after the objector has had an opportunity to examine the purported testament.

Art. 2882. Proceedings at probate hearing

At the probate hearing the court shall open the testament, if it is enclosed in a sealed envelope, receive proof of the making of the testament as provided in Articles 2883 through 2889, may read the testament to those present, and shall paraph the top and bottom of each page of the testament by inscribing it "ne varietur" over the judicial signature.

Amended by Acts 1968 No. 130, §1.

Art. 2883. Olographic testament

A. The olographic testament must be proved by the testimony of two credible witnesses that the testament was entirely written, dated, and signed in the testator's handwriting. The court must satisfy itself, through interrogation or from the written affidavits or the depositions of the witnesses, that the handwriting and signature are those of the testator, and except as provided in Article 2890, must mention these facts in its proces verbal.

B. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator stating that the olographic will was entirely written, dated, and signed in the testator's handwriting, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Acts 1983, No. 594, §1. Acts 1984, No. 393, §1; Acts 1999, No. 85, §1.

Art. 2884. Nuncupative testament by private act

A. Except as provided in Article 2886, the nuncupative testament by private act must be proved by the testimony of at least three of the competent witnesses present when it was made. These witnesses must testify, in substance:

(1) That they recognize the testament presented to them as being the same that was written in their presence by the testator, or by another person at his direction, or which the testator had written or caused to be written out of their presence and which he declared to them contained his testament; and

(2) That they recognize their signatures and that of the testator, if they signed it, or the signature of him who signed for them, respectively, if they did not know how to sign their names.

B. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

Art. 2885. Mystic testament

A. Except as provided in Article 2886, the mystic testament must be proved by the testimony of at least three of the witnesses who were present at the act of superscription. These witnesses shall testify, in substance:

(1) That they recognize the sealed envelope presented to them to be the same that the testator delivered to the notary in their presence, declaring to the latter that it contained the testator's testament; and

(2) That they recognize their signatures and that of the notary in the act of superscription, if they signed it, or the signature of the notary and of the person who signed for them, if the witnesses did not know how to sign their names.

B. The notary before whom the act of superscription has been passed may testify as one of the three witnesses required above.

C. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.
Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

Art. 2886. Probate of nuncupative testament by private act; mystic testament, when witnesses dead, absent, or incapacitated

A. If some of the witnesses to the nuncupative testament by private act, or to the act of superscription of the mystic testament, are dead, absent from the state, incapacitated, or cannot be located, so that it is not possible to procure the prescribed number of witnesses to prove the testament, it may be proved by the testimony of those witnesses then residing in the state and available.

B. If the notary and all of the subscribing witnesses are dead, absent from the state, incapacitated, or cannot be located, the testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator, or of the notary before whom the act of superscription of the mystic testament was passed, or the signatures of two of the witnesses to the nuncupative testament by private act, or to the act of superscription of the mystic testament.

C. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.
Amended by Acts 1980, No. 106, §2; Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

Art. 2887. [Repealed]

Art. 2888. Foreign testament

A written testament subscribed by the testator and made in a foreign country, or in another state, or a territory of the United States, in a form not valid in this state, but valid under the law of the place where made, or under the law of the testator's domicile, may be probated in this state by producing the evidence required under the law of the place where made, or under the law of the testator's domicile, respectively.

Art. 2889. Depositions of witnesses

A petitioner for the probate of a testament under the provisions of Articles 2882 through 2888 may obtain leave of court ex parte for the taking of the deposition of any witness whose testimony otherwise would not be available. The provisions of Articles 1426, 1434 through 1436, 1443 through 1446, 1449, 1452, and 1469 through 1471, so far as applicable, shall govern the taking of such deposition.
Acts 1985, No. 26, §1.

Art. 2890. Proces verbal of probate

A. A proces verbal of the hearing shall be prepared, signed by the judge or by the clerk, and by the witnesses who testified at the hearing, which shall be a record of the succession proceeding, and which shall recite or include:

(1) The opening of the testament, and the manner in which proof of its authenticity and validity was submitted;

(2) The names and surnames of the witnesses testifying, either personally or by affidavit or deposition; the substance of the testimony of the witnesses who testify personally at the hearing; and that any affidavits or depositions used are made a part thereof by attachment or by reference;

(3) The paraphing of the testament by the court, as set forth in Article 2882;

(4) An order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law; or an order refusing to probate the testament, giving the substance of the court's reasons therefor.

B. If written affidavits only are used to prove a will under Articles 2883 through 2887, the proces verbal shall be dispensed with, and the court shall render a written order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law, or a written order refusing to probate the testament, giving the substance of the court's reasons therefor.

Amended by Acts 1968, No. 130, §1; Acts 1970, No. 475, §1; Acts 1984, No. 393, §1; Acts 1987, No. 270, §1.

Art. 2891. Notarial testament, nuncupative testament by public act, and statutory testament executed without probate

A notarial testament, a nuncupative testament by public act, and a statutory testament do not need to be proved. Upon production of the testament, the court shall order it filed and executed and this order shall have the effect of probate.

Acts 1997, No. 1421, §3, eff. July 1, 1999.

Art. 2892. Use of probate testimony in subsequent action

When a testament has been probated in accordance with law, the record of the substance of the testimony of any witness at the hearing, and the deposition of any witness taken under Article 2889, shall be admissible in evidence in any subsequent action in which it is sought to annul the testament, if at the time of trial thereof the witness has died, or for any other reason his testimony cannot be taken again either by subpoenaing him to appear at the trial, or by deposition.

Art. 2893. Period within which will must be probated

No testament shall be admitted to probate unless a petition therefor has been filed in a court of competent jurisdiction within five years after the judicial opening of the succession of the deceased.

Amended by Acts 1981, No. 316, §1; Acts 1986, No. 247, §1.

SECTION 3. CONTRADICTORY PROBATE OF TESTAMENTS

Art. 2901. Contradictory trial required; time to file opposition

If an objection is made to the ex parte probate of a testament, as provided in Article 2881, the testament may be probated only at a contradictory trial of the matter. If only an oral objection is made to the ex parte probate, the court shall allow the opponent a reasonable delay, not exceeding ten days, to file his opposition.

Art. 2902. Opposition to petition for probate

The opposition to the petition for the probate of a testament shall comply with Article 2972, shall allege the grounds of invalidity of the testament relied on by the opponent, and shall be served upon the petitioner for the probate of the testament.

Art. 2903. Proponent bears burden of proof

At the contradictory trial to probate a testament, its proponent bears the burden of proving the authenticity of the testament, and its compliance with all of the formal requirements of law.

Art. 2904. Admissibility of videotape of execution of testament

A. In a contradictory trial to probate a testament under Article 2901 or an action to annul a probated testament under Article 2931, and provided the testator is sworn by a person authorized to take oaths and the oath is recorded on the videotape, the videotape of the execution and reading of the testament by the testator may be admissible as evidence of any of the following:

(1) The proper execution of the testament.

(2) The intentions of the testator.

(3) The mental state or capacity of the testator.

(4) The authenticity of the testament.

(5) Matters that are determined by a court to be relevant to the probate of the testament.

B. For purposes of this Article, "videotape" means the visual recording on a magnetic tape, film, videotape, compact disc, digital versatile disc, digital video disc, or by other electronic means together with the associated oral record.

Acts 2005, No. 79, §1.

CHAPTER 4. ANNULMENT OF PROBATED TESTAMENTS

Art. 2931. Annulment of probated testament by direct action; defendants; summary proceeding

A probated testament may be annulled only by a direct action brought in the succession proceeding against the legatees, the residuary heir, if any, and the executor, if he has not been discharged. The action shall be tried as a summary proceeding.

Amended by Acts 1984, No. 90, §2.

Art. 2932. Burden of proof in action to annul

A. The plaintiff in an action to annul a probated testament has the burden of proving the invalidity thereof, unless the action was instituted within three months of the date the testament was probated. In the latter event, the defendants have the burden of proving the authenticity of the testament, and its compliance with all of the formal requirements of the law.

B. In an action to annul a notarial testament, a nuncupative testament by public act, or a statutory testament, however, the plaintiff always has the burden of proving the invalidity of the testament.

Acts 1997, No. 1421, §3, eff. July 1, 1999.

Art. 2933. [Repealed]

CHAPTER 5. PAYMENT OF STATE INHERITANCE TAXES

Art. 2951. [Repealed]

Art. 2952. Descriptive list of property, if no inventory

If no inventory of the property left by the deceased has been taken, any heir, legatee, or other interested party shall file in the succession proceeding a detailed, descriptive list, sworn to and subscribed by him, of all items of property composing the succession of the deceased, stating the actual cash value of each item at the time of the death of the deceased.

Art. 2953. [Repealed]

Art. 2954. [Repealed]

CHAPTER 6. GENERAL RULES OF PROCEDURE

Art. 2971. Pleading and service of process

Except as otherwise provided by law, the rules of pleading and service of process applicable in ordinary proceedings shall apply to succession proceedings.

A certified copy of the petition, opposition, contradictory motion, or rule initiating a contradictory succession proceeding shall be served on the adverse party; but citation is necessary only in those cases in which it is specifically required by law.

An opposition may be served upon the adverse party as provided in Article 1313.

Art. 2972. Oppositions

An opposition to the petition, motion, or other application of a party to a succession proceeding for an order or judgment of the court shall be in writing and be filed within the delay allowed. It shall comply with the provisions of Articles 853 through 863; shall state the name, surname, and domicile of the opponent; shall allege the interest of opponent in filing the opposition, and the grounds for opposing the petition, motion, or other application; and shall conclude with a prayer for appropriate relief.

Art. 2973. Responsive pleadings to opposition

Responsive pleadings to an opposition may be filed as provided in Article 2593.

BOOK VII. SPECIAL PROCEEDINGS

TITLE I. PROVISIONAL REMEDIES

CHAPTER 1. ATTACHMENT AND SEQUESTRATION

SECTION 1. GENERAL DISPOSITIONS

Art. 3501. Petition; affidavit; security

A writ of attachment or of sequestration shall issue only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the petition verified by, or by the separate affidavit of, the petitioner, his counsel or agent.

The applicant shall furnish security as required by law for the payment of the damages the defendant may sustain when the writ is obtained wrongfully.

Art. 3502. Issuance of writ before petition filed

A writ of attachment or of sequestration may issue before the petition is filed, if the plaintiff obtains leave of court and furnishes the affidavit and security provided in Article 3501. In such a case the petition shall be filed on the first judicial day after the issuance of the writ of attachment or of sequestration, unless for good cause shown the court grants a longer delay.

Art. 3503. Garnishment under writs of attachment or of sequestration

Except as otherwise provided by law and in the second paragraph of this article, garnishment under a writ of attachment or of sequestration is governed by the rules applicable to garnishment under a writ of fieri facias.

In garnishment under a writ of sequestration the only property that can be seized is property the ownership or possession of which is claimed by the plaintiff or on which he claims a privilege.

Art. 3504. Return of sheriff; inventory

The sheriff, after executing a writ of attachment or of sequestration, shall deliver to the clerk of the court from which the writ issued a written return stating the manner in which he executed the writ. He shall annex to the return an inventory of the property seized.

Art. 3505. Reduction of excessive seizure

If the value of the property seized under a writ of attachment or of sequestration exceeds what is reasonably necessary to satisfy the plaintiff's claim, the defendant by contradictory motion may obtain the release of the excess.

Art. 3506. Dissolution of writ; damages

The defendant by contradictory motion may obtain the dissolution of a writ of attachment or of sequestration, unless the plaintiff proves the grounds upon which the writ was issued. If the writ of attachment or of sequestration is dissolved, the action shall then proceed as if no writ had been issued.

The court may allow damages for the wrongful issuance of a writ of attachment or of sequestration on a motion to dissolve, or on a reconventional demand. Attorney's fees for the services rendered in connection with the dissolution of the writ may be included as an element of damages whether the writ is dissolved on motion or after trial on the merits.

Art. 3507. Release of property by defendant; security

A defendant may obtain the release of the property seized under a writ of attachment or of sequestration by furnishing security for the satisfaction of any judgment which may be rendered against him.

Art. 3507.1. Release of property by plaintiff; security

Property seized under a writ of attachment or of sequestration may be released to the plaintiff upon proof of his ownership and upon furnishing security as required by Article 3508. All costs incurred as a result of the seizure shall be paid by the plaintiff prior to the release of the property. A written agreement to hold the seizing authority harmless for wrongful seizure of property which is not seized to enforce a security interest, mortgage, lien or privilege may be substituted in lieu of security at the discretion of the sheriff.

Acts 1985, No. 593, §1; Acts 1989, No. 137, §18, eff. Sept. 1, 1989.

Art. 3508. Amount of security for release of attached or sequestered property

The security for the release of property seized under a writ of attachment or of sequestration shall exceed by one-fourth the value of the property as determined by the court, or shall exceed by one-fourth the amount of the claim, whichever is the lesser.

Art. 3509. Release of property by third person

When property seized under a writ of attachment or of sequestration is in the possession of one not a party to the action, he may intervene in the action and, upon prima facie showing that he is the owner, pledgee, or consignee of the property, have the property released by furnishing security in the manner and amount, within the same delay, and with the same effect as a defendant.

Art. 3510. Necessity for judgment and execution

Except as provided in Article 3513, a final judgment must be obtained in an action where a writ of attachment or of sequestration has issued before the property seized can be sold to satisfy the claim.

Art. 3511. Attachment and sequestration; privilege

To the extent not otherwise provided under Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.), a creditor who seizes property under a writ of attachment or of sequestration acquires a privilege from the time of seizure if judgment is rendered maintaining the attachment or sequestration.

Acts 1989, No. 137, §18, eff. Sept. 1, 1989.

Art. 3512. Release of plaintiff's security

The security required of the plaintiff for the issuance of a writ of attachment or of sequestration shall be released when judgment is rendered in his favor and is affirmed on appeal or when no appeal has been taken and the delay for appeal has elapsed.

Art. 3513. Sale of perishable property

Perishable property seized under a writ of attachment or of sequestration may be sold as provided in Article 2333. The proceeds of such a sale shall be held by the sheriff subject to the orders of the court.

Nothing contained herein shall be construed to prohibit the release of such property upon furnishing of security.

Art. 3514. Release not to affect right to damages

The release of property upon furnishing security under Articles 3507, 3509, or 3576 shall not preclude a party from asserting the invalidity of the seizure, or impair his right to damages because of a wrongful seizure.

SECTION 2. ATTACHMENT

Art. 3541. Grounds for attachment

A writ of attachment may be obtained when the defendant:

(1) Has concealed himself to avoid service of citation;

(2) Has granted a security interest under Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.), or has mortgaged, assigned, or disposed of his property or some part thereof, or is about to do any of these acts, with intent to defraud his creditors or give an unfair preference to one or more of them;

(3) Has converted or is about to convert his property into money or evidences of debt, with intent to place it beyond the reach of his creditors;

(4) Has left the state permanently, or is about to do so before a judgment can be obtained and executed against him; or

(5) Is a nonresident who has no duly appointed agent for service of process within the state.

Acts 1989, No. 137, §18, eff. Sept. 1, 1989.

Art. 3542. Actions in which attachment can issue

A writ of attachment may be obtained in any action for a money judgment, whether against a resident or a nonresident, regardless of the nature, character, or origin of the claim, whether it is for a certain or uncertain amount, and whether it is liquidated or unliquidated.

Art. 3543. Issuance of a writ of attachment before debt due

A writ of attachment may be obtained before the debt sued upon is due. If the debt is paid when it becomes due, the costs of the seizure shall be paid by the plaintiff.

Art. 3544. Plaintiff's security

The security required for the issuance of a writ of attachment shall be for the amount of the plaintiff's demand, exclusive of interest and costs. If the writ is obtained on the sole ground that the defendant is a nonresident, the security shall not exceed two hundred fifty dollars, but on proper showing the court may increase the security to any amount not exceeding the amount of the demand.

Art. 3545. Nonresident attachment; venue

An action in which a writ of attachment is sought on the sole ground that the defendant is a nonresident may be brought in any parish where the property to be attached is situated.

SECTION 3. SEQUESTRATION

Art. 3571. Grounds for sequestration

When one claims the ownership or right to possession of property, or a mortgage, security interest, lien, or privilege thereon, he may have the property seized under a writ of sequestration, if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action.
Acts 1989, No. 137, §18, eff. Sept. 1, 1989.

Art. 3572. Sequestration before rent due

A sequestration based upon a lessor's privilege may be obtained before the rent is due, if the lessor has good reason to believe that the lessee will remove the property subject to the lessor's privilege. If the rent is paid when it becomes due, the costs shall be paid by the plaintiff.

Art. 3573. Sequestration by court on its own motion

The court on its own motion may order the sequestration of property the ownership of which is in dispute without requiring security when one of the parties does not appear to have a better right to possession than the other.

Art. 3574. Plaintiff's security

An applicant for a writ of sequestration shall furnish security for an amount determined by the court to be sufficient to protect the defendant against any damage resulting from a wrongful issuance, unless security is dispensed with by law.

Art. 3575. Lessor's privilege

A writ of sequestration to enforce a lessor's privilege shall issue without the furnishing of security.

Art. 3576. Release of property under sequestration

If the defendant does not effect the release of property seized under a writ of sequestration, as permitted by Article 3507, within ten days of the seizure, the plaintiff may effect the release thereof by furnishing the security required by Article 3508.

CHAPTER 2. INJUNCTION

Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary restraining order

A. An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law; provided, however, that no court shall have jurisdiction to issue, or cause to be issued, any temporary restraining order, preliminary injunction, or permanent injunction against any state department, board, or agency, or any officer, administrator, or head thereof, or any officer of the state of Louisiana in any suit involving the expenditure of public funds under any statute or law of this state to compel the expenditure of state funds when the director of such department, board, or agency or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

B. No court shall issue a temporary restraining order in cases where the issuance shall stay or enjoin the enforcement of a child support order when the Department of Children and Family Services is providing services, except for good cause shown by written reasons made a part of the record.

C. During the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, except in cases where prohibited, in accordance with the provisions of this Chapter.

D. Except as otherwise provided by law, an application for injunctive relief shall be by petition.

E. The irreparable injury, loss, or damage enumerated in Paragraph A of this Article may result from the isolation of an individual over the age of eighteen years by any other individual, curator, or mandatary, including but not limited to violations of Civil Code Article 2995 or Code of Civil Procedure Article 4566(J).

Amended by Acts 1969, No. 34, §2; Acts 2004, No. 765, §1, eff. July 6, 2004; Acts 2016, No. 110, §2, eff. May 19, 2016.

Art. 3602. Preliminary injunction; notice; hearing

A preliminary injunction shall not issue unless notice is given to the adverse party and an opportunity had for a hearing.

An application for a preliminary injunction shall be assigned for hearing not less than two nor more than ten days after service of the notice.

Art. 3603. Temporary restraining order; affidavit of irreparable injury and notification efforts

A. A temporary restraining order shall be granted without notice when:

(1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

B. The verification or the affidavit may be made by the plaintiff, or by his counsel, or by his agent.

C. No court shall issue a temporary restraining order in cases where the issuance shall stay or enjoin the enforcement of a child support order when the Department of Children and Family Services is providing services, except for good cause shown by written reasons made a part of the record.
Acts 1997, No. 1156, §2; Acts 1999, No. 1200, §4, Acts 2001, No. 430, §1; Acts 2003, No. 750, §1; Acts 2004, No. 502, §1.

Art. 3603.1. Governing provisions for issuance of protective orders; grounds; notice; court-appointed counsel

A. Notwithstanding any provision of law to the contrary, and particularly the provisions of Domestic Abuse Assistance, Part II of Chapter 28 of Title 46, Post-Separation Family Violence Relief Act and Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V of Title 9, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code, and this Chapter, no temporary restraining order or preliminary injunction prohibiting a spouse or other person from harming or going near or in the proximity of another shall issue, unless the complainant has good and reasonable grounds to fear for his or her safety or that of the children, or the complainant has in the past been the victim of domestic abuse by the other spouse.

B. Any person against whom such an order is issued shall be entitled to a court-appointed attorney if the applicant has likewise been afforded a court-appointed attorney, which right shall also be included in any order or notice.

C.(1) A complainant seeking protection from domestic abuse, dating violence, stalking, or sexual assault shall not be required to prepay or be cast with court costs or costs of service of subpoena for the issuance or dissolution of a temporary restraining order, preliminary or permanent injunction, or protective order , or the dismissal of a petition for such, and the clerk of court shall immediately file and process the order issued regardless of the ability of the plaintiff to pay court costs.

(2) When the complainant is seeking protection from domestic abuse, stalking, or sexual assault, the clerk of court shall make forms available for making application for protective orders, provide clerical assistance to the petitioner when necessary, provide the necessary forms, and provide the services of a notary, where available, for completion of the petition.
Added by Acts 1997, No. 1156, §2; Acts 1999, No. 1200, §4; Acts 2001, No. 430, §1; Acts 2003, No. 750, §1; Acts 2004, No. 502, §1; Acts 2014, No. 355, §1.

Art. 3604. Form, contents, and duration of restraining order

A. A temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed in the clerk's office and entered of record; shall state why the order was granted without notice and hearing; and shall expire by its terms within such time after entry, not to exceed ten days, as the court prescribes. A restraining order, for good cause shown, and at any time before its expiration, may be extended by the court for one or more periods not exceeding ten days each. The party against whom the order is directed may consent that it be extended for a longer period. The reasons for each extension shall be entered of record.

B. Nevertheless, in a suit for divorce, a temporary restraining order issued in conjunction with a rule to show cause for a preliminary injunction shall remain in force until a hearing is held on the rule for the preliminary injunction prohibiting a spouse from:

(1) Disposing of or encumbering community property;

(2) Harming the other spouse or a child; or

(3) Removing a child from the jurisdiction of the court.

C.(1) A temporary restraining order issued in conjunction with a rule to show cause for a protective order filed in an action pursuant to the Protection from Family Violence Act, R.S. 46:2121 et seq., and pursuant to the Protection From Dating Violence Act, R.S. 46:2151, shall remain in force until a hearing is held on the rule for the protective order or for thirty days, whichever occurs first. If the initial rule to show cause is heard by a hearing officer, the temporary restraining order shall remain in force for fifteen days after the hearing or until the judge signs the protective order, whichever occurs last. At any time before the expiration of a temporary restraining order issued pursuant to this Paragraph, it may be extended by the court for a period not exceeding thirty days.

(2) In the event that the hearing on the rule for the protective order is continued by the court because of a declared state of emergency made in accordance with R.S. 29:724, any temporary restraining order issued in the matter shall remain in force for five days after the date of conclusion of the state of emergency. When a temporary restraining order remains in force under this Paragraph, the court shall reassign the rule for a protective order for hearing at the earliest possible time, but no later than five days after the date of conclusion of the state of emergency. The reassignment of the rule shall take precedence over all matters except older matters of the same character.

D. To be effective against a federally insured financial institution, a temporary retraining order or preliminary injunction issued in accordance with Subparagraph (B)(1) of this Article shall be served in accordance with the provisions of R.S. 6:285(C). A temporary restraining order or preliminary injunction granted pursuant to the provisions of this Article shall be effective only against accounts, safe deposit boxes, or other assets listed or held in the name of the following:

(1) One or both of the spouses named in the injunction.

(2) Another party or business entity specifically named in the injunction.

E. A federally insured financial institution shall not be liable for loss or damages resulting from its actions to comply with a temporary restraining order or preliminary injunction provided that the requirements of this Article have been met.

Acts 1983, No. 651, §1; Acts 1990, No. 361, §1, eff. Jan. 1, 1991; Acts 1999, No. 1336, §2; Acts 2003, No. 750, §1; Acts 2012, No. 582, §2; Acts 2014, No. 618, §1.

Art. 3605. Content and scope of injunction or restraining order

An order granting either a preliminary or a final injunction or a temporary restraining order shall describe in reasonable detail, and not by mere reference to the petition or other documents, the act or acts sought to be restrained. The order shall be effective against the parties restrained, their officers, agents, employees, and counsel, and those persons in active concert or participation with them, from the time they receive actual knowledge of the order by personal service or otherwise.

Art. 3606. Temporary restraining order; hearing on preliminary injunction

A. When a temporary restraining order is granted, the application for a preliminary injunction shall be assigned for hearing at the earliest possible time, subject to Article 3602, and shall take precedence over all matters except older matters of the same character. The party who obtains a temporary restraining order shall proceed with the application for a preliminary injunction when it comes on for hearing. Upon his failure to do so, the court shall dissolve the temporary restraining order.

B. In the event that the hearing on the issuance of a preliminary injunction is continued by the court because of a declared state of emergency made in accordance with R.S. 29:724, any temporary restraining order issued in the matter shall remain in force for five days after the conclusion of the state of emergency. When a temporary restraining order remains in force under this Paragraph, the court shall reassign the application for a preliminary injunction for hearing at the earliest possible time, but no later than five days after the conclusion of the state of emergency. The reassignment of the application shall take precedence over all matters except older matters of the same character.
Acts 2014, No. 618, §1.

Art. 3607. Dissolution or modification of temporary restraining order or preliminary injunction

An interested person may move for the dissolution or modification of a temporary restraining order or preliminary injunction, upon two days' notice to the adverse party, or such shorter notice as the court may prescribe. The court shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

The court, on its own motion and upon notice to all parties and after hearing, may dissolve or modify a temporary restraining order or preliminary injunction.

Art. 3607.1. Registry of temporary restraining order, preliminary injunction, or permanent injunction

A. Immediately upon rendering a decision granting the petitioner a temporary restraining order or a preliminary or permanent injunction prohibiting a person from harming a family or household member or dating partner, or directing a person accused of stalking to refrain from abusing, harassing, or interfering with the victim of the stalking when the parties are strangers or acquaintances, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

B. When a temporary restraining order, preliminary injunction, or permanent injunction relative to domestic abuse or dating violence or relative to stalking as provided for in Paragraph A of this Article, is issued, dissolved, or modified, the clerk of court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.
Added by Acts 1997, No. 1156, §2; Acts 2003, No. 750, §1; Acts 2014, No. 317, §5; Acts 2014, No. 355, §1.

Art. 3608. Damages for wrongful issuance of temporary restraining order or preliminary injunction

The court may allow damages for the wrongful issuance of a temporary restraining order or preliminary injunction on a motion to dissolve or on a reconventional demand. Attorney's fees for the services rendered in connection with the dissolution of a restraining order or preliminary injunction may be included as an element of damages whether the restraining order or preliminary injunction is dissolved on motion or after trial on the merits.

Art. 3609. Proof at hearings; affidavits

The court may hear an application for a preliminary injunction or for the dissolution or modification of a temporary restraining order or a preliminary injunction upon the verified pleadings or supporting affidavits, or may take proof as in ordinary cases. If the application is to be heard upon affidavits, the court shall so order in writing, and a copy of the order shall be served upon the defendant at the time the notice of hearing is served.

At least twenty-four hours before the hearing, or such shorter time as the court may order, the applicant shall deliver copies of his supporting affidavits to the adverse party, who shall deliver to the applicant prior to the hearing copies of affidavits intended to be used by such adverse party. The court, in its discretion, and upon such conditions as it may prescribe, may permit additional affidavits to be filed at or after the hearing, and may further regulate the proceeding as justice may require.

Art. 3610. Security for temporary restraining order or preliminary injunction

A temporary restraining order or preliminary injunction shall not issue unless the applicant furnishes security in the amount fixed by the court, except where security is dispensed with by law. The security shall indemnify the person wrongfully restrained or enjoined for the payment of costs incurred and damages sustained. However, no security is required when the applicant for a temporary restraining order or preliminary or permanent injunction is seeking protection from domestic abuse, dating violence, stalking, or sexual assault.

Acts 2003, No. 750, §1.

Art. 3611. Penalty for disobedience; damages

Disobedience of or resistance to a temporary restraining order or preliminary or final injunction is punishable as a contempt of court. The court may cause to be undone or destroyed whatever may be done in violation of an injunction, and the person aggrieved thereby may recover the damages sustained as a result of the violation.

Art. 3612. Appeals

A. There shall be no appeal from an order relating to a temporary restraining order.

B. An appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction, but such an order or judgment shall not be suspended during the pendency of an appeal unless the court in its discretion so orders.

C. An appeal from an order or judgment relating to a preliminary injunction must be taken, and any bond required must be furnished, within fifteen days from the date of the order or judgment. The court in its discretion may stay further proceedings until the appeal has been decided.

D. Except as provided in this Article, the procedure for an appeal from an order or judgment relating to a preliminary or final injunction shall be as provided in Book III.
Acts 2001, No. 512, §1.

Art. 3613. Jurisdiction not limited

The provisions of this Chapter do not limit the issuance by a court of any writ, process, or order in aid of its jurisdiction.

TITLE II. REAL ACTIONS

CHAPTER 1. ACTIONS TO DETERMINE OWNERSHIP OR POSSESSION

Art. 3651. Petitory action

The petitory action is one brought by a person who claims the ownership, but who is not in possession, of immovable property or of a real right therein, against another who is in possession or who claims the ownership thereof adversely, to obtain judgment recognizing the plaintiff's ownership.
Amended by Acts 1981, No. 256, §1.

Art. 3652. Same; parties; venue

A. A petitory action may be brought by a person who claims the ownership of only an undivided interest in the immovable property or real right therein, or whose asserted ownership is limited to a certain period which has not yet expired, or which may be terminated by an event which has not yet occurred.

B. A lessee or other person who occupies the immovable property or enjoys the real right therein under an agreement with the person who claims the ownership thereof adversely to the plaintiff may be joined in the action as a defendant.

C. A petitory action shall be brought in the venue provided by Article 80(A)(1), even when the plaintiff prays for judgment for the fruits and revenues of the property, or for damages.
Amended by Acts 1981, No. 256, §1; Acts 2010, No. 185, §1.

Art. 3653. Same; proof of title; immovable

To obtain a judgment recognizing his ownership of immovable property or real right therein, the plaintiff in a petitory action shall:

(1) Prove that he has acquired ownership from a previous owner or by acquisitive prescription, if the court finds that the defendant is in possession thereof; or

(2) Prove a better title thereto than the defendant, if the court finds that the latter is not in possession thereof.

When the titles of the parties are traced to a common author, he is presumed to be the previous owner.
Amended by Acts 1981, No. 256, §1.

Art. 3654. Proof of title in action for declaratory judgment, concursus, expropriation, or similar proceeding

When the issue of ownership of immovable property or of a real right therein is presented in an action for a declaratory judgment, or in a concursus, expropriation, or similar proceeding, or the issue of the ownership of funds deposited in the registry of the court and which belong to the owner of the immovable property or of the real right therein is so presented, the court shall render judgment in favor of the party:

(1) Who would be entitled to the possession of the immovable property or real right therein in a possessory action, unless the adverse party proves that he has acquired ownership from a previous owner or by acquisitive prescription; or

(2) Who proves better title to the immovable property or real right therein, when neither party would be entitled to the possession of the immovable property or real right therein in a possessory action.

Amended by Acts 1981, No. 256, §1.

Art. 3655. Possessory action

The possessory action is one brought by the possessor of immovable property or of a real right therein to be maintained in his possession of the property or enjoyment of the right when he has been disturbed, or to be restored to the possession or enjoyment thereof when he has been evicted.

Amended by Acts 1981, No. 256, §1.

Art. 3656. Same; parties; venue

A. A plaintiff in a possessory action shall be one who possesses for himself. A person entitled to the use or usufruct of immovable property, and one who owns a real right therein, possesses for himself. A predial lessee possesses for and in the name of his lessor, and not for himself.

B. The possessory action shall be brought against the person who caused the disturbance, and in the venue provided by Article 80(A)(1), even when the plaintiff prays for a judgment for the fruits and revenues of the property, or for damages.

Acts 2010, No. 185, §1.

Art. 3657. Same; cumulation with petitory action prohibited; conversion into or separate petitory action by defendant

The plaintiff may not cumulate the petitory and the possessory actions in the same suit or plead them in the alternative, and when he does so he waives the possessory action. If the plaintiff brings the possessory action, and without dismissing it and prior to judgment therein institutes the petitory action, the possessory action is abated.

When, except as provided in Article 3661(1)-(3), the defendant in a possessory action asserts title in himself, in the alternative or otherwise, he thereby converts the suit into a petitory action, and judicially confesses the possession of the plaintiff in the possessory action.

If, before executory judgment in a possessory action, the defendant therein institutes a petitory action in a separate suit against the plaintiff in the possessory action, the plaintiff in the petitory action judicially confesses the possession of the defendant therein.

Art. 3658. Same; requisites

To maintain the possessory action the possessor must allege and prove that:

(1) He had possession of the immovable property or real right therein at the time the disturbance occurred;

(2) He and his ancestors in title had such possession quietly and without interruption for more than a year immediately prior to the disturbance, unless evicted by force or fraud;

(3) The disturbance was one in fact or in law, as defined in Article 3659; and

(4) The possessory action was instituted within a year of the disturbance.

Amended by Acts 1981, No. 256, §1.

Art. 3659. Same; disturbance in fact and in law defined

Disturbances of possession which give rise to the possessory action are of two kinds: disturbance in fact and disturbance in law.

A disturbance in fact is an eviction, or any other physical act which prevents the possessor of immovable property or of a real right therein from enjoying his possession quietly, or which throws any obstacle in the way of that enjoyment.

A disturbance in law is the execution, recordation, registry, or continuing existence of record of any instrument which asserts or implies a right of ownership or to the possession of immovable property or of a real right therein, or any claim or pretension of ownership or right to the possession thereof except in an action or proceeding, adversely to the possessor of such property or right.

Amended by Acts 1981, No. 256, §1.

Art. 3660. Same; possession

A person is in possession of immovable property or of a real right therein, within the intendment of the articles of this Chapter, when he has the corporeal possession thereof, or civil possession thereof preceded by corporeal possession by him or his ancestors in title, and possesses for himself, whether in good or bad faith, or even as a usurper.

Subject to the provisions of Articles 3656 and 3664, a person who claims the ownership of immovable property or of a real right therein possesses through his lessee, through another who occupies the property or enjoys the right under an agreement with him or his lessee, or through a person who has the use or usufruct thereof to which his right of ownership is subject.

Amended by Acts 1981, No. 256, §1.

Art. 3661. Same; title not at issue; limited admissibility of evidence of title

In the possessory action, the ownership or title of the parties to the immovable property or real right therein is not at issue.

No evidence of ownership or title to the immovable property or real right therein shall be admitted except to prove:

(1) The possession thereof by a party as owner;

(2) The extent of the possession thereof by a party; or

(3) The length of time in which a party and his ancestors in title have had possession thereof.

Amended by Acts 1981, No. 256, §1.

Art. 3662. Same; relief which may be granted successful plaintiff in judgment; appeal

A. A judgment rendered for the plaintiff in a possessory action shall:

(1) Recognize his right to the possession of the immovable property or real right therein, and restore him to possession thereof if he has been evicted, or maintain him in possession thereof if the disturbance has not been an eviction;

(2) Order the defendant to assert his adverse claim of ownership of the immovable property or real right therein in a petitory action to be filed within a delay to be fixed by the court not to exceed sixty days after the date the judgment becomes executory, or be precluded thereafter from asserting the ownership thereof, if the plaintiff has prayed for such relief; and

(3) Award him the damages to which he is entitled and which he has prayed for.

B. A suspensive appeal from the judgment rendered in a possessory action may be taken within the delay provided in Article 2123, and a devolutive appeal may be taken from such judgment only within thirty days of the applicable date provided in Article 2087(A).

Amended by Acts 1981, No. 256, §1; Acts 2010, No. 185, §1.

Art. 3663. Sequestration; injunctive relief

Sequestration of immovable property or of a real right therein involved in a possessory or petitory action during the pendency thereof is available under the applicable provisions of Chapter 1 of Title I of Book VII.

Injunctive relief, under the applicable provisions of Chapter 2 of Title I of Book VII, to protect or restore possession of immovable property or of a real right therein, is available to:

(1) A plaintiff in a possessory action, during the pendency thereof; and

(2) A person who is disturbed in the possession which he and his ancestors in title have had for more than a year of immovable property or of a real right therein of which he claims the ownership, the possession, or the enjoyment.

Amended by Acts 1981, No. 256, §1.

Art. 3664. Mineral rights asserted, protected and defended as other immovables

The owner of a mineral right may assert, protect, and defend his right in the same manner as the ownership or possession of other immovable property, and without the concurrence, joinder, or consent of the owner of the land or mineral rights.

Amended by Acts 1974, No. 547, §1, eff. Jan. 1, 1975.

Art. 3665. When mineral right owner may assert possessory action

If the owner of a mineral right possesses his right by use or exercise according to its nature, he becomes entitled one year and a day from the date of commencement of his possession to assert the possessory action. Thereafter, if there has been no adverse possession sufficient to include mineral rights, his right to assert the possessory action continues for one year from the date on which his right to bring the action matured or from the last day on which he was in possession of his right by use or exercise thereof, whichever is later.

Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3666. Loss of right to bring possessory action by owner of mineral right

If after the owner of a mineral right has ceased possessing it by use or exercise according to its nature there is adverse possession of the land including the mineral right, the adverse possessor becomes entitled to bring the possessory action when he has been in possession quietly and without interruption for more than one year after his possession began or was resumed.
Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3667. When proof of nonuse required in possessory action against owner of mineral right

In a possessory action against the owner of a mineral right subject to the prescription of nonuse, one possessing land as owner under a title which on its face discloses the mineral right in question must allege and prove that he has possessed the surface of the land as owner quietly and without interruption for more than one year prior to the date the action is brought and that for a period of at least ten years before the year preceding the date on which the action is brought the mineral right was not used or exercised according to its nature. The fact that prescription accruing against the mineral right in question may have been suspended or may have been interrupted for some cause other than use is irrelevant to the possessory action and can be utilized by the defendant only as a basis for claiming ownership of the disputed rights in a petitory action.
Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3668. When proof of nonuse not required in possessory action against claimant of mineral right

In all cases other than those specified in Article 3667, one possessing land as owner need only allege and prove his quiet, uninterrupted possession for more than a year prior to assertion of a possessory action against one claiming a mineral right in the land.
Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3669. Possessory action unavailable between owner of mineral servitude and owner of dependent mineral royalty

In the event of a dispute between the owner of a mineral servitude and the owner of a mineral royalty burdening or alleged to burden the servitude in question, the possessory action is unavailable to either party, and the only available real action is the petitory action. The burden of proof on the plaintiff in such an action is that which must be borne by the plaintiff in a petitory action when neither party is in possession.
Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3670. Real actions against mineral lessee unavailable to mineral lessor or possessor bound by lease

One who has granted a mineral lease, or who possesses under a title subject to a mineral lease, whether or not the lease is disclosed by his act of acquisition, cannot assert the real actions against the lessee on account of the termination of the lease by running of the term or occurrence of an express resolutory condition.
Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

Art. 3671. Real actions involving mineral rights subject to other provisions governing real actions generally

Real actions involving mineral rights are subject to all of the rules established for other real actions by Articles 3651 through 3653 except to the extent that those articles are inconsistent with the express or implied terms of Articles 3664 through 3670.

Added by Acts 1974, No. 547, §2, eff. Jan. 1, 1975.

CHAPTER 2. BOUNDARY ACTION

Art. 3691. Boundary action

An action to fix the boundary is an ordinary proceeding.

Amended by Acts 1977, No. 169, §2, eff. Jan. 1, 1978.

Art. 3692. Appointment of surveyor by court; duties of surveyor

The court may appoint a surveyor to inspect the lands and to make plans in accordance with the prevailing standards and practices of his profession indicating the respective contentions of the parties.

Amended by Acts 1977, No. 169, §2, eff. Jan. 1, 1978.

Art. 3693. Evidence; judgment

After considering the evidence, including the testimony and exhibits of a surveyor or other expert appointed by the court or by a party, the court shall render judgment fixing the boundary between the contiguous lands in accordance with the ownership or possession of the parties.

Amended by Acts 1977, No. 169, §2, eff. Jan. 1, 1978.

CHAPTER 3. HYPOTHECARY ACTION

SECTION 1. GENERAL DISPOSITIONS

Art. 3721. Methods of enforcing mortgage

A conventional mortgage is enforced by ordinary or executory proceedings.

Art. 3722. Enforcement by ordinary proceeding

When the mortgagee enforces a conventional mortgage by an ordinary proceeding, he must first obtain a judgment against the mortgagor and then execute the judgment. If it is not possible to obtain a personal judgment against the mortgagor, then the judgment shall be in rem.

Acts 2003, No. 1072, §1.

Art. 3723. Enforcement by executory proceeding

When the mortgagee enforces a conventional mortgage by an executory proceeding, he must comply with Articles 2631 through 2724.

SECTION 2. HYPOTHECARY ACTION AGAINST THIRD PERSON

Art. 3741. Right of enforcement

A legal mortgage, after judgment on the original obligation has been obtained, a judicial mortgage, or a conventional mortgage may be enforced without reference to any alienation or transfer of the mortgaged property from the original debtor, and the creditor may cause the property to be seized and sold as though it were still owned by the original debtor and in his possession.

Art. 3742. Notice of seizure

When property subject to a legal or a judicial mortgage is no longer owned by the original debtor, the seizing creditor shall cause notices of the seizure to be served by the sheriff upon both the original debtor and the present owner.

Art. 3743. Rights of third possessor

When property subject to a legal or a judicial mortgage is seized to enforce the mortgage, or is about to be seized for this purpose, and the property is no longer owned by the original debtor, the third possessor has the following rights:

(1) To arrest the seizure, or threatened seizure, and consequent judicial sale of the property by injunction on the grounds that the mortgage was not recorded, that the inscription of its recordation had perempted, or that the debt secured by the mortgage is prescribed or extinguished, or to plead discussion as provided in Articles 5154 and 5155; and

(2) All of the rights granted a third possessor under Article 2703(1) and (3).

CHAPTER 4. NOTICE OF PENDENCY OF ACTION

Art. 3751. Notice to be recorded to affect third persons

The pendency of an action or proceeding in any court, state or federal, in this state affecting the title to, or asserting a mortgage or privilege on, immovable property does not constitute notice to a third person not a party thereto unless a notice of the pendency of the action or proceeding is made, and filed or recorded, as required by Article 3752.

Art. 3752. Requirements of notice; recordation

A. The notice referred to in Article 3751 shall be in writing, signed by the plaintiff, defendant, or other party to the action or proceeding who desires to have the notice recorded, or by a counsel of record for such party showing the name of the persons against whom it is to be effective, the name of the court in which the action or proceeding has been filed, the title, docket number, date of filing, and object thereof, and the description of the property sought to be affected thereby.

NOTE: Paragraph B effective until August 15, 2007. See Acts 2006, No. 267, §1.

B. This notice shall be recorded in the mortgage office of the parish where the property to be affected is situated, and has effect from the time of the filing for recordation.

NOTE: Paragraph B as amended by Acts 2006, No. 267, §1, eff. August 15, 2007:

B. This notice shall be recorded in the mortgage office of the parish where the property to be affected is situated and has effect from the time of the filing for recordation. The notice shall cease to have effect after ten years from the date of its filing for recordation. Nevertheless, if the

BOOK IX. MISCELLANEOUS PROVISIONS AND DEFINITIONS

TITLE I. MISCELLANEOUS PROVISIONS

CHAPTER 1. RULES OF CONSTRUCTION

Art. 5051. Liberal construction of articles

The articles of this Code are to be construed liberally, and with due regard for the fact that rules of procedure implement the substantive law and are not an end in themselves.

Art. 5052. Unambiguous language not to be disregarded

When the language of an article is clear and free from ambiguity, its letter is not to be disregarded under the pretext of pursuing its spirit.

Art. 5053. Words and phrases

Words and phrases are to be read in their context, and are to be construed according to the common and approved usage of the language employed.

The word "shall" is mandatory, and the word "may" is permissive.

Art. 5054. Clerical and typographical errors disregarded

Clerical and typographical errors in this Code shall be disregarded when the legislative intent is clear.

Art. 5055. Number; gender

Unless the context clearly indicates otherwise:

(1) Words used in the singular number apply also to the plural; words used in the plural number include the singular; and

(2) Words used in one gender apply also to the others.

Art. 5056. Conjunctive, disjunctive, or both

Unless the context clearly indicates otherwise:

(1) The word "and" indicates the conjunctive;

(2) The word "or" indicates the disjunctive; and

(3) When the article is phrased in the disjunctive, followed by the words "or both", both the conjunctive and disjunctive are intended.

Art. 5057. Headings, source notes, cross references

The headings of the articles of this Code, and the source notes and cross references thereunder, are used for purposes of convenient arrangement and reference, and do not constitute parts of the procedural law.

Art. 5058. References to code articles or statutory sections

Unless the context clearly indicates otherwise:

(1) A reference in this Code to a book, title, chapter, section, or article, without further designation, means a book, title, chapter, section, or article of this Code; and

(2) A reference in this Code to an article of a code, or to a statutory section, applies to all prior and subsequent amendments thereof.

Art. 5059. Computation of time

A. In computing a period of time allowed or prescribed by law or by order of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.

B. A half-holiday is considered as a legal holiday. A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:

(1) It is expressly excluded;

(2) It would otherwise be the last day of the period; or

(3) The period is less than seven days.

C.(1) A legal holiday shall be excluded in the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision or order by an agency in the executive branch of state government.

(2) Subparagraph (1) of this Paragraph shall not apply to the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision or order by the Department of Revenue.

Acts 2018, No. 128, §1.

CHAPTER 2. ATTORNEY APPOINTED TO REPRESENT UNREPRESENTED DEFENDANTS

Art. 5091. Appointment; contradictory proceedings against attorney; improper designation immaterial

A. The court shall appoint an attorney at law to represent the defendant, on the petition or ex parte written motion of the plaintiff, when:

(1) It has jurisdiction over the person or property of the defendant, or over the status involved, and the defendant is:

(a) A nonresident or absentee who has not been served with process, either personally or through an agent for the service of process, and who has not waived objection to jurisdiction.

(b) An unemancipated minor or mental incompetent who has no legal representative, and who may be sued through an attorney at law appointed by the court to represent him.

(c) Deceased and no succession representative has been appointed.

(2) The action of proceeding is in rem and:

(a) The defendant is dead, no succession representative has been appointed, and his heirs and legatees have not been sent into possession judicially.

(b) The defendant is a corporation, a limited liability company, or partnership on which process cannot be served for any reason.

(c) The defendant's property is under the administration of a legal representative, but the latter has died, resigned, or been removed from office and no successor thereof has qualified, or has left the state permanently without appointing someone to represent him.

B. All proceedings against such a defendant shall be conducted contradictorily against the attorney at law appointed by the court to represent him. For the limited purpose of any such action or proceeding, the appointed attorney at law shall be the proper representative of the succession of any such decedent to the same extent as if he were the regularly appointed and duly qualified administrator or executor in such decedent's succession.

C. The improper designation of the attorney appointed by the court to represent such a defendant as curator ad hoc, tutor ad hoc, special tutor, or any other title, does not affect the validity of the proceeding.

D. The improper designation of a defendant for whom an attorney has been appointed by the court in an action or proceeding in rem under Paragraph (A)(2) of this Article shall not affect the validity of the proceedings and any judgment rendered therein shall be binding upon the parties and property involved in the action or proceeding in rem. Therefore, naming an attorney to represent the unopened succession of the defendant, the succession of the defendant, the estate of the defendant, the deceased defendant, or any other similar designation or appellation shall satisfy the requirements of Paragraph (A)(2)(a). The designation of a corporation or a partnership by a name sufficient to identify the same to a reasonably prudent man, regardless of any errors which it might contain, shall satisfy the requirements of Paragraph (A)(2)(b).

Amended by Acts 1964, No. 4, §1; Acts 1991, No. 366, §1, eff. July 6, 1991; Acts 1992, No. 584, §2; Acts 1997, No. 578, §1; Acts 1999, No. 145, §2.

Art. 5091.1. Appointment of attorney in disavowal actions

In any action to disavow paternity, the judge shall appoint an attorney to represent the child whose status is at issue, and the attorney so appointed shall not represent any other party in the litigation.

Added by Acts 1976, No. 430, §3.

Art. 5091.2. Curator ad hoc in adoption cases

In complying with the provisions of the Louisiana Children's Code Articles 1011, 1107, or 1190 and related statutes, the judge of the competent court is authorized to appoint an attorney who shall serve as curator ad hoc who will assist the court in complying with the statutory requirements for maintaining the confidentiality of termination, surrender, adoption, and related records and proceedings.

Added by Acts 1978, No. 450, §3; Acts 1997, No. 1056, §1.

Art. 5092. Qualifications; suggestions for appointment not permitted

When the court appoints an attorney at law to represent an unrepresented party, it shall appoint an attorney qualified to practice law in this state.

The court shall not accept any suggestion as to the name of the attorney to be appointed, unless manifestly in the interest of the unrepresented party.

Art. 5093. Oath not required; waiver of citation and acceptance of service

An attorney at law appointed by the court to represent an unrepresented party need not take an oath before entering on the performance of his duties, as his oath of office as an attorney applies to all of his professional duties.

An attorney appointed to represent a defendant may waive citation and accept service of process, but may not waive any defense. No further action may be taken by the court after service or acceptance thereof until after the expiration of the delay allowed the defendant to answer, even though the appointed attorney may have filed an exception or answer prior thereto.

Art. 5094. Duties; notice to nonresident or absentee

When an attorney at law is appointed by the court to represent a defendant who is a nonresident or an absentee, the attorney shall use reasonable diligence to communicate with the defendant and inform him of the pendency and nature of the action or proceeding, and of the time available for the filing of an answer or the assertion of a defense otherwise.

Art. 5095. Same; defense of action

The attorney at law appointed by the court to represent a defendant shall use reasonable diligence to inquire of the defendant, and to determine from other available sources, what defense, if any, the defendant may have, and what evidence is available in support thereof.

Except in an executory proceeding, the attorney may except to the petition, shall file an answer or other pleading in time to prevent a final default judgment from being rendered, may plead therein any affirmative defense available, may prosecute an appeal from an adverse judgment, and generally has the same duty, responsibility, and authority in defending the action or proceeding as if he had been retained as counsel for the defendant.

Acts 2017, No. 419, §1.

Art. 5096. Compensation

The court shall allow the attorney at law appointed to represent a defendant a reasonable fee for his services, which shall be paid by the plaintiff, but shall be taxed as costs of court.

The attorney so appointed may require the plaintiff to furnish security for the costs which may be paid by, and the reasonable fee to be allowed, the attorney.

If the attorney so appointed is retained as counsel for the defendant, the attorney shall immediately advise the court and opposing counsel of such employment.

Art. 5097. Attorney appointed to represent claimant in worker's compensation case

Articles 5092, 5093, and 5098 apply to an attorney at law appointed by the court to represent a claimant in a worker's compensation case who seeks authority to compromise or to accept a lump sum settlement.

Acts 1983, 1st E.S., No. 1, §6.