

THE ITALIAN CIVIL CODE

Translated by

Mario Beltramo Giovanni E. Longo John Henry Merryman

1969
Oceana Publications, INC.
Dobbs Ferry, N.Y.

155. Provisions regarding children. The tribunal* which decrees separation declares which of the spouses shall have custody of the children and provide for their maintenance, education and instruction (147, 148).

In any case the tribunal can, for serious reasons, order that the children be placed in an educational institution or with a third person.

Regardless of the person to whom the children are entrusted, the father and mother retain the right to supervise their education.

156. Effects of separation. The spouse who is not at fault in the separation retains such rights inherent in his marital status as are not incompatible with the separation.

The spouse through whose fault the separation has been pronounced has no right except that of support (433 *ff.*). He loses all benefits that the other spouse has granted to him by the marriage contract, even if they were stipulated with reciprocity.

The tribunal* can also deprive him, wholly or in part, of the legal usufruct (324 *ff.*) to which he may be entitled over the property of minor children.

If the separation decree is granted because of the fault of both spouses, each of them incurs the loss indicated in the preceding paragraph and the tribunal, depending on the circumstances, makes appropriate provisions concerning the legal usufruct (585).

The tribunal, depending on the circumstances, can also forbid the wife to use the name of the husband.*

sm Foreword

* See Foreword

Title IX

PATERNAL AUTHORITY

315. Duties of child to parents. A child, whatever its age, shall honor and respect its parents.

316. Exercise of paternal authority. A child is subject to the authority of its parents until majority (2) or emancipation (390 *ff.*). This authority is exercised by the father. After the death of the father and in other cases established by law it is exercised by the mother (317, 330 *ff.*).

317. Impediment of father. In case of remoteness or other impediment which makes it impossible for the father to exercise paternal authority, such authority is exercised by the mother (321, 327).

318. Abandonment of paternal home. A child cannot leave the paternal home or that assigned to it by its father. If the child leaves without permission, the father can call it back, applying if necessary to the guardianship judge (344).

319. Misconduct of child. A father who is unable to restrain the misconduct of a child can, subject to the rules contained in special legislation, place the child in a correctional institution, with the authorization of the presiding judge of the tribunal.*

The authorisation can be requested verbally. The presiding judge of the tribunal,* after gathering appropriate information, makes provisions by a decree without formalities and without stating the reasons.

The decree of the presiding judge of the tribunal can be appealed to the presiding judge of the court of appeals,* who acts after hearing the public prosecutor.*

320. Representation and administration. The father represents the children born or to be born in all civil acts and administers their property (643).

However, he cannot, except in case of necessity or for the obvious advantage of the child and after authorization by the guardianship judge (344), transfer, mortgage, or pledge the property of the child, renounce inheritances, accept gifts or legacies which are subject to encumbrances and conditions, request partitions, contract loans in the child's name or lease property for a term exceeding nine years, or perform other acts beyond the limits of administration in the ordinary course or compromise or institute actions in connection with such acts.

Principal amounts cannot be collected without the authorization of the guardianship judge, who determines how they shall be invested.

The operation of a business enterprise (2195) cannot be continued except with the authorization of the tribunal,* upon the opinion of the guardians judge. The guardianship judge can consent to the operation of the enterprise on a provisional basis, until the tribunal rules on the petition (2198).

If a conflict of interests arises between children who are subject to the same paternal authority (315) or between them and their father, the guardianship judge shall appoint a special curator for the children.

* See Foreword

321. Acceptance of inheritance and gifts. If the father cannot or does not want to accept an inheritance devolving upon children born or to be born in the future, and gifts made to them, such inheritance and gifts can be accepted, following authorization by the guardianship judge (334), by the mother or by any ascendant.

When an acceptance by the mother or the ascendant, is lacking, the tribunal,* at the request of the child or of any one of the relatives, or even at the instance of the public prosecutor,* can authorize acceptance, after having appointed a special curator and having heard the father.

322. Non-observance of preceding provisions. The acts performed without observing the rules of the preceding articles can be annulled at the request of the father or of the child or of the latter's heirs or successors in interest.

323. Acts prohibited to parent. A parent exercising paternal authority (315) cannot, even at public auction, purchase either directly or through an intermediary the property and rights of the minor (2, 1471).

Acts performed in violation of this prohibition can be annulled (1441), at the request of the child or of his heirs or successors in interest.

A parent exercising paternal authority (315) cannot even become the assignee of a cause of action or claim against the minor (1260 *ff.*).

324. Legal usufruct. The father has a usufruct (978) over the property of the child while he exercises paternal authority, except as provided in article 328.

Legal usufruct does not apply to:

1) property acquired by the child on the occasion or through the exercise of military service, or of an office, employment, profession or art or in any other manner, separately by his own effort and his own trade;

2) property devised or given to the child to enable him to engage in a career, art, or profession;

3) property devised or given on condition that the father have no usufruct over it; however, the condition is without effect with respect to property to which the child is entitled by way of forced heirship (537 *ff.*);

4) property received by the child by inheritance, legacy or gift and accepted in the interest of the child against the father's will (321).

325. Duties inherent in legal usufruct. Legal usufruct entails, in addition to the typical duties of a usufructuary, the obligation to pay the costs of maintenance, instruction, and education of the child (147).

326. Inalienability of legal usufruct. Levying of execution on fruits. Legal usufruct cannot be the object of transfer, pledge (2786), or mortgage (2808) or of the levying of execution by creditors.

The levying of execution on the fruits (820) of the property by creditors of the father cannot take place with respect to debts which the creditor knew had been contracted for purposes not connected with the family needs.

327. Legal usufruct of mother. The preceding articles are applicable to the mother who exercises paternal authority (316, 317).*

* See Foreword

Legal usufruct is transferred to the mother, even when paternal authority is exercised by the father, if the latter is deprived of the usufruct (324) for reasons that are personal to him.

328. New marriage. Legal usufruct ceases upon the parent contracting a new marriage.

329. Enjoyment of property after cessation of legal usufruct. Once legal usufruct has ceased, if the parent, without power of attorney but without the obligation, or with power of attorney but without the obligation to account for fruits (820), has continued to enjoy the property of the child who is living with him, said parent, or his heir, is only bound to turn over the fruits existing at the time of the petition.

330. Forfeiture of paternal authority. The tribunal* can terminate paternal authority (315) when the parent violates or neglects the duties inherent in it with serious prejudice to the child.

331. Transfer of paternal authority to mother. When paternal authority (315) has been terminated and the exercise of such authority is transferred to the mother, the tribunal* can, in special circumstances, dictate provisions by which the mother must abide. The tribunal can also order that the child be removed from the paternal home.

332. Restoration of paternal authority. The tribunal* can restore paternal authority (315) to the parent who forfeited it when, the reasons for the forfeiture no longer existing, there is no risk of prejudice to the child.

333. Conduct of parent prejudicial to child. Whenever the conduct of the parent does not justify forfeiture of paternal authority as contemplated in article 330, but appears to be in some way prejudicial to the child, the tribunal* can, depending on the circumstances, make such provisions as are suitable in the interest of the child and can also order his removal from the paternal home.

334. Removal from administration. If the assets of a minor (2) are improperly administered, the tribunal* can dictate the conditions of administration by the parent or can remove him from the administration and also deprive him, wholly or in part, of the legal usufruct (324).

When removal has been ordered, the administration is entrusted to the other parent, and in the absence of the latter, or if he is unable to act, to a curator.

335. Reinstatement in administration. A parent who has been removed from administration (334) and possibly deprived of the legal usufruct (324) can be reinstated by the tribunal* as administrator and enjoy the usufruct when the reasons for removal no longer exist.

336. Procedure. The provisions indicated in the preceding articles are granted upon petition of the mother, of the relatives, or of the public prosecutor* and also, when revocation of previous decisions is involved, upon petition of the parent concerned.

The tribunal* makes its ruling in chambers, after having gathered information and heard the public prosecutor. In cases where the petition or the aforesaid provisions is made against a parent, he shall be heard by the tribunal.*

* See Foreword

In case of urgent necessity the guardianship judge (344) can also issue, *ex officio*, temporary provisions in the interest of the child, notifying the public prosecutor of such orders.*

337. Vigilance by guardianship judge. The guardianship judge (344) shall see that the conditions established by the tribunal* for the exercise of paternal authority (334) and for the administration of the property are observed.

338. Conditions imposed on surviving mother. The father *ca*, by will (587), by public act (2699), or by private authenticated writing (2703) impose conditions on the surviving mother with respect to the rearing of the children and the administration of the property.

The mother who does not want to accept the conditions can request to be released from their observance, and the tribunal* then makes pertinent provisions in chambers, after having gathered information and heard the public prosecutor* and, if possible, the relatives up to the third degree (76).

339. Curator for unborn child. If at the time of death of the husband the wife is pregnant, the tribunal,* upon request of any interested person or of the public prosecutor,* can appoint a curator for the protection of the child to be born and, if necessary, for the administration of his property.

340. New marriage of mother. A mother who wishes to remarry shall notify the tribunal* before the celebration of the marriage. The tribunal, after having gathered the pertinent information and heard the public prosecutor, decides whether she can retain the administration of the property, and establishes the conditions of said administration and of the rearing of the children.

If the preceding provision is not observed, the mother loses the administration of the property by operation of law and the husband is liable in *in solido* (1292) with the mother for the wrongfully continued administration.

The tribunal, upon request of the public prosecutor or of the relatives or even *ex officio*, when it does not deem it appropriate to reinstate the mother in the administration of the property, decides the conditions to be observed for the rearing of the children and the appointment of a curator for their property.

The vital statistics officer who performs or records the marriage of the widow, shall notify the public prosecutor within ten days after the marriage or the recordation.

341. Liability of new husband. When the mother is left with the administration of the property or reinstated therein, the husband is always deemed to be associated with her in such administration and becomes liable in *solido* (1292) for it.

342. Repealed.

* See Foreword

Title IX

UNLAWFUL ACTS

2047. Injury caused by person lacking capacity. If an injury is caused by a person incapable of understanding or intending, compensation is due from those who were charged with the custody of such person, unless they prove that the act could not have been prevented.

If the person injured is unable to secure compensation from the person charged with the custody the person lacking capacity, the judge, considering the financial conditions of the parties, can order the person who caused the injury to pay an equitable compensation.

2048. Liability of parents, guardians, teachers, and masters of apprentices. The father and mother, or the guardian, are liable for the damage occasioned by an unlawful act of their minor un-emancipated (390) children, or of persons subject to their guardianship (343 *ff.* 414 *ff.*) who reside with them. The same provision applies to a parent by affiliation (404 *ff.*).

Teachers and others who teach an art, trade, or profession are liable for the damage occasioned by the unlawful act of their pupils or apprentices while they are under their supervision.

The persons mentioned in the preceding paragraphs are only relieved of liability if they prove that they were unable to prevent the act.

Title X

GUARDIANSHIP AND EMANCIPATION

CHAPTER I

Guardianship of Minor

343. Opening of guardianship. If both parents are dead or for others reasons cannot exercise paternal authority (315) guardianship is opened in the pretura* of the district where the principal place of business and interests of the minor are located.

If the guardian is domiciled in or transfers his domicile (43) to another district, the guardianship can be transferred there by a decree of the tribunal.*

SECTION I

Guardianship Judge

344. Functions of guardianship judge. At each *pretura* a guardianship judge looks after guardianships and curatorships and exercises the other functions given to him by law.

The guardianship judge can, request the assistance of organs of the public administration and of all agencies whose aims correspond to his functions.*

* See Foreword

Title XII

MENTAL INFIRMITY, INDIRECTION AND DISABILITY

416. Interdiction and disability in last year before majority. A minor who is not emancipated can be interdicted or declared disabled in the last year before majority. The interdiction or disability takes effect on the day the minor attains majority (421).

417. Petition for interdiction or for disability. Interdiction or disability proceedings can be instituted by the spouse, by persons related by blood (76) within the fourth degree or by affinity (78) within the second degree, by the guardian (346) or curator (392), or by the public prosecutor.*

If the person who is to be interdicted or disabled is subject to paternal authority (315) or has one of his parents as curator, interdiction or disability proceedings can only be instituted on the petition of such parent or of the public prosecutor.*

* See Foreword