Title XII. Of Loan (Art. 2891 - 2925)

Louisiana
ART. 2891

There are two kinds of loans:
The loan of things, which may be used without being destroyed;
And the loan of things, which are destroyed without being used.
The first kind is called loan for use or commodatum.
The second kind is called loan for consumption or mutuum.*

RCC 1870, Art. 2891.
(Same as Art. 2891 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 2862.
(Pars. 1, 2 same as pars. 1, 2, above.
And the loan of things, which are destroyed by being used.
Pars. 4, 5 same as pars. 4, 5, above; but semicolon (;) after “commodatum.”

CC 1808, p. 402, Art. 1.
(Same as above; but no punctuation after “The loan of things”, or after “And the loan of things”; period (.) after “commodatum.”

*See general comment by redactors, Projet, p. 342.

Les règles concernant le partage des successions, la forme de ce partage et les obligations qui en résultent entre les héritiers, s'appliquent aux associés.
Chapter 1—Of the Loan for Use, or Commodatum

Section 1—Of the Nature of the Loan for Use

Art. 2893. The loan for use* is an agreement, by which a person delivers a thing to another, to use it according to its natural destination, or according to the agreement, under the obligation on the part of the borrower, to return it after he shall have done using it.

RCC—1675, 1761, 1771, 1884, 1925, 2150 et seq., 2894 et seq., 2910, 2912.

RCC 1870, Art. 2893.
Same as above.

CC 1825, Art. 2864. (Projet, p. 342. Amendment adopted; no comment)
Same as above; but comma (,) after "obligation."

CC 1808, p. 402, Art. 3.
The loan for use is an agreement by which a person delivers a thing to an-
Art. 2894

This loan is essentially gratuitous; otherwise it would be a letting or hiring.

RCC—1773, 1777, 2674, 2675, 2892, 2893, 2929.

RCC 1870, Art. 2894.

Same as above.

CC 1825, Art. 2865.

(No reference in Projet)

Ce prêt est essentiellement gratuit, autrement ce serait un louage.

CC 1808, p. 402, Art. 4.

This loan is essentially gratuitous; otherwise it would be letting or hiring.

Same as above.

CN 1804, Art. 1876.

This loan is essentially gratuitous.

Ce prêt est essentiellement gratuit.

Projet du Gouvernement (1800), Book III, Title XV, Art. 4.

Same as CC 1808, p. 402, Art. 4, above.

ART. 2895. The lender remains proprietor of the thing lent.

RCC—2893, 2911, 3166.

RCC 1870, Art. 2895.

Same as above.

CC 1825, Art. 2866.

(No reference in Projet)

Le prêteur demeure propriétaire de la chose prêtée.

CC 1808, p. 402, Art. 5.

Same as above.

CN 1804, Art. 1877.

Same as above.

ART. 2896. Every thing which is in commerce, and which is not consumed by use, may be the object of this agreement.

RCC—1798, 1885, 2448, 2449, 2910, 2912, 2928, 3154, 3155.

RCC 1870, Art. 2896.

Same as above.
ART. 2898. The borrower is bound to keep and preserve, in the best possible order,* the thing lent. He can use it only in the manner for which it is fitted by its nature, or which is allowed by the agreement, under the penalty of damages.**


RCC 1870, Art. 2898.
Same as above.
Art. 2899

If the borrower employs the thing to another use or for a longer time than has been agreed on, he shall be liable for the loss which may happen, although the same might have happened by chance.

RCC—621, 1911, 1933, 2052, 2155, 2219, 2220, 2316, 2317, 2711, 2898, 2900, 2901, 2939, 2940, 2955.

RCC 1870, Art. 2899.

Same as above.

CC 1825, Art. 2870. (No reference in Projet)

Same as above; but comma (,) after “use.”

CC 1808, p. 402, Art. 9.

Same as above.

CN 1804, Art. 1881.

Same as above.

ART. 2900. If the thing lent be destroyed by a chance which might have been prevented by the borrower in making use of his own, or if, unable to preserve both, he has preferred preserving his own, he is answerable for the loss of the other.

RCC—1908, 1933 et seq., 2470, 2697, 2719, 2723, 2899, 2908, 2937, 2939.

RCC 1870, Art. 2900.

Same as above.
ART. 2901. If the thing has been valued at the time of lending it, the loss which results, even by chance, is on account of the borrower, unless there has been a contrary agreement.

RCC—1901, 1933 et seq., 2863, 2898, 2899.

RCC 1870, Art. 2901.
Same as above.

CC 1825, Art. 2872.
Same as above. (No reference in Projet)

Si la chose a été estimée en la prê­tant, la perte qui arrive, même par ces cas fortuits, est pour l'emprunteur, à moins de conventions contraires.

CC 1808, p. 404, Art. 11.
Same as above; but no punctuation after “results.”

-p. 405, Art. 11.

Si la chose a été estimée en la prê­tant, la perte qui arrive, même par cas fortuit, est pour l'emprunteur, à moins de conventions contraires.

CN 1804, Art. 1883.
Same as above.

Si la chose a été estimée en la prê­tant, la perte qui arrive, même par cas fortuit, est pour l'emprunteur, s'il n'y a convention contraire.

ART. 2902. If the thing be made worse by the effects of the use alone for which it was borrowed, and without any fault on the part of the borrower, he is not answerable for the same.

RCC—550, 577, 2155, 2719 et seq., 2940, 2945.

RCC 1870, Art. 2902.
Same as above.

CC 1825, Art. 2873.
Same as above. (No reference in Projet)

Si la chose se détériore par le seul effet de l'usage pour lequel elle a été empruntée, et sans aucune faute de la part de l'emprunteur, il n'en est pas tenu.
Art. 2903. The borrower is not at liberty to keep the thing as a compensation for what the lender owes him.

RCC—11, 2150, 2207, 2209, 2210, 2955, 2956, 3217.

ART. 2904. If, in order to use the thing, the borrower be compelled to go to some expense, he has no right to be reimbursed by the lender.

RCC—2314, 2898, 2908, 2960.

ART. 2905. If several persons have jointly borrowed the same object, they are bound for it in solido to the lender.

RCC—2091, 2093, 2107, 2113, 2957.
Section 3—OF THE OBLIGATIONS OF THE LENDER FOR USE

ART. 2906. The lender can take back the thing lent, only after the time agreed on; or, if no agreement has been entered into in that respect, after it has been employed to the use for which it was borrowed.

RCC—1764, 1776, 1901, 2048 et seq., 2727, 2907, 2917, 2955.

ART. 2907. Nevertheless, if during the interval, or before the borrower has done with the thing, the lender be in an urgent and unforeseen need of this thing, the judge may, according to circumstances, compel the borrower to return it to him.

RCC—2052, 2732, 2734, 2906, 2917, 2918, 2955.
Art. 2908

(No reference in Projet)

Néanmoins, si pendant ce délai, ou avant que le besoin de l'emprunteur ait cessé, il survient au prêteur un besoin pressant et imprévu de la chose, le juge peut, suivant les circonstances, obliger l'emprunteur à lui rendre.

p. 405, Art. 16.
Same as above; but comma (,) after "si."

ART. 2908. If, during the loan, the borrower was obliged for the preservation of the thing to go to some extraordinary expense, necessary and so urgent that he could not give notice of the same to the lender, the lender shall be bound to reimburse him for the same.

RCC—594, 1256, 1257, 1259, 1965, 2299, 2314, 2509, 2510, 2587, 2598, 2717, 2900, 2904, 2960, 3167, 3217.

RCC 1870, Art. 2908.
Same as above.

CC 1825, Art. 2879. (No reference in Projet)
Same as above; but comma (,) after "oblige", and after "necessary."

Si, pendant la durée du prêt, l'emprunteur a été obligé, pour la conservation de la chose, à quelque dépense extraordinaire, nécessaire, et tellement urgente qu'il n'ait pas pu en prévenir le prêteur, celui-ci sera tenu de la lui rembourser.

p. 405, Art. 17.
Same as above; but comma (,) after "urgente."

CC 1808, p. 404, Art. 17.
Same as above; but no punctuation after "If", or after "expense"; comma (,) after "thing", and after "urgent."

CN 1804, Art. 1890.
Same as above; but no punctuation after "urgente."

ART. 2909. When the thing lent has defects of such a nature that it may occasion injury to the person who uses it, the lender is answerable for the consequences, if he knew the defects and did not apprise the borrower of them.

RCC—1832, 1847, 1934, 2315, 2476, 2520 et seq., 2545, 2695, 2916.

RCC 1870, Art. 2909.
Same as above.
ART. 2910. The loan for consumption is an agreement by which one person delivers to another a certain quantity of things which are consumed by the use, under the obligation, by the borrower, to return to him as much of the same kind and quality.

RCC—472, 549, 1761, 1765, 1771, 1773, 2156, 2863, 2891, 2893, 2896, 2911 et seq., 2920, 2925, 2941.

RCC 1870, Art. 2910.
Same as above.

CC 1825, Art. 2881. (No reference in Projet)
Same as above.

CC 1808, p. 404, Art. 18.
Same as above; but no punctuation after "obligation", or after "borrower."

CN 1804, Art. 1892.
The loan for consumption is a contract by which one of the parties delivers to the other a certain quantity of things which are consumed by the use, under the obligation by the borrower to return to him as much of the same kind and quality.

Projet du Gouvernement (1800), Book III, Title XV, Art. 18.
Same as CC 1808, p. 404, Art. 18, above; but no punctuation after "simple", after "laquelle", after "charge", after "dernier", or after "autant."
Art. 2911

ART. 2911. By the effect of this loan the borrower becomes
the owner of the thing lent, and if it be destroyed, in whatever man-
er the same may have happened, the loss is on his account.

RCC—1909, 2138, 2895, 2910, 2912, 3166.

RCC 1870, Art. 2911.

Same as above.

CC 1825, Art. 2882.

Same as above.

CC 1808, p. 404, Art. 19.

Same as above; but comma (,) after
"loan"; semicolon (;) after "lent."

CC 1804, Art. 1893.

Same as above.

ART. 2912. Any thing which is such that it may be returned
of the same kind and quality, may be given as a loan for consump-
tion; but things which, although of the same kind, still may differ
from each other in quality,* as beasts and the like,** can not be lent after
this manner.

RCC—1798, 1885, 2893, 2896, 2910, 2911.

RCC 1870, Art. 2912.

Same as above.

CC 1825, Art. 2883.

Same as above; but comma (,) after
"such."

CC 1808, p. 404, Art. 20.

Same as above; but no punctuation
after "such", or after "things which";
comma (,) after "consumption."

CN 1804, Art. 1894.

Things which, although of the same
kind, differ from each other individually, as beasts, cannot be given as a loan
for consumption: it is then a loan for
use.

Projet du Gouvernement (1800), Book III, Title XV, Art. 20.

Anything which is such that it may be returned of the same kind and
quality may be given as a loan; but
things which, although of the same kind, still may differ from each other in-
dividually, as beasts, cannot be lent
after this manner.

*Note error in English translation of French text; "in quality" should be
"individually."

**"And the like" has no counterpart in French text.

1594
ART. 2913. The obligation which results from a loan of money, can never be more than the numerical sum mentioned in the contract. If there has been augmentation or diminution in the value of the money before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such money as has currency at the time of the payment.

RCC—2150, 2210, 2910, 2914, 2915, 2944.

RCC 1870, Art. 2913.
(Same as Art. 2913 of Proposed Revision of 1869)

CC 1825, Art. 2884. (No reference in Projet)
Par. 1 same as par. 1, above; but comma (,) after “obligation.”
If there has been augmentation or diminution in the value of the species before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such species as has currency at the time of the payment.

Par. 1 same as par. 1, above; but no punctuation after “obligation.”
If there has been augmentation or diminution in the value of the species before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such species as has currency at the time of the payment.

CN 1804, Art. 1895.
Same as above; RCC 1870 preferred.

ART. 2914. The rule in the preceding article does not obtain, if the loan has been made in bullion.*

RCC—2210, 2913.

RCC 1870, Art. 2914.
(Same as Art. 2914 of Proposed Revision of 1869)

CC 1825, Art. 2885. (No reference in Projet)
The rule in the preceding article does not take place, if the loan has been made in bullion.*

CC 1808, p. 406, Art. 22.
Same as above; but no punctuation after “place.”

CN 1804, Art. 1896.
Same as above.

Projet du Gouvernement (1800), Book III, Title XV, Art. 22.
The rule stated in the preceding article does not obtain, if the loan had been made in bullion or by weight.

*English translation of French text incomplete; should include “or by weight.”
Art. 2915

ART. 2915. If provisions have been lent, whatever be the increase or diminution of their price, the debtor is still bound to return the same quantity and quality, and he is bound to return no more.

RCC—2150, 2156, 2910, 2913.

RCC 1870, Art. 2915.
Same as above.

CC 1825, Art. 2886.
Same as above.

Same as above; but no punctuation after “quality.”

CN 1804, Art. 1897.
If bullion or provisions have been lent, whatever be the increase or the diminution of their price, the debtor is still bound to return the same quantity and quality, and he is bound to return no more.

Projet du Gouvernement (1800), Book III, Title XV, Art. 23.
Same as above.

Section 2—OF THE OBLIGATIONS OF THE LENDER
FOR CONSUMPTION

Art. 2916. In the loan for consumption, the lender is subject to the responsibility above established with respect to the vices of the thing lent for use.

RCC—2909.

RCC 1870, Art. 2916.
Same as above.

CC 1825, Art. 2887.
Same as above.

The lender is answerable for the defects of the things which he lends, when they are not fit for the use to which they were intended, as if the money be counterfeited or the corn spoiled.
In the loan for consumption, the lender is subject to the responsibility established by Article 1891 with respect to the loan for use.

Dans le prêt de consommation, le prêteur est tenu de la responsabilité établie par l'article 1891 pour le prêt à usage.

Art. 2917. The lender cannot claim the thing lent before the time agreed on.

If no term has been agreed on for the restitution, the judge may grant a delay according to circumstances.

RCC—1776, 2048, 2050 et seq., 2153, 2906, 2907, 2918 et seq.

RCC 1870, Art. 2917.*

Same as above.

CC 1825, Art. 2888. (No reference in Projet)

Same as above.

CC 1808, p. 406, Art. 25. Par. 1 same as par. 1, above.

If no term has been agreed on for the restitution, the judge may grant a delay according to the circumstances.

CN 1804, Art. 1899.

The lender cannot reclaim the thing lent before the term agreed on.

-Art. 1900.

If no term has been agreed on for the restitution, the judge may grant a delay to the borrower according to the circumstances.

Projet du Gouvernement (1800), Book III, Title XV, Art. 25, par. 2.

Same as CC 1808, p. 406, Art. 25, par. 2, above.

*Official edition reads “Art. 2617.”

Art. 2918. No delay shall be granted if the loan has been stipulated as exigible at will.

RCC—2050, 2153, 2907, 2917, 2919.

RCC 1870, Art. 2918.

Same as above.

CC 1825, Art. 2889. (No reference in Projet)

Same as above; but comma (,) after “granted.” Il n'en peut être accordé aucun, si le prêt a été stipulé restituable à volonté.
ART. 2919.

If it was agreed only that the borrower should pay when he could, or when he should have the means so to do, he ought to be sentenced to pay as soon as he appears to be able so to do.

RCC—2060, 2153, 2917, 2918.

RCC 1870, Art. 2919.

Same as above.

CC 1825, Art. 2890.

Same as above; but comma (,) after "to pay."

CC 1808, p. 406, Art. 27.

Same as above; but no punctuation after "could", or after "to pay."

CN 1804, Art. 1901.

If it was agreed only that the borrower should pay when he could, or when he should have the means so to do, the judge shall fix a term for his payment according to the circumstances.

Projet du Gouvernement (1800), Book III, Title XV, Art. 27.

Same as CC 1808, p. 407, Art. 27, above; but no punctuation after "convenu", or after "payer."

Section 3—OF THE ENGAGEMENTS OF THE BORROWER FOR CONSUMPTION

ART. 2920.

The borrower is obliged to restore the thing lent in the same quantity and condition,* and at the place and time agreed on.

If no spot has been fixed on for the restitution, it must be made at the place where the loan was made.

RCC—546, 549, 1764, 1914, 2048, 2050 et seq., 2156, 2157, 2910, 2917, 2921, 2922, 2953, 2954.

RCC 1870, Art. 2920.

Same as above.
ART. 2921. If it be impossible for him to fulfill his engagement, he is bound to pay the value of the things lent, taking into consideration the time and place when they ought to have been returned according to the agreement.

If the time and place have not been regulated, the payment is made according to the price which the thing is worth at the time and place where the demand is made.

RCC—1914, 2050, 2157, 2920, 2922, 2953.

RCC 1870, Art. 2921.
Same as above.

CC 1825, Art. 2892. (No reference in Projet)
Same as above; but comma (,) after "returned."

Par. 1 same as par. 1, above; but no punctuation after "returned."
If said time and place have not been regulated, the payment is made according to the rate of the time and place where the demand is made.

CN 1804, Art. 1903.
Par. 1 same as par. 1, above.

*Note error in English translation of French text; "condition" should be "quality."

S'il est dans l'impossibilité d'y satisfaire, il est tenu d'en payer la valeur, eu égard au temps et au lieu où la chose devait être rendue par la convention.
Si ce temps et ce lieu n'ont pas été réglés, le payement se fait au prix du temps et du lieu où la demande est faite.

Par. 1 same as par. 1, above; but comma (,) after "rendue."

S'il est dans l'impossibilité d'y satisfaire, il est tenu d'en payer la valeur eu égard au temps et au lieu où la chose devait être rendue d'après la convention.
If the time and place have not been regulated, the payment is made according to the price which the thing was worth at the time and place where the loan was made.

Projet du Gouvernement (1800), Book III, Title XV, Art. 29.

Same as CC 1808, p. 406, Art. 29, above; RCC 1870 preferred.

ART. 2922. If the borrower does not return the things lent or their value, at the time appointed, he shall be bound to pay interest from the time that a judicial demand of it has been made.

RCC—1934 et seq., 2917, 2920, 2921, 2923, 2924.

RCC 1870, Art. 2922.
Same as above.

CC 1825, Art. 2893. (No reference in Projet)
Same as above; but comma (,) after "lent"; no punctuation after "value."

Same as above; but no punctuation after "lent."

CN 1804, Art. 1904.
Same as above.

Chapter 3—Of Loan on Interest

ART. 2923. It is lawful to stipulate interest for a simple loan, whether of money or other movable things.


RCC 1870, Art. 2923.
Same as above.

CC 1825, Art. 2894. (No reference in Projet)
Il est permis de stipuler des intérêts pour simple prêt, soit d'argent, soit d'autres choses mobilières.

CC 1808, p. 408, Art. 31.
Same as above; but no punctuation after "loan."

CN 1804, Art. 1905.
Il est permis de stipuler des intérêts pour simple prêt soit d'argent, soit de denrées, ou autres choses mobilières.

Projet du Gouvernement (1800), Book III, Title XV, Art. 31.
Same as CC 1808, p. 408, Art. 31, above; but no punctuation after "prêt."
ART. 2924. Interest is either legal or conventional. Legal interest is fixed at the following rates, to wit:

At five per cent on all sums which are the object of a judicial demand. Whence this is called judicial interest;

And on sums discounted at banks at the rate established by their charters.*

The amount of the conventional interest cannot exceed eight per cent. The same must be fixed in writing; testimonial proof of it is not admitted in any case.

Except in the cases herein provided, if any persons shall pay on any contract a higher rate of interest than the above, as discount or otherwise, the same may be sued for and recovered within two years from the time of such payment.

The owner or discouter of any note or bond or other written evidence of debt for the payment of money, payable to order or bearer or by assignment, shall have the right to claim and recover the full amount of such note, bond or other written evidence of debt and all interest not beyond eight per cent per annum interest that may accrue thereon, notwithstanding that the rate of interest or discount at which the same may be or may have been discounted has been beyond the rate of eight per cent per annum interest or discount; but this provision shall not apply to the banking institutions of this State in operation under existing laws.

The owner of any promissory note, bond or other written evidence of debt for the payment of money to order or bearer or transferrable [transferable] by assignment shall have the right to collect the whole amount of such promissory note, bond or other written evidence of debt for the payment of money, notwithstanding such promissory note [,] bond or other written evidence of debt for the payment of money may include a greater rate of interest or discount than eight per cent per annum; provided such obligation shall not bear more than eight per cent per annum after maturity until paid.

Provided however where usury is a defense to a suit on a promissory note or other contract of similar character, that it is permissible for the defendant to show said usury whether same was given by way of discount or otherwise, by any competent evidence. (As amended by Acts 1908, No. 68)

RCC—1935 et seq., 2054, 2374, 2553, 2922, 2923, 3015, 3025. CP—553, 554. Acts 1908, No. 31; 1912, No. 240; 1916, No. 102; 1928, E.S., No. 7. RS—299, 316, 1887, 1890.

RCC 1870, Art. 2924. (Same as Art. 2924 of Proposed Revision of 1869; par. 5 in conformity with Acts 1844, No. 25, §1, and Acts 1855, No. 291, §2 [RS §1884]; par. 6 similar to Acts 1844, No. 25, §2, and Acts 1855, No. 291, §3 [RS §1885]; par. 7 similar to Acts 1856, No. 161; par. 8 similar to Acts 1860, No. 62, §1 [RS §§337, 1889])

Pars. 1-3 same as pars. 1, 2, above; but period () after "cent"; comma (,) after "demand."
And on sums discounted by banks, at the rate established by their charters.*
Par. 5 same as par. 4, above.

Except in the cases herein provided, if any person shall pay on any contract a higher rate of interest than the above, as discount or otherwise, the same may be sued for and recovered within twelve months from time of such payment.
The owner of any promissory note, bond or other written evidence of debt for the payment of money, to order or bearer or transferable by assignment, shall have the right to collect the whole amount of such promissory note, bond or other written evidence of debt for the payment of money, notwithstanding such promissory note, bond or other evidence of debt for the payment of money may include a greater rate of interest or discount than eight per cent. per annum; provided, such obligation shall not bear more than eight per cent. per annum after maturity until paid.

The amount of the conventional interest cannot exceed ten per cent. The same must be fixed in writing; and testimonial proof of it is not admitted in any case.

The interest is either legal or conventional. Legal interest is fixed by the laws of this territory, to wit:

At five per cent. on all sums which are the object of a judicial demand, whence this interest is called judicial interest: and six per cent. for the interest of sums discounted by banks.

Par. 4 same as par. 5, above; but no punctuation after “writing.”

*In connection with this paragraph see Acts 1855, No. 166, §25 (RS §§1299, 1887), and Acts 1866, No. 33 (RS §§316, 1890).

**ART. 2925.** The release of the principal, without any reserve as to interest, raises the presumption that it also has been paid, and operates a release of it.

RCC—2164, 2285, 2287, 2910, 2923.

RCC 1870, Art. 2925.
Same as above.

CC 1825, Art. 2896.
Same as above.

CC 1808. No corresponding article.

CN 1804, Art. 1908.
Same as CC 1825, Art. 2896, above.

Same as above.