



SUPREME COURT OF CANADA

CITATION: Zardev Inc. v.
Dydzak, 2026 SCC 27

APPEAL HEARD: November 10,
2025

JUDGMENT RENDERED: July 24,
2026

DOCKET: 41291

BETWEEN:

Zardev Inc.
Appellant

and

**Joseph J. Dydzak, Élise Cloutier,
Marilyn Dalton, Nicolas Beauchamp,
Christiane Leduc, Rémi Beaudry,
Hervé Boscher, Marie-Suzanne Boscher,
Fiducie familiale Lac Masson (2017),
Robert Carsley, Fiducie J. Cheaib,
Marie-Chantal Gariépy, Serge Gauvin,
France Gauvin, Fiducie Yves Gauvin,
Warren Grzywacz, Jean Lacroix,
Lucie O'Dowd, Rachel Landry,
Josée Voisard Lefebvre, Louis B. Lépine,
Shoula Cohen, Vickie Guillevin-Magnier,
Fiducie de protection Jean Claude Medalsy,
Alain Paquet, Frances Rubinger,
Roselyne Rovira, Claude Verville,
Édith Fournier, Harold Zackon,
Serge Baril, Aline Dubé,
Denis Bélanger, Marc Bouvrette,
William R. Collier, Jonathan Marcoux,
Émile Gorak Savard, Natacha Garoute,**

**Valéria Wlusek Rosenbloom, Henri H. Boucher,
Sylvain Brosseau, Rachel Bergeron,
Michel Lagueux, Michele Fearon,
Richard O'Doherty, Francisco Durazo,
Sylvia Garza De Durazo, Patrick Garneau,
Émilie St-Vincent-Gagnon and Michael Weinerman**
Respondents

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O'Bonsawin and Moreau JJ.

REASONS FOR Kasirer J. (Wagner C.J. and Karakatsanis, Rowe, Martin,
JUDGMENT: Jamal, O'Bonsawin and Moreau JJ. concurring)
(paras. 1 to 123)

DISSENTING Côté J.
REASONS:
(paras. 124 to 232)

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Zardev Inc.

Appellant

v.

**Joseph J. Dydzak, Élise Cloutier, Marilyn Dalton,
Nicolas Beauchamp, Christiane Leduc, Rémi Beaudry, Hervé Boscher,
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Indexed as: Zardev Inc. v. Dydzak

2026 SCC 27

File No.: 41291.

2025: November 10; 2026: July 24.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O’Bonsawin and Moreau JJ.

Property — Immovables — Contracts of sale — Obligation to deliver — Accessory rule — Developer selling riparian lots bounded by navigable lake to multiple buyers — Buyers discovering existence of submerged lots between riparian lots and lake at time of cadastral renewal — Whether buyers purchased submerged lots adjacent to each of riparian lots acquired — Civil Code of Québec, art. 1718.

In 1881, public authorities built a dam at the outlet of Lac Masson in the Laurentians, which raised the level of this navigable lake by about 1.5 metres. Flooding submerged a portion of the land adjacent to the shore and made it an extension of the lake bed. The owner of the land at the time the lake waters rose remained the owner of this portion of land after it was submerged. This submerged strip of land is therefore in the private domain and is not property of the state.

From 1959 to 1971, the owner of the land, a property developer, divided it into lots bounded by the lake that it then sold to buyers through 50 or so transactions evidenced by notarial deeds of sale. With a few exceptions, the deeds state that the lot sold is “bounded by Lake”. In addition to the usual clauses concerning the obligations of the buyer and seller, the deeds specify that the seller is not obliged to provide a title of ownership or search certificate. The deeds also impose servitudes requiring the buyers to build a single-family dwelling within a certain time, while also prohibiting the construction of any other immovable as well as agricultural activities. The deeds do

not expressly refer to the existence of the submerged lands.

The buyers of the lots learned of the existence of the submerged strip of land in 2016, with the publication of a new cadastre for the territory, which indicated that the strip was still owned by the developer. They filed an application in the Superior Court seeking a declaratory judgment and the cancellation of registrations in the land register, arguing that the submerged strip was sold to them with their respective riparian lots. Specifically, they relied on the civil law maxim *accessorium sequitur principale* (the accessory follows the principal), which is partially codified in the general law of sale in Quebec and which requires the seller to deliver to the buyer, along with the principal property sold, “all its accessories” (art. 1718 of the *Civil Code of Québec*).

The Superior Court dismissed the buyers’ application. It interpreted the deeds of sale and found that the submerged lots are not included in the deeds, nor are they accessories. The Court of Appeal held unanimously that the submerged lots are accessories to the riparian lots, referring notably to the special rules applicable to bodies of water. It set aside the trial judge’s decision and declared the buyers the owners of the submerged lots.

Held (Côté J. dissenting): The appeal should be dismissed.

Per Wagner C.J. and Karakatsanis, Rowe, Martin, **Kasirer**, Jamal, O’Bonsawin and Moreau JJ.: The Court of Appeal’s declaration that the buyers are the owners of the submerged portion of their respective lots is upheld. The submerged lots

are accessories to the riparian lots, in that they are necessary to ensure that the destination of the property sold, as established by the parties, can be fulfilled. Since the accessory rule was not displaced by the contracts of sale, it continues to apply: the submerged lots, which are accessories by their function in light of the destination of the lots sold, were transferred to the buyers with the riparian lots.

First of all, the trial judge made no reviewable error in interpreting the deeds of sale by concluding that the lots acquired by the buyers are bounded by the raised lake. The general scheme of the deeds, including the immatriculation number of the lots, their area and the Lake boundary, indicates that the principal object of each of the sales was the riparian lots, which did not include the submerged parcel. That being said, the obligational content of a contract is not limited to its express provisions, but also includes “what is incident to it according to its nature and in conformity with usage, equity or law” (art. 1434 *C.C.Q.*). It is thus appropriate to continue the analysis to determine whether the submerged lots are accessories that were transferred to the buyers with the riparian lots sold.

The accessory rule is based on the idea of a natural or rational connection between two items captured by law. This connection involves a dependence of the accessory on the principal, such that the treatment of the accessory item is tied to that of the principal. The accessory rule adds, as a contract’s implicit content, the presumption that the accessory property and the principal property are transferred simultaneously, unless otherwise indicated. The rule that, in the sale context, ownership

and delivery of the accessory follow the principal is based on a presumption that the contracting parties will share the intention of maximizing the utility and value of the property when the contract of sale is performed. Unless otherwise indicated, it can be presumed that the seller has no interest in being left with accessory property that has become useless and that the buyer also has no wish to receive new property diminished by the fact that it has been separated from its accessory. Thus, the rule that the accessory follows the principal is first and foremost a presumption about the parties' intention. This presumption, codified in art. 1718 *C.C.Q.*, is a rule of suppletive law — in that the parties may have excluded it in the pursuit of other objectives — and it thus adds to the implicit content of contracts of sale. It follows that there is no need for the contracting parties to expressly signal their intention to adhere to the accessory rule. Often, accessories are not specifically mentioned in a deed of sale, other than to exclude them from the application of the rule.

To compensate for the parties' silence, a test of general application is needed in order to better appreciate their implicit intention. For the purposes of applying the accessory rule in Quebec's law of sale, an accessory is property that is destined to serve the principal property sold and that, by reason of this destination, is necessary for the agreed use of the latter. This test in fact relies on the concept of the "destination" of property, as established by the parties. Thus, the destination of the principal property sold — here the riparian lots — should be determined in order to ascertain whether the property that is potentially "accessory" — here the submerged lots — is necessary to fulfill this destination established in the deeds of sale. For

accessory property to be presumed to be transferred with the principal property, it must be necessary for the use of that property, such that the buyer can derive from it the enjoyment contemplated by the parties to the contract. However, the accessory property must be necessary for the use of the principal property as contemplated by the parties, not for its existence from an objective standpoint. A thing that is necessary for the very existence of another is instead a constituent element of the principal, not its accessory. In all cases, the characterization of property as an accessory is a contextual exercise that must yield a conclusion consistent with the legitimate expectations of the parties. The “necessity” test must not be applied in a technical or mechanical fashion. The purpose of this factor is only to better gauge the implicit intention of the parties to the contract of sale.

The trial judge in this case erred in law with regard to the legal standard to be applied in determining whether property is an accessory to other property. She applied an overly narrow and one-dimensional view of the notion of accessory and did not consider the parties’ intention as to the use of these lots, the respective destination of the two properties, and the buyers’ reasonable expectations. The test described above makes it plain that the submerged lands are accessories to the riparian lots. The sold lots “bounded by Lake” are destined to serve as waterfront sites for vacation homes, giving the buyers direct access to the lake and exclusive access to the shore. This appropriation results in particular from the servitudes imposed by the developer requiring the construction of residential homes of a certain value and preventing the buyers from granting a right of way to third parties. The tranquility of the location was

reinforced, for the benefit of all, by the destination of the property sold in accordance with the will of the parties, as revealed by the deeds of sale. This tranquility is the reason why the buyers purchased riparian lots at the prices asked. Thus, direct and exclusive access to the lakeshore for recreational purposes is an essential component of the value and destination of the riparian lots.

The submerged lands — which are not mentioned in the deeds of sale — are accessories to the riparian lots, in that they ensure that the destination of the property sold, as established by the parties, can be fulfilled. They are for the use of the principal thing and, without them, this use contemplated by the parties would not be possible. They secure direct and exclusive access to the lakeshore, as the parties envisioned the property sold; the submerged lands support the undisturbed use of the riparian lots and protect the buyers' privacy. Moreover, the submerged lands are unbuildable and enclosed, and their only destination is to serve the riparian lots. Ownership of the submerged lots is necessary for the use of the riparian lots, because if the water level in the lake were to fall — for example, if the dam were removed or if climate change caused the water level to drop — the lots sold would no longer be riparian lots, but would be lots bounded by the now exposed land belonging to the developer or its successors in title. The developer's conduct confirms their accessory character: it has always used these submerged lots either by appropriating them to the use of the riparian lands or by restricting enjoyment of them. In this context, an exceptional one in Quebec, where a portion of the bed of a navigable lake has left the public domain, ownership of the submerged lots is necessary to ensure that the riparian lots can be used in

accordance with the destination negotiated for them. They must be characterized as accessories so as not to undermine the buyers' reasonable expectations.

Finally, it is, of course, well settled that the accessory rule is not mandatory and that it can be excluded by an unequivocal expression of intention. However, the statement that the riparian lots sold were "bounded by Lake" is neither an express exclusion clause nor a sufficient basis for concluding that there was a common intention to leave the submerged lots out of the sale. First, this statement is not a clause excluding the accessory, but is rather simply part of the description of the principal property. The parties expressly excluded certain accessories in the deeds of sale, but they said nothing about the submerged lots. Yet, the suppletive nature of the accessory rule in the sale context requires not the inclusion of accessories, but rather their unequivocal exclusion by the parties, which did not occur in this case. Second, the alleged exclusion has an even more fundamental flaw: the buyers were unaware of the existence of submerged private lands in front of their lots. The developer did not alert the buyers to the very existence of the accessories to which they were entitled, and the deeds were prepared using templates submitted to the buyers and their legal counsel. In the absence of an express clause and adequate information, and with the developer's good faith being assumed, the accessory rule continues to apply: the submerged lands, which are accessories by their function in light of the destination of the lots sold, were transferred to the buyers with the riparian lots.

Per Côté J. (dissenting): The appeal should be allowed, the judgment of

the Court of Appeal set aside and the judgment of the Superior Court restored. The submerged lots are not accessories to the riparian lots and, even assuming — without, however, accepting — that they are, the parties excluded their transfer in unambiguous terms and demonstrated a common intention to that effect.

Firstly, the trial judge did not commit a reviewable error in finding that the deeds of sale at issue concerned only the riparian lots. The deeds of sale in the present case never reference the submerged lots and very precisely delimit the riparian lots. The parties to these contracts therefore did not provide for the sale of the submerged lots as principal properties.

Secondly, the Latin maxim *accessorium sequitur principale* expresses the rule that the accessory follows the fate of the principal. In Quebec law, in the context of a contract of sale, the accessory rule is related to the obligation to deliver the property sold. Delivery means the act by which the property sold is put at the disposal of the buyer. Article 1718 C.C.Q. provides for the simultaneous transfer of the accessory and the principal in the context of a sale, even where the parties are silent. This rule applies both to material accessories (corporeal property, whether movable or immovable, including land) and to legal accessories (real rights, like a servitude, or personal rights, like a warranty). The submerged lots in this case do not constitute accessories to the adjacent riparian lots for the purposes of applying art. 1718 C.C.Q. A relationship of accessoriness can be identified in two ways. The first is that it may be provided for by a legal rule. No legal rule provides that submerged land in a navigable lake must be

treated as an accessory to the adjacent riparian land for the purposes of the obligation of delivery set out in art. 1718 C.C.Q. The Court of Appeal erred in finding that the accessory doctrine in the body of water context applied in this case. This doctrine never considered the bed of a navigable watercourse, and by extension, submerged land in a navigable watercourse, as being an accessory to riparian land. It therefore does not apply to the submerged lots at the heart of this case.

The second way is that a relationship of accessoriness can arise from the nature of things. Such a relationship is based on appropriation, a synonym of destination, which means the purpose or function of property. To find that there is a relationship of accessoriness arising from the nature of things, it is therefore necessary first to determine, in light of the context, the purpose of the supposedly accessory property and that of the principal property. Second, it must be established that, according to their respective purposes, the accessory property is necessary for the use of the principal property. However, if it is indispensable to the definition of the principal, the property is not an accessory, but rather part of the principal. This test of an accessory's necessity for the use of the principal is assessed on the basis of the legitimate expectations of the buyer and the seller with respect to these properties. Property will be an accessory to other property only if it allows the buyer to derive the enjoyment that they can legitimately expect from the principal property. In this case, there is no relationship of accessoriness by the nature of things between the submerged lots and their adjacent riparian lots. By its nature, land is meant to serve as a principal rather than an accessory, because its function can always be modified. And even when

submerged like the lots at issue in this case, land therefore cannot be an accessory to other land, such as the riparian lots.

Moreover, the submerged lots, the appropriation of which is related to public navigation, are not at all necessary for the use of the riparian lots, that is, direct access to the body of water for the purposes of recreation and pleasure. Article 981 *C.C.Q.* recognizes that riparian owners have the right to access the lake bordering their lands and to make use of it, which includes, in particular, its recreational use for the purposes of swimming and boating. What is more, art. 920 *C.C.Q.* allows any person to travel on a lake, under certain conditions. Thus, by virtue of the right of access provided for in art. 981 *C.C.Q.* and the right to travel on the lake provided for in art. 920 *C.C.Q.*, the buyers' legitimate expectations as to the use they wish to make of their respective riparian lots are met, since they can legally access the lake and swim in it. Further, there is no need to determine the accessory nature of a submerged lot based on a risk of the water level changing and riparian rights disappearing. Riparian lot owners can never be certain that their land will remain bounded by the visual line of a lake forever; this is a risk they must assume. Absent a legal rule or a relationship of accessoriness by the nature of things, the submerged lots cannot be characterized as accessories within the meaning of the *Civil Code of Québec*. Consequently, the developer remains their owner.

Finally, suppletive rules, in particular, art. 1718 *C.C.Q.*, form part of the implicit obligational content of a contract, since the content of a contract includes the

terms of the contract as well as what is incident to it in conformity with law, among other things (art. 1434 C.C.Q.). The parties to a contract are free to derogate from a suppletive rule provided for by law or to reduce the scope of it (art. 9 C.C.Q.). Derogating from a suppletive rule or reducing its scope does not require any particular formalities. Thus, in order to determine whether a contract provides for a derogation from a suppletive rule or a reduction of its scope, the normal rules of contractual interpretation should be applied. The first step is to determine if the words of the contract are clear or ambiguous regarding whether the parties chose to derogate from the rule of the delivery of an accessory property. The focus is on a reading of the words themselves, but the court may consider the context of the conclusion and performance of the contract in order to confirm that its language is clear. In the case of a clear and unambiguous statement from which it can be concluded that a given accessory property has been excluded, undertaking a more thorough interpretation is unnecessary. Conversely, if the court identifies an ambiguity, it must engage in a more extensive interpretation consisting in seeking the common intention of the parties to exclude or not exclude the identified accessory property (art. 1425 C.C.Q.). In these different interpretative exercises, the court will consider elements both intrinsic and extrinsic to the contract.

Even assuming — without, however, accepting — that the submerged lots were accessories to the riparian lots, the parties excluded their transfer as such in the deeds of sale. The description of the riparian lots by their metes and bounds, their area and their immatriculation number clearly excludes the transfer of the submerged lots

as accessories. Indeed, it is normal that the parties took the view that the methods of description, set out in the *Civil Code of Québec*, were sufficient to exclude the submerged lots from the sale because, unlike legal accessories, the submerged lots are of exactly the same nature as the principal properties, that is, land. No reasonable person would expect to have to specify that the lot they are selling does not include the neighbouring lot that they also own and that is not the object of the sale. This is particularly true because no legal rule explicitly provides that a submerged lot can be an accessory to a riparian lot. To conclude otherwise would be contrary to the expectations of the parties to a sale of an immovable and would jeopardize the predictability of the effects of the contract of sale on the seller's right of ownership, as well as the predictability that the land register and cadastral plans are supposed to bring to the sales and transfers of immovables. Moreover, elements extrinsic to the contract also demonstrate the common intention of the parties to exclude the transfer of the submerged lots from the sale.

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By Kasirer J.

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By Côté J. (dissenting)

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(*Procureur général*), 2006 QCCA 1358, [2006] R.J.Q. 2583; *Maclaren v. Attorney-General for Quebec*, [1914] 15 D.L.R. 855; *Administration portuaire de Québec v. Thibeault*, 2018 QCCA 72; *Marchand v. Marina de la Chaudière inc.*, [1998] R.J.Q. 1971; *Morin v. Morin*, [1998] R.J.Q. 23; *Houde v. Couture*, 2018 QCCA 9; *Monette v. Mathieu*, [1958] C.S. 259; *North Shore Railway Co. v. Pion*, [1889] App. Cas. 612; *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, [2008] 3 S.C.R. 392; *Ponce v. Société d'investissements Rhéaume ltée*, 2023 SCC 25; *Domaine de la Rivière-aux-Pins inc. v. Les boisés Fossambault sur le lac inc.*, 1999 CanLII 13835; *Benjamin v. Crédit VW Canada inc.*, 2022 QCCA 1383; *Gagnon v. Bell Mobilité inc.*, 2016 QCCA 1496; *Steve Brown Machineries Solutions (SBMS) inc. v. Groupe Sutton Excellence inc.*, 2021 QCCA 302; *Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, [2017] 2 S.C.R. 59; *Churchill Falls (Labrador) Corp. v. Hydro-Québec*, 2018 SCC 46, [2018] 3 S.C.R. 101; *Resolute FP Canada Inc. v. Hydro-Québec*, 2020 SCC 43, [2020] 3 S.C.R. 789; *Hydro-Québec v. Matta*, 2020 SCC 37, [2020] 3 S.C.R. 595.

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APPEAL from a judgment of the Quebec Court of Appeal (Vauclair and Lavallée JJ.A. and Buchholz J. (*ad hoc*)), 2024 QCCA 347, [2024] AZ-52014173, [2024] J.Q. n° 1767 (Lexis), setting aside a decision of Chatelain J., 2021 QCCS 3306, [2021] AZ-51786402. [2021] J.Q. n° 9205 (Lexis). Appeal dismissed, Côté J. dissenting.

Guy J. Pratte, Julien Boudreault and Abbie Buckman, for the appellant.

Doug Mitchell, Ad. E., François Goyer and Jessica Michelin, for the respondents.

English version of the judgment of Wagner C.J. and Karakatsanis, Rowe, Martin, Kasirer, Jamal, O’Bonsawin and Moreau JJ. delivered by

KASIRER J. —

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I. Overview

[1] At first glance, this appeal seems to fit within a type of dispute well known in the law of immovable property, especially in the countryside, where measuring the metes and bounds of land sold is not always an exact science. Between 1959 and 1971, the fifty respondents or their predecessors in title each purchased, from the same property developer, a lot bounded by a large navigable lake. As many people do, they acquired the land so they could enjoy the tranquility of the Laurentians, a vacation region north of Montreal known for its expanses of water. Well after the deeds of sale were entered into and cottages were built by the buyers, a disagreement arose with the developer over the area of each of the lots sold. The dissatisfied buyers are claiming a portion of land that the developer maintains it never sold them.

[2] However, an unusual aspect relating to the location of the lots sold sets the debate in this case apart. In front of each of the riparian lots purchased by the respondents, and extending from the lateral boundaries of these lots, is a strip of land submerged under the lake waters that, according to the property developer, Zardev Inc., belongs to it as a private owner. In 1881, explains Zardev, public authorities built a dam, which raised the lake level by about 1.5 metres. Flooding caused a portion of the land adjacent to the shore, which had been dry before the dam was built, to be

submerged under the lake waters and made it an extension of the lake bed. This strip of land, submerged in 1881, remains underwater to this day, because the dam is still in place. The parties acknowledge that this portion of the land is in the private domain and is not property of the state. Indeed, it was the riparian owner at the time the lake waters rose in 1881 — the predecessor in title of the current property developer, Zardev — that remained the owner of this portion of land after it was submerged.

[3] The respondents say that they did not learn of the existence of the submerged strip of land until 2016, with the publication of a new cadastre for the territory which indicated that the strip was owned by Zardev. Noting that the developer did not disclose the existence of the submerged strip to them or their predecessors in title at the time of the sales between 1959 and 1971, the respondents maintain that the strip was sold to them with their respective riparian lots. Specifically, the respondents rely on the civil law maxim *accessorium sequitur principale* (the accessory follows the principal), which is partially codified in the general law of sale in Quebec and which requires the seller to deliver to the buyer, along with the principal property sold, “all its accessories” (art. 1718 of the *Civil Code of Québec* (“C.C.Q.”)). The Superior Court interpreted the deeds of sale and ruled against the respondents, finding that the submerged lots are not included in the deeds, nor are they accessories. The Court of Appeal held unanimously that the submerged lots are accessories to the riparian lots, referring notably to the special rules applicable to bodies of water. It set aside the trial judge’s decision and declared the respondents the owners of the submerged lots.

[4] The backdrop to the dispute, therefore, is the question of the proper application of the rule in the *Civil Code of Québec* concerning the seller's obligation to deliver the property sold "in the condition it is in at the time of the sale, with all its accessories" (art. 1718), which is but one expression of this important civil law maxim that the accessory follows the principal. While all are agreed that the rule applies in Québec's law of sale, the parties disagree over exactly what constitutes an "accessory". Since there is no statutory definition, the Court will thus have to determine the parameters of the notion of accessory. This exercise will be undertaken in light of the applicable legal scholarship and jurisprudence, with a view to establishing, at the end of the day, whether the submerged lots are "accessories" to the adjacent riparian lots under the deeds of sale at issue.

[5] On appeal to this Court, Zardev submits that it is the owner of the submerged parcel of land, which was excluded from the sales to the respondents. It maintains that the Court of Appeal gave the accessory rule an unprecedented and overly broad scope and, in the alternative, that the parties to the contracts excluded its application. The respondents, for their part, argue that the submerged lots, by their nature and under "ancestral rules" applicable to bodies of water, are accessories to the riparian lots. They also take the view that the contracts of sale do not expressly exclude the rule that the accessory follows the principal.

[6] To decide between the parties' disparate views, I will begin the analysis by noting that the trial judge made no reviewable error in interpreting the deeds of sale.

The general scheme of these deeds, including the immatriculation number of the lots, their area and the “Lake . . .” boundary, indicates that the principal object of the contracts — the lots sold — is in fact the riparian lots, without any mention of the submerged lots. That being said, the obligational content of a contract is not limited to its express provisions, but also includes “what is incident to it according to its nature and in conformity with usage, equity or law” (art. 1434 C.C.Q.). Since the accessory rule is a rule of suppletive law in the general law of sale, it can apply when the parties make no mention of the accessory. It is thus appropriate to continue the analysis to determine whether the submerged lots are accessories that were transferred to the buyers with the riparian lots sold.

[7] For the purposes of applying the accessory rule in Quebec’s law of sale, an accessory is property that is destined to serve the principal property sold and that, by reason of this destination, is necessary for the agreed use of the latter. This test in fact relies on the concept, well known in Quebec law, of the “destination” of property, as established by the parties. Thus, the destination of the principal property sold — here the riparian lots — should be determined in order to ascertain whether the property that is potentially “accessory” — here the submerged lots — is necessary to fulfill this destination established in the deeds of sale. For accessory property to be presumed to be transferred with the principal property, it must be necessary for the use contemplated by the parties, so [TRANSLATION] “that the buyer is able to derive from it the enjoyment they may legitimately expect” (P.-G. Jobin and M. Cumyn, *La vente* (4th ed. 2017), at para. 105). In all cases, the characterization of property as an accessory is a contextual

exercise that must yield a conclusion consistent with the legitimate expectations of the parties.

[8] Applied to the facts of this case, this test makes it plain that the submerged lands are accessories to the riparian lots. The sold lots “bounded by Lake . . .” are destined to serve as waterfront sites for vacation homes, giving the buyers direct access to the lake and exclusive access to the shore. This appropriation results in particular from the servitudes imposed by Zardev requiring the construction of residential homes of a certain value and preventing the riparian owners from granting a right of way to third parties. The tranquility of the location was reinforced, for the benefit of all, by the destination of the property sold in accordance with the will of the parties, as revealed by the deeds of sale. This tranquility — relative, of course, given that the lake is navigable — is the reason why the respondents purchased riparian lots at the prices asked. Thus, direct and exclusive access to the lakeshore for recreational purposes is an essential component of the value and destination of the riparian lots.

[9] The submerged lands — which are not mentioned in the deeds of sale — are accessories to the riparian lots, in that they ensure that the destination of the property sold, as established by the parties, can be fulfilled. They are for the use of the principal thing and, without them, this use contemplated by the parties would not be possible. They secure direct and exclusive access to the lakeshore, as the parties envisioned the property sold; the submerged lands support the undisturbed use of the riparian lots and protect the respondents’ privacy. Moreover, the submerged lands are unbuildable and

enclosed, and their only destination is to serve the riparian lots. Ownership of the submerged lots is necessary for the use of the riparian lots, because if the water level in the lake were to fall — for example, if the dam were removed or if climate change caused the water level to drop — the lots sold would no longer be riparian lots, but would be lots bounded by the now exposed land belonging to Zardev or its successors in title. The appellant’s conduct confirms their accessory character: it has always used these submerged “lots” either by appropriating them to the use of the riparian lands or by restricting enjoyment of them. In this context, an exceptional one in Quebec, where a portion of the bed of a navigable lake has left the public domain, ownership of the submerged lots is necessary to ensure that the riparian lots can be used in accordance with the destination negotiated for them. They must be characterized as accessories so as not to undermine the buyers’ reasonable expectations.

[10] Finally, the appellant’s alternative argument, to the effect that the accessory rule was displaced by the very terms of the contracts of sale, does not withstand scrutiny. It is, of course, well settled that this rule is not mandatory and that it can be excluded by an unequivocal expression of intention. However, the statement that the riparian lots sold were “bounded by Lake” is neither an express exclusion clause nor a sufficient basis for concluding that there was a common intention to leave the submerged lots out of the sale. First, this statement is not a clause excluding the accessory, but is rather simply part of the description of the principal property. The parties expressly excluded certain accessories in the deeds of sale, but they said nothing about the submerged lots. Yet, the suppletive nature of the accessory rule in the sale

context requires not the inclusion of accessories, but rather their unequivocal exclusion by the parties, which did not occur in this case. Second, the alleged exclusion has an even more fundamental flaw: the buyers were unaware of the existence of submerged private lands in front of their lots. Zardev did not alert the buyers to the very existence of the accessories to which they were entitled, and the deeds were prepared using templates submitted to the buyers and their legal counsel. In the absence of an express clause and adequate information, and with Zardev's good faith being assumed, the accessory rule continues to apply: the submerged lands, which are accessories by their function in light of the destination of the lots sold, were transferred to the respondents with the riparian lots.

II. Background

[11] Zardev is a property development company that operates on the Esterel vacation site in the Laurentians region. In the mid-20th century, Zardev, then known as Simco Enterprises Co. Ltd., sold riparian lots bordering on Lac Masson, Lac du Nord and Lac Dupuis to the respondents or their predecessors in title. To properly understand the nature of the dispute, it is helpful to trace the history of the land that is now at issue.

[12] On October 18, 1864, the Crown in right of the province of Canada made a grant to Edouard Masson of 1,646 acres of land surrounding Lac Masson, Lac du Nord and Lac Dupuis, in the Laurentians. It is not contested that these lakes are navigable and floatable, and the Crown did not grant title to the bed of the lakes to Mr. Masson.

[13] In 1881, a dam was built at the outlet of Lac Masson. The water level in the three lakes was raised by 1.5 metres, thereby joining them into a single expanse of water and submerging a strip of land around the lakes. It is not contested before this Court that this submerged strip of land was part of the royal grant and that its flooding did not cause its ownership to revert to the state. Therefore, since 1881, the portion of the bed of Lac Masson immediately adjacent to the shore has been in the private domain.

[14] In the decades that followed, the riparian lots on Lac Masson were transferred about 15 times. Most of the deeds of sale make no mention of the submerged lands, but both sides acknowledge that these lands always followed the riparian lots. In 1935, at the behest of Baron Louis Empain, who wished to develop a vacation home development, the land surrounding Lac Masson, Lac du Nord and Lac Dupuis was named “Domaine d’Estérel”.

[15] On October 23, 1957, Domaine d’Estérel was purchased by Simco, now Zardev. The deed of sale imposed an obligation on Zardev to continue residential development on the riparian lands.

[16] In August 1959, Zardev undertook major cadastral operations on its newly acquired lands, with a view to organizing property development there. First, Zardev annulled a large portion of its lots and consolidated them into a large block, “Bloc B”, that covered almost all of the lands surrounding the three lakes. Although Bloc B is described in the book of reference as being bounded [TRANSLATION] “by Lake Masson”

(A.F. in the C.A., vol. VII, at p. 2339), the Attorney General of Quebec’s expert and the trial judge concluded that this refers to the water level prior to the building of the dam. Bloc B therefore includes the submerged lots. This conclusion is not challenged before this Court.

[17] The same week, Zardev then subdivided most of Bloc B into several hundred new lots. Unlike the description of Bloc B, the subdivision plan shows the lakes at their water level after the dam was built, which means that the submerged lands do not appear in the plan and are not identified. Among the new subdivided lots, those seen to be bordering the expanse of water are described as [TRANSLATION] “[b]ounded in front . . . by Lake” (R.F. in the C.A., vol. II, at p. 76). In addition, the area of those lots indicates that they do not include the submerged portion of Zardev’s land.

[18] From 1959 to 1971, through 50 or so transactions evidenced by notarial deeds, Zardev sold some of the subdivided lots around the three lakes to the respondents or their predecessors in title. Almost all of the deeds of sale use the same template. The lot sold is designated by its Bloc B subdivision number and its dimensions. With a few exceptions, the deeds state that the lot sold is “[b]ounded in front . . . by Lake”. In addition to the usual clauses concerning the obligations of the buyer and seller, the deeds specify that the seller is not obliged to provide a title of ownership or search certificate. The deeds of sale also impose servitudes requiring the buyers to build a single-family dwelling within a few years, while also prohibiting the construction of any other immovable as well as agricultural activities. The contracts do not expressly

refer to the existence of the submerged lands, and the uncontested evidence reveals that Zardev did not give this information to the buyers at the time of the sales. Zardev's current president said he began disclosing the existence of the submerged lands to future buyers in writing in 2008.

[19] Over the years, Zardev undertook certain transactions affecting the submerged lands. First of all, on about 10 occasions, it transferred parcels of the submerged strip of land to certain riparian owners (who are not parties to this proceeding) in exchange for a symbolic sum. Zardev's president testified that the purpose of those transactions was to regularize the titles of some riparian owners who wished to sell their lots or who had filled in the submerged lots. In addition, the evidence shows that Zardev charged the submerged lots with a number of servitudes, partly to enable the Esterel Golf Club to install and maintain a pipe for pumping water or to limit the number of boats that could be moored to a dock. It is relevant to note that the submerged lots are described as being [TRANSLATION] "[b]ounded . . . by Lake Dupuis (shown in the original cadastre)" (A.F. in the C.A., vol. V, at p. 1873). None of the respondents is a party to those deeds.

[20] In 2011, the Quebec government, pursuant to the *Act to promote the reform of the cadastre in Québec*, CQLR, c. R-3.1, undertook a cadastral renewal for, among others, the territory of the town of Esterel.

[21] In 2016, during a public consultation, the riparian owners learned of the proposed cadastral plan. They discovered to their great surprise that, between the lake

and their properties, the plan showed a long submerged strip of land, immatriculated and attributed to Zardev in the cadastral plan. All the riparian owners who testified stated that they had never known there was private property between their lots and the lake bed belonging to the state. The riparian owners lodged administrative challenges against the proposed cadastre with the responsible government department, but were unsuccessful.

[22] On July 28, 2017, the respondents filed an application in the Superior Court seeking a declaratory judgment and the cancellation of registrations in the land register. They asked the court to declare that their riparian properties include the “submerged lots” wrongly registered in Zardev’s name. In the alternative, the respondents sought a declaration that the submerged lands had been acquired by the Quebec government by acquisitive prescription. However, after the Attorney General of Quebec filed her defence, in which she stated that the submerged lands are not state property, the respondents amended their originating application and removed that alternative conclusion.

[23] In support of their principal application, the respondents stated that the submerged portion of the lots is [TRANSLATION] “for the benefit of the riparian lots” and “remains attached to the fronting immovable” (A.F. in the C.A., vol. II, at p. 358). They submitted that their lots were sold as being [TRANSLATION] “bounded by a lake, without reservation” (p. 360), not bounded by another lot. They explained that their

water access was now in jeopardy, despite the fact that they were already using these submerged lots as owners, notably to set up docks or to swim.

[24] In its defence, Zardev argued that it had intentionally retained ownership of the submerged lots when the riparian lands were sold in order to [TRANSLATION] “preserve the esthetic qualities of the town of Esterel (for example, by limiting the construction of boathouses)” (A.F. in the C.A., vol. I, at p. 230). It submitted that the deeds of sale never concerned the submerged land and that it still had full ownership of that land.

III. Judicial History

A. *Quebec Superior Court, 2021 QCCS 3306 (Chatelain J.)*

[25] The trial judge dismissed the application brought by the buyers, the respondents before this Court. First, she accepted the expert report filed by the Attorney General of Quebec and found that the submerged strip of land had been acquired by Zardev in 1957 and then incorporated into Bloc B in 1959. For this submerged portion, the lake bed is in the private domain even though the lakes are “navigable and floatable” within the meaning of art. 919 C.C.Q., which provides that, ordinarily, the bed of such an expanse of water is property of the state up to the high-water line. However, the judge concluded that the subdivided lots in Bloc B — including those eventually sold to the respondents — are bounded by the raised lake subsequent to the building of the dam. The judge observed that the subdivision plan shows the lake after the dam was

built and that [TRANSLATION] “the lot area noted in the book of reference corresponds to the size of the lots excluding the submerged portion”. She concluded that the lots subdivided for the purposes of sale do not include the submerged strip of land, which remains a part of Bloc B without a cadastral survey (para. 62).

[26] Second, the judge ruled that the lots sold, as described in the deeds of sale entered into by Zardev and the respondents or their predecessors in title, were only the subdivided lots, which, in view of her previous conclusion, did not include the submerged strip of land. She took into account the fact that the deeds of sale describe the lot sold as being “bounded by Lake” and refer to the immatriculation numbers of the subdivided lots, without mentioning a non-immatriculated portion of Bloc B. The judge also relied on the dimensions and area of the lots sold, which exclude the submerged lots, as well as on Zardev’s conduct subsequent to the contracts, when it purportedly acted as owner.

[27] Finally, the trial judge rejected the riparian owners’ alternative argument that the submerged lands are “accessories” to their riparian lots within the meaning of art. 1718 *C.C.Q.* The judge was of the view that the submerged parcels are actually additional and distinct immovables that are not necessary for the use of the riparian lots. The judge specifically considered the rights arising from art. 981 *C.C.Q.* that guarantee riparian owners access to and use of the watercourse bordering their land. She also distinguished the present case from the jurisprudence relating to foreshores (*battures*) and non-navigable watercourses. The judge found that, in the case of a

navigable lake, the jurisprudence indicates that the common intention of the parties should be sought in order to determine the consequence for the privatized bed. The judge concluded that, in this case, [TRANSLATION] “the search for the parties’ common intention does not support the conclusion that [Zardev] wanted to sell the portion of Bloc B that was submerged and without a cadastral survey”, relying on the fact that the deeds of sale do not expressly include that portion and on Zardev’s subsequent conduct (para. 96).

[28] In the end, the judge held that Zardev is the owner of the submerged lots, and she therefore dismissed the respondents’ application.

B. *Quebec Court of Appeal, 2024 QCCA 347 (Lavallée J.A., Vauclair J.A. and Buchholz J. (ad hoc) Concurring)*

[29] The Court of Appeal, per Lavallée J.A., allowed the riparian owners’ appeal in part and declared them, respectively, owners of the submerged lots [TRANSLATION] “adjacent to the lots they own” (para. 5). The court began by rejecting the riparian owners’ argument that the submerged lots are accessories to their lands because they are necessary for their use. It found rather, as had the trial judge, that they are [TRANSLATION] “distinct and retain their own functionality” (para. 37). The court then addressed whether the submerged lots are accessories on what it considered to be a different basis, namely [TRANSLATION] “the accessory doctrine applied to navigable watercourses” (para. 38). Citing certain cases, including *Administration portuaire de Québec v. Thibeault*, 2018 QCCA 72, the Court of Appeal found that its jurisprudence

recognizes that the accessory doctrine applies to a navigable watercourse in the same manner as to a non-navigable watercourse.

[30] Focusing its analysis on the jurisprudence specific to bodies of water rather than that relating to the general law of sale, the Court of Appeal found that the trial judge's first error had been to equate the submerged strip of land with the bed of the watercourse. The determination of the high-water line must be made at the time of the royal grant, pursuant to art. 919 C.C.Q. Since the accessory doctrine can apply to the bed of a watercourse that has been granted, to a foreshore or to a beach, [TRANSLATION] "it logically follows that it can apply to a submerged strip of land" (para. 81). The trial judge had therefore erred in finding that the doctrine did not apply because the submerged strip of land is not a foreshore.

[31] The Court of Appeal stated that the judge had also erred in interpreting the jurisprudence and in making the application of the accessory doctrine dependent on the presence of an express statement to this effect in the deed of sale. The trial judge had misinterpreted *Administration portuaire de Québec*, a decision that [TRANSLATION] "is binding on the [c]ourt in this case" (para. 91). In keeping with the reasoning in that decision, the accessory doctrine can be excluded only by an express statement. The submerged lots are therefore accessories to the riparian lots and, in the absence of an express statement to the contrary, they were transferred with them.

[32] In the Court of Appeal's opinion, the parties did not expressly exclude the transfer of the submerged lands in the deeds of sale. It noted first that the contracts say

nothing about the existence of submerged lands or about the fact that the water level in the lake was raised because of a dam. The court found that it is more logical to conclude that the “Lake” boundary in the deeds of sale corresponds not to the visual boundary of the lake at the time of the sales, but to its natural boundary, that is, the high-water line at the time of the grant and the dividing line between the private domain and the public domain. The court pointed out that the riparian lots would no longer be bounded by a lake if the dam were destroyed and that it is [TRANSLATION] “completely illogical for there to be a private owner in front of the appellants’ riparian property” (para. 108). Conversely, there was no probative evidence that Zardev had wished to retain ownership of the submerged strip. The court also noted that no owner could expect there to be a strip of private land extending between their riparian lot and the public lake. Consequently, the respondents are the owners of the submerged lots. The Court of Appeal ordered the registration of the judgment against the lots (para. 6).

IV. Issue

[33] The debate centres around one simple question: Under the various deeds of sale, did the respondents purchase only the riparian lots, or did they also purchase the portion of the submerged strip of land adjacent to each of the riparian lots acquired?

[34] For the most part, the fundamental principles applicable to the sale of an immovable are not at issue in this case. Moreover, the parties on both sides accept that the riparian lots were transferred at the time of the sales entered into individually with each of the respondents over the years. They disagree over whether, at the same time,

the developer also transferred, as an accessory, ownership of the portion of the submerged land that is adjacent to each of the riparian lots sold.

[35] On appeal to this Court, Zardev rejects the characterization of the submerged lots as “accessories” to the riparian lots. It maintains that the Court of Appeal gave the accessory rule an overly broad scope, given that the submerged lots are not necessary for the use of the riparian lots. The developer points out that, in the deeds of sale, the parties specified the dimensions of the lots sold, which correspond to the area of the riparian lots, without mentioning the submerged strip of land. Almost all of the deeds of sale stated that the lot being sold was “bounded by Lake”. At present, Zardev takes this expression literally and, arguing that the trial judge made no reviewable error in interpreting the deeds of sale, submits that the parties excluded the submerged strip from the sales. Following the sales, the developer-seller says, it remained the owner of the submerged strip of land, which was therefore never sold to the respondents.

[36] The respondents counter that, on the contrary, the submerged strip of land is indeed an “accessory” to the riparian lot sold and was therefore transferred to them with the lot. They take the view that the submerged lands have a sufficient relationship of proximity, dependence and utility with the riparian lots to be considered their accessories. Nothing in the contract excludes the seller’s duty to deliver these accessories. The expression “bounded by Lake” used by the parties refers to the riparian lot and says nothing about its accessories, which are not necessarily excluded,

especially based on the jurisprudence concerning sales of riparian lands. Under the general law of sale, the property developer had an obligation, as seller, to deliver to them the property sold with all its accessories, including the submerged strip that is closely related to the riparian lots sold.

V. Analysis

[37] To address the grounds of appeal, I propose to follow the three main points proposed by the appellant, Zardev, in its outline of argument: (A) under the deeds of sale, the property sold did not include the submerged parcels; (B) the Court of Appeal allegedly erred in applying the accessory doctrine to submerged parcels that were never “accessories” within the meaning of the *Civil Code of Québec*; and (C) in the alternative, even if the submerged lots were accessories, they were excluded from the sale, and the trial judge made no error in finding that the presumption of transfer arising from the accessory doctrine was rebutted in this case.

A. *Do the Deeds of Sale Stipulate That the Principal Property Sold Also Includes the Submerged Lots?*

[38] Zardev first submits that the trial judge made no reviewable error in concluding that the deeds of sale at issue referred only to the riparian lots. On this point, I agree with Zardev.

[39] I note that the trial judge determined that the lots sold, as described in the contracts of sale, are the riparian lots resulting from the subdivision of Bloc B and that they have as their [TRANSLATION] “rear boundary the raised lake” rather than the natural high-water line before the rise caused by the dam (para. 67). The trial judge relied on various factual elements to support this interpretation, including the subdivision plan for Bloc B, the book of reference for Bloc B, the reference to the numbers of the subdivided lots, the area and dimensions indicated in the contract, the fact that the submerged lots are not mentioned and the statement “bounded by Lake . . .” appearing in the contracts (“*borné par le lac . . .*” in the deeds drafted in French) (paras. 61-62, 65 and 74-76). This conclusion is entitled to deference and reflects a thorough analysis of the evidence, the context surrounding the signing of the contracts and the cadastral history of the lots at issue (*Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, [2017] 2 S.C.R. 59, at para. 41; see also *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 50). The respondents have shown no error in this analysis warranting appellate intervention in respect of her conclusion that the principal object of the sales to the respondents was the riparian lots, in accordance with the teachings of *Uniprix*.

[40] In interpreting the deeds of sale, the trial judge had to, among other things, give meaning to the expression “bounded by Lake” used by the contracting parties to describe the boundary of the lot sold. As the judge explained, the respondents argued before the Superior Court that this statement was not a reference to the visual boundary of the lakes at the time of the sale, but rather to the natural high-water line before the

rise in the lake level caused by the building of the dam in the 1880s. In other words, according to the respondents' argument at first instance, the "Lake" boundary corresponded to the boundary of the public domain; otherwise, the deeds of sale would have described the lots sold as being bounded by a portion of Bloc B and not by a lake. The trial judge rejected this argument and refused to see any ambiguity in the description found in the deeds of sale, because such a finding would lead her to [TRANSLATION] "give the word 'lake' a meaning other than its usual meaning" (para. 81).

[41] It is true that the same expression — "bounded by Lake" — was used when Zardev itself purchased all the land of Domaine d'Estérel in 1957 and that it is conceded that, at that time, Zardev nevertheless acquired from its seller not only the riparian lots but also the submerged parcel.

[42] The trial judge was aware of this. She could have found that the expression "bounded by Lake" had the same meaning in the deed between Zardev — as buyer — and its seller in 1957, and in the deeds between Zardev — as seller — and its buyers between 1959 and 1971. She did not do so, preferring instead to give this expression its "usual meaning" (paras. 80-81) and noting that the deeds of sale do not refer to the submerged parcel and refer rather to the dimensions of the Bloc B subdivision.

[43] The trial judge's assessment of the common intention of the parties to the deeds of sale entered into by Zardev and the respondents was based on questions of fact and of mixed fact and law. The description of the lots sold confirms that, unlike in

the deed through which Zardev had itself acquired Bloc B a few years earlier, the “Lake” boundary referred not to the natural high-water line or the public domain, but rather to what the respondents could observe visually at the time their respective lands were acquired. In keeping with *Uniprix*, the trial judge was certainly entitled, in the absence of any ambiguity, to accept this usual meaning of the words as reflecting the parties’ intention.

[44] The Court of Appeal expressed its disagreement with this interpretation. It found that the words “bounded by Lake” can be interpreted [TRANSLATION] “only as corresponding to the boundary between the private domain and the public domain, that is, the original natural high-water line” (para. 108). It based this reading of the deeds on the need for consistency with the acts of concession, the risk of the water level dropping such that the buyers would no longer be riparian owners, and the idea that it would be “completely illogical for there to be a private owner in front of the [respondents’] riparian property” (para. 108; see also paras. 106-7).

[45] With respect, I disagree with this conclusion, which, in my view, contradicts the trial judge’s interpretation in the absence of any true reviewable error. The purpose of any exercise of contractual interpretation is to determine “[t]he common intention of the parties” (art. 1425 C.C.Q.). It is therefore not a matter of giving precedence, in light of information not known to the parties at the time, to the interpretation of the contract that seems most logical in retrospect or to the one that avoids what are thought to be undesirable consequences. The interpreter must put

themselves in the parties' position at the time the contracts were formed in order to determine what their true intention was at that time, in light of the general context brought to their attention (*Uniprix*, at paras. 37-41; see also D. Lluelles and B. Moore, *Droit des obligations* (3rd ed. 2018), at No. 1609). The points raised by the Court of Appeal to contradict the trial judge's contractual interpretation are instead facts that, based on its own conclusion, were not brought to the buyers' attention and went against their reasonable expectation (see para. 111).

[46] For example, given that the deeds of sale exclude the seller's obligation to provide titles of ownership or search certificates, it seems to me that "consistency" between the deed of sale and the words used in the grant a century earlier is not a relevant factor in discerning the intention expressed by the parties at the time the contracts were signed. Similarly, given that the Court of Appeal correctly found that the buyers had not been informed of the existence of the submerged strip of land, let alone the existence of a "natural" high-water line distinct from the "raised" one, it is incautious to infer that they considered scenarios involving the destruction of the dam and drafted their contracts accordingly (see paras. 107 and 111). Respectfully, it is difficult to arrive at the conclusion that the parties truly intended the "Lake" boundary to correspond to an abstract "natural" high-water line that was situated somewhere below the waters of the lake at the time of the sale, when the buyers were not even aware that such a line existed. These facts, and this informational imbalance, may be relevant when considering the free and informed nature of the buyers' consent or the seller's duty to inform. However, they cannot be used at the contractual interpretation

stage to supplant the true intention of the parties in favour of a contract that is thought to be more “logical” or that avoids what are thought to be adverse consequences.

[47] In short, I agree with Zardev that, in light of this Court’s discussion in *Uniprix*, the Superior Court judge made no reviewable error in interpreting the deeds by concluding that the riparian lots are bounded by the raised lake.

[48] To be clear, this conclusion does not resolve the separate question of whether the submerged lots are included in the sale as accessories to the riparian lots, the principal property in the deeds of sale at issue. The trial judge properly addressed this question in a different section of her reasons, after determining that the principal object of each of the sales to the respondents was the riparian lots, which did not include the submerged parcel.

[49] In focusing on the riparian lots as the lots sold in that first part of her analysis, the trial judge considered what the *Civil Code of Québec* describes as “property” transferred within the meaning of art. 1708 para. 1, which defines the principal object of a sale. In the *Civil Code of Québec*, this “property” is set out separately from “its accessories” in art. 1718, which specifies that the seller is bound to deliver “the property in the condition it is in at the time of the sale, with all its accessories” (the same distinction between the “thing”, as the principal object of the sale, and “its accessories”, was found in the *Civil Code of Lower Canada* in arts. 1472 and 1499; see, e.g., W. deMontmollin Marler, *The Law of Real Property — Quebec* (1932), at para. 496).

[50] The judge therefore proceeded correctly: scholars confirm this distinction between the “property sold” and “its accessories” (see, e.g., Jobin and Cumyn, at paras. 1 and 105). I agree with the trial judge that the fact that the first question, which concerned the “lot sold”, was decided in Zardev’s favour did not necessarily resolve the second question, which concerned the accessories to the lot sold. This second question required the judge to consider, as she did, art. 1718 C.C.Q. as well as the relevant jurisprudence that [TRANSLATION] “abounds with examples of what constitutes an accessory” (para. 87). On this point, she concluded that [TRANSLATION] “[t]he submerged lots are not accessories to the lots sold” (heading of para. 85), a conclusion challenged by the respondents before the Court of Appeal and before this Court. I turn now to consider this question.

B. *Are the Submerged Lots “Accessories” to the Riparian Lots and, as Such, Included in the Sales?*

[51] To resolve this second issue — whether the submerged lots are accessories to the riparian lots sold — I propose a three-part analysis: first, explaining the relevance of the “accessory follows the principal” rule in the law of sale; second, properly identifying the legal test for determining when property in the nature of submerged lots must be characterized as an accessory to a riparian lot under the general law of sale; and third, considering how these principles apply to the deeds of sale in this case.

(1) Relevance of the Accessory Rule in Quebec’s Law of Sale

[52] The parties agree on the existence and the importance in Quebec civil law of the rule that “the accessory follows the principal” and on its relevance in the law of sale, where it requires, *inter alia*, the simultaneous transfer of ownership of the principal property sold and the accessories to that property, absent a clause stating otherwise. Indeed, Zardev is not alleging that the Court of Appeal applied a rule that does not exist in the civil law by finding that the accessory — here the submerged lots — follows the principal, but rather that it misapplied the rule by [TRANSLATION] “g[iving] the accessory doctrine an unprecedented scope” (A.F., at para. 39). Zardev properly recognizes that the accessory rule in the sale context [TRANSLATION] “applies both to material accessories (corporeal property, whether movable or immovable) and to legal accessories (real rights, like a servitude, or personal rights, like a warranty)” (para. 46). The respondents agree with Zardev on this point, even going so far as to describe the accessory rule as a “basic principle of the civil law of contracts” (R.F., at para. 1; see also paras. 48-51).

[53] Accordingly, the disagreement between the appellant and the respondents relates not to the existence of the accessory rule, but mainly to the question of the applicable legal test for determining whether property is an “accessory” to other property. On the one hand, the appellant takes the position that an accessory must not simply be [TRANSLATION] “useful” for the use of the principal property, but must rather be “necessary” for such use (A.F., at paras. 53-54). In Zardev’s view, the submerged strip is in no way necessary for the use of the riparian lots, which means that it cannot be considered their accessory in the case of the sales at issue. Zardev agrees here with

the Court of Appeal's opinion, expressed at para. 37 of its reasons, but faults it for deviating from this test when applying it to the facts of the case. Zardev argues in particular that there is no separate basis for the accessory doctrine that applies specifically in the context of bodies of water (A.F., at paras. 54 and 89).

[54] On the other hand, the respondents argue in favour of a more flexible definition of the notion of accessory in the sale context, a definition that would be based on a relationship of proximity, dependence and utility between the accessory and its principal, rather than on a relationship of necessity (R.F., at para. 58). Considered from this perspective, they say, the submerged lots are clearly accessories that Zardev had to deliver with the riparian lots, pursuant to art. 1718 *C.C.Q.* Relying in particular on the jurisprudence applicable to legal warranties, which are understood as legal or statutory accessories to the principal property, the respondents define an accessory “as a right or thing that is closely related to the principal and intended for its direct benefit, with a general and flexible view of protecting the normal expectations of a user of the principal property” (R.F., at para. 58; see also paras. 52-57 (emphasis deleted)). The respondents submit that the accessory rule in the law of sale, set out in art. 1718 *C.C.Q.*, must be understood as reflecting this flexible test (paras. 60-65). Finally, in contrast to Zardev, the respondents adapt the general accessory rule to the specific rules for bodies of water, including art. 919 *C.C.Q.*, in order to conclude that any private land situated below the high-water line of a lake or river, whether the expanse of water is navigable or non-navigable, must be considered an accessory to the adjacent riparian lot (R.F., at paras. 66-119).

[55] In order to answer the questions raised by the parties and provide a reliable basis for the application of the accessory rule to the submerged lots at issue in this case, I propose to review (1) the place of the general accessory rule in Quebec private law and (2) its specific application in the general law of sale.

(a) *The Accessory Rule as a “General Principle of Private Law”*

[56] While the parties are poles apart on whether the submerged lots should be characterized as accessories included in the sales of riparian lots, they do, however, share essentially the same view on the place of the idea that the accessory follows the principal in Quebec private law.

[57] Often associated with the maxim *accessorium sequitur principale*, the “accessory rule” is based on the idea of a natural or rational connection between two items captured by law. This connection involves a [TRANSLATION] “dependence” of the accessory on the principal, such that the treatment of the accessory item is tied to that of the principal (M. Cottet, *Essai critique sur la théorie de l’accessoire en droit privé* (2013), at p. 157). This rule that the accessory follows the principal requires that the accessory be treated, in law, the same way as the principal, thereby reflecting the [TRANSLATION] “hierarchy” in their relationship: “the accessory is only a complement, a supplement. It follows the principal to which it is joined, it cannot lead it” (G. Goubeaux, *La règle de l’accessoire en droit privé* (1969), at p. 35).

[58] Property law is often referred to as the main, though not exclusive, field in which the maxim that the accessory follows the principal applies in Quebec civil law (see A. Mayrand, *Dictionnaire de maximes et locutions latines utilisées en droit* (4th ed. 2007), at p. 7, “*accessorium sequitur principale*”; S. Normand, *Introduction au droit des biens* (4th ed. 2026), at p. 535). Professor Jean Carbonnier explains the basis for the rule in French property law as follows: [TRANSLATION] “. . . materially distinct, two items of property may be united by a sort of attraction, if one is an accessory to the other, that is, if it complements it in some way” (*Droit civil* (2004), vol. II, at para. 721).

[59] It is understood that the accessory property serves the principal property and therefore follows it in law, unless otherwise indicated. Authors Hubert Reid and Simon Reid, for their part, explain the scope of the accessory rule in property law as follows: the maxim is a [TRANSLATION] “[l]egal rule under which the accessory property, when joined to the principal property, loses its individuality and is incorporated into the patrimony of the owner of the principal property or else follows the legal status of that property” (*Dictionnaire de droit québécois et canadien* (6th ed. 2023), at p. 9, *sub verbo* “*accessoire*”). That being said, the maxim has a broader scope and is sometimes applied where property is not directly involved. For example, in *Pauze v. Gauvin*, [1954] S.C.R. 15, this Court referred to the *accessorium sequitur principale* rule in the law of obligations to observe that [TRANSLATION] “in certain cases the nullity of the principal contract, which exists in isolation and on its own, results in the nullity of the accessory contract which can exist only if it is connected with the

principal contract” (p. 20; see also *Fortin v. Chrétien*, 2001 SCC 45, [2001] 2 S.C.R. 500, at paras. 38-39).

[60] According to Professor Philippe Jestaz, in French civil law the adage bears a truly normative status as a “general principle of law” because it has existed for a long period, is peremptory in nature and purports to be general in its application (see “Principes généraux, adages et sources du droit en droit français”, in *Autour du droit civil — Écrits dispersés, Idées convergentes* (2005), 222, at p. 226). Yet, this [TRANSLATION] “common sense maxim, and also legal rule”, is only “implied by several provisions of the [Civil Code]” (Carbonnier, at para. 721 (emphasis added)). The same can be said of Quebec law.

[61] The maxim *accessorium sequitur principale* is cross-cutting in scope, touching various fields of Quebec law, as shown by the multiple applications of the rule set out in several books of the *Civil Code of Québec*. In addition to its role as the very source of the law of accession (arts. 954 et seq.), there are specific expressions of it in matrimonial law (art. 455) as well as in the law of usufruct (art. 1124) or servitudes (art. 1178). Elsewhere, the *Civil Code of Québec* provides that an employer has a right to resiliate a lease that is “accessory” to a contract of employment upon the termination of the contract (art. 1976), that the assignment of a claim entails the assignment of its “accessories” (art. 1638), and that suretyship extends to “all the accessories of the principal obligation” (art. 2344). The maxim also applies to successions for a legatee: [TRANSLATION] “A legatee is entitled not only to the bequeathed property, but also to

its accessories”, write Professors Jacques Beaulne and Christine Morin, citing the rule set out in art. 744 para. 1 C.C.Q., which provides that “[b]equeathed property is delivered, with its accessories” (*Droit des successions* (5th ed. 2016), at para. 1075). This provision of the *Civil Code of Québec*, specific to legacies, is analogous to art. 1718, which provides that the seller must deliver the property sold “with all its accessories” (see, in French law, H. Roland and L. Boyer, *Adages du droit français* (4th ed. 1999), at p. 1, “*Accessorium sequitur principale*”).

[62] It can therefore be said that the legal effect of the rule rests not on a mere textual foundation, but rather on its status as a “general principle of law” that, according to the preliminary provision of the *Civil Code of Québec*, governs persons, relations between persons, and property, in harmony with the *Civil Code of Québec*. These general principles of law, as they are widely understood, [TRANSLATION] “are like the soul and backbone of the system” of Quebec civil law (A.-F. Bisson, “La Disposition préliminaire du *Code civil du Québec*” (1999), 44 *McGill L.J.* 539, at pp. 556-57). Indeed, in almost all of its fields, private law identifies an accessory and a principal and applies the same legal treatment to the former as to the latter, despite there being no explicit general statement of the rule in the *Civil Code of Québec*. In the sale context, as we will see, the general principle of law that “the accessory follows the principal” is only partially set out in the text of the *Civil Code of Québec*, but this in no way precludes it from being part of the positive law in this area (see *Cie Immobilière Viger Ltée v. Giguère Inc.*, [1977] 2 S.C.R. 67, at p. 76; *Mohawk Council of Kanesatake v. Sylvestre*, 2025 SCC 30, at para. 66). The maxim’s Roman law origins do not confine

the concept to the civil law in the French tradition; *Black's Law Dictionary* (12th ed. 2024), at p. 1948, contains a similar entry, “[a]ccessorium non ducit, sed sequitur, suum principale” (“An accessory does not lead, but follows, its principal”), and in *Legal Maxims with Observations and Cases* (1878), English author George Frederick Wharton relates it to the transfer of property as follows: “This maxim may also be translated, ‘The incident shall pass by the grant of the principal, but not the principal by the grant of the incident’”, and “all those things appurtenant, necessary for [the] enjoyment [of the principal] as such, will pass” (p. 17).

[63] Having observed the importance of this rule, I turn now to the law of sale, where the accessory doctrine has specific applications that are determinative for this appeal: the rule that the accessory and the principal are transferred simultaneously and its corollary, the rule that the seller must deliver the property sold “with its accessories”.

(b) *The Accessory Rule in the Sale Context*

[64] As the parties agree, the maxim *accessorium sequitur principale* applies in the law of sale to explain how, when the buyer acquires the property sold at the time the contract of sale is formed, the accessories follow because of the rule that [TRANSLATION] “the accessory and the principal are transferred simultaneously” (Cottet, at pp. 112 et seq.; see also Goubeaux, at pp. 141-47). Fundamentally, the rule means that [TRANSLATION] “[u]nless otherwise agreed, material accessories follow the property sold: they belong to the buyer, to whom they must be delivered” (D.-C. Lamontagne, *Droit de la vente* (4th ed. 2019), at para. 157). This rule that supplements

the intention of the contracting parties — for it can be excluded or modified by a stipulation of the parties — is codified, albeit partially, in Quebec law in art. 1718 C.C.Q., which states that “[t]he seller is bound to deliver the property in the condition it is in at the time of the sale, with all its accessories” (see Jobin and Cumyn, at para. 105; J. Deslauriers, *Vente, louage, contrat d’entreprise ou de service* (2nd ed. 2013), at No. 293; M. Pourcelet, *La vente* (5th ed. 1987), at p. 116).

[65] Even though the Quebec legislature — like the French legislature — chose to incorporate the rule in the context of the seller’s obligation to deliver, the rule that the accessory follows the principal also dictates the translatory effect of a contract with respect to ownership. The mode of acquiring ownership, of both the principal and the accessory, is “contract” (art. 916 C.C.Q.) and not “accession”, as in the case, for example, of immovable accession (see Normand, at pp. 124-25).

[66] Indeed, the very reason why the seller has an obligation to deliver the accessories under art. 1718 C.C.Q. is because the seller implicitly undertook in the first place to transfer ownership of them upon formation of the contract of sale, in accordance with the general law of obligations, which provides that a contract can transfer real rights (art. 1433 para. 2 C.C.Q.). The rule that the accessory follows the principal therefore extends beyond the seller’s obligation to deliver: [TRANSLATION] “With regard to the creation or transfer of a right, the act effecting it, though seemingly disposing of the principal property only, must be presumed, absent an express clause to the contrary, to relate as well to the accessory property . . . of the contract of sale”

(Roland and Boyer, at p. 1; see also pp. 2-3). In other words, the accessory rule adds, as the contract's implicit content, the presumption that the accessory property and the principal property are transferred simultaneously, unless otherwise indicated. Therefore, in keeping with the general rule codified in art. 1453 C.C.Q., *ownership* of the accessory is transferred upon the formation of the contract, even though delivery does not take place immediately (Jobin and Cumyn, at paras. 77 and 100; J. Huet et al., *Traité de droit civil: Les principaux contrats spéciaux* (3rd ed. 2012), at para. 11204 ([TRANSLATION] “ownership [of the principal property] is accompanied by its accessories”)). Delivery can be made at a second stage, when *detention* of the property is transferred from the seller to the buyer, who already owns and has possession in law of the principal property and the accessory property.

[67] The rule that, in the sale context, ownership and delivery of the accessory follow the principal is one of suppletive law, based on a presumption that the contracting parties will share the intention of maximizing the utility and value of the property when the contract of sale is performed. Indeed, unless otherwise indicated, it can be presumed that the seller has no interest in being left with accessory property that has become useless and that the buyer also has no wish to receive new property diminished by the fact that it has been separated from its accessory. Thus, the rule that the accessory follows the principal is first and foremost a presumption about the parties' intention:

[TRANSLATION] The transfer of ownership of the principal thing originates in an agreement of wills between the parties. Reasonable men

structure their dealings in accordance with common sense rules like the rule that needlessly paralyzing a right should be avoided. It can therefore be *presumed* that the parties agreed to transfer the accessories to the purchaser at the same time that they intended ownership of the principal thing to be transferred to him. The accessory rule does not itself effect the transfer. It is merely a maxim for interpreting intention, which serves to reveal a tacit agreement that, logically, the parties must have made. [Emphasis in original.]

(Goubeaux, at p. 141)

[68] This presumption about what the contracting parties intended, codified in art. 1718 C.C.Q., is a rule of suppletive law — in that the parties may have excluded it in the pursuit of other objectives — and it thus adds to the implicit content of contracts of sale (art. 1434 C.C.Q.). This “suppletive implied obligation” therefore arises directly from the law, without necessarily having to be explicitly agreed upon by the parties (see P.-A. Crépeau, “Le contenu obligationnel d’un contrat” (1965), 43 *Can. Bar Rev.* 1, at p. 28; Lluelles and Moore, at Nos. 1488-89). It follows that there is no need for the contracting parties to expressly signal their intention to adhere to the accessory rule (Goubeaux, at p. 147). Often, accessories are not specifically mentioned in a deed of sale, other than to exclude them from the application of the rule (*Dallaire v. Dallaire* (1891), 17 Q.L.R. 121 (Sup. Ct.), at pp. 121 and 125; Marler, at para. 496, citing *Doyle v. Couture* (1915), 48 C.S. 124 (Que.)). As Professors Jobin and Cumyn explain in discussing the sale of an immovable, [TRANSLATION] “the jurisprudence and legal scholarship impose on the seller an obligation to deliver even immovables by attachment or joining, unless otherwise stipulated” (para. 105).

[69] Following this brief overview of the accessory rule, I turn now to the question that divides the parties before this Court: What is the applicable test for determining that property is an “accessory” to the principal property sold?

(2) The Applicable Test for Characterizing Property as an Accessory to the Property Sold

[70] Zardev would adopt the test identified by the trial judge. To the extent that the submerged lots are not [TRANSLATION] “necessary for the use” of the riparian lots, the appellant says, they should not be characterized as accessories, and they must therefore be excluded from the sale (A.F., at para. 90; see Sup. Ct. reasons, at para. 88). In fact, nothing prevents the riparian owners from using the lake, including for swimming, fishing and boating. Moreover, Zardev argues, the law has resisted the idea of recognizing a material immovable — here the submerged lots — as being accessory to another immovable.

[71] The respondents, on the other hand, submit that the trial judge erred in relying on the “necessary for the use” test to decide whether the submerged lots are accessories under the general law of sale. In their opinion, the jurisprudence establishes a more flexible test than necessity, centred instead on the accessory’s relationship of utility with the principal property, to which the accessory must simply be [TRANSLATION] “closely related” (outline of argument in respondents’ condensed book, at p. 1). The respondents also argue that the jurisprudence treats sales of riparian lands

as including any submerged strip of land adjacent to a riparian property as an accessory if that strip also belongs to the seller, as is the case here.

[72] In my view, by ignoring the destination of the principal property as established by the parties in the deeds of sale, the efforts of both the appellant and the respondents lack precision in identifying the proper legal test.

[73] Quebec legal scholarship on the law of sale proposes several definitions of accessories. Accessories are [TRANSLATION] “implicitly attached to the property . . . in other words, [they] are necessary for its use” (J. Torres-Ceyte, “Livre cinquième — Des obligations”, in B. Moore, ed., *Code civil du Québec: Annotations — Commentaires 2025-2026* (10th ed. 2025), 881, at p. 1107); they [TRANSLATION] “may result from the very nature of the property sold or be provided for as such in the contract” (Deslauriers, at No. 293); they are “[e]verything which, at the time of the sale, *appeared* to form part of the property, whether by nature, incorporation or destination” (Marler, at para. 496 (emphasis in original)); and all things [TRANSLATION] “that are inseparable . . . and indispensable” to the thing sold (T. Rousseau-Houle, *Précis du droit de la vente et du louage* (2nd ed. 1986), at p. 91). Other authors look to the specific context of sale to define an accessory: Professors Jobin and Cumyn note that the transfer of the accessory with the principal ensures “that the buyer is able to derive from it the enjoyment they may legitimately expect” (para. 105; see also Pourcelet, at p. 116). French authors also propose varied definitions. An accessory is, at a minimum, [TRANSLATION] “a necessary complement for the use of the thing sold” (P. Malaurie

and L. Aynès, *Cours de droit civil*, t. VIII, *Les contrats spéciaux: civils et commerciaux* (14th ed. 2001), at para. 307 (emphasis deleted)). The author Goubeaux identifies some characteristics of an accessory: it is in a [TRANSLATION] “state of inferiority relative to the principal” (p. 19); it is “only a complement, a supplement”, and it is “appropriated for the service of the principal” (p. 35). The author Cottet states that an accessory to property, in the broadest sense, is that which serves to [TRANSLATION] “facilitate or enhance the use or enjoyment of the property; permit the use of the property; ensure the peaceful use and enjoyment of the property” (p. 438). According to authors Henri Mazeaud et al., accessories are [TRANSLATION] “objects destined for the use of the thing and without which this use, as contemplated by the parties, would not be possible” (*Leçons de droit civil*, t. III, vol. 2, *Principaux contrats: vente et échange* (7th ed. 1987), at para. 940 (emphasis deleted)).

[74] Finally, it should be noted that the *Civil Code of Québec* specifies, in art. 1719, certain accessories that must be handed over to the buyer unless otherwise agreed: for example, titles of ownership in the sale of an immovable, including “a copy of the act of acquisition of the immovable, of any previous titles and of any location certificate in [the seller’s] possession” (see *Commentaires du ministre de la Justice*, vol. I, *Le Code civil du Québec — Un mouvement de société* (1993), at p. 1073). This long-established expression of the rule that the accessory follows the principal confirms its suppletive nature in the sale context; the obligation to provide titles upon the sale of an immovable can be excluded by an agreement to the contrary (see A. Lavallée, “De l’obligation légale du vendeur de fournir les titres” (1933), 36 *R. du N.* 97, at p. 100).

[75] Following the outline of the applicable legal framework, it will be helpful to clarify the notion of accessory itself and how it is shaped by the sale context and by the parties' idea of the use for which the property sold is destined. First, because an accessory is defined contextually rather than by its very essence, the notion is *functional* rather than conceptual (Goubeaux, at p. 23; Carbonnier, at No. 721). An accessory is not a notion whose content is [TRANSLATION] "abstractly determined once and for all" (Cottet, at p. 6), since it can be defined only by its function, rather than by its nature, and since its status and its relationship with the principal property sold will vary with the circumstances. In addition to being too theoretical, a conceptual definition that would purport to apply to any accessory is undesirable. To achieve their purpose, functional notions must be defined in such a way as to leave considerable latitude and flexibility, so that they are able to apply in an almost infinite number of contexts.

[76] Second, the notion of accessory is *relative*, as the author Goubeaux states: [TRANSLATION] "The notions of accessory and principal must not be considered in isolation. What is involved is an accessory-principal *relationship*" (p. 34 (emphasis in original); see also p. 22). Like others, the author Cottet recognizes the importance of the common destination that ties together the accessory and the principal, a destination that will result from the will of the parties: [TRANSLATION] ". . . there are no accessories intrinsically tied to the thing; everything depends on the destination given to it" (p. 39).

[77] Lastly, the notion of accessory is not quantitative — be it in terms of value, volume or size — but rather *qualitative* (Goubeaux, at pp. 26 and 31). Not everything

that is smaller or costs less than the principal is an accessory thereto. Such a criterion would not only be imprecise, but would also quickly lead to questionable results. [TRANSLATION] “It would be absurd”, writes the author Goubeaux, “if a difference in value or size between two items of property with nothing in common were enough to trigger a phenomenon where one is attracted by the other” (p. 26). For example, a bracelet and a necklace worn together will not be considered to have an accessory-principal relationship simply because one costs more or is larger than the other. The notion of accessory depends on a hierarchical and qualitative relationship that exists between two items of property — the accessory is destined to serve the principal, according to the will of the parties. Subject always to a contextual analysis, the examples of a halter and a horse, a spare tire and a car, or a frame and a picture have been cited to highlight the fact that the accessory serves the principal in a hierarchical relationship (Carbonnier, at No. 721). That being said, given that the accessory property must be subordinated to the principal property, it may well happen that the former is, at least in monetary value, and even in size, inferior to the latter.

[78] The notion of accessory is therefore functional, relative and qualitative. The determination of whether property is an accessory to other property necessarily depends on the context and requires a specific factual assessment in each case. In other words, the notion does not come down to a single legal test applicable in every situation. This is all the more compelling in respect of the application of the accessory rule in contract law, where the will of the parties governs. Any application of the accessory rule in this context can only serve as an extension and confirmation of the

expressed will of the parties, their implied obligations and their reasonable expectations. That being said, what can be drawn from the *Civil Code of Québec*, the legal scholarship and the jurisprudence is a general orientation for this concept, one that can guide its analysis: an accessory is property that is appropriated for the service of a principal property and is necessary for its use, in keeping with the destination of the principal property.

[79] Fundamentally, the principal-accessory relationship is a hierarchical one, which indicates that property is “subordinated” to other property (*Private Law Dictionary and Bilingual Lexicons: Property* (2012), at p. 4, *sub verbo* “accessory”). The accessory’s destination is to serve the principal, which has a purpose of its own. While [TRANSLATION] “[t]he principal pursues its own purpose”, the accessory’s purpose is “[to] complement or enhance” the principal, to “serve” it (Goubeaux, at p. 36). Thus, [TRANSLATION] “[t]he accessory can fulfill its purpose only if it is added to the principal” (p. 36).

[80] The notion of accessory depends, in part, on the destination of the principal property, because that destination must be considered first in order to understand the parties’ intended use of the property. The accessory’s destination must then be considered to determine whether this property serves the principal and tends toward the same end. In the context of the law of sale, the parties assign a destination to the principal property in the contract of sale. They explicitly or implicitly establish, in the

contract, the purpose and use of the property sold, a purpose that the accessory will have to allow for and complement.

[81] The concepts of destination and appropriation, here used as synonyms, are well known in Quebec law (see B. Roy, “L’affectation des biens en droit civil québécois: Une approche globale de la notion” (2001), 103 *R. du N.* 383, at p. 388; D. Lametti, “Destination” (2020), 66 *McGill L.J.* 47, at p. 49; S. Normand, “L’affectation en droit des biens au Québec” (2014), 48 *R.J.T.U.M.* 599). They refer to the “[p]articular end” of property or a right (*Private Law Dictionary and Bilingual Lexicons*, at p. 14, *sub verbo* “appropriation”) or, more figuratively, the [TRANSLATION] “personality” of an immovable (*Dictionnaire de droit privé et lexiques bilingues: Les biens* (2012), at p. 60, *sub verbo* “destination”, treated as a synonym of “affectation” (appropriation), quoting C. Gagnon, *La copropriété divisée* (2nd ed. 2007), at p. 129). According to Professor Gérard Cornu, [TRANSLATION] “destination” may refer to the “purpose sought” or the “end impressed upon an agreement”, or to a “use to which a thing is appropriated” (*Vocabulaire juridique* (15th ed. 2024), at p. 342).

[82] In summary, what distinguishes the accessory from the principal lies in their respective destinations. The accessory’s purpose is not to serve the user directly, but to serve other property. An accessory isolated from its principal is rendered useless and loses its *raison d’être* (Goubeaux, at pp. 76-77). This test makes it possible to quickly distinguish accessories from items of property that are merely related, but are independent of the principal. When a chair is placed in a house, serving the house itself

is not its direct and sole destination: it has its own destination, utility and value. It serves its owner directly by enabling the owner to rest, and it can be moved outside the home without losing its utility. In contrast, a window's destination is to serve other property: the house. It complements the house by protecting it from inclement weather, while allowing light to pass through. A window in isolation from the immovable into which it is incorporated is [TRANSLATION] "incomplete. It lacks something essential that the principal brings to it" (Goubeaux, at p. 44).

[83] Moreover, two items of property can be complementary to each other and serve the same purpose without one necessarily being an accessory to the other, in the absence of a hierarchical relationship. For example, a lawyer's gown and tabs both serve the same purpose: being properly attired for court. However, neither of these items is subordinated to the other; there is no hierarchical relationship between the gown and the tabs, but rather a [TRANSLATION] "community of purpose or reciprocal appropriation" established on an equal footing (Goubeaux, at p. 37). Consequently, the accessory rule will not apply, and the sale of the lawyer's gown will not result in the sale of the tabs, or vice-versa, unless there is a specific indication that this is what the contracting parties intend.

[84] Of particular importance in the context of the law of sale, the destination of property must be ascertained in light of the parties' general intention (Mazeaud et al., at para. 940). In other words, to determine whether there is a principal-accessory relationship, it will be necessary to consider the reason for the sale from the perspective

of the buyer and the seller. As we have seen, the accessory rule is a presumption about the parties' intention.

[85] The first analytical factor, centred on the appropriation of the accessory property, could suffice to define an accessory in its broadest sense. Any property appropriated for the service of other property would be its accessory, regardless of its degree of utility or necessity. However, the jurisprudence and legal scholarship properly recognize that, to compensate for the parties' silence, a test of general application is needed in order to better appreciate their implicit intention (Goubeaux, at pp. 109-12; Cottet, at pp. 42, 45 and 438-40). The test of the mere "utility" of the accessory property should be rejected, because it would not suffice to attain the objective of adequately representing the parties' presumed intention, as it would instead give [TRANSLATION] "the impression of an excessive attractive force that carries along with it, like a net cast over too wide an area, too large a number of properties" (L. Tranchant, "Les accessoires artificiels: les accessoires 'rattachés' à l'immeuble" (2018), 46 *La semaine juridique notariale et immobilière* 40, at p. 41). Accessories are rather, as authors Mazeaud et al. say, objects that are "destined for the use of the thing and without which this use, as contemplated by the parties, would not be possible" (para. 940 (emphasis deleted)).

[86] Quebec courts have adopted the "necessary for the use" test to find that a principal-accessory relationship exists, while also emphasizing the importance of a contextual analysis (e.g., *Turcotte v. Lacombe*, [1975] C.A. 305; *Assemani v. Zoltan*,

2024 QCCS 4457, at para. 207; *Serre v. Portes et fenêtres Verdun*, 2023 QCCQ 5223, at para. 20; see also, by analogy, *Corp. du cimetière Mont-Marie v. Lévis (Ville)*, 2001 CanLII 16801 (C.A.)). Authors often adopt this test, while properly pointing out that characterization as an accessory is also closely related to the parties' legitimate expectations regarding full enjoyment of the property purchased (Rousseau-Houle, at p. 91; Torres-Ceyte, at p. 1107; see also Jobin and Cumyn, at para. 105).

[87] Thus, in Quebec law, the “necessity” of the accessory for the use of the principal property sold is highly contextual and related to the circumstances of the parties, their true intention and their reasonable expectations. In other words, what will be “necessary for the use” of property sold in a given contractual context will not necessarily be so in another, because “necessity” is assessed in light of the destination explicitly or implicitly provided for by the parties. Everything will depend on context and on a consideration of the parties' general intention and reasonable expectations. To be sure, if the buyer has expressed a desire to purchase the principal property for a specific purpose — or if the seller has represented to the buyer that the property has great utility in a certain context — then the accessories that reasonably assist in ensuring the full realization of this destination will have to be transferred. The “necessity” test must not, and I emphasize this point, be applied in a technical or mechanical fashion. The purpose of this factor is only to better gauge the implicit intention of the parties to the contract of sale, which is the aim of any suppletive rule, like the one at issue in this case.

[88] A clarification is in order: given that the principal-accessory relationship depends on destinations and intentions specific to each case, it does not exist in a permanent and fixed manner, but rather at a precise point in time between two contracting parties (Goubeaux, at pp. 43-44). In the sale context, it is therefore necessary to look to the moment of exchange of consents to determine what property, if any, must be transferred pursuant to the accessory rule (Marler, at para. 496). That is when ownership of the accessory property is acquired, if such is the case, by the effect of the contract (arts. 916 and 1453 C.C.Q.). Once the buyer has acquired the accessory property, the buyer will of course be free to use and modify it in accordance with their prerogative as owner. Such modifications after the contract of sale is signed will logically not cause the property in question to retroactively lose its accessory character fixed at the time the contract of sale was formed.

[89] I emphasize that the accessory property must be necessary for the *use* of the principal property as contemplated by the parties, not for its *existence* from an objective standpoint. As the author Goubeaux notes, a thing that is necessary for the very existence of another — for example, the engine of a car — is instead a constituent element of the principal, not its accessory: [TRANSLATION] “The principal may absolutely need the services supplied by the accessory if its use depends on them. But if it owed its existence to the accessory, it would itself be in the position of an accessory” (p. 56). In short, an accessory is property that is appropriated for the service of a principal property and is necessary for its use, in keeping with the destination of the principal property. To find that a principal-accessory relationship exists, the first

step is to consider the destination of the principal property as established by the parties to the contract of sale. The second step is then to determine whether the property said to be an accessory is destined by its appropriation to serve that principal property as well as whether it is necessary for the use of that property, such that the buyer can derive from it the enjoyment contemplated by the parties to the contract.

[90] In closing, I reiterate that the accessory rule is fundamentally a [TRANSLATION] “common sense” rule that depends first and foremost on an assessment of the facts and the specific context of each contract of sale (Goubeaux, at p. 115). The analysis done by a judge faced with such a question will be highly contextual and specific to each case. Where the judge has applied the correct legal test, deference will be owed to their ultimate, and highly factual, determination (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 26).

(3) Application of the Principles to This Case: The Submerged Lots Were, at the Time of the Sales, Accessories to the Riparian Lots

[91] Zardev maintains that the Court of Appeal erred in concluding that the submerged lots are accessories to the riparian lots. Applying the test of necessity, it takes the view that land, even when submerged, cannot be an accessory to other land, unless an exception applies. The appellant insists that the current situation differs from the precedents that have applied the accessory doctrine to the beds of non-navigable watercourses and the foreshores and beaches of navigable watercourses (A.F., at paras. 58-62). It submits that the submerged strip is [TRANSLATION] “a distinct immovable,

which is not ‘necessary for the use’ of the riparian lots and which retained its own utility even after the rise in the lake” (para. 90). Zardev refers to art. 981 C.C.Q., which recognizes that riparian owners have a right to access and use the lake or river, and art. 919 C.C.Q., which, it says, indicates that separate ownership of the riparian land and the lake bed is the norm in Quebec law. The appellant adds that the riparian owners gain no advantage from being adjacent to the state, since they have riparian rights in any event. Finally, it regards as hypothetical the scenario of a significant drop in the water level resulting from the dam being taken down, and it contends that, even in such a case, the riparian owners would potentially have a right of way to the lake.

[92] As for the respondents, they take the view that the submerged lands are accessories to the riparian lots. They begin by describing the “ancestral rules of concession of State-owned riparian land”, which, they say, indicate that any submerged private land must be considered an accessory to the riparian land adjacent to it at the time of a royal grant (R.F., at para. 66). Relying on *Massawippi Valley Railway Co. v. Reed* (1903), 33 S.C.R. 457, and *Québec (Procureur général) v. Tanguay-Bédard*, [1978] AZ-51216610 (Que. C.A.), the respondents then suggest that the bed of a watercourse is presumed to be an accessory to the adjacent riparian lot, regardless of whether the waters are navigable. They submit that the submerged lands in this case have the same degree of physical proximity as other beds of watercourses and that the same logic should therefore apply here. The buyers had a reasonable expectation, they say, that they would own any private land between their riparian lot and the public lake.

[93] Respectfully, in light of the above analysis of the notion of accessory and the arguments made by the parties, I am of the opinion that the trial judge erred in law with regard to the legal standard to be applied in determining whether property is an accessory to other property (see *Housen*, at para. 33; *St-Jean v. Mercier*, 2002 SCC 15, [2002] 1 S.C.R. 491, at paras. 48-49). The trial judge concluded that the submerged lots do not fit the notion of accessory because [TRANSLATION] “it cannot be said that ownership of the submerged lots is necessary for the use of the plaintiffs’ non-submerged lots”, a test that the Court of Appeal endorsed (para. 88; see also C.A. reasons, at para. 37). In so doing, the trial judge applied an overly narrow and one-dimensional view of the notion of accessory and did not consider the parties’ intention as to the use of these lots, the respective destination of the two properties, and the buyers’ reasonable expectations.

[94] It bears repeating that, in this case, the means by which the respondents acquired ownership of the riparian lot was a contract and that, according to their argument, the same deed of sale ensured the acquisition of submerged lands as accessories. In this regard, to resolve the question of whether the submerged land, as an accessory, follows the riparian lot, the principal object of the contracts of sale, it is necessary to look first and foremost to the intention of the parties as expressed in the deeds of sale. The cornerstone of the analysis must therefore be the intention of the parties and not an abstract application of the test of “necessity”, assessed objectively without regard to the common intention of the buyer and the seller.

[95] For the reasons that follow, I am of the view that the submerged lots at issue were, at the time of the sales, accessories to the riparian lots. Ownership of the submerged lots was necessary to ensure the expected use and peaceful enjoyment of the riparian lots, and the destination of the former is to serve the latter. That being the case, contrary to what the respondents argue, my conclusion does not depend on the existence of a general ancestral rule that any private land situated under water is an accessory to the adjacent riparian lands. Since it is not in dispute before this Court that the submerged lands are in the private domain, the rules for delimiting the public and private domains are not relevant in this case. More importantly, as we have seen, the notion of accessory is functional and relies on the overall intention of the parties, and it therefore does not lend itself to the formulation of absolute rules that apply in every situation. Here, as in many other civil law matters, each case must be considered on its own facts.

[96] For the same reason, I am of the opinion that it cannot categorically be said that an immovable or land can never be an accessory to another immovable or other land. I also note that Zardev itself recognizes that land may, in exceptional circumstances, be an accessory to other land (see A.F., at paras. 55-59). An approach that flatly denies this possibility would be inconsistent with the functional and contextual nature of the notion of accessory. It is true that, as the author Goubeaux notes, the soil, *relative to the movables and immovables erected upon it*, seems at first glance to be [TRANSLATION] “the principal *par excellence*” pursuant to the maxim *superficies solo cedit* (“the surface yields to the soil”) (p. 49; see also p. 50). That said,

there is no reason why land appropriated to the use of other land cannot, at least temporarily, be an accessory thereto (pp. 51-52). Goubeaux himself lists, as examples of immovables accessory to another immovable that must by operation of law be transferred with it, a water intake channel for a mill (pp. 106-7) and a garden adjoining a home (p. 110; for a similar example in Quebec jurisprudence involving an aqueduct accessory to a neighbouring immovable, see *Dallaire*). In fact, in the context of legacies, the *Civil Code of Québec* provides that “any accessory or annexed immovable property” must be presumed to be included “in the legacy” for the purposes of the accessory rule in this field, which is similar in several respects to the one in question here (art. 745; see also Beaulne and Morin, at para. 1077; P. Ciotola, “Le testateur et son clone inavoué, le juge ou l’art de concilier formalisme et volontarisme dans l’interprétation testamentaire: à la recherche du sens des expressions ou des institutions auxquelles fait référence le testateur” (2005), 107 *R. du N.* 239, at pp. 264-65).

[97] Like the appellant, I acknowledge that it will no doubt be rare, under the test described above, for land to be recognized as an accessory to a lot sold. Usually, land is, by its nature, independent property that can have many possible uses, often at the same time. For this reason, there is frequently a common intention to individualize each parcel of land. It will therefore be difficult for a buyer to show that, according to the intention of the parties, the lot alleged to be an “accessory” has no purpose of its own but rather is destined to serve another lot and, *a fortiori*, that ownership of that land is necessary for the use of the lot purchased. I note, however, that the jurisprudence recognizes a specific context — the one dealt with here — in which two parcels of land,

by their very nature, are closely related, often in a hierarchical manner: riparian land and “its” adjacent submerged land (“*ex jure naturae*” (“by natural law”), to use the expression of Taschereau C.J. in *Massawippi*, at p. 469). Thus, the jurisprudence unquestionably recognizes that, in a setting with a body of water, land can be an accessory to other land, whether the expanse of water is navigable or not (*Massawippi*; *Société du Port de Québec v. Lortie-Côté*, [1991] R.J.Q. 25 (C.A.); *Tanguay-Bédard*; *Administration portuaire de Québec*, at paras. 90-91). Ultimately, even for land, everything depends on the will of the contracting parties.

[98] To determine whether the “accessory” property serves the principal, it is necessary to first determine the intended use and the appropriation of the latter at the time of the sale, that is, the riparian lots in this case. On this point, there is clear and unanimous evidence: the riparian lots are destined for lakefront vacation homes.

[99] First, Zardev purchased the lots at Domaine d’Estérel in 1957 on the express condition that it would continue developing a residential neighbourhood, to the exclusion of any other commercial activity (A.F. in the C.A., vol. III, at pp. 1082-84). Second, the contracts of sale entered into by Zardev and the respondents impose on the buyers, by means of a “special servitude”, an obligation to build a residential home of a certain value, to the exclusion of any other commercial or agricultural activity (see A.F. in the C.A., vol. II, at pp. 367-69). Moreover, the servitude provides that [TRANSLATION] “the purchaser shall not have the right to grant to anyone nor in favour of any other immovable property without the written authorization of the vendor, any

servitude or right of passage whatsoever on the property sold, with or without consideration” (p. 368). This special servitude is a strong sign that, in keeping with the parties’ intention, the destination of the riparian lot sold is to serve as a private and exclusive vacation home site, since the parties wished to ensure that only one cottage could be built per lot, and they prohibited titled access to the lake by non-owners of a riparian lot. The tranquility of the location is therefore central to the parties’ intention and to the destination of the lots sold. Finally, the statement that the lot sold will be “bounded by Lake” indicates that the lot sold will necessarily be riparian. This means that Zardev sold, and the respondents or their predecessors in title purchased, a lot with a title providing direct access to the water.

[100] The testimony of Robert Lavigne and Champlain Charest, the only witnesses who were parties to the contracts of sale at issue, confirms that this destination as a waterfront vacation home site was the one understood by everyone. When asked about why he had chosen to settle in Esterel, Mr. Lavigne explained that he had purchased the lot because [TRANSLATION] “it’s a waterfront lot. That’s what we were looking for” (A.F. in the C.A., vol. VII, at p. 2489). In answer to the same question, Mr. Charest explained that, since he had been raised on the riverfront, he had chosen to settle in Esterel specifically to be [TRANSLATION] “on a lake” (p. 2532). Mr. Zarbatany, Zardev’s president, admitted that the value of the riparian lots is closely tied to their riparian nature and the enjoyment of the lake: “. . . the value of a property in Estérel is having a boat on the lake . . .” (p. 2673).

[101] Accordingly, this destination of the “principal” property — the riparian lots — was clearly established by the parties: lands intended for waterfront vacation homes. For the purchasers, it was therefore a matter of gaining direct access to the expanse of water for recreational purposes, an essential component of the value and destination of the lots.

[102] Consequently, is ownership of the submerged lots necessary to secure this specific use of the riparian lots and ensure that “the buyer is able to derive from it the enjoyment they may legitimately expect” (Jobin and Cumyn, at para. 105)? Before this Court, the appellant submits that the riparian owners are able to make full use of their land, notably through the riparian rights set out in the *Civil Code of Québec*. I respectfully disagree. First of all, its own conduct tends to show the opposite: the submerged lot can in fact be used by Zardev to interfere with the peaceful enjoyment of the riparian lots and, as its president himself said, to [TRANSLATION] “control the lakefront” (A.F. in the C.A., vol. VIII, at p. 2900). I reiterate that Zardev has already used the submerged lots to limit the number of boats that can be moored to a dock not owned by it. This point is not determinative of the principal-accessory relationship between the riparian and submerged lots, given that such an analysis must be done at the time of the sale, that is, when the transfer of ownership occurs. However, it helps to demonstrate that ownership of the submerged lands is necessary to ensure peaceful enjoyment of the riparian lot.

[103] Second, I am of the view that art. 981 *C.C.Q.* does not in itself serve to ensure that the riparian lots can be used in a manner consistent with their destination in the deeds of sale. The fact that a private owner has retained ownership of the lake bed is precisely what puts the respondents' status as "riparian owners" at risk. Indeed, the evidence shows that the artificially raised level of the lake can vary from season to season, given that it already fell 1.4 metres when the water level was artificially lowered to carry out a cleaning operation (A.F. in the C.A., vol. VIII, at pp. 2776-77). If such a situation were to occur again temporarily, or even permanently if the dam were taken down, the respondents' properties would lose their "riparian" character to the submerged lots that would become dry land again, and they could therefore no longer benefit from art. 981 *C.C.Q.* Moreover, it is entirely possible that the owner of the submerged strip of land could decide to fill it in. That owner would then replace the respondents as the "riparian owner" on Lac Masson and the rights holder under art. 981 *C.C.Q.* These risks, some of which have materialized while others still remain hypothetical, must be considered in the analysis, especially when the very destination of the property purchased includes an aspect of seeking peacefulness and quiet exclusivity. This argument by the appellant must therefore be rejected.

[104] I would add that the buyers' legitimate expectations, which arise directly from the appropriation of the riparian lots made by Zardev, go beyond the mere right to access the water codified in art. 981 *C.C.Q.* The respondents purchased a lot "bounded by Lake", not a lot with a mere right of non-exclusive access to the lakeshore. Unlike a right of ownership, the right conferred by art. 981 *C.C.Q.* does not ensure

exclusive and peaceful enjoyment, enforceable against all. On the contrary, art. 981 para. 2 C.C.Q. provides, as an express limitation, that it is prohibited to “prevent other riparian owners from exercising the same right”. However, the destination of the principal lots as lands for waterfront vacation homes created a reasonable expectation among the buyers that they would have peaceful and exclusive enjoyment of their access to the lake, subject only to the servitudes and rights expressly reserved to the seller. As author Yvette Marie Kieran has observed: [TRANSLATION] “This is the advantage of riparian ownership: only riparian owners can freely access the watercourse and set foot on the banks” (“Histoire d’eau — Guide à l’intention des notaires” (1996), 98 *R. du N.* 145, at p. 192). The presence of a third party that owns a portion of the lake bed necessarily compromises this exclusivity and disturbs the peaceful enjoyment legitimately suggested by the appropriation of the property.

[105] I note again that this case arises from a fact situation that is very rare in Quebec, where the bed of a floatable and navigable lake is in the private domain, as an exception to art. 919 C.C.Q. (see B. Beaulieu, “La genèse de la délimitation des domaines en milieu hydrique”, in S. Normand, ed., *Mélanges offerts au professeur François Frenette: Études portant sur le droit patrimonial* (2006), 195, at pp. 198-99). Indeed, in the usual case where the riparian property is directly bordered by state property, two things ensure peaceful and continuous enjoyment of the riparian lot, without it being necessary to own the bed of the lake as well. First, Quebec law recognizes that, with some exceptions, any person may enter on state lands (*Act respecting the lands in the domain of the State*, CQLR, c. T-8.1, ss. 1 and 53), which

guarantees legal access to the water, even if the level of the lake falls. Second, any owner adjacent to water property in the domain of the state may, without authorization, build a dock or boathouse not exceeding the dimensions prescribed by law (*Regulation respecting the water property in the domain of the State*, CQLR, c. R-13, r. 1, s. 2). In all cases, the relationship between the riparian owner and the public water is governed by express and foreseeable legal rules. Here, the buyers legitimately expected to enjoy these advantages by purchasing the property. Thus, the appellant's argument that the riparian owners gain no advantage from being adjacent to the state must be rejected.

[106] In short, the transfer of ownership of the submerged lot was necessary to secure full use of the riparian lot in keeping with its destination as a vacation home site agreed on by the parties, a use that includes exclusive access to the shore and peaceful and continuous access to the lake.

[107] The principal-accessory relationship is also apparent from the destination of the submerged lots, which is clear both from their nature and from the use assigned to them by their owners over the decades. These lots do not serve any purpose of their own, independent of and separate from that of the riparian lots. There exists between them a hierarchy characteristic of a principal-accessory relationship that reflects the destination agreed on in the deeds of sale at issue: the submerged lands — accessory property — serve the riparian lots — principal property.

[108] Since 1881, the submerged lots have comprised the first few metres of the bed of the raised lake. Covered by about 1.5 metres of water, they are not buildable in

their current state without major infilling work. They are also enclosed and inaccessible otherwise than by crossing the riparian lots. While as a general rule land has multiple possible destinations, their number is greatly reduced here by the natural situation of the lot. It is difficult to imagine that these lands could have some independent use of their own, and the appellant has not proposed any such use. In any event, no evidence was adduced to this effect. On the contrary, considered in their current situation, which is the same as it was at the time of the sale, these lots seem unusable. Lastly, ownership of the submerged land does not in itself prevent navigation; the *Civil Code of Québec* expressly provides for the right of any person who has legal access to a lake or river to “travel” on it (art. 920).

[109] Having concluded that, at the time of the sales, the submerged lots were accessories to the riparian lots because they were destined for the use of the riparian lots and necessary for that agreed use, I must now consider whether the parties nonetheless excluded the application of the accessory rule by clearly expressing their intention to do so.

C. *Did the Parties Exclude the Submerged Lots Upon the Sale of the Riparian Lots?*

[110] I will now address Zardev’s alternative argument: that the parties excluded the application of the accessory rule, and more specifically the transfer of the submerged lots. According to Zardev, the contracts clearly exclude the transfer of the submerged lots, mainly because they stipulate that the lot sold is “bounded by Lake”. The Court of Appeal therefore erred, it says, in substituting its opinion for that of the

trial judge in the absence of a palpable and overriding error (A.F., at paras. 110-35). The respondents, for their part, maintain that the statement “bounded by Lake” is not an express exclusion of the submerged lands. They emphasize the fact that Zardev never revealed the existence of the submerged lots to the buyers and thus breached its duty to inform its contractual counterparty (R.F., at paras. 130-47).

[111] I note that the appellant and the respondents properly point out, as did the Superior Court and the Court of Appeal, that the accessory rule is not absolute in its application in the sale context and that it can be excluded by a clear expression of the parties’ intention to this effect. Indeed, legal scholars confirm that the nature of the adage *accessorium sequitur principale* is to supplement intention and that it applies to a sale [TRANSLATION] “absent a clause expressly stating otherwise” (Carbonnier, at No. 721; see also Roland and Boyer, at p. 3; Lamontagne, at para. 157).

[112] I would add that the question of whether the parties clearly excluded the application of the accessory rule is a question of mixed fact and law, in respect of which deference is normally owed to a trial judge’s decision (*Uniprix*, at para. 41; *Sattva* at para. 50). That being said, this standard of deference does not apply in the present case, because, with all due respect, the trial judge did not decide the relevant question and thus erred in law.

[113] At paragraphs 96 to 98 of her analysis, the trial judge in fact confined herself to determining whether [TRANSLATION] “the common intention of the parties” revealed that they had definitely wanted these submerged lots to be sold as principal

property. She found that the evidence did not show such an intention, noting in particular that there was [TRANSLATION] “no mention in the deeds of sale of [Zardev’s] intention to sell the submerged portion” (para. 96). The trial judge was therefore seeking to determine whether the parties had *included* the submerged lots in the contracts as the principal object, not whether the parties had unequivocally *excluded* them as accessories. I agree with the Court of Appeal that this was an error of law by the judge (para. 83). An accessory does not have to be mentioned in a contract of sale for the accessory rule to apply. On the contrary, as we have seen, the accessory rule applies despite the parties’ silence, and the fact that an accessory is not mentioned in a contract cannot, without contradicting the rationale for the rule, justify its exclusion. In *Dallaire*, for example, as in the case before us, the seller argued that he had not sold the items of property alleged to be accessories because “neither is mentioned in the deed of sale” (p. 123). However, the Superior Court, whose decision was affirmed on review, held that the seller has an obligation to deliver the accessories even though they are not referred to in the deed of sale (pp. 123-25; Marler, at para. 496; Torres-Ceyte, at p. 1107).

[114] Accordingly, as the respondents put it, the trial judge’s analysis “asks the wrong question: it examines whether the submerged land is part of the principal property of the sale. It does not examine whether the submerged land, despite being an accessory to the principal property, was excluded from the scope of the sale” (R.F., at para. 139 (emphasis in original)). With respect, the trial judge thus erred in law by

applying the suppletive accessory rule as a rule of inclusion rather than a rule of exclusion. I will therefore endeavour to answer this question below.

[115] As has been summarized above, the parties disagree on the degree of “clarity” required to exclude the submerged lots from the accessory rule. This debate crystallizes around the following point: Is the “Lake” boundary, specified in almost all of the contracts of sale, a sufficiently clear exclusion of the submerged lots? Like the Court of Appeal, I would answer this question in the negative, albeit for different reasons.

[116] First, while I accept the interpretation whereby the “Lake” boundary corresponds to the physical water level at the time of the sale, I note that this word is simply part of the description of the principal property and cannot in itself serve to exclude the accessory. It is in the very nature of an accessory not to be part of the express designation of the property sold. Not mentioning an accessory in the description of the principal lot therefore cannot be enough to exclude it, for otherwise accessories would always be excluded and the rule would become meaningless. On the contrary, [TRANSLATION] “when nothing has been said about the accessory, it is necessary to construe the scope of the juridical acts or statutory provisions relating to the principal” (Goubeaux, at p. 105 (emphasis deleted)).

[117] This is why legal scholars require that the application of the accessory rule be excluded by means of a “clause expressly stating otherwise” (Carbonnier, at No. 721; see also Roland and Boyer, at p. 3). For example, the contracts of sale at issue

contained a clear exclusion, through a separate clause, of the legal accessories that titles of ownership represent: [TRANSLATION] “NOT TO CALL UPON the vendor to supply any copy of title deeds or any certificate of search on the said property, the vendor not undertaking to supply any title” (A.F. in the C.A., vol. II, at p. 366). Under both the former *Civil Code* and the new one, these documents are understood to be “accessories” to the principal property sold and, without this exclusion, had to be transferred to the buyer with the property sold (see Jobin and Cumyn, at para. 105; Marler, at para. 496). The parties could have done likewise for the submerged lots. To accept that a descriptive clause like “bounded by Lake” could, on its own, result in the exclusion of the accessories would be to drain the “clause expressly stating otherwise” requirement of all substance and to conflate the description of the principal with renunciation of the accessories.

[118] In *Massawippi*, after finding that the bed of a non-navigable river was an accessory to a riparian lot, Taschereau C.J. addressed the question of whether the rule had been clearly excluded. The seller argued in that case, as Zardev does here, that the deed of sale excluded the accessory by specifying “the river as the boundary of the land sold” (p. 467). The Court rejected that argument and concluded as follows: “It is settled law that a deed of sale which gives a non-navigable river as the boundary on one side of the land sold cannot be read as implying a reservation of the river, or as excluding it from the sale; and in such a deed, if the description is doubtful, it has to be construed against the vendor” (p. 468). While it is true that that decision concerned non-navigable rivers rather than a navigable lake as in the case before us, Taschereau C.J.’s comment

that it is impossible to exclude an accessory by describing the metes and bounds of the principal lot remains sound and applicable in this case: the boundaries of a principal lot cannot serve to exclude the accessory lot.

[119] Second, in my view it was factually and legally impossible in this case for the buyers to consent, even tacitly, to the exclusion of the accessory submerged lots, when they did not even know that Zardev owned them. Valid consent to an exclusion requires, at the very least, knowledge of the existence of the excluded item. Yet the evidence shows that the buyers were unaware of the existence of the submerged lots prior to the 2016 cadastral renewal and that their existence was never disclosed by Zardev (e.g., the deeds entered into with Robert Lavigne (A.F. in the C.A., vol. VIII, at p. 2492) and Champlain Charest (p. 2539)). Mr. Charest, one of the two original buyers of riparian lots who testified, even stated that he would not have purchased the land if this information had been revealed to him by Zardev (p. 2539). Moreover, nothing in the contracts of sale reveals, even implicitly, that the lake was raised or that, contrary to what the buyers reasonably expected, their respective lots would be bordered by a neighbouring private property rather than by the public lake.

[120] In their appeal factum, the respondents raise the possibility that Zardev was aware of the existence of the submerged parcel at the time the deeds of sale were formed “and yet chose not to disclose its existence” (R.F., at para. 109). Thus, they suggest that Zardev failed to comply with a duty to inform the buyers and that this conduct could have breached the requirements of good faith (see paras. 6, 60-65 and 144-46). To be

clear, and as counsel for the respondents conceded at the hearing, there is no formal allegation of a breach of good faith in this case, whether at the time of contract formation or otherwise. The presumption of good faith provided for in art. 2805 *C.C.Q.* applies in Zardev's favour. But Zardev's good faith tends to confirm that the submerged lots were not excluded as accessories. It suggests that Zardev did not intend to retain ownership of the accessories by concealing their existence from the respondents. If Zardev had intended not to transfer the accessory submerged lots, it would instead, in accordance with the requirements of good faith, have informed its counterparties of the existence of the lots so as to obtain a free and informed renunciation from them. Indeed, this is exactly what Mr. Zarbatany, Zardev's current president, testified that he had done since (A.F. in the C.A., vol. VII, at p. 2632).

[121] In short, my conclusion that the accessories were not expressly excluded does not rest in any way on a finding of a breach of good faith by Zardev, quite the contrary. As the respondents argue, art. 1718 *C.C.Q.* requires the seller to deliver the property sold (here the riparian lot) with its accessories (here the submerged lots), unless the accessories are expressly excluded, as the parties did in this case for the former title deeds. The submerged lots are not mentioned in the contract, so they are not excluded. It is understandable that Zardev, acting in good faith and aware of their existence, chose not to exclude them. In any event, it cannot be concluded that the respondents, in a free and informed manner, renounced the accessories to which they were entitled, if they were not even aware of their existence.

[122] Lastly, the appellant’s argument about the [TRANSLATION] “undesirable practical consequences” of the Court of Appeal’s conclusion must be rejected (A.F., at paras. 102 et seq.). Zardev submits that this conclusion [TRANSLATION] “would call into question the presumed accuracy of the cadastral plan” (para. 102). As the Court of Appeal said, the presumption that the cadastre is accurate is rebuttable and, clearly, a conclusion reached by a court following an adversarial proceeding can rebut this presumption (para. 125). Zardev’s related argument about the practical difficulty of delimiting the portions of the submerged strip belonging to each riparian owner should also be rejected. In the present case, the issue relates to whether it is appropriate to issue a declaration that the respondents are the owners of the submerged lots. As their counsel said at the hearing, the boundaries between neighbouring riparian owners will be determined later, in keeping with the procedures set out in the applicable law. Many land law disputes lead to complex cadastral amendments. Not only can this fact not alter the rights of the parties to a dispute, but I would note that Quebec law recognizes the importance and expertise of land surveyors, who are fully competent to resolve such situations, including through a boundary determination procedure (see, among others, B. Beaulieu, *Le bornage* (3rd ed. 2016), at pp. 1-9).

VI. Conclusion

[123] For these reasons, I would uphold the Court of Appeal’s declaration that the respondents are the owners of the submerged portion of the lots referred to in the Court of Appeal’s decision, and dismiss the appeal, with costs.

English version of the reasons delivered by

CÔTÉ J. —

I. Overview

[124] This appeal requires the Court to rule on the issue of the applicable legal test for determining whether an immovable property is an accessory to another immovable property. This issue comes before us in the context of a seller’s obligation under art. 1718 of the *Civil Code of Québec* (“C.C.Q.”) to deliver the accessories to the property sold. In analyzing this issue, the Court must also consider the rules on the exclusion of a transfer of accessories in a contract of sale.

[125] The appellant, Zardev Inc., or its predecessor in title, Simco Enterprises Co. Ltd., sold riparian lots adjacent to navigable lakes in the town of Estérel to many persons in the 1950s, 1960s and 1970s. The deeds of sale specify that these riparian lots are “bounded by Lake”. The respondents are all subsequent purchasers of riparian lots, except for two, who bought their lot directly from the property developer. However, in 2016, during a cadastral renewal, they discovered that the property developer, now Zardev, had remained the owner of a submerged strip of land in the lake adjacent to their respective lots and is therefore their neighbour. In this context, the respondents went to court to be declared owners of the lots forming the submerged strip of land in front of their respective riparian lots.

[126] In order to dispose of the appeal, it must first be determined whether the deeds of sale expressly include the submerged lots. In the present case, the contracts of sale never reference the submerged lots and very precisely delimit the riparian lots. The parties to these contracts therefore did not provide for the sale of the submerged lots as the principal property. It must then be determined whether the submerged lots were nonetheless transferred as accessories to the adjacent riparian lots. Having analyzed the matter, I find that this is not the case. No legal rule provides that these submerged lots can constitute accessories to their adjacent riparian lots. Furthermore, there is no relationship of accessoriness by the nature of things between the submerged lots and their adjacent riparian lots. Indeed, by its nature, land is meant to serve as a principal rather than an accessory, because its function can always be modified. And even when submerged like the lots at issue in this case, land therefore cannot be an accessory to other land, such as the riparian lots. Moreover, the submerged lots are not necessary for the use of the riparian lots, which precludes characterizing them as accessories. Consequently, Zardev remains their owner.

[127] Even assuming — without, however, accepting — that the submerged lots were accessories to the riparian lots, I am of the opinion, after applying the modern approach to contractual interpretation, that the parties excluded their transfer as such in the deeds of sale. In fact, the description of the riparian lots by their metes and bounds, their area and their immatriculation number clearly excludes the transfer of the submerged lots as accessories. In addition, elements extrinsic to the contract also

demonstrate the common intention of the parties to exclude the transfer of the submerged lots from the sale.

[128] For the reasons that follow, I would allow the appeal, set aside the judgment of the Court of Appeal and restore the judgment of the Superior Court.

II. Background

A. *Facts*

[129] I agree with the description of the facts provided by my colleague Kasirer J., except on two points. First, my colleague states that, in the transactions from 1959 to 1971, Zardev did not disclose the existence of the submerged strip of land to the buyers. Only two respondents, Robert Lavigne and Champlain Charest, purchased riparian lots directly from Simco. Although their respective pre-trial examinations suggest that Simco did not in fact inform them of the existence of the strip of land, it cannot reasonably be inferred from the testimony of only these two respondents that such was the case for the 85 other persons who did not purchase riparian lots directly from Simco.

[130] Second, it is important to contextualize my colleague's statement that "Zardev's current president said he began disclosing the existence of the submerged lands to future buyers in writing in 2008" (para. 18 (emphasis added)). My colleague seems to imply by his statement that from 1951 to 2008, Zardev knowingly kept secret

the fact that it owned the submerged lots. However, there was nothing secret about this information because it could be found through a title search — such as, for example, that undertaken by the government for the cadastral renewal. Moreover, there is no evidence in the record establishing that there existed, before 2008, a systematic practice by Simco, and then Zardev, of selling lots without notifying the buyers of riparian lots of the existence of the submerged lots. At most, the evidence shows that, since Zardev’s current president took over managing the company, the practice has been to indicate ownership of submerged lots in the notarial deeds.

III. Judicial History

A. *Quebec Superior Court, 2021 QCCS 3306 (Chatelain J.)*

[131] The trial judge dismissed the originating application for a declaratory judgment filed by the riparian owners, respondents before this Court. She concluded that the submerged strip of land is owned by Zardev.

[132] The judge began her analysis by noting that the outcome of the case turned on the interpretation of the deeds of sale for properties bordering the lake, which required [TRANSLATION] “determining whether, when Simco, [the predecessor in title] of Zardev, sold subdivided properties ‘bounded on Lake’, this boundary corresponded to the natural high-water line or instead to the high-water line altered by the rise in the level of the lakes resulting from the erection of the Lac Masson dam” (para. 55).

[133] The judge, relying on the expert evidence, first concluded that the submerged lots were part of the lands acquired by Simco in 1957 and of Bloc B, created in 1959. She then found that in 1959, Simco parcelled part of the territory of Bloc B and subdivided it into more than 580 lots, which were delimited not by the natural high-water line, but rather by the raised lake, and which did not include the submerged portion of Bloc B. In other words, although they belonged to Simco, the submerged portions were simply not included in the lots subdivided in 1959 for the purposes of sale to potential riparian owners.

[134] In this context, the judge concluded that the riparian owners were wrong in asserting that the clauses in the deeds of sale show the parties' intention that the submerged lots be sold with the subdivided lots. Indeed, the deeds of sale indicate that the lots are "bounded by Lake" and, according to the judge's assessment, if the intention of the parties to the various deeds of sale was to include a submerged portion in the sale, one would have expected the deeds of sale to specify this or to specifically refer to this submerged portion of Bloc B.

[135] The judge then went on to conclude that, under art. 1718 *C.C.Q.*, the submerged lots are not accessories to the lots sold. Submerged lots cannot be equated with accessories of the immovable sold, as would a servitude or any other right connected with the immovable sold; they constitute, rather, additional immovables. Moreover, it cannot be said that ownership of the submerged lots is necessary for the use of the riparian owners' non-submerged lots. Furthermore, while the judge

acknowledged that flats that are not in the public domain are accessories to riparian lands, as are the beds of non-navigable watercourses, the submerged lots, in this case, are not flats, and the lakes concerned are navigable. Lastly, the judge noted that the intention of the parties and their conduct subsequent to entering into the deeds of sale confirm that Simco did not intend to sell the bed of the watercourse and, consequently, that the submerged lots belong to Zardev.

B. *Quebec Court of Appeal, 2024 QCCA 347 (Lavallée J.A., Vauclair J.A. and Buchholz J. (ad hoc) Concurring)*

[136] The Court of Appeal found that the main issue was whether the submerged lots were included in the deeds of sale by virtue of the accessory doctrine, either by reason of their necessity for use or by application of this doctrine in the body of water context. The Court of Appeal summarily rejected the riparian owners' first argument, according to which the submerged lots are accessories to the riparian lots in that they are necessary for their use. However, the Court of Appeal agreed with their second argument that, by application of the accessory doctrine in the body of water context, the riparian owners acquired the submerged lots by purchasing the riparian lots, since Simco did not include an express reservation in the deed of sale.

[137] The Court of Appeal stated that the accessory doctrine applies to the bed of a watercourse that has been granted by the Crown, to a flat or to a beach. In this context, the Court of Appeal found that a strip of land directly adjacent to riparian lots

is of the same nature as the above-mentioned elements and that the accessory doctrine in the body of water setting can therefore also apply to it.

[138] The Court of Appeal then explained that the common intention of the parties was to be determined by the application of the accessory doctrine, which can be displaced only by a statement expressly excluding the accessories from the sale. In this case, as I said above, the deeds of sale do not mention the submerged portion adjacent to the riparian lots. At the time of the sales to the riparian owners or their predecessors in title, Simco sold the riparian immovable on the lake without expressly reserving the submerged portion for itself. The application of the accessory doctrine creates a presumption that Simco had the intention of transferring the riparian lot, including the submerged portion.

[139] Finally, the Court of Appeal found that the presumption that the submerged lots, as accessories, followed the riparian lots was not rebutted by Zardev. It noted that the deeds establishing the riparian owners' right of ownership all state, with rare exceptions, that the lots sold by Simco are "bounded by Lake". On the other hand, the deeds do not specify whether this means the lake as it existed prior to the construction of the dam or the lake raised by this infrastructure. According to the Court of Appeal, the words "bounded by Lake" are ambiguous and do not constitute an express statement of Simco's intention to retain ownership of the submerged strip. Thus, under the accessory doctrine, the words "bounded by Lake" refer to the shore before it rose by

the construction of the dam, such that this line is the one separating the private domain from the public domain. The Court of Appeal therefore allowed the appeal.

IV. Issue

[140] I agree with my colleague that the debate centres around the question of whether, under the various deeds of sale, the respondents purchased only the riparian lots or whether they also purchased the submerged lots adjacent to the riparian lots acquired (para. 33).

[141] Though my conclusions differ in several respects, I also agree with my colleague on how to deal with this question:

1. In the deeds of sale, did the properties sold include the adjacent submerged lots?
2. Do the submerged lots constitute accessories to the riparian lots adjacent to them for the purposes of applying art. 1718 C.C.Q.?
3. Assuming that the submerged lots constitute accessories to the riparian lots adjacent to them, did the contracts for the sale of the riparian lots exclude the transfer of ownership of these submerged lots?

V. Analysis

A. *The Deeds of Sale Apply Only to the Riparian Lots and Do Not Include the Submerged Lots*

[142] I agree with my colleague’s analysis and with his conclusion (at paras. 38-50) that the trial judge did not commit a reviewable error in finding that the deeds of sale at issue concerned only the riparian lots.

[143] The contracts of sale in this case never refer to the submerged lots and delimit the riparian lots by their metes and bounds, in particular by the words “bounded by Lake”, and their area or, in some cases, by identifying them by their immatriculation number resulting from the Bloc B subdivision process. The contracts of sale therefore did not provide for the sale of the submerged lots as principal properties.

[144] Moreover, as it is clear from the analysis undertaken by the trial judge, the finding that the principal properties sold, pursuant to art. 1708 C.C.Q., did not include the submerged lots does not decide the question of whether ownership of the submerged lots as accessories had nonetheless been transferred. I will now turn my attention to this question.

B. *The Submerged Lots Do Not Constitute Accessories to the Adjacent Riparian Lots for the Purposes of Applying Article 1718 C.C.Q.*

(1) Clarification of the Terminology

[145] At issue in the case at bar are submerged lots and riparian lots. A lot is “[l]anded ownership immatriculated in the cadastre” (*Private Law Dictionary and Bilingual Lexicons: Property* (2012), at p. 110, “lot”; see also *Dictionnaire de droit québécois et canadien* (6th ed. 2023), “lot”) that makes it possible to identify an immovable in a certain territory (*Chowieri v. Ville de Gatineau*, 2022 QCCA 1104, at para. 47; M. Gervais, F. Roy and N. Massé, *Le droit foncier et l’arpenteur-géomètre* (2016), at pp. 88-94). In this case, the type of immovable identified in the cadastre by the immatriculation of the riparian lots and the submerged lots is known in French as a “*fonds de terre*” (“land” in English), a term designating a “[d]elimited portion of the soil” (*Private Law Dictionary and Bilingual Lexicons*, at p. 101, “land”; see also art. 900 C.C.Q.). As for “soil”, it means the “[s]urface layer of the earth’s crust” (*Private Law Dictionary and Bilingual Lexicons*, at p. 179, “soil”; see also *Aubry & Rau: Droit civil français* (7th ed. 1961), by P. Esmein, t. 2, at p. 21).

[146] In the case before us, prior to the cadastral renewal in 2016, the submerged lots were in fact merely submerged land that was without a cadastral survey. That being so, in these reasons, I will refer to the land underlying the riparian and submerged lots in this case as “lots”. In the French version of these reasons, the term “*fonds de terre*” will be used only in its generic sense for the purposes of legal analysis, without referring to the lands specifically in issue.

(2) The Accessory Rule, the Notion of Accessory and Land

(a) *The Accessory Rule and Sale*

[147] The Latin maxim *accessorium sequitur principale* expresses the rule that the accessory follows the fate of the principal (M. Cottet, *Essai critique sur la théorie de l'accessoire en droit privé* (2013), at No. 6; G. Goubeaux, *La règle de l'accessoire en droit privé* (1969), at Nos. 1-3). Numerous articles of the *Civil Code of Québec* refer to this rule in various contexts (i.e., arts. 744, 1124, 1442, 1638, etc.).

[148] In Quebec law, in the context of a contract of sale, the accessory rule is related to the obligation to deliver the property sold. Delivery means the act by which the property sold is put at the disposal of the buyer (P.-G. Jobin and M. Cumyn, *La vente* (4th ed. 2017), at para.100; D.-C. Lamontagne, *Droit de la vente* (4th ed. 2019), at para. 144). The obligation to deliver, which was set out in art. 1499 of the *Civil Code of Lower Canada* (“C.C.L.C.”), can now be found in art. 1718 C.C.Q. These provisions state:

Civil Code of Lower Canada

1499. The obligation to deliver the thing comprises its accessories and all that has been designed for its perpetual use.

Civil Code of Québec

1718. The seller is bound to deliver the property in the condition it is in at the time of the sale, with all its accessories.

[149] Article 1499 C.C.L.C. and art. 1718 C.C.Q. therefore provide for the simultaneous transfer of the accessory and the principal in the context of a sale, even where the parties are silent. This rule applies both to material accessories (corporeal

property, whether movable or immovable, including land) and to legal accessories (real rights, like a servitude, or personal rights, like a warranty) (Lamontagne, at paras. 156-58; Jobin and Cumyn, at paras. 105-6; Cottet, at No. 122; art. 1442 C.C.Q.; *General Motors Products of Canada Ltd. v. Kravitz*, [1979] 1 S.C.R. 790, at p. 809). Of course, this obligation to deliver presupposes that ownership of the accessories is transferred at the time of formation of the contract (art. 1453 C.C.Q.).

(b) *The Notion of Accessory*

[150] While the accessory rule refers to the technical tool that allows the accessory to follow the fate of the principal, the notion of accessory [TRANSLATION] “involves a definition of the situations in which an accessory-principal relationship, which will be referred to as a *relationship of accessoriness*, is established” (Cottet, at No. 6 (emphasis in original)).

[151] A relationship of accessoriness can be identified in two ways. The first is that it may be provided for by a legal rule (Goubeaux, at No. 26). Put another way, the law provides that one property is an accessory to another. This is notably the case with the rules relating to accession (i.e., art. 948 C.C.Q.) (J. Carbonnier, *Droit civil* (2004), vol. II, at No. 721; art. 546 of the French *Code civil*). Indeed, Professor D.-C. Lamontagne explains that [TRANSLATION] “accession arises from the original or derivative mode of acquiring property, by application of the ancient Roman rule: *accessorium sequitur principale*” (*Traité du domaine privé: le droit patrimonial: biens, propriété et modes d’acquisition* (2021), at No. 795). As will be seen later, art. 919

C.C.Q. is another legal rule that provides for a relationship of accessoriness, that is, the one between riparian land and the bed of a non-navigable and non-floatable lake or watercourse before 1918.

[152] The second is that a relationship of accessoriness between two properties can also arise from the nature of things (Goubeaux, at No. 26). Such a relationship is based on the [TRANSLATION] “appropriation of one property to the use of another” (Cottet, at Nos. 38-41; see also Goubeaux, at Nos. 18-20; S. Guinchard, *L’affectation des biens en droit privé français* (1976), at Nos. 46-47). Appropriation, a synonym of destination, means the purpose or function of property (*Private Law Dictionary and Bilingual Lexicons*, at p. 14, “appropriation”, and at p. 49, “destination”; D. Lametti, “Destination” (2020), 66 *McGill L.J.* 47). To find that there is a relationship of accessoriness arising from the nature of things, it is therefore necessary first to determine, in light of the context, the purpose of the supposedly accessory property and that of the principal property (Cottet, at No. 43).

[153] Second, it must be established that, according to their respective purposes, the accessory property is necessary for the use of the principal property (J. Torres-Ceyte, “Livre cinquième — Des obligations”, in B. Moore, ed., *Code civil du Québec: Annotations — Commentaires 2025-2026* (10th ed. 2025), 881, at p. 1107; T. Rousseau-Houle, *Précis du droit de la vente et du louage* (2nd ed. 1986), at p. 91). It should be noted, however, that [TRANSLATION] “[t]he accessory is not indispensable to the definition of the principal, but it brings added utility” (Carbonnier, at No. 721

(emphasis added)). Indeed, if it is indispensable to the definition of the principal, the property is not an accessory, but rather part of the principal (Goubeaux, at No. 23).

[154] This test of an accessory's necessity for the use of the principal is assessed on the basis of the legitimate expectations of the buyer and the seller with respect to these properties. Property will be an accessory to other property only if it allows the buyer to derive the enjoyment that they can legitimately expect from the principal property (Jobin and Cumyn, at para. 105; *Nashua Canada ltée v. Genest*, [1990] R.J.Q. 737 (C.A.), at pp. 743-44). For example, a registration certificate will be an accessory to a vehicle sold where the buyer has expressed their intention to use the vehicle for driving on roads (*Turcotte v. Lacombe*, [1975] C.A. 305 (Que.); *Lapointe v. Essiambre*, 2022 QCCQ 6865, at para. 55), but not an accessory to a vehicle that is intended to be part of a collection (Cottet, at No. 43).

(3) The Submerged Lots Do Not Constitute Accessories to the Riparian Lots Sold by the Predecessor in Title and Remain the Property of Zardev

[155] In this case, the Court of Appeal concluded that the submerged lots constitute accessories to the adjacent riparian lots by applying the accessory doctrine in the body of water context. With respect, I cannot agree with that conclusion for two reasons, which I examine in detail later. First, there is no legal rule providing that submerged lots constitute accessories to riparian lots. In fact, the accessory doctrine in the body of water context does not apply in this case. Second, no relationship of accessoriness by the nature of things exists between submerged lots and adjacent

riparian lots, because submerged lots have a navigation function that is neither necessary nor useful for the use of riparian lots. Absent a legal rule or such a relationship of accessoriness, the submerged lots cannot be characterized as accessories within the meaning of the *Civil Code of Québec*.

(a) *No Legal Rule Provides That Submerged Land in a Navigable Lake Constitutes an Accessory to Adjacent Riparian Land*

[156] In the case at bar, no legal rule provides that submerged land in a navigable lake must be treated as an accessory to the adjacent riparian land for the purposes of the obligation of delivery set out in art. 1718 C.C.Q.

[157] The Court of Appeal held that the accessory doctrine in the body of water context applied in this case. This doctrine refers to an ancestral legal rule that, in its initial iteration, provided that the bed of a non-navigable lake or watercourse constituted an accessory to riparian land at the time it was granted by the state. In my opinion, a consideration of the bases for this rule sheds significant light on the main issue in this case. In fact, this is probably the only legal rule that provides that land is an accessory to other land. Moreover, in a manner analogous to land submerged as a result of the construction of a dam as is the case here, [TRANSLATION] “the bed of a watercourse is flooded land” (Y. M. Kieran, “Histoire d’eau — Guide à l’intention des notaires” (1996), 98 R. du N. 145, at p. 194).

[158] Thus, while it is appropriate to rely on this accessory doctrine in the body of water context applicable to the beds of lakes to derive guidance concerning submerged land located in the bed of a lake, it does not apply in this case. Why? Because this doctrine never *considered* the bed of a *navigable* watercourse, and by extension, submerged land in a navigable watercourse, as being an accessory to riparian land. It therefore does not apply to the submerged lots at the heart of this case.

(i) Only a Legal Rule Can Provide a Basis for Characterizing Land as an Accessory

[159] Before the accessory doctrine in the body of water context is examined, it is worth noting an ontological aspect: its exceptional nature, by reason of the fact that it runs counter to the principle that land cannot be an accessory to other land by the nature of things.

[160] Indeed, legal scholars point out that the soil and, as it is a delimited portion of the soil, land (*Private Law Dictionary and Bilingual Lexicons*, at p. 101, “land”; art. 900 C.C.Q.) resist being characterized as an accessory and constitute the principal property *par excellence*. In this sense, land can therefore never be characterized as an accessory unless a legal rule so provides.

[161] The justification lies in the particular nature of the soil. Even when it undergoes transformations, such as being excavated or built upon, the soil endures. From this perspective, there appears to be little basis for establishing definitive

consequences for ownership, which is in essence a perpetual right, as a result of an appropriation whose duration can only be transitory. Consequently, the soil has a fixed and eternal nature, which [TRANSLATION] “destines it for the role of support, characteristic of the function of principal” (Goubeaux, at No. 28; see also No. 29; P. Malaurie, L. Aynès and M. Julienne, *Les biens* (11th ed. 2025), at No. 190; W. Dross, *Le mécanisme de l’accession: éléments pour une théorie de la revendication en valeur*, Ph.D thesis, Université Nancy II (2000), at No. 76; G. Baudry-Lacantinerie and M. Chauveau, *Traité théorique et pratique de droit civil — Des biens* (1896), at No. 19).

[162] This justification applies to submerged land. Being a portion of the soil, land is of the same fixed and eternal nature as the soil and is also destined to exercise a function of principal property precluding it from being characterized as an accessory by the nature of things. This Court, as the legal scholarship also suggests, has already pointed out that “land is the only tangible property that is really immovable” (*Cablevision (Montreal) Inc. v. Deputy Minister of Revenue (Que.)*, [1978] 2 S.C.R. 64, at p. 73; S. Normand, *Introduction au droit des biens* (4th ed. 2026), at p. 68). In this context, land, even when submerged, renders in principle impossible its characterization as an accessory by the nature of things. It will always remain possible to fill it in, excavate it or build upon it, such that it will always have an appropriation that will preclude it from serving as an accessory to other property.

[163] Moreover, the characterization of the soil as a principal property is recognized by art. 951 para. 1 C.C.Q., which provides that “[o]wnership of the soil

carries with it ownership of what is above and what is below the surface.” This provision is based on the *accessorium sequitur principale* rule and makes the soil a principal in its relationship of accessoriness with what is above and below the surface (art. 552 of the French *Code civil*; J.-L. Bergel, M. Bruschi and S. Cimamonti, *Traité de droit civil: Les biens* (2nd ed. 2010), at No. 185; L. Tranchant, “La copropriété sans le sol” (2017), 630 *Informations Rapides de la Copropriété* 33).

[164] In my opinion, and I say this with great respect, my colleague’s proposition that land can be an accessory to other land runs counter to this legal scholarship. Moreover, there is no Quebec jurisprudence supporting this proposition. My colleague relies on *Dallaire v. Dallaire* (1891), 17 Q.L.R. 121 (S.C.). However, in that decision, the accessory property at issue was an aqueduct and a right to a supply of water, not land. My colleague also relies on *Massawippi Valley Railway Co. v. Reed* (1903), 33 S.C.R. 457, *Société du Port de Québec v. Lortie-Côté*, [1991] R.J.Q. 25 (C.A.), and *Québec (Procureur général) v. Tanguay-Bédard*, [1978] AZ-51216610 (Que. C.A.), in which this Court and the Quebec Court of Appeal found that riverbeds were accessories to riparian land. However, as we will see later, those cases involved the application of the accessory doctrine in the body of water context — a legal rule rather than a consequence of the nature of things — a doctrine that provides for the possibility that certain riverbeds may exceptionally constitute accessories.

[165] Thus, in principle, land cannot constitute an accessory to other land, unless a legal rule so provides. I will now turn to the question of whether such a rule exists.

(ii) The Presumption That the Bed of a Non-Navigable Lake or Watercourse Is Granted at the Time of a Grant of Riparian Land by the State

[166] Since the period of New France, the state in what would become the province of Quebec, in its capacity as original owner, has made grants of lands — including some situated in bodies of water — thus gradually transferring from the public domain to the private domain a portion of what today constitutes the territory of Quebec (S. Lanoix, “La navigabilité d’un cours d’eau: ses implications dans l’application de la réglementation municipale”, in *Service de la qualité de la profession du Barreau du Québec*, vol. 509, *Développements récents en droit municipal* (2022), 23, at p. 26).

[167] The accessory doctrine in the body of water context originates from the rule formerly applicable to the bed of a *non-navigable* lake or watercourse at the time of a grant of riparian land by the state. Article 919 para. 2 *C.C.Q.* refers to this rule, indicating that it applied until February 9, 1918. This provision states the following:

919. The beds of navigable and floatable lakes and watercourses are property of the State up to the high-water line.

The beds of non-navigable and non-floatable lakes and watercourses bordering lands alienated by the State after 9 February 1918 also are property of the State up to the high-water line; before that date, ownership of the riparian land carried with it, upon alienation, ownership of the beds of non-navigable and non-floatable watercourses.

In all cases, the law or the act of concession may provide otherwise.

[168] According to this rule, which comes from French customary law of feudal origin, if land granted by the Crown was bordered by a *non-navigable* lake or watercourse, private ownership extended *to the thread of the water*, in other words, to the middle of the lake or watercourse. This so-called implied grant rule applied unless there was a reservation in favour of the Crown (*Québec (Procureure générale) v. Ayers Itée*, 2016 QCCA 1419, at para. 22; *Hurdman v. Thompson*, [1895] 4 B.R. 409 (C.A.); *Seigniorial Questions* (1856), L.C. Dec., vol. A, 49a, at pp. 68a-70a). Thus, this rule provided that the bed of a *non-navigable* lake or watercourse was an accessory to the riparian land at the time of a grant of land by the state.

[169] This rule results from the fact that these *non-navigable* lakes and watercourses were “intended to water and fertilize” the lands (Sir L. H. Lafontaine, “Opinion” (1856), L.C. Dec., vol. A, 1a, at No. 272). Their implied grant allowed riparian owners to use them for irrigation purposes (M. Duranton, *Cours de droit français suivant le Code civil* (4th ed. 1844), t. 5, at Nos. 192 and 203-5). This was the case because old French law did not allow riparian owners to take water from a watercourse in the public domain that crossed their lands, for fear that doing so would reduce water volumes (No. 192; *Hurdman*, at p. 447).

[170] In the early 20th century, this Court’s decision in *Massawippi* clarified that this rule also applies after an initial grant, in the context of a subsequent sale between private owners. The Court provided the following explanations:

The river is, *ad filum aquae* (to the thread of the water), included in the sale itself *ex jure naturae* (according to the law of nature), as an incident of property, as a part and parcel of the land sold, just as the windows and doors of a house, or its chimneys and heating apparatus, form part of a sale of the house if not reserved in clear language. [p. 469]

[171] In summary, the bed of a *non-navigable* lake or watercourse constitutes an accessory to riparian land, at the time of a grant, because of the application of a legal rule, that is, that of the *thread of the water*.

(iii) The Presumption That the Bed of a Navigable Lake or Watercourse Is Not Granted at the Time of a Grant of Riparian Land by the State

[172] Contrary to non-navigable watercourses, the bed of *navigable* lakes and watercourses was presumed, under old customary law, to remain in the public domain, unless it was expressly granted (*Ayers*, at para. 22; *Club de la baie du lac des Deux Montagnes v. Québec (Procureur général)*, 2006 QCCA 1358, [2006] R.J.Q. 2583, at para. 54; *Maclaren v. Attorney-General for Quebec*, [1914] 15 D.L.R. 855 (P.C.), at p. 865; *Seigniorial Questions*, at pp. 68a to 70a). This presumption is in fact reproduced in art. 919 C.C.Q., although the Quebec legislature has now extended the scope of the rule on remaining in the public domain, making it apply as well to non-navigable watercourses and lakes, specifically those that have not been granted before February 9, 1918.

[173] This rule therefore did not provide — originally and even less so today — that the bed of a navigable lake or watercourse could be an accessory to riparian land.

The *raison d'être* of this rule stemmed from the economic importance of navigable lakes and watercourses, given that they were thoroughfares for the state, at a time when boats were the best means of transport (P.-C. Lafond, *Précis de droit des biens* (2nd ed. 2007), at para. 1139; J. Bouffard, *Traité du domaine* (1977), at No. 57; Kieran (1995), at pp. 153-54). Put another way, the function of the bed of a navigable lake or watercourse is [TRANSLATION] “the use that the public may make of it as a public way and thoroughfare” (Bouffard, at No. 57) — rather than, like non-navigable lakes and watercourses, a use appropriated to riparian land. Thus, there has never been any relationship of accessoriness between the bed of a *navigable* lake or watercourse and riparian land.

[174] In the case of subsequent sales of the bed of a *navigable* lake or watercourse that has entered the private domain *because of an explicit grant by the state*, two lines of thought have developed in the case law (*Administration portuaire de Québec v. Thibeault*, 2018 QCCA 72, at paras. 88-89; M. Galarneau and P. Duchaine, *L'examen des titres immobiliers* (5th ed. 2022), at p. 698; Y. M. Kieran, “Comment acheter et aménager en milieu hydrique sans se noyer . . .” (2007), 1 *C.P. du N.* 203, at pp. 228-29).

[175] According to the first line of thought, the express grant rule always applies to a subsequent sale, the seller being required to *expressly include* the bed of the navigable lake or watercourse in the deed of sale so that it becomes the property of the buyer. In *Marchand v. Marina de la Chaudière inc.*, [1998] R.J.Q. 1971, the Quebec

Court of Appeal found that the onus is on the riparian owner to provide [TRANSLATION] “positive evidence of the transfer of ownership of the riverbed” (p. 1980).

[176] According to the second line of thought, once it has entered the private domain, the bed of a navigable lake or watercourse is, like the bed of a non-navigable lake or watercourse, an accessory to riparian land, the seller being required to *expressly exclude* the bed from the sale of the riparian land in order to retain ownership of it. This was the conclusion reached by the Court of Appeal in *Administration portuaire de Québec*, relying on its own decisions that held that a beach or a flat of a navigable watercourse that has entered the private domain became an accessory to riparian land (para. 92; see also *Tanguay-Bédard*; *Société du Port de Québec*).

[177] With respect, I am of the opinion that this second line of thought is highly questionable. Indeed, at the time of a grant, the bed of a *navigable* watercourse or lake can be transferred only as a principal property in the deed of grant, because the ancestral rule provides that it is not an accessory to riparian land. Moreover, even if it enters the private domain, logically, the bed of a *navigable* watercourse or lake does not thereby become an accessory to riparian land, since its navigable nature confers on it a function unrelated to the appropriation of riparian land.

[178] In order to characterize land as an accessory, whether it is in a body of water or not, only its function has to be analyzed. In other words, there is no need to proceed by analogy between the bed of a navigable watercourse and a flat or beach as the Court of Appeal did in *Administration portuaire de Québec*. For example, the

beaches of a river could include, in particular, fertile [TRANSLATION] “meadows” that were of “central importance” in the early days of the colony, in that they made it possible to “have animals graze in the summer and to have the fodder needed for winter” (*Société du Port de Québec*, at p. 44). It is because of this function, and not because of a similarity with the bed of a watercourse, that even once taken out of the domain of the state a beach can still be considered an accessory to riparian land.

[179] In short, the bed of a *navigable* watercourse cannot be an accessory to its riparian land.

(iv) Application to the Facts of This Case

[180] The Court of Appeal found that the accessory doctrine in the body of water context applied to the submerged lots because, by analogy with the bed of a lake, with a flat or with a beach, these submerged lots are [TRANSLATION] “directly adjacent to the riparian lots” (para. 81). With respect, the Court of Appeal erred in finding that the accessory doctrine in the body of water context applied in this case.

[181] In fact, the rules of the accessory doctrine in the body of water context never applied when the state granted the lots at the heart of the dispute in 1864. At that time, these lots (which were not yet submerged) formed part of the lands granted by the state. The question of whether these lands constituted accessories did not arise, because it was only after the construction of a dam and the rise in the water level in 1881 that these lands became submerged.

[182] Also, as set out previously, the accessory doctrine in the body of water context teaches us that the bed of a navigable watercourse, like the bed at issue in this case, is never an accessory to the riparian land. Thus, by analogy with such a bed, nor could a submerged lot in a navigable lake be considered an accessory to its riparian lot.

[183] In the end, no legal rule allows the submerged lots to be treated as accessories. It should be noted that my colleague does not analyze the question of whether a legal rule permits treating the submerged lots as accessories, despite the fact that the accessory doctrine in the body of water context was the basis for the Court of Appeal's conclusion that the submerged lots are accessories.

[184] Nor does my colleague explain the interaction of this doctrine with his analysis of accessoriness by the nature of things. Yet he relies on the jurisprudence relating to the accessory doctrine in the body of water context to conclude that there is a relationship of accessoriness by the nature of things between the submerged lots and the riparian lots (para. 97). It is open to question whether this approach renders the accessory doctrine in the body of water context obsolete. In my view, such an approach also raises the possibility, in a situation where the legislature has provided for the existence of a relationship of accessoriness between two properties by a legal rule, of ignoring the limits on the scope of such a rule and expanding it by relying on accessoriness by the nature of things.

- (b) *The Absence of a Relationship of Accessoriness by the Nature of Things Between the Riparian Lots and the Submerged Lots Also Does Not Allow*

the Latter to Be Treated as Accessories for the Application of Article 1718 C.C.Q.

[185] In the absence of a legal rule as discussed above, it is important to determine whether the submerged lots in question can nonetheless be considered accessories to the riparian lots by the nature of things for the application of art. 1718 C.C.Q. To this end, it is necessary to ascertain the respective appropriations of the riparian lots and the submerged lots in order to determine whether, based on these appropriations and the expectations of the parties, the submerged lots are necessary for the use of the riparian lots.

(i) The Appropriation of the Submerged Lots

[186] As a first step, the appropriation of the submerged lots must be ascertained. My colleague finds that land can be appropriated to the use of other land temporarily, which would be the case for the submerged lots in the present case (para. 96). He is of the view that the submerged lots “do not serve any purpose of their own, independent of and separate from that of the riparian lots” since, given their location, they appear to be unusable unless major work is carried out (para. 107).

[187] To begin with, as I have explained, land is by nature a principal property rather than an accessory property because the soil, of which it is a portion, can always be transformed, such that the appropriation of land can always change. In the present case, the submerged lots could be filled in, as was the case for certain lots in the past

(Sup. Ct. reasons, at paras. 10, 15 and 36), and the owner could make new use of such a lot by developing it in some way. Whether the work required for this development is significant or minor has no bearing on this conclusion. Consequently, the very nature of the submerged lots makes it impossible for them to be recognized as accessories by the nature of things.

[188] Next, even assuming — without, however, accepting — that land can be an accessory to other land because of a temporary appropriation, with respect, I believe that there is a mistake in my colleague’s characterization of the submerged lots at issue. This mistake arises from the fact that the submerged lots are in a navigable lake, whereas the accessory doctrine in the body of water context rests on the distinction between the navigability and non-navigability of the bed of watercourses and lakes. Therefore, in accordance with what this doctrine instructs, these lots can be considered to have the same use as the bed in which they are located, that is, public navigation (Bouffard, at No. 57). The respondents have never shown that Zardev made any use of these lots that would interfere with navigation.

[189] On the contrary, all the lots together form a wide strip of land suitable for boating, and some 300 docks have been installed on them, without any opposition from Zardev, thus allowing many people to go boating on the lake (A.F. in the C.A., vol VIII, at pp. 2778-79, 2837 and 2841). Moreover, although he concludes that the submerged lots have no appropriation of their own, my colleague nevertheless bases his justification on the idea that the riparian rights the respondents have are insufficient

for their enjoyment of the riparian lots because of the fact that they cannot build a dock or boathouse on them. Put another way, my colleague himself implicitly confirms that the riparian owners' interest in owning the submerged lots stems from the fact that the submerged lots make it possible to go boating on the lake.

[190] In short, the appropriation of the submerged lots is to make it possible for public watercraft to use the lake.

(ii) The Appropriation of the Riparian Lots

[191] I agree with my colleague that the riparian lots were intended for waterfront vacation homes and that the purchasers wanted to gain direct access to the body of water for the purposes of recreation and pleasure (para. 101). That being so, as we will see, the purchasers did not intend to be the owners of the submerged lots, and these submerged lots, because of their appropriation, are not necessary for them to have direct access to the body of water for the purposes of recreation and pleasure.

(iii) The Context and the Expectations of the Parties Concerning the Submerged and Riparian Lots

[192] To begin with, it should be noted that none of the respondents, except for two, dealt with Zardev, or its predecessor in title, Simco, to acquire their riparian lot. It is therefore difficult to know the expectations of the persons who purchased the riparian lots from Simco, and it cannot be assumed that their expectations were the same as

those of the respondents. At best, the evidence in the record demonstrates that the respondents did not expect to have ownership of the submerged lots, but simply to have the state as a neighbour (C.A. reasons, at para. 110). In my opinion, and contrary to the conclusion of the Court of Appeal, such an expectation cannot form the basis of a transfer of ownership of the submerged lots as accessories.

[193] Indeed, there is virtually no evidence contemporaneous with the sales by Simco of the 87 riparian lots at issue between 1959 and 1971 (Sup. Ct. reasons, at para. 82). Only Mr. Dydzak testified at trial and, since his parents acquired the riparian property that he currently owns in 1980, he cannot shed light on Simco’s sale of this property. As the trial judge noted, obviously, one [TRANSLATION] “cannot infer from Mr. Dydzak’s testimony the intention of other persons” (para. 82).

[194] As regards the pre-trial examinations filed in evidence, they reveal that the respondents expected to have the state for a neighbour, rather than being the owners of the bed of the lakes or what would prove to be the submerged lots. Indeed, during the cadastral renewal process in 2016, they discovered the existence of the submerged lots and the fact that these lots are owned by Zardev, whereas they had believed that the waters were in the domain of the state (A.F. in the C.A., vol. VIII, at p. 2783; A.F. in the C.A., vol. VII, at p. 2443-44, 2475, 2510-11, 2521, 2539 and 2608). This was particularly the case for Robert Lavigne and Champlain Charest, the only respondents who purchased one of the lots directly from Simco between 1959 and 1971 (A.F. in the C.A., vol. VII, at pp. 2492, 2498-2500 and 2539).

[195] An application for annulment of the sale or reduction of the sale price would have been a more appropriate avenue for remedying the respondents' frustrated expectation of having the state as a neighbour. However, according to their counsel, the respondents thought that the outcome of such an application would have been unsatisfactory. Given that the value of the riparian lots has increased significantly since their sale, an annulment of the sale or a reduction of the sale price would have resulted in lower compensation than that sought in this case (transcript, at p. 92). By the present proceeding, some might think that the respondents are attempting to transform this initial intention of having the state as a neighbour into an intention to own the submerged lots, the existence of which they had never envisaged.

[196] Also, contrary to my colleague's opinion, the submerged lots, the appropriation of which is related to public navigation, are not at all necessary for the use of the riparian lots, that is, direct access to the body of water for the purposes of recreation and pleasure. Indeed, art. 981 *C.C.Q.* recognizes that riparian owners have the right to access the lake bordering their lands and to make use of it, which includes, in particular, its recreational use for the purposes of swimming and boating (*Morin v. Morin*, [1998] R.J.Q. 23 (C.A.), at pp. 28-29; *Houde v. Couture*, 2018 QCCA 9, at paras. 122 and 125). This provision reads as follows:

981. A riparian owner may, for his needs, make use of a lake, the headwaters of a watercourse or any other watercourse bordering or crossing his land. As the water leaves his land, he shall direct it, not substantially changed in quality or quantity, into its regular course.

No riparian owner may by his use of the water prevent other riparian owners from exercising the same right.

[197] What is more, art. 920 *C.C.Q.* allows any person to travel on a lake, under certain conditions:

920. Any person may travel on watercourses and lakes provided he gains legal access to them, does not encroach on the rights of the riparian owners, does not set foot on the banks and complies with the conditions of use of the water.

Thus, by virtue of the right of access provided for in art. 981 *C.C.Q.* and the right to travel on the lake provided for in art. 920 *C.C.Q.*, the respondents' legitimate expectations as to the use they wish to make of their respective riparian lots are met, since they can legally access the lake and swim in it.

[198] However, contrary to the three Court of Appeal judges and the trial judge, who were of the opinion — rightly so, given the obviousness of this conclusion — that the submerged lots were not necessary for the use of the riparian lots, my colleague finds that they are (C.A. reasons, at para. 37; Sup. Ct. reasons, at para. 88). Consequently, it is appropriate for me to address some of his arguments.

[199] According to my colleague, the trial judge and the Court of Appeal erred in law by narrowly applying the necessity test that he himself adopts (paras. 93-94). However, I am of the opinion that the trial judge and the Court of Appeal were correct in finding that the rights provided for in art. 981 *C.C.Q.* are sufficient to meet the use

of the riparian lots. What my colleague considers to be an overly narrow application of the necessity test is in fact a disagreement with the lower courts on the issue of whether the rights of access to the lake are sufficient for the enjoyment of the riparian lots, a pure question of fact. This Court cannot, under the guise of an error of law, substitute its own assessment of the facts without a palpable and overriding error being shown.

[200] My colleague then refers to Zardev's conduct as capable of becoming an interference with the enjoyment of the riparian lots (para. 102). He imputes to Zardev the intention of controlling the lake on the basis of a deed of servitude between it and a hotel complex. Yet nothing in the evidence indicates that the respondents even once suffered a loss of tranquility or any annoyances resulting from the fact that Zardev owns the submerged lots. Regarding the deed of servitude, it actually demonstrates Zardev's spirit of cooperation with the riparian owners and public authorities. Indeed, this deed arose from an idea put forward by the mayor at the time to ensure that the 200 co-owners of the hotel complex had access to the lake in an orderly manner. In this way, Zardev did not have to sell the submerged lot, and a disorderly proliferation of individual docks was thus avoided (A.F. in the C.A., vol. VIII, at pp. 2921-22).

[201] Moreover, if Zardev were to deny or interfere with the riparian owners' right of access, this situation could give rise to an injunction or pecuniary compensation (*Monette v. Mathieu*, [1958] C.S. 259 (Que.); *North Shore Railway Co. v. Pion*, [1889] App. Cas. 612 (H.L.)). Abnormal or excessive annoyances for a neighbouring riparian owner resulting from the exercise of Zardev's right of ownership over the submerged

lots could also open the door to an action for neighbourhood disturbances (art. 976 C.C.Q.; *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, [2008] 3 S.C.R. 392, at para. 86).

[202] To support their arguments, the respondents also raise the risk of losing their riparian owner status in the event of variation in the lake level or infilling by Zardev. This is an additional element that my colleague uses to support his finding that there is a relationship of accessoriness between the riparian lots and the submerged lots (para. 103).

[203] However, there is currently no factual basis supporting the argument that the lake level could radically change, in a permanent manner. While seasonal variations in the lake level resulting from rain, drought and other factors may occur (A.F. in the C.A., vol. VIII, at pp. 2776-77), they are common to all lakes. With respect to the cleaning operation that resulted in a four-and-a-half-foot drop in the lake level, this could also have been anticipated by the buyers of the riparian lots, since it assisted in fulfilling the destination of their riparian lands, that is, a vacation home. Then, concerning infilling, it is curious that such a scenario is being put forward when my colleague at the same time maintains that the submerged lots are unusable and that Zardev has always behaved in good faith (paras. 108 and 120-21). Such a risk seems highly hypothetical to me, especially since the evidence shows that Zardev has never carried out such an infilling. In any event, there is no need to determine the accessory nature of a submerged lot based on a risk of the water level changing and riparian rights

disappearing. Riparian lot owners can never be certain that their land will remain bounded by the visual line of a lake forever; this is a risk they must assume.

[204] My colleague further states that the fact that a private person, rather than the state, has ownership of the submerged lots precludes the use of the riparian lots in accordance with the respondents' expectation concerning the *exclusive* enjoyment of access to the lake. This expectation supposedly stems from additional rights that they have as riparian owners (paras. 104-5).

[205] Nothing in the evidence indicates that the initial buyers of the lots had an expectation of exclusive enjoyment of their access to the lake. Moreover, at the time of the sales, they could not base such an expectation on jurisprudence holding that at least a portion of the bed of a watercourse is an accessory property to the riparian land. Indeed, no judgment concerning a navigable lake had yet been rendered, such that the initial buyers could not have relied on it (*Société du Port de Québec; Tanguay-Bédard; Administration portuaire de Québec*). In any case, the fact that ownership of watercourses generally lies with either the state or the riparian owner does not excuse a lack of diligence in the verification of titles prior to the sale.

[206] I would add that, even assuming that the buyers had an expectation of exclusive enjoyment, as the author Kieran explains, the respondents' rights as riparian owners are the same, whether the lake is public or private:

[TRANSLATION] The right of navigation is therefore recognized, but under certain conditions, including: “gains . . . access to them” and “does not set foot on the banks”. This is the advantage of riparian ownership: only riparian owners can freely access the watercourse and set foot on the banks. Moreover, a person owning a lake or a river without being a riparian owner finds themselves in the situation of an owner of enclosed land. They must therefore obtain a servitude of right of way to have access to their property. It should also be noted that, for their part, they cannot prohibit riparian owners from using the water for swimming, for boating or even as drinking water. [Emphasis added.]

((1995), at p. 192)

[207] The fact that the riparian owners cannot avail themselves — since in this case the state is not their neighbour as they believed (or wished) it to be — of the right of every person to enter on lands in the domain of the state provided for in ss. 1 and 53 of the *Act respecting the lands in the domain of the State*, CQLR, c. T-8.1, is of no consequence, since they have a right of access to and of navigation on the lake and, by extension, the submerged lots, by virtue of arts. 920 and 981 C.C.Q. As for the impossibility of the riparian owners building a dock or boathouse (*Regulation respecting the water property in the domain of the State*, CQLR, c. R-13, r. 1, s. 2), it is unfounded, because Zardev never prevented the installation of some 300 docks around the lake (A.F. in the C.A., vol. VIII, at pp. 2778-79, 2837 and 2841). Moreover, the evidence shows that at the time of the initial sales of the lots, the municipality prohibited the construction of a boathouse on the lake (A.F. in the C.A., vol. VII, at pp. 2489 and 2534), which once again demonstrates that the initial buyers could not have a legitimate expectation in this regard.

[208] To summarize all the points examined, submerged lots cannot be characterized as accessories; land is principal property *par excellence* because of the fact that its appropriation can always be changed and therefore cannot be for the service of other property. Even if they are considered to nevertheless have a temporary appropriation, this temporary appropriation relates to navigation by the public on the lake. However, because of this appropriation, ownership of the submerged lots does not have to follow that of the riparian lots, because the submerged lots are not necessary for the vacation home function of the riparian lots, and because arts. 920 and 981 C.C.Q. allow riparian owners direct access to the body of water for the purposes of recreation and pleasure.

C. *Assuming — Without, However, Accepting — That the Submerged Lots Constitute Accessories to Their Adjacent Riparian Lots, Did the Deeds of Sale for the Latter Exclude the Transfer of Ownership of These Submerged Lots?*

(1) The Exclusion of the Transfer of an Accessory in the Context of a Sale

[209] The *Civil Code of Québec* sets out a number of suppletive rules, in particular, art. 1718 C.C.Q., which are relevant here — as well as art. 1499 C.C.L.C., given the dates on which the contracts were entered into — for the purposes of my analysis. Suppletive rules form part of the implicit obligational content of a contract, since the content of a contract includes the terms of the contract as well as what is incident to it in conformity with law, among other things (art. 1434 C.C.Q.). In other words, suppletive rules are part of the contract [TRANSLATION] “on the basis of the presumed will of the parties” (P.-A. Crépeau, “Le contenu obligationnel d’un contrat”

(1965), 43 *Can. Bar Rev.* 1, at p. 28; D. Lluelles and B. Moore, *Droit des obligations* (3rd ed. 2018), at No. 1499).

[210] The parties to a contract are free to derogate from a suppletive rule provided for by law or to reduce the scope of it (art. 9 C.C.Q.). In fact, [TRANSLATION] “law that is merely suppletive is simply a tool of divination, not a normative straitjacket: as a general rule, the legislature allows contracting parties to provide for another solution” (Lluelles and Moore, at No. 1500; see also *Ponce v. Société d’investissements Rhéaume ltée*, 2023 SCC 25, at para. 71).

[211] Derogating from a suppletive rule or reducing its scope does not require any particular formalities (Lluelles and Moore, at Nos. 1500-1501; J.-L. Baudouin and P.-G. Jobin, *Les obligations* (7th ed. 2013), by P.-G. Jobin and N. Vézina, at No. 704; *Domaine de la Rivière-aux-Pins inc. v. Les boisés Fossambault sur le lac inc.*, 1999 CanLII 13835 (Que. C.A.)). Thus, in order to determine whether a contract provides for a derogation from a suppletive rule or a reduction of its scope, the normal rules of contractual interpretation should be applied (*Benjamin v. Crédit VW Canada inc.*, 2022 QCCA 1383, at para. 54; *Gagnon v. Bell Mobilité inc.*, 2016 QCCA 1496, at paras. 142-56; *Steve Brown Machineries Solutions (SBMS) inc. v. Groupe Sutton Excellence inc.*, 2021 QCCA 302, at paras. 93-106).

[212] Transposed to the suppletive rule in art. 1718 C.C.Q. that “[t]he seller is bound to deliver the property in the condition it is in at the time of the sale, with all its accessories”, the analysis therefore requires the following steps. The first step is to

determine if the words of the contract are clear or ambiguous regarding whether the parties chose to derogate from the rule of the delivery of an accessory property (*Uniprix inc. v. Gestion Gosselin et Bérubé inc.*, 2017 SCC 43, [2017] 2 S.C.R. 59, at para. 34). The focus is on a reading of the words themselves, but the court may consider the context of the conclusion and performance of the contract in order to confirm that its language is clear (paras. 35-36). In the case of a clear and unambiguous statement from which it can be concluded that a given accessory property has been excluded, undertaking a more thorough interpretation is unnecessary (para. 36). Conversely, if the court identifies an ambiguity, it must engage in a more extensive interpretation consisting in seeking the common intention of the parties to exclude or not exclude the identified accessory property (art. 1425 C.C.Q.). In these different interpretative exercises, the court will consider elements both intrinsic and extrinsic to the contract (*Uniprix*, at para. 37; arts. 1426 to 1428 C.C.Q.).

[213] With respect, it is important to note that there is no basis for asserting, as the Court of Appeal did, that [TRANSLATION] “the absence of an express reservation is capable on its own of deciding the matter, without it being necessary to examine other elements making it possible to determine the common intention of the parties”, and that any reference to the conduct of the parties should serve only to back up the court’s position (para. 92 (emphasis deleted)). The Court of Appeal reached this conclusion by relying, at para. 88, on passages from *Administration portuaire de Québec* that are worth reproducing:

[TRANSLATION] The second line of thought applies the accessory doctrine as in the situation of a non-navigable river. This means that the seller must exclude the riverbed from the transaction; otherwise, the buyer acquires ownership of it, as an accessory of the sale.

To determine the object of the sale that took place in 1904, the interpreter must seek the common intention of the parties. This requires studying the language they used as well as examining their conduct. The words of the contract of sale do not expressly state that the bed of the river was sold, as we have already mentioned. However, it must be noted that the seller sold the immovable he owned on each side of the river, without reserving the bed for himself. If the seller had wanted to retain ownership of only the riverbed and sell everything else he owned in that location, he would have specified this. The will to sell the riverbed can therefore be inferred from the absence of an express reservation.

Moreover, if the conduct of the parties at a time contemporaneous with the deed of 1904 is examined, it appears that the buyer acted as if he was the owner of the riverbed by granting an emphyteutic lease for a term of 30 years to Chaudière Basin Power Company Limited in 1908. The description of the leased area encompassed the entire basin of the Chaudière River and the shores surrounding it to a depth of 30 feet from the high-water line. This lease was published. There was no objection from the seller. In this context, the accessory doctrine must be applied. The 1904 sale of the immovables bordering the Chaudière River included the bed of that river, as an accessory. [Emphasis added; emphasis in original deleted; paras. 89-91.]

In these passages, it is indeed the common intention of the parties that the Court of Appeal sought in that 2018 case, and, to do so, it took into account numerous elements extrinsic to the contract. Those elements did not serve solely to back up a conclusion regarding the contract, which, I would add, is consistent with the teachings of *Uniprix* (see also *Domaine de la Rivière-aux-Pins*; *Société du Port de Québec*, at pp. 47-49).

[214] In addition, the strict and formalistic approach to interpretation applied by the Court of Appeal in this case must be rejected, since it would inevitably lead to unjust results. In fact, a court could conclude that a seller transferred their properties in

the absence of an express reservation even if all the other elements show a contrary intention. This is especially so since the Court of Appeal here did not specify what a sufficient “express” statement for precluding the transfer of an accessory would consist of.

[215] Similarly, my colleague does not explain what “unequivocal exclusion” of an accessory means (see paras. 10 and 113) or why elements extrinsic to a contract, in accordance with the teachings of *Uniprix* on contractual interpretation, are not relevant to the analysis of the exclusion of an accessory.

(2) The Contracts of Sale Exclude the Transfer of the Submerged Lots as Accessories

(a) *The Words “Bounded by Lake” and the Immatriculation Numbers of the Lots Are Not At All Ambiguous and Point To the Exclusion of the Transfer of the Submerged Lots as Accessories*

[216] As already mentioned, almost all of the deeds of sale for the lots created through the subdivision of Bloc B mention that the lots are “bounded by Lake” and specify their area. Certain other deeds designate the lot sold by its immatriculation number resulting from the Bloc B subdivision process (C.A. reasons, at para. 112).

[217] The trial judge found that the words “bounded by Lake” were not at all ambiguous and meant the visual line of the lake at the time of the sale, that is, the raised lake. With respect for the Court of Appeal’s contrary conclusion, the trial judge’s

finding is perfectly correct and, as it is a question of mixed fact and law, is entitled to deference (*Churchill Falls (Labrador) Corp. v. Hydro-Québec*, 2018 SCC 46, [2018] 3 S.C.R. 101, at para. 49; *Resolute FP Canada Inc. v. Hydro-Québec*, 2020 SCC 43, [2020] 3 S.C.R. 789, at para. 49; *Hydro-Québec v. Matta*, 2020 SCC 37, [2020] 3 S.C.R. 595, at para. 46).

[218] To begin with, it defies belief that the parties would have chosen the words “bounded by Lake” to refer to the form of the lake 60 years earlier. Such an interpretation is completely detached from the normal expectations buyers or sellers of immovable properties would have. The word “lake” must instead be interpreted according to its usual meaning, that is, the expanse of water according to its form contemporaneous with the deeds of sale of the lots to the respondents.

[219] Furthermore, nothing in the deeds of sale provides any basis for calling this usual meaning into question. On the contrary, in addition to a description by reference to the metes and bounds of the lots, the deeds of sale contain a description of the lots based on their area. In this regard, art. 1720 *C.C.Q.* provides that “[t]he seller is bound to deliver the area, volume or quantity specified in the contract”. In the present case, it is indeed the area indicated in the contracts of sale that Zardev delivered to the buyers of the lots. As the Superior Court judge noted, [TRANSLATION] “both the depth dimensions and the area of the lots sold are consistent with the fact that the boundary of the lake is the raised lake level” (para. 76; see also para. 80).

[220] In the case of the lots identified by their immatriculation number, it should be noted that “the number assigned to a lot is its sole description and is sufficient in any document referring to the lot” (art. 3032 *C.C.Q.*; *Chowieri*, at para. 47). In these circumstances, a contractual clause identifying a lot on the basis of the requirements of the law cannot be considered ambiguous in accordance with the modern principles of contractual interpretation (see *Uniprix*, at paras. 34 et seq.).

[221] My colleague finds that the phrase “bounded by Lake” is insufficient to exclude the transfer of the submerged lots, because it “is simply part of the description of the principal property” (para. 116). He also mentions the fact that the contracts of sale contained a clear exclusion of certain legal accessories and that the parties could have done likewise concerning the submerged lots (para. 117).

[222] With respect, unlike legal accessories, what my colleague considers to be an accessory property is of exactly the same nature as the principal property, that is, land. It is therefore normal that the parties took the view that the methods of description set out in the *Civil Code of Québec*, that is, by the metes and bounds, area and immatriculation number, were sufficient to exclude the submerged lots from the sale. No reasonable person would expect to have to specify that the lot they are selling does not include the neighbouring lot that they also own and that is not the object of the sale. This is particularly true because no legal rule explicitly provides that a submerged lot can be an accessory to a riparian lot. To conclude otherwise would be contrary to the

expectations of the parties to a sale of an immovable and would jeopardize the predictability of the effects of the contract of sale on the seller's right of ownership.

[223] In fact, many sellers would risk having ownership of one lot carry with it ownership of another neighbouring lot that they never envisaged selling. What is more, this could be the case retroactively, as in the case at bar. It is easy to imagine that many contracts of sale already entered into concern a lot adjacent to another lot and do not include a sufficiently express exclusion of the lot adjacent to the one sold, having regard to my colleague's criteria. It is therefore entirely possible that these contracts of sale could be reviewed after the fact and could deprive a seller of a property that they never sold and that the other party to the contract had never envisaged acquiring, as is the case here.

[224] Such a situation also jeopardizes the predictability that the land register and cadastral plans are supposed to bring to the sales and transfers of immovables. The presumption of accuracy of the land register provided for in art. 2944 C.C.Q. would lose its *raison d'être*, in a sense, if the parties to a deed of transfer of an immovable property cannot rely on it. My colleague's approach also has the effect of undermining the right of a seller, when the area exceeds that specified in the contract, to have the buyer pay for the excess or restore it to the seller (art. 1737 C.C.Q.), since his reasons suggest that excess can be treated as an accessory.

[225] Furthermore, a final comment is necessary with respect to my colleague's conclusion that Zardev's good faith tends to confirm the non-inclusion of the

submerged lots as accessories (paras. 120-21). With respect, good faith cannot serve as a basis for disregarding the terms of the contract and supplementing deficient evidence to infer that a contracting party intended to transfer ownership of their property. In this case, the terms of the contract clearly indicate that the submerged lots were not part of the sale, be it as the principal or the accessory. Moreover, although the two respondents who purchased their lots from Zardev’s predecessor in title testified that they were not informed of the existence of the submerged lots, the evidence in the record is silent as to the other 85 lots sold by Zardev. In short, good faith cannot serve as a presumption of the transfer of ownership: one can be in good faith while still wanting to retain ownership of one’s properties.

[226] In short, at the first step in the interpretative exercise, the words “bounded by Lake”, combined with an exact area or the use of the immatriculation number of a riparian lot, are not at all ambiguous and make it easy to conclude that the parties had the common intention to exclude the submerged lots from the sale.

(b) *The Evidence As To the Parties’ Conduct Also Demonstrates That the Parties Excluded From the Sale the Transfer of the Submerged Lots as Accessories*

[227] In addition to the unambiguous terms of the contracts of sale at issue, which, according to the teachings of *Uniprix* (paras. 34 et seq.), must be the main interpretative consideration, other elements militate in favour of the conclusion that the parties intended to exclude the submerged lots from the sale.

[228] To begin with, as I noted earlier, the respondents never thought that the submerged lots belonged to them and that they had been transferred as accessories. In fact, the respondents' belief that they had the state as a neighbour works against the argument that they considered themselves to be the owners.

[229] Also, the conduct of Simco and Zardev after the sales of the riparian lots is particularly conclusive. In fact, Simco and Zardev sold, or even transferred by gratuitous title in some cases, portions of the submerged strip to certain riparian owners, notably after these portions had been filled in by the riparian owners. As the trial judge correctly noted, [TRANSLATION] "[t]hese transactions confirm that in addition to being well aware of the existence of the submerged strip of land, Simco acted as owner" (para. 84).

[230] Furthermore, the evidence in the record is silent as to the information the original buyers of the riparian lots and the subsequent buyers other than the respondents had. Concerning the latter, it is surprising that most of them were never aware before the cadastral renewal that Zardev owned the submerged lots. Indeed, the sales of the riparian lots at issue involved notaries who had to conduct an examination of the titles. What is more, some riparian owners seemed to be aware of the situation. In this regard, one of the witnesses at trial explained that she purchased the portion of the submerged land in front of her riparian lot from Simco in 2006 and that her neighbour had done the same the previous year (A.F. in the C.A., vol. VIII, at pp. 2857-58). In these circumstances, it is difficult to justify the transfer of the submerged lands as accessories

on the basis of an absence of knowledge of their existence by the buyers or the respondents.

[231] In the end, if in fact the submerged lots constitute accessories to the adjacent riparian lots, the parties unambiguously excluded their transfer as such by the terms of their contract. Moreover, the elements extrinsic to the contracts also show that the parties intended to exclude the transfer of the submerged lots from the sale.

VI. Conclusion

[232] The submerged lots are not accessories to the riparian lots and, even assuming that they are — which I do not accept — the parties excluded their transfer in unambiguous terms and demonstrated a common intention to that effect. I would allow the appeal, set aside the judgment of the Court of Appeal and restore the judgment of the Superior Court, with costs throughout.

Appeal dismissed with costs, CÔTÉ J. dissenting.

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