MATRIMONIAL REGIMES CASE BRIEFS
(SPAHT-CARROLL MATRIMONIAL REGIMES CASEBOOK)

Listed in alphabetical order

Adams v. Adams (La. App. 2 Cir. 1987)

- Facts
  - Couple separated on September 19, 1985
  - Community property settlement entered into on September 24, 1985, but inadvertently the description of the immovable property (a home) was left out
    - Couple didn't actually realize they owned the land that was left off of the settlement
    - Deal was wife was going to get $10K in cash, new car, auto and health insurance for one year; husband would get immovable property and assume all community debts
  - Wife used husband's brother as her attorney (STUPID!!!!); husband told wife if she didn't enter into first agreement he would have to declare bankruptcy and she wouldn't get anything
    - Talked to two other attorneys who said they could not tell her if it was fair deal without looking into husband's records
  - Husband gave wife amended version of agreement and told her she had to sign it (it had the property listed); she would not
- Legal Issue
  - Is the original agreement valid? Wife is trying to say it is not because of error, fraud, duress
    - Error
      - Not knowing about he property is not reason to vitiate the entire contract because that property was not the cause of the contract
    - Fraud
      - Wife claims fraud for putting faith in the brother-in-law, but fraud is not about misplaced trust, it is about misrepresentations of the truth
      - Wife claims fraud for the bankruptcy comments; problem is bankruptcy may have been a serious consideration given the financial state
    - Duress
      - Wife claims duress because of hardship of going through divorce; this isn't the type of duress the law recognizes; duress is about a fear of unjust or considerable injury to a party's person, property or reputation
- Holding
  - Extra property added to settlement

Alessi v. Belanger (La. App. 1 Cir. 1994)

- Facts
  - ∏ filing for outstanding balance due on a ring of $10+K
    - Property of Δs in East Baton Rouge Parish attached by sheriff
    - Δ files a declinatory exception raising the objection of law of quasi in rem jurisdiction and seeking dissolution of the writ of attachment
      - Δ says she was a Louisiana domiciliary (instead of NC which the ∏ claims)
    - Δ then claims that she was not the purchaser of the ring, just a third party beneficiary (it's a wedding ring)
      - ∏ says that Δ picked the ring out and signed an invoice for the ring; ring being delivered to her (how unromantic!)
      - ∏ gave Δ (husband) a sales pitch about not having to pay sales tax because he lived in NC
      - Δ tried to put it on his credit card, but denied
- Legal Issue
  - Who bought the ring?
    - Trial court found the man did, and this is supported by facts in the record, so not manifestly erroneous
- Holding
  - Dismiss claim against wife

Allbritton v. Allbritton (La. App. 3 Cir. 1990)

- Facts
  - Wife's grandmother and father gave her gifts
  - Husband claims the gifts were community; wife claims they were separate
- Legal Issue
  - Gifts from grandmother = non-cash gifts, gifts of cash
    - Grandmother is dead, so she cannot testify as to what her intent was
    - Little evidence at trial presented as to the intent of the grandmother and the burden (at the time—this is pre-*Talbot*) was clear and "legally certain"
    - No testimony save wife's that non-cash gifts were not to be community
    - As for cash gifts, they were mortgage payments on a community house, made payable to the mortgage company
      - They were used to benefit the community during the existence of the marriage, therefore the court finds they are also community in nature
    - Cash gifts made payable only to the Δ
      - Court says this information is not enough to overcome the presumption of community
      - Court also notes that simply because money was deposited in a community account does not inherently make it community (citing *Curtis*), though the court finds these cash payments to be community
  - Gifts from father = cash gifts
    - Δ says the microwave and washer were bought with Christmas gift money from her father to her
    - Father testifies that he intended the money to be a personal gift to his daughter
    - Father also made payments on a second house that was community property
      - Father testified he intended his daughter to be sole beneficiary, but knew the husband would benefit, too
    - Court also notes that the father testified (and husband agreed) that they never got along
- Holding
  - Gifts from grandmother are community; gifts from father are separate
  - Court seems to be more accepting when the donor is around to testify as to his intent; also takes into account the relationship between the donor and the other spouse; court does not accept that checks made payable to one spouse are automatically separate property; court seems (when there is no testimony in addition to receiving spouse) to be accepting the use of the money as a manner of identifying the nature of the money, i.e. if it is community or separate
- Dissent/concurrence (Knoll)
  - Grandmother's gifts were separate
    - Fact wife's testimony was self-serving is insufficient grounds to disregard it

        - Trial court believed wife
        - When donor is dead, that use of the gifts should not be controlling
        - Grandmother physically gave checks to wife or third party, not to husband
            - One can presume from this, as in *Campo*, that there was a preference for the wife
            - The lack of delivery to the husband is significant
        - Husband did not know grandmother was going to pay their debts
    - Agrees father's gifts were community

Allbritton v. Allbritton (part 2)

- Facts
    - Debt of husband from a DWI conviction
- Legal Issue
    - Is DWI community or separate?
        - A separate obligation is one that is an intentional wrong not perpetrated for the benefit of the community (article 2363)
            - Unknown if he was on community mission at the time
            - And paying attorney's fees might have helped keep him out of jail, thus indirectly benefit community
- Holding
    - This is a community obligation
- Dissent (Knoll)
    - DWI doesn't benefit the community so not community debt

Alt v. Alt (La. App. 4 Cir. 1983)

- Legal Issue: whether evidence of the income of a remarried parent's spouse is admissible to determine the amount of support where a prenup provides for separate property
- Rule: second spouse's income is not a factor for child support if there is a separate property regime

- Under R.S. 9:315 (which came after *Alt*), second spouse's income only comes into play as a benefit if (regardless of the legal regime) the income is shown to be used directly to reduce the costs of the spouse's actual expenses

Auger v. Auger (La. App. 2 Cir. 1980)

- Facts
  - Husband and wife marry in 1963; physically separate in April 1971
    - In May 1971 the husband conveyed his interest in seven tracts of land acquired during community to his father and brother
  - In 1972 the parties reconciled and the husband told the wife about the conveyance but said the property would be reconveyed to the community
  - In 1972 the parties re-separate and in 1973 there is a separation for bed and board followed by a divorce
  - Wife suing originally to have sale annulled, but then she amended to seek damages for fraudulent transfers
- Procedural Background
  - Trial court found for the wife and gave her ½ the fair market price of the land minus the consideration
- Legal Issue
  - It is clear that (based on *Thigpen*) the wife cannot get a sale rescinded because of fraud (though she could because of simulation, but she isn't appealing on that grounds), but she can get damages for fraud
  - The problem with the trial court is the amount of damages
    - Should be the fair market value minus consideration because the consideration was never paid
    - The burden is on the husband to prove with some degree of certainty that actual consideration was paid which he did not do
- Holding
  - Wife gets ½ of fair market value of property

Aymond v. Aymond (La. App. 3 Cir. 2000)

- Facts
  - Husband and wife married in 1967
    - Husband is an attorney and farmer; wife is housewife
  - Wife leaves matrimonial domicile in 199
    - Couple is rich (she gets $4,500 in interim spousal support/month)
  - After leaving the matrimonial domicile, wife prematurely cashed in some CDs for more than ½ million dollars
  - Husband accusing wife of fraud
- Legal Issue
  - Was that fraud?
    - Fraud is the misrepresentation or a suppression of the truth made with the intention of obtaining an unjust advantage to a party or causing a loss to another (art. 1953)
    - This wasn't fraud because the wife was simply trying to maintain funds to support herself; she was a housewife who had no means of generating income for herself
- Holding
  - No fraud so no reimbursement

Bailey v. Bailey (La. 1998)

- Facts
  - Couple marries in July 1977
  - Husband had been a member of LASERS (La St Retirement program) since 1963
  - In October 1993, husband enters DROP (DROP allows you to put retirement benefits into an account while still working)
  - Couple divorces and community terminated on January 28, 1994
- Legal Issue
  - Are the DROP funds community?
    - The trial court (and COA affirmed) divided the DROP account into two parts:
      - Portion attributable to funds credited by LASERS to the account from the date entered to the termination of the community
      - Portion attributable to funds credited by LASERS after the termination of the community
    - First portion was deemed community and the trial judge awarded the wife her community interest; second portion was deemed separate
  - The problem though (as the dissent in the COA points out) is the right to participate in DROP is based on past years of a service, so really DROP is an asset attributable to the employee's employment before the termination of the community
  - So the question is: is the entire DROP account subject to the *Sims* formula, or only the portion collected during the community?
    - The entire DROP account is subject to the *Sims* formula
    - In the DROP context, the eventual monthly retirement benefits is fixed as of the date the person enters into the program because the spouse is earning no more credit toward those benefits while in DROP
      - The wife is entitled to all of the DROP account, in as much as it is attributable to the community
- Holding
  - Reverse; apply *Sims* to entire DROP account

Note: post-*Bailey*, the DROP program was changed from being a defined benefits plan to being a defined contribution plan, so you no longer apply the *Sims* formula, but instead apply the *T.L. James* formula

Banks v. Rattler (La. App. 2 Cir. 1983)

- Facts
  - Banks in the car with wife; wife driving
  - Wife and Banks in car wreck with Rattler; only Banks claims injuries
  - Banks files suit against Rattler, his employer, the employer's insurer, and Bank's insurer
    - These Δs file third party demands against wife or in the alternative, comparative fault award
  - Wife answers and reconvenes against Rattler and his employer
  - Husband seeks reconventional demand for restitution of damages to the car
    - Δs file exceptions that wife could not sue for damages to the car because the car wasn't in her name and that husband could not sue for damages to the car because he was not a defendant to the principal action
- Procedural Background
  - Trial court sustained exceptions for lack of capacity
- Legal Issue
  - Can husband and wife sue for car damage?
    - The right to recover damages to property is a property right, which belongs to the owner of the thing
    - Under article 2351, the spouse who's name a movable is issued or registered in has exclusive right to manage
    - Under article 686, either spouse is the proper plaintiff to sue to enforce a community right, but if one spouse is the managing spouse with respect to the right to be enforced, then that spouse is the property plaintiff
      - But if there is doubt about whether the right is community or separate, the plaintiff spouse may sue in the alternative
      - If only one spouse sue to enforce a community right, the other spouse is a necessary party
    - The car is registered in the husband's name, so he is clearly the property plaintiff
    - Since he is the proper plaintiff, you cannot deny him the opportunity to sue; his reconventional demand was miscast as such, but it is a proper intervention (reconventional demand is only available for defendants and third parties)

Blanchard v. Blanchard (La. 1999)

- Facts
  - Couple divorces on March 3, 1993
  - Two major assets: family home (boyhood home of husband) and pension (in Teacher's State Retirement System)
- Procedural Background
  - Trial court gave to wife the pension and the husband the house because the present cash value of the two was roughly equal; husband also got equalizing payment
    - Wife appeals (she doesn't want present cash value)
  - COA reversed, saying present cash value was inappropriate because of nature of pension things were too speculative
- Legal Issue
  - Is it proper in this case to divide the pension using "present cash value" or to defer Δs benefit distribution until ∏ retires under the fixed percentage method of *Sims*
    - Explanation of two types of divisions given (see above)
    - In this case, the present cash value system is unfair because the interests of the employee spouse are not adequately taken into account
      - She can earn more in her pension if she waits to retire until after 30 years, as opposed to now after 20 years
    - Also the court looks at the nature of the assets: the house and the pension are not particularly liquid
      - Also looked at the fact there are not sufficient marital assets to lessen the blow to the wife
    - But this does not mean the family home must be sold
- Holding
  - COA affirmed; no present cash valuation of pension because it would cause undue hardship
- Dissent (Marcus)
  - Within trial judge's discretion to do exactly what he did
- Dissent (Johnson)
  - The point of divorce proceedings is to bring an end to the community
  - Husband has no control over the pension plan

Boellert v. Lumpkin (La. App. 3 Cir. 1993)

- Facts
  - Boellert (an attorney) did legal work for Lumpkins in 1987–1990
    - Suing them for payment
  - Trial court held judgment against husband, but not against wife insofar as it affects her separate property
- Legal Issue
  - There is an extremely limited record, but the court notes that the services were rendered for the "client," not "clients," the wife is not referred to except in the payment collection, and the accounts receivable were under the husband's name only
- Holding
  - Court finds there is sufficient evidence to show no manifest error on trial court's determination that this was a separate obligation incurred by the husband so wife is not separately liable

Boggs v. Boggs (SCOTUS 1997—very important case)
*****This case overrules *T.L. James* to the extent that ERISA preempts what the private employer was doing in that case*****

- Background on ERISA and REA
  - ERISA applies to all private employers; it's goal is to secure rights of the employees in retirement plans and assure a stream of income to employees and "his dependents" (*Boggs* says that ERISA is for the living and not for the dead)
  - REA (Retirement Equity Act) recognized that certain claims could be asserted by non-employee spouses against *the pension administrator*; this is what allowed for the QDRO
    - REA also set up a mandatory survivor annuity plan which can only be waived by the spouse's consent
- The court in *Boggs* reasoned that Congress had recognized spousal interests, and therefore there was no need to apply a state's community property laws, because Congress had created the QDRO and the mandatory survivors' annuity plan
- Note that *Boggs* is in direct opposition to *Johnson v. Wetherspoon*, but they are governing different things; *Boggs* is worried about plans that fall under ERISA protections (so private retirement plans); *Johnson* is discussing state retirement plans

- Facts
  - Husband and wife marry; they have 3 kids
  - Husband begins working for South Central Bell in 1949
  - Wife dies in 1979
  - Husband marries wife2 in 1980
  - Husband retires in 1985
  - Husband dies in 1989
    - When husband dies, he has the following retirement items: lump-sum distribution from SCB, which he rolled into an IRA (worth $180+K); 96 shares of stock; monthly annuity
- Legal Issue
  - Who can get his retirement stuff?
    - The people who have claims to it:
      - The sons from the first marriage. The first wife left the husband 1/3 of her estate and usufruct to all of the estate and the sons naked ownership to all and 2/3 of her estate; therefore, whatever the first wife should have had in the pension plan would go to the sons
      - The second wife. The husband bequeathed to her certain real property lifetime
        - Second wife claims the sons claims are all pre-empted by ERISA
          - the Fifth Circuit said that ERISA did not pre-empt the sons claims because while ERISA requires that pension plan benefits cannot be "assigned" or "alienated," these benefits were not transferred, but instead acquired by law (though some of the 5th

Circuit disagreed, saying this frustrates ERISA's goals of securing national uniformity in pension plan administration, and they said this intent is further seen in the creation of QDRO, which allows recognition of a non-participant spouse's community property interest in a pension plan in specific circumstances)
        - The Ninth Circuit has held the exact opposite (which is significant as both 5th and 9th Circuits cover community property states)
    - ERISA has a preemption clause that states the Act "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan"
        - Survivor benefits
            - Wife2 says that to have the sons claim the survivor annuity defeats the purpose of ERISA
                - The sons say it does not because their claim only affects the money after the funds have been disbursed
                - The court agrees with wife2, saying the statutory object was to ensure a stream of income to the retiree (point of ERISA) and the surviving spouses (point of REA with the QDRO); to allow a community interest to be created would defeat this purpose
        - Sons claims to part of IRA, stock, and monthly annuity payments
            - The object of ERISA is to protect plan participants and beneficiaries
            - The sons are not participants or beneficiaries; to allow them to acquire a competing interest in the funds would undermine the goals of the statute
- Holding
    - ERISA pre-empts state law
        - Note that this is big because state family and property law is being pre-empted and these are two areas of the law usually reserved for states

- In response to *Boggs*, this was added to the Louisiana Revised Statutes:
    - When federal law or the provisions of a statutory pension or retirement plan, state or federal, preempt or preclude community classification of property that would have been classified as community property under the principles of the Civil Code, **the spouse of the person entitled to such property shall be allocated or assigned the ownership of community property equal in value to such property prior to the division of the rest of the community property**. Nevertheless, if such property consists of a spouse's right to receive social security benefits or the benefits themselves, then the court in its discretion may allocate or assign other community property equal in value to the other spouse. (R.S. 9:2801.1)
    - Does this only apply to pensions? Does this in itself conflict with ERISA?

- Arguably this may conflict with ERISA; for military benefits, prior to the passage of 10 U.S.C. § 1408 in 1983, the court had stated that federal law also preempts reimbursement; this is just like reimbursement—it's offsetting—so this may also be preempted by federal law

Brar v. Brar (La. App. 3 Cir. 2001)

- Facts
  - Couple married in 1998 in India
    - Move to Alexandria
  - Husband files for art. 103(1) divorce on July 14, 2000
    - Wife files reconventional demand for interim support (gets $4.5K/month)
    - Husband files rule to show cause for separation of community property on September 8, 2000
    - He is granted separation but it is dated back to date he filed rule for separation of property, not back to the original filing of divorce
- Legal Issue
  - To what date does the separation of community property go back to?
- Holding
  - Under article 2375, it dates back to filing for divorce

Brehm v. Brehm (La. App. 5 Cir. 200)

- Facts
  - Couple married for 30 years
  - Partition of community property
- Procedural Background
  - Trial court said:
    - House – community property ($140K)
    - Wife owes reimbursement on cashing in of life insurance policy ($15.8K)
    - Wife owes reimbursement for alimony, health insurance, auto insurance
    - Husband entitled to reimbursement for paying home, flood, property insurance, pest control
    - Both parties responsible for tax consequences
- Legal Issue and Holdings
  - Is the house community property?
    - House was built on separate property of husband (art. 2366 governs)
    - Wife is entitled to ½ reimbursement of funds used to build the home
  - Is wife entitled to ½ reimbursement of labor?
    - To get labor under art. 2368, must prove:
      - Property is separate
      - Property increased in value
      - Increase in value was based on uncompensated or undercompensated labor of other spouse
    - If you prove all three things, then the burden shifts to the other spouse to prove that value increase was due to something other than uncompensated or undercompensated labor
    - Wife's labor was painting, wall papering, other routine fixes to a new house
      - However, also significant contract work done
  - Did the sale/resale of the house to the Homestead Association constitute a change in ownership?
    - No; that was solely for the purpose of providing the homestead with a vendor's lien and first mortgage
- Holding
  - Wife entitled to reimbursement for community funds used to build house; since house is husband's separate property, he is not entitled to insurance reimbursements on house
  - Husband is entitled to reimbursement for the permanent alimony, health insurance and auto insurance he paid before issue of permanent alimony was resolved, since wife was not awarded permanent alimony (I guess she cheated on him?)

Bridges v. Bridges (La. App. 3 Cir. 1997)

The alienation in this case is the renouncement of liberative prescription

- Facts
  - Couple marries on February 28, 1970
  - Couple divorces on October 11, 1993 with community terminating on March 18, 1993
  - The items in debate are:
    - Valuation of the Little John residence (where the wife resides) and the Rustic Manor residence (where the husband resides)
    - A Ford van
    - A Dodge vehicle
    - Utility trailer
    - Fishing rods and guns
    - Reimbursement payments for mortgage payments on the Rustic Manor and on an Isuzu truck
    - Reimbursement payments for the daughter's braces
    - Reimbursement payments of $72,000 to the wife's parents
- Legal Issue
  - Reimbursement to the wife's parents
    - The wife's parents wrote checks payable to the wife totaling $72,000 during the community
      - These funds were used to purchase the Rustic Manor, and other checks were put into their joint bank account
      - There was a promissory note executed for $40K from couple to parents
    - Trial court concluded that the checks had prescribed
      - Prescription cannot accrue in favor of the community because it is not a legal entity
      - But a few days before filing a divorce, the wife executed a renunciation of prescription on the payments to her parents
      - Trial court said that this effectively renounced prescription on behalf of the community
    - Court disagrees; renunciation abandons the rights derived from the accrued prescription and creates a new obligation
      - But the community cannot have obligations because it is only a patrimonial mass, not a legal entity
      - The wife never told the husband she was executing the document, and when she executed it, she was already planning on getting a divorce
      - All she could do was renounce her part of the debt
- Holding
  - Claims on parents' checks have prescribed; husband owes nothing to wife's parents

Bridges v. Osborne (La. App. 1 Cir. 1988)—this case is wrong!

- Facts
  - Bridges hired to paint ½ of a duplex, so he asked the owner of the other ½ (the Δ) if they wanted their ½ painted; wife said yes
  - Painting and repairs take place on October 27, 1985; total cost was $1,478
    - Bill sent on October 28; payable by November 4
    - Wife said she couldn't pay the bill, so wife and Bridges work out deal that she will pay half now and half in December
    - Wife sends $300 in December and then $200 in January
  - Bridges sues husband and wife; trial court finds in favor of Bridges
  - Husband appeals
- Legal Issue
  - Can the husband be held liable for the debt orally contracted by his wife?
    - Firs the court notes there is no evidence that they were married (though some testimony to this effect . . .)
    - It is also unclear if the property was community or separate because there is testimony that the duplex was acquired by the wife prior to the marriage (thus making it separate)
    - Obligations occurred during a community regime are presumed to be community obligations, but an obligation incurred by a spouse for his separate property is a separate obligation to the extent that it does not benefit the community, the family or the other spouse
    - However, the wife rented the duplex out
      - Rent is community property
      - The painting and repairs were ordinary expenditures to make the property better for renters
      - Thus, the painting and repairs benefited the community
      - Thus they were community obligations
- Holding
  - Painting and repairs were community obligations; husband is liable

Brumfield v. Brumfield (La. App. 1 Cir. 1985)

- Facts
  - Husband forces wife to sign matrimonial agreement for separate property regime the day before the wedding
  - Debate about where the signing took place; he says in law office; she says at home
  - Husband is a lawyer! Tells her not to read the agreement
  - Wife questions husband about what she signed years later; he says she still wouldn't understand it
  - Husband and wife separate; husband says he's been lying to her all these years and she owns nothing
- Legal issue
  - Is the prenup that applies separate property regime valid?
    - Wife argues fraud
    - Court agrees ("[T]here is no doctrine that intimate fraud cannot be successfully provided.")
      - Lots of testimonial evidence
      - Only question is the believability of the witnesses and that was for a jury to determine
- Holding
  - Hold for wife

Cabral v. Cabral (La. App. 5 Cir. 1989) (real estate investments resulting in substantial loss to community were not fraudulent because no proof that he was doing it to try and impoverish the community; reasonable to think he was just trying to reduce financial difficulty of community, though is admitted the husband could have been more attentive to the investments)

Cajun Capital v. Bourque (La. App. 3 Cir. 1988)

- Facts
  - Husband signs a listing agreement with Cajun, granting them the exclusive right to sell a community property enterprise; the wife does not sign the agreement (unclear as to why)
    - The deal was that Cajun would be paid if they could sell the enterprise
    - Cajun finds a buyer for the enterprise
    - Husband and wife execute sale to the buyer without the help of Cajun
    - Cajun wants to be paid; husband and wife won't pay them, saying the original agreement was a nullity because the wife wasn't a party to it
- Procedural background
  - Trial court declared the listing agreement to be absolutely null
- Legal Issue
  - Does the requirement of concurrence apply to the exclusive listing agreement?
    - No because this was not an encumbrance
    - An encumbrance must create a real obligation, which attaches to a thing
      - No obligation attached to the community enterprise, as the agreement between the couple and the buyer said that there was no encumbrances on the property
- Holding
  - This is the management act of one spouse, not an encumbrance; did not need wife's signature; not a nullity

Camel v. Waller (La. 1988)

- Facts
  - This suit is between the wife and the parties her husband sold property to
    - It is a suit for partition buy licitation
  - Husband purchased 4 properties during community (detailed below); when he purchased the properties he said he was separated (he was not separated at the time)
    - Parties do eventually separate
  - Unit 1: husband and Ellen Waller purchased; eight months after the separation of husband and wife, husband and Waller sell unit 1 (husband accurately says he is judicially separated from wife)
    - Eight months after divorce rendered, buyer of unit 1 sells it
  - Unit 4: husband had purchased unit 4 and three days after selling unit 1, sold unit 4 to Ellen Waller (accurately saying he was judicially separated from wife)
  - Wife claims she owns undivided ¼ interest in unit 1 and undivided ½ interest in unit 2
  - Wife also claims Ellen Waller knew or should have known that husband's interest in property was community interest so she was in bad faith
- Procedural Background
  - Trial judge rendered judgment against wife; COA affirmed
- Legal Issue
  - Can defendants rely on the public records doctrine and husband's description of his marital status? Or, should wife's interest in the community property trump?
    - The purchaser cannot rely on the declaration of marital status so as to validate the purchaser's acquisition in preference to the interest of the ex-wife
  - The public records doctrine is founded on the principle of public policy for the purpose of assuring stability of land titles, but it does not create rights in a positive sense, but rather has the negative effect of denying effectiveness of certain rights unless they are recorded
    - Third parties may not rely on the public records, but on the *absence* of something from the public records
    - Therefore, the court says the third parties can rely on the absence from the public record of the instrument that signaled the termination of the community, i.e. the judgment (this was never recorded)
    - The absence of the judgment terminating the community permitted third party purchasers to acquire free and clear of her claims the property which her husband as head and master of the community was at liberty to convey alone
      - Isn't this imposing an obligation on the wife???? This seems crappy . . .
- Holding
  - Third parties win

Campo v. Campo (La. App. 4 Cir. 1979)

- Facts
  - Parents gave their son money to build a shrimp boat
- Legal Issue
  - Was the shrimp boat community or separate property?
- Holding
  - Separate
  - Court looked at the testimony of the donor, the relationship between the donor and the other spouse, and the fact the spouses were having marital problems when the donation took place

Canale v. Guy Mayer, Co., Ltd. (La. App. 4 Cir. 1985)

- Facts
  - Wife takes her furs to Mayer's store to store in Spring of 1978
  - Wife gets temporary tickets for coats
  - Husband called and got coats moved to another store and an unidentified woman came to collect them
    - Weird things going on in their relationship; wife's property would end up missing; she had to move all the time; FBI investigation
- Legal Issue
  - Who is responsible for the coats?
    - Mayer was the depositary of the wife's; the husband was not the wife's agent
    - The Depositary has to restore the thing to the one who delivered it to him or the one who's name the deposit was made in or who was pointed out to receive it (article 2949)
      - In each case, this was the wife
      - Mayer tries to say that the store account was in the husband's name, but the court doesn't care because the receipts were issued to the wife in her name
- Holding
  - Mayer is liable to the wife for the coats

Carpenter v. Carpenter (La. App. 1 Cir. 2001)

- Facts
  - Couple marries in 1967
  - Couple divorces in 1991
  - In community property settlement, wife got stock in Superior Patio Sales
    - Husband had put money into the Superior account from his mother's succession
    - Heirs of his mother wanted payment from husband as to pay for funeral expenses to tune of $14K
  - Years later, the administratix sought to have this debt acquired by the husband declared to be a debt of the former community and a joint and solidary obligation of the former spouses
  - Ex-wife pays full debt then sues ex-husband for reimbursement of full or half of the amount (action for contribution)
- Legal Issue
  - Did the husband have to reimburse the wife?
    - If it is a solidary obligation, then each is liable for his virile portion; a solidary obligor who has rendered the whole can claim from the others his virile share
    - There is a presumption that the virile shares are equal
    - This was not a community debt at the time the community was dissolved:
      - The wife was not named an original party and the debt was not mentioned in the settlement agreement between the spouses
- Holding
  - Husband liable for ½
- Dissent (Whipple)
  - Lack of subject matter jurisdiction (huh?)
- Notes from *Carpenter*
  - Solidary obligors may ask for indemnification or for contribution; here they are calling the couple solidary obligors, but she is asking for reimbursement, which is what happens between spouses, but these people are no longer married
    - The question then is can the rules of reimbursement be extended post-termination of the marriage, though in this case it doesn't matter because the two are co-debtors

Carroll v. Carroll (La. App. 1 Cir. 2000)

- Facts
  - Couple married on September 17, 1983
  - Wife filed suit for divorce on February 26, 1997
  - Wife then filed to partition community property and listed her community property partition attorney's fees as community obligations
- Legal Issue
  - Are her attorney's fees a community obligation?
    - Article 2369.1 says attorney's fees that incurred before date of judgment of divorce are community obligation
    - Partition of community property falls into the category of things that are in a judgment of divorce
- Holding
  - They are community obligation

Chance v. Chance (La. App. 2d 1997)

- Facts
  - Husband wife married for 31 years; ends in divorce; division of assets so court has to determine whether items are community or separate
- Legal Issue
  - Interest in husband's medical practice
    - Trial court: 20% community interest in medical practice
    - COA: not manifest error; it is fine to assign values to the various components and holdings of the partnership and not add the future cash flow of the business (which is arguably just good will)
      - Keep in mind that the "good will" calculation is going to be questionable post–R.S. § 9:2801.2
  - Accounts receivable
    - Trial court: subtracted certain contractual discounts and then calculated a historic collection rate (the experts had different collection rates)
    - COA: methodology is fine; accept the expert's testimony that the trial court accepted
  - Prostate Center Income
    - Trial court: earnings from referrals are separate property
    - COA: this is correct because it was generated by husband's professional skill and effort
- Holding
  - Affirm trial court

Colonial Bank v. Perkins (La. App. 4 Cir. 1987)

- Facts
  - Realtor obtains a money judgment against husband
    - Judgment recorded; becomes a judicial mortgage
    - Realtor seeks writ of seizure against community property
      - Files rule to show cause against wife why seizure should not issue
- Legal Issue
  - Is this an appropriate use of summary proceedings?
    - Yes; CCP article 2592 allows for summary proceedings to be used for "incidental question[s] arising in the course of litigation"
    - This was incidental to the money judgment litigation
- Holding
  - Summary proceeding appropriate in this case

Depner v. Depner (La. App. 1 Cir. 1985)

- Facts
  - Husband and wife married in 1976; separated in 1979
  - Husband is a medical doctor
- Legal Issue
  - How do you divide the enhanced value of the husband's professional medical practice?
    - Trial court did not include the sum of earning capacity or other intangibles (good will) in the calculation
    - Husband argues that only a physician can participate in the medical corporation earnings under R.S. 12:905(B); wife counters that she is entitled not to the earnings but should have earning capability considered when valuing the medical corporation's worth
  - Court notes that property is patrimony
    - But, says that good will has no existence in and of itself, so it is dependent on the principal property right
    - Good will does not bestow on those who have an ownership in the business a separate property interest
    - Court analogizes to an educational degree
- Holding
  - Affirms trial court; good will is not a separate property interest
- **Recap of *Depner*:**
  - Good will is not separate property from the thing which it attaches to
  - Professional corporations cannot have good will because it is impossible to distinguish good will from the future earnings interest in the corporation

Delahaye v. Delahaye (La. App. 1 Cir. 2004)

- Facts
  - Husband and wife marry in 1971; husband is agent for New York Life
  - Couple divorces in 1999
- Procedural Background
  - Trial court said payments were renewal commissions, so community; home was separate property of wife, but subject to reimbursement for ½ of any community funds used to enhance it
- Legal Issue
  - Is the home and some payments received by husband post-split community?
    - To the extent that a right to receive proceeds derives from a spouse's labor and industry during the existence of the community, that right is a community asset, even if the proceeds are received after the dissolution of the community
    - Husband contends the commissions are separate property because they are compensation for his services, efforts, skill post-dissolution
      - Testimony that the husband does not have to maintain policies in order to keep getting payments
      - This makes it different than *Ross* because in *Ross*, had the agent not continually maintained the policies, he would have not been paid; in other words, he is not required to "schmooze" in order to get paid—he is getting the benefits for his past work
      - For future policy increases, to the extent any of it is because of work post-community, then the wife's share should be deducted
    - It is not necessary that the rights be vested during the community; if the proceeds are attributable to a spouse's labor, skill, industry during community, then it is community
- Holding
  - Payments are community

Dillenkoffer v. Dillenkoffer (La. App. 5 Cir. 1986)

- Facts
  - Couple separated on January 30, 1984
- Legal Issue
  - Addition to family home:
    - Addition constructed on the family home
      - Family home (and addition) lost to fire
      - Insurance adjuster valued the addition at $4,482
      - Trial judge allocated the insurance proceeds receive by the husband for the loss equally between the husband and wife
    - Is this the right valuation for the addition?
      - The value should be the value the asset had when it was used; the building and the loss occurred very close together, so this valuation is not in manifest error
  - Mortgage payments on family home
    - When mortgage payments are paid in connection with marital home that constitutes separate property, the community is entitled to reimbursement for the principal only
    - Not entitled to interest because the community had the benefit of using the home
  - Truck
    - Wife avers that trial judge should have given her a credit for a $2K payment she made
    - Court says no
      - It is true that you don't have to pay rent on a family home if you are also paying the mortgage
      - But movable property like a car is different because it depreciates in value while you are using it

Dixon v. Dixon (La. App. 1 Cir. 2000)

- Legal Issue: Does use of separate property under a separate property regime operate to make the other spouse a co-owner? (in this case the fight was over LSU football tickets)
- Rule: Use alone does not suffice; there must be a joint interest; the owner of the separate property may do that, but use alone is not enough

Doughty v. Insured Lloyds Ins. Co. (La. 1991) (holding that recovery for liability can be made by an owner who does not have garde over the thing)

- In this case, the son was killed at a lumber mill owned by the parents; the wife had not management over the mill based on her lack of involvement
- LASC said because of her lack of involvement, the wife could recover from insurance company for son's death, but the husband could not because he was liable because he had custody of the mill
- Problems with the case:
    - The appearance may have been that the husband was the sole manager, but there was no indication that the wife ever gave away her right of management
    - All assets of the business were community, so it would appear the wife owns half of the business, and thus can manage it
    - Even if her planning was remote, article 2336 says that each spouse owns an undivided one-half interest
    - She cold not partition the property during the community, but that helps presume she owns it with her husband
- This may be okay because the court rests on tort liability theory that she was in no better position than an innocent victim to take steps to eliminate the harm at the mill

Dué v.Dué (La. 1977)

- Facts
  - Husband and wife split; he is a lawyer with some contingency fee contracts pending
- Legal Issue
  - Are contingency fee contracts pending at the date of dissolution included in community assets?
- Procedural Background
  - Trial court—no because no interest is vested until the contract is completed (which happens post-dissolution)
  - Third Circuit—yes because at the date of execution the contingency fee contract creates a right to share in the eventual proceeds
- Legal Issue 2
  - Husband says:
    - Contingency fee contract is aleatory contract (based on uncertain event), so no obligation until event happens
      - Court: Whether it is aleatory has no significance to whether it creates an obligation that is a property right; only gives rise to "pure and simple" obligations
    - If it is conditional obligation, then the right is only for specific enforcement
      - Court : subject to rules of mandate ("revocable mandate")
        - If the relationship is terminated at the will of the client, attorney can recover services
        - If terminated by attorney's death, heirs can recover his services
    - No ascertainable value before successful completion of work
      - Court: no merit
  - All property is to form part of the community if acquired during the marriage, and property should be viewed in its broad sense, as denoting all patrimonial rights
- Holding
  - Contingency fee contract creates a **patrimonial asset** acquired during the marriage through the husband's labor, and therefore is an asset of the community at the time of dissolution
    - Obligation is subject to suspensive condition
- **Recap of *Dué***
  - There is no question in the court's mind as to whether a contingency fee contract is property; applying the definition of patrimony to property, a contingency fee contract clearly is susceptible of pecuniary value, so it is clearly property
  - The more nuanced question the court tackles is whether an obligation with a suspensive condition creates a property right
    - The court says yes, it does create a property right
    - Today, this would be an easier case because article 1771 explicitly states that a suspensive condition creates a *right*

- The *Dué* court establishes that the contingency fee contract may be part of community property and it may be part of separate property; the equation to determine which is part of which is:

$$\frac{\text{work performed during community}}{\text{total work}} \times \frac{1}{2} \times \text{value of contract}$$

  - This equation (or variations) is going to pop up repeatedly in this course; the difficult part is how do you determine the amount of work performed? By hours? By type of work?

Egan v. Egan (La. App. 4 Cir. 1999)

- Facts
  - Husband is a DEA agent and is injured on the job; elects to have worker's compensation payments (instead of Office of Personal Management payments)
  - Couple divorces
- Legal Issue
  - Can the wife get future worker's comp payments, future meaning those that come in after the dissolution of the marriage?
    - Wife (and trial court) says that because he elected to have his payments come in worker's comp, all worker's comp benefits are now community, so she should get future payments, too
  - The court says this is not correct because the worker's comp purpose is to compensate the injured worker for lost wages and reduced or lost earning capacity; it's akin to salary
    - Those received after the dissolution of the community are separate
- Holding
  - Worker's comp benefits that are received post-dissolution of the marriage are separate property

Ellington v. Ellington (La. App. 2 Cir. 2003)

- Facts
  - Husband and wife marry in 1964
  - Husband and wife have a cotton company
  - Husband and wife divorce in 1998
- Legal Issue
  - Good will included in the cotton company?
    - It is clear that the vast majority of the company's customer based is attributable to the husband and one of his sons
  - The company is not like a doctor, lawyer, engineer in which the good will has to be attached to an individual
  - Good will is an intangible asset that must be used in determining the total value of the business
- Holding
  - This means that goodwill is not a separate property interest

Post-*Ellington* amendment (and current law):

- § 9:2801.2: In a proceeding to partition the community, the court *may* include, in the valuation of any *community-owned* corporate, commercial, or professional business, the goodwill of the business. However, that portion of the goodwill attributable to any *personal quality* of the spouse awarded the business shall not be included in the valuation of a business.
  - This changes the law because:
    - It states that professional business may have good will; this means that it overrules *Depner*
    - It requires for the valuation of a business that the portion of goodwill attributable to any personal quality of the spouse to be not included; this would change the *Ellington* result because the 55% attributable to the husband would be removed from the valuation of the business
      - Arguably, if you are to remove the "personal quality" of the spouse, if that personal quality were negative, then you could argue that the actual value of the business should be higher than it is; this has not been done yet, but it is [according to Spaht] a good argument

Fielding v. Van Geffen (La. App. 1 Cir. 1985)

- Facts
  - Husband and wife enter into a premarital contract on August 22, 1979
    - Couple renounces community property regime
    - Contract also said that husband agreed to pay wife $200K
      - Obligation would cease upon death of wife, but not cease upon death of husband
    - Husband does pay wife $7,500 (opens separate account for her)
  - Husband and wife get divorced on August 20, 1982
  - Wife suing for remaining $192,500
- Legal Issue
  - Is the promise to pay $200K enforceable?
- Holding
  - Yes; the marriage contract is a valid commutative contract based on valid consideration of the parties giving up certain benefits and receiving others
  - Husband has to pay wife $200K

First Security Bank and Trust v. Dooley (La. App. 2 Cir. 1985)—this case is wrong!

- Facts
  - Wife borrowed money from Bank on two occasions (once for $7,800, once for $2K)
  - Parties physically separated a month (October 1983) after wife borrowed money
    - Legal separation January 1984
  - Bank sues wife; wife files third party demand against husband saying if she is liable, then he is liable for ½ because notes were community obligation
- Legal Issue
  - Is husband liable?
    - He argues this was not a community obligation because made without his permission, authority or knowledge
      - Court disagrees, saying it falls under equal management provision of art. 2346 (doesn't fit any exception), so wife had managerial authority to incur the community obligation without his concurrence
    - He argues also that they were note community obligation because they were not incurred for common interest of community
      - Court disagrees because they were used on home improvements
      - Money also spent on major son's education, but court sees this as a common interest of the spouses
    - Husband is liable
  - How much is the husband liable for?
    - The wife is liable individually and as a partner in the community, so the debts may be satisfied by her separate property or her interest in the community property
    - The husband is liable only as a partner in the community, so he is only liable for the value of his interest in the former community
- Holding
  - Judgment held against wife individually and wife and husband as a community; each liable for ½
    - NOTE: nothing anywhere imposes liability on each spouse for ½ of community obligation; this court relies on this erroneous conclusion

Ford Motor Credit Co. v. Corbello (La. App. 3d Cir. 1986)

- Facts
  - Husband executed a promissory note on October 21, 1983 for car
    - Husband doesn't pay twice, so Ford accelerates payments
    - Car is seized, but still a $6,543.10 balance due
    - Ford gets default judgment and tries to execute it on wife's car
    - Wife says car is separate property
- Procedural background
  - Trial court found wife's car was separate property, bought with funds wife accumulated from selling her house she owned with former husband
- Legal Issue
  - Is wife's car separate or community?
    - No manifest error in finding wife's car to be separate property
    - Clear records of her selling the house, depositing money, and buying car with that money
    - Husband was only obligor on the promissory note, not the wife, so her separate property could not be seized in order to satisfy his debt
  - Was seizure wrongful?
    - Even though there is the presumption of community, evidence shows that Ford was aware the car was separate, so seizure was wrongful; damages can be awarded for wrongful seizure
- Holding
  - Wife's car is separate; Ford has to pay damages

Ford Motor Co. v. Epps (La. App. 3 Cir. 1998)

- Facts
  - Wife buys a car from Ford and signed an installment contract with her signature and forged her husband's signature
  - Wife defaults and Ford seizes the vehicle and proceeds against wife and husband for $8+K
  - Trial court said both husband and wife were liable for the community debt, but the husband was not separately liable (wife was)
- Legal Issue
  - Can the community be liable for deficiency judgment rendered pursuant to an executory process based on fraud?
    - It is presumed the car was purchased for the benefit of the community
    - Debts incurred for the benefit of the community are community debts
- Holding
  - The debt against the community is proper
- Notes on *Epps*:
  - This is even more offensive than *Bridges* because at lease in *Bridges* the other spouse was only liable for half (joint liability); here the other spouse is liable in solido

Fowler v. Fowler (La. 2003)

- Facts
  - Couple marries on June 5, 1965; have one son
  - Couple takes out three life insurance policies on the son totaling $500K; wife is named beneficiary, though the son can change the beneficiary once he hits 21
  - Son dies at age 21 without changing the named beneficiary
  - Wife collects proceeds and puts in separate account in her name
  - Eight years after the son's death, wife files for divorce
- Legal Issue
  - Are the proceeds governed by community property regime?
    - Insurance proceeds are not treated like other forms of property; for one, they are governed by the Insurance Code
    - They are governed more by contract principles
    - The beneficiary is the owner of the proceeds, not the community
- Holding
  - Proceeds are wife's separate property

Franz v. Cormier (La. App. 5 Cir. 1991) (wife able to get an injunction to prevent another woman from spending money donated to her by the husband of the wife because the donations were made without the wife's concurrence)

Frazier v. Harper (La. 1992)

- Facts
  - Husband and wife divorce
  - Husband and wife have co-ownership in the husband's pension plan
  - Husband's employer changes the pension plan to an ERISA qualified plan
- Procedural Background
  - Trial court says the wife has no ownership in the new plan because it was created after the termination of the community (even though it credited the husband with the old plan)
- Legal Issue
  - What is the wife's right to the new plan?
    - The wife does have an interest to the new plan; she acquired it under a novation theory (novation = extinguishment of one obligation by replacing it with another . . . question about the wife's consent, because normally you have to consent to a novation, but the court says she ratifies the transaction by commencing the lawsuit)
      - Instead of the ratification theory, the court should have stuck with the agency theory or the negotorium gestio concept (management of the affairs of another)
      - Or, even better would be to rely on the theory of real subrogation
- Holding
  - The wife does have an interest in the new retirement plan

French Market Homestead v. Huddleston (La. App. 5 Cir. 1991)

- Facts
  - Husband and wife execute promissory note to French Market for $1.75M; both sign
  - French Market sues for payment; gets a default judgment
  - French Market issues write of fifa and seizure
  - Couple petitions court to nullify judgment
    - Wife also says (and trial court buys) she was not properly served with underlying lawsuit, so enjoined from seizure her ½ (issue on appeal)
- Legal Issue
  - Does the wife's notice on underlying lawsuit matter?
  - Whether creditor can seize and sell immovable community property to satisfy community obligation incurred by both when only one spouse has been sued and cast in judgment on the community obligation?
    - The encumbrance was community obligation; property securing the obligation is subject to seizure
    - In order to seize wife's separate property, she must be named a party
      - Wife concurred in the encumbrance
      - Natural consequence of encumbrance is that if you default on payment, community property will be seized
  - There is no due process violation because wife had notice prior to the sale as evidenced by the fact she sued to enjoin the sale
- Holding
  - Wife's injunction set aside
- Dissent (Gaudin)
  - Wife did not receive service of underlying lawsuit; no attempt to serve her
  - Injunction should remain and allow trial court to hear all merits

Gewalt v. Stevens (La. App. 1 Cir. 1999) (stating that when spouses reside, service of prior notice on one spouses alone does not offend due process rights of the other with respect to enforcement of an obligation against community property)

Gibson v. Gibson (La. App. 3 Cir. 1993) (court allocated property—guitar and amp—on wishes of children)

Gibson v. Gibson (La. App. 3d Cir. 1997)

- Facts
    - After being employed (and subsequent to divorce), husband withdrew funds from retirement plant without telling wife
    - Used 20% of funds for taxes
- Legal Issue
    - Did he act as a prudent administrator?
        - Trial court said no evidence he acted in bad faith
        - COA doesn't care about bad faith because it is not a requirement under article 2369.3
            - Under 2369.3, spouses have affirmative duty to each other to act as prudent administrator over former community property
            - Liable for fault, default, or neglect
- Holding
    - Husband is liable to wife

Gonzales v. Graffeo (La. App. 4 Cir. 1991)

- Facts
  - Wife and husband get married
  - Husband has a bank account he has with his daughter when they get married
    - He then takes his daughter off the bank account and banks the bank account in the name of him and the wife
    - Four months later the husband removes almost all of the money from the bank account ($22K of $24K) into a separate account with only his name on it
  - Petition for separation less than one year into the marriage
- Legal Issue
  - Is the bank account community or separate?
    - Husband and daughter testify the account was not suppose to be community, but only suppose to be used by the wife if the husband became incapacitated
    - Court seems to put great weight in the fact the wife's name was placed on the account, and in the fact the trial court was to determine the credibility of the witnesses
- Holding
  - Bank account is community property

Hamilton v. Hamilton (La. App. 1 Cir. 1979)

- Facts
  - Husband and wife married in 1973; divorce in 1977
- Legal Issue
  - Are the gifts from the bridal shower (plates, saucers, bowls, glasses, etc.) community or wife's separate property?
    - Trial judge said they were obviously intended for the joint use by the husband and wife
    - COA agrees that it must be "presumed that gifts of the nature [] involved, which would appear to be for the use by both parties, are therefore jointly owned by them"
- Holding
  - Affirm

Keep in mind in this case, that the items are co-owned, but they are separate property; the couple only has regular co-ownership over these items, so they will be partitioned in the matter items that are co-owned are regularly partitioned, i.e. by licitation or in kind (these will be in licitation)

Hanley v. Drumm (La. 1879)

- Facts
  - Argument is whether $4K that wife brought into the marriage is community or separate based on the marital agreement
  - Premarital contract said that the parties would be in a community property regime, and included in that regime would be:
    - All property husband was bringing into the marriage except the property from his late first wife's succession,
    - Property wife (this one) has acquired since first husband's death
  - This property was to be brought into the marriage such that the profits and losses acquired from it would be community, subject only to testamentary rights
  - The share was to be split in proportion to what was brought in, so because the husband brought in 5-fold more, he would get 5x the profits or losses
  - Parties not liable for debts of other spouse prior to marriage
  - The property referred to in the contract is under the control and management of the husband
- Legal Issue
  - Is the contract valid?
    - Wife says it should be null because it has her binding herself for her husband's debts
      - Court says no, this not binding herself to her husband's debts, but discussing what the wife is assuming
    - Wife says contract is against public policy because she is alienating dotal property
      - Court says the property is not dotal but community
      - There is no reason the wife should be able to benefit from the community, but should not have to put something into the community, too
  - Court: there is nothing that prevents a couple from saying property brought into the community (that otherwise would be separate) is community
- Holding
  - $4K is community

Hare v. Hodgins (La. 1991)

- Facts
- Legal Issue
    - How do you partition the interest in an employee's defined benefits pension ?
        - Trial court did a fixed percentage of the pension to the non-employee spouse
        - COA gave a lump sum to the non-employee spouse up front and the whole amount to the employee-spouse when it was paid out
    - LASC: COA is wrong because you don't freeze the value at the time of the trial on the merits [this was the same argument that was rejected in *Sims*]; each spouse is a co-owner of the pension and is entitled to a distribution based on the actual value of the fully matured pension
        - The value of the asset must be determined at the date of the partition trial on the merits
        - A fixed lump sum can be done, but it must be adjusted and discounted for contingencies such as mortality, interest, probability of vesting, etc.—*Sims* had said this could not be done in footnote 7 of case
            - This works if the employee-spouse can satisfy the claim without undue hardship
        - You can also do a fixed percentage which is paid out when the pension is paid out
            - This is called for when the calculation of the present value is too speculative
    - In this case, the wife's pay out from the COA is too low (and thus inequitable) compared to the real amount
- Holding
    - Reverse and remand

Hebert v. Unser (La. App. 5 Cir. 1992) (distinguishing garnishment from other seizures; garnishee-employer is entitled to notice not the judgment debtor employee; but in this case the wife had actual notice based on the fact she was served with a rule for contempt filed against her husband for failure to show at a judgment debtor hearing)

Hemb v. Landry (La. App. 4 Cir. 1999)

- Facts
  - Third party executed a purchase agreement to buy some property from husband and wife
    - Husband signed agreement; wife did not
    - Husband tried to get the third party to sign a waiver of redhibition; third party would not
    - So sale nixed
  - Couple then forms corporation which they transfer the property to (this is the corporation's only asset)
    - Try to sale property to third party from corporation (with no waiver), but third party won't buy it because the property is only as good as the corporation and he realizes if he has a redhibition claim he'll only be able to go after the corporation, not the individuals
- Procedural Background
  - Third party files suit and notice of lis pendens
  - Trial court holds for couple on summary judgment saying the first agreement was a nullity in the absence of the wife's signature
- Legal Issue
  - Third party is arguing that the wife confirmed the agreement, thus not making it null
    - The couple tries to argue that the original agreement was an absolute nullity, but there is no support for this
  - But the wife executed a power of attorney giving her husband authorization to act on her behalf
    - Wife says that she did not give her power to make the sale with the redhibition waiver
    - Court agrees that the power of attorney authorizes the husband to sell the property "as is," and makes no special mention of the waiver for redhibition, but says that she could and should have expressed such limitations if she wanted them
      - Regardless, the power of attorney raises a question of material fact so this should not have been dismissed on summary judgment
- Holding
  - Remand to determine if the wife ratified the agreement

Henson v. Henson (La. App. 3 Cir. 1986) (holding that the valuation of the pension was based on the date of termination of the community)—however, this is all wrong because they should not have focused on the value of the pension but the classification; the date of termination simply determines what is and is not community property

Herrell v. Herrell (La. App. 3 Cir. 1992) (R.S. 9:374 does not apply if the occupation of the family home is not from a court order)

Holland v. Holland (La. App. 4 Cir. 1989) (informal and unwritten agreement between spouses to support each other through college was unenforceable)

Hoover v. Hoover (La. 2002)

- Facts
  - Couple marries on August 30, 1980
  - Divorced filed via article 102 on November 16, 1994; new divorce filed on June 5, 1994 via article 103
  - Divorce rendered on July 18, 1995
  - Couple signed a community property settlement
    - Settlement did not include the value of a contingency fee contract the husband had
- Procedural Background
  - Trial court said this was a compromise, so no lesion
  - COA found husband did not fraudulently concealed the case with the contingency fee contract in question, and found that it was a compromise so there was no possibility of lesion
- Legal Issue
  - Was the settlement a compromise or an extra-judicial partition such that it can be rescinded for lesion?
    - Extrajudicial partitions may have qualities of compromises
      - Williamson: "a partition, even when it takes upon itself the aspect and qualities of a compromise, may be attacked for lesion beyond one-fourth; but the partition once made, if disputes grow out of it, and the parties compromise on those disputes, this compromise is unassailable for lesion"
      - The idea behind lesion is that one party should not benefit to the detriment of the other
    - The movant has the burden of proof in proving lesion, but for summary judgment, the burden of proof changes to the non-movant, but only to point out an absence of factual support for one or more elements essential to the claim, action or defense (CCP art. 966)
      - Therefore, the movant (wife) would have the burden of proving lesion at trial, but on summary judgment the husband has the burden of proving a lack of material fact
- Holding
  - This was a partition, not a compromise
  - Improper to dismiss lesion claim on summary judgment

In re Boyer (La. App. 1 Cir. 1993)

- Facts
  - Couple has matrimonial agreement to terminate community
    - Both represented by independent counsel
    - Agreement executed before notary and 2 witnesses
    - Parties submit joint petition to court to establish separate property regime
    - Neither party requested a hearing
    - Trial court reviewed agreement, found the parties understood the rules and principles of the agreement
    - Court gave approval
  - Now wife wants the matrimonial agreement declared null because she (1) signed under duress and (2) procedure was defective
    - She says procedure was defective because (1) agreement was signed before court approval, (2) no hearing, (3) trial court misled as to the date the agreement was signed, and (4) agreement not in authentic form
- Legal Issue
  - Does it matter when you sign the document?
    - No; art. 2329 contemplates that the court approve a valid agreement, it does not specify when you must sign that agreement
    - The goal of art. 2329 is to protect the less worldly spouse from entering into a disadvantageous position, but perfect symmetry is not required
    - Wife was represented by independent counsel; agreement clearly stated this was for the termination of the community regime
  - Do you need a hearing?
    - No requirement in art. 2329
  - Further, even if you said this was relatively null, the documents were filed in the public record; wife makes no claim that she did not agree with the filing or the partition that followed thereafter
- Holding
  - Matrimonial agreement is valid

Jackson v. Galan (E.D. La. 1986)

- Facts
  - October 28, 1980: husband and his mother executed a promissory note to Spahr for $5,000 (wife does not sign note)
  - September 3, 1981: Spahr files suit on promissory note (wife not named a Δ)
  - November 11, 1981: default judgment entered against husband, mother, and their company (wife not named as a judgment debtor)
  - May 1, 1982: Spahr files a garnishment petition against wife's employer (Sears Roebuck)—wife not served with garnishment petition
  - July 7, 1983: Spahr obtains judgment against Sears Roebuck ordering garnishment of wife's wages
  - September 27, 1983–July 25, 1985: wife's wages garnished ($5,737.90)
- Legal Issue
  - Can wife's wages be garnished?
- Holding
  - No; this is a state action that led to the unconstitutional deprivation of her liberty (property interest under 14th amdt)

Jennings v. Turner (La. 2001)

- Facts
  - Couple executes a partition of community property on October 25, 1990
    - Husband gets family home, personal items, two cars, appliances and furniture at family home
    - Wife gets $30K, personal items, appliances and furniture in her possession
  - Wife then files for her rights to his pension
- Procedural Background
  - Trial court held for husband saying the pension was included in the original partition
- Legal Issue
  - Was the pension plan included?
    - According to *Robinson*, when the agreement does not expressly mention the pension, it does not necessarily divest the non-employee spouse of his/her right to the pension
    - There is no language in the agreement about the pension so she did not divest her right to it
- Holding
  - Wife is entitled to the pension under the *Sims* formula

Johnson v. Wetherspoon (La. 1997)

- Facts
  - Couple marries on March 23, 1957
  - On August 28, 1958, the husband became a member of the Teacher's Retirement System of Louisiana (this is a defined benefits plan like the on in *Sims*)
  - Couple separates on November 12, 1966; community terminated from November 15, 1966
    - Community was never partitioned
  - Husband remarries on December 21, 1974
  - Husband dies on September 13, 1984
  - Second wife receives death benefits for almost 10 years when the first wife filed suit seeking benefits attributable to the community
- Legal Issue
  - Doe survivor benefits that belong to the beneficiary in full ownership still have an obligation on the beneficiary to account to a former spouse in the community if the receipt of the benefit's violates the former spouse's rights in the community? (answer is yes)
    - TRSLA works by the employees paying a portion of the salary into the system, and the employer paying a percentage into the system
    - Payments are not based on contribution, but on the member's highest average compensation, years of service credit, and the member's age
    - Two categories of benefits: retirement benefits and survivors benefits
    - The retirement benefits clearly must be pro rated; but what about the survivor benefits?
      - Survivor benefits payable by the employer's retirement plan to the extent they are attributable to the community, are a community asset
        - Why? The retirement benefits are community, and the portion contributed by the employer are community, and this applies whether the plan is private or public
    - How retirement benefits are paid out: the member may (1) choose to receive full monthly benefit with nothing going to the survivors upon death; (2) choose option 1 with a reduced benefit and a lump sum paid to the beneficiaries, (3) choose option 1 with a reduced benefit and a benefit paid to the beneficiaries for their life period
      - The Regular Maximum benefit calculation (option 1 is):

        number of years of service credit X highest average compensation for 36 consecutive months X 2% or 2.5%

      - If the member chooses another plan, then actuarial factors are used to reduce the monthly benefit
      - If the #2 (called Option 1 in the opinion) is selected, then the monthly benefit is reduced by a predetermined amount to allow for

the lump sum payout; if the member dies while there is a balance still, then the balance is paid to the member's estate
        - Survivor benefits are calculated the same way retirement benefits are calculated
            - Therefore, based on the similarity of the way the two are paid, the idea that two should be treated similarly is reinforced
    - The legislative intent also supports that the two are treated the same
        - The class of person the legislature created in all of the TRSLA retirement legislation is the same wording (members) and that had already been interpreted to include claimants, like previous members of a previous community
        - The first wife would be able to gain her share in any other situation in which the husband received retirement benefits, so no reason to specifically prohibit receipt in this instance in which the husband dies after having remarried
- Holding
    - Former spouse has right to survivor benefits that are attributable to the community
- This is different than *Sims* because the wife in *Wetherspoon* has the opportunity to go after the beneficiary for the benefits attributable to the community; **a state pension plan allows the wife to assert rights for interest against the beneficiary; a federal plan does not allow the first wife to assert rights against the beneficiary**

Junca v. Junca (La. App. 1 Cir. 1999)

- Facts
  - Couple reaches community property agreement
  - Agreement said that they intended to settle all of their disputes through the settlement
  - Husband then files claim of lesion; wife objects
- Procedural Background
  - Trial court said it was a compromise so not susceptible to lesion
- Legal Issue
  - Is this a compromise or partition?
- Holding
  - Court says compromise (weird!) because they entered into the agreement specifically for the purpose of settling their community property suit

Reason this is a compromise: husband filed a petition seeking a judicial partition, therefore creating a pending lawsuit; the agreement they reached thereafter was a compromise

Kambur v. Kambur (La. App. 5 Cir. 1995)

- Facts
  - Parties married on June 22, 1969; one child born of marriage
  - Parties filed for divorce and to partition community property on February 20, 1991
  - On January 5, 1993, consent judgment of partition entered into by which the parties agreed that life insurance policies, IRA accounts, and annuities owned in community was be divided based on a separate agreement reached by the parties, and if no agreement could be reached, then by judicial partition
  - On October 22, 1993, the husband filed a rule to judicially partition
  - Trial court took the wife's division of assets; husband is appealing
- Legal Issue
  - Did the trial court abuse its discretion in the judicial partition?
    - The trial court has the discretion to divide a particular asset equally or unequally; the only requirement is that the final net value be equal
    - There is a difference in life insurance policies and proceeds; the proceeds are the property of the beneficiary, not community property; the policy itself may be community
    - Ultimately, the trial court let the husband retain a policy of cash value around $106K ($331K total value), and the wife retain a policy of cash value of $77-78K cash value ($340K total value), and both retained co-owners of the policies in which their child is the beneficiary; the husband had to pay equalizing payments to the wife
    - The wife did get to keep more insurance coverage, but the net value at the end of the day is equal, which is what R.S. 9:2801 requires
- Holding
  - The trial court did not abuse its discretion
- Dissent (Cannella)
  - The problem is the wife maintained the life insurance policy on the husband even though she has no interest in his life anymore
  - Also problem with valuing the policies solely on the cash surrender value
    - The court should also consider whose life is being insured
    - Public policy says you cannot gamble on the life of another; there must be an insurable interest (meaning you actually have an interest in the thing being insured, you will suffer some loss from its loss)
      - An ex-wife has no insurable interest in her ex-husband (question: is this short sighted? The two are co-parents also)
    - Also, the husband is now ill and uninsurable so his policies are worth more than simply their cash surrender value

Kirchberg v. Feenstra (SCOTUS, 1981)

- Facts
  - 1974: Husband incarcerated on charge (brought by wife) of molesting his daughter
    - While in jail, husband retained legal services; signed a $3,000 promissory note for prepayment of legal services, and executed a mortgage on his home (jointly owned with wife) as security on note
    - Wife unaware of mortgage until 1976
  - Wife drops charge; husband gets a legal separation
  - 1976: lawyer (Kirchberg) obtains order of executory process to seize home
- Procedure
  - Wife answers, *inter alia*, that Louisiana "head and master" rule is unconstitutional
    - Thereafter Louisiana changed its community property scheme to grant equal control
  - Trial court said to hold the statute unconstitutional was an attack on the bedrock of community property; ruled for husband
  - 5th Circuit said the only substantially related advancement by statute was that only one spouse was designated as manager (efficiency), but there was no reason why the husband be mandated to fill this role; equal protection violation (but prospective only)
- Legal Issue
  - Is the statute constitutional that gave husband as "head and master" of property jointly owned with wife the right to dispose of such property without wife's consent?
    - The article "clearly embodies the type of express gender-based discrimination that [SCOTUS] have found unconstitutional absent a showing that the classification is tailored to further an important governmental interest"
      - Husband argues that wife could have declared by authentic act that husband could not execute a mortgage without her approval
      - Court says this misses the question: does the statute substantially further am important governmental interest?
      - The burden is on the husband to show the statute advances an "exceedingly persuasive justification" for discriminating on the basis of gender
    - Husband also argues that since COA was prospective, it doesn't matter if it violates equal protection amendment
      - Court says COA clearly intended to resolve this dispute, too
- Holding
  - Affirm COA; article violates equal protection amendment

Kline v. Kline (La. App. 3 Cir. 1999)

- Facts
  - Couple married in 1977
    - Husband had construction business; financed construction of their family home through husband's mother
  - Couple divorces in 1987
    - Wife gets occupancy of family home and husband has to pay mortgage
      - Wife does not take care of the property: septic pond was overgrown with vegetation; rotten wood in house; key broken off in lock; washer and dryer broken; spray paint on cabinets and walls; hole in bedroom door; one door missing
    - Wife moves out; through oral agreement, husband moves in
    - Husband makes tons of repairs over course of 9 years
    - Husband now wants to be reimburse (they never partitioned the house?)
      - Partition list was filed by wife in 1988, but husband never filed one until 1995
- Legal Issue
  - Can husband be reimbursed?
    - His work on the house not only maintained it, but also fixed the problems wife caused, which she was liable to him for
  - Husband also wants to be reimbursed for ½ of mortgage
    - Wife argues he was getting benefit of house so he should not
    - Court does not agree—mortgage is community obligation; husband entitled to ½ reimbursement of separate property for money he spent on the community

Notes on Kline: though the court is not saying it, the court is applying co-ownership rules

Knighten v. Knighten (La. App. 2 Cir. 1984)

- Facts
  - Husband severely injured in a car accident
  - His estranged wife and his mother both fought to be his curatrix (he and wife living separate and apart for one year)
    - Mom gets to be curatrix and wife undercuratrix
    - Agreement worked out that wife would be paid $50K in cash from any settlement and $50 K payable over installments with 6% interest rate
    - Also wife agrees to terminate community
  - These terms all became part of a settlement agreement with the tortfeasor which was approved by a judge
  - Curatrix now saying that wife should not get anything because she terminated the community
- Legal Issue
  - Can wife get any of the settlement?
    - Art. 2344 says: Damages due to personal injuries sustained during the existence of the community by a spouse are separate property. Nevertheless, the portion of the damages attributable to expenses incurred by the community as a result of the injury, or in compensation of the loss of community earnings, is community property. **If the community regime is terminated otherwise than by the death of the injured spouse, the portion of the damages attributable to the loss of earnings that would have accrued after termination of the community property regime is the separate property of the injured spouse**.
    - Curatrix says that because the community was terminated in the agreement, the wife cannot get the money paid thereafter
  - Court disagrees; the wife would not have agreed to terminate the community had she not gotten the $100K; this was for a valuable consideration because had the community continued she would have been able to get ½ of everything that was a injury to the community
- Holding
  - Hold for wife

Krielow v. Krielow (La. 1994)

- Facts
  - Couple marries in 1980
  - 6 years prior the husband and his brothers created a family owned corporation
  - In 1984, the husband's mother acquired 90% of the corporations stock and granted the corporation an irrevocable option to repurchase the shares
  - In 1988, corporation exercised its option and acquired mother's shares; husband was sold some shares (now he has 1/3 of stock)
  - Community terminates in 1988
- Legal Issue
  - What burden of proof is required to show that uncompensated or undercompensated labor of the community was performed by the other spouse on his separate property
    - Art. 2368
    - Wife must prove that common or community labor was expended on separate property
      - Spouse should not be able to deprive the community of earnings
    - If a claim exists because the laboring spouse was uncompensated or undercompensated, then the measure of reimbursement is ½ of increase attributed proportionately to increase attributable proportionately to uncompensated labor
    - At this point the burden of proof also shifts to the other spouse (husband) to show that increase was due to the ordinary course of things
      - This is fair because that spouse will likely be in the better position to have the evidence to show such
  - Husband says that wife failed to meet the first burden: showing that his labor was uncompensated
    - He says this could be shown by proving the amount he received was less that open market value
    - Court finds that the fact the husband received a very low salary is fine; also looks at everything the corporation provided for the family and how the husband made the corporation flourish
  - At this point, the burden shifts to the husband to prove the improvements to the corporation were for some other reason
  - There is also an issue of whether the flourishment of the corporation was due to the mother
    - Court says she was only a stockholder
    - The board of directors chose to exercise the option to repurchase from the mother and she had nothing to do with that decision
  - Trial court erred in requiring wife to prove exact value of the separate property at the inception of the community; estimates will do
  - Wife is also entitled to be reimbursed for the separate property she used to satisfy community debts

        - Burden of proof is on party (wife) claiming indebtedness to show by a preponderance of the evidence whether the community obligations were incurred for the ordinary and customary expenses of the marriage
            - Ordinary and customary expenses include: house payments, taxes, insurance premiums
- Holding
    - Remand for a determination of which debts were ordinary and customary
- Rehearing
    - The mother's shares because treasury shares after the option to repurchase was exercised
    - This means that the husband purchased some of the treasury shares to increase his interest in the corporation to 1/3
    - The husband is arguing that the amount the wife can be reimbursed should be limited to the amount the community laborer was undercompensated
        - The compensation goes with ½ the value of the enhancement

Kyson v. Kyson (La. App. 2 Cir. 1991) (finding rental payments can be community if they result from a substantial amount of time spent by husband managing the property)—in this case, on rehearing the court found there was not enough evidence to support that the husband spent a lot of time managing rental property, but the case is still good for the premises that you could find rental payments to be community

Lambert v. Lambert (La. App. 3 Cir. 1985) (holding that a computer purchased with $3,000 of community property and $6,000 of separate property is community property because $3,000 is not "inconsequential" as required by article 2341)

Landry v. Landry (La. App. 3 Cir. 1992) (holding that when the wife was aware and failed to object to the proposed agreement by the husband's employer—which the husband did not instigate—to lower the way some stock could be repurchased by the employer if the marriage terminated in divorce was not fraudulent or bad faith management; also the husband's failure to disclose the repurchase or existence of a CD did not constitute fraud or bad faith management)

Langley v. Langley (La. App. 3 Cir. 1994) (holding that the agreement that the husband would pay $1K in permanent alimony was an interspousal agreement rather than an agreement terminating the community regime because the agreement dealt with existing assets; further the community would automatically terminate upon the divorce

Lanza v. Lanza (La. 2005)

- Facts
  - Husband wife married
  - After marriage, husband started a State Farm Agency
  - Husband wife divorce
- Legal Issue
  - Whether a State Farm Agency is community property, and if not, whether renewal commissions on insurance policies written during the community is community property
- Procedural Background
  - Trial court: agency not a thing subject to partition and the income earned after dissolution is not subject to partition (so no to renewal commissions)
  - COA: agency not thing, but the income earned afterwards (renewal commissions) are community property
- Legal Issue 2
  - Agency part of community?
    - Wife argues it doesn't matter if agency is a thing, but if it is property (i.e. has patrimony)
      - Court: something is not necessarily patrimonial for all purposes (this is Spaht/Hargrave view); broadest view of patrimony was in *Dué*
      - Eight factors court looks at to say Agency is not part of community:
        - Husband (pursuant to agreement) had no ownership interest in Agency
        - Husband cannot sell, assign or pledge any right in the Agency without State Farm approval
        - Husband owns no "book of business"
        - If agent dies, heirs inherit nothing in way of service compensation
        - All information provided to husband are trade secrets
        - State Farm retains right to set all charges, prescribe any policy, govern all payments
        - Husband's agreement with State Farm can be terminated at any time by State Farm or the husband
        - When the agreement terminates between State Farm and the husband, all information, income, clients, etc., becomes part of State Farm
      - Factors lead to the determination that agency is not part of community
    - Wife argues Agency is part of "community enterprise" (art. 2369.3 says community enterprise is a business that isn't a legal entity; equated with community property); a community enterprise is usually thought of to be a sole proprietorship or the like (ex: housewife who decides to make

jewelry and sell it at fairs . . . chances are she is not incorporating herself, so she is not a legal entity, but she is a business of sorts)
        - Court: **this can't be read to circumvent the definition of community property; must be property first, then community enterprise**
    - Renew commissions part of community?
        - Court relies on *Ross* which was LASC case that said yes, renewal commissions paid during community are part of community property
            - This case is different because commissions aren't paid until after dissolution
            - Regardless, they are still part of the community under the basic definition of community property that they were acquired through the effort, skill, or industry of the husband during the community (art. 2338)
            - The difficulty for wife on remand will be the burden of proof
                - If property actually obtained during the community, there is a presumption that it is community property; if obtained thereafter, no presumption, so wife will have to prove beyond a reasonable doubt which portion is community property
- Holding
    - Agency not part of the community property; renewal commissions are, but wife has burden of proving which ones are

Lawson v. Lawson (La. App. 2 Cir. 1988)

- Facts
  - Son executed two promissory notes to his mother while married
  - Son gets divorced
- Legal Issue
  - What is the ex-wife's liability for the promissory notes?
    - She is not separately liable; only her community interest is liable
    - The son, however, is separately liable as he was the debtor
  - There are only two instances when the non-debtor spouse would be separately liable:
    - When the non-debtor spouse disposes of formerly community property for other than the satisfaction of the community obligations; in this instance the non-debtor spouse would be liable for separate or community obligations incurred by the other spouse
    - When the non-debtor spouse assumes the liability in writing; in this instance the non-debtor spouse would be liable for half of the community obligation
- Holding
  - The ex-wife is not personally liable
- NOTE: *Lawson* overrules *Dooley*; *Lawson* is correct

Longo v. Longo (La. App. 4 Cir. 1985)

- Facts
  - Parties begin their relationship in "concubinage" while he is still married (in 1964)
  - The husband divorces his first wife in 1965 and buys a house
  - The couple is married on December 7, 1971
  - The couple separates on January 10, 1983
- Legal Issue
  - Is the house community or separate?
- Holding
  - Separate; it was his he brought into the marriage; matrimonial regime does not begin until the parties are married; her payments on the mortgage prior to the marriage do not make the property community

Magee v. Amiss (La. 1987)

- Facts
  - September 1, 1970: lot purchased by husband
    - Act of sale says the husband was married to and living with wife
  - 1971: wife gets judgment of separation
    - This is not recorded until 1980
  - 1979: Reynolds Roofing gets lien (remember: not covered under management articles . . .) on husband's property; property seized
  - 1980: lot sold to third party (Stockmann) at sheriff's sale (mortgage balance paid off; husband gets $30K
  - Late in 1980: third party sells lot to another third party (Alan and Iglehart)
- Procedural Background
  - Wife files suit for sheriff's sale to be declared null insofar as it purported to convey her ½ interest, or for ½ proceeds from sheriff's sale
  - Ighleharts file 3d party demand against sheriff, Stockmann, and Reynolds Roofing
  - Stockmann files third party demand against husband and Reynolds
  - Court dismisses most people on summary judgment; only person left for purposes of this opinion is wife against husband
  - Reynolds has also filed suit against the husband (?)
- Legal Issue
  - Since the judgment of separate was not recorded until 1980, the marriage remained in tact to third parties
  - Her concurrence was required (?—but this is a lien . . .)
    - At minimum she was suppose to get notice
  - The debt to Reynolds made by the husband was a separate obligation incurred post-termination of the community
- Conclusion
  - Reynolds could file suit against the husband; facts suggest he was trying to liquidate his wife's interests
  - Wife's due process rights were violated due to lack of notice
  - Stockmanns and successors were not in good faith and acquired only ½ interest of husband
  - Wife keeps her ½ interest

Magnon v. Leger (La. App. 3 Cir. 1989)

- Facts
  - Wife and husband were not living together when the family home was damaged
  - Wife hired Magnon to make repairs
    - Bill was $7,500 and she gave him a bill of sale for a community owned tractor to pay him in part (this is a *dation en paiment*)
    - Husband comes and seizes tractor
  - Magnon sues husband for possession of the tractor, or in the alternative, fo damages
- Procedural Background
  - Trial court granted summary judgment for husband
- Legal Issue
  - Obligations incurred during the existence of the community are of the common interests of the spouses
    - This was a needed repair in 1985 after a tornado hit the house
    - The husband was not paying the wife support, even though they were living separate and apart
  - One spouses may dispose of movable community property acting along in order to satisfy a community obligation
  - It is unclear what "interest" the tractor was conveyed in: community or not
- Holding
  - Summary judgment reversed; still issues of material fact

McAlpine v. McAlpine (La. 1996)

- Facts
  - Antenuptial agreement included: (1) separate property regime; (2) waiver of interim spousal support, and (3) waiver of final spousal support
- Legal Issue
  - Can you waive permanent alimony?
    - Why was permanent alimony invented?
    - History of cases:
      - *Player* – alimony is a pension plan for the ex-wife
      - *Montz* dissent – permanent alimony to keep ex-wives off of welfare
      - *Holliday* – pre-nup waivers of alimony are void because contrary to public policy; husband should support wife during marriage
      - Court concludes that permanent alimony was invented to protect individuals, not protect the public interest; therefore it can be waived; it is not public policy
  - Can you waive pendente lite?
    - No because based on duty of spouses to support one another (art. 98)
- Holding
  - Permanent alimony may be waived; interim spousal support may not be waived

McCarroll v. McCarroll (La. 1997)

- Facts
  - Couple married in 1958
  - Divorced in 1980
- Legal Issues
  - Can the wife rescind the community property partition based on lesion?
    - Wife is trying to claim lesion, but her own numbers do not add up to lesion
    - The assessment of the rental value can be factored into to determine if there was lesion
  - Can the wife be forced to make rental payments now?
    - Circuit split: some circuits say you must order rental payments at time of award of use and occupancy; some say you can do it anytime
- Holding
  - Rental payments may not be retroactively assigned; the award of rent shall be made at the time of determination of occupancy

McCarty v. McCarty (SCOTUS 1981) (holding that military retirement benefits were not subject to division upon divorce as community property)

McElwee v. McElwee (La. App. 2 Cir. 1972)

- Facts
  - While parties are newly married, wife files suit against her mother for final accounting
    - Mother's land is seized and sold
    - Wife gets mother's land
      - There is a certified copy of an instrument with husband's signature on it that the land was acquired with the wife's separate property and there was no community interest in it
      - However the authentication of the document was never completed and the document was not recorded until the parties separated
  - Husband is now claiming the property is community property
- Legal Issue
  - Husband relies on presumption that all property possessed in community is community property
  - Wife can rebut the presumption by showing separate funds were used to purchase it, she administered and controlled it, it was for benefit of separate estate (is this still the rule? I think we got rid of this . . .)
  - Court says the evidence of the instrument is sufficient to show this was her separate property
    - Husband also admits that he would not have made a claim to it if she had not made a claim to property that he thinks is his separate property
- Holding
  - Property is the wife's

McGehee v. McGehee (La. App. 1 Cir. 1989)

- Facts
  - Husband and wife marry in 1968
  - In 1983 they formed an insurance agency
  - In 1985, they legally separate
  - Wife trying to get community property and says book of business was valued incorrectly
- Legal Issue
  - Different experts testify as to different amounts the book of business should be worth and debate about whether the signing of a non-compete clause should be included in the valuation
  - Goodwill in this case is not as closely tied to the individual as it is in the case of a doctor or lawyer
  - The good will is part of the intangible property of the thing (the agency) itself; it is not a separate thing
  - That said, the non-compete clause was mis-calculated and the judge should not have simply made up his own evaluation of the property
- Holding
  - Revalue book of business

McGee v. McGee (La. App. 1 Cir. 2005)

- Facts
  - Couple married in 1976
  - Couple secured a loan by promissory note in favor of Premier Mortgage
  - Security for the mortgage was immovable property owned separately by husband
  - Proceeds of loan were used to build a house on the immovable property owned separate by the husband
  - Couple divorced in 2002
- Legal Issue
  - What is community debt and what can be reimbursed to wife?
    - Loan was a community debt because (arguably) acquired by both spouses
      - And presumption that it is community obligation
      - And inarguably went to betterment of marital home
    - Wife is liable for her share of community debt
  - However, the husband is liable to the wife to reimburse her for community funds used to build home on his separate property
  - Subtract the two from one another (offset) and get the amount that husband owes wife
- Holding
  - Loan = community; reimburse for community funds used to build house

McMorris v. McMorris (La. App. 1 Cir. 1995)

- Facts
  - Wife received damages for personal accident prior to the marriage—these are clearly separate because acquired prior to the establishment of the community (look at article 2341 or article 2344)
- Legal Issue
  - Can any of these damages be community by their nature of being for the husband (though not husband at the time), too?
    - Loss of consortium only available tot persons who would have had a cause of action for wrongful death (which under article 2315.2 is spouses, children, parents, siblings)
  - Can any of the monthly payments that were (presumably) paid during the community but for contract payments prior to the community be considered community?
    - No because they were disability benefits for employment prior to the community
  - Does the fact these funds have been commingled matter?
    - No; commingled funds (particularly money) can be separated
    - Arguably separate and community funds placed in one bank account do not produce a new thing at all
      - Remember that if you want a separate thing to be turned into community, you have to have a private signature or authentic act (depending upon if onerous or gratuitous) and a stipulation under article 2343.1
    - Even if you say a new thing was created, the spouse can get reimbursement under article 2367
      - Look at how this works: you get reimbursed one-half and you get your one-half in community, so you get back the whole
      - This is how the wife should have been reimbursed for her motor home and CD contributions to the marital home
      - There is a question as to how much (the court says not half) the husband can recover from the wife for insurance, expenses, maintenance on the marital home because article 806 in co-ownership provide that co-owners only get reimbursed for necessary expenses, maintenance and repairs in proportion to their shares

Michel v. Michel (La. App. 1 Cir. 1986)

- Facts
  - Husband and wife divorce; suit to partition community property
  - She is an author and is in progress writing some literary works
    - Much of research work went into books before dissolution (though she says it was just an outline), but publishing contracts were not entered into until after the dissolution
  - He is an insurance salesman and receives a commission on the efforts of the sales agents he recruits and trains
- Legal Issue
  - Are the literary works in progress part of the community?
    - Court analogies to *Dué* case: the writer's literary works constitute a patrimonial asset which forms a part of the community insofar as its value is based upon the writer's services performed during the existence of the community
    - Trial court did not want to get into how much work was done when, but said that half of one book done within community and one book was only 10% done during community, so husband gets 50% of ½ for first book (= 25%) and 50% of 1/10 for second book (= 5%)
  - Are the commissions of the sales people he recruits part of the community?
    - Trial court: he has not vested interest in these commissions, so not part of the community
    - First Circuit: recruitment and training completed prior to dissolution of marriage, so part of community
- Holding
  - They are entitled to the future earnings of each other's assets
- **Recap of *Michael***
  - The *Michael* court brings what is considered property for the purposes of community property one step further than the *Dué* court because what it considers property is closer to extra-patrimonial in traditional definition
  - The court is using the same equation when determining how much the non-contributing spouse should receive

Millet v. Millet (La. App. 5 Cir. 2004)

- Facts
  - Couple marries on May 17 1995
  - Couple divorces on February 18, 2003
  - Consent judgment signed same day as divorce
  - Wife got : Cocodrie camp, trailer, vehicle, movable property, and cash
  - Husband got: movable property, 401(k), and all other work benefits
  - Wife moves to rescind for lesion, fraud, mistake or failure of cause because the camps was uninsured when the partition was agreed to, and then a hurricane came and knocked camp down before the parties signed the lease over
- Legal Issue
  - Can the partition be rescinded?
    - First, the party seeking the rescission bears the burden of proof
    - Error
      - The only error that vitiates consent is error that concerns the cause and without with the party would not have incurred the obligation
      - In this case, there was not sufficient error
    - Fraud
      - Fraud is a misrepresentation or suppression of the truth
      - The wife knew what she was signing; she was not misled
    - Failure of consideration
      - The purpose of the compromise (???) partitioning the community property was to retain the items they each desired
      - The failure of a party to anticipate the value of the property does not void the deal; the wife wanted the Cocodrie camp
- Holding
  - The compromise stands; the change in value does not void it

Minvielle v. Dupuy (La. App 1 Cir. 1994) (holding that the ownership of proceeds from an IRA was determined by the agreement)

Morris v. Morris (La. App. 3 Cir. 1997)

- Legal Issue
  - Is a punitive damage award community or separate property?
    - Husband had received $40K, which trial judge decided was community property, and wife's separate settlement of $35K was separate property
    - Punitive damages (the court says) fall into the omnibus clause of article 2338 and are community
  - The wife's damage award had evidence that indicated it was her separate property

Munson v. Munson (La. App. 3 Cir. 2000)

- Facts
  - Husband had separate property that was not used as the family home
  - Community paid $57.8K in mortgage payments (including interest)
  - Trial court reimbursed ½ to wife (including interest)
- Legal Issue
  - Can wife be reimbursed for interest?
- Holding
  - Yes (despite earlier cases, but relying on *Longo* and *Major*) because the interest payment is like a fruit
  - The property did not generate any rent for the community and it was not used as the family home

Naquin v. Naquin (La. App. 5 Cir. 1990)

- Facts
  - Couple married in 1979
  - Two children
  - Wife files petition for separation in 1987
    - Husband files reconventional demand thereafter
  - In 1988, consent judgment on child support and interim spousal support
  - August 9, 1988 wife files supplemental answer for divorce
  - One month later, wife files to increase child support and petition to partition community property
- Legal Issue
  - What date does community property terminate?
    - Termination is retroactive to date that petition for divorce is filed if the divorce is based on the grounds assert in the petition
- Holding
  - Community terminated on August 9, 1988, date of supplemental answer

Noel v. Noel (La. App. 4 Cir. 2004)

- Facts
  - Parents win the lottery and create a family partnership that pays out money to the children
  - Wife of one son (7 year marriage) wants to claim the proceedings paid out from family partnership are community
- Legal Issue
  - Testimony of parents that they intended only their children to participate in the lottery proceeds
    - Wife did not sign the partnership agreement as a partner, only as a witness
    - Wife's name was not on the partnership agreement
  - Clear that the proceeds were gratuitous donations by the parents
  - Wife tries to argue there is a lack of form in the way the parents gave the money to the son, so there is an absolute nullity
    - Even if this is true, that does not make the property community, it just means the rights were never divested from the parents
  - Wife tried to claim that intention was not clear the proceeds should only go to the son
    - Court says the testimony of the donors is good
  - Wife argues this is really a right to receive the payments, so it constitutes fruits
    - Court disagrees because it would mean all future payments should be conflated into one payment
- Holding
  - No community interest in lottery winnings

Norman v. Norman (La. App. 4 Cir. 2000)

- Facts
  - Couple married on September 6, 1969
  - Petition for separation on November 7, 1990; divorced on August 15, 1991
  - Disputed item in partition is the rental properties
    - Husband given control of them
    - When he assumed control in 1990, the monthly rent was $1,379
    - By 1993, properties had deteriorated to being uninhabitable
    - Trial court made husband pay the rent that would have been received between the termination of the community and the partition (in 1999) had he not mismanaged the property
- Legal Issue
  - Husband says the court erred in using the gross rental income instead of the net rental income
  - Wife argues the court erred in failing to consider the possibility of rise in rent
    - Court says trial court within its discretion on this point
  - Husband argues the trial court erred in not reimbursing him to satisfy attorneys fees associated with the foreclosure proceedings and for his time managing the properties
    - The code does not say whether separate funds must be used to satisfy a community debt
    - But there is a duty imposed to maintain and preserve former community property, so with that duty comes the right to receive reimbursement
    - There is no reimbursement for your own labor
  - Husband argues he should not have had to reimburse wife for alarm system and neighborhood association fees
    - Court finds that expenses incurred after the termination of the community but before the partition may only be awarded if the expenses is necessary and enhances the value of the property
    - Trial court says these expenses were necessary
    - COA says they existed before the termination of the community and are reimburseable with the duty to maintain and preserve
- Holding
  - Affirm

O'Krepki v. O'Krepki (La. App. 5 Cir. 1988)

- Facts
  - Couple enters antenuptial agreement on September 25, 1984 saying they would be under separate property regime
  - Marry on October 31, 1984
  - On September 8, 1986 (2 years later) they enter into matrimonial agreement by authentic act that says they will be under community property regime and act as if they had never taken any action prior to marriage
    - This is recorded on September 25, 1986
  - On March 27, 1987, wife sues husband for separation from bed and board
  - Wife institutes declaratory action to see whether a community regime existed from the time of their marriage
- Procedural Background
  - Trial court said always under community regime
- Legal Issue
  - Can the matrimonial agreement retroactively establish the community regime?
    - Yes; nothing to say it cannot
      - Husband tries to say this is more like donating separate or community property under art. 2343 and 2343.1, but court says no, this is the re-establishment of the community
      - Court analogizes to article 155 which was the re-establishment of community after a divorce (no longer in effect)
        - Article 155 said that the re-establishment of the community did not prejudice third party rights until recordation
      - Clearly there is a policy to promote people returning to the legal regime of acquets and gains
- Holding
  - Matrimonial agreement retroactively established the community

Oliver v. Oliver (La. App. 2 Cir. 1990)

- Facts
  - Couple married on June 3, 1959
  - Separated in July 1982
  - Community dissolved on September 23, 1982
  - Among the items in dispute are: interest/rent claim by wife against husband for his use and possession of the family home; husband's salary; formula for calculating reimbursement
- Legal Issue 1
  - Husband argues the reimbursement by the wife of mortgage payments on the family home should come from her separate property, not the mass of community property
- Holding 1
  - Court agrees; reimbursement comes from separate property not community
- Legal Issue 2
  - Wife argues the court erred in recognizing as a community debt the interest payments of the husband on a CNB loan
    - Husband renewed the note instead of paying off the loan
    - Loan was for paying off community debts
- Holding 2
  - Husband's actions were in the best interest of the community
  - He was not creating a new obligation but maintaining the status quo on paying an existing debt
  - He is owed reimbursement

Palmer v. Palmer (La. App. 2 Cir. 1997)

- Facts
  - Couple legally separates on August 10, 1998
  - Partition community property, but they have a mineral interest in Mississippi
    - Mineral interest is in husband's name
    - In dividing asset, they expressly exclude mineral interest from the partition and they say they will divide it in accordance with a declaratory judgment from the Mississippi court
      - Mississippi court says the interest is jointly owned
    - Couple then agrees to what net revenues derived from interest between termination of community and partition are
- Legal Issue
  - What interest can wife obtain on the mineral revenues received?
    - Husband says she is not entitled to judicial interest because the payments are like rent
    - Court disagrees
      - These are products under article 488 which means that husband (as co-owner) must account to wife for all products
      - Also he could have "used" the products and he would have owed the interest on what use he made of them to the wife
- Holding
  - Legal interest is owed to wife by husband on revenues created during duration of partition proceedings

Pan American Import v. Buck (La. 1984)

- Facts
  - Woman employed by Pan Am for one year; fired for embezzling money ($61K)
    - Pan Am sues woman and her live in boyfriend
    - Live in boyfriend becomes husband the next year
    - Pan Am garnishes husband's wages
    - Husband files for judicial separation of property pursuant to article 2374
    - Pan Am intervened objecting to the separation on the grounds that it would be in fraud of its (Pan Ams) rights
- Procedural Background
  - Trial judge dismissed suit against husband for recovery of money embezzled by wife and allowed for separation of property
  - COA affirmed dismissal, but reversed on separation of property
- Legal Issue
  - Is husband's separation "in fraud"?
    - First for there to be a separation, the party's interest in the community regime must be threatened (clearly the case here)
    - Second, in order for art. 2376 to kick in, the termination of the community regime must be in fraud of creditor's rights
      - What does in fraud mean?
        - Read a pari to revocatory action
        - For revocatory action it has two elements: bad faith and present injury to the creditor
        - Same two requirements for in fraud for community partition
        - Here, no present injury for Pan Am so husband not in fraud
          - The advantage of this reading is that it allows spouses to partition the property without divorcing, thus saving marriages
- Holding
  - Allow husband to partition

Parker v. Parker (La. App. 1 Cir. 1987)

- Facts
  - Couple married on October 10, 1981
  - Separated on June 20, 1984
  - Wife had townhouse prior to marriage (separate property) that 31 mortgage payments were made on during community
- Legal Issue
  - Can husband get reimbursement for ½ of community funds used to pay the interest on the mortgage note on the wife's separate property when the property was used as the family home?
    - Previously, reimbursement was valued based on ½ of the enhanced value of the separate property improved by common labor or expense
    - Today, the amount of reimbursement is determined by the amount of property used or its value
      - This treats the advance as an interest-free loan rather than an investment
      - The only exception is if one spouse's separate property increases in value because of the labor of the other spouse, then the other spouse is entitled to ½ of the increase in value
      - The effect of this is to reduce the occasions for reimbursement when community funds are used and increase them when separate funds are used
  - For the mortgage, the use of the wife's separate residence as a community home was an enjoyment of the civil fruits of the separate property
    - Therefore, the payment of the principal with community funds entitles the husband to reimbursement
    - But the payment of interest was the cost of maintaining the civil fruits of the separate property for the community's use and therefore not reimburseable
- Holding
  - Affirm

Parquin v. Finch (La. 1823)

- Facts
  - Heirs of late wife suing the husband for her estate in his possession
  - Husband argues that there was a matrimonial agreement that said that if there were no children of the marriage, then the husband inherited everything
- Legal Issue
  - Is this agreement valid?
- Holding
  - Yes

Paxton v. Bramlette (La. App. 3 1969)

- Facts
  - Paxton married to Low; they have one kid (Billie McRight)
    - Low dies in 1953
  - Paxton marries Bramlette on August 2, 1957
    - When she does, she has assets from her marriage with Low of $616K+, liabilities of $111K+ (net = $505K+); Paxton owned 5/6 interest, Billie had 1/6 interest
- Legal Issue
  - Are the fruits community or separate?
    - General rule is they are community (under Art. 2334), but can execute authentic act and record it where community is domiciled and fruits be administered to separate property
    - Her salary was certainly community
    - Her rents from her real estate interests are community
  - All are community because she is putting forth (though conflicting testimony on this) substantial services to make the money
    - Decisions for the corporations are run by her (she has 82% stock)
    - She reported her earnings on her income taxes
- Holding
  - Everything is community because she contributed "substantial services" to the corporations she was making a profit from
- Follow up from Paxton:
  - If fruits of separate property, they can be declared separate (article 2339); if earnings, they are community
  - To determine if something is a fruit or an earning, the court in Paxton looked at the ratio of labor to capital; if revenue received labor > capital investment, then it is an earning; if capital investment > labor, then fruit

Pellerin v. Pellerin (La. App. 4 Cir. 1989)

- Facts
  - During marriage, husband moved from having 23% of common stock of PLMSCO to having 92% of common stock (and thus a controlling interest)
    - His brothers/sisters owned most of the rest of the common stock, and they gave husband common stock in exchange for preferred stock (done through recapitalization plan)
    - Dividends not paid out on common stock
- Legal Issue
  - Can wife get credit to the community for the increase in the husband's controlling interest in the corporation?
    - She argues that his increased interest is a form of compensation, which she says is worth $2M
    - The community certainly includes intangible rights resulting from a spouse's labor and industry
      - Ex: goodwill is a property right that can exist as an asset itself
      - However, potential future earnings are not community assets
      - Husband is not receiving extra earnings from the increase in acquired interest
      - Compensation came by way of income and bonuses, which are part of the community
    - Party claiming enhancement of value of separate property has burden of proving the increase is a result of uncompensated common law of the spouse
  - Did the corporation unreasonably withhold dividends?
    - Dividends were normally not paid and based on the tax bracket the corporation was in, it would not have been financially wise to pay dividends
- Holding
  - Affirm trial court judgment; no reimbursement for increase value of separate property

Perkins v. B&W Contractors (La. App. 1 Cir. 1983)

- Facts
  - There are proposed building restrictions in a subdivision which both the husband and wife did not sign
- Legal Issue
  - What is the effect of both of them not signing?
    - Presuming they both had to, the effect is only that the act is relatively null
    - The wife in this case has not objected, and she would have to in order to make the deal null
- Holding
  - Restrictions are not null

Pitre v. Pitre (La. App. 3d Cir. 1987)

- Facts
    - Wife and husband divorce in 1981; trial on the merits is on Novemebr 26, 1984
- Procedural Background
- Legal Issue
    - What date is the appropriate date to measure the community assets and obligations?
        - The valuation of the assets should be at the time of trial (R.S. 9:2801)
        - The valuation of debt should be at the time of the termination of the community
    - Court also didn't the lower court's incorporation of good will into the equation
- Holding
    - Undo the goodwill stuff and weird valuation scheme

This is wrong. Both should be valued at the time of the trial

Poirier v. Poirier (La. App. 3 Cir. 1993)

- Facts
  - October 4, 1989: couple executes community property partition in which they purport to "discharge each other from any further accounting of community property"
  - October 20, 1989: default judgment of divorce
  - Wife is trying to have partition annulled
- Legal Issue
  - Is the partition valid?
    - Court says no because they were trying to end the community by the partition and you can't do that; you have to follow formalities of art. 2329
    - Under art. 2329, but file joint petition and have judgment of court that this is in the best interest of both parties
    - Fact they were amid divorce is going to hurt them
- Holding
  - Partition annulled

Ransome v. Ransome (La. App. 1 Cir. 2002)

- Facts
  - Couple divorces on January 27, 1993
  - Have an agreement to partition community property
  - Wife files a subsequent petition to recover damages for alleged breach of agreement
  - Husband files a reconventional demand asserting the agreement should be set aside for lesion
- Procedural Background
  - Family Court decided the agreement was a compromise that could not be attacked for lesion
- Legal Issue
  - Is this a compromise or a partition?
    - The agreement included a lot of things: spousal support, alimony, etc.
    - The primary part of the agreement, though, is about the division of community property, thus making this an extrajudicial partition because it was entered into without the benefit of court approval and without being made part of a judgment
- Holding
  - The Family Court should not have automatically denied the husband's claim of lesion; this is a partition, not a compromise

Rayne State Bank v. Fruge (La. App. 3 Cir. 1989)

- Facts
  - Wife signs three continuing guaranty agreements to Rayne for son's company (husband unaware)
    - Company defaults
  - Wife service personally
    - Wife fails to answer; default judgment
  - Rayne files rule to show cause against husband to show why community property should not be seized
- Legal Issue
  - Husband first says the judgment should be annulled because he wasn't served with original suit; he claims he is an indispensable party so failure to make him a Δ is a violation of due process
    - This would mean (as husband argues) that one spouse cannot incur an obligation that when reduced to judgment would encumber the community
      - Encumbrances imposed by law are not subject to requirement of concurrence
      - This was an accessory contract; did not encumber property; husband's concurrence on original agreement not necessary
    - Rayne not required to join husband because under CCP article 735, either spouse is the property Δ
  - Did husband have to have notice? If so, what constitutes notice?
    - Husband says since he is owner of ½ interest of community property, he was entitled to notice prior to seizure
      - Court agrees
      - However, rule to show cause constitutes notice
- Holding
  - No due process violation; community property may be seize

Razzaghe-Ashrafi v. Razzaghe-Ashrafi (La. App. 2 Cir. 1990)

- Facts
  - Couple married in Iran in 1962
    - Moved to NYC in 1972; to LA in 1978
  - Divorces in 1986 for living separate and apart
  - Community property judicially partitioned (two big items: home and medical corporation)
    - Husband appeals from the partition
    - Wife then tried to get the partition enforced, but the trial judge dismissed, saying it was not a money judgment
- Legal Issue
  - Is this a money judgment?
- Holding
  - Yes
- Legal Issue
  - When the court valued the medical corporation, they picked the date of the termination of the community instead of the trial date—okay?
- Holding
  - Yes because it was the husband's fault they could not get a valuation at the date of trial

Reeves v. Reeves (La. App. 2 Cir. 1992) (holding that 18% of total value given by community property is inconsequential, so the property—a plantation—was separate property)

Reinhardt v. Reinhardt (La. App. 2d Cir. 1999)

- Facts
  - Prior to couple's divorce, all their family members seem to die, leaving them lots of property
  - Question, though, is about expenses from the wife's separate account and rent received
- Legal Issue
  - Wife wants to be reimbursed for ½ of expenses she incurred from redecorating the community home; trial court found the wife used community funds for this; not manifestly erroneous
  - Wife also wants ½ of rentals received form renting trailer to husband's nephew
    - Court says she is entitled to ½ of rents
- Holding
  - No reimbursement, but yes to rentals

Reynolds v. Reynolds (La. 1980)

- Facts
  - Wife's grandmother conveyed an interest in a trust to her
  - In 1966, wife marries husband; trust money is in separate account, but they spend most of it ($9,660 of $11,913) during marriage; however, at dissolution of marriage in 1970, there is $11,434 of undistributed earnings of trust for wife
- Legal Issue
  - What is the money in the trust?
    - Wife says its her separate property
    - Husband says its fruits, and she declared no paraphernality, so it's community
- Holding
  - Income from trust was not a fruit, and so it did not fall into community
- Rehearing
  - The undistributed trust income is not community
    - She has less than full ownership in the beneficial interest of the trust; the beneficial interest was under the control of the trustee, and it accrued to the trustee as a civil fruit unseparated form the corpus of the trust; therefore, she only had an incorporeal right to the beneficial interest
  - The distributed income was community
    - Community because it does constitute civil fruits, and there was no declaration of paraphernality
  - The wife has no right of reimbursement of what she spent during the community from the trust

Rodrigue v. Rodrigue (5 Cir. 2000)

- Facts
  - Husband and wife married in 1967; divorced in 1993
  - Husband created Bluedog
- Legal Issue
  - Are copyrights governed by federal statute or state community property laws?
    - Federal copyright law provides that the work vests in the author-spouse; vesting does not inherently preclude the other spouse from sharing in the economic benefit
    - Ownership in Louisiana law has three elements: usus, fructus, and abusus
      - The author-spouse has the elements of usus and abusus alone
      - This means that copyrights are not in the category of equal management, but in the category of exceptional movables that one spouse (the author) manages and both enjoy the fruits of
    - Federal law also does not provide for the right to enjoy the earnings and profits of copyrights
      - Federal law just discusses the five rights: reproduction, adaptation, publication, performance, display
    - Husband argues that to allow share in the fruits will create the following problems:
      - Copyrights will not be amendable to efficient or predictable exchange if spouses have equal rights to impair or dispose of rights (this is negated by the fact that only the author-spouse has management over)
      - Predictability and uniformity will not be served if varying state laws are applied to copyright management issues (court doesn't see as a problem)
      - Authors will have less incentive to created works (court doesn't buy that the interests during the existence of the community are such that one spouse won't create work just because it will become community)
- Holding
  - Copyrights are governed by state community property law, in as much as that does not conflict with federal law
  - Author-spouse in whom a copyright vests maintains exclusive managerial control of the copyright but that the economic benefits of the copyrighted work belong to the community while it exists and to the former spouses in indivision thereafter
    - Court is able to get to this conclusion because it says the federal copyright laws do not grant ownership to the author-spouse
  - Remand to deal with derivate works, and which works were created during the community
    - QUESTION: if you go back to determine which works were created during the community, do you have to divide like the court did in *Michael* for literary works

Ross v. Ross (La. 2003)

- Facts
  - He is an insurance agent and has been since 1963
  - Marry each other on May 29, 1992
    - He files declaration of paraphernality on July 10, 1992 that said he reserved all fruits of his paraphernal and separate property
  - Divorce in 1996
- Procedural Background
  - Trial court said renewal commissions for policies originally issued before community were separate and subject to paraphernal declaration; renewal commissions from policies issued during the marriage were community
  - COA affirmed, saying that the renewal commissions were not party of his salary because wife did not prove that substantial labor was exerted by him to obtain the renewal commissions during the existence of the community
- Legal Issue
  - Are the renewal commissions on policies written pre-marriage community property (i.e. are they earnings)? Or, are the renewal commissions "civil fruits" of some asset he acquired prior to the community, such that they are subject to his declaration of paraphernality?
    - Natural and civil fruits produced during marriage from separate property are community (art. 2339)
    - However, the fruits may be declared to be separate property
    - Thus, are the renewal commissions fruits or earnings? If fruits, then they can be declared separate. If earnings, they cannot.
      - Spaht/Hargrave method of determining: fruits do not require labor or industry, they should be a passive interest; if labor is producing, it should be community; if there is a mix of separate and community producing fruits or earnings, then there should be a pro rata division
    - Court cites *Michael* and *Futch* for notion that renewal commissions are community property because they require labor
    - So, did the commissions come from labor or not?
      - Wife says they did, because husband used his sales efforts, personality, knowledge, etc.
      - Husband says he exerted no skill, effort, industry during marriage on these commissions; he did 30 years prior to marriage; but husband does say he spent 3 to 7 hours in the office 3 to 5 days a week
    - Because renewal commissions were received during the community, it is husband's burden to proves they are not community
      - He clearly exerted much labor to keep the agency running; he "schmoozed" with clients
- Holding
  - The renewal commissions are community; and apparently they are fruits

        - NOTE: remember the *Lanza* case said the holding in *Ross* was not that the renewal commissions were fruits, but that they were community property (they are not fruits! Use Knoll's concurrence)
- Concurrence (Knoll)
    - The renewal commissions are community, but they are not fruits
    - Fruits are a right of ownership, so there must be ownership in the things to claim it as a fruit
        - Not all juridical acts giving rise to payment create fruits; must be ownership
    - Majority took a circuitous route to reach conclusion that the commissions are community
        - Could have skipped the fruits question and just jumped into they were earned by effort, skill, industry, so they are presumed community

Roy v. Landry (La. App. 1 Cir. 1986)

- Facts
  - Couple married on June 12, 1947; second suit of divorce filed on July 13, 1976
  - Couple does a separation of property agreement
    - In agreement, husband's pension is values at $1,762 and put in husband's column
    - Totals end up being equal, but wife finds out the pension is worth a lot more; wants a rescission of the agreement
    - Husband says that is the value because at the time of the agreement he only would have been eligible to receive that much
    - Ultimately husband gets $94,578.10 for pension
- Procedural Background
  - Trial court said that since the retirement plan was specifically included in the settlement, such could not get a supplemental partition
- Legal Issue
  - What is the value of the pension? Can the wife get a supplemental partition in the vested benefits of the pension?
    - Wife argues under *T.L. James* she gets ½ of the pension attributable to the time they were married
    - She testifies (and it is not refuted) that she did not know the value of the pension
- Holding
  - The vested pension was not included in the settlement so she is entitled to a supplemental partition

Russell v. Russell (La. App. 3 Cir. 1987)

- Facts
  - Husband entered army on January 31, 1955
  - Couple marries on October 5, 1958
  - Husband retires from army on September 21, 1972
  - Couple divorces on June 1, 1978
  - In 1983, wife sues husband for military disability retirement benefits
- Legal Issue
  - What are benefits?
    - Payments that compensate a retiring member for a disability are the member's separate property, but retirement payments are community
- Holding
  - Remand to determine percentage attributable to retirement and percentage attributable to disability

Santistevan v. Santistevan (La. App. 5 Cir. 2000)

- Facts
  - Husband and wife marry in 1975; divorce in 1993
  - He's in an accident in 1987, thus disabling him
    - Has gambling problem that (as alleged by wife) wipes out a chunk of the accident settlement agreement
  - Goes to SUNO from 1990–1993 for associate degree in substance abuse counseling
- Legal Issue
  - Can wife get award for educational support?
    - Factors:
      - (1) claimant's expectation of shared benefit when contributions were made
        - Arguably, wife had a belief she would share in the benefit of his degree
      - (2) degree of detriment suffered by the claimant in making the contributions
        - Court finds she did not suffer any significant financial detriment because husband was attending school
        - Some of his settlement money (at least $50K) was available for finances; his tuition was paid by the State; he was available during the day to baby sit, thus avoiding child care costs
  - Burden of proof
    - Trial judge has discretion to make/deny award, so review is only whether the trial court abused its discretion
    - Underlying facts are subject o manifest error standard
- Holding
  - Trial court did not abuse its discretion

Salley v. Salley (La. 1995)

- Facts
  - Husband worked for family business (moved up from stockboy to president)
  - During course of his employment, the value of the stock went from $37K to $814K
  - At dissolution of the community, wife said she should get partitioned increase in the value of stock
    - The stock was the husband's separate property
- Legal Issue
  - What is the burden of proof to get increase in value of separate property?
    - Must show:
      - (1) property is separate
        - Easy to show; he was donated the stock alone by his parents (separate under 2341); money from selling stock then his too (2341)
      - (2) property increased in its value
        - To show this, must show:
          - (a) condition of the property at the time of the marriage
          - (b) value of the property at the dissolution in the state it was at the time of the marriage
          - (c) real value of said property with all of the improvements in the condition it was at the time of dissolution of the community
          - (d) difference between the two estimates
        - Easy to show; went from $37K to $814K
      - Increase in value was based on the uncompensated or undercompensated labor of the other spouse
        - It is enough to show that the labor of either spouse was expended (does not have to be claimant spouse)
        - This is where wife fails
        - Wife never shows his salary was undercompensation (he made $750K over his employment)
        - Wife tries to say he was undercompensated because no dividends paid, but dividends are discretionary
  - Had the wife been able to prove this, then the measure of reimbursement would be ½ of the increase attributable proportionately to the uncompensated labor of the spouse
- Holding
  - Wife loses

Schlosser v. Behan (La. App. 5 Cir. 1998)

- Facts
  - Couple married in 1968; divorce in 1976
  - Husband worked as a NOPD; had some difficulty while married with NOPD, but after marriage advanced because of his stellar performances (testified to by multiple experts)
- Legal Issue
  - Can wife get his pension and his DROP money?
    - The wife can get part of the pension, but husband has to prove that any elevated increase he got was not due to a non-personal factor, but came because of exceptional service, thus making that part not available to the wife (he does this)
    - DROP was done entirely after they were divorced (it even came into effect then); DROP is all husband's
- Holding
  - Reverse

Schwegmann v. Schwegmann (La. App 5 Cir. 1983)

- Legal Issue: Can a concubine relationship with no written agreement produce a universal partnership such that the individuals can share in the "common stock" between them?
- Holding: no; must follow the explicit rules of universal partnership (a term of legal art) and be in writing

- Note: since the time of *Schwegmann*, the universal partnership language has changed and no longer requires a writing; arguably now this type of relationship would be allowed to produce such a partnership; the court in dicta in *Schwegmann* said it didn't matter because the relationship was meretricious, but this is much harder to prove; must show it has invalid cause

Shewbridge v. Shewbridge (La. App. 2 Cir. 1998)

- Facts
  - Husband and wife marry in 1987
  - Husband in aviation school; wife works
    - Husband's father also contributes some (unclear if wife knew this or not) financially
  - Husband and wife divorce in 1993
  - Wife wants award for contribution made to husband's education
- Legal Issue
  - Can wife get award for contribution?
    - Clearly under article 121 she has a cause of action to receive an award for contribution made to his education
    - Factors to be considered include:
      - (1) her expectation of share benefit when the contributions were made [she says she thought that he would then pay for her to go to nursing school and they would benefit because they would make more money eventually]
      - (2) the degree of detriment suffered by her in making the contributions
      - (3) the magnitude of benefit received by him
    - Formula as originally given in Minnesota case of *DeLa Rosa* and adopted in *McConathy* is that equitable award for education contribution determined by:

      Working spouse's financial contributions to joint living expenses/educational costs of student spouse – ½ (working spouse's financial contributions + student spouse's financial contributions – cost of education) = equitable award

  - The purpose of article 121 is to compensate the working spouse for contributions that helped to increase the *earning power* of the other spouse when the working spouse will not benefit from the increased earning power during the marriage
    - **It is *not* a focus on increased *earnings*, as the divorced spouse will no benefit from that; this focuses on increased *earning power***
- Holding
  - Wife is entitled to award for educational benefit

Sims v. Sims (La. 1978)—super important case

- Facts
  - Husband and wife married on May 30, 1946; divorced on November 19, 1975
  - Husband was employed by the federal government since June 18, 1956 as an air traffic controller
  - His retirement plan is contributory: he and the government deposit 7% of his basic pay into the Treasury; the annuity is made scheduled by statute
    - His annuity based upon a percentage of average pay during federal employment is (1) payable to him with at least 5 years creditable service when he reaches the age of 62 or (2) is payable to him as an air controller if he is voluntarily or involuntarily separated from his service after he hits 50 years old and has completed 20 years of service
    - In lieu of any annuity rights, the employee can also obtain a refund of contributions upon separation from the federal government
  - When the marriage was dissolved, the husband had 19 years and 5 months of creditable service, and he was not yet 50 (his 50th birthday was on September 23, 1976—about ten months later)
    - On the date the community was dissolved, the husband could have separated from his job and either received a refund ($14,446.95) or his retirement annuity would have commenced when he hit 62 (so 12+ years later)
- Procedural Background
  - Trial court and COA found the wife's interest to be the return of one-half of the community funds contributed to the pension, as if the husband had elected this option on the day of dissolution of the community (so ½ of $14,446.95)
- Legal Issue
  - Trial court is in error because:
    - The husband did not elect that option
    - It overlooks the matching contributions made by the employer, which represent an asset acquired by community earning
    - Overlooks the fundamental nature of the community asset acquired in a retirement plan
      - The community interest comes from contributions by community funds and from any right to receive proceeds attributable to such employment during the community whether based on the community's contribution or not
  - The right to share in a retirement plan is a community asset and must be classified at dissolution of the community, even if it has no marketable value at that time
  - The right to receive an annuity, lump-sum benefit, or other benefits payable by a retirement plan is, to the extent attributable to the employment during the community, a community asset
  - One case anomaly: *Langlinais v. David* (holding that the wife did not have a right to retirement benefits because the husband had not retired at the dissolution of the community; wife only got ½ of the amount in the retirement fund)

- The wife has a proportionate interest, if and when the retirement annuities become payable
  - Due to the nature, it is not merchantable or susceptible of partition by licitation
- There is no current redeemable cash value of the retirement benefits, but **the wife is entitled to a declaration at the time of the dissolution of the community of the interest attributable to the community of any payments, if and when they become due**
  - In other words, ½ of the value of the amount attributable to the community (this is the same equation as in *Dué*)

This is gradual vesting; that's what the "portion of pension" is about

$$\left\{ \frac{\text{Portion of pension attributable to creditable service during community}}{\text{Total creditable service}} \times \frac{1}{2} \left[\text{Pension} \right] \right\}$$

- Holding
  - Reverse trial court; apply above formula
- Dissent (Dixon)
  - If the value of the right is ascertainable, then the wife gets ½ of it when the community dissolves; if the value of the right is not ascertainable, then the wife doesn't get anything
- Note: this means there is an equal sharing of risk; if the husband dies before collecting retirement (which actually happened in *Sims*), then the wife doesn't collect either
  - The wife in *Sims* tried to go after the beneficiary, but the court would not allow her because it was a federal plan (this will be different in the *Wetherspoon* case when dealing with a state plan)
- Also, Judge Tate calls this a partition, but it is not (it cannot be as she has no management over her half); this is co-ownership, however we usually think of co-ownership as over things, but there is nothing that prevents it from being over rights
- Since the wife had no management over the property, the husband had a duty of good faith as stated by the court (though this has now been legislatively added in article 2369.3); there is no similar duty of good faith during the existence of the community

Skrantz v. Skrantz (La. App. 3 Cir. 1993) (holding that fraud was shown when the husband could not prove payments to his brother were repayments for valid debts)

South Central Bell v. Eisman (La. App. 5 Cir. 1983)

- Facts
  - SCB installed an underground conduit and manhole on the Eismans property without their permission
  - SCB negotiated with husband and he executed a servitude contract authorizing the work, but SCB did not secure wife's signature
  - Couple began parking their car in such a way as to prevent SCBs work; SCB filed a petition seeking injunctive relief; the Eismans reconvened asserting SCB was trespassing
- Procedural background
  - Trial court said the agreement was relatively null and it became absolutely null when wife did not ratify it
- Legal Issue
  - What is the effect of the wife not signing the contract?
    - Contracts signed by only one spouse when both spouses are required to concur are relatively null and such agreements become absolutely null unless confirmed by the other (non-signing) spouse
  - Did the wife acknowledge the contract?
    - Trial judge said no (even though there is some testimony that the wife spoke with SCB) and the court defers to his weighing of the witnesses
- Holding
  - Affirm trial court; wife and husband entitled to damages for right of way servitude and resodding of the lawn; wife personally entitled to general damages for trespass, but the court reduces the damages awarded by the trial court

NOTE: relatively null contracts do not become absolutely null!!!

Stewart Title Guaranty Co. v. Kiefer (E.D. La. 1997)

- Facts
  - Stewart was a title insurer and had an underwriting agency agreement with Charter, would eventually filed bankruptcy
  - Stewart able to resolve its tort claims for recovery of unpaid premiums except with regards to Kiefer
  - J.B. Kiefer signed that he assumed personal liability to Stewart/Security for any default or breach of agency agreement by Charter
- Legal Issue
  - Can the wife of J.B. Kiefer be held liable?
    - Wife says it is not a community obligation
    - However, this argument is misplaced; regardless of if it is a community or separate obligation, she cannot be held personally liable, except with regards to money removed from the community and disposed of for a purpose other than satisfying the community obligation
      - Wife did remove $100K from the community and put into a personal separate account
- Holding
  - There is a genuine issue of fact as to the money disposed of so no summary judgment

Succession of Allen Sneed Jackson (La. App. 4 Cir. 1981)

- Facts
  - Husband married to second wife on November 21, 1970
    - Acquires three life insurance policies and one annuity policy
      - Boston Mutual = $35K
      - John Hancock = $ 25K
      - Commercial Union = $9K
  - Husband and wife filed for separate on November 23, 1976, granted on October 20, 1977; preliminary injunction telling them not to dispose of community property
  - Husband gets Haitian divorce on February 10, 1979 and marries a third wife on February 12, 1979 in Haiti
  - Husband dies on September 25, 1979
  - At this point, the third wife is the named beneficiary of the three policies
- Legal Issue
  - Who gets the life insurance pay out: third wife, second wife, or kids from first marriage?
    - The life insurance policy and proceeds have different owners; in this case the policy was owned by the second wife and husband community, but the proceeds were owned by the third wife; second wife gets no proceeds
  - Who's entitled to reimbursement?
    - The community is entitled to reimbursement but only according to the value of the policy at the time of the dissolution of the community; at the time of the dissolution of the community, there was no cash surrender and there could not have been because these were term policies, so there was no value, therefore no reimbursement
  - Who has a right to the annuity contract
    - An annuity contract acquired during the existence of a community is a community asset (like a retirement plan)
    - The formula is:

$$\frac{\text{Cash surrender value at the termination of the community}}{\text{Cash surrender value}} \times \frac{1}{2}\left[\text{Cash surrender value}\right]$$

      - Trial court erred in its formula in not actual attributing the right portion of the annuity contract attributable during the duration of the community; the trial court just looked at the number of months of the community and the monthly income benefit of the annuity contract; but at the dissolution of the community, the annuity contract had a value, which was the value attributable to the duration of the community
      - Also the trial court erred in not using the cash surrender value as the value of the annuity; it again used a monthly income benefit times the number of months value

        - The problem with using the monthly income benefit is that is the rate for if the annuity contract matures; it is not the pay out if the annuitant dies before maturity
    - The second wife is entitled to the annuity contract proceeds as owner, not as creditor, so they are due immediately

Succession of Caraway (La. App. 2 Cir. 1994) (holding that a husband could transfer to his daughter the right to sells and transfer property, including community property

Succession of Earl Ernest Egan, Jr. (La. App. 5 Cir. 1989)

- Facts
  - Husband and wife married on October 22, 1980
  - Will executed on June 24, 1986
  - Husband dies on December 1, 1986
  - Included in the assets were IRAs; wife was designated beneficiary of the IRAs
    - Children of first marriage and forced heirs are claiming reimbursement of husband's community property from IRAs
- Legal Issue
  - Are they entitled to reimbursement from community property or does the wife (sole beneficiary) own the proceeds free and clear?
    - IRAs under the Internal Revenue Code say that all laws shall be applied without regard to community property laws
  - Court says IRAs should be treated like other retirement plans, citing *T.L. James* (so pensions)
- Holding
  - The wife is the sole owner of ½ of the contributions made to the IRAs during the marriage
  - Absent a showing that the first wife's community property rights were infringed, no reimbursement

Succession of McVay v. McVay (La. App. 3 Cir. 1985) (holding that an IRA with community funds invested into it became the wife as beneficiary, but the value of the IRA had to be listed in the descriptive list of community property)

Succession of Moran (La. 1988)

- Facts
    - Wife filed petition to assert a claim as creditor of husband's succession because the antenuptial agreement said that the husband "binds and obligates himself to make a will in which he will leave to Wife the entire disposable portion of his estate" and usufruct and that he would incorporate this into his will
    - Husband never made a will in favor of the wife
    - Husband and wife were divorced
- Legal Issue
    - Is this agreement valid?
        - Marriage contract only valid as to matters not prohibited by public policy
        - Generally donation inter vivos of future property is null, but this prohibition does not apply to antenuptial contracts
            - A donation inter vivos can comprehend only the present property of the donor. If it comprehends property to come, it shall be null with regard to that. (art. 1528)
            - The four preceding articles are not applicable to donations of which mention is made in the eighth and ninth chapters of the present title. (art. 1532) [these are the donations inter vivos in contemplation of marriage by third persons and the interspousal donations inter vivos]
                - The donation, which may consist of any of the donor's present property or all or any of the property that the donor will leave at his death, may be made to the donor's future or present spouse. The donation may not, however, be made to their common descendants, whether already born or to be born. (art. 1746)
                - When the donation consists of property that the donor will leave at his death, it becomes of no effect and the object thereof thereupon falls to the heirs or legatees of the donor spouse, as the case may be, if the donee predeceases the donor or, once the donor's succession is opened, renounces the donation or is declared unworthy to receive it. (art. 1749)
        - Generally you cannot contract with regard to the succession of a living person; the only exception is in antenuptial agreements between prospective spouses
    - The matrimonial contract was no longer in effect after the parties got divorced
    - Court looks at the agreement between the spouses in this case as one with a potestative condition—a condition that can only be fulfilled if obligated party chooses to do so—and the potestative promise is revocable at any time
- Holding
    - Wife loses; contract no valid
- Concurrence (Calogero)
    - This was not a potestative condition

- However, an agreement to not revoke a will is unenforceable

Succession of Moss (La. App. 3 Cir. 2000)

- Facts
  - Deceased husband and Coury agree to form a corporation in 1979 (Coury Moss Inc.) for the purpose of operating a car dealership
    - 1000 shares of stock issued; 75% owned by Coury; 25% owned by husband originally, but deal was that husband would buy 2/3 of Coury's stock over 5 years (so the percentages would become reversed) at book value
    - Corporation is a closed corporation so at death of a shareholder, the stock must be offered for sale to other shareholder for book value
    - Article 10 of the corporation mandated that a shareholder wishing to sale had to offer the stock to the corporation first
    - Article 11 said upon death, the heirs must transfer—save 25%--of the corporation's stock to corporation at book value
  - Coury transferred initial shares he was suppose to transfer, but then stopped saying husband breached the contract; husband filed suit
    - Husband then dies, so succession representative and surviving spouse substituted in lawsuit
    - Court held that husband did not breach so Coury had to make transfer, but opined that he would have option to buy them back due to death
  - Wife says now that under community property regime, she is entitled to ½ of stock
- Legal Issue
  - Who owns the stock?
    - Clearly the wife owns a ½ undivided interest in the stock, including the shares currently in Coury's possession
    - What is the nature of the ownership? Is she subject to transfer restrictions?
      - Wife basically wants to say that she gets to own the stock without the transfer restrictions, however her ownership interest is subject to the transfer at death restrictions because husband has exclusive management of the stock and could make them subject to transfer restrictions
- Holding
  - ½ of stock is owned by wife; ½ is owned by succession; however, all is subject to the transfer restrictions

Succession of Norwood v. Norwood (La. App. 2 Cir. 1988)

- Facts
  - Husband and wife put her separate funds into a community account and declared them to be her separate property
- Legal Issue
  - Can the husband's heirs controvert such a declaration?
- Holding
  - Yes, wife has burden of rebutting the presumption that property possessed during marriage is community

Talbot v. Talbot (La. 2003)

- Facts
  - Couple marries in 1974; divorces in 1997
  - Before marriage, the grandfather of the wife game her (and her siblings) shares of stock in Citizens Bank and Trust Company
    - That stock eventually became Hibernia and Bank One stock
    - Husband says he does not recall he and his wife purchasing such stock
  - Wife also has 2 CDs, which she says are the byproduct of her interest (from her grandfather) in different limited liability companies, which were eventually sold, and she put the money into CDs
  - Wife asserts the stock and 2 CDs at Hibernia and Bank One are separate property
- Procedural Background
  - Trial court applies clear and convincing evidence standard for burden of proof to overcome presumption of community; finds wife met it, so stock and CDs are separate property
  - COA applies same burden of proof, but finds the wife did not meet the standard because the court erred in allowing parol evidence in to help wife sustain her burden
- Legal Issue
  - What is the burden of proof necessary to overcome the presumption of community?
    - The burden of proof used to overcome old presumption of community was clear and convincing
    - Now, the presumption of community applies to all property in possession of a spouse during the marriage
      - This applies to things *in possession* so it has the potential of being unfair (presumption applies to property brought into the marriage)
  - In civil cases, there is a preponderance of the evidence burden of proof, unless there is special danger of deception, in which case it is clear and convincing
  - Lower courts have relied on the old burden of proof standard (the clear and convincing), and have usually said this standard is met when the wife can prove (1) the funds that were used to pay for the property were separate, (2) the funds were administered by her, and (3) the funds were invested by her
    - The problem is the legislature has now abandoned the double declaration rule, in an effort to gain flexibility in the community presumption
    - No reason to maintain high burden for presumption (fairness doesn't really dictate because law allows spouses to enter into separate property arrangement; no real efficiency argument)
    - Making the burden clear and convincing will create a situation in which some spouses cannot prove its separate property due to when they acquired it
- Holding
  - Burden of proof is preponderance of the evidence; wife proved by preponderance of the evidence the stock and CDs were hers
- Dissent (Traylor)

- The repeal of the double declaration is not evidence that the legislature wanted to lower the burden of proof; the legislature repealed it because it was arbitrary
- In community property, there are strong emotions and everything is intensely personal, so people will have a desire to deceive the other party

Tarver v. Tarver (La. App. 2 Cir. 1983) (holding that a *compromise* could not be rescinded for an error of law regarding whether military pensions where community property following the *McCarty* case)

- Problem with *Tarver*: the underlying settlement was not a compromise; should have been classified as a partition, and the result would have been the same

Taylor v. Taylor (La. App. 2 Cir 2000)

- Facts
  - Couple married on February 7, 1998; divorced on October 24, 1998
  - In settlement, wife gets $2K/month for life and ½ of future proceeds from oil and gas leases held by husband's company (WTF?!?!?!?)
    - Also in the agreement is that it won't terminate on remarriage
  - Husband in early December says he won't abide by agreement because it is lesionary
  - Parties divorced on June 3, 1999
- Legal Issue
  - Can it be rescinded for lesion?
    - Proper method for establishing lesion:
      - Establish the property's net value
      - Determine if the property acquired is ¾ of ½ share the true value of the property partitioned
    - Party claiming lesion has burden of proving it
    - Ignoring the oil and gas leases, the community was (net) valued at $40.5K, so it would have been lesion if husband got anything less that $15.2K, which he did
- Holding
  - Agreement nullified

Thigpen v. Thigpen (La. 1956)

- Facts
  - Husband was fist married to first wife; first wife dies; they have two children
  - Husband then marries second wife (∏)
    - While married to second wife, husband buys tracts of land
    - Husband and second wife's relationship begins to go downhill in early 1951
    - During 1951 husband allegedly sells all real property owned by community and some farm chattel (cattle, farm equipment) to son of first marriage
      - Son had not been engaged in the farming business at all (had been a highway employee)
      - Son didn't have financial resources to make purchase
      - Husband continued to control operations, though son was now around the farm
        - When second wife asked why son was around, husband did not tell her about the sale
      - This transaction is clearly inspired by the hostility of the husband and second wife
  - Second wife and husband separate; second wife is suing husband for simulation or in alternative fraudulent transfer of her vested rights in the community
- Procedural Background
  - Trial judge held for husband, saying it wasn't a simulation or fraudulent transfer
    - A contract is a simulation when, by mutual agreement, it does not express the true intent of the parties. If the true intent of the parties is expressed in a separate writing, that writing is a counterletter. (art. 2025)
- Legal Issue
  - There is no right of rescission for fraudulent transfer of community property (there's a revocatory action available for creditors to set aside fraudulent conveyances of debtors, but not for husbands and wives)
    - The old CC art. 2404 (now XXX) provided that the wife only had an action against the heirs of her husband for fraudulent sale of community property (had to be by fraud or to injure the wife)
      - However the court says that since the wife now (at the time of the case) has a vested interest in the community property at the time it is acquired and not only at the termination of the community by the husband's death, the wife can not only sue the heirs but also the husband for fraud
      - But still no right to rescission
  - Was there fraud?
    - This will depend on whether the value by the son was less than the market value of the property
    - The real estate was sold for $17K and the cattle/equipment went for $13,700

        - Wife does not introduce evidence to what cattle/equipment should have been sold for, so leave that alone
        - Property was valued at more than $30K in total, so there was a $15,800K deficiency
            - Loss to wife (remember only ½ because this is community property) was $7,900
- Holding
    - Wife can recover $7,900
    - NOTE: the rest of the sale is not included because the son gave the father promissory notes which are assets of the community, so the wife will collect that portion of the sale through the promissory notes

Thomas v. Champagne (La. App. 1 Cir. 1994)

- Facts
  - Wife driving husband in car headed to event for husband's employer (Lawson)
  - Wife causes wreck
  - Victim sues wife and wife's insurer
    - Insurer deposits money into the registry of the court
    - Victim dismisses insurer and wife
    - Insurer files suit against Lawson (under theory of respondent superior)
  - Lawson files for summary judgment
- Legal Issue
  - Can wife's negligence be imputed to husband and then can Lawson be held liable via respondent superior for the negligence imputed on the husband?
    - The fault of one spouse cannot be imputed on the other merely because of the marital relationship
    - The victim argues that the husband is liable as head and master of the community if the wife was expressly or impliedly authorized by her husband and was attending to a community mission or affair
      - Problem with this argument is the head and master regime is over
    - Victim also argues that if the passenger is the owner of the vehicle and the driver is on a mission for the owner, the passenger may be held liable
      - There must be a joint interest in the object and purpose of the mission and an equal right, express or implied, on the part of each to direct or control the conduct of the other in the operation of the vehicle
      - Here, the husband exercised no control over the manner in which his wife operated the vehicle

Thomason v. Thomason (La. App. 3 2000)

- Facts
  - Couple goes to Mississippi to get a marriage license in 1958
  - Obtain license and then according to the wife, they went to the house of a Justice of the Peaces (husband says they did not)
  - From then on, the two hold themselves out to be married
  - Couple splits in 1998 (40 years later!!!)
  - Husband tries to say they are not married so she should not get civil effects
- Procedural Background
  - Trial court says they had a putative marriage and husband was in bad faith, so civil effects go to the wife
- Legal Issue
  - Husband says he knew they were never married (debate about whether he told the wife that)
  - What is good faith?
    - Honest and reasonable belief that the marriage was valid and no legal impediment existed; test is a subjective test depending upon the circumstances of the case (quoting from *Saacks*)
    - Therefore, the factual findings from the trial judge will be upheld unless in manifest error
    - No findings that husband was in good faith; in fact, it is clear from husband's testimony that he was not in good faith as he knew the marriage was a sham at the beginning
- Holding
  - No civil effects for husband

Tinsley, Sharpe v. Sharpe (La. App. 4 Cir. 1989)

- Facts
  - November 17, 1980: husband and wife enter pre-marital contract (authentic act) that says that they will have separate property and that neither will have a claim on the other even if the property is acquired in both names or be considered to be community property
  - Husband and wife marry on November 29, 1980
  - Couple resides before and during marriage in house owned by wife
- Procedural Background
  - Trial court interpreted contract to be a preclusion on all claims against the husband and wife that occurred before or during marriage
- Legal Issue
  - Husband thinks that the contract did not preclude his claims against wife for loans he made to her
    - Author and notary of the premarital contract testified that parties intent was to have no debts owed to one another
    - Court says purpose of the contract was to (1) make parties separate in property, (2) make income of the parties separate, and (3) renounce community property regime
  - Claims of reimbursement are barred by premarital contract
- Holding
  - Hold for wife

Tullier v. Tullier (La. 1985)

- Facts
  - Husband and wife divorce in 1980
  - Wife filing suit to partition community, and the land in question are 3 tracts of land the husband acquired during the marriage
    - The tracts were acquired through a "cash sale" the husband made with his mother, though no money changed hands
- Procedural Background
  - Trial court found the property was community property
  - COA found it was separate property
- Legal Issue
  - Is article 2340 retroactive? (took effect January 1, 1980)
    - The article gets rid of the double declaration rule, but the acquirement of the property in this case took place before 1980 (took place around 1966)
    - If it is applied retroactively, then the husband can introduce evidence showing it is separate property; if it is not retroactive, then the property is conclusively presumed to be community property
    - Act of 1978 passing the article almost identical to today's article had a paragraph that said it applied to all property/obligations of spouses, regardless of when the property was acquired, but Act also said that it did not change the characterization of separate/community property prior to the enactment of the statute; therefore, the article in the Act of 1978 would not be retroactive
    - But, in Act of 1979, the actual article 2340 was passed and it did not include any information about retroactivity
    - The double declaration rule was a conclusive presumption, and deemed to be a rule of substantive law
      - However, it was entirely judicial in origin; usually most substantive rules have some legislative backing
      - Since judicial opinions are not "law," they cannot create substantive rights of ownership in property
      - Laws that are only procedural in nature can be applied retroactively; this is procedural in nature because it merely establishes that the presumption is rebuttable; therefore, the article may be applied retroactively
    - Argument that applying this retroactively would be unfair to the wife
      - This is not taking anything away from the wife that was hers; she still is entitle to her portion of community property; this is merely allowing the husband to establish what is and what is not community property
  - Here the husband has proved the tracts of land were his separate property because he was the owner of the bonds that "paid" for the property; no cash exchanged hands, so this may have really been a donation, but even then, the donation was only to the husband, so still his separate property
- Holding

- Tracts are separate property

Washington v. Washington (La. App. 2 Cir. 1986)

- Facts
  - November 8, 1984: judgment of custody rendered same day as judgment of divorce; no mention of community property
  - July 16, 1985: husband instituted proceeding for possession of former community home and petitioned for a judicial partition of community
  - September 23, 1985: court partitioned community property in kind and maintained the prior eviction of the tenants
- Legal Issue
  - Did the court err in partitioning in kind (instead of by licitation)?
    - Partition by licitation is disfavored
    - Preferable way is to partition by licitation and due an equalizing payment
  - Was the equalizing sum wrong?
    - It has to be amended to reflect three money judgments that were not incorporated, but otherwise it is right
- Holding
  - Affirm COA; partition in kind

Webb v. Pioneer Bank and Trust Co. (La. App. 2 Cir. 1988)

- Facts
  - Couple marries in 1941
    - Husband manages all finances, even when the wife is the sole wager earner
  - Couple divorces in 1985
  - After divorce the wife finds out that there is a past loan due on which the husband forged her signature on the loan (loan increased her house payments from $78/month to $310/month)
    - Note did not require concurrence because it is an encumbrance created by law—only encumbrances created conventionally require concurrence; the mortgage (on immovable property) did require concurrence
    - The note and mortgage were for $40K, but the husband only got $15K
    - Wife had signed the credit application for the loan
    - She makes payment on the loan before filing suit, but tells the bank officials that it's not her signature
- Procedural Background
  - Trial court found the wife did not sign the loan so that was null and void
  - But, the court found the $15K benefited the community, so it was a community obligation not voided by the forged signature
- Legal Issue
  - Did the promissory note represent a community obligation
    - The mortgage is clearly an encumbrance placed on community property, so this falls under the joint management of article 2347 and needed both signatures; this is null
    - But what about the underlying obligation secured by the mortgage?
      - A community obligation is an obligation incurred by a spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouses (article 2360)
    - The incurrence of community obligations does not require the other spouse's consent, so here the loan and promissory note are community obligations
  - Can the wife get damages for the husband forging her name?
    - The wife was clearly damaged by the forgery
    - The husband is clearly at fault
    - The bank guy who served as notary clearly negligently failed in his duties
      - Her damages include the $15K received in execution of the $40K, plus interest, and $2,500 for mental anguish
- Holding
  - Reverse trial court; this was a community obligation, but the wife is entitled to damages

Whatley v. Whatley (La. App. 2 Cir. 1983) (finding that mineral lease proceeds from separate property were community)—the court in this case is wrong because the proceeds were up front payments for the next five years, and the community terminated the day after the lease payment was made; the court claimed you could not divide the payments, the property was either separate or community; the court should have turned to article 556, and apportioned the fruits on a day by day basis

Williams v. Williams (La. App. 1 Cir. 1987)

- Facts
  - Couple separated on October 12, 1983
  - Court found wife to be indebted to husband for ½ of mortgage payments paid on family home
    - Husband indebted to wife for ½ of rental value of family home
- Legal Issue
  - Is the reimbursement out of the community property or the wife's separate property?
- Holding
  - Her separate property; to hold otherwise would be to make the husband responsible for 75% of the payments to maintain the community asset when the wife would get ½ of the proceeds

Williams v. Williams (La. App 3 Cir. 2000)

- Facts
  - Couple has been living together for years (10 living together; 19 [total] dating)
  - Couple gets married
  - Couple executes an agreement to have separate property
    - They wrote up the agreement, had one counsel, for both, presented it to the trial court, and trial court approved
  - Couple gets divorced
  - Husband wants agreement annulled (has alimony requirement in it)
- Legal Issue
  - Was the agreement in the property form?
    - The trial court had to make two findings: the agreement was in the best interest of the parties and the parties understood the governing principles and rules
    - These requirements were not met
- Holding
  - Annulled; agreement unenforceable
- Dissent (Amy)
  - The matrimonial agreement is unenforceable, but the spousal support issues are severable and still enforceable
  - Uses *Langley* to say that the spousal support portion is an interspousal agreement
  - The fact that two types of agreements with different formalities are incorporated in one document does not render all portions null

Yiatchos v. Yiatchos Executrix, et al. (SOCUTS 1964)

- Facts
  - Husband purchased with community funds a U.S. Savings Bond in 1950–51, face value $15,075
    - Husband was registered owner of the bonds; brother (person filing suit) was beneficiary
    - Will left all cash and bonds to brother and siblings; wife is executrix
    - Husband died in 1958
- Legal Issue
  - Who gets the bond?
    - Brother claims that the beneficiary is the sole and absolute owner, so he (and siblings) get the bonds
    - Wife claims they are community property so ½ is hers
  - Court says the beneficiary is entitle to the bonds unless the owner committed fraud or breach of trust tantamount to fraud
    - Wife is claiming fraud because husband was under a fiduciary duty to manage community property
    - If the wife consented to the gift of community property to the brother, then this wouldn't be fraud, but the record is silent about the knowledge of the wife of the bonds
      - Case should be remanded to see wife's knowledge
  - Another question on remand is what does "vested one-half interest" mean?
    - Does it mean that the wife has one-half interest in everything? If that is the case, then the husband giving the brother the bonds would be tantamount to impermissible conversion of the wife's assets
    - Or does it mean she has no interest in any specific asset? This would mean that the giving of the bonds to the brother is not fraud
  - The only other caveat is what is the value of the bonds compared to the net of the estate (after payment of debts)? Bonds have to also bear the burden of debts
- Holding
  - Remand

Young v. Young (La. App. 3 Cir. 1989)

- Facts
  - Husband had accident four months before marriage; paid during marriage
- Legal Issue
  - Is the award separate or community?
- Holding
  - Separate
    - None of the award can be said to constitute the produce of the reciprocal industry and labor of the husband and wife