
LOUISIANA COMMUNITY PROPERTY LAW

OUTLINE

WINTER 2002

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I. GENERAL PRINCIPLES OF MATRIMONIAL REGIMES

A. Matrimonial Regimes

1. Generally: “A matrimonial regime is a system of principles and rules governing the ownership and management of the property of married persons as between themselves and toward third persons.” LA. CIV. CODE art. 2325.
2. Types: “A matrimonial regime may be legal, contractual, or partly legal and partly contractual.” LA. CIV. CODE art. 2326.
 - a. Legal Regime: “The legal regime is the community of acquets and gains” LA. CIV. CODE art. 2327. The legal regime is the default regime which is in effect absent an agreement between the spouses.
 - b. Contractual Regime: A contractual regime can be established through a matrimonial agreement between the parties. *See* LA. CIV. CODE art. 2328. The parties’ contract (either prenuptial or otherwise) typically establishes a contractual regime of separation of property. *Id.*
 - c. Modified Legal Regime: A modified legal regime can be established through a matrimonial agreement modifying the legal regime of community property. The provisions of the legal regime that have not been excluded or modified by the matrimonial agreement retain their force and effect. *See* LA. CIV. CODE art. 2328.

B. Matrimonial Agreements

1. Form of Matrimonial Agreement
 - a. Generally: A matrimonial agreement “shall be made by authentic act or by an act under private signature duly acknowledged by the spouses.” LA. CIV. CODE art. 2329. (An act is one “under private signature duly acknowledged” when it is signed and the signor recognizes the signature as his own before a notary and two witnesses. *See* LA. CIV. CODE art. 1836.)
 - b. Minors: “Unless fully emancipated, a minor may not enter into a matrimonial agreement without the written concurrence of his father and mother, or of the parent having his legal custody, or of the tutor of his person.” LA. CIV. CODE art. 2333.
2. When Can a Matrimonial Agreement Be Entered Into?
 - a. Generally: “A matrimonial agreement may be executed by the spouses before or during marriage.” LA. CIV. CODE art. 2331.
 - b. Matrimonial Agreements Before Marriage: Prior to marriage, spouses may enter into a prenuptial matrimonial agreement modifying, or opting out of,

the legal regime either through an authentic act or through a duly acknowledged private act. *See* LA. CIV. CODE art. 2329; *id.* cmt. b.

c. Matrimonial Agreements *During* Marriage

(1) Agreements Modifying or Terminating Legal Regime

(a) Spouses Long Domiciled in Louisiana: Spouses may enter into a matrimonial agreement that modifies or terminates the legal regime (or a modified legal regime) only upon joint petition and a finding by the court that this serves their best interests and that they understand the governing principles and rules. *See* LA. CIV. CODE art. 2329.

(b) Spouses Moving Into Louisiana: “During the first year after moving into and acquiring a domicile in this state, spouses may enter into a matrimonial agreement without court approval.” *Id.*

(2) Agreements Subjecting Spouses to Legal Regime: Spouses may subject themselves to the legal regime by a matrimonial agreement at any time without court approval. *See* LA. CIV. CODE art. 2329.

3. Contractual Freedom

a. Generally: Spouses may enter into a matrimonial agreement before or during marriage as to all matters that are not prohibited by public policy. *See* LA. CIV. CODE art. 2329. For example, spouses may by matrimonial agreement:

(1) Contributions: Provide for the parties’ respective contributions to the expenses of the marriage. *See* LA. CIV. CODE art. 2330, cmt. d.

(2) Apportion Shares: Provide for the apportionment of community property according to fixed shares. *Id.*

(3) Reserve Fruits: Provide for the reservation of fruits as separate property. *Id.*

(4) Future Property: Provide that the spouses’ existing or future property shall be subject to the matrimonial regime. In such a case, a matrimonial agreement may be a donation governed by the rules of substance and form applicable to donations. *Id.*

b. Limits: Spouses may *not* by agreement before or during marriage:

(1) Marital Portion: Renounce or alter the marital portion. *See* LA. CIV. CODE art. 2330.

- (a) Policy: The marital portion (and the order of succession) are rules of public order that may not be derogated from by agreement. *See id.* cmt. a.
- (b) Contrast Renunciation of Marital Portion After Spouse's Death: After the death of a spouse, the survivor may renounce the marital portion. *Id.* cmt. a.
- (2) Order of Succession: May not renounce or alter the established order of succession. *Id.*
- (3) Third Parties: May not limit with respect to third persons the right that one spouse alone has under the legal regime to obligate the community or to alienate, encumber, or lease community property. *Id.*

II. LEGAL REGIME OF COMMUNITY OF ACQUETS AND GAINS

A. Generally

- 1. Application: “The legal regime of community acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of celebration of the marriage.” LA. CIV. CODE art. 2334. (For a more detailed discussion of choice-of-law issues, see *infra*.)
- 2. Nature of Legal Regime: The legal regime is not a legal entity but a patrimonial mass, that is, a universality of assets and liabilities. *See* LA. CIV. CODE art. 2336, cmt. a.
 - a. Not a Legal Entity: Because the legal regime is not a legal entity, it does not own property or have obligations—spouses do.
 - b. Generally: An undivided one-half of the mass forms a part of the patrimony of each spouse during the existence of a community property regime, but the entirety of the assets of the mass is liable to creditors for the satisfaction of separate as well as community obligations of the spouses. *See* LA. CIV. CODE art. 2336, cmt. c.
- 3. Ownership of Community Property
 - a. Undivided One-Half Interest: “Each spouse owns a present undivided one-half interest in the community property.” LA. CIV. CODE art. 2336.
 - b. Undivided Interest is Inalienable: “A spouse may not alienate, encumber, or lease to a third person his undivided interest in the community or in particular things of the community prior to the termination of the regime.” LA. CIV. CODE art. 2337.

- (1) Absolute Nullity: The attempted disposition by a spouse of his undivided interest in the community or in things of the community by inter vivos act in favor of a third person is an “absolute nullity.” LA. CIV. CODE art. 2334, cmt. b.
- (2) Can Alienate Portions of the Community: “This provision does not prevent the alienation, encumbrance or lease to a third person of a portion of the community or things of the community in full ownership. It is aimed simply at preventing a third party from owning an undivided interest in the community or in particular things of the community.” *Id.* cmt. c.

B. Classification of Assets

1. Generally

- a. Classification Scheme: “Property of married persons is either community or separate, except as provided in Article 2341.1.” LA. CIV. CODE art. 2335.

(1) Generally

- (a) No Mixed Titles: For the most part, classification of property as community or separate is an all-or-nothing proposition. That is, with regard to most property, it is either entirely community or entirely separate—not part community, part separate. There are important exceptions to this rule, however.
- (b) Classify at Acquisition: The classification decision is typically made as of the point of acquisition of the asset—not thereafter.

(2) Community Property: Community property comprises the following:

- (a) Property Acquired Through Spousal Work: Property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse;
- (b) Property Acquired With Community Things: Property acquired with community things or with community and separate things, unless classified as separate property under Article 2341;
- (c) Joint Donations and Fruits of Community Property: Property donated to the spouses jointly; natural and civil fruits of community property;

- (d) Damages Awarded for Loss of Community Property: Damages awarded for loss or injury to a thing belonging to the community; and
 - (e) All Nonseparate Property: All other property not classified by law as separate property.” LA. CIV. CODE art. 2338.
- (3) Separate Property: The separate property of a spouse is his exclusively. It comprises:
- (a) Property Acquired Prior to Legal Regime: Property acquired by a spouse prior to the establishment of a community property regime;
 - (b) Property Acquired With Separate Property: Property acquired by a spouse with separate things or with separate and community things when the value of the community things is inconsequential in comparison with the value of the separate things used;
 - (c) Inherited Property: Property acquired by a spouse by inheritance or donation to him individually;
 - (d) Damages for Mismanagement of Community: Damages awarded to a spouse in an action for breach of contract against the other spouse or for the loss sustained as a result of fraud or bad faith in the management of community property by the other spouse;
 - (e) Damages to Separate Property: Damages or other indemnity awarded to a spouse in connection with the management of his separate property; and
 - (f) Voluntary Partition: Things acquired by a spouse as a result of a voluntary partition of the community during the existence of a community property regime.” LA. CIV. CODE art. 2341.
- b. Presumption of Community: “Things in the possession of a spouse during the existence of a regime of community of acquets and gains are presumed to be community, but either spouse may prove that they are separate property.” LA. CIV. CODE art. 2340. This is a presumption that is rebuttable with proof that the property is separate. The burden is said to be higher than proof by a preponderance.

- c. Article 2341.1: Acquisition of Additional Interests of a Thing Does Not Affect Ownership of Original Undivided Interest
- (1) Separate Property: If a spouse owns an undivided interest in a thing as separate property and acquires an additional interest in the same thing as community property, the original interest owned remains separate.
 - (2) Community Property: If a spouse owns an undivided interest in a thing as community property and owns or acquires an additional interest in the same thing as separate property, the original interest owned remains community property and the other interest is separate.
- d. Real Subrogation: The principle of real subrogation is applicable to both separate and community property. Thus, when a thing forming a part of the separate property (or community property) of a spouse is converted into another thing, the mass of the separate property (or community property) is not diminished. The new thing takes the place of the old. *See* LA. CIV. CODE art. 2341, cmt. c.
- e. Estoppel by Deed
- (1) Generally: A declaration in an act of acquisition that things are acquired with separate funds as the separate property of a spouse may be controverted:
 - (a) By Other Spouse: By the other spouse *unless he concurred in the act*, and
 - (b) By Forced Heirs and Creditors: By forced heirs and creditors of the spouses, “despite the concurrence by the other spouse.” *See* LA. CIV. CODE art. 2342.
 - (2) Exception—Onerous Transfer to Third Party: Despite such a declaration, “an alienation, encumbrance, or lease of the thing by onerous title may not be set aside on the ground of the falsity of the declaration.” LA. CIV. CODE art. 2342.
- f. Interspousal Donations and Other Transactions
- (1) Transformation of Community Property to Separate Property
 - (a) Effect on Donated Interest: “The donation by a spouse to the other spouse of his undivided interest in a thing forming part of the community transforms *that interest* into separate property of the donee.” LA. CIV. CODE art. 2343.

(b) Effect on Donee's Existing Interest: "Unless otherwise provided in the act of donation, an *equal interest of the donee* is also transformed into separate property and the natural and civil fruits of the thing, and minerals produced from or attributed to the property given as well as bonuses, delay rentals, royalties, and shut-in payments arising from mineral leases, form part of the *donee's separate property*." *Id.*

(2) Transformation of Separate Property to Community Property

(a) Generally: "The transfer by a spouse to the other spouse of a thing forming part of his separate property, with the stipulation that it shall be part of the community, transforms the thing into community property." LA. CIV. CODE art. 2341.1. In effect, the transferor conveys to the other spouse one-half of what he owns and retains the other half as co-owner under the legal regime. *See id.* cmt. b.

(b) Form Required

- i) Stipulation: Must stipulate that thing "shall be part of the community." *Id.*
- ii) Onerous Transfer: A transfer by onerous title must be made in writing. *Id.*
- iii) Gratuitous Transfer: A transfer by gratuitous title must be made by authentic act. *Id.*

2. Fruits and Revenues of Separate Property

a. Generally: "The natural and civil fruits of the separate property of a spouse, minerals produced from or attributable to a separate asset, and bonuses, delay rentals, royalties, and shut-in payments arising from mineral leases are community property." LA. CIV. CODE art. 2339.

(1) "Fruit" Defined: Fruits are things that are produced by another thing without diminution of its substance. *See* LA. CIV. CODE art. 2339, cmt. c (citing *id.* art. 551, cmt. c).

(2) Minerals: Minerals are not "fruits" because their production results in depletion of the property. However, minerals produced from a separately owned oil well or mine are community property. *Id.* art. 2339, cmt. c.

b. Reservation of Fruits and Revenues by Declaration

(1) Generally: A spouse unilaterally may reserve fruits and revenues “as his separate property by a declaration made in an authentic act or in an act under private signature duly acknowledged.” LA. CIV. CODE art. 2339.

(2) When Declaration is Effective

(a) Fruits of Immovables: “As to fruits and revenues of immovables, the declaration is effective *when filed for registry* in the conveyance records of the parish in which the immovable property is located.” *Id.*

(b) Fruits of Movables : “As to fruits of movables, the declaration is effective *when filed for registry* in the conveyance records of the parish in which the declarant is domiciled.” *Id.*

3. Pensions: Pensions are an exception to Louisiana’s all-or-nothing classification scheme. Pensions are classified on a pro rata basis.

a. Generally: Pensions are community property to the extent attributable to effort expended by spouse during the existence of the community. *See Sims v. Sims*, 358 So. 2d 919 (La. 1978) (Tate, J.).

b. Qualified v. Nonqualified Plans: Rules regarding classification of pension assets as community or separate are the same for qualified and nonqualified plans.

(1) Qualified Plans: Qualified plans are those which are approved in advance by the IRS. Employer contributions to such plans are tax deductible. In the context of a partition, must have court issue a Qualified Domestic Relations Order to effect changes in ownership.

(2) Nonqualified Plans: Examples of nonqualified plans include the Louisiana Teachers Retirement System and the Municipal Employees Retirement System.

c. Defined Contribution Plans v. Defined Benefit Plans

(1) Defined Contribution Plans: In a defined contribution plan, the employer promises to pay the employee, upon retirement, benefits from a sum comprised of contributions to a trust for the employee’s account. The ultimate value of the “pension” or payment to the employee is directly related to the total sums contributed by the employer and/or employee.

- (a) Determinable Sum Can be Credited to Employed Spouse: At community termination, a determinable sum can be credited to the employed spouse.
 - (b) Division of Determined Sum Between Spouses: The employee spouse's contributions to the pension plan during the community determine the interest of the community to share in the ultimate payments. That portion of the total pension attributable to contributions made during the legal regime is community. *See T.L. James v. Montgomery*, 332 So. 2d 834 (La. 1976). The rest is separate.
- (2) Defined Benefit Plans: In a defined benefit plan, the employer promises to pay the employee, upon retirement, stated benefits based upon the length of the employee's service—not based on the employer's or the employee's financial contributions. Such plans typically define the employee's benefits by reference to a formula (for example, 80% of the employee's salary upon retirement).
- (a) No Determinable Sum Credited to Employed Spouse: Unlike a defined contribution plan, no determinable sum can be credited to the employed spouse at community termination.
 - (b) Division of Indeterminable Sum Between Spouses
 - i) Generally—Sims Formula: The *Sims v. Sims*, 358 So. 2d 919 (La. 1978) formula is used to compute a "community fraction."
 - a) Numerator: The numerator (top number) of the fraction is the portion of the pension attributable to creditable service during the community.
 - b) Denominator: The denominator (bottom number) of the fraction is the pension attributable to total creditable service.
 - ii) Variations on Sims Formula—Hare: The *Sims* formula is not the exclusive method for determining the nonemployed spouse's interest. For example, events occurring after the termination of the legal regime which affect the amount of pension due to the employed spouse can affect the allocation of pension benefits. *See Hare v. Hodgins*, 586 So. 2d 118 (La. 1991).

Courts can take these factors into consideration in determining the portion of the pension which is community property.

- d. Pensions and Federal Preemption: ERISA preempts conflicting provisions of Louisiana community-property law. *See Boggs v. Boggs*, 138 L. Ed. 45 (1997) (ERISA prohibits first wife from making testamentary transfer of her portion of certain retirement benefits when second wife receiving ERISA-covered benefits).
 - e. Partition of Pension Rights: Pension rights can be partitioned years after a general partition of other community property if the parties' original settlement was silent on the topic and parties did not discuss the issue. *See, e.g., Robinson v. Robinson*, 778 So. 2d 1105 (La. 2001).
4. Personal Injury Damages: "Damages due to personal injuries sustained *during* the existence of the community by a spouse are separate property." LA. CIV. CODE art. 2344. This includes injuries to the personality of a spouse as well as workers' compensation benefits. *Id.* cmt. a.
- a. Exception—Award for Community Expenses: The "portion of the damages attributable to expenses incurred by the community as a result of the injury" is community property. *Id.*
 - b. Exception—Award for Lost Wages: The "portion of the damages . . . in compensation of the loss of community earnings" is community property. *Id.* However, "[i]f 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." *Id.*
5. Miscellaneous Classification Problems
- a. Commingling: As a matter of community property doctrine, commingling of community property and separate property does not affect the classification of either. As a matter of proof, however, commingling makes it very difficult to overcome the presumption of community and to prove the separate nature of commingled property.
 - b. Credit Sales: Under Louisiana sales law, title passes (and the asset is acquired by the buyer) once there is agreement on the thing and the price. LA. CIV. CODE art. 2456. Thus, if an asset is purchased by a spouse with separate funds, it remains separate even though community funds are later used to pay off the loan which facilitated the purchase.

- c. Bond for Deed Contracts: In a bond for deed contract, the buyer of an immovable pays the purchase price in installments and eventually acquires title upon payment of the final installment. If early payments are made prior to the commencement of the legal regime, and later payments are made during the regime, the property will be classified as *community* if consequential community funds contributed to the acquisition. *See* LA. CIV. CODE art. 2341. (Commentators have argued that the bond-for-deed contract should result in pro rata ownership of the asset.)
- d. Acquisitive Prescription: Under civilian property law, the acquisition date of property acquired through acquisitive prescription relates back to the beginning of possession. For this reason, a good argument can be made that such property should be classified as of the *commencement* of prescription. Thus, if consequential community things contributed to the acquisition, the asset would be considered community. Conflicting authority suggests, however, that such property should be classified as of the conclusion of the period of prescription. This issue remains unresolved.
- e. Donations: A donation made to one spouse *individually* (rather than to both spouses jointly) is separate. The donor's donative intent is dispositive.
- f. Life Insurance: Life insurance contracts are *sui generis*.
 - (1) Ownership of Proceeds: The proceeds of a policy payable upon death are always owned by the beneficiary named in the contract of insurance.
 - (2) Ownership of Policy: Policies acquired before marriage are separate; policies acquired during marriage (with consequential community things) are community. Practically speaking, term-life policies (usually) have no calculable cash value; in contrast, whole-life policies typically have value.
- g. Contingency Fee Contracts: An attorney-spouse's right to recover a contingency fee is classified on a pro rata basis. That is, that portion of the fee attributable to work performed during the existence of the community is considered to be community.
- h. Intellectual Property
 - (1) Generally: Intellectual property works in progress (such as books, art, songs and the like) are classified on a pro rata basis. That is, that portion of the revenue ultimately generated by the work which is attributable to work performed during the existence of the community is considered to be community.

(2) Copyrighted Works of Authorship: The “fructus” of copyrighted works created during the legal regime are community property. The “usus” and “abusus” of such works are separate property. *See Rodrigue v. Rodrigue*, 218 F.3d 432 (5th Cir. 2000).

- i. Disability Payments: Classifying disbursements from a disability income policy is troublesome. The nature of the benefits, not the source of premium payments, is determinative. When payments represent lost income rather than deferred compensation, disability payments are generally considered community property during the existence of the community, and separate property thereafter. *See Mercer v. Mercer*, 671 So. 2d 937 (La. Ct. App. 3d Cir. 1996).
- j. Insurance Policy Renewal Commissions: Renewal commissions on insurance policies written or serviced by spouse during the community, but paid after termination, are classified as community property. However, the ex-spouse insurance agent is entitled to deduct from the gross renewal commissions an amount representative of his individual efforts following termination of the community. *See Futch v. Futch*, 643 So. 2d 364 (La. Ct. App. 2d Cir. 1994).
- k. Sweepstakes Winnings: Sweepstakes prize money awarded as a result of a spouse’s “own skill and effort in correctly finding the hidden words, and thereafter mailing [the] entry for submission,” is community property. *See Noil v. Noil*, 699 So. 2d 1134, 1137 (La. Ct. App. 1st Cir. 1997).

C. Management of Community Property

- 1. Generally: “Each spouse acting alone may manage, control, or dispose of community property unless otherwise provided by law.” LA. CIV. CODE art. 2346.
 - a. Equal Management: This article establishes the principle of equal management. *Id.* cmt. a.
 - b. Spouses are Not Mandataries: This provision does not make each spouse the mandatory (agent) of the other. A spouse who contracts with a third person, when acting alone in the management of community property, does not obligate the separate property of the other spouse. *Id.* cmt. b.
- 2. When Concurrence of Both Spouses is Required
 - a. Alienation of Community Property
 - (1) Generally: “The concurrence of both spouses is required for the alienation, encumbrance, or lease of community immovables, standing, cut, or fallen timber, furniture or furnishings while located in the family home, all or substantially all of the assets of a community enterprise and movables issued or registered as

provided by law in the names of the spouses jointly.” LA. CIV. CODE art. 2347. The concurrence of both spouses is required to harvest community timber. *Id.* art. 2347(B).

(2) Inapplicability

(a) Encumbrances Imposed by Law: Encumbrances imposed by law (such as liens and privileges) are not subject to the requirement of concurrence. LA. CIV. CODE art. 2347, cmt. a.

(b) Business Entities: This provision applies to business that are *not* legal entities. If the business possesses legal personality, such as a corporation, L.L.C. or partnership, its alienation, encumbrance, or lease may be effected by disposition of shares of stock or a partner’s interest. *Id.* cmt. b.

b. Donations: “The donation of community property to a third person requires the concurrence of the spouses, but a spouse acting alone may make a usual or customary gift of a value commensurate with the economic position of the spouses at the time of the donation.” LA. CIV. CODE art. 2349.

c. Exceptions—When One Spouse Can Act Alone Despite Concurrence Requirement

(1) Ratification: A spouse can ratify the alienation, encumbrance, or lease of a community immovable by the other spouse. *See* LA. CIV. CODE art. 2348, cmt. a.

(2) Renunciation of Right to Concur

(a) Generally: “A spouse may expressly renounce the right to concur in the alienation, encumbrance, or lease of a community immovable or some or all of the community immovables which may be acquired in the future, or all or substantially all of a community enterprise. He may also renounce the right to participate in the management of a community enterprise.” LA. CIV. CODE art. 2348.

(b) Express Reservations Permitted: “A spouse may nonetheless reserve the right to concur in the alienation, encumbrance, or lease of specifically described community immovable property.” *Id.*

- (c) Duration of Renunciation
 - i) Irrevocable Renunciation: “The renunciation may be irrevocable for a stated term not to exceed three years.” *Id.*
 - ii) Revocable Renunciation: If the renunciation is not expressly made irrevocable, the renunciation remains in effect “until it is revoked.” *Id.*
 - (d) Effect of Renunciation: A renunciation, unlike the granting of a power of attorney, does not render the renouncing spouse a party to the transaction. Consequently, a resulting obligation may not be satisfied from the separate property of the spouse who renounces the right to concur. *Id.* cmt. b.
- (3) Judicial Authorization To Act Without Consent of Other Spouse: A spouse, in a summary proceeding, may be authorized by the court to act without the concurrence of the other spouse upon showing that:
- (a) Best Interest of Family: Such action is in the best interest of the family, *and*
 - (b) Other Spouse: The other spouse arbitrarily refuses to concur or that concurrence may not be obtained due to the incapacity or absence of the other spouse. LA. CIV. CODE art. 2355.
- (4) Spouse Has Exclusive Right to Manage: When a spouse has the exclusive right to manage community property, *see infra*, obviously that spouse does not need the concurrence of the other spouse to act.
3. When One Spouse Has the Exclusive Right to Manage Community Property
- a. Alienation of Movable Assets of a Business: “The spouse who is the sole manager of a community enterprise has the exclusive right to alienate, encumber, or lease its movables unless the movables are issued in the name of the other spouse or the concurrence of the other spouse is required by law.” LA. CIV. CODE art. 2350.
 - b. Alienation of Registered Movables: “A spouse has the exclusive right to manage, alienate, encumber, or lease movables issued or registered in his name as provided by law.” LA. CIV. CODE art. 2351. Applies to shares of stock, negotiable instruments and bank accounts. *Id.* cmt. a. (This provision

does not limit the right of a creditor to seize community property that the other spouse has the exclusive right to manage. *Id.*)

c. Management and Disposition of Partnership or LLC Interest

(1) Generally: A spouse who is a partner or a member of a limited liability company has the exclusive right to manage, alienate, encumber, or lease the partnership or LLC interest. *See* LA. CIV. CODE art. 2352.

(2) Purpose: The spouse who is not a party to the other spouses' partnership contract may not affect the legal relationship of the partner spouse and the other partners. *Id.* cmt.

d. Exception to Sole Management—Judicial Authorization: “When a spouse is an absent person, the other spouse, upon showing that such action is in the best interest of the family, may be authorized by the court in a summary proceeding to manage, alienate, encumber, or lease community property that the absent spouse has the exclusive right to manage, alienate, encumber, or lease.” LA. CIV. CODE art. 2355.1.

4. Mismanagement

a. Unauthorized Alienation of Community Property: “When the concurrence of the spouses is required by law, the alienation, encumbrance, or lease of community property by a spouse is relatively null unless the other spouse has renounced the right to concur. Also, the alienation, encumbrance, or lease of the assets of a community enterprise by the nonmanager spouse is a relative nullity.” LA. CIV. CODE art. 2353.

b. Liability for Fraud or Bad Faith: “A spouse is liable for any loss or damage caused by fraud or bad faith in the management of community property.” LA. CIV. CODE art. 2354.

5. Accounting: “A spouse owes an accounting to the other spouse for community property under his control [management authority] at the termination of the community property regime.” LA. CIV. CODE art. 2369. “The obligation to account prescribes in three years from the date of termination of the community property regime.” *Id.*

a. Heritable: A spouse or his heirs may demand an accounting under this provision from the other spouse or his heirs. *Id.* cmt. b.

b. Prescription Issues

(1) Commencement of Prescription: Prescription commences to run from the date of the judgment that terminates the community. *Id.* cmt. d.

- (2) No Suspension of Prescription: Prescription is not suspended by marriage. *Id.* cmt. c.
- D. Termination of Legal Regime: The legal regime of community property is terminated by the following:
1. Death: The death or judgment of declaration of death of a spouse. LA. CIV. CODE art. 2356.
 2. Nullity: The declaration of nullity of the marriage. *Id.*
 3. Divorce: The divorce of the spouses. *Id.* (Termination date of the community is retroactive to the date of the filing of the petition on which divorce is granted. If two petitions for divorce were filed, then the judgment shall be effective retroactive to the date of the filing of the *original* petition. *See* LA. CIV. CODE art. 2375(C) (1997 amendment); *id.* art. 159.)
 4. Matrimonial Agreement: A matrimonial agreement terminating the community. *Id.* art. 2356.
- E. Classification of Obligations: “An obligation incurred by a spouse may be either a community obligation or a separate obligation.” LA. CIV. CODE art. 2359. Classification of obligations becomes relevant only upon termination of the legal regime.
1. Community Obligations: “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* spouse is a community obligation.” LA. CIV. CODE art. 2360 (emphasis added).
 - a. Presumption: “Except as provided in Article 2363, all obligations incurred by a spouse during the existence of a community property regime are presumed to be community obligations.” LA. CIV. CODE art. 2361.
 - b. Alimentary Obligation: “An alimentary obligation imposed by law on a spouse is deemed to be a community obligation.” LA. CIV. CODE art. 2362. Child support is an “alimentary obligation.”
 - c. Obligation Incurred in Action for Divorce: “An obligation for attorneys’ fees and costs in an action for divorce incurred before the date of the judgment of divorce that terminates the community property regime is a community obligation of that regime.” LA. CIV. CODE art. 2362.1. Attorneys’ fees incurred with regard to incidental matters qualify. *See Carroll v. Carroll*, 753 So. 2d 395 (La. Ct. App. 1st Cir. 2000).
 2. Separate Obligations
 - a. Obligations Arising Prior to Legal Regime: Obligations incurred prior to the establishment of a community property regime are separate obligations. *See* LA. CIV. CODE art. 2363.

b. Certain Obligations Arising During Legal Regime

- (1) Generally: Obligations incurred during the existence of a community property regime but neither for the common interest of the spouses nor for the interest of the other spouse are separate obligations. *See id.*
- (2) Obligations Incurred for the Benefit of Separate Property: Obligations incurred for the separate property of a spouse are separate obligations to the extent that they do not benefit the community, the family, or the other spouse. *See id.*
- (3) Obligations Arising From Intentional Torts: Obligations resulting from intentional wrongs not perpetrated for the benefit of the community are separate obligations. *See id.*

c. Obligations Arising After Termination of Legal Regime: Obligations incurred after the termination of a community property regime, except obligations incurred for attorneys' fees and costs under article 2362.1, are separate obligations. *See id.*

3. Importance of Classifying Obligations: As previously noted, classification of obligations becomes relevant only upon termination of the legal regime.

- a. Personal Liability to Creditors: A spouse who disposes of former community property is personally liable to creditors only if he disposes of that property for a purpose *other than to satisfy a* community obligation. *See* LA. CIV. CODE art 2357 (unenumerated paragraph 2).
- b. Assumption of Personal Liability: A spouse can assume responsibility for one-half of each community obligation incurred by the other spouse under article 2357.
- c. Reimbursement: Whether a spouse is due a reimbursement for satisfying an obligation depends upon the classification of that obligation and the classification of the assets used to satisfy it.
- d. Allocation: Only community obligations are allocated during partition of community property.

F. Reimbursement Between Spouses

1. Generally: "Upon termination of a community property regime, a spouse may have a claim against the other spouse for reimbursement . . ." LA. CIV. CODE art. 2358.
2. Source of Reimbursement: "Reimbursement shall be made from the patrimony of the spouse who owes reimbursement." LA. CIV. CODE art. 2358.1. Reimbursement is *not* due from the net community assets. *Id.* cmt. c.

- a. Effect: When community property has been used to satisfy a separate obligation of a spouse, the other spouse is entitled upon termination of the community to reimbursement for one-half of the amount or value used from the patrimony of the other spouse. The accounting is simple. One-half of the community property that was used to satisfy the separate obligation of a spouse belonged to that spouse and, therefore, no reimbursement is due to him. The other half of the community property that was used belonged to the other spouse, and therefore, reimbursement is due to him. *Id.* cmt. c.
 - b. Components of Spouse's Patrimony: The patrimony of a spouse consists of *his share* in the community *and* his separate property. *Id.* cmt. a.
 - c. Exceptions: Some codal provisions limit the reimbursement liability of a spouse to the value of his share of the community. *See* LA. CIV. CODE arts. 2365 & 2367.
3. Satisfaction of Obligations
- a. Satisfaction of Separate Obligation
 - (1) With Community Property: If community property has been used to satisfy a separate obligation of a spouse, the *other spouse* is entitled to reimbursement upon termination of the community property regime for one-half of the amount or value that the property had at the time it was used. *See* LA. CIV. CODE art. 2364.
 - (a) Effect: This article treats community property used to satisfy a separate obligation as an interest-free loan.
 - (b) No Limitation: There is no limit on the amount of reimbursement due when community property is used to satisfy a separate obligation.
 - (c) Related Provision—Criminal Forfeiture: If community property is seized as a result of a criminal act of a spouse not committed for the benefit of both spouses, the innocent spouse is entitled to reimbursement upon termination of the community property regime for one-half of the value of the seized property. *See* LA. CIV. CODE art. 2364.1 (1997).
 - (2) With Separate Property: If separate property has been used to satisfy the separate obligation of the other spouse, the issue of whether the other spouse is entitled to a payment must be resolved under the law of obligations, rather than the law of community property.

b. Satisfaction of Community Obligation

(1) With Separate Property

(a) Generally: “If separate property of a spouse has been used to satisfy a community obligation, that spouse, upon termination of the community property regime, is entitled to reimbursement for one-half of the amount or value that the property had at the time it was used.” LA. CIV. CODE art. 2365.

(b) Limitation on Amount of Reimbursement

i) Generally: “The liability of a spouse who owes reimbursement [to the other spouse whose separate property has been used to satisfy a community obligation] is limited to the value of his share in the community after deduction of all community obligations.” LA. CIV. CODE art. 2365.

ii) When Full Reimbursement is Permitted—Separate Property Used for Family Expenses: If, however, the community obligation was incurred for the following, “the spouse is entitled to reimbursement from the other spouse *regardless* of the value of that spouse’s share of the community.” *Id.*

a) Ordinary Family Expenses: Obligations incurred for the “ordinary and customary expenses of the marriage.” *Id.*

b) Child-Related Expenses: Obligations incurred for the “support, maintenance, and education of children of either spouse in keeping with the economic condition of the community.” *Id.*

(2) With Community Property: If community property has been used to satisfy a community debt, then no reimbursements are due to either spouse.

4. Improvement and Maintenance of Property

a. Use of Community Property

(1) To Benefit Separate Property

(a) Generally: “If community property has been used for the acquisition, use, improvement, or benefit of the separate property of a spouse, the other spouse is entitled upon termination of the community to one-half of the amount or value that the community property had at the time it was used.” LA. CIV. CODE art. 2366.

(b) Buildings and Plantings on Separate Property

i) Ownership: “Buildings, other constructions permanently attached to the ground, and plantings made on the separate property of a spouse with community assets belong to the owner of the ground.” *Id.*

ii) No Limitation: There is no limit on the amount of reimbursement due when community property is used to benefit separate property.

(2) To Benefit Community Property: If community property is used to benefit community property, no reimbursements are due to either spouse.

b. Use of Separate Property

(1) To Benefit Community Property

(a) Generally: “If separate property of a spouse has been used for the acquisition, use, improvement or benefit of community property, that spouse upon termination of the community is entitled to one-half of the amount or value that the property had at the time it was used.” LA. CIV. CODE art. 2367.

(b) Limitation on Amount of Reimbursement: “The liability of the spouse who owes reimbursement is limited to the value of his share in the community after deduction of all community obligations.” *Id.*

(c) Buildings and Plantings on Community Property

i) Ownership: “Buildings, other constructions permanently attached to the ground, and plantings

made on community property with separate assets of a spouse become community property.” *Id.*

- ii) Reimbursement: “Upon termination of the community, the spouse whose assets were used is entitled to one-half of the amount or value that the separate assets had at the time they were used. The liability of the spouse who owes reimbursement is limited to the value of his share in the community after deduction of all community obligations.” *Id.*

(2) To Benefit the Other Spouse’s Separate Property

- (a) Ownership: “Buildings, other constructions permanently attached to the ground, and plantings made on the land of a spouse with the separate assets of the other spouse belong to the owner of the ground.” LA. CIV. CODE art. 2367.1.
- (b) Full Reimbursement: “Upon alienation of the land, *or* termination of the community, the spouse whose assets were used is entitled to reimbursement for the amount or value that the assets had at the time they were used.” *Id.* There is no limit on the amount of reimbursement that might be due.
- (c) Same Principles Apply to Component Parts of Separate Property: “When a spouse with his own separate assets incorporates in or attaches to a separate immovable of the other spouse things that become component parts under articles 465 and 466, [then] article 2367.1 applies.” LA. CIV. CODE art. 2367.2.

5. Increase of the Value of Property

- a. Separate Property: “If the separate property of a spouse has increased in value as a result of the uncompensated common labor or industry of the spouses, the other spouse is entitled to be reimbursed from the spouse whose property has increased in value one-half of the increase *attributed to* the common labor.” LA. CIV. CODE art. 2368.
 - (1) Labor: If *either* spouse’s labor has caused the value of separate property to increase and that labor has been undercompensated, then a reimbursement is due.

- (2) Increase Not Due to Undercompensated Labor: No reimbursement due. For example, if separately owned public stock increases in value, no reimbursement is due.
 - b. Community Property: Any increase in value of community property is community property.
- G. Partition of Community Assets and Obligations: Spouses divide up community assets and obligations through partition.
 1. When Partition is Allowed
 - a. Cannot Judicially Partition Before Termination: “[N]either the community nor things of the community may be partitioned prior to the termination of the regime.” LA. CIV. CODE art. 2336. Thus, neither spouses nor their creditors can force a judicial partition as long as the legal regime continues to exist. *Id.* cmt. a.
 - b. Can Voluntarily Partition Before Termination
 - (1) Generally: “During the existence of the community property regime, the spouses may, without court approval, voluntarily partition the community property in whole or in part. In such a case, the things that each spouse acquires are separate property.” *Id.*
 - (2) Effect of Voluntary Partition
 - (a) Generally: Voluntary partition does not alter the spouse’s matrimonial regime; it merely changes the classification of those things they partition. Thus, if spouses subject to the legal regime voluntarily partition certain community property, property acquired thereafter can be community property.
 - (b) Effect on Third Parties: A voluntary partition “is effective toward third persons when filed for registry in the manner provided by Article 2332.” *Id.*
 - (3) Rescission of Voluntary Partition
 - (a) Lesion: If a spouse does not receive at least three-fourths of the fair market value of her interest in the net value of the community (typically, 37.5% of the net value of a typical 50%-50% community), then she may rescind the voluntary partition for lesion. LA. CIV. CODE art. 814. However, a *judicial* partition cannot be rescinded for lesion, nor can a partition that constitutes a settlement/compromise.

- (b) Other Grounds: Voluntary partitions can also be rescinded by a party who suffered from a vice of consent (for example, error, fraud or duress).
2. Procedure for Judicial Partition: The procedure for involuntary judicial partition is detailed in LA. REV. STAT. § 9:2801.
- a. Classification: The court must first classify all assets and obligations as community or separate. Each spouse is required to file a sworn descriptive list of community assets and community obligations within 45 days of service of the motion requesting partition. Each spouse then either traverses (disagrees with) or concurs in the other's classification and valuation of each asset within 60 days of service of the last filed descriptive list. If the parties disagree, the court holds a summary "trial of the traverses" at which each asset and obligation is classified (valuation issues are deferred to the trial on the merits). *Id.* § 9:2801(1-2).
- b. Allocation and Valuation: At the partition trial, the court then values the assets (as of the time of trial), and allocates to the respective spouses *all* of the community assets and community liabilities. (The court cannot allocate only a portion of the community.) *Id.* § 9:2801(4).
- (1) Goal—Equality: "The court shall divide the community assets and liabilities so that each spouse receives property of an equal net value." *Id.* § 9:2801(4)(b).
- (2) Allocating Hard-to-Allocate Assets: If the court cannot fairly allocate an asset to one spouse or the other, it can order the parties to draw lots for the asset, order a private sale or order partition by licitation (public sale and subsequent allocation of proceeds). *Id.* § 9:2801(4)(c-e).
- (3) Effect of Allocation of Obligations: As between spouses, the allocation of an obligation to a spouse obligates that spouse to extinguish it. However, "[t]he allocation in no way affects the rights of creditors." *Id.* § 9:2801(4)(c).
- (4) Equalizing Payment: After the trial judge determines the assets and obligations of the parties, and allocates the community property to each party, she then awards one party an "equalizing payment" if the allocation would otherwise be unequal. Interest on equalizing payments is due only from the date of the judgment of partition. *See Reinhardt v. Reinhardt*, 748 So. 2d 423 (La. 1999).

c. Miscellaneous Issues

- (1) Expert Assistance: The court can appoint experts to assist the court in classifying, valuing or allocating assets and obligations. *Id.* § 9:2801(3).
- (2) Venue for Partition Actions: If the spouses do not own community immovable property, an action to partition community property can be brought in the parish where either party is domiciled. *See* LA. CODE CIV. P. arts. 72, 82, 928(A), 929 & 964.

H. Creditors' Rights

1. Creditors' Rights During Community Property Regime

- a. Generally: "A separate *or* community obligation may be satisfied during the community property regime from community property and from separate property of the spouse who incurred the obligation." LA. CIV. CODE art. 2345.
- b. Right to Reimbursement: When *community property* is used to satisfy a *separate* obligation of a spouse, the other spouse may have a claim for reimbursement under article 2364. *See id.* cmt. b. Likewise, when *separate property* is used to satisfy a *community obligation*, the other spouse may have a claim for reimbursement under article 2365.

2. Creditors' Rights Following Termination of the Community Property Regime

- a. Generally: "An obligation incurred by a spouse before *or* during the community property regime may be satisfied after termination of the regime from the property of the former community *and* from the separate property of the spouse who incurred the obligation." LA. CIV. CODE art. 2357.
- b. Attorneys' Fees Included: "The same rule applies to an obligation for attorneys' fees and costs in an action for divorce incurred by a spouse between the date the petition for divorce was filed and the date of the judgment of divorce that terminates the community regime." *Id.*
- c. When Property of the Former Community is Sold
 - (1) Generally: "If a spouse disposes of property of the former community for a purpose other than the satisfaction of community obligations, he is liable for *all* obligations incurred by the other spouse *up to the value* of that community property." *Id.*
 - (2) Exception—Written Assumption of Responsibility: "A spouse may by written act assume responsibility for one-half of each community obligation incurred by the other spouse. In such case, the assuming spouse may dispose of community property without incurring

further responsibility for the obligations incurred by the other spouse.” *Id.*

3. Creditors’ Rights Following Voluntary Partition Without Termination of the Community Property Regime: Unclear. Article 2357 does not apply (applies only after termination of regime). A creditor, however, may be able to bring a revocatory action to annul the voluntary partition if the partition “causes or increases the [spouse-]obligor’s insolvency.” LA. CIV. CODE art. 2036; *id.* arts. 2037-2043.

III. SEPARATION OF PROPERTY REGIME

A. Creating a Separation of Property Regime: “A regime of separation of property is established by a matrimonial agreement that excludes the legal regime of community of acquets and gains or by a judgment decreeing separation of property.” LA. CIV. CODE art. 2370.

1. By Agreement: Matrimonial agreements are discussed above. *See supra.*
2. By Judgment of Separation of Property
 - a. Mismanaging Spouse
 - (1) Generally: “When the interest of a spouse in a community property regime is threatened to be diminished by the fraud, fault, neglect, or incompetence of the other spouse, or by the disorder of the affairs of the other spouse, he may obtain a judgment decreeing separation of property.” LA. CIV. CODE art. 2374(A).
 - (2) Retroactivity: “A judgment decreeing separation of property terminates the regime of community property retroactively to the day of the filing of the petition or motion therefor, without prejudice to rights validly acquired in the interim between the filing of the petition or motion and rendition of judgment.” LA. CIV. CODE. art. 2375(A).
 - b. Absentee Spouse
 - (1) Generally: “When a spouse is an absent person, the other spouse is entitled to a judgment decreeing separation of property.” *Id.* art. 2374(B).
 - (2) Retroactivity: The judgment decreeing separation of property terminates the regime of community property retroactively to the day of the filing of the petition seeking partition. LA. CIV. CODE. art. 2375(A).
 - c. Divorcing Spouses: When a petition for divorce has been filed, either spouse may obtain a judgment decreeing separation of property. *Id.* art. 2374(C).

- (1) Procedure: Spouse seeking partition must file a rule to show cause and must prove the following:
 - (a) Living Apart for 30 Days: That the spouses have lived separate and apart without reconciliation for at least 30 days from the date of, or prior to, the filing of the petition for divorce; and
 - (b) No Reconciliation: That the spouses have not reconciled.
 - (2) Retroactivity: A judgment of separation of property is retroactive to the date that the petition was filed. If, however, an earlier petition for divorce or nullity is pending at the time of the judgment of separation of property, then the partition judgment “shall be effective retroactively to the date the original petition for divorce was filed, without prejudice to rights validly acquired in the interim between filing of the petition or motion and rendition of judgment.” LA. CIV. CODE art. 2375(C).
 - (3) Effect of Reconciliation: Reconciliation “reestablishes the regime of community property between the spouses retroactively to the day of the filing of the motion or petition therefor, *unless* prior to the reconciliation the spouses execute a matrimonial agreement to the contrary.” LA. CIV. CODE art. 2375.
 - (a) No Need for Court Approval: This agreement does not need court approval. *Id.*
 - (b) Third Parties: This agreement is effective toward third persons when filed for registry. The reestablishment of the community is effective toward third persons when a notice thereof is filed for registry. *Id.*
- d. Physically Separated Spouses
- (1) Generally: “When the spouses have lived separate and apart continuously for a period of six months, a judgment decreeing separation of property shall be granted on the petition of either spouse.” *Id.* art. 2374(D).
 - (2) Retroactivity: “A judgment decreeing separation of property terminates the regime of community property retroactively to the day of the filing of the petition or motion therefor, without prejudice to rights validly acquired in the interim between the filing of the petition or motion and rendition of judgment.” LA. CIV. CODE. art. 2375(A).

- (3) Effect of Reconciliation: Reconciliation “reestablishes the regime of community property between the spouses retroactively to the day of the filing of the . . . petition therefor, *unless* prior to the reconciliation the spouses execute a matrimonial agreement to the contrary.” LA. CIV. CODE art. 2375 (same principles which apply to the reconciliation of divorcing spouses).
 3. Effect of Judgment of Separation of Property on Rights of Creditors: The creditors of a spouse may seek to protect their rights in either of two ways. *See* LA. CIV. CODE art. 2376.
 - a. Intervention: Creditors may intervene in a proceeding to establish a separation of property regime or to modify the legal regime and object if it is “a fraud on their rights.” *Id.*
 - b. Suit to Annul: Creditors may sue to annul a judgment of separation of property within one year from the date of the rendition of the final judgment. However, after execution of the judgment, they may assert nullity only to the extent that they have been prejudiced. *Id.*
- B. Responsibility for Family Expenses and Obligations Under a Separation of Property Regime
1. Necessaries: Spouses are solidarily liable for obligations incurred by either spouse for necessities obtained for himself or for the family. *See* LA. CIV. CODE art. 2372. As between the spouses, however, the debt is apportioned in accordance with article 2373.
 2. Apportioning Family Expenses: Under article 2373, each spouse contributes to the expenses of the marriage:
 - a. According to Agreement: As provided in any applicable matrimonial agreement. *See* LA. CIV. CODE art. 2373.
 - b. Absence of Agreement: In the absence of a matrimonial agreement, each spouse contributes in proportion to his means. *Id.*
- C. Property Ownership and Management of Property During Separation of Property Regime
1. Property Acquired *During* Separation of Property Regime
 - a. Ownership: Under the regime of separation of property, each spouse owns his or her property alone.
 - b. Management: “Under the regime of separation of property each spouse acting alone uses, enjoys, and disposes of his [separate] property without the consent or concurrence of the other spouse.” LA. CIV. CODE art. 2371.

2. Unpartitioned Former Community Property Acquired Before Separation of Property Regime
- a. When Former Legal Regime is Terminated by Death of Spouse: The property-law articles governing co-ownership in indivision apply to *unpartitioned* former community property when the former legal regime is terminated by the death of a spouse. *See* LA. CIV. CODE arts. 797-818. (Of course, *partitioned* former community property is no longer co-owned in indivision.)
- b. When Former Legal Regime Terminated Other Than by Death of Spouse
- (1) Generally: The property-law articles governing co-ownership in indivision apply to *unpartitioned* former community property when the former legal regime is terminated by something other than the death of a spouse *unless one of the more particular rules set forth below governs*. *See* LA. CIV. CODE art. 2369.1.
- (2) Ownership of Former Community Property: “Each spouse owns an undivided one-half interest in former community property and its fruits and products.” LA. CIV. CODE art. 2369.2.
- (3) Management of Former Community Property
- (a) Duty to Preserve: Spouse must preserve and manage former community property under his control (including a former community enterprise) in a manner consistent with the use of the property prior to termination. *See* LA. CIV. CODE art. 2369.3.
- (b) Costs of Management: The managing former spouse is entitled to reimbursement from other former spouse for certain expenses. *See* LA. CIV. CODE art. 806. However, if that spouse enjoyed the thing while she maintained it, her reimbursement shall be “reduced in proportion to the value of the enjoyment.” *Id.*
- (c) Concurrence Requirement
- i) Generally—Alienation or Encumbrance: Spouse cannot alienate, encumber or lease any former community property (or his undivided community interest in that property) without concurrence (except as provided below). In the absence of concurrence, the attempt is a “relative nullity.” *See* LA. CIV. CODE art. 2369.4.

- a) Registered Movables: “A spouse may alienate, encumber or lease a movable issued or registered in his name as provided by law.” LA. CIV. CODE art. 2369.5.
- b) Former Community Enterprise: “The spouse who is the sole manager of a former community enterprise may alienate, encumber, or lease its movables in the regular course of business.” LA. CIV. CODE art. 2369.6.
- ii) Dispensing With Concurrence: A spouse may be judicially authorized to act alone upon showing of *all* of the following:
 - a) Necessity: The action is necessary.
 - b) Best Interest: The action is in the best interest of the petitioning spouse and is not detrimental to the nonconcurring spouse.
 - c) Reason: The other spouse is absent, incapacitated, imprisoned, incompetent or is acting arbitrarily. *See* LA. CIV. CODE art. 2369.7.
- (4) Obligation to Pay Rent for Use of Former Community Home: A court can award the use and occupancy of the former community home to a spouse. The spouse who uses and occupies the home “shall not be liable to the other spouse for rental for the use and occupancy, unless otherwise agreed by the spouses or ordered by the court.” *See* LA. REV. STAT. § 9:374(B-C); *McCarroll v. McCarroll*, 701 So. 2d 1280 (La. 1997).
- (5) Partition of Former Community Property
 - (a) Right to Partition: A spouse has the right to demand partition of former community property at any time. A contrary agreement is absolutely null. *See* LA. CIV. CODE art. 2369.8.
 - (b) Procedure: If the spouses cannot agree on the partition, either may demand judicial partition in accordance with LA. REV. STAT. § 9:2801. *Id.*

IV. MISCELLANEOUS TOPICS

A. Territorial Application of Louisiana Community Property Law

1. Generally: “The legal regime of community acquets and gains applies to spouses domiciled in this state, regardless of their domicile at the time of marriage or the place of celebration of the marriage.” LA. CIV. CODE art. 2334.

2. Conflict of Laws

a. Movables

(1) Generally: “[T]he rights and obligations of spouses with regard to movables, wherever situated, acquired by either spouse during the marriage are governed by the law of the domicile of the acquiring spouse at the time of acquisition.” LA. CIV. CODE art. 3523.

(2) Termination of Community: Upon termination of the community, or dissolution by death or by divorce of the marriage of spouses either of whom is domiciled in this state, their respective rights and obligations with regard to . . . movables, wherever situated, that were *acquired during the marriage by either spouse while domiciled in another state* shall be determined as follows:

(a) If Community Property Under Louisiana Law: Property that is classified as community property under the law of this state shall be treated as community property under that law; and

(b) If Separate Property Under Louisiana Law: Property that is not classified as community property under the law of this state shall be treated as separate property of the acquiring spouse. However, the other spouse shall be entitled, in value only, to the same rights with regard to this property as would be granted by the law of the state in which the acquiring spouse was domiciled at the time of acquisition. LA. CIV. CODE art. 3526.

b. Immovables

(1) Generally: “Except as otherwise provided in this Chapter, the rights and obligations of spouses with regard to immovables situated in this state are governed by the law of this state. Whether such immovables are community or separate property is determined in accordance with the law of this state, regardless of the domicile of the acquiring spouse at the time of acquisition.” LA. CIV. CODE art. 3524.

(2) Termination of Community

(a) Acquiring Spouse Domiciled in Louisiana

- i) Immovable Situated in Louisiana: Louisiana community property law applies.
- ii) Immovable Situated Elsewhere: “Upon the termination of the community between spouses, either of whom is domiciled in this state, their rights and obligations with regard to immovables situated in another state acquired during marriage by either spouse while domiciled in this state, which would be community property if situated in this state, shall be determined in accordance with the law of this state. This provision may be enforced by a judgment recognizing the spouse’s right to a portion of the immovable or its value.” LA. CIV. CODE art. 3525.

(b) Acquiring Spouse Domiciled Elsewhere

- i) Immovable Situated in Louisiana—Generally: “Upon termination of the community, or dissolution by death or by divorce of the marriage of spouses either of whom is domiciled in this state, their respective rights and obligations with regard to immovables situated in this state . . . that were *acquired during the marriage by either spouse while domiciled in another state* shall be determined as follows:
 - a) If Community Property Under Louisiana Law: Property that is classified as community property under the law of this state shall be treated as community property under that law; and
 - b) If Separate Property Under Louisiana Law: Property that is not classified as community property under the law of this state shall be treated as separate property of the acquiring spouse. However, the other spouse shall be entitled, in value only, to the same rights with regard to this property as would be granted by the law

of the state in which the acquiring spouse was domiciled at the time of acquisition.” LA. CIV. CODE art. 3526.

- ii) Immovable Situated in Louisiana—Death of Spouse Domiciled Elsewhere: “Upon the *death of a spouse domiciled outside of this state*, that spouse’s immovables situated in this state *and acquired by that spouse when domiciled outside this state*, which are not community property under the law of this state, are subject to the same rights, in value only, in favor of the surviving spouse as provided by the law of the domicile of the deceased at the time of death.” LA. CIV. CODE art. 3527.
- iii) Immovable Situated Elsewhere: Louisiana community-property law does not apply.

B. Putative Marriage Doctrine: An absolutely null marriage “produces its civil effects in favor of a party who contracted it in good faith for as long as that party remains in good faith.” LA. CIV. CODE art. 96. One civil effect of a putative marriage is that the legal regime applies to the putative spouses.

- 1. When Only One Spouse in Good Faith: Upon the death of a bad-faith spouse in a bigamous (second) marriage, one-half of the community property at death goes to the legal (first) wife and one-half to the putative (second) wife—his heirs get nothing on the theory that he wronged the second wife by creating a bigamous marriage, and for his wrong, the second wife has a claim against the husband equal to his share in the community. *See Patton v. Cities of Philadelphia & New Orleans* (La. 1846).
- 2. When Both Spouses in Good Faith: Upon the death of a good-faith spouse in a bigamous (second) marriage, one-half of the community property at death goes to his heirs, and the other half his split between the legal (first) and putative (second) wife (that is, each gets one-fourth). *See Prince v. Hopson* (La. 1956).

C. Marital Portion

- 1. Generally: “When a spouse dies rich in comparison with the surviving spouse, the surviving spouse is entitled to claim the marital portion from the succession of the deceased spouse.” LA. CIV. CODE art. 2432.
 - a. “Rich in Comparison”: No concrete test has ever been devised by courts. Nevertheless, the survivor will ordinarily be awarded the marital portion when the comparison of patrimonial assets show a ratio of five to one or more. *Id.* cmt. c.

- b. Earning Capacity Irrelevant: The earnings or earning capacity of the surviving spouse are not factors to be considered. *Id.*
2. Nature: “The marital portion is an incident of any matrimonial regime and a charge on the succession of the deceased spouse. It may be claimed by the surviving spouse, even if separated from the deceased, on proof that the separation occurred without his fault.” LA. CIV. CODE art. 2433.
- a. Types of Regime to Which Applicable: The marital portion is an incident of *any* matrimonial regime—not just the legal regime. This is a rule of public order. As such, spouses may not renounce or alter the marital portion prior to the decedent spouse’ death. LA. CIV. CODE art. 2330.
 - b. Charge on Succession: The survivor may claim the marital portion even if the deceased spouse attempted to dispose of his property by will in favor of other parties. Thus, a survivor is entitled to the marital portion irrespective of the rights of heirs (forced or otherwise) or legatees. LA. CIV. CODE art. 2433 cmt. c.
 - c. Nonheritable Right: “The right of the surviving spouse to claim the marital portion is personal and nonheritable.” LA. CIV. CODE art. 2436. Once a claim is made, however, the claim can be inherited if the surviving spouse dies. *Id.* cmt. b.
 - d. Prescription: “The right [to claim the marital portion] prescribes three years from the date of death.” LA. CIV. CODE art. 2436.
 - e. Right to Advances: “When, during the administration of the succession, it appears that the surviving spouse will be entitled to the marital portion, he has the right to demand and receive a periodic allowance from the succession representative.” LA. CIV. CODE art. 2437. The amount of the allowance is fixed by the court. If a spouse receives more advance allowance than the amount of the marital portion, once fixed, then “the surviving spouse is charged with the deficiency.” *Id.*
3. Quantum
- a. Depends on Number of Surviving Children: The amount of the marital portion varies with the number of children left by deceased spouse. Term “children” includes direct descendants, adopted children and the issue of previous marriages. LA. CIV. CODE art. 2434, cmt. b.
 - (1) Deceased Has No Children: Surviving spouse gets *ownership* of one-fourth of the succession. LA. CIV. CODE art. 2434.
 - (2) Deceased Has 3 or Fewer Children: Surviving spouse gets *usufruct* of one-fourth of succession for life. *Id.*

- (3) Deceased Has 4 or More Children: Surviving spouse gets *usufruct* of child's share of succession for life. *Id.*
- b. Cap on Quantum: "In no event, however, shall the amount of the marital portion exceed one million dollars." *Id.*
- c. Deduction of Legacy: "A legacy left by the deceased to the surviving spouse and payments due to him as a result of the death are deducted from the marital portion." LA. CIV. CODE art. 2435. "Payments" includes benefits from life insurance, social security and pension plans. *Id.* cmt. c.

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