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Analysis and Interpretation of the New Matrimonial Regimes Law

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STUDENT SYMPOSIUM

ANALYSIS AND INTERPRETATION OF THE NEW MATRIMONIAL REGIMES LAW

INTRODUCTION

Although it is technically inaccurate to refer to the "new" matrimonial regimes legislation, the lack of reported decisions interpreting the 1980 provisions attests to its infancy. With virtually no judicial pronouncements upon which to rely, speculation concerning the meaning and application of the statutory language continues. The purpose of this symposium is to *assist in* resolving the speculation on some narrowly defined topics of matrimonial regimes law which have not been exhaustively treated elsewhere.

One of the topics, unresolved problems at termination of the community, was essentially chosen by the legislature. Senate Concurrent Resolution No. 165 (1981) created a joint legislative subcommittee to study "the need for and the feasibility of developing a specific procedure for the partition of community property between spouses and settlement of debts." Thus, the opportunity existed to consider the effect of the 1981 legislation on the right of partition at dissolution of the legal regime and to make general constructive suggestions. Of considerable interest among lawyers of the state has been the theoretical difficulties in distinguishing an ordinary contract of the spouses from a matrimonial agreement. Since matrimonial agreements which alter the legal regime ordinarily must be judicially approved, but ordinary contracts need not, the distinction is legally significant. Suggestions of distinctions are thoroughly explored.

Two complementary articles examine the difficulties encountered in classifying incorporeal movable property as separate or community and the general conceptual restrictions upon "equal management" of community incorporeal movables. In the classification of incorporeal movables, the legislation is no more helpful than the word "acquired," which is capable historically of three possible interpretations. Even though unaffected by matrimonial regimes law, the right accorded to each spouse to manage or alienate community incorporeal movables may nonetheless be restricted by general principles of the law of obligations. For example, when the incorporeal movable is a contract executed by only one spouse, the question arises whether the contractual right thus "acquired" may be "managed" by the non-contracting spouse.

In the articles which follow, the student authors have contributed significantly to the understanding of matrimonial regimes law. The research, analysis and thought-provoking consideration of their respective topics is a service to members of the bench and bar who attempt to serve the public and their clients by applying a "new" statutory scheme which affects each ordinary citizen of the state.

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