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Classification of Property

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country the power of renunciation first developed, but it is known that both French and Spanish provisions for this power existed at the time of redaction in 1808.¹³¹ Because of the great similarity in language between the Louisiana and French articles, however, it seems reasonable to assume that the French constituted the source.¹³²

It can be seen, therefore, that Louisiana's community property law is not of single origin. Spanish theories contributed substantially, as manifested by Louisiana's classification of property. The influence of over forty years of Spanish occupation on Louisiana custom cannot be overlooked, especially when dealing with an institution that owes so much of its development to customary law. Consequently when interpreting Louisiana's community property provisions, one should be wary of relying solely on French authorities. Spanish authorities and commentators should also be considered to assure the most accurate interpretation possible of Louisiana's community property law.

Paul H. Dué

CLASSIFICATION OF PROPERTY

Every marriage contracted in Louisiana¹ creates a community of acquets and gains unless the parties have expressly stipulated otherwise by prenuptial contract.² In this regime of community property all property brought into the marriage or acquired by the spouses during the marriage is classified as separate property or community property.³ A thorough understanding of the legal principles governing this classification is essential, as the legal status of the property affects the rights of all persons concerned with it — the spouses themselves, their

the wife or her heirs and assigns have the faculty of accepting or renouncing it. Any agreement to the contrary is null."

131. See note 130 *supra*.

132. Compare LA. CIVIL CODE p. 338, arts. 72-76, 78, 79, p. 340, arts. 80-84 (1808); corresponding to LA. CIVIL CODE arts. 2379-2384, 2387-2392 (1825) and LA. CIVIL CODE arts. 2410-2415, 2418-2423 (1870) with FRENCH CIVIL CODE arts. 1453, 1454, 1456, 1460, 1461, 1463-1466, 1492, 1493.

1. The rule also applies to marriages contracted outside of the state when the parties establish a domicile in Louisiana. Property acquired after their arrival is governed by Louisiana law. See LA. CIVIL CODE art. 2401 (1870).

2. *Id.* arts. 2325, 2329, 2399.

3. *Id.* art. 2334.

creditors,⁴ their heirs, and anyone who deals with them concerning the property. This Comment examines the origin and development of the legal rules which govern classification of property in Louisiana.

HISTORICAL SOURCES

Although most of the Louisiana Civil Code is derived from the Code Napoleon, the basic structure of our community property system is derived from Spanish law.⁵ Spanish law viewed marriage as a partnership in which the spouses devoted their talents, energies, and resources to the common good.⁶ Thus it followed that all acquisitions and gains attributable to such expenditure of labor and resources should be shared by the partnership.⁷ This basic concept was the premise underlying classification of property in the Spanish community. Mode and time of acquisition were important factors in application of the basic principle.⁸ Thus property acquired before marriage remained the separate property of the owner.⁹ Mode of acquisition controlled the classification of property acquired during the marriage. Generally all acquisitions by onerous title inured to the partnership because the property was considered a product of the common labor of the spouses.¹⁰ Likewise, fruits¹¹ produced from property, even separate property,¹² inured to the partner-

4. See Comment, 25 LA. L. REV. 201 (1964).

5. See *Morales v. Marigny*, 14 La. Ann. 855 (1859); *Cole's Widow v. Executors*, 6 Mart.(N.S.) 41 (La. 1828); *Frederic v. Frederic*, 10 Mart.(O.S.) 188 (La. 1821); *Bruneau v. Bruneau's Heirs*, 9 Mart.(O.S.) 217 (La. 1821); *Gale v. Davis' Heirs*, 4 Mart.(O.S.) 645 (La. 1817); *Beauregard v. Piernas*, 1 Mart.(O.S.) 281 (La. 1811); DAGGETT, *THE COMMUNITY PROPERTY SYSTEM OF LOUISIANA* 9 (1945); 1 DE FUNIAK, *PRINCIPLES OF COMMUNITY PROPERTY* §§ 1, 60 (1943); Morrow, *Matrimonial Property Law in Louisiana*, 34 TUL. L. REV. 3 (1959); Comment, 25 LA. L. REV. 78 (1964).

6. See MATIENZO, *COMMENTARIA* (1597), transl. in ROBBINS, *COMMUNITY PROPERTY LAWS* 69 (1940) [hereinafter cited as MATIENZO with page reference to ROBBINS transl.].

7. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 1 (1805); MATIENZO 69.

8. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 1-6 (1805); MATIENZO 16-17, 23, 62, 69, 75, 113.

9. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 2, 5 (1805); MATIENZO 17, 69.

10. MATIENZO 17, 23, 35, 62, 97, 110, 113. The only exception to this rule was an acquisition by exchange of separate property since the property was obtained through the use of separate property and not through the joint labor of the spouses. This principle was extended to cover situations in which separate property was sold and the funds used to purchase another piece of property. The property acquired in this way was considered separate property because it was considered a replacement for the land sold. MATIENZO 63.

11. AZEVEDO, *COMMENTARIORUM IURIS CIVILIS IN HISPANIAE REGIAS* (1597), transl. in ROBBINS, *COMMUNITY PROPERTY LAWS* 154 (1940) [hereinafter cited as AZEVEDO with page reference to ROBBINS transl.].

12. See NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 3, 5, 6 (1805); AZEVEDO

ship because the labor of the spouses was employed in its production.¹³ However, if property was acquired during marriage by gratuitous title (donation or inheritance), it was not considered the result of the labor of either spouse; hence it belonged to the spouse acquiring it.¹⁴ Acquisitions under gratuitous title to the spouses jointly inured to the community because of the obvious purpose of the transfer.¹⁵

COMPOSITION OF THE COMMUNITY IN LOUISIANA

The Louisiana Civil Code of 1825 reproduced the three basic features of the Spanish community of acquets and gains.¹⁶ First, all the property owned by either spouse prior to the marriage remained the separate property of that spouse.¹⁷ Second, acquisitions after marriage were classified as separate or community according to the time and mode of acquisition regardless of which spouse acquired the property.¹⁸ The application of this rule produced the same results as achieved in the Spanish system with respect to the classification of acquisitions under onerous title (purchase or other similar way),¹⁹ under gratuitous title (succession or donation) to one of the spouses²⁰ and under gratuitous title to both spouses.²¹ Third, the fruits of all property, community and separate, inured to the community.²² Louisiana followed this third provision with respect to the husband's separate estate,²³ but made an exception for the fruits of the wife's paraphernal property.²⁴ Under Spanish law the husband had the right to administer the wife's paraphernal property.²⁵ Since he administered this property as the head of the community, it followed that the fruits of his labor inured to the community.²⁶ Louisiana codified the general rule in ar-

163, 167; GUTIERREZ, PRACTICORUM QUAESTIONEM CIRCA LEGES REGIAS HISPANIA (1606), transl. in ROBBINS COMMUNITY PROPERTY LAWS 220 (1940) [hereinafter cited as GUTIERREZ with page reference to ROBBINS transl.]; MATIENZO 17, 88.

13. AZEVEDO 150; GUTIERREZ 220; MATIENZO 35, 62, 113.

14. NOVISIMA RECOPIACIÓN, bk. 10, tit. 4, L. 2 (1805); MATIENZO 17, 75.

15. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 2 (1805)

16. LA. CIVIL CODE arts. 2314, 2371 (1825), now LA. CIVIL CODE arts. 2334, 2402 (1870). See note 5 *supra*.

17. LA. CIVIL CODE art. 2314 (1825), now LA. CIVIL CODE art. 2334 (1870).

18. LA. CIVIL CODE art. 2371 (1825), now LA. CIVIL CODE art. 2402 (1870).

19. *Ibid.*

20. LA. CIVIL CODE art. 2314 (1825), now LA. CIVIL CODE art. 2334 (1870).

21. LA. CIVIL CODE art. 2371 (1825), now LA. CIVIL CODE art. 2402 (1870).

22. See NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 3 (1805); MATIENZO 88.

23. LA. CIVIL CODE art. 2371 (1825), now LA. CIVIL CODE art. 2402 (1870).

24. LA. CIVIL CODE art. 2363 (1825), now LA. CIVIL CODE art. 2386 (1870).

25. AZEVEDO 163.

26. AZEVEDO 163.

ticle 2371 which provided that "the profits of all the effects of which the husband has the administration either of right or in fact" belong to the community.²⁷ But with respect to the wife's separate estate the 1825 Code provided that if the wife administered her separate estate individually, the fruits inured to her separate estate.²⁸ By this rule Louisiana deviated from the basic presumption of the Spanish community that the spouses always devote their labors and talents to enhancement of the common good and not for individual gain. Though subscribing to the basic principle in other areas, Louisiana permitted the wife to channel some of her energies toward advancement of her own estate by diverting some of the produce of her industry from the community.

Although the 1825 code articles substantially reproducing the basic framework of the Spanish community were carried forward into the 1870 Code, judicial interpretation and later legislation introduced significant alterations. By providing that if the wife administered her paraphernal property independently the fruits would inure to her separate estate, the Code left the courts with the difficult problem of determining who in fact was administering the wife's separate property. The difficulty was compounded by the rule that the wife could employ the husband as her agent to administer her separate estate.²⁹ Practically, the courts found the test of administration unworkable.³⁰ Consequently, article 2386 was amended by Act No. 286 of 1944 to provide that unless the wife records a declaration of her intent to reserve the fruits for her separate estate and to administer the property separately and alone, the fruits will inure to community.³¹ The courts have not yet determined whether the fruits are separate or community if the wife files

27. LA. CIVIL CODE art. 2371 (1825), now LA. CIVIL CODE art. 2402 (1870).

28. LA. CIVIL CODE art. 2363 (1825), now LA. CIVIL CODE art. 2386 (1870).

29. See, *e.g.*, *Miller v. Handy*, 33 La. Ann. 160 (1881).

30. LA. CIVIL CODE art. 2385 (1870) provides that the paraphernal property of the wife is considered to be under the control of her husband if she does not administer it separately and alone. The presumption is in favor of administration by the husband and the burden of proof is on those asserting otherwise. *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Fortier v. Barry*, 111 La. 776, 35 So. 900 (1904); *Breaux v. LeBlanc*, 16 La. Ann. 145 (1861). Nevertheless, the courts were faced with the problem of determining what constituted administration. See *Paul v. Arnoult*, 164 La. 841, 114 So. 706 (1927); *Miller v. Handy*, 33 La. Ann. 160 (1881); see Note, 7 LA. L. REV. 588 (1947).

31. LA. CIVIL CODE art. 2386 (1870); *Troerlicht v. Collector*, 25 So. 2d 547 (La. App. Orl. Cir. 1946). In discussing the 1944 amendment to article 2386 the court stated: "It seems to us to evidence nothing more than a realization by the legislators of the fact that there may often be doubt as to how and by whom a wife's separate estate is administered." 25 So. 2d at 551.

the declaration required by article 2386 but the husband in fact administers the paraphernalia. It can be strongly argued that the legislative intent of the amendment is to relieve the courts of determining by whom the property is administered. Once the declaration has been filed, the fruits always inure to the wife's separate estate. An authoritative decision by the courts is needed to settle the question.

The code provisions concerning acquisitions under onerous title likewise have been modified by the jurisprudence. The courts have properly interpreted the provision of article 2402 relating to acquisition of property during marriage "by purchase, or in any similar way" to include not only acquisitions by purchase but also by *dation en paiement*,³² retrocession,³³ acquisitive prescription,³⁴ and exchanges³⁵ if the property given in exchange is community property. The jurisprudence has made an important alteration in the rule that all acquisitions under onerous title are community property. Very early the courts developed the principle of reinvestment,³⁶ perhaps influenced by French law,³⁷ by which property could be acquired under onerous title during the marriage to inure to the separate estate of either spouse. This jurisprudential rule was given legislative recognition by a 1912 amendment to article 2334 providing that

32. *Slaton v. King*, 214 La. 89, 36 So. 2d 648 (1948).

33. *Bagala v. Bagala*, 237 La. 60, 110 So. 2d 526 (1959); *Betz v. Riviere*, 211 La. 43, 29 So. 2d 465 (1947); *Maddox v. Butchee*, 203 La. 299, 14 So. 2d 4 (1943); *Fulton v. Fulton*, 7 Rob. 73 (La. 1844).

34. *Crouch v. Richardson*, 158 La. 822, 104 So. 728 (1925).

35. *Slaton v. King*, 214 La. 89, 36 So. 2d 648 (1948); *Succession of Land*, 212 La. 103, 31 So. 2d 609 (1947); *Kittredge v. Grau*, 158 La. 154, 103 So. 723 (1925); *Dillon v. Freville*, 129 La. 1005, 57 So. 316 (1912). In *Dillon* community funds were given along with the immovable of the separate estate and the court held the property acquired was separate property because the chief consideration for the exchange was the immovable from the separate estate. *Cf. Merren v. Commissioner*, 51 F.2d 44 (5th Cir. 1931); *Newson v. Adams*, 3 La. 231 (1832). Note that status of the chief consideration given determines the status of the property received.

36. See *Sharp v. Zeller*, 110 La. 61, 34 So. 129 (1902); *Jordy v. Muir*, 51 La. Ann. 55, 25 So. 550 (1898); *Cockburn v. Wilson*, 20 La. Ann. 40 (1868); *Hanna v. Pritchard*, 6 La. Ann. 730 (1851); *Young v. Young*, 5 La. Ann. 611 (1850); *Stroud v. Humble*, 2 La. Ann. 930 (1847); *Gonor v. Gonor*, 11 Rob. 526 (La. 1845); *Dominguez v. Lee*, 17 La. 295 (1841). See also text accompanying note 46 *infra*.

37. FRENCH CIVIL CODE arts. 1434, 1435 (Cachard's transl. 1930); *cf. Sharp v. Zeller*, 110 La. 61, 71, 34 So. 129, 133 (1902): "It has been held in France: That in order that property purchased by the husband during marriage should become his separate property, he should, in the act of purchase, make the double declaration, first, that it is bought with the proceeds of a sale of property belonging to himself individually; second, that the purchase is made for the purpose of replacing the property sold. That the making use of only one of these declarations is insufficient. *Dalloz v. Vergé*, Code Annotés. article 1434."

the separate estate includes acquisitions during marriage with separate funds.³⁸ The principle of reinvestment, as applied by the courts, converts the rule that all acquisitions under onerous title are community property into a rebuttable presumption.³⁹ Nevertheless the presumption is a difficult one to overcome, and failure to do so results in classification of the acquisition as community property.

COMPOSITION OF THE WIFE'S SEPARATE ESTATE

In the Spanish community, the wife's separate estate comprised initially the property she owned before marriage.⁴⁰ It could be augmented during marriage by inheritance, by donations to her individually,⁴¹ and by increases in value resulting from external events other than the labor of the spouses.⁴² Louisiana adopted these rules in the 1825 Code,⁴³ but modern legislation and the jurisprudence have made several changes favorable to the wife's separate estate. Under article 2363 (now article 2386) the wife could retain the fruits from her paraphernal property for her separate estate by administering her property independently of her husband.⁴⁴ This method of augmenting her separate estate was impossible in Spanish law since the wife could not remove the property from her husband's administration.⁴⁵

The most significant alteration has occurred through development of the principle of reinvestment. The courts have reasoned that if the Code allowed the wife to reserve the fruits of her paraphernalia for her separate estate, she should also be able to reinvest these fruits to enhance her separate property. Reinvestment is not limited to funds derived from fruits. If the wife sells separate property, she can reinvest the proceeds; like-

38. See LA. CIVIL CODE art. 2334 (1870), as amended by La. Acts 1912, No. 170.

39. See *Prince v. Hopson*, 230 La. 575, 89 So. 2d 128 (1956); *Smith v. Smith*, 230 La. 509, 89 So. 2d 55 (1956); *Succession of Hemenway*, 228 La. 572, 83 So. 2d 377 (1956); *Succession of LeJeune*, 221 La. 437, 59 So. 2d 446 (1952); *Salassi v. Salassi*, 220 La. 785, 57 So. 2d 684 (1952); *Succession of Land*, 212 La. 103, 31 So. 2d 609 (1947).

40. MATIENZO 69.

41. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 2 (1805); MATIENZO 17.

42. MATIENZO 60.

43. LA. CIVIL CODE art. 2314 (1825), now LA. CIVIL CODE art. 2334 (1870).

44. *Id.* art. 2363, now LA. CIVIL CODE art. 2386 (1870). In 1944 this article was amended so that now, if the wife wishes to keep these fruits for her separate estate, she must file a declaration with certain requirements. See note 31 *supra*, and accompanying text.

45. AZEVEDO 163.

wise, she can reinvest funds acquired by inheritance or donation, or funds she acquired before marriage. Thus the jurisprudential rule was created that under the theory of reinvestment the wife can use separate funds to acquire property by onerous title during the marriage for her separate estate.⁴⁶

The courts limited the availability of this mode of augmenting the wife's separate estate by requiring strict proof that the acquisition under onerous title is indeed a reinvestment. Since the presumption that all such acquisitions are community property⁴⁷ can be rebutted only by proof of reinvestment, it follows that the wife must prove she made the acquisition with her separate funds for the benefit of her separate estate.⁴⁸ There can be no reinvestment unless the wife has separate funds to reinvest, and there is no reinvestment unless she intends the acquisition to be such. As an added element of proof, the wife is required to show that she is the sole administrator of the funds, in order to reduce the possibility that these funds have been allocated to the community.⁴⁹ If the purchase is a credit transaction the wife must show that she has sufficient separate funds to make it reasonable for her to expect to be able to meet the deferred payments.⁵⁰ No special formalities are required with respect to the instrument of transfer itself; since the

46. See *Jordy v. Muir*, 51 La. Ann. 55, 25 So. 550 (1898); *Cockburn v. Wilson*, 20 La. Ann. 40 (1868); *Hanna v. Pritchard*, 6 La. Ann. 730 (1851); *Young v. Young*, 5 La. Ann. 611 (1850); *Stroud v. Humble*, 2 La. Ann. 930 (1847); *Gonor v. Gonor*, 11 Rob. 526 (La. 1845); *Dominguez v. Lee*, 17 La. 295 (1841).

47. See note 39 *supra*.

48. *Southwest Natural Prod. Co. v. Anderson*, 239 La. 490, 118 So.2d 897 (1960); *Succession of Schnitter*, 220 La. 323, 56 So.2d 563 (1952); *Cameron v. Rowland*, 215 La. 177, 40 So.2d 1 (1949); *Ortego v. Morein*, 212 La. 774, 33 So.2d 516 (1948); *Succession of Land*, 212 La. 103, 31 So.2d 609 (1947); *Betz v. Riviere*, 211 La. 43, 29 So.2d 465 (1947); *Capillon v. Chambliss*, 211 La. 1, 29 So.2d 171 (1947); *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Fortier v. Barry*, 111 La. 776, 35 So. 900 (1904); *Succession of Burke*, 107 La. 82, 31 So. 391 (1902); *Jordy v. Muir*, 51 La. Ann. 55, 25 So. 550 (1898); *Succession of Rogge*, 50 La. Ann. 1220, 23 So. 933 (1898); *Stauffer, Macready & Co. v. Morgan*, 39 La. Ann. 632, 2 So. 98 (1887); *Miller v. Handy*, 33 La. Ann. 160 (1881).

49. See note 48 *supra*. Arguably the 1944 amendment to article 2386 affected the method of proving that the funds invested were her separate funds. Proof that the wife was sole administrator of the funds invested seems required to show her intent to reinvest for the benefit of her separate estate, rather than to show the separate ownership of the funds invested. Thus the amendment to article 2386 seems not to have altered the requirement stated in text. The courts still require proof of separate administration. See, e.g., *Southwest Natural Prod. Co. v. Anderson*, 239 La. 490, 118 So.2d 897 (1960).

50. See *Succession of Franek*, 224 La. 747, 70 So.2d 670 (1954); *Betz v. Riviere*, 211 La. 43, 29 So.2d 465 (1947); *Succession of Andrus*, 131 La. 940, 60 So. 623 (1913); *Fortier v. Barry*, 111 La. 776, 35 So. 900 (1904); *Miller v. Handy*, 33 La. Ann. 160 (1881); *Metcalf v. Clark*, 8 La. Ann. 286 (1853).

property is purchased in the name of the wife, the instrument is notice to the world that the property may be her separate property.⁵¹

Problems arise if property is acquired by the wife in a credit transaction and both separate and community funds are used to pay the purchase price. The courts have concluded that if any community funds are used, the wife cannot claim that the purchase is a reinvestment of her separate funds and thus she cannot rebut the presumption that the acquisition is community property.⁵² The rule has been followed even in cases in which the separate estate of the wife contributed most of the purchase price and the community advanced only a relatively small amount.⁵³ Apparently, the courts have reasoned that the principle of reinvestment is an exception to the rule that all acquisitions under onerous title inure to the community and should therefore be strictly construed. Although it may seem an unfair policy in some instances, in view of the principle that the spouses are presumed to work primarily for the common good, it is the sounder approach, and it is more in harmony with the Louisiana community property system.⁵⁴

51. Thus the wife need not make the double declarations which the husband must make in the deed. See *Prince v. Hopson*, 230 La. 575, 89 So. 2d 128 (1956); *Smith v. Smith*, 230 La. 509, 89 So. 2d 55 (1956); *Cameron v. Rowland*, 215 La. 177, 40 So. 2d 1 (1949); *Betz v. Riviere*, 211 La. 43, 29 So. 2d 465 (1947); *Capillon v. Chambliss*, 211 La. 1, 29 So. 2d 171 (1947); *Rousseau v. Rousseau*, 209 La. 428, 24 So. 2d 676 (1946); *Succession of Farley*, 205 La. 972, 18 So. 2d 586 (1944); *Otis v. Texas Co.*, 153 La. 384, 96 So. 1 (1923).

52. See *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Reine v. Reine*, 170 La. 839, 129 So. 364 (1930); *Succession of Coste*, 43 La. Ann. 144, 9 So. 62 (1891); *DeSentmanat v. Soulé*, 33 La. Ann. 609 (1881).

53. See *Succession of Schnitter*, 220 La. 323, 56 So. 2d 563 (1952), where the separate estate contributed \$2,500 and the community \$300 of the purchase price. The court ruled that the property belonged to the community, which owed the separate estate for its contribution.

54. There is the possibility that a husband could thwart his wife's attempted purchases for her separate estate by making some of the deferred payments with community funds. This problem was discussed in *Bailey v. Alice C. Plantation*, 152 So. 2d 336 (La. App. 1st Cir. 1963), where it was indicated that the wife must either knowingly use community funds to pay the price, or the husband must make use of community funds with her consent to pay the price, in order to prevent the wife from proving that the acquisition is separate property.

It seems that should the husband's action without her consent prevent the wife from proving separate ownership (if such is possible after *Bailey*), she should be permitted to sue for fraud. Dicta in *Bailey* indicated that the property could be "converted" from separate to community through the use of community funds after separate funds had been used initially. This theory does not appear to be the most accurate appraisal of the legal concepts involved. It appears more accurate to say that the use of community funds prevents the spouse from overcoming the presumption in favor of the community because of one of the requirements, proof that only separate funds had been invested, can not be satisfied. Acquisitions during the marriage are presumed to be community property until rebutted by the required proof. See Note, 24 LA. L. REV. 648 (1964).

Estoppel by deed plays a significant role in the acquisition of separate property under onerous title by the wife. The courts hold that if the husband signs a deed, either as a party or as witness, which recites that the acquisition is for the separate estate of the wife and is made with her separate funds, he is estopped from denying these recitals.⁵⁵ Estoppel also has been applied when the husband did not sign the deed but signed two subsequent notarial acts acknowledging that the purchase by the wife was with her separate funds under her control and for her separate estate.⁵⁶ However, a husband who arranged for the purchase but did not sign the deed and who subsequently treated the property as a community asset by executing mineral leases jointly with the wife was not estopped from denying her assertions of separate ownership.⁵⁷ The estoppel does not bind the husband's forced heirs,⁵⁸ or creditors.⁵⁹

Allowing the wife to acquire property by precluding the husband from denying her assertions of ownership seems inconsistent with basic principles of Louisiana community property law. By the general rule all property acquired under onerous title during the marriage is presumed to be acquired for the community,⁶⁰ and proof of reinvestment of separate funds is the only mode of rebutting the presumption.⁶¹ Estoppel is contrary to these principles, for it allows the wife to acquire prop-

55. See *Monk v. Monk*, 243 La. 429, 144 So. 2d 384 (1962); *Rousseau v. Rousseau*, 209 La. 428, 24 So. 2d 676 (1946); *Pfister v. Casso*, 161 La. 940, 109 So. 770 (1926); *Tonglet v. Chopin*, 155 La. 752, 99 So. 587 (1924); *Succession of Manning*, 150 La. 1008, 91 So. 435 (1922); *Fireman's Ins. Co. v. Hava*, 140 La. 638, 73 So. 708 (1917); *Karcher v. Karcher*, 138 La. 288, 70 So. 228 (1915); *Kenner v. Leon Godchaux Co.*, 52 La. Ann. 965, 27 So. 542 (1900); *Lavedan v. Jenkins*, 47 La. Ann. 725, 17 So. 256 (1895); *Succession of Bellande*, 42 La. Ann. 241, 7 So. 535 (1890); *Maguire v. Maguire*, 40 La. Ann. 579, 4 So. 492 (1888); *Moore v. Stancel*, 36 La. Ann. 819 (1884); *Kerwin v. Hibernia Ins. Co.*, 35 La. Ann. 33 (1883); *Succession of Wade*, 21 La. Ann. 343 (1869).

56. *Airhart v. Airhart*, 153 So. 2d 140 (La. App. 3d Cir. 1963).

57. *Monk v. Monk*, 243 La. 429, 144 So. 2d 384 (1962).

58. See *Cameron v. Rowland*, 215 La. 177, 40 So. 2d 1 (1949); *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Phelps v. Mulhaupt*, 146 La. 1078, 84 So. 362 (1920); *Westmore v. Harz*, 111 La. 305, 35 So. 578 (1902); *Succession of Valdez*, 44 So. 2d 151 (La. App. Orl. Cir. 1950); *Lotz v. Citizens Bank & Trust Co.*, 17 So. 2d 463 (La. App. 1st Cir. 1944); *Drewett v. Carnahan*, 183 So. 103 (La. App. 2d Cir. 1938).

59. *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Pfister v. Casso*, 161 La. 940, 109 So. 770 (1926); *Kerwin v. Hibernia Ins. Co.*, 35 La. Ann. 33 (1883); *DeSentmanat v. Soulé*, 33 La. Ann. 609 (1881); *Shaw v. Hill*, 20 La. Ann. 531 (1868); *Huntington v. Legros*, 18 La. Ann. 126 (1866); *Willis v. Gordon*, 94 So. 2d 99 (La. App. 1st Cir. 1957); *Succession of Valdez*, 44 So. 2d 151 (La. App. Orl. Cir. 1950).

60. See note 39 *supra*; LA. CIVIL CODE art. 2402 (1870).

61. See note 46 *supra*.

erty for her separate estate in some instances without proving that the acquisition is a reinvestment of separate funds.

A further change in the basic framework inherited from Spanish law is reflected in a 1912 amendment to article 2334 which provides that "the earnings of the wife when living separate and apart from her husband although not separated by judgment of court, her earnings when carrying on a business, trade, occupation or industry separate from her husband . . . are her separate property."⁶² As interpreted by the courts, the amendment means that the earnings of the wife from her separate business or trade are her separate property only if she is living apart from her husband although not separated by judgment of court.⁶³ Although it is clear when the wife's earnings inure to her separate estate, it is not clear what constitutes "earnings." The courts are faced with the problem of determining what income represents "fruits," which would inure to the separate estate only if the proper declaration of paraphernality is filed,⁶⁴ and what income represents "earnings," which would inure to the separate estate without any declaration if the spouses are living separate and apart.⁶⁵ It has been suggested that the courts could use the ratio of labor to capital as a criterion for classifying income in a particular case.⁶⁶ Thus if the revenue received was the result of substantial capital investment with relatively little labor, it would be a fruit governed by article 2386; but if the revenue represents the return on substantial labor with relatively little capital investment, it would be earnings governed by article 2334.⁶⁷

Under Spanish law the wife could claim an increase in the value of her property only if it were the result of the natural course of events.⁶⁸ Any increase in value of the separate prop-

62. LA. CIVIL CODE art. 2334 (1870).

63. See, *e.g.*, *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933).

64. LA. CIVIL CODE art. 2386 (1870).

65. *Id.* art. 2334; *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933).

66. See *Morrow, Matrimonial Property Law in Louisiana*, 34 TUL. L. REV. 3 (1959).

67. The language of articles 2334 and 2386 bears out this approach. In speaking of fruits article 2386 uses the terms "civil [fruits] including interest, dividends and rents" which seem to apply primarily to investments of capital. When speaking of earnings, article 2334 uses the terms "business, trade, occupation or industry," which indicate primary emphasis on labor, though of course business or trades require capital investments, at least initially.

In solving these problems the courts are forced to rely on their own practical wisdom aided by the connotations of the terms used in the Code and suggested approaches such as enumerated in the text.

68. GUTIERREZ 212; MATIENZO 60.

erty produced by labor of the spouses would inure to the community since all their energies and industry were presumed to be for the common good.⁶⁹ Louisiana, by using the principle of accession in relation to immovables, altered this concept so that all improvements constructed on the separate estate belong to the owner of the estate.⁷⁰ If community funds have been employed, the owner of the separate estate owes the other spouse half the amount of enhanced value.⁷¹ If there be no increase in value, or if it be attributable to causes other than the labor of the spouses, the owner of the separate estate owes no obligation of reimbursement.⁷² Thus Louisiana law provides the wife with an additional opportunity to augment her separate estate, which was not possible in Spanish law.

A final change made in the basic structure inherited from Spanish law resulted from amendments to articles 2334 and 2402, which enable the wife to retain damages collected for offenses and quasi offenses as her separate property.⁷³ The provision seems a logical consequence of the greater legal freedom granted the wife to exercise and defend her rights.

COMPOSITION OF THE HUSBAND'S SEPARATE ESTATE

In the Spanish community the separate estate of the husband consisted initially of all property acquired before marriage.⁷⁴ His separate estate could be augmented during marriage by donations to the husband individually,⁷⁵ or by inheritance,⁷⁶ and by increases in value of separate property due to the natural course of events.⁷⁷

69. AZEVEDO 150; GUTIERREZ 212; MATIENZO 35, 113.

70. See LA. CIVIL CODE art. 508 (1870). However, instead of giving the owner of the separate estate a choice whether to keep the improvement and pay the enhanced value or compel its removal as provided in article 508, the owner of the separate estate is always compelled to pay the other spouse one-half the enhanced value of the soil. These principles are applicable to the use of separate funds to improve the community. See notes 70-72 *infra*, and accompanying text; Dillon v. Freville, 129 La. 1005, 57 So. 316 (1912).

71. See Peters v. Klein, 161 La. 664, 109 So. 349 (1926); Succession of Burke, 107 La. 82, 31 So. 391 (1902); Sims v. Bellington, 50 La. Ann. 968, 24 So. 637 (1898); Succession of Webre, 49 La. Ann. 1491, 22 So. 390 (1897); Dillon v. Dillon, 35 La. Ann. 92 (1883).

72. LA. CIVIL CODE art. 2408 (1870); Succession of Meteye, 113 La. 1012, 37 So. 909 (1905).

73. LA. CIVIL CODE arts. 2334, 2402 (1870).

74. MATIENZO 17, 69.

75. NOVISIMA RECOPIACIÓN bk. 10, tit. 4, L. 2 (1805); MATIENZO 17, 75.

76. See note 75 *supra*.

77. GUTIERREZ 212; MATIENZO 60.

These provisions were incorporated into the Louisiana laws governing the community.⁷⁸ But there were changes. The courts reasoned that if the wife can reinvest separate funds to augment her separate estate, the husband should have the same privilege.⁷⁹ Thus the husband can acquire property under onerous title during marriage for his separate estate, but his burden of proving reinvestment is different from that of the wife. Since property acquired in the husband's name may be an acquisition by the head and master for the community or one by the husband for his own estate, the courts require a declaration in the instrument of transfer that the purchase was for the husband's separate estate, if he intended it to be such.⁸⁰ The requirement is probably motivated by a desire to make titles as certain and free from ambiguity as possible in order to protect creditors and purchasers and to prevent an unscrupulous husband from transferring unprofitable investments to the community. Since the transaction must be reinvestment of separate funds to be a permissible acquisition for the separate estate, the husband must prove he used separate funds to make the acquisition. For reasons not altogether clear, the courts also require that the husband declare in the deed that he is using separate funds.⁸¹ By way of exception, the double declaration is not required if the husband exchanges separate property.⁸² The exception is explained perhaps by the court's conclusion that the title of the separate property exchanged was sufficient notice that the acquisition was for the separate estate. Another reason might be that an exchange is more a replacement of the property given than a reinvestment in which property of a different type is acquired.

78. LA. CIVIL CODE art. 2314 (1825), now LA. CIVIL CODE art. 2334 (1870).

79. See, e.g., *Young v. Young*, 5 La. Ann. 611 (1850).

80. See *Smith v. Smith*, 230 La. 509, 89 So.2d 55 (1956); *Succession of Chapman*, 225 La. 641, 73 So.2d 789 (1954); *Lewis v. Clay*, 221 La. 663, 60 So.2d 78 (1952); *Slaton v. King*, 214 La. 89, 36 So.2d 648 (1948); *Fleming v. Fleming*, 211 La. 860, 30 So.2d 860 (1947); *Succession of Bell*, 194 La. 274, 193 So. 645 (1940); *Peters v. Klein*, 161 La. 664, 109 So. 349 (1926); *Succession of Andrus*, 131 La. 940, 60 So. 623 (1913); *Sharp v. Zeller*, 110 La. 61, 34 So. 129 (1902); *Hero v. Bloch*, 44 La. Ann. 1032, 11 So. 821 (1892). See note 37 *supra*, and accompanying text.

The rule stated in the text applies to immovables; it has not as yet been extended to movables. See *Bruyninckx v. Woodward*, 217 La. 736, 47 So.2d 478 (1950).

81. See notes 37 and 80 *supra*.

82. See *Merren v. Commissioner*, 51 F.2d 44 (5th Cir. 1931); *Slaton v. King*, 214 La. 89, 36 So.2d 648 (1948); *Succession of Land*, 212 La. 103, 31 So.2d 609 (1947); *Kittridge v. Grau*, 158 La. 154, 103 So. 723 (1925); *Dillon v. Freville*, 129 La. 1005, 57 So. 316 (1912); *Newson v. Adams*, 3 La. 231 (1832).

As in the case of the wife, the husband is able to claim, under the principle of accession, improvements constructed on his property as his separate property.⁸³ If these improvements are made with community funds, the husband is obliged to reimburse the wife half the amount of the enhanced value.⁸⁴

Under the 1920 amendment to article 2334 the husband may reserve actions for damages for offenses and quasi offenses for his separate estate, if he is living separate and apart from his wife by reason of fault on her part sufficient to enable him to obtain a judicial separation or divorce.⁸⁵

The husband, unlike the wife, cannot divert the fruits of his separate property or his earnings to his separate estate when he lives voluntarily apart from his wife.⁸⁶ The basis for this distinction seems to be the traditional concept of the husband as the chief provider and dominant financial partner; and to enable him to meet his responsibilities in this capacity, the courts have refused to allow him to divert this income from the community.

CONCLUSION

The Louisiana community of acquets and gains rests on a workable harmony of two principles. The first, inherited from the Spanish community, declares that after marriage the labors, energies, industry, and resources of both spouses, either jointly or individually, are devoted to the common good. Though this principle underlies the whole of the Louisiana community, it is sharply modified by the concept of reinvestment, probably acquired from the French Civil Code, which allows either spouse to channel some of his energy and resources into enhancement of his own estate. This provision has given Louisiana's community property structure the flexibility it needs to meet the realities of family life in the mobile society of the present day. The application of these laws, and the proposal of any changes, should be made with care so as to preserve the balance that has been achieved.

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83. See notes 70, 71, 72 *supra*, and accompanying text.

84. See note 71 *supra*, and accompanying text.

85. LA. CIVIL CODE art. 2334 (1870).

86. *Id.* art. 2402.