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Private Law: Community Property

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the plaintiffs' action was in the nature of an accounting for the imperfect usufruct which their father had on the stock. The court held that the usufruct on corporate stock is not an imperfect but a perfect usufruct since the usufructuary need not sell, alienate, or change the substance of the property in order to enjoy it, the usufructuary being entitled to the fruits in the form of dividends. Accordingly, the court held, the alienation of the stock in question was in breach of the usufructuary's fiduciary obligation, and their rights to recover the same could not prescribe, for under the provisions of article 3510 prescription cannot run in favor of the usufructuary as against the rights of naked owners.[32]

COMMUNITY PROPERTY

*Robert A. Pascal**

Article 2408 of the Civil Code is the only Louisiana legislation on accounting between the separate and common interests of the spouses on the termination of the community of acquets and gains and it foresees only one type of case, the increase in the value of a separate asset of either spouse by their "common labor, expenses, or industry." Here the "other spouse" is entitled to receive one-half of the increase in value. *Tooley v. Pennison*[1] presented the case of one spouse's separate asset, acquired before marriage on credit, being paid for in part after marriage with common funds. Clearly there is no question in this instance of the augmentation of the value of the asset, but rather a payment of a separate obligation with common funds, and thus the court properly decided that the spouse whose separate obligation had been paid should reimburse the common or community fund for the amounts so expended.[2]

32. "As relates to the facts in the present case, were this Court to say that since the petitioners did not assert their rights to the stocks within ten years after the termination of the usufruct, their rights have prescribed; we would actually be saying that there can be acquisitive prescription under a usufruct. Such a holding would be directly contrary to the clear and express provision of Civil Code Art. 3510." *Id.* at 381.

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1. 157 So. 2d 628 (La. App. 4th Cir. 1963).

2. The same decision also declared that land in a separate property state, bought in the husband's name with common funds, belonged to the husband, but that the husband must reimburse the common fund. *Id.* at 630. This questionable solution is discussed in the *Conflict of Laws* portion of this Symposium.

There is, as mentioned above, no specific rule on what is to be the accounting when separate assets become mingled with community assets or are used to purchase community assets, but here again the jurisprudence has considered the community indebted to the spouse whose separate asset was utilized or contributed to the extent of its value at the time it was so utilized or contributed. This was the rule applied in *Succession of Hollier*,[3] a case in which a spouse's separate capital obtained on dissolution of one partnership was used as capital contributed to a new partnership under circumstances in which the contribution became a community asset.[4]

Also of interest in the area of marital regimes was the decision in *Tilton v. Tilton*,[5] in which a "property settlement" executed during marriage was declared ratifiable after divorce. Care must be taken to understand the limits of such a decision. The "property settlement" executed during marriage purports to be both a dissolution of the marital property regime and a partition of assets. As an attempt at a dissolution of the marital regime such an act can have no effect whatsoever, for such a regime can be terminated only by a judgment of separation from bed and board, divorce, or separation of property.[6] Thus the marital regime cannot be terminated retroactively to the date of its attempted conventional dissolution by any act of ratification. On the other hand, there would appear to be no reason why the *partition* made in such an act could not be ratified, and, so understood, the *Tilton* decision seems unobjectionable.

A decision not on a question of community property, but of great interest in determining whether an acquisition falls into the community, is that in *Humble Oil & Ref. Co. v. Lewis*.[7] Reduced to its simplest terms, the decision affirms that an asset contracted for during the existence of the community falls into the community even if it is actually received after its dissolution. The writer considers this solution unimpeachable in principle for cases in which the prestation of the spouse is made during the marriage under conditions which would render that

3. 158 So. 2d 351 (La. App. 3d Cir. 1964).
4. Vining v. Beatty, 161 So. 2d 298 (La. App. 2d Cir. 1964) illustrates that separate assets may lose their character through intermingling with community assets.
5. 162 So. 2d 733 (La. App. 4th Cir. 1964).
6. See LA. CIVIL CODE arts. 155, 159, 2329, 2427.
7. 245 La. 499, 159 So. 2d 132 (1964).

to be received a community asset if it were to be actually received during marriage. The time for delivery or receipt of that bargained for, in other words, should not itself be relevant if that given for it is a performance during marriage under conditions which would render the acquisition during marriage a community asset. The rule could not be applied justly, however, to an asset received after divorce merely because it was received pursuant to a contract entered into during marriage; it would be incorrect, for example, to treat as a community asset the remuneration received after divorce for services rendered thereafter merely because the services had been rendered pursuant to a contract entered into during marriage.[8]

CONVENTIONAL OBLIGATIONS

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The principle that a third party cannot accept an offer addressed to another is recognized by the provisions of our Civil Code.[1] The Code contains also a number of articles which deal with error as to the person. In the first case there is an absence of consent; in the other, consent is given but is based on error. The latter case arises when one deals with another under a mistaken belief in the other's identity or capacity. In *National Crankshaft Co. v. Natural Gas Industries, Inc.*,[2] the defendant ordered a crankshaft from one supplier and it was subsequently shipped by another who was a stranger to the trans-

8. Other decisions applying recognized solutions in community property cases were: Glassell v. Dickerson, 159 So. 2d 393 (La. App. 2d Cir. 1963) applying the rule that the purchase by the wife with separate funds becomes a community asset, unless she can prove she purchased the item with separate funds with intent to have it as separate asset; Cormier v. Billeaudeau, 159 So. 2d 780 (La. App. 3d Cir. 1964) affirming that a partition after divorce can be translative of ownership between parties even for land not specifically described; Harris v. Harris, 160 So. 2d 359 (La. App. 4th Cir. 1964) affirming that only net income from separate assets of husband falls into the community; Vining v. Beatty, 161 So. 2d 298 (La. App. 2d Cir. 1964) applying the rule of article 2386 as amended by Acts 1944, No. 286 that fruits of the separate property of the wife fall into the community unless she declares in writing that she reserves them for her separate use and benefit; and Acremont v. Acremont, 162 So. 2d 813 (La. App. 4th Cir. 1964) affirming that after divorce the community is dissolved and husband and wife become co-owners in indivision.

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1. See LA. CIVIL CODE arts. 1798, 1800 (1870).

2. 158 So. 2d 370 (La. App. 2d Cir. 1963).