A Suggested Marriage Contract for Louisiana

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A SUGGESTED MARRIAGE CONTRACT FOR LOUISIANA*

The Louisiana Civil Code furnishes ample statutory basis for the contracting of a conjugal association to modify or supplant the community of acquets or gains otherwise imposed by law. Articles 1967, 2325, 2332, 2333, 2392, 2399, and 2424 of the Civil Code permit the future spouses to agree on any conjugal association in lieu of the legal community, so long as this is done before the celebration of the marriage, in the case of couples domiciled in this state, or within one year after settling in this state, in the case of couples who remove to Louisiana.

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1. LA. CIV. CODE art. 1967: "The law, intended by the rule before referred to, means such legislative provisions as provide for those cases in which the parties have not declared their intention. When the contracting parties have not derogated from such law, its provisions are to be followed. The laws directing a community of matrimonial gains and a warranty on sales, are examples of this kind of legislative provision (provisions), which take effect and regulate the contract when the parties make no agreement that contravene them."

2. LA. CIV. CODE art. 2325: "In relation to property, the law only regulates the conjugal association, in default of particular agreements, which the parties are at liberty to stipulate as they please, provided they be not contrary to good morals, and under the modifications hereafter prescribed."

3. LA. CIV. CODE art. 2332: "The partnership, or community of acquets (acquets) or gains, needs not to be stipulated; it exists by operation of law, in all cases where there is no stipulation to the contrary. But the parties may modify or limit it; they may even agree that it shall not exist." See also LA. CIV. CODE art. 1901: "Agreements legally entered into have the effect of laws on those who have formed them. They can not be revoked, unless by mutual consent of the parties, or for causes acknowledged by law. They must be performed with good faith."

4. LA. CIV. CODE art. 2333: "From the various conventions which are customary in marriage contracts, or which are a consequence of the marriage, result various distinctions with respect to the property which may be the object of these conventions."

5. LA. CIV. CODE art. 2392: "Married persons may stipulate that there shall be no partnership between them."

6. LA. CIV. CODE art. 2399: "Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary."

7. LA. CIV. CODE art. 2424: "Married persons may, by their marriage contract, modify the legal community as they think fit, either by agreeing that the portions shall be unequal, or by specifying the property, belonging to either of them, of which the fruits shall not enter into the partnership."

8. LA. CIV. CODE art. 2329: "Every matrimonial agreement can be altered by the husband and wife jointly before the celebration of marriage; but it cannot be altered after the celebration. Provided that in the case of married couples removing to this State and settling therein from other States and countries after marriage, they shall have the right at any time within one year after the passage of this Act, or a like period after such settlement in this State, to make a valid marriage contract, subject in all other respects to the laws of this State."
This contractual freedom is limited in but few ways. The parties cannot alter the legal order of succession either with respect to themselves in what concerns the inheritance of their children or posterity or with respect to their children between themselves. In the same manner they cannot derogate from the rights resulting from the power of the husband over his wife and children, or which belongs to him as head of the family, nor from the prohibitory provisions of the Civil Code. Every matrimonial agreement must be made by an act before a notary public and two witnesses.

Although numerous decisions by Louisiana courts, and by federal courts applying Louisiana law, have enforced marriage

9. LA. CIV. CODE art. 2326: "Husband and wife can in no case enter into any agreement or make any renunciation, the object of which would be to alter the legal order of descents, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, without any prejudice to the donations inter vivos or mortis causa, which may take place according to the formalities and in the cases determined by this Code."

10. LA. CIV. CODE art. 2327: "Neither can husband and wife derogate by their matrimonial agreement from the rights resulting from the power of the husband over the person of his wife and children, or which belong to the husband as the head of the family, nor from the rights granted to the surviving husband or wife by the title: Of Father and Child, and by the title: Of Minors, of their Tutorship and Emancipation, nor from the prohibitory dispositions of this Code."

11. LA. CIV. CODE art. 2328: "Every matrimonial agreement must be made by an act before a notary and two witnesses."
contracts, the practice of drawing up marriage contracts has fallen into disuse in Louisiana. It is the purpose of this Comment to suggest a practical approach to the making of such contracts in the hope that interest in them may be revived. An attempt is not made at any broad historical survey of the nature or evolution of the marriage contract; rather, the contract is urged as a functional answer to some of the almost overwhelming problems created by the Louisiana law of community property. Consideration is not given to the threshold determination of the comparative advantages and disadvantages of living separate in property or of agreeing upon some form of a community of gains. The following marriage contract, set out in full, is directed to spouses who have resolved that question in favor of a community of gains. Each provision of the contract is only a suggestion. Of course, infinite variation is possible, as warranted by conditions peculiar to the parties contemplating marriage.

MARRIAGE CONTRACT

1. ___________ and ___________, in contemplation of their

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14. See Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L. Rev. 3, 11 (1959): "In spite of these elaborate provisions concerning marriage contract and dowry, however, as a practical matter these legal institutions have long since become obsolete. It has been reported that a sampling of parish records in Louisiana reveals that the use of marriage contracts, except in rare and scattered instances, had ceased by 1880. It appears that in one parish where French influences remain relatively strong, the custom has persisted to some extent of registering before marriage an inventory of the property of the prospective husband and wife. Otherwise, the device may be presumed to be used today only by a few mature persons of means who are contemplating marriage and wish to contract away the community regime."

15. The existence of such problems was noted in Daggett, Policy Questions on Marital Property Law in Louisiana, 14 La. L. Rev. 528 (1954): "The purpose of this discussion is to emphasize the confusion, inequities, and maladjustments to social and economic realities presently existing in the marital property law of Louisiana . . . . Re-examination of the community property system has been thought necessary for quite some time because its adherents fear that, without adjustment to present conditions, dissatisfactions may become sufficiently acute to result in its abandonment. Its complexities are so great that its acceptability can be maintained only by clear demonstration of achievement of its worthy basic objects, those best strengthening the ties and economic basis of the family."

The utility of marriage contracts was pointed out in Huie, Separate Ownership of Specific Property Versus Restitution from Community Property in Louisiana, 26 Tul. L. Rev. 427, 431 (1952): "Professor Daggett has brought to the attention of the legal profession in Louisiana the usefulness of marriage contracts as a means of avoiding future controversies and has urged their general use. Many problems that now furnish sources of litigation could be avoided by a marriage contract, and there is a special need for such a contract in order to simplify the restitution of separate capital."
forthcoming marriage, enter into the following marriage contract.

2. Prior to the celebration of the marriage, an inventory of all of the assets and liabilities of the respective parties shall be taken. This inventory shall form a part of and be recorded with the marriage contract.

3. The following are to be separate assets, regardless of which spouse exercises administration and control of them:
   (1) All things brought into marriage by either spouse;
   (2) Things received by either spouse alone through gratuitous donation, including interspousal donations;
   (3) Things acquired by either spouse by inheritance;
   (4) The fruits, revenues, and income from each spouse's separate asset, except as provided in Article Four, Paragraph Six;
   (5) Wages or salary of either spouse earned while the spouses are living separate and apart;
   (6) Damages recovered for personal injuries arising from offenses or quasi-offenses, and for personal injuries arising from the breach of a contract relating to separate or community assets;
   (7) Things acquired during marriage with separate funds or in exchange for separate assets, with no necessity for a declaration of separateness or for a particular form of proof of separateness;
   (8) Things acquired during marriage with both separate and community assets, if separate assets and community assets each compose at least 25% of the cost of acquisition and if it is proved that the spouses intended the things acquired to be separate assets of the spouse contributing separate assets to the acquisition, subject to the claim of the other spouse for reimbursement of half the value of community assets used in the acquisition;
   (9) All things which have a uniquely personal character, such as clothing, regardless of how they are acquired;
   (10) Intellectual assets, such as copyrights, trademarks, patents, and publishable works of every sort;
   (11) The interest of either spouse in partnership capital, whether acquired before or during marriage, subject to the obligation of reimbursing the other spouse half the value of community assets diverted to the use of the partnership.
4. The following are to fall into the community of gains between the spouses:

(1) Things acquired during marriage with community funds or in exchange for community assets;

(2) Things acquired during marriage with both separate and community assets, if separate assets and community assets each comprise at least 25% of the cost of acquisition and if it is proved that the spouses intended the things acquired to be community assets, subject to the claim of the spouse contributing separate assets for reimbursement from the other spouse of half the value of the amount so contributed;

(3) Wages and salaries of both spouses while living together;

(4) The fruits, revenues, and income of community assets;

(5) Donations made to the spouses without designation of shares;

(6) All income, royalties, and revenues received during marriage while the spouses are living together under any agreement relating to the intellectual assets specified in Article Three, Paragraph Ten.

5. The following provisions shall govern life insurance insofar as it concerns the conventional community:

(1) The policy rights belonging to an insured spouse who has named the other spouse revocable beneficiary shall be a separate asset of the insured, whether the contract of insurance was taken out before or after marriage, subject to the obligation of reimbursing the other spouse half the value of community assets used to pay the premiums or to otherwise support the insurance contract if the community is dissolved prior to death, or in the event that the insured spouse receives the cash surrender value or otherwise appropriates the cash value of the policy to his personal benefit. If the insured spouse has relinquished all policy rights by naming the other spouse irrevocable beneficiary, or by assigning the policy to the other spouse, the policy rights shall be a separate asset of the beneficiary or assignee, subject to the preceding obligation of reimbursement in the instances mentioned.

(2) When the insured spouse has either revocably or irrevocably designated the other spouse as beneficiary, or
if either spouse has insured the life of the other spouse naming himself or herself revocable or irrevocable beneficiary, the beneficiary spouse shall receive the proceeds as separate assets, whether the contract was taken out before or after marriage. No obligation of reimbursement shall be enforceable against the beneficiary in favor of the succession of the deceased spouse for half the value of community assets used to keep up the policy unless, during marriage, the deceased spouse expresses an intent to avail himself or herself of the right to reimbursement.

(3) If a policy on the life of either spouse is made payable to the insured's succession or to the legal representative of the insured, the proceeds shall be separate assets, subject to the obligation of reimbursement due the other spouse for half the value of community assets used to support the policy.

6. The following provision shall alone govern payments received during marriage as a substitute for, or as a supplement to, wages or earnings:

The right of either spouse to receive any benefits in lieu of or as a supplement to wages or earnings is a separate asset of that spouse; but all such benefits actually received by that spouse during marriage while the spouses are living together shall fall into the community of gains between the spouses, regardless of whether the scheme, plan, or agreement providing for such benefits was entered into before or after marriage; provided that upon termination of the community by a cause other than death, the spouse not entitled to the benefits shall be entitled to reimbursement of half the value of community assets used to support the right to the benefits to the extent that that spouse's half interest in any benefits actually received during marriage as community assets has not equalled this amount; provided further, that upon termination of the community by death, no obligation of reimbursement shall be enforceable as a consequence of any assets expended in support of the right to receive the benefits, unless the spouse entitled to reimbursement evidenced during marriage an intent to avail himself or herself of the right to reimbursement.

7. The following provision alone shall govern property insurance:
All proceeds from policies insuring assets from any risk shall acquire the status of the asset which such proceeds restore or for the loss of which the insured is indemnified, subject to the obligation of reimbursement as described in Article Nine.

8. This marriage contract shall in no way create any presumption as to the classification of any thing, movable or immovable, corporeal or incorporeal, as a separate or community asset. The classification of all things, if put in issue, is to be proved as any other fact in a civil case, i.e., by a preponderance of the evidence.

9. Except as otherwise provided by this contract, if community assets are used in the interest of the separate assets of either spouse, whether the separate assets are enhanced in value or not, the other spouse is entitled to be reimbursed half the value of the community assets so expended. Where separate assets of either spouse are used in the interest of community assets, whether this results in enhancement of the community assets or not, the contributing spouse is entitled to reimbursement from the other spouse of half the value of the separate assets so expended. Neither spouse shall be entitled to compensation nor reimbursement for labor bestowed on the separate assets of either spouse, whether the separate assets are enhanced in value or not, unless it is in the form of wages or salary.

10. The husband is the head and master of the community of gains between the spouses, and he alone can incur obligations chargeable against the community assets, of which he has sole administration and control. He can dispose of community assets without the consent of the wife, subject to the following modifications:

   (1) He can not dispose, by onerous title, of immovables of the community standing in the name of the wife without her written consent;
   (2) He can make no disposition inter vivos, by gratuitous title, of immovables or of incorporeal movables of the community without the consent of the wife;
   (3) A gratuitous title within the contemplation of this provision embraces all titles wherein there is no direct, material advantage to the donor;
   (4) If it should be proved that the husband has made
any disposition of community assets without the consent of the wife, where her consent is required, or in fraud of her rights, she shall have an action at the termination of the community against him or his heirs for the recovery of the value of her interest.

(5) The wife's consent shall not be required during her continued absence, or where by reason of infirmity she is incapable of making an informed judgment.

11. Although the wife's interest in the community assets is one of ownership, it is subject to the administration and control of the husband, and she is powerless to act for or in the place of her husband without his authority, express, implied, or customary. However, the wife shall have full administration and control of community assets in the continued absence of her husband, or where by reason of infirmity he is incapable of himself exercising administration and control.

12. As between husband and wife, obligations incurred during the existence of the community by the husband alone, or by the wife, acting for or in the place of her husband, shall be satisfied out of community assets, with the following exceptions:

(1) Obligations incurred by either spouse solely in the interest of his or her separate assets are chargeable to that spouse's separate assets;

(2) The liability of either spouse for his or her offenses or quasi-offenses shall be satisfied out of that spouse's separate assets;

(3) If community assets should be insufficient to satisfy the alimentary obligations existing between the spouses themselves or between a spouse and his legitimate children, the spouses are bound to support these obligations out of their separate assets in proportion to the relative amount owned by each during the period when the obligations are due.

13. During marriage, third persons may seek satisfaction for obligations incurred by the husband before or during marriage and for obligations incurred by the wife acting for or in the place of her husband from the husband alone, unless the wife has also bound herself personally for these obligations; provided, that both spouses shall be liable personally and in solido to third persons for the alimentary obligations described in Article Twelve, Paragraph Three.
14. When the community is terminated for any cause, the wife's acceptance of the former community shall constitute an unconditional assumption of personal responsibility for half of the obligations chargeable to it, whereupon she is entitled of right without the necessity of giving security to half the assets and to an immediate partition of the same. She may avoid liability for all obligations of the former community for which she has not assumed personal liability by renouncing the same, in which case she is not entitled to receive any of the assets. She may limit her liability to half the value of the assets by accepting with benefit of inventory, in which case she consents to an administration of the community and agrees to receive only half the value remaining after the debts have been paid.

**Explanation of the Contract**

**Article One**

This provision is simply a declaration of the intention of the future spouses to avoid the institution of the legal community of acquets or gains and to establish a conventional property arrangement in its stead. In order to affect third persons, recordation of the marriage contract appears to be required both in the conveyance records of the parish where the matrimonial domicile is to be established and in the mortgage and conveyance records of any parish where immovable property belonging to either spouse is located.

16. This requirement derives from the following two Civil Code articles which, while not specifically dealing with marriage contracts, are suggested as functionally analogous. **LA. Civ. Code** art. 155: "Separation from bed and board carries with it separation of goods and effects. Upon reconciliation of the spouses, the community may be reestablished by husband and wife jointly, as of the date of the filing of the suit for separation from bed and board, by an act before a notary and two witnesses, which act shall be recorded in the conveyance office of the parish where said parties are domiciled but which act shall be without prejudice to rights validly acquired in the interim."

**LA. Civ. Code** art. 2386 contains the following recordation requirement where the wife reserves the fruits of her separate property: "The said instrument shall be executed before a Notary Public and two witnesses and duly recorded in the Conveyance Records of the Parish where the community is domiciled."

17. This requirement is based on the following three Civil Code articles. **LA. Civ. Code** art. 2264: "No notarial act concerning immovable property shall have any effect against third persons, until the same have been deposited in the office of the parish recorder, or register of conveyances of the parish where such immovable property is situated."

**LA. Civ. Code** art. 2265: "All sales of immovable property made by any sheriff or other officer, by virtue of any execution or other order of court; all marriage contracts made within this State, tending in any wise to convey, transfer, assure or affect the estates of the parties, or being only intended
ness against third persons, recordation should be repeated when the matrimonial domicile is changed to a different parish or when additional immovables are acquired in a different parish by either spouse.

Article Two

An inventory of all assets and liabilities of the respective spouses at the beginning of the marriage is suggested not only to establish the separate character of these assets, but to facilitate proof at the termination of the community of this separate status. Hopefully, this will avoid the systematic classification of separate assets as community assets because of an inability to trace the source of the assets.

Article Three

This article is of paramount importance: it defines what things remain the separate assets of each spouse. The principle purpose of this article is to facilitate the acquisition and maintenance of separate assets, if the parties so desire.

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19. See H. Daggett, Policy Questions on Marital Property Law in Louisiana, 14 La. L. Rev. 523, 541-42 (1954), wherein Professor Daggett listed seven ways in which she considered the trend toward placing all marital property in the community to be deleterious. However, a contrary opinion...
Paragraph One provides that all things brought into marriage by either spouse shall continue to be the separate assets of that spouse. In this respect it does not differ from article 2334 of the Civil Code.\(^{20}\) The separate status of these assets should be easier to maintain, however, through the requirement of an inventory found in Article Two. Similarly, as provided in article 2334 of the Civil Code,\(^ {21}\) things received by either party alone through gratuitous donation, including interspousal donations, remain separate assets. No change is made in Paragraph Three in stipulating that things acquired by either spouse through inheritance are separate assets.\(^ {22}\)

The first major departure from the principles of the legal community is found in Paragraph Four, which states that fruits and revenues of the spouses' separate assets shall constitute separate assets, regardless of by whom the separate assets are actually administered. This provision departs from articles 2386 and 2402 of the Civil Code, which provide that fruits of separate assets fall into the community. The latter rule admits of an exception in favor of the wife alone in that she can file a written statement preserving the fruits of her separate property for her separate use and benefit.\(^ {23}\) The suggested change should have

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was expressed in Morrow, *Matrimonial Property Law in Louisiana*, 34 Tul. L. Rev. 3, 47 (1959): "In the opinion of the writer, a great clarification could be accomplished and a fundamental objective of a community property system achieved, by providing that practically all income and acquisitions by either spouse during marriage should be classified as community property. . . ."

Decisions as to the characterization of things as separate or community assets are fundamental ones which largely determine the relative amounts of separate and community assets during marriage. These choices should be made after careful consideration of the intentions of the future spouses in the context of the Louisiana law of succession, forced heirship, and the usufruct granted the surviving spouse by law. *See* La. Civ. Code arts. 871-933 and 1493-1518.

\(^ {20}\) La. Civ. Code art. 2334, para. 2: "Separate property is that which either party brings into the marriage, or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly."


\(^ {22}\) See note 20 supra.

\(^ {23}\) La. Civ. Code art. 2402 reads in part as follows: "This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact . . . ." The first paragraph of La. Civ. Code art. 2386 reads as follows: "The fruits of the paraphernal property of the wife, wherever the property be located and however administered, whether natural, civil, including interest, dividends
enormous practical consequences on the composition of the community. For example, cash dividends on separate stock would no longer fall into the community; the interest on federal, state, municipal, and private bonds which are considered separate property would no longer enter the community; income from a trust which is a separate asset of one spouse, if distributed to that spouse, would not fall into the community; and rents received from separate assets would not enter the community. Expenses for the preservation of separate assets, e.g., taxes and insurance, would no longer be chargeable to community assets; the community would not benefit by receiving the fruits of the separate asset. The sole exception to the rule of this paragraph is found in Paragraph Six of Article Four which states that income, royalties, and revenues from intellectual assets are community assets.

and rents, or from the result of labor, fall into the conjugal partnership, if there exists a community of acquets and gains; unless the wife, by written instrument, shall declare that she reserves all of such fruits for her own separate use and benefit and her intention to administer such property separately and alone. The said instrument shall be executed before a Notary Public and two witnesses and duly recorded in the Conveyance Records of the Parish where the community is domiciled.”

In this regard see Peltier v. Begovich, 239 La. 233, 118 So.2d 395 (1960); Succession of Ratcliff, 212 La. 563, 33 So.2d 114 (1947); Mathews v. Hansberry, 71 So.2d 232 (La. App. Orl. Cir. 1954). It should be noted that a declaration by the wife has only been required since 1944; before that time, if thewife retained the administration of her separate property, the fruits remained hers. See Trorlicht v. Collector of Revenue, 25 So.2d 547 (La. App. Orl. Cir. 1948) and Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L. Rev. 3, 13, 24 (1959).

24. See Messersmith v. Messersmith, 229 La. 495, 86 So.2d 169 (1956), holding to the effect that cash dividends on separate stock fall into the community. No change has been made in the rules of the Louisiana courts that stock dividends on separate stock remain separate property and that new shares acquired by a split of separate stock are separate property. Daigre v. Daigre, 223 La. 682, 83 So.2d 900 (1955); Succession of Hemenway, 228 La. 572, 83 So.2d 377 (1955). See generally Comment, 25 La. L. Rev. 108, 133-34 (1964); Comment, 33 Tul. L. Rev. 811, 817-18 (1959).

25. See Comment, 33 Tul. L. Rev. 811, 817 (1959): “Ownership of federal, state, municipal and private bonds not issued pursuant to special legislation is determined in accordance with general community property principles. Bonds received by one spouse as a donation or inheritance become the separate property of that spouse. Interest on the wife's separate bonds remains separate property provided she has separate administration of the bonds and, after 1944, has filed a declaration reserving the income as paraphernal property. Interest on bonds owned by the husband as separate property falls into the community of acquets and gains. Bonds acquired with community funds become community property, as does any income which they earn.”


28. See Succession of Ratcliff, 209 La. 224, 24 So.2d 456 (1945) and Succession of Boyer, 36 La. Ann. 506 (1884), holding to the effect that when the revenues from separate property fall into the community the community should bear the ordinary expenses of preservation. See also Huie, Separate Claims To Reimbursement From Community Property In Louisiana, 27 Tul. L. Rev. 143, 159-60 (1953); Comment, 25 La. L. Rev. 201, 207-08 (1964).
Paragraph Five, which declares the wages or salary of either spouse to be a separate asset if the spouses are living apart, works a departure from the Civil Code insofar as the husband is concerned. Article 2334 provides that the wages or salary of the wife living apart from her husband is her separate property,29 while the wages or salary of the husband enters the community regardless of whether he is living with his wife.30 The suggested change puts the husband in the same position as the wife, i.e., his wages or salary are a separate asset if he is living apart from his wife. It is felt that no useful purpose is served by an arbitrary distinction.31

Paragraph Six modifies and broadens articles 2334 and 2402 of the Civil Code relative to damages recovered by the spouses. These articles provide that damages for personal injuries to the wife occasioned by offenses or quasi-offenses are her separate property,32 while such damages to the husband are community property, unless he is living separate and apart from his wife for fault on her part sufficient for separation or divorce.33 These rules are altered to place the husband in a position identical to that of the wife by allowing him to retain these damages as separate property under all circumstances. No justification exists for dis-

29. LA. CIV. CODE art. 2334 reads in part as follows: "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." See Houghton v. Hall, 177 La. 238, 257, 148 So. 37, 48 (1933); Lytell v. Lytell, 144 So.2d 925, 926 (La. App. 4th Cir. 1962); King v. Dearman, 105 So.2d 293 (La. App. 1st Cir. 1958). See also Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L. Rev. 3, 14, 24 (1959).
31. In Daggett, Policy Questions on Marital Property Law in Louisiana, 14 La. L. Rev. 528, 544 (1954), this result is urged in the following language: "Certainly sources of community and separate property whatever they may be should be the same for both spouses so that equitable division might be made at the dissolution of the community. . . ." See also Daggett, Is Joint Control of Community Property Possible?, 10 Tul. L. Rev. 559, 590 (1936); Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L. Rev. 3, 25 (1959).
32. LA. CIV. CODE art. 2334 provides in part: "[A]ctions for damages resulting from offenses and quasi offenses . . . are her separate property."
33. LA. CIV. CODE art. 2402 also provides in part as follows: "But damages resulting from personal injuries in the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone. . . ." See Sanders v. P. & S. Ins. Co., 125 So.2d 24, 27 (La. App. 2d Cir. 1960).
34. LA. CIV. CODE art. 2334: "Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce shall be his separate property." See Talley v. Employers Mutual Liab. Ins. Co., 181 So.2d 784, 787 (La. App. 4th Cir. 1965), cert. denied, 248 La. 785, 181 So.2d 783 (1966).
tinguishing between husband and wife on the basis of fault.\textsuperscript{34} A broadening of these principles is accomplished by including as a separate asset damages for personal injuries suffered by either spouse as a result of a breach of a contract relating to separate or community assets.\textsuperscript{35}

Major changes are made in Paragraph Seven in regard to the judicial requirements of proof imposed upon a spouse who acquires things during the existence of the legal community. Although there is no departure from the principle that things acquired during marriage with separate funds or in exchange for separate assets are separate assets,\textsuperscript{36} the stipulation in the contract that no declaration of separateness or particular form of proof of separateness of the funds or assets involved in the acquisition is required should be of far-reaching importance. The courts have enunciated the doctrine that for an immovable acquired by the husband during marriage to be his separate asset, a double declaration in the act of purchase that he was buying for his separate benefit and with his separate funds must have been made. Absent these two declarations, the immovable is presumed conclusively to belong to the community, even if there has been a recitation of separateness.\textsuperscript{37} As to the wife, the courts have held that to overcome the presumption that the thing acquired is a community asset and to establish its separate status, she must show with legal certainty (1) that the funds used for the pur-

\textsuperscript{34} In Morrow, *Matrimonial Property Law in Louisiana*, 34 Tul. L. Rev. 3, 25 (1959), a similar observation is made: “It is difficult to rationalize this obvious discrimination between husband and wife, and the distinction must be attributed to pressures on behalf of married women in the early part of this century, followed by a belated 'compromise' provision with reference to the husband.” See also Daggett, *Is Joint Control of Community Property Possible?*, 10 Tul. Rev. 559, 590 n.21 (1939).

\textsuperscript{35} The Civil Code is limited to characterization of personal injuries caused by offenses and quasi-offenses. Article Three, Paragraph Six of this marriage contract is also directed toward the situation where damages for personal injury are suffered because of a breach of contract, e.g., mental anguish, embarrassment, humiliation, inconveniences, injury to reputation, etc.

\textsuperscript{36} See, e.g., Dillon v. Freville, 129 La. 1005, 87 So. 316 (1912); Kittredge v. Grau, 158 La. 154, 103 So. 723 (1925).

chase were her separate funds, (2) that they were administered by her, and (3) that they were invested by her. In addition, when the wife purchases on credit, she has the further burden of establishing that she both made the down payment with her separate funds and that she had sufficient separate funds to assure, with reasonable certainty, that the deferred payments could be met. Paragraph Seven avoids these formal requirements of proof in favor of allowing proof of the character of the funds used as any other fact in a civil case.

An innovation has been made in Paragraph Eight with the insertion of a provision which allows things acquired with both separate and community assets to be separate assets, if the spouses so intend and if the separate and community assets used in the acquisition each constitute at least 25% of the cost of acquisition. If separate assets form less than 25% of the cost of acquisition, insufficient commingling exists to prevent characterization of the things acquired as community assets. Under the legal regime, a presumption of community status generally prevails, and the thing acquired is held to be a community asset, subject to reimbursement of the spouse contributing separate funds for half the amount of his contribution. Likewise, under Paragraph Eight, separate or community status is imposed subject to an obligation of reimbursement for half the value of the other type of assets used in the acquisition.

Paragraph Nine is a unique provision which is fully justified


40. The writer is dedicated to allowing the intention of the spouses to be the determinative factor as to the classification of things acquired with both separate and community assets; but, this 25% limitation is thought to be a necessary adjunct to providing that assets acquired wholly with separate funds are separate assets, and that assets acquired wholly with community funds are community assets. If even the slightest combination of separate and community assets were permitted to make the acquisitions either separate or community assets, no reasonable justification would exist for not applying such a rule where separate or community assets alone are used in the acquisition. The writer has sought to preserve uniformity where one type of assets is used in the acquisition, while allowing the spouses freedom of characterization where the commingling has been relatively substantial.

as a practical matter. By its terms, items peculiarly personal are separate assets, regardless of the circumstances of acquisition.\textsuperscript{42} Paragraph Ten categorizes intellectual assets as separate assets, a choice made to avoid difficulties in the valuation of such rights upon termination of the community. However, income, royalties, and revenues received from intellectual assets are community assets.\textsuperscript{43} A spouse's interest in partnership capital is characterized by Paragraph Eleven as a separate asset primarily to avoid the necessity for valuation and division of the interest in the event the community is terminated prior to death; that event does not ordinarily signal the dissolution of the partnership. Protection is afforded the other spouse by the right to reimbursement of half the value of community assets diverted to the interest of the partnership. This departs from decisions holding that a spouse's interest in partnership capital is a separate assets if a partnership were formed before marriage, but a community asset if it were formed during marriage.\textsuperscript{44} Under Article Nine and Article Four, Paragraph Three, profits received by a partner-spouse, being remunerations in the nature of wages or salary, continue to fall into the community if the spouses are living together.\textsuperscript{45} But the other spouse is no longer entitled, at the dissolution of the community, to half the enhanced value of the partner-spouse's interest in partnership capital.\textsuperscript{46}

\begin{itemize}
  \item \textsuperscript{42} This provision is based on a similar implication which might be drawn from \textit{La. Civ. Code} art. 2416, which applies when the wife has renounced any rights to the community assets: "Her linen and clothes shall not, in any case, be comprised in the inventory; she has a right to take them without any formality."
  \item \textsuperscript{43} See note \textsuperscript{47} \textit{supra} and Article Four, Paragraph Six of this marriage contract.
  \item \textsuperscript{46} \textit{Succession of Ferguson}, 146 La. 1010, 84 So. 338 (1920); \textit{Dubuisson v. Moseley}, 232 So.2d 570, 571, 572 (La. App. 2d Cir. 1970), in which the wife was held entitled to half the value. \textit{See also} \textit{The Work of the Louisiana Appellate Courts for the 1969-1970 Term—Matrimonial Regimes}, 31 \textit{La. L. Rev.} 252, 255 (1971); \textit{Comment}, 37 \textit{Tul. L. Rev.} 506, 508, 509 (1963); Article Nine of this contract; notes \textsuperscript{99} and \textsuperscript{100} \textit{infra}.
\end{itemize}
Article Four

This article engages the somewhat diminished task of specifying what assets enter the conventional community. Paragraph One follows the legal regime by stating that things acquired during marriage with community funds or in exchange for community assets shall enter the community. Paragraph Two is designed to be read in conjunction with Article Three, Paragraph Eight of this contract. Both clauses stipulate that the character of things obtained during marriage with a combination of separate and community assets, where the separate and community assets each constitute at least 25% of the cost of acquisition, is determined by the intention of the spouses, subject only to an obligation of reimbursement. This procedure will allow the spouses some control over the characterization of assets acquired during marriage, which is impossible presently since the thing acquired is automatically presumed a community asset. No change from the legal regime is made in the provision in Paragraph Three that the wages or salaries of both spouses are community assets where the spouses are living together. Likewise, there is no departure in Paragraph Four stating that the fruits and revenues of community assets are community assets; or in Paragraph Five, which specifies that donations made to the spouses jointly are community assets. Paragraph Six provides that income, royalties, and revenues from intellectual assets enter the community of gains. This was thought to be a necessary

47. Although not expressly stated in this way, this principle is implicit in LA. CIV. CODE arts. 2402 and 2334. Article 2402 provides that property acquired during marriage is community property, while article 2334 states that if the property is acquired with separate funds, it is separate property. See also note 36 supra.

48. See note 41 supra.

49. See Peitier v. Begovich, 239 La. 238, 249-50, 118 So.2d 395, 399 (1960); "Likewise earnings of the husband, whether living with his wife or not fall into the community." The wife's earnings are community if she is living with her husband. Brownfield v. Southern Amusement Co., 196 La. 73, 198 So. 656 (1940); Houghton v. Hall, 177 La. 238, 148 So. 37 (1933); Morace v. Morace, 220 So.2d 775, 778 (La. App. 1st Cir. 1969), cert. denied, 254 La. 287, 223 So.2d 410 (1969); Alexius Bros. & Co. v. Brock, 58 So.2d 279 (La. App. 1st Cir. 1952); Drewett v. Carnahan, 183 So. 103 (La. App. 2d Cir. 1938).


51. See Succession of Land, 212 La. 103, 31 So.2d 609 (1947); Brewer v. Hill, 178 La. 533, 152 So. 75 (1933), cert. denied, 292 U.S. 626 (1934); Burns v. DeBakey, 186 So. 374 (La. App. 1st Cir. 1939).

52. Although no Louisiana decisions have considered the character of income, royalties, or revenues from intellectual property, royalties from mineral leases granted on the separate property of one of the spouses have been held to fall into the community, since they were said to be in the nature of
corollary to the classification of intellectual assets as separate assets, since in some instances the spouses might be wholly dependent upon income from such intellectual assets for their livelihood.

Article Five

This article regulates life insurance under the conventional community by drawing a basic distinction, all too often ignored in Louisiana decisions, between policy rights—which include such rights as the right to the cash surrender value, the right to borrow on the policy, and the right to receive dividends and proceeds rights—which become exigible only upon the death of the insured. Paragraph One specifically classifies policy rights as separate assets. If the insured has designated the other spouse revocable beneficiary, the policy rights are separate assets of the insured; if the insured has relinquished the policy rights by designating the other spouse irrevocable beneficiary or by assigning the policy to the other spouse, the policy rights are separate assets of the beneficiary or assignee. Under the legal community, the character of the policy is determined at the time of its inception. If the policy is taken out before marriage, the policy rights are separate assets of the insured, if the designation of beneficiary is revocable; whereas, they are separate assets of the beneficiary, if the designation is irrevocable. However, if


53. This distinction between policy rights and proceeds rights has been pointed out as a necessary one for an orderly consideration of life insurance under traditional principles of community property law. See Benjamin and Pigman, Federal Estate and Gift Taxation of Louisiana Life Insurance: Part II, 28 Tul. L. Rev. 423, 233 (1954); Comment, 25 La. L. Rev. 492, 493 (1965).

54. The irrevocable designation of a beneficiary has generally been thought to be sufficient to transfer the policy rights to the irrevocable beneficiary. See Benjamin and Pigman, Federal Estate and Gift Taxation of Louisiana Life Insurance: Part II, 28 Tul. L. Rev. 243, 256-61 (1954); Comment, 40 Tul. L. Rev. 131, 146 (1985). However, it has recently been pointed out that designation of an irrevocable beneficiary may, under some policies, leave some policy rights with the insured. In such a case, only an assignment of the policy to the beneficiary is said to be sufficient to accomplish this result. See Comment, 16 Loyola L. Rev. 415 (1969-70); see also Oppenheim, The Donation Intervivos, 43 Tul. L. Rev. 731, 737-38, 744-46 (1969).

the policy is issued during marriage, the policy rights are community assets.\footnote{56}

Under these principles governing the legal community, if the community is dissolved prior to death, the policy rights which are community assets, must be valued and divided.\footnote{57} The difficulties inherent in this procedure do not exist under Article Five of this contract which classifies policy rights as separate assets of one of the spouses under all circumstances. The one-half community interest of the spouse not entitled to the policy rights is protected, where the community is terminated prior to death, by the requirement of reimbursing that spouse half the value of community assets used to support the policy. This right to reimbursement has been extended to the situation where the spouse possessed of the policy rights converts them during marriage to his or her personal benefit, e.g., by receiving the cash surrender value. In both instances reimbursement is essential to prevent that spouse from converting to his separate patrimony the other spouse’s half interest in community assets used to support the policy.

The writer acknowledges that the characterization of policy rights as separate assets invites adverse estate tax consequences as to an insured who retains the policy rights as separate assets. Where policy rights are classified as belonging to the community, half the value of the proceeds of the policy are included in the succession of the deceased insured spouse for estate tax purposes. But where policy rights are classified as separate assets of the


\footnote{57. Numerous theories of an equitable method of division have been suggested. See, e.g., Nabors, \textit{Civil Law Influences Upon the Law of Insurance in Louisiana—Life Insurance Problems under the Community Property System}, 6 Tul. L. Rev. 515, 533 (1932); Comment, 25 La. L. Rev. 492, 503 (1965); Note, 12 Tul. L. Rev. 156, 157-58 (1957). But see Cahn, \textit{Louisiana Civil Law as Applied to Life Insurance}, 12 La. L. Rev. 56, 63 (1961), wherein the writer has concluded that the cash surrender value would belong to the owner of the policy as a separate asset, subject to accountability for half the value of premiums paid with community assets. This position accords with the result reached under this contract.}
insured, the entire proceeds of the policy are included in the succession of the insured. Nonetheless, it is believed that the adverse estate tax consequences are outweighed by the value of having an efficient and manageable procedure for disposing of life insurance policies when the community is dissolved prior to death, especially in this age of rising marital instability. Under this contract, an insured may still avoid any estate tax liability by relinquishing all incidences of ownership in the policy, i.e., by completely disposing of all policy rights. Differing views exist as to how this may be accomplished. The generally accepted view is that it suffices to designate the other spouse as irrevocable beneficiary and to cancel any reverter clauses which might return policy rights to the insured should the beneficiary predecease him. However, this method has been criticized as ineffective and it has been suggested that only an assignment of the policy effects an abandonment of all policy rights.

The decisions interpreting the legal community appear to have held, in regard to the proceeds of a life insurance policy, that if the policy is taken out by the husband, either before or during marriage, and made payable to the wife, the proceeds are her separate assets. Furthermore, she owes no obligation to reimburse the succession of her husband half the value of community funds used to support the policy; he is held to have intended a donation of this amount to her. If the wife procures a policy payable to her husband, it has been suggested that he receives the proceeds as separate assets, but that he may have to reimburse the succession of the wife half the value of com-

60. See Comment, 16 Loyola L. Rev. 415 (1969-70).
munity funds used to pay premiums. Earlier decisions which held that a contract of insurance taken out during marriage produced community proceeds appear to have antedated the now accepted notion that the right to change the beneficiary can be reserved, with the attendant severance of policy rights and proceeds rights. Consequently, those decisions simply classified both policy rights and proceeds rights as community assets, whereas the current understanding is that only the policy rights fall into the legal community.

Paragraph Two is in accord with current principles in that it states that where one spouse insures his or her own life and names the other spouse beneficiary, either revocably or irrevocably, the proceeds are separate assets of the beneficiary spouse, whether the contract was made before or during marriage. However, a change of great practical significance is introduced in the provision that no obligation of reimbursement shall be enforceable against the beneficiary as a consequence of community assets having been used to support the policy, unless during the marriage the spouse entitled to reimbursement expresses an intent to avail himself or herself of that right.

62. See Benjamin and Pigman, Federal Estate and Gift Taxation of Louisiana Life Insurance: Part II, 28 Tul. L. Rev. 243, 268 (1954); Comment, 25 La. L. Rev. 492, 500 (1964). Presumably, reimbursement is required because the wife cannot be presumed to have donated to the husband her interest in the community funds used to pay the premiums, since she has no power to donate community property.


64. See Benjamin and Pigman, Federal Estate and Gift Taxation of Louisiana Life Insurance: Part II, 28 Tul. L. Rev. 243, 256-57 (1954): "Louisiana's insurance jurisprudence fails clearly to distinguish between the owner's policy-rights and the beneficiary's proceeds-rights, which have been freed from certain rules applicable to other Louisiana property interests. The lack of an express distinction in the Louisiana jurisprudence between policy-rights and proceeds-rights is at least partially due to the fact that early Louisiana cases involved policies in which no right to change beneficiaries was reserved. In cases involving these 'irrevocable-beneficiary' policies no distinction is necessary between policy-rights and proceeds-rights since both are vested in an irrevocably-designated beneficiary. However the few Louisiana decisions involving policy-rights in policies in which the right to change beneficiaries is reserved have applied general Louisiana property rules in determining whether the policy-rights inure to the benefit of the marital community or the insured's separate estate."

65. This provision is weighted against reimbursement in the belief that an insured spouse intends that, upon his or her death, the beneficiary spouse
By subjecting this contractual obligation of reimbursement to a suspensive condition\(^6\) (the evidencing of intent during marriage), Paragraph Two is intended to allow the option of reimbursement without violating the Civil Code prohibitions against contracts between spouses.\(^7\) The applicability of this option of reimbursement to both spouses displaces the fiction that the husband intended a donation of his interest in community assets so used to the wife.

Under the principles regulating the legal community, when one spouse during marriage insures the life of the other spouse in his own favor, the proceeds are held to be community assets, because neither spouse is allowed to enrich his patrimony at the expense of the community.\(^6\) However, it has been recommended that it is socially and economically desirable to allow the wife to protect herself by insuring the life of her husband in her own favor, with the proceeds payable to her as separate assets.\(^6\) This sound recommendation has been adopted by Paragraph Two and extended to give the husband the same right to insure the life of the wife in his own favor. Protection is afforded the insured's half interest in community assets used to support the policy through the option of requiring reimbursement. This procedure should also yield the most favorable estate tax treatment for the insured, since both policy rights and proceeds rights would normally belong to the beneficiary from the inception of the contract.

In dealing with the legal community, the courts have decided that the husband has virtually unlimited power to assign a policy insuring his life or to name a third person as beneficiary of a policy on his life; no reimbursement is due by the husband for his wife's half interest in community funds used to support

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6. LA. Civ. Code art. 2043 defines the suspensive condition and explains its effect: "The obligation contracted on a suspensive condition, is that which demands, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties. In the former case, the obligation can not be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it can not be enforced until the event be known."


the policy, unless he has acted in fraud of her rights.\textsuperscript{70} No change is made in this rule.\textsuperscript{71}

The decisions have held uniformly that proceeds of a policy characterized as a separate asset of the insured and made payable to his succession are separate assets subject to the reimbursement due the other spouse for half the value of community assets used to support the policy.\textsuperscript{72} Proceeds under a policy characterized as a community asset and payable to the insured's succession are community assets.\textsuperscript{73} Insofar as Paragraph Three provides that proceeds from all policies payable to the insured's succession or to the legal representative of the insured\textsuperscript{74} shall be separate assets, it changes the above principles. This difference is consistent with the rejection of the time of the making of the insurance contract as the determinative factor as to classification. The obligation of reimbursement imposed by this paragraph will prevent any appropriation by the insured spouse

\textsuperscript{70} Sizeler v. Sizeler, 170 La. 128, 127 So. 388 (1930); Douglass v. Equitable Life Assurance Soc., 150 La. 519, 90 So. 834 (1922); Morris v. Providential Life & Accident Ins. Co., 162 So. 443, 444-45 (La. App. 1st Cir. 1935). See also Benjamin and Pigman, Federal Estate and Gift Taxation of Louisiana Life Insurance: Part II, 28 Tul. L. Rev. 243, 288 (1954); Comment, 25 La. L. Rev. 492, 498 (1965); Note, 12 Tul. L. Rev. 156 (1937). In Cahn, Louisiana Civil Law as Applied to Life Insurance, 12 La. L. Rev. 56, 61 (1951), the opinion was expressed that the husband's succession might be accountable to the wife for half the value of community funds used to pay premiums where a third person is named beneficiary, because this would be construed as a donation to her detriment. This view is unacceptable, however, in that it fails to appreciate that the burden of proof upon the wife is one of showing fraud.

\textsuperscript{71} Under Article Five, Paragraph One of this contract, policy rights are always separate assets, and the husband can freely dispose of a policy on his life; no reimbursement is due the wife for half the value of community funds used to pay the premiums on the policy because Article Ten grants the husband the power to make manual gifts of corporeal movables characterized as community assets without the consent of the wife.

\textsuperscript{72} Thigpen v. Thigpen, 231 La. 206, 91 So.2d 12 (1956); Succession of Lewis, 192 La. 734, 740, 189 So. 118, 120 (1939); Succession of Verneuille, 120 La. 605, 609, 45 So. 520, 522 (1908); Estate of Moseman, 38 La. Ann. 219 (1886); Succession of Butler, 147 So.2d 684, 686 (La. App. 4th Cir. 1962). See also Cahn, Louisiana Civil Law as Applied to Life Insurance, 12 La. L. Rev. 56, 69 (1951); Comment, 17 La. L. Rev. 510, 513 (1957).

\textsuperscript{73} Thigpen v. Thigpen, 231 La. 206, 91 So.2d 12 (1956); Messersmith v. Messersmith, 229 La. 495, 86 So.2d 169 (1956); Succession of Farrell, 200 La. 29, 35, 7 So.2d 605, 606 (1942); Berry v. Franklin Bank & Trust Co., 186 La. 623, 173 So. 126 (1937); Succession of LeBlanc, 143 La. 27, 33, 76 So. 223, 225 (1917); Succession of Buddig, 108 La. 408, 408, 32 So. 361, 362 (1902). See also Cahn, Louisiana Civil Law as Applied to Life Insurance, 12 La. L. Rev. 56, 59 (1951); Comment, 25 La. L. Rev. 492, 501 (1965).

\textsuperscript{74} "Legal Representative" as used here has the meaning given it in La. Code Civ. P. art. 5251 (10): "'Legal representative' includes an administrator, provisional administrator, administrator of a vacant succession, executor, dative testamentary executor, tutor, administrator of the estate of a minor child, curator, receiver, liquidator, trustee, and any officer appointed by a court to administer an estate under its jurisdiction."
of the half interest of the other spouse in community assets used in support of the policy.

Article Six

This Article seeks to achieve uniformity in the various rules as to annuities, disability payments, workman's compensation benefits, unemployment compensation, retirement benefits, and pensions in a manner not only beneficial to the spouses, but more workable in practice.

The courts have applied the life insurance rules to annuities. Where the annuity is contracted during marriage, benefits received under it are community assets; if contracted prior to marriage the benefits are separate assets.75 The writer has departed from these rules in favor of classifying annuity benefits received during marriage as community assets, whether the contract was taken out before or during marriage.76 Recognition has been accorded the nature of these periodic payments as a substitute for or as a supplement to wages or earnings. Since under Article Four, Paragraph Three of this contract wages and earnings of each spouse fall into the community if the spouses are living together, the identical treatment is given these payments. The right to receive the benefits, as distinguished from the benefits themselves, is a separate asset of the receiving spouse, and upon dissolution of the community, that spouse retains this right and is entitled to receive all future benefits. Consequently, it is considered imperative, when the community is terminated prior to death, that the recipient spouse reimburse the other spouse half the value of community assets used in acquiring the right to the benefits to the extent that that spouse's community half interest in benefits already received has not been sufficient for this purpose. If reimbursement were not required, the receiving spouse could convert the other spouse's half interest to his own personal benefit; he alone would participate in any benefits received after dissolution of the community. This obligation of


76. Since all benefits received during marriage by virtue of an annuity contract are community assets, the amount of the cash surrender value of the contract, if received by the annuitant during the marriage, is likewise community property. For cases recognizing the cash surrender value of an annuity contract, see Succession of Pedrick, 207 La. 640, 21 So.2d 859 (1945); Succession of Raboulin, 201 La. 227, 9 So.2d 529 (1942).
reimbursement is not due where the community is dissolved by
death, unless during marriage the spouse entitled to reimburse-
ment expressed an intent to take advantage of this right.77

When faced with the issue of the status of disability pay-
ments received during marriage, from an insurance policy taken
out prior to marriage, the Supreme Court of Louisiana rejected
the life insurance rule and announced that disability payments
received during marriage are community assets, even if the
policy providing the benefits was taken out prior to marriage.78
One writer has suggested that underlying this holding was the
desire to accord community status to funds replacing the lost
wages of the injured spouse.79 The treatment by Article Six of
all such payments as substitutes for or as supplements to wages
or salary is consistent with this analysis.

In a somewhat ambiguous decision, the Supreme Court of
Louisiana indicated that workman’s compensation benefits re-
ceived by an injured wife during the existence of the community
are her separate assets. The court apparently reasoned that a
separate right of action was granted the wife by the workman’s
compensation statute.80 This result is at variance with the ra-
tionale of the disability decisions, and the explanation has been
urged that the court might have been drawing an analogy to
the separate status of the wife’s claim for damages under the
legal regime.81 It has been predicted that on the next occasion
the court will view workman’s compensation benefits as a re-
placement for wages and, therefore, as community assets.82 The

77. This provision could be of importance not only where the commuted
value of the annuity contract is paid to the estate of the deceased annuitant,
but also where the other spouse receives it as beneficiary under a refund
annuity contract. In both instances Article Six makes the amount received
a separate asset, since the community has been dissolved by death; but,
reimbursement might be in order since the right to the death benefits was
a contractual one in existence during the marriage. For treatment of refund
annuity contracts, see Succession of Pedrick, 207 La. 640, 21 So.2d 859 (1945);
Succession of Rabouin, 201 La. 227, 9 So.2d 529 (1942). See also Cahn, Lou-
tisiana Civil Law as Applied to Life Insurance, 12 La. L. Rev. 56, 68-69 (1951),
wherin it is suggested that the commuted value might be considered a
community asset under the legal regime.

78. Succession of Scott, 231 La. 381, 91 So.2d 574 (1956); Easterling v.
Succession of Lamkin, 211 La. 1089, 1097-98, 31 So.2d 220, 223 (1947).
81. See Comment, 25 LA. L. REV. 108, 143 (1964); see also Morrow, Matri-
monial Property Law in Louisiana, 34 Tul. L. REV. 3, 45 (1959), in which It
is suggested that the court was influenced by the fact that in a variety of
situations the wife’s income is separate property.
82. See Morrow, Matrimonial Property Law in Louisiana, 34 Tul. L. REV.
3, 45 (1959); Comment, 25 LA. L. REV. 108, 143 (1964); Comment, 17 LA. L. REV.
result of this decision is changed by Article Six. Under that Article only the right granted by the workman's compensation statute is a separate asset; the benefits actually received during marriage while the spouses are living together enter the community of gains. This contract would work no change in one writer's observation that death benefits under the statute would be the separate property of the recipient, since the right to those benefits only accrues at the death of one spouse—an event which ends the community.88

No decisions were found dealing with unemployment compensation. Nonetheless, since unemployment compensation is intended as a substitute for wages, it should be included in the community when the unemployment occurs during marriage.84 This result is reached under Article Six.

Retirement benefits have been held, in the context of a Teachers' Retirement Fund, to be separate assets of the spouse entitled to receive them.65 This result was based upon the non-assignability provisions of the statute providing the benefits. Although the result is a variance with Article Six, it need not be, since this article classifies only the right to the proceeds as a separate asset and characterizes benefits actually received during marriage as community assets. Likewise, this method of characterization should avoid any conflict with either federal or state restrictions controlling the right to receive benefits under a federal or state statutory scheme.86

With regard to pensions, the general rule seems to be that where the services which warrant the pension are rendered wholly before marriage, the pension is a separate asset of the

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810, 817-19 (1957). See also Barr v. Davis Bros. Lumber Co., 183 La. 1013, 1023, 165 So. 185, 188 (1935), in which it was held that the object of the workman's compensation statute is to offer a substitute for wages.

83. See Comment, 25 LA. L. REV. 108, 143 (1964); Comment, 17 LA. L. REV. 810, 819 (1957). See note 77 supra and note 91 infra, which explain that where community assets are used to support an annuity or retirement contract containing a contractual right to death benefits, reimbursement might be in order. The right to workman's compensation death benefits arises only at the death of one of the spouses, which event terminates the community of gains. Hence, no question of reimbursement is involved.

84. See Comment, 17 LA. L. REV. 810, 819 (1957).


86. In addition to the examples of the workman's compensation statute and the Teachers' Retirement Fund, a good discussion of potential conflicts with federal regulations as to federally supported pension plans is found in Comment, 25 LA. L. REV. 108, 141-42 (1964).
pensioner; if the services are rendered during marriage, the pension is a community asset. If the services begin prior to marriage and continue into marriage, and the pension becomes payable during marriage, the status of the property is not clear. The presumption of community might make the whole amount a community asset, although it has been urged that it would be desirable to let the pensioner preserve as a separate asset the percentage of the pension representing the time for which services were rendered prior to marriage. Article Six abandons reliance on the time of the rendition of the services in favor of providing that pension benefits received during marriage while the spouses are living together are community assets, regardless of when the services are rendered.

When the legal community is terminated prior to death and before the accrual of the pension right, and if the pension right is certain without the necessity of other services, it must be valued and divided with the other assets of the former community. This difficulty is avoided by Article Six, which stipulates that only pension benefits actually received during marriage while the spouses are living together are community assets; the right to the benefits is a separate asset of the recipient spouse. The other spouse is entitled to reimbursement for half the value of community funds used to acquire the right to the pension, to the extent that that spouse's half interest in pension benefits already received has not equaled this amount. When the community is terminated by death no obligation of reimbursement is enforceable, unless the spouse entitled to reimbursement has, during marriage, expressed an intent to take advantage of the right.

Article Seven

No change was made in adopting the basic principle of the

90. Id.
91. Although death benefits payable under a retirement system are received under this contract as separate assets, since death has terminated the community, an obligation of reimbursement might arise if the right to the death benefits was a contractual one existing during the marriage. See note 74 supra and Succession of Rockvoan, 141 So.2d 438, 440 (La. App. 4th Cir. 1962).
legal regime that proceeds of property insurance acquire the character of the property insured. The obligation of reimbursement contained in Article Nine is available to facilitate a proper accounting should community assets be used to insure a separate asset or should separate assets be used to insure a community asset.

**Article Eight**

Article Eight presents perhaps the most dramatic divergence from the principles of the legal community. The courts of this state have uniformly held that all things acquired during marriage are presumed community assets, and the spouse seeking to prove a separate character bears a heavy burden. Likewise, the Civil Code establishes a presumption that all effects which the husband and wife reciprocally possess at the dissolution of the marriage are community assets. Thus, where admittedly community funds are commingled with admittedly separate funds in a separate account, the entire balance is transformed into community funds, unless the amount of community funds is too insignificant to constitute commingling. Such strictly en-

94. The proof required has been stated in a variety of ways. It is said that the presumption of community must be overcome by evidence which is "strong, clear and convincing," Succession of Marshall, 174 So.2d 234, 237 (La. App. 4th Cir. 1965), cert. denied, 247 La. 1033, 175 So.2d 647 (1965); "only by evidence of the clearest character," Humble Oil and Ref. Co. v. Lewis, 150 So.2d 796, 800 (La. App. 3d Cir. 1963), aff'd, 245 La. 499, 159 So.2d 132 (1963); by proof which is "clear, positive, and of a legally certain nature," Succession of Elrod v. LeNy, 218 So.2d 83, 87 (La. App. 4th Cir. 1969); and by proof which is "strict, clear, positive and legally certain," Fleury v. Fleury, 131 So.2d 355, 357 (La. App. 4th Cir. 1961).
95. LA. CIv. CODE art. 2405: "At the time of the dissolution of the marriage, all effects which both husband and wife reciprocally possess, are presumed common effects or gains, unless it be satisfactorily proved which of such effects they brought in marriage, or which have been given them separately, or which they have respectively inherited."
96. See Slater v. Culpepper, 233 La. 1071, 1096, 99 So.2d 348, 357 (1957); Abraham v. Abraham, 230 La. 78, 92, 97, 87 So.2d 735, 740 (1958); Succession of Joseph, 180 So.2d 862, 865 (La. App. 3d Cir. 1965); see also Comment, 25 LA. L. Rev. 108, 144 (1964); Note, 33 Tul. L. Rev. 244 (1958), for a full discussion of commingling.
forced presumptions have been, in the writer's opinion, the greatest obstacles to a more efficient settlement of the community of gains. Too often these presumptions are unresponsive to the desires of the spouses, and too frequently they result in the unintended loss of separate assets. It is suggested that substantial justice would be better achieved by abolishing all presumptions and by subjecting, as does Article Eight, the classification of all things to the same requirements of proof as any other fact in a civil action, i.e., proof by a preponderance of the evidence. Since the problem of characterization arises only when the status of the property is put in issue, this article is couched in those terms.

Article Nine

This article introduces major alterations in the Civil Code rules concerning the accounting between the spouses at the termination of the community of gains. These rules provide basically that where separate assets of one spouse are enhanced in value by common labor, funds, or industry, the other spouse is entitled to reimbursement of half the increased value, provided the enhancement did not result in the ordinary course of events or due to a normal rise in value or to the chances of trade. Likewise, where community assets are enhanced by the

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97. This difficulty was pointed out in Hule, Separate Claims To Reimbursement From Community Property In Louisiana, 27 Tul. L. Rev. 143, 160-61 (1953):

"The evidence available at the dissolution of the marriage, when claims for reimbursement are commonly asserted, is often so fragmentary that it is hard to establish even the bare fact of ownership of separate funds at one time during the existence of the community. . . ."

"Only by education can litigation . . . be avoided. Married couples and those contemplating marriage must be taught what evidence to preserve and how to preserve it. Until it becomes a common practice to prepare and preserve reliable documentary evidence of at least the original separate assets and liabilities of each of the partners to the marital partnership, the separate estates of the spouses will continue to disappear into the community at a rapid rate. . . ."

98. La. Civ. Code art. 2408: "When the separate property of either the husband or the wife has been increased or improved during the marriage, the other spouse, or his or her heirs, shall be entitled to the reward of one half of the value of the increase or ameliorations, if it be proved that the increase or ameliorations be the result of the common labor, expenses or industry; but there shall be no reward due, if it be proved that the increase is due only to the ordinary course of things, to the rise in the value of property, or to the chances of trade."

separate funds of one spouse, that spouse is entitled to reimbursement of half the increased value.\textsuperscript{9}\textsuperscript{9} Article Nine changes the measure of reimbursement from half the enhanced value, which treats reimbursement as a return on an investment, to the amount of the assets used, which treats reimbursement as the repayment of a loan.\textsuperscript{100}\textsuperscript{100} By confining the inquiry to the amount of the funds expended, much of the difficulty in measuring the elusive dimensions of “enhanced value”\textsuperscript{101}\textsuperscript{101} will be circumvented. In line with this effort toward a more manageable accounting procedure, Article Nine denies reimbursement for labor expended by either spouse on separate assets of either spouse, regardless of whether the separate assets are enhanced in value. Under the legal community, the labor of each spouse alone is held to be community labor,\textsuperscript{102}\textsuperscript{102} and reimbursement of half the enhanced value of the separate asset is required. The writer submits that the labor of a spouse is compensated adequately by payment of wages or a salary, which falls into the community if the spouses are living together.\textsuperscript{103}\textsuperscript{103} No change is made in the settled principle that where separate assets of one spouse are used to satisfy an obligation chargeable, as between the spouses, to the community assets, that spouse is entitled to reimbursement from the other

\textsuperscript{9} See Pennison v. Pennison, 157 So.2d 628 (La. App. 4th Cir. 1963), cert. denied, 245 La. 585, 159 So.2d 290 (1964).

\textsuperscript{100} It should be noted that, at an earlier date, the amount of the funds expended was accepted as the measure of reimbursement. See Succession of McClelland, 14 La. Ann. 762 (1859); Depas v. Riez, 2 La. Ann. 30 (1847).

\textsuperscript{101} See In re Succession of Rusciana, 136 So.2d 509, 511 (La. App. 1st Cir. 1961), in which the court stated that four elements had to be proved in order to establish enhanced value: “A husband or wife claiming entitlement to one-half of the enhanced value of the other’s separate estate because of alleged increased value thereof resulting from their joint effort and industry during the marriage bears the burden of proving; (1) the improvements so made did in fact enhance the value of the separate property of the other; (2) such improvements were made with community funds or resulted from their joint industry, expense or labor; (3) the value of the separate property of the other spouse at the commencement and dissolution of the community (so that the enhanced value may be determined); and (4) that the enhancement did not result in the ordinary course of events or due to the property’s normal rise in value or the chance of trade.” Accord, Chrisentery v. Chrisentery, 124 So.2d 426 (La. App. 1st Cir. 1960). See also Comment, 37 Tul. L. Rev. 506, 522 (1963).

\textsuperscript{102} For holdings which define “common labor,” see Abraham v. Abraham, 230 La. 73, 87 So.2d 735 (1956) and Guillory v. Desormeaux, 166 So.2d 575, 578 (La. App. 3d Cir. 1964). See also Comment, 37 Tul. L. Rev. 506, 514, 520 (1963).

\textsuperscript{103} See, e.g., Beals v. Fontenot, 111 F.2d 956, 960 (5th Cir. 1940), in which the husband owned stock, as his separate property, in a corporation of which he was an officer. The wife argued that the increase in value of the separate stock was due to community labor. The court held that the increase in value belonged entirely to the husband, since the community had been adequately compensated by the salary paid the husband.
spouse of half the value of separate assets contributed.\textsuperscript{104} Where community assets are used to pay an obligation chargeable, as between the spouses, to a spouse's separate assets, that spouse is bound to reimburse the other spouse half the value of community assets used.\textsuperscript{105} The preface of Article Nine, "Except as otherwise provided by this contract," refers to the options contained in Articles Five and Six relative to requiring enforcement of the obligation of reimbursement.

\textit{Article Ten}

This article tracks Civil Code article 2404\textsuperscript{106} in that it adopts the concept that the husband is the head and master of the conventional community; he alone can incur obligations chargeable against it, and he has full administration and control of its effects and disposes of its revenues. His power is limited, just as it is under the legal regime, but several modifications are introduced. Paragraph One incorporates both the Civil Code provision that the husband can dispose by onerous title of immovables of the community, and the exception that where the property stands in the name of the wife her written consent is necessary.\textsuperscript{107} But it rejects the Civil Code provision that where title to immovables stands in the names of both husband and wife, the wife may file a declaration by authentic act that her written consent is required.\textsuperscript{108} A major change is made by Paragraph


\textsuperscript{106} LA. Civ. CODE art. 2404 reads in part as follows: "The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by onerous title, without the consent and permission of his wife."

\textsuperscript{107} Id. \textit{See also} LA. Civ. CODE art. 2334, which reads in part as follows: "But when the title to community property stands in the name of the wife, it cannot be mortgaged or sold by the husband without her written authority or consent."

\textsuperscript{108} LA. Civ. CODE art. 2334: "Where the title to immovable property stands in the names of both the husband and wife, it may not be leased, mortgaged or sold by the husband without the wife's written authority or consent where she has made a declaration by authentic act that her authority and consent are required for such lease, sale or mortgage and has filed such declaration in the mortgage and conveyance records of the parish in which the property is situated." \textit{See also} LA. R.S. 9:2801-04 (1950), which allow the wife to make and record a declaration that certain prop-
Two, which stipulates that the husband can make no inter vivos gratuitous disposition of the immovables or incorporeal movables of the community without the consent of the wife. Under the legal regime, he cannot make a gratuitous disposition of the immovables or of the whole or a quota of the movables, unless it be for the establishment of the children of the marriage; but he can dispose of the community movables by a gratuitous and particular title for the benefit of all persons. The concurrence of the wife is urged as a reasonable requirement in the two instances mentioned in Paragraph Two. Furthermore, as to the donation of incorporeal movables, it is considered a necessary concomitant of the transformation of the form of wealth in our society from primarily immovable to predominantly movable.


110. La. Civ. Code art. 2404, which reads in part: "He can make no conveyance inter vivos, by a gratuitous title, of the immovables of the community, nor of the whole, or of a quota of the movables, unless it be for the establishment of the children of the marriage.

"Nevertheless he may dispose of the movable effects by a gratuitous and particular title, to the benefit of all persons."

See Oliphant v. Oliphant, 210 La. 781, 54 So.2d 18 (1951), which defines a "quota of the movables" to mean a fraction or a percentage.

111. La. Civ. Code arts. 1536 and 1538 subject donations of immovables and of incorporeal movables to the stringent form of an authentic act. It is suggested that it is not an unreasonable demand to require that the wife consent to any donation of community immovables or community incorporeal movables. Corporeal movables could still be donated by authentic act (art. 1538) or by manual gift (art. 1539) without the consent of the wife. Where the consent of the wife is required, she would bear an easier burden in attacking dispositions intentionally made by the husband to her detriment, for in the final accounting between the spouses she need only show that her consent was not secured and that she had not ratified the act. This burden is considerably lighter than that imposed by an allegation of fraud, which is the only recourse available to the wife where her consent is not required.

In several areas, later legislation has superseded these Civil Code provisions as to the form of donations. La. R.S. 1521 (1958) provides that these Civil Code requirements are not applicable to insurance policies, and a recent decision has held that the Uniform Stock Transfer Act, La. R.S. 12:621-43 (1968), supersedes the Civil Code rules on the form of donations. See Succession of Hall, 198 So. 511 (1967), cert. denied, 250 La. 974, 200 So.2d 664 (1967). See generally Oppenheim, The Donation Inter Vivos, 43 Tul. L. Rev. 751 (1969).

112. See especially Succession of Geagan, 212 La. 574, 599-600, 33 So.2d 118, 126 (1947), in which the wife claimed the decedent donated the community stock to his son in fraud of her rights. The court stated: "In our opinion the wife should not have to prove fraud and injury in order to set aside gratuitous dispositions of valuable movable property. In modern times, when movable property may and often does constitute the great bulk of the wealth, the husband should have no more right to dispose of movables gratuitously without the consent of his wife than he has to dispose of immovables. It appears to be a matter of sufficient importance to warrant the
Paragraph Three simply adopts the definition of "gratuitous title" found in the Civil Code;\textsuperscript{113} Paragraph Four grants the wife a cause of action against the husband or his heirs at the termination of the community for the recovery of her interest when the husband has made a disposition without her consent, where required, or in fraud of her rights.\textsuperscript{114} Paragraph Five is essential to the continuous administration of the community, for it permits the husband to administer the community assets without his wife's consent, where required, and where she is an absentee or is by reason of infirmity incapable of making an informed judgment. This guarantees the husband full powers of administration without having to be appointed his absent wife's curator, with the attendant restrictions,\textsuperscript{115} and without the necessity of having his wife interdicted.\textsuperscript{116} It also fills a hiatus in the law by its application when the wife is committed to a mental institution but is not interdicted.\textsuperscript{117}

\textbf{Article Eleven}

Article Eleven accords with the rules governing the legal Legislature's giving this provision of our law serious consideration." See also the following observations made on the decision in Geagan, Comment, 33 Tul. L. Rev. 811, 812 (1959): "One effect of this decision would be to permit the husband to transform immovable community property into movable property thereby escaping the strict limitation on donations of immovable community property. A deceitful husband, by inter vivos donation, might thus defeat the wife's community interest. At the least, he would have shifted to the wife the burden of protecting her interest by proving his fraudulent intent to injure her community interest."

\textsuperscript{113} \textsc{La. Civ. Code} art. 2404, which reads in part as follows: "A gratuitous title within the contemplation of this article embraces all titles wherein there is no direct, material advantage to the donor."

\textsuperscript{114} \textit{Id.}, which states in part: "But if it should be proved that the husband has sold the common property, or otherwise disposed of the same by fraud, to injure his wife, she may have her action against the heirs of her husband in support of her claim in one-half of the property, on her satisfactorily proving the fraud." This article allows the wife this action only upon the termination of the community in support of her claim for her half interest. In this respect it is consistent with \textsc{La. R.S.} 9:291 (1950), which provides that a wife may not sue her husband during marriage, except for the three instances specified therein. See also note 108 supra which points out the easier burden of proof imposed upon the wife where the disposition was made without her required consent.

\textsuperscript{115} See \textsc{La. Civ. Code} arts. 47-55.

\textsuperscript{116} See \textsc{La. Civ. Code} arts. 389-426.

\textsuperscript{117} See Slovenko and Super, \textit{Commitment Procedure in Louisiana}, 35 Tul. L. Rev. 705, 719 (1961): "Under the Louisiana Mental Health Law [\textsc{La. R.S.} 28:1-205 (1950)], commitment in itself does not deprive the patient of his civil rights, such as the right to make contracts and gifts. It is the purpose of an incompetency proceeding (interdiction) to adjudge a person incompetent and to appoint a curator (guardian) to control his property and administer his affairs. Commitment, while it involves confinement in an institution, does not in itself take from the patient the care and management of his estate. . . ."
community in providing that the wife's interest in each community asset is one of full ownership from the moment of acquisition. This interest is subject to the administration and control of the husband in the manner specified in Article Ten.\footnote{118} The provision that the wife cannot act for or in the place of her husband unless authorized by him is a recognition of the husband's position as head and master of the community and is consistent with the holdings of the Louisiana courts in regard to the power of the wife to bind the legal community.\footnote{119} The writer suggests, in addition to this, the possible existence of a custom by which the wife binds her husband as the head of the community.\footnote{120} In providing that the wife shall have full administration of community assets in the continued absence of her husband, or where because of infirmity he is himself incapable of such administration, Article Eleven promotes uninterrupted control of community assets by relieving the wife of the necessity of being appointed her absent husband's curator,\footnote{121} or of having her husband interdicted.\footnote{122} It also allows administration by the wife where her husband is committed to a mental institution, but is not interdicted.\footnote{123} The authority of the wife in the absence of her husband lasts until she is forced to elect whether to continue the community or to allow her husband's presumptive heirs to be put into provisional possession of his estate.\footnote{124}

**Article Twelve**

Article Twelve incorporates the basic language of Civil Code article 2403\footnote{125} in providing that debts incurred during marriage are properly chargeable to the community assets, but a

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  \item \footnote{118} Azar v. Azar, 239 La. 941, 946, 120 So.2d 485, 487 (1960); Thigpen v. Thigpen, 231 La. 206, 226, 91 So.2d 12, 19 (1956); Commercial Credit Plan, Inc. v. Perry, 186 So.2d 900 (La. App. 1st Cir. 1966), cert. denied, 249 La. 709, 190 So.2d 231 (1966).
  \item \footnote{119} For a very full discussion of this entire area of community property law, see Comment, 30 La. L. Rev. 441 (1970). See also Comment, 25 La. L. Rev. 201, 234-40 (1964). La. Civ. Code arts. 2985-3034 contain the rules applicable to mandates, and La. Civ. Code art. 1787 permits the wife to act as the mandatory of her husband.
  \item \footnote{121} See note 115 supra.
  \item \footnote{122} See note 118 supra.
  \item \footnote{123} See note 117 supra.
  \item \footnote{124} See La. Civ. Code arts. 57-75, especially art. 64.
  \item \footnote{125} La. Civ. Code art. 2403: “In the same manner, the debts contracted during the marriage enter into the partnership or community of gains, and must be acquitted out of the common fund, whilst the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.”
\end{itemize}
fundamental departure is made from decisions interpreting that Civil Code article as applying to third persons and as granting community creditors preferential treatment in proceeding against community assets. \(1^{26}\) Article Twelve unequivocally explains that the requirement of satisfying obligations incurred during marriage out of community assets is only an accounting procedure between husband and wife which in no way alters the recourse of creditors against the spouse or spouses who personally incurred the obligation. This accounting principle is the basis for the rules in Article Nine regarding reimbursement, which essentially inquire as to whether an obligation was properly chargeable to the community assets or separate assets out of which it was satisfied. That these precepts were at one time understood in Louisiana is illustrated by an early decision, \(1^{27}\) but since that decision, these principles have been ignored. The reference to obligations incurred by the husband, or by the wife acting for or in the place of her husband is merely a recognition of the manner in which obligations chargeable to the community assets may be incurred.

Paragraph One includes a basic exception to the broad language of Article Twelve by stipulating that obligations incurred in the interest of the separate assets of one spouse are not to be imposed on both spouses, in the final accounting upon dissolution of the community, by being charged against the community assets. Rather, they are to be satisfied, as between the spouses, out of the separate assets of the spouse benefited. \(1^{28}\) Paragraph Two abolishes the judicially instituted rule that the delicts of the wife are to be satisfied out of the community assets if she was on a community mission at the time of the injury. \(1^{29}\) It provides uniformly that, as between the spouses,


\[1^{27}\] In Dickerman v. Reagan, 2 La. Ann. 440 (1847), the following was said: "It is true, that debts contracted during the marriage enter into the community of gains, and must be acquitted out of the common fund. C.C. art. 2372 [article 2403, in the Louisiana Civil Code of 1870]. But this provision applies to the partners alone, and regulates their rights between themselves, upon a settlement of the community at its dissolution. It has no application to creditors, and does not deprive them of their recourse against the wife, during the marriage, for debts contracted for her separate advantage, and for which she is individually liable." See also Comment, 30 LA. L. REV. 441, 447-48 (1970).


liability for the delicts of either spouse is chargeable to that spouse's separate assets.

Paragraph Three is an adaptation of several Civil Code principles imposing personal liability on the wife for all\textsuperscript{130} or a portion\textsuperscript{131} of the necessary expenses of the marriage. These obligations are recognized as being chargeable to the community assets, but where the community assets are not sufficient to satisfy these obligations, the separate assets of the spouses are available for this purpose. This provision is the sole instance in which reimbursement is not allowed for satisfaction of obligations chargeable to community assets out of separate assets.\textsuperscript{132} As to third persons, this liability is personal and solidary,\textsuperscript{133} but as between the spouses, it is due in proportion to the relative amount of the separate assets owned by each during the period when the obligations are due.\textsuperscript{134} Payment by either spouse in excess of this proportionate liability gives rise to a claim \textit{inter sese} for reimbursement at the final accounting between the spouses. It should be noted that Paragraph Three

\begin{itemize}
\item \textsuperscript{130} LA. CIV. CODE art. 2435, which applies where the wife has been granted a separation of property during marriage, provides: "The wife, who has obtained the separation of property, must contribute, in proportion to her fortune and to that of her husband, both to the household expenses and to those of the education of their children. She is bound to support those expenses alone, if there remains nothing to her husband." \textit{See LA. CIV. CODE} arts. 2425-37 for the principles governing the separation of property.
\item \textsuperscript{131} LA. CIV. CODE art. 2389 governs where the wife has brought no dowry into marriage, but has retained all of her property as paraphernal, or separate, property. It states: "If all the property of the wife be paraphernal, and she have reserved to herself the administration of it, she ought to bear a proportion of the marriage charges, equal, if need be, to one half her income." \textit{La. CIV. CODE} art. 2335 controls where the spouses have contracted that there should be no community of property between them, but that they should remain separate in property. It provides: "Each of the married persons separate in property, contributes to the expenses of the marriage in the manner agreed on by their contract; if there be no agreement on the subject, the wife contributes to the amount of one-half of her income."
\item \textsuperscript{132} Hule, \textit{Separate Claims to Reimbursement from Community Property in Louisiana}, 27 Tul. L. Rev. 143, 159 (1953).
\item \textsuperscript{133} Obligations in solido are governed by LA. CIV. CODE arts. 2077-2107.
\item \textsuperscript{134} The standard of liability established by LA. CIV. CODE art. 2435 has been adopted in Article Twelve, Paragraph Three in that the liability of the wife, vis-a-vis her husband, may extend to the whole of the obligations. Third persons may proceed against either spouse for total satisfaction, without regard to the proportionate liability between the spouses themselves, which is a matter to be settled by the spouses through the principle of reimbursement in the final accounting. But the spouses' liability \textit{inter sese} may be total. For example, if the husband has no separate assets, the wife's proportionate liability is for the whole of these obligations. \textit{But see Hule, Separate Claims to Reimbursement from Community Property in Louisiana, 27 Tul. L. Rev. 143, 195 (1953)}, in which the writer urges rejection of the standard contained in article 2435 where there is a community of gains between the spouses.
\end{itemize}
avoids the multitude of phrases used in the Civil Code to describe the necessary expenses of the marriage, and, instead, utilizes the concept of the "alimentary obligations" due between the spouses themselves or between the spouses and their legitimate children. Alimentary obligations owed by one spouse to his ascendants or to his illegitimate children are to be satisfied ultimately out of the separate assets of that spouse alone. Consequently, these particular obligations are not mentioned in Paragraph Three.

Article Thirteen

This article, in considering the liability of the spouses to third persons, recognizes the accepted principle that community obligations are to be satisfied by the husband, even out of his separate assets. The wife is liable to third persons for community obligations only if she has made herself personally liable for them. Article Thirteen also provides that antenuptual creditors of the husband may proceed against him and against the community assets during marriage for satisfaction; in this respect it nullifies the result reached by the Supreme Court of Louisiana in United States Fidelity and Guaranty Co. v. Green.

In making this departure, the writer is in full agreement with

141. 252 La. 227, 234, 210 So.2d 328, 331 (1968). That decision held that antenuptual creditors of the husband could not proceed against the community assets for satisfaction, and reversed prior decisions uniformly holding that Civil Code article 2403 is to be read with article 2404, which gives the husband such broad powers in alienating the community assets that his antenuptual creditors can proceed against the community assets. See, e.g., Fazzio v. Krieger, 226 La. 511, 76 So.2d 713 (1954); Heirs of Gee v. Thompson, 41 La. Ann. 348, 352, 6 So. 548, 549 (1888); Stafford v. Sumrall, 21 So.2d 83, 85 (La. App. 1st Cir. 1945).
prior statements that Green is unsound and unduly harsh on creditors.\footnote{142. See Note, 15 Loyola L. Rev. 166 (1969); Note, 43 Tul. L. Rev. 376 (1969).} Of course, as between the spouses, the wife's half interest in community assets is fully protected, since she is entitled to reimbursement at the dissolution of the community.\footnote{143. In this regard, see The Work of the Louisiana Appellate Courts for the 1968-1969 Term—Matrimonial Regimes, 30 La. L. Rev. 219, 220-21 (1969), in which the writer points out, in his criticism of the Green decision, that the Civil Code regulation of the community is an interspousal matter only, which produces effects as to third persons only indirectly by altering the patrimonies of the contracting parties. The wife's creditors cannot reach the community assets because her interest in them vis-a-vis her husband is not part of her patrimony as far as they are concerned. The husband's creditors may reach the community assets because they are part of his patrimony, so far as they are concerned, whatever his interest in them vis-a-vis the wife. As between the spouses, however, the wife does have a protectable interest in the community assets. See also Note, 29 La. L. Rev. 409 (1969). Both of the cited writers not only criticize the result reached in Green, but also proclaim a misapplication of basic principles of matrimonial regime law.} The last clause of Article Thirteen imposes on the spouses solidary liability to third persons for the alimentary obligations specified in Article Twelve, Paragraph Three. The reason for this last clause is simple. This marriage contract enables the spouses to more easily acquire and maintain separate assets. Since the husband has always had to satisfy community obligations out of his separate assets, it would be manifestly unfair both to the husband and to creditors of community obligations to permit the wife to increase her separate assets at the expense of the community and not be charged with sharing personal responsibility with her husband for at least the most elementary expenses of the marriage, where the community assets are inadequate.

\textit{Article Fourteen}

This article adopts the basic scheme of the Civil Code for the division of community assets and liabilities upon the dissolution of the community. The wife is entitled, by her unconditional acceptance of the community and resulting assumption of personal liability for half the community obligations,\footnote{144. La. Civ. Code art. 2409: "It is understood that, in the partition of the effects of the partnership or community of gains, both husband and wife are to be equally liable for their share of the debts contracted during the marriage, and not acquitted at the time of its dissolution." The wife is personally liable for half the community obligations not only to third persons, but also to her husband, or to his heirs, if he or they are forced to pay all of the community obligations. The husband, or his heirs are liable to third}
in half the community assets.\textsuperscript{145} She avoids liability by renouncing the community\textsuperscript{146}—in which case she loses all rights to the things which composed the former community\textsuperscript{147}—or by accepting with benefit of inventory—in which case she limits her liability to half the value of the community assets.\textsuperscript{148} The provision that the wife is entitled of right and without the necessity of furnishing security to half the community assets and to an immediate partition of the same is inserted to remove all doubt that the wife need not await the payment of community obligations before she can obtain a partition. This should avoid the results of many Louisiana decisions which hold that the community is "fictitiously continued" under the administration of the husband or his administrator or executor for the payment of community obligations.\textsuperscript{149} To obtain a partition, the wife need only assume personal responsibility for half the community obligations by unconditionally accepting the community, unless she has bound herself personally for a greater amount.\textsuperscript{150}

\textit{Conclusion}

The articles of the above marriage contract suggest change in many areas of community property law which, by their very unworkability, demand change. They are not recommended as the solution to the problems; rather, they are submitted only as a solution. What the writer seeks, above all, is to promote a

\textsuperscript{145}\textit{LA. Civ. Code} art. 2406, which reads in part as follows: "The effects which compose the partnership or community of gains, are divided into two equal portions between the husband and the wife, or between their heirs, at the dissolution of the marriage . . . ."

\textsuperscript{146}\textit{LA. Civ. Code} art. 2410: "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

\textsuperscript{147}\textit{LA. Civ. Code} art. 2411: "The wife, who renounces, loses every sort of right to the effects of the partnership or community of gains. But she takes back all her effects, whether dotal or extradotal."

\textsuperscript{148}La. R.S. 9:2821 (1950): "At the dissolution for any cause of the marital community, the wife may accept the community of acquets and gains under the benefit of inventory, in the same manner and with the same benefits and advantages as are allowed heirs to accept a succession under the benefit of inventory." \textit{See generally} La. Civ. Code arts. 1032-68, which govern the acceptance of a succession with benefit of inventory.


\textsuperscript{150}\textit{See} Comment, 30 La. L. Rev. 603 (1970), in which the writer fully discusses this area of the law.
heightened awareness of the different areas in which variation is possible; the provisions recommended above must be understood in this manner, or they can not be understood at all.

Joseph E. LeBlanc, Jr.

THE POSSESSOR'S RIGHT TO COMPENSATION*

A possessor of land is almost certain to incur some expense during his possession in an effort to improve and preserve the land. The land may be cleared and prepared for habitation and cultivation; ditches may be dug; repairs and additions may be made; or completely new structures may be erected. The possessor may pay the taxes on the land and obtain insurance to protect his investment. If the possessor is subsequently evicted by one who proves to be the rightful owner, problems arise when the possessor claims compensation for some or all of his improvements and expenses.

At present some uncertainty exists as to exactly what improvements and expenses are subject to compensation and under what circumstances compensation should be allowed. The purpose of this Comment is to examine and determine the rights of the possessor who has been evicted by the rightful owner\(^1\) to claim reimbursement for his improvements and expenses under the provisions of articles 508, 2314, and 3453 of the Louisiana Civil Code. These articles specifically apply to possessors evicted through judgments obtained in possessory\(^2\) and petitory actions.\(^3\) The discussion will, however, touch upon other articles which allow possessors evicted through other types of action (such as collation in kind,\(^4\) warranty,\(^5\) and lesion beyond moiety\(^6\) ) to recover similar expenses. Although the good or bad faith of the possessor\(^7\) will bear upon his right to recover, no detailed discussion of these elements will be undertaken. Finally, no attempt will be made to examine the possessor's

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1. This discussion is limited to the rights of possessors as distinguishable from other third persons on the land, i.e., trespassers, intermeddlers, etc.


