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## French Reforms in Domestic Law

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## FRENCH REFORMS IN DOMESTIC LAW

Through a series of recent acts the French have changed their traditional Civil Code provisions to reflect recognition of equal rights and responsibilities for women.<sup>1</sup> These changes, dealing primarily with authority within the family and the power of the spouses to manage their property, are of special interest in Louisiana since many represent alterations of Civil Code articles parallel to our own and illustrate an alternative found compatible with a similar civilian tradition.

### *Family Residence*

In 1970 the French National Assembly rejected a paternalistic tradition of family authority and substituted a system more responsive to the evolving demand for equality between the spouses.<sup>2</sup> Under the 1804 French Code the wife was obligated to live with her husband wherever he chose to reside, but the husband's reciprocal obligation to receive her was not added until 1938.<sup>3</sup> The 1970 law states that the spouses are mutually obliged to a common life and that the residence of the family should be at the place chosen by their common accord. However, it further provides that the husband's decision will prevail in case of disagreement,<sup>4</sup> thereby making the impact of the new provision somewhat illusory.

Nevertheless, the new law may have reduced the husband's control by increasing the number of situations in which the wife can obtain legal authorization to establish a separate residence.<sup>5</sup> Previously, the wife was required to prove that the husband's choice of residence presented physical or moral dangers to the family; under the new law she need only show grave inconveniences caused by her

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1. Law of 18 Feb. 1938 removing legal incapacities of married women; Law of 22 Sept. 1942 decreasing the wife's incapacities and establishing the regime of *biens réservés*; Law of 13 July 1965 changing the legal matrimonial regime from community of acquets and movables to community reduced to acquets and restructuring rights and obligations of spouses concerning management of marital expenses; Law of 4 June 1970 giving parents more equal responsibility in care and education of children.

2. See Law no. 70-459 of 4 June 1970.

3. FRENCH CIV. CODE art. 214 (as amended in 1938, prior to revision in 1970) (resulting in a rule very similar to that of LA. CIV. CODE art. 120); 1 WEILL, DROIT CIVIL n° 314 (3<sup>ème</sup> ed. 1972) [hereinafter cited as WEILL].

4. FRENCH CIV. CODE art. 215.

5. The effectiveness of this provision is severely questioned by several commentators, noting that the domicile of a wife with an authorized separate residence remains that of her husband, according to FRENCH CIV. CODE art. 108. R. LEGEAIS, L'AUTORITÉ PARENTALE (ETUDE DE LA LOI NO. 70-459 DU 4 JUIN 1970 ET DES TEXTES QUE L'ONT COMPLÉTÉE) 36 [hereinafter cited as LEGEAIS].

husband's decision.<sup>6</sup> The authorization of the wife's separate residence is comparable to a legal separation in that it suspends the obligation of the communal life and converts the obligation of support and assistance to one of a solely financial nature, which may be enforced like any other alimony obligation.<sup>7</sup> However, unlike a legal separation, the authorization does not change the wife's domicile from that of her husband.<sup>8</sup>

### *Exercise of Parental Authority*

Perhaps the most interesting change effected by the new law is its modification of the authority exercised by parents over their children.<sup>9</sup> Prior to 1970 this authority, termed "paternal power,"<sup>10</sup> belonged to both parents during the marriage but was exercised by the father in his role as head of the family.<sup>11</sup> Consequently, the mother was required to seek the father's permission for all acts concerning the child, including everyday functions considered usual acts of parenthood.<sup>12</sup> The 1970 law removes the husband as head of the household and creates a new system of "parental authority," placing the parents in more equal positions of authority over their children. It requires that the parents exercise this authority concurrently<sup>13</sup> and recognizes that although parents should be encouraged to act together, each should be authorized to act separately in performing

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6. FRENCH CIV. CODE art. 215.

7. WEILL n ° 322, 323. For the law concerning procedure for enforcing alimony obligations, see Law no. 73-5 of 2 Jan. 1973, which is located following C. Civ. art. 211 (71 re ed. Petis Codes Dalloz 1973-74).

8. FRENCH CIV. CODE art. 108; LEGEAIS 36.

9. The Law of 4 June 1970 made extensive changes in the entire area of authority over minors, dealing with powers and responsibilities comprising parental authority, its devolution in case of termination of the marriage or malfeasance by the parents, measures for educative assistance when the health or security of the child is endangered, possibilities of delegating or being deprived of parental authority and application of the law in various specific cases. FRENCH CIV. CODE arts. 213, 215, 371-87, 389, 1384; FRENCH CODE DE LA FAMILLE ET DE L'AIDE SOCIALE arts. 46, 49, 50, 64 which is located following C. Civ. art. 487 (71 re ed. Petis Codes Dalloz 1973-74); Law no. 70-459 of 4 June 1970 arts. 6-18 which is located following C. Civ. art. 387.

10. Although the French term "puissance paternelle," translated "paternal power" is similar to the term "paternal authority" used in the Louisiana Civil Code, Louisiana jurisprudence has interpreted the latter term as synonymous with parental authority, and as exercised simultaneously by both parents during their marriage, but subject to paternal preeminence in case of difference. Cf. LA. CIV. CODE art. 216.

11. FRENCH CIV. CODE art. 213 (as it appeared prior to 1970).

12. Colombet, *Commentaire de la loi du 4 juin 1970 sur l'autorité parentale*, [1971] D. Chron. [hereinafter cited as *Colombet*].

13. FRENCH CIV. CODE art. 372.

ordinary parental functions when their mutual action is impossible or impractical.<sup>14</sup>

This authorization derives from a presumption in favor of third persons in good faith that a parent acts with the consent of the other when performing any ordinary act of parental authority concerning the person of the child.<sup>15</sup> This presumption, coupled with the power of each spouse to bind the community for ordinary expenses concerning the children,<sup>16</sup> provides practical guarantees to third persons necessary to effectuate the law's initial grant of equal authority to the parents. Though the phrase, "an ordinary act of parental authority,"<sup>17</sup> is somewhat vague and will require judicial interpretation to determine its exact scope,<sup>18</sup> many acts previously requiring written permission of the father, such as passport application, registration in a school or recreational camp and authorization for minor surgical operations, can now be performed by either parent.<sup>19</sup> The negative implication of the presumption is that extraordinary acts of parental authority must be performed by the parents jointly and that acts concerning the patrimony of the child can be performed only by the parent having legal administration of the child's estate, a right usually exercised by the father. Furthermore, the presumption of accord can be dispelled by any indication of the other parent's opposition, though the opposing parent bears the burden of proving that a third party involved knew of his opposition.<sup>20</sup>

Another important feature of the new law is the procedure devised to resolve disagreements between the parents as to the proper exercise of their authority. In such situations the parents are bound to follow whatever practices they have followed previously;<sup>21</sup> when they cannot agree on the existence or applicability of a prior practice,

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14. LEGAIS 35. This observation is based on an interpretation of FRENCH CIV. CODE arts. 372 and 372.2. The latter article establishes a presumption in favor of third persons in good faith that a parent performing any ordinary act of parental authority concerning the person of the child has the consent of the other parent. *See also* text at notes 15-20 *infra*.

15. FRENCH CIV. CODE art. 372.2.

16. *Id.* art. 220.

17. *Id.* art. 372.2 (trans. supplied).

18. Commentators point out that French legislation is traditionally drafted in broad language to allow more practical application by the courts. LEGAIS 86.

19. WEILL n ° 730; *Colombet* 13.

20. *Id.*

21. Professor Cornu has compared this system of resolving differences by reliance on prior practices to the principle in property law which favors the right of the possessor and forces the challenger of his possession to bear the burden of explaining his disruption of the status quo. LEGAIS 82-83.

either may seek a decision from a special judge of tutorships.<sup>22</sup> The judge must consider any application made to him, but like the spouses, he is bound by any prior practice that he finds to have existed,<sup>23</sup> unless he determines that it is contrary to the interest of the family or the child involved.<sup>24</sup> Furthermore, the parent bringing the action has the burden of proving, as a prerequisite to the judge's intervention, that no prior practice has ever been established or that the practice is harmful or inapplicable to the situation in question.<sup>25</sup> This procedure reduces judicial interference in family matters, encourages accord between parents who prefer to follow a previously acceptable practice rather than display their family disagreements before a judge and provides a rule to follow pending judicial decision.<sup>26</sup>

The 1970 law also establishes mutual responsibility for a child's tortious conduct. In contrast to the prior law, which like its Louisiana equivalent,<sup>27</sup> provided that the father was solely responsible for the torts of his minor child living at home,<sup>28</sup> the revised French article holds the parents solidarily liable as long as both have custody over the child.<sup>29</sup> The practical result of this modification is that the mother's separate property becomes obligated for payment of any damages caused by the child, in addition to community assets and the father's separate property.

Despite the great strides made by the 1970 law toward equalization of the spouses' roles regarding their children, the legal administration of the children's estates remains under the control of the

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22. The *juge des tutelles*, a magistrate of the lowest local civil court (*tribunal d'instance*), has general power of surveillance over the legal administrations and tutorships in his district. The institution was established in Law no. 64-1230 of 14 Dec. 1964. WEILL n ° 774.

23. The judge must also take into consideration any previous agreements made between the spouses, including those in the marriage contract, unless one of the spouses can justify the revocation of his consent. Written proof of the agreement is not required. FRENCH CIV. CODE art. 376.1; LEGAIS 79.

24. LEGAIS 81; WEILL n ° 731.

25. LEGAIS 83.

26. *Id.* at 80.

27. LA. CIV. CODE art. 2318.

28. FRENCH CIV. CODE art. 1384 (4th unnumbered paragraph, as it appeared prior to 1970).

29. *Id.*, as amended by Law of 4 June 1970. The right of custody is considered in French law as an aspect of parental authority; therefore, in the ordinary family situation, both parents exercise it together. However, in cases of legal separation, establishment of a separate residence for the wife, divorce, or death of one of the spouses, the right of custody can be isolated from other aspects of parenthood (*i.e.*, administration of the child's estate) and exercised by one of the parents alone or a third person. WEILL n ° 711-13.

father during the marriage,<sup>30</sup> though concurrence of the mother is required for all acts of alienation.<sup>31</sup> The National Assembly recognized the inequality of the parents in this area during debates on the 1970 law, yet left the administration with the father to avoid the complexity of dual management of property when dealing with third persons.<sup>32</sup>

### *Organization of Family Finances*

#### *Elements of the New Regime*

As in Louisiana, French law traditionally has viewed the arrangement of family finances as a matter of contract to be agreed upon by the spouses before marriage and has provided a legal matrimonial regime which spouses are presumed to adopt if they make no contrary agreement.<sup>33</sup> The French Civil Code of 1804 established the legal matrimonial regime of the "community of acquets and movables" which was completely under the control and management of the husband. It was composed of all movable property owned by either spouse whether acquired before or during marriage, all property acquired by either spouse during marriage other than by succession or donation and all fruits or profits derived from the separate property of each spouse. The husband as head of the community administered the wife's separate property as usufructuary.<sup>34</sup> In 1907 the wife was given complete control over all gains and salaries acquired in her exercise of a separate profession, as well as all property acquired with these gains and salaries. Termed the wife's *biens réservés* (reserved property), this property was technically part of the community and was treated as such upon dissolution of the marriage.<sup>35</sup> A second change in 1942 gave the wife the right to bind the community for

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30. See Law no. 64-1230 of 14 Dec. 1964, which completely reorganized the administration of the child's patrimony and the establishment of tutorships.

31. FRENCH CIV. CODE art. 383; WEILL n° 773. If the mother refuses to consent to some act requiring her concurrence, the father may appeal to the judge of tutorships for a ruling dispensing with the necessity of her consent. *Id.* at 774.

32. WEILL n° 773. The Assembly further determined that the mother could probably find sufficient financial support for any acts of parental authority in her ability to bind the community for such acts under the 1965 revision of FRENCH CIV. CODE art. 220, giving both spouses the right to contract alone for ordinary expenses of the household and the children. LEGAIS 86.

33. FRENCH CIV. CODE art. 1387; 4 MAZEAUD, LEÇONS DE DROIT CIVIL n° 32-39 [hereinafter cited as MAZEAUD]; Weill n° 324. See also LA. CIV. CODE art. 2325.

34. MAZEAUD n° 91, 130, 319.

35. Law of 13 July 1907; MAZEAUD n° 25.

ordinary household expenses by establishing her as the husband's legal representative in such transactions.<sup>36</sup>

In 1965 the French National Assembly completely revised the nature of the legal regime, as well as the basic requirements for all regimes.<sup>37</sup> In lieu of the prior community of acquets and movables, the new law substituted a community of acquets alone as the legal matrimonial regime. The community was still administered by the husband, but the definition of *acquets* was significantly restricted by allowing each spouse to retain control of his gains and salaries after discharging the expenses of the marriage.<sup>38</sup> This provision seems to have made no practical change in the powers of the spouses because the new law specifically continued the regime of *biens réservés* which guaranteed the wife's power to administer not only her gains and salaries but also property acquired with her gains and salaries from a separate profession.<sup>39</sup>

The new law also provides a presumption in favor of third persons in good faith dealing with an individual spouse that each has the power to contract concerning movables in his possession, except those related to the family lodging or which by their nature relate to the other spouse.<sup>40</sup> This presumption may be of more practical importance than the grant of individual control, since prior to 1965 creditors were often reluctant to deal with any married woman without her husband's authority, regardless of her powers under the regime of *biens réservés*.<sup>41</sup>

In further modifying the definition of *acquets*, the new legal re-

36. Law of 22 Sept. 1942; MAZEAUD n° 25. This law merely confirmed the jurisprudential rule that accorded the wife a tacit mandate from her husband to perform the ordinary acts of household management. Both the jurisprudence and the 1942 law allowed the husband to revoke this mandate, but such revocation was valid only if the third person involved had personal knowledge of it.

37. Law no. 65-570 of 13 July 1965. An initial attempt at revision of the matrimonial regime laws was made in 1959, but when the two houses of the National Assembly failed to reach an agreement, the project was withdrawn. MAZEAUD n° 93.

38. FRENCH CIV. CODE art. 224 as amended by Law no. 65-570 of 13 July 1965. Though the commentaries are split as to the effect of this provision, the jurisprudence tends to classify gains and salaries as part of the community to be divided between the spouses upon dissolution of the marriage, even though they remain under the complete control of the respective spouses during the marriage. *Epoux Digneaux*, D.1970.434 (Trib. de gr. inst. Bordeaux, 17 June 1969 and note by Morin), [1970] J.C.P. II. 16561 (and note by Courturier), *Gaz. Pal.* 1969.2.183 (and note by Baranger); (Cour d'appel de Bordeaux, 1re Ch., 5 Jan. 1971) D.1971.155 (and note by Morin), [1971] J.C.P. II. 16721 (and note by Patarin).

39. FRENCH CIV. CODE arts. 224, 1401, 1425; MAZEAUD n° 25, 129.

40. FRENCH CIV. CODE art. 222; MAZEAUD n° 25-3 bis.

41. MAZEAUD n° 25.

gime excludes from the community the fruits and profits realized from the spouses' separate property, though any goods purchased with such fruits or profits belong to the community. However, unlike the modification allowing each spouse control of his gains and salaries, this provision is not mandatory and can be altered by the marriage contract.<sup>42</sup>

In spite of the extensive reduction of the community by the 1965 law, it retains much of its original importance in practice because of the continued strength of the presumption that any property belonging to the spouses is community unless proved to be separate.<sup>43</sup> This presumption can be defeated only if a spouse fastidiously maintains the distinct nature of his separate property and preserves proof of its origin. Although this presumption supposedly operates against third persons who must assume that property held by a spouse is community unless proof of its separate nature is presented, such application seems likely to be seriously undercut by the more recently established presumption relative to third persons that a spouse has the power to transact with any movables in his possession.<sup>44</sup>

#### *Expenses of the Marriage*

Because the spouses' gains, salaries and revenues from separate property, certainly the greatest part of the family income in most cases, no longer fall immediately into the community, the expenses of the marriage must be met by some other plan. Though the spouses are free to choose their own method for meeting these expenses, the new law provides that where no contrary agreement is made, the spouses should each contribute according to their respective abilities and that all their property is liable to this obligation.<sup>45</sup> In most cases the percentage to be contributed by each spouse is not a problem since family expenses are usually as great as the entire incomes of the spouses. However, when spouses' resources exceed family expenses and they cannot agree on the amount to be contributed by each,

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42. FRENCH CIV. CODE arts. 1401, 1403. Though still uncertain in all of its specific applications, the rule is thought to be that whereas gains and salaries are treated as separate property and revenues from separate property are in fact separate, any goods acquired with such gains, salaries or revenues become community property, as long as the acquired goods are of a different nature than the original gains, salaries or revenues. For example, interest from a savings account composed of gains, salaries or revenues, or savings bonds purchased with such gains, would remain separate property. MAZEAUD n° 130, 131, 132-2.

43. FRENCH CIV. CODE art. 1402.

44. MAZEAUD n° 122.

45. FRENCH CIV. CODE art. 214.

appeal may be made to a judge to determine their respective abilities to contribute.<sup>46</sup> Responsibility for family expenses is charged to the husband as primary obligor,<sup>47</sup> and he may satisfy these expenses either from the community or from his own resources, or he may demand contribution from his wife when she has property or resources at her disposal. The wife may satisfy her portion of the expenses directly from the resources under her administration, or she may pay her contribution to her husband for his administration. If she has no resources of her own, she cannot be forced to seek employment and may choose to satisfy her obligation of contribution by her work in the home or her participation in the profession of her husband.<sup>48</sup> The new law also establishes a procedure for forcing a spouse to contribute his share toward family expenses:<sup>49</sup> in addition to providing possible grounds for divorce or legal separation if considered a grave injury,<sup>50</sup> a spouse's failure to meet the obligation of contribution may subject him to garnishment of wages or criminal charges of abandonment of family.<sup>51</sup>

### *Mandates*

To facilitate the management of family finances, French law has developed a system of representation by which one spouse can, in certain circumstances, exercise the powers of the other.<sup>52</sup> The 1965 law continued this system by allowing either spouse to give a mandate to the other to represent him in the exercise of any powers attributed to him in the matrimonial regime. Such a mandate can be either general or specific and seems to involve the same obligations

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46. MAZEAUD n ° 27.

47. FRENCH CIV. CODE art. 214.

48. *Id.*; WEILL n ° 327.

49. The need for such provision arises most often in cases of abandonment by one of the spouses.

50. FRENCH CIV. CODE art. 232; WEILL n ° 360.

51. The last paragraph of FRENCH CIV. CODE art. 214 makes applicable to the spouse failing to contribute to family expenses the same provisions of the Code de Procédure Civile designed to enforce payment of alimony obligations. C. PRO. CIV. art. 864; C. PÉN. art. 357.2; Law no. 73-5 of 2 Jan. 1973, which is found following FRENCH CIV. CODE art. 211 (71 re ed. Petits Codes Dalloz 1973-74); WEILL n ° 323, 328.

52. The Law of 22 Sept. 1942 specifically allowed such representation in three cases: conventional representation by express mandate, judicially authorized representation by one finding his spouse in a state unable to express his will, and legal representation by the wife to bind the community for household expenses. The first two provisions were expressly maintained by the 1965 law and the final was supplanted by a provision empowering the wife directly to bind the community for household expenses. MAZEAUD n ° 20.

and responsibilities as any ordinary mandate.<sup>53</sup> A spouse may also seek judicial authorization to act for the other when the latter cannot manifest his will.<sup>54</sup> The spouses may also act for one another under the general rules of quasi-contract resulting from management of another's affairs (*gestion d'affaire*).<sup>55</sup>

#### *Liability for Family Expenditures*

Several basic rules in the new legislation, which apply to all matrimonial regimes and cannot be derogated from by the marriage contract, enable the wife to participate more fully in the management of family finances, though most of these provisions are termed so as to apply to both spouses equally.<sup>56</sup> The first is that each spouse has the right to contract alone for the maintenance of the household or the education of the children. Such contracts bind the spouses solidarily and therefore obligate all separate and community property unless they represent purchases with time payments or expenditures manifestly excessive with regard to the family's lifestyle, the transaction's usefulness or the bad faith of third persons involved.<sup>57</sup> In these latter cases, the contract is binding on the spouse who has made it, but not on the non-contracting spouse, and the creditors may therefore seize only the contracting spouse's separate property or community property.<sup>58</sup> The solidary obligation created by such expenditures seems the most important change provided by the new law, since even before 1965 the wife could contract for household expenses in her capacity as her husband's legal representative, but only the community and the husband's separate property were thereby obligated to the creditors.<sup>59</sup>

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53. FRENCH CIV. CODE art. 218; MAZEAUD n° 21.

54. This provision, originally enacted in 1942 for the benefit of prisoners of war held in Germany, was continued by the 1965 law. It applies only when a spouse cannot manifest his own will in administering his affairs, and not to situations where a spouse seeks to supplant the expressed will of the other. FRENCH CIV. CODE art. 219. The details of this procedure are provided in the Code de Procédure Civile involving basically a request for authorization to the president of the district civil court, which is decided upon the three-judge tribunal of the court. MAZEAUD n° 22.

55. FRENCH CIV. CODE art. 219; MAZEAUD n° 23.

56. FRENCH CIV. CODE art. 226 states that these provisions are applicable to all marriages by the single fact of the marriage, no matter which matrimonial regime the spouses have chosen, unless a certain matrimonial regime is specifically excepted by the article. The provision that each spouse will control his gains and salaries is also a mandatory provision of the new law. See text at n.38 *supra*.

57. FRENCH CIV. CODE art. 220.

58. MAZEAUD n° 24.

59. As mentioned earlier, traditional French jurisprudence accorded a tacit man-

*Wife's Separate Profession*

The new regime grants to each spouse complete control over all of his personal income, whether derived from his employment or his property, once he has contributed toward the family expenses.<sup>60</sup> This guarantee, however, is supplemented by several other provisions considered necessary to effect the independent control of property, one of the most essential being the married woman's right to exercise a separate profession without her husband's consent.<sup>61</sup> Interestingly enough, this change benefits the husband perhaps as much as the wife, since before 1965 his consent was assumed, whether expressed or not, therefore obligating both his separate and community property for any debts contracted by the wife in her exercise of a separate profession. However under the new law the husband's separate property is not obligated unless he expressly agrees to the act or to her practice of a profession generally, or unless he participates in her profession.<sup>62</sup> The wife engaged in a separate profession may also find her ability to obtain credit strengthened under the new law which specifically provides that her creditors may seize her *biens réservés* in payment of her debts, including those unrelated to her profession.<sup>63</sup>

*Individual Bank Accounts*

Under traditional French jurisprudence a wife could not administer any banking operations under her own name, but in 1942<sup>64</sup> she was allowed to operate a special account with funds provided by her husband for the purpose of meeting household expenses, in keeping with her legal mandate to contract for those necessities. The bank was obligated, however, to notify the husband of the opening of such an account and could allow no overdrafts without his express permission.<sup>65</sup> The 1965 reform expressly guaranteed the right of either spouse to open and operate any deposit or checking account in his own name without the consent of the other.<sup>66</sup> Theoretically such an account in

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date to the wife to represent her husband in contracting for household necessities; the Law of 22 Sept. 1942 confirmed this jurisprudence by establishing a legal mandate applicable to all matrimonial regimes enabling the wife to represent her husband in such transactions. The jurisprudence, however, tended to hold the wife as a subsidiary obligor in cases of the husband's insolvency by virtue of her obligation to contribute to household expenses. WEILL n ° 330.

60. FRENCH CIV. CODE arts. 224, 1401, 1425; MAZEAUD n ° 25, 129.

61. FRENCH CIV. CODE art. 223.

62. MAZEAUD n ° 257.

63. FRENCH CIV. CODE art. 225.

64. Law of 22 Sept. 1942.

65. WEILL n ° 332.

66. FRENCH CIV. CODE art. 221.

a wife's name could be overdrawn as well, but since an overdraft for non-household expenses would obligate only the wife's separate property, it is doubtful that the bank would allow such overdrafts without the husband's authorization which secures the loan with the entire community and separate property of both spouses. Despite this practical limitation, this right finally acquired by the French wife represents perhaps the greatest progress toward independent administration of her property.<sup>67</sup>

### *Safeguards*

In contrast to the guarantees of independence provided by the 1965 reform, the new law also establishes several safeguards against extensive harm to the family security by the irresponsibility of one of the spouses. This protection is provided by the requirement that certain acts be performed by both spouses together and by the possibility for judicial removal of a spouse's administrative powers.<sup>68</sup> Two types of transactions must be performed by the spouses together to effectively bind them both: the disposal of any rights assuring the family dwelling<sup>69</sup> and any purchases made on credit to be paid for by time payments.<sup>70</sup> Those acts affecting the security of the family dwelling include any acts obligating the family to leave the residence or making their right of occupation more precarious, including leasing or subleasing the dwelling or part of it to a third person, renouncing the right to renew the lease of the residence or alienating the usufruct or right of habitation of the dwelling.<sup>71</sup> If a spouse performs such an act without the consent of the other, the non-consenting spouse has one year from the date he learned of it to nullify the act, except that this right to nullify terminates in all cases one year after dissolution of the marriage.<sup>72</sup>

### *Conclusion*

Though the reforms brought by the laws of 1965 and 1970 seem to provide for extensive equalization of the rights and responsibilities of the spouses during marriage, the changes have been viewed rather

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67. MAZEAUD n ° 322.

68. FRENCH CIV. CODE arts. 220.1 - 220.3; WEILL n ° 336.

69. FRENCH CIV. CODE art. 215.

70. FRENCH CIV. CODE art. 220; MAZEAUD n ° 240; WEILL n ° 331(b).

71. WEILL n ° 334 n.2. The jurisprudence has held, however, that a spouse may alienate the naked ownership of the dwelling if he retains the usufruct in favor of the surviving spouse. 16 Dec. 1970, D.1971, Somm. 61 (Trib. gr. inst. Paris); Gaz. Pal. 1971.2.115.

72. FRENCH CIV. CODE art. 215; WEILL n ° 334.

unfavorably by a great many of the legal profession. Critics claim that because the reforms severely restrict the portion of the family's assets under the control of either spouse, a creditor must require either consent of both spouses or a mandate from the non-contracting spouse allowing the other to effect the transaction. The procedures for judicial settlement have also been criticized as being totally contrary to the Frenchman's view of the private nature of the family unit. Other members of the French legal profession have seen the single important feature of the reform as the establishment of a regime quite similar to a separation of property and resent the abandonment of the traditional civilian community regime. Despite these criticisms the new laws represent important advancements toward equal rights and responsibilities for the spouses and illustrate possible alternatives should Louisiana be faced with revision of its domestic law in light of the Equal Rights Amendment.

*Carolyn Hazel*