

# Louisiana Law Review

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Volume 40 | Number 3

*The Work of the Louisiana Appellate Courts for the  
1978-1979 Term: A Symposium  
Spring 1980*

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## Private Law: Matrimonial Regimes

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### Repository Citation

Robert A. Pascal, *Private Law: Matrimonial Regimes*, 40 La. L. Rev. (1980)  
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol40/iss3/5>

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## MATRIMONIAL REGIMES

Robert A. Pascal\*

## TRUST INCOME

*Reynolds v. Reynolds*<sup>1</sup> deserves comment. The Third Circuit Court of Appeal, in a well reasoned opinion, rejected the erroneous reasoning of *Dunham v. Dunham*,<sup>2</sup> a 1964 decision of the First Circuit Court of Appeal. The court decided correctly that the income from a trust, of which a married woman is income beneficiary, is itself community income if she fails to file the declaration permitted her by article 2386 of the Civil Code, viz., that she intends to administer her paraphernal assets alone and to claim their revenues as her separate property. The reasons for the correctness of this solution were detailed in the author's critique of *Dunham* appearing in an earlier Symposium.<sup>3</sup>

## ACQUISITION UNDER "BOND FOR DEED"

Under article 2402 of the Civil Code of 1870, acquisitions by purchase during marriage (by the husband—article 2404; and with community funds—article 2334) are community assets. In *Cosey v. Cosey*<sup>4</sup> a man entered into a "bond for deed" transaction and made all payments thereon during his first marriage, but an act "translative of title" was not executed in his favor until he had married a second time. The court decided the land was a community asset of the second marriage. This is mechanical decision making indeed. For purposes of applying article 2402, the "bond for deed" transaction should have been recognized for what it is, a sale subject to a suspensive condition. No one can doubt that a purchase made during a first marriage under a suspensive term or condition should be considered a community asset of the first marriage even though the term expires or the condition occurs during a second marriage. Moreover, if the land must be deemed to have been acquired during the second marriage, it should not be considered a community asset inasmuch as it was not acquired with funds of the community then in existence. As to the second marriage, funds of the first community are separate funds.

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1. 365 So. 2d 530 (La. App. 3d Cir. 1979).

2. 174 So. 2d 898 (La. App. 1st Cir. 1965).

3. *The Work of the Louisiana Appellate Courts for the 1965-1966 Term—The Community of Acquets and Gains*, 26 LA. L. REV. 477, 483-85 (1966).

4. 364 So. 2d 186 (La. App. 1st Cir. 1978). The first circuit's opinion was affirmed by the Louisiana Supreme Court, 372 So. 2d 560 (La. 1979), but rehearing was granted on Sept. 4, 1979.