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BOOK REVIEW

Louisiana Civil Law Treatise: Matrimonial Regimes.
By Spaht and Hargrave. St. Paul, MN: West Publishing Co. 1989. Pp. xviii, 1-528. \$85.

*Kenneth Rigby**

Since its earliest days, Louisiana has lived under an enlightened marital property system, which recognizes the distinctive and varying contributions of each spouse to the marriage and rewards each equally upon termination, albeit not always having treated them as equals during the marriage. One unique characteristic of this system was that the husband was the exclusive manager of community property, having not only the exclusive managerial functions but also having the sole power to dispose of community property and to incur community obligations. For over 100 years, a large body of jurisprudence developed interpreting the provisions of Title VI, Book III, articles 2325-2437, of the Civil Code of 1870, entitled *Of the Marriage Contract, and the Respective Rights of the Parties—Relation to Their Property*. Since Daggett, *The Community Property System of Louisiana* (1945), however, a comprehensive treatise on the subject had not been published.

Although a few minor legislative amendments and enactments over the years reflected changing social views of the roles of males and females in marriage and family relationships, no major revision of community property law was undertaken until the late 1970s. Lagging far behind common intra-marriage practices and impelled more by constitutional necessity than the desire for social reform, the Louisiana Legislature enacted the present Matrimonial Regimes Act, articles 2325-2376 of the Civil Code, effective January 1, 1980. Professor Spaht served as Chair of the Advisory Committee to the Joint Legislative Subcommittee Considering a Revision of Louisiana's Community Property Law.

Since its enactment, a rapidly growing body of jurisprudence has likewise developed, interpreting and applying the provisions of the Matrimonial Regimes Act. It is fortunate that, approximately ten years after the adoption of the Act, this comprehensive textual exposition of Louisiana Matrimonial Regimes has been published. The book reflects a combined teaching experience of the authors of 41 years at LSU Law

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Center and publication of numerous law review articles and other legal writing.

Although this exhaustive treatment of the subject will be of inestimable value to bench, bar, teacher and law student alike, this review is written from the perspective of the practitioner. This point of reference is not to denigrate the scholarship reflected in the work; however, to be of maximum value to the practitioner, a legal text must reflect a practitioner's needs, anticipate a practitioner's approach to issues, discuss both statutory enactment and jurisprudential interpretation, criticize when necessary, analyze policy considerations, both review the past and point to the future, and contain a detailed topic and case index. This work passes muster on all these counts.

The work is especially valuable in its review of pre-1980 statutory provisions and jurisprudence and its commentary as to the modification or retention of the statutory and jurisprudential rules in the 1979 enactment. Some interpretative errors have been made by attorneys and courts as a result of not understanding which pre-1980 rules were changed and which remain unchanged and the consequent misapplication of pre-1980 decisions to post-1980 situations. The text identifies and addresses some of these troublesome decisions. In order to understand the "system of principles and rules" in the Matrimonial Regimes Act, it is imperative to understand what the law was before 1980. The text provides the source for that understanding. A reproduction in a supplement of the pre-1980 Civil Code articles and other statutory provisions discussed in the text and cited cases would be helpful for ready reference and comparison to the present text, especially for the practitioner not having easy access to them. Frequently a court interpreting or applying a codal article or other statutory provision fails to quote the full text being interpreted or applied. A side by side comparison of pre-1980 and post-1980 texts is helpful and oftentimes necessary in order to determine whether or not a particular rule of law was changed by the 1979 act.

The materials are presented in basically the same sequence in which a practitioner approaches the issues in a community property partition: i.e., the identification of all items that may qualify as "assets," "property," or "things" (the Act uses all three descriptive words, sometimes interchangeably, which is unfortunate in the reviewer's opinion), their classification as community or separate, the identification of outstanding obligations at the termination of the legal regime, the reimbursement claims of the spouses, and the mechanics of partition under LSA-R.S. 9:2801.

Although appellate court opinions are the stock in trade of practitioners, the authors correctly emphasize the source of law-legislative enactment. The codal articles are the law; judicial decisions are merely

interpretations.¹ The authors gently question, suggest and prod when judicial decisions are contrary to or do not correctly reflect the meaning of a codal article.

Because of the reputation and eminence of the authors in matrimonial regimes, courts are frequently relying upon and quoting this work for correct interpretation and application. A recent appellate example is *Oliver v. Oliver*.² The practitioner is well advised to do the same. As the law review articles written by the authors have been in the past, this work will be the standard treatise in Louisiana on Matrimonial Regimes. It is welcomed by those of us who practice "in the trenches."

1. *Holland v. Buckley*, 305 So. 2d 113 (La. 1974); Tate, *Techniques of Judicial Interpretation in Louisiana*, XXII La. L. Rev. 727, 743 (1961-2).

2. 561 So. 2d 908, 912 (La. App. 2d Cir. 1990).

