The Degree of Cruelty Necessary to Justify Separation from Bed and Board in Louisiana

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appeal stated that “the owner of the soil on which a public road shall pass may resume and take possession of the same ‘whenever said road shall have been abandoned by the public, or shall have been transferred elsewhere with the consent of the owner and with that of the competent authority.’” The court based its decision on a portion of section 3368 of the Revised Statutes of 1870, which was not carried into the Revised Statutes of 1950. Although there is no statutory provision today which authorizes implied abandonment, the courts, as with implied dedication, continue to recognize this method of abandonment.

**Termination of servitude of passage by ten years’ non-use.** A second method by which the public may lose a servitude of passage or way is through liberative prescription of ten years, as expressed in article 789 of the Civil Code. Although the Louisiana Constitution states that “prescription shall not run against the State in any civil matter,” it was declared in *New Orleans v. Salmen Brick & Lumber Co.* that this constitutional provision does not prevent prescription from running against a parish or municipality where the subject involved is alienable. This principle is well established in the jurisprudence. Thus, in *Baret v. Louisiana Highway Commission* the police jury of Calcasieu Parish had obtained a servitude on additional ten-foot strips of land on the sides of an old road. The court held that non-usage of the strips of land for more than ten years extinguished the right to their use. Similarly, in *Jouett v. Keeney,* the grantee of a servitude of passage was ruled to have lost the rights and privileges over the strip by non-usage during the prescribed period.

*Thomas D. Hardeman*

**The Degree of Cruelty Necessary to Justify Separation from Bed and Board in Louisiana**

Article 138(3) of the Louisiana Civil Code provides that if one spouse is guilty of such cruel treatment toward the other as to “render their living together insupportable” the other spouse

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63. *Id.* at 362.
64. LA. CIVIL CODE art. 789 (1870): “A right to servitude is extinguished by the non-usage of the same during ten years.”
65. LA. Const. art. XIX, § 16.
66. 135 La. 828, 66 So. 237 (1914).
67. 178 La. 454, 151 So. 768 (1933).
68. 17 La. App. 323, 139 So. 175 (La. App. 1931).
has the right to demand a separation from bed and board.1 Although many acts may be considered cruel, the court ruling on the separation must decide whether the cruel treatment is "of such a nature as to render their living together insupportable." The purpose of this Comment is to discuss the factors underlying the codal requirement and to group and classify the decisions of the Louisiana Supreme Court dealing with cruelty. Special consideration will be given to determining the extent the court has actually applied insupportability as a requisite.

The term insupportability is probably incapable of exact definition. To the writer it seems to connote a relationship between spouses which is unbearable and which renders harmonious cohabitation impossible. Despite difficulty in definition, the term must nevertheless be accorded some uniform meaning by the court, as it is the only basis for determining whether the particular conduct involved warrants the separation of the parties. Except for this requirement of insupportability, even if uncertain, there is nothing else in the Code article to prevent the extension of "cruelty" to almost any insult. Without the requirement, the Code provision would be a means of facilitating separation rather than a mode of limiting separation to good cause only.

Underlying Factors to Consider

In determining whether a particular act constitutes such cruelty as to render living together insupportable, the court has considered a number of underlying factors surrounding the marriage. In one case the court took note of the frailty of man's nature, the just authority of the husband, and the respect which is due the wife.2 The character, education, habits, and sentiments of the spouses have also been considered.3 Length of marriage was undoubtedly the principal factor in a case involving the use of vile epithets by the husband,4 inasmuch as the court concluded: "Having managed to live together these many years,

1. LA. CIVIL CODE art. 138(3) (1870) - "Separation from bed and board may be claimed reciprocally for the following causes: . . . 3. On account of . . . excesses, cruel treatment, or outrages of one of [the married persons] towards the other, if . . . such ill treatment is of such a nature as to render their living together insupportable."
they should stay together in the evening of life, which they can do by the exercise of a little patience and forbearance. They have lived together nearly half a century." In still another decision, childishness and impetuosity were the considerations which prevented separation.

The social class of which the couple is a member is another important factor, and as culture and refinement increase, the acts need not be as violent to cause living together to be insupportable. Provocation for the action and degree of violence are other important elements. Furthermore, the complainant must be comparatively free from wrong and not equally responsible for the domestic difficulty.

Although it is important to know that the circumstances surrounding the marriage are considered in determining the question of separation, it is obvious that the acts of conduct which give rise to the suit for separation play perhaps the paramount role in the court's determination. Consequently, the writer has made an analysis of the decisions to determine what specific acts have been deemed cruelty by the court. To facilitate discussion, the conduct involved is categorized into physical or mental cruelty.

**Physical Cruelty**

In nearly all of the cases involving any kind of unprovoked physical attack, separation has been awarded to the complainant. Where this type of conduct appears in repeated and un-
bearable instances, the court has no difficulty in finding that the marriage is insupportable.

Physical violence cases requiring more scrutiny than the type mentioned above are those which involve only a single instance that disrupts marital peace. In the early case of *Fleytas v. Pigneguy*\textsuperscript{11} the court held that one act of ill treatment during a long cohabitation does not justify a separation when there is no apparent reason for the cruelty and when it is unattended by aggravating circumstances. The case was followed and a separation denied in *Primeaux v. Comeaux*,\textsuperscript{12} in which the wife struck her husband with a poker, and in the ensuing scuffle, he slapped her lightly. Subsequently, however, in *Veal v. Veal*,\textsuperscript{13} one instance of misbehavior was held sufficient. In that case as a result of an argument, the husband cursed the wife, accused her of unfaithfulness, and grabbed her by the throat and threw her down. The court distinguished both the *Fleytas* and *Primeaux* cases on the ground that in those cases the cruelty was provoked by the complainant’s own fault and that there were other qualifying circumstances. Nevertheless, the status of the *Veal* case as authority is somewhat in doubt. For in a later decision, (the husband kicked, struck, and grossly abused his wife, and drove her to her father’s house, saying he would not return); *Pinchon v. Pinchon*, 164 La. 272, 113 So. 845 (1927) (the husband was proved to have come home drunk on several occasions, at which times he struck and abused his wife to a considerable extent); *Fertel v. Weinberg*, 161 La. 955, 109 So. 775 (1926) (the preponderance of the evidence revealed that the husband cursed, struck, and kicked the wife without cause); *Kemp v. Kemp*, 144 La. 671, 81 So. 221 (1918) (the husband continually sided with his children in arguments with the plaintiff, his second wife, humiliated her in front of them, and finally in a fit of anger, slapped her and pulled her hair).\textsuperscript{11} 9 La. 419 (1836). The defendant was alleged to have struck his wife once, but no evidence as to the origin of the fight was presented. The evidence further brought out the fact that the plaintiff had a violent temper and there was a possibility that she provoked the blow. The denial of the decree seems to be due more to the lack of evidence than anything else.\textsuperscript{12} 139 La. 549, 71 So. 845 (1916).\textsuperscript{13} 140 La. 879, 74 So. 181 (1917). The facts were exceptionally strong here. The defendant evidenced his bad humor on the night in question by several curse words directed toward his wife. Being afraid to remain at home alone with him, she told him she was going out to see some friends. He accused her of going out with some man, and when she went to her room, he followed, cursing her and then threatening to end it all, grabbed her and threw her down. He was pulled off by a friend of the wife and after being locked out of the room, tried to re-enter in a violent manner.\textsuperscript{14} For other cases holding one act sufficient, see *DeJean v. Debose*, 226 La. 600, 76 So. 2d 900 (1954) (there had actually been many violent instances, but all except the last had been condoned by a reconciliation); *DeJoie v. DeJoie*, 224 La. 611, 70 So. 2d 398 (1954) (for facts see page 540 infra); *Schneider v. Schneider*, 214 La. 759, 48 So. 2d 732 (1949) (for facts see page 541 infra); *Sliiman v. Sliiman*, 155 La. 397, 99 So. 343 (1924) (for facts see page 537 infra).
Romero v. Dautrielle,15 the court in its majority opinion ignored the Veal case and cited the Primeaux case as authority for the proposition: "A solitary instance of ill treatment . . . will not warrant a judgment of separation from bed and board."16 While concurring in the decree, Chief Justice O'Niell disagreed with the above quotation of the court and, in the writer's opinion, accurately pointed out that the Veal case had considered the question and had determined that the Primeaux case was not authority for the doctrine that one instance can never be sufficient.

It is understandable that the conduct involved in the Veal case could render living together insupportable, especially since the wife was found to be a lady of culture and refinement. It is also justifiable that a severe beating would change the relationship between the spouses to such a degree that life together would be equally insupportable. Thus, in a case involving a single instance where the husband cursed, abused, and severely assaulted and beat his wife during an argument over her recent expenditures, the separation was granted.17 Similarly, where a wife struck her husband with a club while he lay in bed, the court granted separation.18 An adequate statement of the present rule is that a single act of ill treatment against a spouse who is not free from fault, during a long cohabitation, does not authorize a judgment of separation from bed and board.19 If there is no fault on the part of the complainant, however, one instance may be enough.

Logically, the more incidents and aggravations that are chargeable to a spouse, the easier are the chances of finding that life together is insupportable. When, however, several complaints are referred to in the court's opinion as the basis for rendering the decree, it becomes impossible to determine which acts were given the most consideration by the court. In many cases one of the acts alone may have been sufficient, while in many other cases no one or two deeds by themselves could have been enough, and the decisions must have been based on the accumulated grievances. For example, one case involved a wife's interference with the husband as he was choking their son.20 The

15. 163 La. 597, 112 So. 498 (1927).
16. Id. at 599, 112 So. at 499.
19. Weiser v. Weiser, 168 La. 847, 123 So. 595 (1929) (for facts of this case see page 539 infra).
20. Millet v. Millet, 144 La. 921, 81 So. 400 (1910).
husband threw her with such force against the wall that her shoulder was dislocated. When it was shown that during her subsequent illness, he lived in the next room, locked the door, ate out, and never went in to see his wife or minister to her needs, the court called it “cruel treatment in the extreme.” In another case the following series of occurrences led to a decree of separation. The husband refused to feed his wife and also refused to let her in the house when she returned from her father’s house, where she was forced to eat. He also neglected to give her medicine, broke furniture, cursed her, and struck her twice. In this case life together was unquestionably insupportable. The court in another case found that threats by the husband, “something closely resembling choking,” exasperating charges of laziness, unreasonable denial of his wife’s use of the night lamp, and brutal monopolizing of the bed by requiring her to sleep on the floor, were sufficient irritations to render living together insupportable. In one case the husband repeatedly ordered his wife out of the house and then enticed her to return only to have the same thing happen again. In addition, on at least one occasion, he “laid rough hands on her, not to her maiming or serious injury, but decidedly less gently than a man should ever lay hands on a woman, especially his wife and the mother of his children.” The court felt this was sufficient to warrant a judgment of separation. The facts of another case so clearly evidenced cruelty that even admitting alleged misconduct of the wife (not specified), she was granted a separation. The husband’s many acts included cursing, refusal to provide living expenses, staying away from home on several occasions without any explanation, a vicious attempt to drag his wife outside in her nightgown, and ordering her out of his house. In all these cases, it is virtually impossible to develop any rules or concrete statements of the court to apply to future cases other than to indicate the sort of actions which, when cumulated, are tantamount to physical cruelty sufficient to warrant separation.

Thus far, an examination has been made only of cases involving physical cruelty in which separation has been granted. Note must be taken as well of the decisions involving the cruelty question in which the separation decree requested has been

21. Id. at 923, 81 So. at 401.
denied for varying reasons. As previously stated, the early position taken by the court that a single instance of ill treatment would not warrant a judgment for separation was clarified in Veal v. Veal, although its status has been doubtful as a result of a later case. Also, where the grievance was provoked by the complaining spouse, separation has been denied. For example, in one case, where a wife received a bruised eye as a result of a quarrel with her husband for his being too slow in running an errand, the court denied the wife's demand for separation, since she instigated the quarrel. In another case the wife struck the husband with a vase, but the husband had started the fray by a blow with his hand, and his demand for separation was denied. In a third case the fact that the husband was present and participated in a drinking party at which the wife had too many drinks prevented him from obtaining a separation on those grounds.

Along the same lines, an interesting decision is Artigues v. Artigues. There, a young husband admitted slapping his wife with his hand on several occasions. The court held that since the spouses were childish, impetuous, and high tempered, and it was shown that they often quarreled and that the husband would grab and spank his wife and would be thereafter forgiven, the slapping was not altogether uncondoned and not sufficient for a separation. In a somewhat different case, the husband used deceit and physical force in a good faith attempt to commit his wife to a mental institution. The court held the conduct permissible under the circumstances and denied separation. Although the facts are diverse, all of these cases seem to demonstrate that where the physical violence is provoked, condoned, or justified, the facts are diverse, all of these cases seem to demonstrate that where the physical violence is provoked, condoned, or justified,

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26. Romero v. Dautrielle, 163 La. 597, 112 So. 498 (1927); see page 537 supra.
27. Silva v. Miramon, 156 La. 360, 100 So. 528 (1924) (the court reasoned that after the husband gave the wife just ground for believing that he had abandoned her, he cannot complain that she should voice her indignation, even to the extent of scratching his face); Cooper v. Cooper, 10 La. 249 (1836) (frequent quarrels and abuse by both parties were climaxed by the husband's pushing his wife out of the door, the action being provoked by an insinuation by the wife that he was not a gentleman).
31. 172 La. 884, 135 So. 665 (1931).
32. Kalpakis v. Kalpakis, 221 La. 739, 60 So.2d 217 (1952) (the acts of deceit and physical force were not specified).
the Supreme Court feels a request for separation should be denied.

Mental Cruelty

In addition to acts of physical mistreatment, behavior causing purely mental anguish may be cruelty of such a nature as to render living together insupportable. In *Olberding v. Gohres* the court stated: “A husband may be guilty of outrages [against his wife] . . . such as to render their living together insupportable, without raising his hand against her. His conduct may be the very refinement of cruelty, without either force or blows.” To illustrate, in one case, where a husband separated his wife from her four eldest sons by ordering her away and insulted her in the presence of the children whenever he encountered her in public places, the court said that this was “cruelty in the sense of the Civil Code” and living together was insupportable. Similarly, when a wife fired a shot at her husband to “frighten him” into being more sympathetic, he being unaware of her motive, the court held that to live in a house in fear of bodily harm is such cruel treatment as to render living together insupportable. Particular acts of mental cruelty must be alleged, however, as mere “want of congeniality” will not suffice.

In the writer’s view, the factual elements of the cases involving mental cruelty lend themselves to the following classification: (a) abusive and violent language and excessive quarreling, (b) indifference and neglect, (c) false accusations not constituting defamation, (d) refusal to provide a separate home, (e) cruelty to the children, (f) expulsion from the home, (g) loathsome disease unknown to the other spouse, (h) miscellaneous grounds, and (i) accumulation of grievances.

(a) Abusive and violent language and excessive quarreling. To allow a separation merely for violent or abusive language would seem to require very strong facts or else some extraneous cause to justify the decree. In *Smith v. Smith* the court felt that the use of vile epithets by one party did not warrant separation when the parties were “ending life’s course.” It stated:

37. 116 La. 1005, 41 So. 238 (1906).
"Should we grant a separation of property, it may be followed by divorce, which would sever the ties of matrimony which should never be severed except for manifest legal cause."\textsuperscript{38} In \textit{Kammer v. Reed},\textsuperscript{39} however, when speaking of the husband's use of a highly objectionable name on various occasions toward his wife and child, the court said: "We are fully justified... in maintaining the self respect and... the womanhood of the plaintiff, a lady of refinement, against such vile epithets, insults, and outrages... [T]he ill treatment... received... is of such a nature as to render living together insupportable."\textsuperscript{40} In the more recent case of \textit{Schneider v. Schneider},\textsuperscript{41} in which the court cited the \textit{Kammer} case, a separation was granted where only one incident was involved, during which the wife and the seventeen-year old daughter were violently cursed, insulted, and threatened for several hours.\textsuperscript{42} The facts in that case were particularly aggravated, but nevertheless the case reflects a possible liberalization of the concept of insupportability provided by the Code and expressed in the \textit{Smith} case, although in the latter case the court gave great weight to the length of the marriage. For in the \textit{Schneider} case, the living together was rendered insupportable in a few short hours by insults and threats, a type of offensive conduct which might be considered the least objectionable. Such cases involving vile epithets and other acts of mental cruelty require the utmost careful consideration by the court, because the careless award of a separation in a case where the facts are not strong may create an extremely lenient rule which would lead to unwarranted extensions of the concepts of insupportability.

Whether quarrelling, unattended by predominantly abusive violent language, will render living together insupportable remains an unsettled question. The only case discovered relating

\textsuperscript{38} \textit{Id.} at 1007, 41 So. at 239.
\textsuperscript{39} 176 La. 1091, 147 So. 357 (1933).
\textsuperscript{40} \textit{Id.} at 1096, 147 So. at 358. The fact that the husband continually refused to speak to his wife for four or five days at a time was also a factor.
\textsuperscript{41} 214 La. 759, 38 So.2d 732 (1949).
\textsuperscript{42} \textit{Ibid.} The court said in granting the separation that this incident was no mild dispute because, first, the plaintiff sought the aid of both her and defendant's brother; second, defendant's sister came to talk to him; third, the daughter displayed a butcher knife in defense of the plaintiff; and, fourth, in a mild dispute in a family of culture and refinement, one does not ordinarily use such vile epithets, especially before a seventeen-year old child. But see Dunn \textit{v. Eiche}, 175 La. 801, 144 So. 501 (1932) (the court considered it "good advice" when the husband told his wife in front of a hired servant that she would be a "damned fool" if she would not keep out of certain other persons' affairs.
to this problem is *Schlater v. LeBlanc*,\(^4\) decided in 1908, in which the court found that repeated quarrels, resulting in "uncontrolled irritation and violent displays of temper" are sufficient to constitute mental cruelty. The facts of the case indicate that the quarrelling had become extreme and that the granting of separation was justified. Whether or not the court would grant a separation under less severe circumstances is not apparent, but occasional quarrels alone should never be sufficient to justify a separation.

(b) *Indifference and neglect.* One spouse's refusal to live with the other may be abandonment but not cruel treatment.\(^4\) In one case, however, the husband intentionally neglected his wife in favor of several other women. He became very matter of fact about the associations, even admitting that he had contracted a venereal disease from one of his companions. The court said that because of the worry and suffering caused the wife by the husband's behavior, she should not be forced to live with him.\(^4\) The living together in that case was truly insupportable. Indifference expressed by one spouse's telling the other that he or she no longer loves the other was discussed in *Spansenberg v. Carter*,\(^4\) an abandonment case. The court stated, in finding that there was just cause for abandonment, that for a wife to tell her husband that she had ceased to love him, deliberately and not in a state of temper, is cruel treatment.\(^4\) On the other hand, in the later case of *Ducros v. Ducros*,\(^4\) a declaration by the defendant to his wife that he no longer loved her was held not to be cruelty such as to render living together insupportable. The effect of the case is to restrict the holding of the *Spansenberg* decision to situations involving abandonment and not actions for separation on the ground of cruelty. This seems to be borne out by *Parish v. Parish*,\(^4\) which expressly followed the *Ducros* decision. There the wife stated to her husband that she no longer cared for him and the court held that, while this was certainly

\(^4\) 121 La. 919, 46 So. 921 (1908). The court stated such repeated quarrels were cruelty, disturbance of the wife's peace of mind, aggravation of a nervous condition, and destruction of the legitimate object of matrimony.
\(^4\) Lester v. Lester, 160 La. 708, 107 So. 499 (1926).
\(^4\) 151 La. 1038, 92 So. 673 (1922).
\(^4\) *Ibid.* The court even went so far as to call this "the end of connubial felicity, to the marriage relation, to the home itself. Therefore living under the same roof with a person whose affection has permanently ended is necessarily in-supportable." *Id.* at 1049, 92 So. at 677.
\(^4\) 156 La. 1033, 101 So. 407 (1924).
\(^4\) 164 La. 62, 113 So. 764 (1927).
cruel, it did not constitute cruelty within the meaning of article 138(3). Thus, it would seem, as reflected in the Ducros and Parish decisions, the court’s attitude as to this subject has changed from the opinions expressed in the Spansenberg case, and the latter case should not be considered applicable to situations involving cruelty.

In addition to romantic indifference, estrangement of affection is a factor which has been considered. In one case, the husband became unexplainably estranged in his affections and neglected his wife, resulting in various insults directed at her and in disobedience by their children. The court held that married persons cannot be divorced for just any kind of reason, and that “estrangement of affections and the coldness and indifference which grow on changeable man are not good reasons for divorce.”

Mere nonsupport of one’s family has been held not to be cruelty. Thus, where a husband failed to speak to his family and to give his wife enough money to support and clothe herself and her child in a manner commensurate with his income and her economic station in life, such was held insufficient to support a decree of separation. The court remarked that failure to take care of a wife and child is a “dereliction of duty” but not legal cause for separation. In another decision it was held that the complaint that the defendant “did not try to take care of his wife and child” did not constitute in that case, if in any, sufficient ill treatment to warrant interference by the court.

In only one instance has neglect of any kind resulted in a separation decree. In that case the husband neglected to provide medical care for his wife who had become ill while working in the fields. In cases involving denial of accustomed social life, or denial of “necessaries” according to the style which suited some of the wife’s wealthy friends, or failure to pay

50. Tourné v. Tourné, 9 La. 452, 454 (1836). It went further to say that “a series of studied vexations and provocations on the part of a husband, without ever resorting to personal violence” may be cruelty, but felt, in denying the separation, that the unkind insults made by the children to the plaintiff in this case were caused more by the husband’s weakness than by cruelty on his part. Id. at 456.
54. Dollar v. Dollar, 159 La. 219, 105 So. 296 (1925) (the wife had been ill since the birth of her last child and it was only at the insistence of her husband that she worked in the first place).
promptly their child's educational expenses, the court properly refused to allow a separation.

(c) False accusations not constituting defamation. This category is illustrated by the Hansbrough case. There, over a period of two years, a husband sent his wife, his children, and his stepson a series of letters containing complaints, insults, and accusations of infidelity designed to destroy his wife's peace of mind and happiness and bring about a divorce. The court correctly held this to be cruel treatment sufficient to render the marriage insupportable. In another case the husband, in addition to ordering his wife to leave his house and then taking her to her father, threatened to tell her father of certain purely imaginary acts of infidelity and then accused her of these acts, using the names of her alleged paramours. The court held the conduct to be cruel and outrageous. Although the series of acts involved in the case may indeed have rendered living together insupportable, the accusations considered alone would seem in the writer's opinion to fall short of the insupportability requirement. However, in two other cases accusations alone have been held sufficient. In the first case, a husband told his wife in front of her relatives that she was guilty of an infamous crime. In the other case the husband charged his wife, in her sister's presence, with an atrocious crime and with being the mistress of another man. The court held in both cases that the accusations did not amount to defamation, but they did constitute cruel treatment under article 138. It is submitted that although such accusations were unkind and reprehensible, they should not be considered sufficient in themselves to render living together insupportable, especially since they were made on merely one occasion and then only in front of a member of the accused party's family.

(d) Refusal to provide a separate home. Refusal by a spouse to provide a separate home away from relatives, following dis-

56. Rowley v. Rowley, 19 La. 557 (1841); see Armentor v. Gondron, 184 La. 622, 168 So. 102 (1936) (husband's refusal to participate in the wife's desired social activity was held justified on the ground that it would interfere with the husband's business).
57. Public defamation is a separate ground for separation. LA. CIVIL CODE art. 138(4) (1870).
59. Champagne v. Duplantis, 147 La. 110, 84 So. 513 (1920).
60. Olberding v. Gohres, 107 La. 715, 31 So. 1028 (1902) (the court in granting the decree failed to term the act "cruelty").
agreements between the other spouse and his family has caused several actions for separation. Where the husband refused to establish a separate domicile away from his parents who were cruel to his wife and refused to allow her to care for her child, the court, although not calling the action "cruelty," granted a separation. Another couple, after a separation, reconciled and agreed to live away from the husband's sisters. Thereafter the husband took the children and went back to his sisters, with whom he remained, refusing to let his wife see the children and insulting her in front of them. The court reversed and remanded a judgment refusing to grant the decree. In another case a husband's refusal to provide a home away from his mother who had become hostile and abusive was deemed to be cruel treatment. Likewise, where a husband's relatives living with the couple cursed, abused, and generally mistreated the wife, the court found that the husband was able to provide another home and thus declared the failure to do so sufficient cause for separation. On the other hand, refusal to live separately from the husband's family is not grounds for separation when earnings are not sufficient to maintain a separate home and the parents-in-law are kind to the wife.

(e) Cruelty to the children. The court has been faced with this question in three cases. In one, a father shot his son in the mother's presence and refused to allow her to go to the dying boy's aid, threatening that she would be killed if she moved. No more extreme example of the insupportability of marriage after that incident can be imagined. In another, the court stated that mere punishment of a child is not grounds for separation, but where done solely to cause the other spouse grief, resulting in ill health, it is cruelty of such a nature as to warrant legal separation. But, according to the third decision, where the punishment inflicted on the children is not designed to give the other spouse grief, no separation will be granted.

(f) Expulsion from the home. An act such as expulsion of the spouse from the home should certainly constitute cruelty,

64. Cormier v. Cormier, 103 La. 158, 100 So. 365 (1926).
and it has been so held. Thus, a defendant's action in ordering his wife out of the house on several occasions, spitting at her once, and charging her with being worthless was held to constitute cruel and humiliating conduct, making marriage insupportable. In a similar case the husband turned his wife outdoors and forbade her to return until he sent for her, else he would drive her away with his "cowhide." The court here, influenced by the age, habits, and mode of life of the parties, coupled with the repentance of the husband and his willingness to live with her, refused to grant a separation. It is easy to see that the last case, though similar to the first, had several differences which enabled the court to deny a separation.

(g) Loathsome disease unknown to other spouse. Two adjudicated cases come within this category. In one, a man communicated a venereal disease to his wife who was unaware that he was infected. Evidence showed that before the marriage he had been treated for the disease and knew or should have known that there was danger of his wife's contracting it. This complete indifference to his wife's health was sufficient to warrant a separation on the ground of cruelty, as it certainly must have rendered the marriage insupportable. But where a husband concealed that he was a leper until he was incarcerated at the sanitarium, the court refused to grant a separation, since the wife was neither infected nor in any danger of being so. The court said that "humiliation and mortification which result from deception, and conduct not amounting to an outrage, but which merely wounds the mental feelings" is not cruelty.

(h) Miscellaneous grounds. Falling into this classification are several cases. In one, it was held that the husband's action in spreading a rumor that his wife was insane and telling at least four persons of the couple's unhappy home life was sufficient to support a separation decree on the ground of cruel treatment, though not on the basis of defamation. The decision was based partly on the prominent social class of the couple, the court

72. Ibid. The specific facts about these factors were not stated, the court merely saying that in view of several leading cases, they were unable to hold that the district court erred.
75. Id. at 1097, 142 So. at 700.
saying: "The higher we rise in the social scale, the more jealously guarded we find, is the secret of unhappiness of families." 77

There is a mutual obligation between spouses to submit to the normal sexual desires of the other, and force used in "normal desires" is not cruelty. 78 What is "normal" seems to depend on the various social and health factors concerning the couple. 79

(i) Accumulation of grievances. By "accumulation of grievances" is meant all of the circumstances which have been considered collectively in judging a particular case. In an early case the court granted a separation where twelve months of neglect by the husband of his wife, in addition to indifference to her affection, were followed by recurring scenes of violent quarrels involving his use of opprobrious epithets. 80 Although the court in another case 81 conceded that failure to support, per se, is not a legal ground for separation (the husband had been guilty of failure to provide proper food and clothing), it found that the husband had a quarrelsome disposition, a dictatorial manner in handling funds, and a highly nervous and irritable nature. Furthermore, he had threatened to inflict personal violence on his wife and had cursed and abused her. These combined grievances had caused her to fear her husband and had rendered living together insupportable. Somewhat similar is a case where the husband came home intoxicated, cursed his wife, declared he no longer loved her, and picked up a loaded weapon in such a manner as to cause her to fear for her life and take refuge in a neighbor's house. 82 He was also proved guilty of threatening, striking, cursing her on prior occasions, and of taking their child away in his automobile for hours while he was under the influence of alcohol without telling his wife of his intentions. The combination of circumstances in this case was considered sufficient to render living together insupportable. The cumulative

77. Id. at 824, 40 So. at 234.
79. Ibid. The court found that sexual intercourse once a day, with occasional indulgences of twice or three times a day for this healthy, uneducated Negro couple was reasonable and normal.
80. Terrell v. Boarman, 34 La. Ann. 301 (1882). The court recognized the necessity of considering the character, habits, and education of the parties to determine if the conduct renders living together insupportable, and finding that the plaintiff was a lady of culture and refinement, granted a separation.
81. Allen v. Allen, 170 La. 100, 127 So. 378 (1930) (one particular instance in which the husband became infuriated and threatened to kill his wife if she did not leave his sight, impressed the court as to the hopelessness of the marriage).
effect of the wife's misconduct was decisive in another instance, where it appeared she habitually gambled and spent beyond the couple's means, and as a result neglected her household duties, quarrelled, nagged, and abused her husband and interfered with his medical practice. The court said that gambling habits, which caused embarrassment or humiliation alone were not enough, but where carried to excess and resulted in such as the above, they constituted cruelty.83 In another case a man made unreasonable demands and used brutal force in sexual relations while the wife was pregnant, constantly criticized his wife in handling family funds and in performance of household duties, and attempted to take his wife to a tourist court against her will.84 This conduct resulted in the wife's experiencing repeated hysterical spells, she being a person of highly nervous temperament. The court's grant of separation appears justified.

The element of faithlessness was a factor in a decision concerning collective grievances.85 The husband, it seems, over a period of seven years had openly devoted much attention to another woman, disregarding the pleas of his wife to cease such conduct. One day he and the other woman were confronted by his wife on a main street in New Orleans, whereupon he insulted his wife and used vile language. The court said this series of actions, climaxed by the verbal insults, was cruelty sufficient to render living together insupportable, because it constantly humiliated the wife and deprived her of a happy home and of being accepted in society. Another peculiar situation developed in two cases involving the same set of circumstances.86 The defendant husband became obsessed with his new religious ideas and neglected his wife, children, and business, and attempted to convert the children to his new faith. He became very strict with his wife and forbade her to take part in any of her accustomed social activities, causing her humiliation and grief. In addition, he accused her of leading an empty life and of being

84. Wendling v. Aucoin, 214 La. 361, 37 So.2d 819 (1948); but see Thompson v. Emery, 127 La. 718, 53 So. 968 (1911) (separation was denied on the ground that nonsupport, pawning the wife's piano, and failure to pay his debts were not cruelty).
85. Holmes v. Holmes, 50 La. Ann. (N.R.S. ed.) 768, 771, 23 So. 324, 326 (1898) (an argument arose at the street meeting and the husband told his female companion to take his cane and "give her [his wife] hell, and knock her damn brains out").
unfit to raise their child. The court recognized that the change of religion and attempts to convert his children were not enough alone to support a judgment of separation, but with the accusations and resulting humiliation, it found the action amounted to cruelty. Although, as in the physical violence cases involving several grievances, it would be difficult to evolve any definite standards to serve as means of predicting future decisions, it may nevertheless be useful to note that the court has had no difficulty in finding that accumulated acts of mental cruelty render the marriage insupportable.

Conclusion

The cases which have been discussed illustrate that cruelty of such a nature as to render living together insupportable may be found in a great variety of circumstances. Several conclusions may be drawn from this analysis. One isolated act can be sufficient. It is not necessary that the act or acts inflict physical injury; mental harassment alone may suffice. The act of cruelty need not be directly committed against the other spouse, but may be inflicted on their child to cause grief to the other. The married life as a whole, including its social, economic, and psychological aspects, is considered in evaluating the particular acts complained of. The concept of insupportability has properly been interpreted to include situations in which cruelty has caused such danger to or animosity toward the other spouse as to result in great fear or an absolute breakdown of harmonious relations. In cases involving abusive language, expulsion from the home and false accusations, however, the court has been inclined to give the requirement of insupportability a more lenient interpretation. With these exceptions, the standard of insupportability has very nearly conformed to the definition preliminarily suggested by the writer. It may be noted that

87. Krauss v. Krauss, 163 La. 218, 111 So. 683 (1927) (the trial court rendered a decision granting a separation, and in affirming the judgment, the Supreme Court concluded that conduct producing "perpetual social sorrow" is cruelty). Id. at 226, 111 So. at 686.
88. Thompson v. Emery, 127 La. 718, 53 So. 968 (1911). The court held that if the husband's paroxysms of rage were such cruelty as to cause his wife to fear for her life and render living together insupportable, separation would be granted. This statement implies that if the wife were made to fear for her life, living together would be insupportable.
there have been no cases decided on the ground of cruelty which should have been based on other grounds. The court's early position with regard to the sanctity of marriage\textsuperscript{90} undoubtedly has been changed over the years, but the modifications of policy have not been apparent in the cases involving complaints of cruelty. Unless the trend toward consent divorce as illustrated by the law authorizing divorce on the sole ground of separation in fact is reversed, the ground of cruelty will continue to be of diminishing importance.

James F. Pierson, Jr.

The Delays for Filing Transcripts of Appeal and the Duty To Do So in the Various Appellate Courts of Louisiana

Considerable difficulty has been experienced by attorneys in Louisiana in ascertaining the proper procedure for filing the transcript of the trial record in the appropriate appellate court. Much of this difficulty can be attributed to a lack of uniformity in the prescribed methods for filing of transcripts that resulted from statutory amendments which changed the procedure for appeal on an individual appellate court basis rather than by comprehensive provisions applicable to all appellate courts. The purpose of this Comment is to discuss when there is a duty to file, the time within which to file, and the results of late filing of the record in the appellate courts of this state. In the determination of the proper procedure for filing the transcript, a close analysis must be made of the various statutory provisions in the light of the various appellate courts to which they apply.

Prior Procedure

Prior to act 106 of 1908 and act 22 of 1914, article 583 of the Code of Practice provided that the appellee be cited to appear before the appellate court "at its next term or return day for the

\textsuperscript{90} Dubon v. Dubon, 110 La. 240, 34 So. 428 (1903) ("the courts of Louisiana are reluctant to interfere with the relations of man and wife and slow in interposing their authority wherever it seems probable in any reasonable view that those relations may be preserved"); Halls v. Cartwright, 18 La. Ann. 414 (1866) (the court held that public policy, good morals and the highest interests of society require every safeguard to the marriage relation and a severance is allowed only for causes specified by law and clearly proven).