Matrimonial Agreements

Types

- Legal
  - Comm of acquits + gains
  - Modified through matrim. ag'ment
    - Typically sep of prop
      - provisions of legal regime not exclu. remain in effect
- K
  - Est through matrim. ag'ment
    - Modified legal regime

Form

- Gen'l rule
- Authentic act or priv. act
- Written concurrence
- Father AND mother
- OR parent w/custody
- OR tutor
- Spouses may enter prenup
- May modify/opt out of legal
  - Authentic act or priv. act

When to enter agreement?

- Gen'l rule
  - B/f or during marriage
  - BEFOR marriages may enter prenup
  - May modify/opt out of legal
    - Authentic act or priv. act
  - DURING
    - SS long domiciled in LA?
      - Joint petition to CT
      - CT finding serves best interest
      - SS understand princ. + rules
      - SS Moving into LA?
      - During 1st yr may enter w/o CT approval
      - Entering a LEGAL regime?
      - SS may enter matrim ag't to any matters not proh. by public policy.
        - E.G.
        - Provide for specific contrib. to expenses of marriage
        - Provide for apportion of CP acc. to fixed shares
        - Reserve fruits as sep prop
        - Provide that future prop = CP
        - N.B. may be a donation
        - Check rules app. to donations
        - May NOT reduce/alter marital portion
        - May NOT alter order of succession
        - May NOT limit rights 1 spouse has to oblig., alienate, encumber, lease (3rd parties)

- DEFAULT
  - Comm of acquits + gains
  - Typically sep of prop
  - Modified legal regime
  - Provisions of legal regime not exclu. remain in effect

Matrimonial Regimes

K Freedom

- Systems of princ. + rules gov. o'ship +mng't of prop. of married persons
- Gen'lly
- SS may enter matrim ag't to any matters not proh. by public policy.
- E.G.
  - Provide for specific contrib. to expenses of marriage
  - Provide for apportion of CP acc. to fixed shares
  - Reserve fruits as sep prop
  - Provide that future prop = CP
  - N.B. may be a donation
  - Check rules app. to donations
- Limits
  - May NOT reduce/alter marital portion
  - May NOT alter order of succession
  - May NOT limit rights 1 spouse has to oblig., alienate, encumber, lease (3rd parties)
Gen'lly

Assets

Misc. Probs.

Classification of
Assets II

05/29/2000 - v6

Applies to...

SS domiciled in LA regardless of place of marriage

does NOT "own" prop.

SS own prop.

NOT legal entity

entirety of assets of mass liable to creditors of sep AND comm oblig.

Nature of Regime

Each owns undiv. 1/2 interest

Onship of CP

atmtpt. disp = absolute nullity

Suff Sep Prop interest is INALIENABLE

BUT portion and/or tl of things of each = CP

Applying:

Awards for lost earnings = CP

If comm term, post-term portion = sep

NO effect on classif.

Commingling

Makes it diff. to overcome pres. of CP

title passes at ag'ment on thing + price

remains sep even if comm $ used to pay off

acquires in installments; title rec'd at end

if later payments w/comm $ = CP

UNLESS comm $ = inconseq.

some argue should be pro rata

if made to 1 spouse indiv. = sep prop

look to donor's intent

pro rata

sui generis

proceeds always owned by benef.

policies acq. b/f marriage = sep

during marriage = comm

term life has NO value

whole life has savings value

portion attrib to work during comm = CP

pro rata

Contingency Fee Ks

Life ins. Ks

Physical Sales

title passes at ag'ment on thing + price

remains sep even if comm $ used to pay off

pro rata

portion attrib to work during comm = CP

Disability

if written during comm = CP

even if premium paid post-term

Sweepstakes

Gen'l rules

no mixed titles

classify at acquis.

Presumption of Comm.

S may rebut w/proof

BOP?

Acq. through effort, skill, industry of either spouse (WORK)

Acq. w/ comm things or w/comm + sep things (see 2341)

Joint donations

Fruits of comm prop

Damages for loss/damage to CP

ALL other prop not class. as sep

Acq. prior to est. of legal regime

Acq. w/ sep prop

Acq. w/ sep AND comm prop when value of comm = "inconseq."

Inherited

Damages against a spouse

breach of K

fraud/bad faith in mng't of CP

Damages to sep prop.

Things acq. from voluntary partition

2341.1: additional interests

Sep Prop

donates to Sep?

transfers 1/2 to spouse

Form

stipulate: "shall be part of comm"

onerous: in writing

gratuitous: authentic act

Comm Prop

donates to Comm?

transfers 1/2 to spouse

Real Subrogation

decl. in act of acq. that thing acq. w/o sep prop MAY BE controverted

By spouse UNLESS he concurred

ALWAYS by forced heirs + creditors

EXCEPTION

N.B. seems like mixed title

Estoppel by Deed

new thing takes place of old

sep prop b/c sep prop etc.

orig. interest remains sep.

Comm Prop

later acq. sep interest

origin. interest remains CP

Ins. Policy Commis.

if written during comm = CP

even if premium paid post-term

Sweepstakes

Comm to Sep?

donation transforms to sep prop of donee

= interest of donee b/c sep prop

fruits, minerals etc. b/c SEP PROP of donee!

Interspousal Donations

Transfers 1/2 to spouse

Sweepstakes

Septo Comm?

stipulate: "shall be part of comm"

onerous: in writing

gratuitous: authentic act
Pension Plans

Fruits/Revenues of Sep Prop.

Classification of Assets II

General classify pro rata

Exception to all or nothing rule

Defined Contrib. Plans
e/er pays based on length of service
NOT based on e/er or e/ee contrib.
e.g. 80% of salary

Defined Benefit Plans

ERISA Preemption

See Boggs

ERISA preempts LA CP law

Classify as comm prop

nat + civil fruits
minerals
domestic

delays rentals
royalties
shut-in payments

Fruits

minerals
bonuses
delay rentals
royalties
shut-in payments

Classify as comm prop

Unilateral decl. reserved fruits OK
authentic act or priv. sign.

Reservation of Fruits

When effective?
immove: filed for registry in parish

movable: filed where decl. domiciled

? - 5/31/00 - v1 - Dane S. Ciolino
Manag. of Comm. Prop.  

**Gen'l Rule**  
Each spouse acting alone may manage, manage control, dispose  

**Exclus. Right to Manage**  
- Sole manage of comm. enter.  
  - Alienate movables  
  - UNLESS issued in name of other S  
- Applies to stock  
- Creditors of other S can still seize  
- S = partner has right to manage  
- S not partner may NOT affect legal r'ship of partners  
- Other S may be auth by CT to manage, etc. the prop  
- If sole manage is absent?  

**Concurrence Req'd**  
- Equal Mgmt.  
  - Each spouse acting alone may manage, manage control, dispose  
- Alien comm immov.  
  - Turn. in famiy home  
  - All/subst all assets of comm. enter.  
  - Movebles in name of both jointly  
- NOTE: NO concurrence  
  - Encumb. imposed by law  
  - Business entity/sale of stock  
  - Donation of CP to 3d person  
  - Except usual/custom  

**NO Concurrence**  
- Other spouse ratifies alien. etc.  
- May reserve to some CP  
- Can be irrev. up to 3 yrs.  
- If revocable, in effect until revoked  
- Renouncing spouse not party to trans.  
- Spouse renounces right to manage comm. enter.  
- Best interest of family  
- Other spouse arbit. refuses to concur OR is incap. or absent  

**Mismanagement**  
- S liable for damage caused  
- Unauthorized alienation?  
- If alienate w/o concurrence  
  - Relative nullity  
  - UNLESS S has renounced  
- Alienation of assets of bus. by non-manager = relative nullity  

**Accounting**  
- S owes to other for CP under his control at term  
- Prescip. = 3 yrs from term.  
- HERITABLE  

**Other**  
- Judicial Authorization if . . .  
- Other spouse arbit., refuses to concur OR is incap. or absent  

Causes of Term.

- Gen'l Rule
- Comm Oblig.
- Sep. Oblig.
- Import. of Classif.
- Classif. Of Oblig's

Death
Decl. of Nullity
Divorce
Matrim Ag'ment term comm

ON WHICH DIVORCE IS GRANTED

Oblig is comm or sep.

Classif. only relevant at term

Gen'l Rule

All oblige incurred by S during CP regime presumed comm.
Oblig incurred for common interest or interest of other S
Alimentary oblig. of S
Oblig for attys fees in divorce

Oblig incurred for common interest or interest of other S

Incurred prior to est of CP regime
incurred neither for common interest NOR for interest of other S

Incurred for benefit of sep prop.
to extent no benefit comm

arising from intent torts
if no benefit comm.

arising after term.
except atty fees (2362.1)

Comm Oblig.

Comm Oblig.

if disposes of former CP for purpose other than comm oblig.
s can be personally liable
free to dispose of cp

S can be personally liable

Comm Oblig.

can assume resp. for 1/2

comm oblig are allocated at term

Import. of Classif.

Sep. Oblig.

Incurred prior to est of CP regime

Incurred neither for common interest NOR for interest of other S

Incurred for benefit of sep prop.
to extent no benefit comm

arising from intent torts
if no benefit comm.

arising after term.
except atty fees (2362.1)

Reimbursement

Sep. Prop to Benefit Sep. Prop?
- CP Used to Benefit Sep. Prop?
  - NO limit on amt. of reimburs.
  - other S entitled to 1/2 value of CP at time it was used.
  - Bldgs., other construct, plantings made w/ comm assets on sep prop.
  - S whose assets used entitled to FULL reimburse.
  - NO limit on reimburs.
  - N.B. NOT same as property law

Sep. Prop Used to Benefit CP?
- S whose assets used entitled to 1/2 value at time
- S whose assets used entitled to FULL reimburse.
- Bldgs, etc. on Comm. Prop.
- lab ltd. to his share in comm.

Sep. Oblig Satis. w/ Sep Prop?
- S entitled to 1/2 value
  - if CP used to satisfy sep oblig.
  - 1/2 of CP used goes to other S at term.
  - N.B. some articles limit amt. to his share in comm.

Sep. Oblig Satis. w/ Comm Prop?
- Made from patrimony of S who owes
  - NOT from comm assets
  - if CP used to satisfy sep oblig.
  - 1/2 of CP used goes to other S at term.
  - N.B. some articles limit amt. to his share in comm.

Sep. Oblig for Comm Debt?
- no reimburse due

Gen’lly
- if CP used to satisfy sep oblig.
- 1/2 of CP used goes to other S at term.
- N.B. some articles limit amt. to his share in comm.

Effect?

Component parts?

other spouse entitled to 1/2
INCREASE in value ATTRIB to labor
CAN be LABOR of EITHER SPOUSE
if increase due to something else
NO reimburse (e.g. stock market)

Sep. Increase b/c Uncomp. Labor?

Made from patrimony of S who owes
- NOT from comm assets
- if CP used to satisfy sep oblig.
- 1/2 of CP used goes to other S at term.
- N.B. some articles limit amt. to his share in comm.

Effect?

Component parts?

other spouse entitled to 1/2
INCREASE in value ATTRIB to labor
CAN be LABOR of EITHER SPOUSE
if increase due to something else
NO reimburse (e.g. stock market)

Sep. Increase b/c Uncomp. Labor?

Made from patrimony of S who owes
- NOT from comm assets
- if CP used to satisfy sep oblig.
- 1/2 of CP used goes to other S at term.
- N.B. some articles limit amt. to his share in comm.

Effect?

Component parts?

other spouse entitled to 1/2
INCREASE in value ATTRIB to labor
CAN be LABOR of EITHER SPOUSE
if increase due to something else
NO reimburse (e.g. stock market)

Sep. Increase b/c Uncomp. Labor?

Made from patrimony of S who owes
- NOT from comm assets
- if CP used to satisfy sep oblig.
- 1/2 of CP used goes to other S at term.
- N.B. some articles limit amt. to his share in comm.

Effect?

Component parts?

other spouse entitled to 1/2
INCREASE in value ATTRIB to labor
CAN be LABOR of EITHER SPOUSE
if increase due to something else
NO reimburse (e.g. stock market)

Sep. Increase b/c Uncomp. Labor?
When is partition allowed?

- Judicial part: NOT b/f term, no one can force, not spouses, not creditors, post term either can demand, any agr't to contrary null.
- Voluntary part: during comm regime, things acq. b/c sep prop., no effect on matrim. regime, future things still comm.

Effect?
- 3rd parties: file for registry
- cong for immov. in parish
- mov. spouse domicile

Experts
- CT may consult

Venue
- immov.?: no
- mov. spouse domicile: if S does not rec. 3/4 FMV

Allocation & Valuation
- GOAL = each rec. eq. net value
- hard to allocate assets? 
- order to draw lots
- order priv sale
- order part by licitation

Effect of Alloc.?
- b/w spouses?
- among creditors?
- no way affects rights

CT may consult
- Experts
- immov.?: no
- mov. spouse domicile: if S does not rec. 3/4 FMV

Classification
- LA. R.S. 9:2801
- CT classifies assets and obligs as sep or comm.
- each spouse files sworn descrip. list
- list assets and FMV
- each can traverse or concur
- trial of traverses
- CT will classify assets + obligs if disagree?
- no value until trial on merits
- GOAL = each rec. eq. net value
- Alloc. + Valuation

LA. R.S. 2332
- immov. parish
- mov. spouse domicile

Spouse bears BOP on value
- also rescind if vice of consent
- error
- fraud
- duress

Partition of Comm. Assets and Obligations
05/29/2000 - v5

Proc. for Jud. Part.
During Regime

2357: oblig incurred b/f or during comm may be satis. AFTER term w/ former CP and sep of S who incurred

may be liable for all obligs of other S up to value of prop disposed

S may assume by written act resp for 1/2 oblig incurred by other S

may dispose of former CP w/o add. liab.

EXCEPTION: Assumption

BUT his former CP still subj to seizure

Volunt. Part?

2357 n/a b/c post term

may be revocatory action

Creditors' Rights

05/29/2000 - v4

During Regime

2345: sep or comm oblig. may be satis. w/ CP or sep prop of S who incurred

maybe right to reimburse if sep used to comm obig?

may reimburse if CP used to satisfy sep oblig?

but may be ltd. to comm. assets

Creditors rights unclear

Post Term.

maybe reimburse if sep used to comm obig?

same rule attys fees?

If spouse sells former CP?

if other than comm oblig?

may be satis or comm oblig. may be satis. w/ CP or sep prop of S who incurred

maybe right to reimburse if sep used to comm obig?

may reimburse if CP used to satisfy sep oblig?

but may be ltd. to comm. assets

Creditors rights unclear

2357 n/a b/c post term

may be revocatory action

Choice of Law

Putative Marriage

Misc. Topics

05/29/2000 - v4

Art. 96: absolute null marriage produces civil effects in favor of party who knew in good faith that the marriage was invalid.

Comm. regime = civil effect.

One S in good faith

Other 1/2 to 1st S

Spouse 1/2 split b/w 2 spouses

See Patton v. City of Phil.

Marital Portion

Gen'l rule

putative marriage applies to Ss domiciled in this state regardless of domicile at marriage or place of celeb.

Movables

Gen'l rule

law of domicile applies to movables regardless of domicile.

Either spouse domicile in LA

Movables wherever sit.

At term.

Either spouse acquired by S while domiciled in another state

CP under LA law = CP

If CP under LA law = CP

IF SP = SP BUT other S entitled to same rights in value as granted under law of domicile.

Acq. S

Immov.

Gen'l rule

Movables in LA governed by laws of this state at term.

Immov. in another state?

Either S domicile in LA

Acq. in another state

At term.

If CP in this state = law of this state

Enforce by judg.

LA Immov.?

Either S domicile at term

Acq. by S while domicile another state

If CP in LA = CP

If CP in LA = CP

BUT other S entitled to same rights granted by state of domicile.

Immov. in LA

Acq. by S domiciled elsewhere

If CP would be CP

If not same rights as granted by state of domicile.

Death of S domiciled elsewhere?

Acq. by S domiciled elsewhere

CP if wife or forced heir

If not same rights as granted by state of domicile.

S dies rich in comparison

Nature

Incident of ANY regime

S may claim if sep.

No kids? 1/4 of ship.

3 fewer kids? 1/4 usufr.

4 more kids - child's share usufr.

Quantum

NEVER more than $1 million.

Credit legacy and death benefits.

NOT inter vivos gifts.

See Patton v. City of Phil.

Com. Portion

Misc. Topics

05/29/2000 - v4

Gen'l rule

Legal rule applies to Ss domiciled in this state regardless of domicile at marriage or place of celeb.

Either spouse domicile in LA

Movables wherever sit.

At term.

Either spouse acquired by S while domiciled in another state

CP under LA law = CP

If CP under LA law = CP

If SP = SP BUT other S entitled to same rights in value as granted under law of domicile.

Acq. S

Immov. in another state?

Either S domicile in LA

Acq. in another state

At term.

If CP in this state = law of this state

Enforce by judg.

LA Immov.?

Either S domicile at term

Acq. by S while domicile another state

If CP in LA = CP

If CP in LA = CP

BUT other S entitled in value to rights granted by state of domicile.

Immov. in LA

Acq. by S domiciled elsewhere

CP if would be CP

If not same rights as granted by state of domicile.

Death of S domiciled elsewhere?

Acq. by S domiciled elsewhere

CP if wife or forced heir

If not same rights as granted by state of domicile.

S dies rich in comparison

Nature

Incident of ANY regime

S may claim if sep.

No kids? 1/4 of ship.

3 fewer kids? 1/4 usufr.

4 more kids - child's share usufr.

Quantum

NEVER more than $1 million.

Credit legacy and death benefits.

NOT inter vivos gifts.