

BIENVENUE EN LOUISIANE!

Demystifying
Practice in
Louisiana for Texas
Litigators





D. Ryan Cordell, Jr.
rcordell@hicks-thomas.com
713-547-9130

YOUR CLIENT FINDS ITSELF IN LOUISIANA'S COURTS – AND WANTS YOU TO HANDLE IT

- “I leave my 20 acre plot of land to my daughter Amy for her life, and after that, to my son Billy in perpetuity”
- Valid devise in Texas, Arkansas, Mississippi, etc.
- But NOT in Louisiana
- Prohibited Substitution (C.C. Art. 1520); *compare* Vulgar Substitution
- Vulgar Substitution: “I leave my 10 acre plot of land to my daughter Amy, and in the event that Amy does not accept it or is predeceased, to my son Billy.”

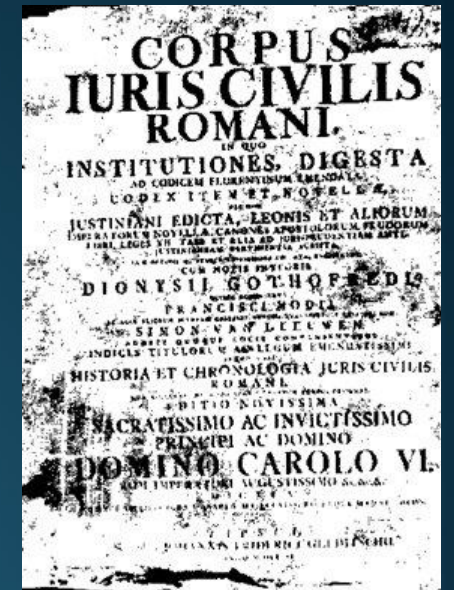
CIVIL LAW – HISTORICAL ROOTS (GREATLY SIMPLIFIED)

▶ BYZANTINE (EASTERN ROMAN) EMPIRE

- *Corpus Juris Civilis* (Justinian I) (enacted 529-534)
- Rediscovered in Northern Italy in about 1070.

SPAIN AND FRANCE

- Evolved further in the west during the middle ages.
- *Jus commune*



*Corpus Juris
Civilis*

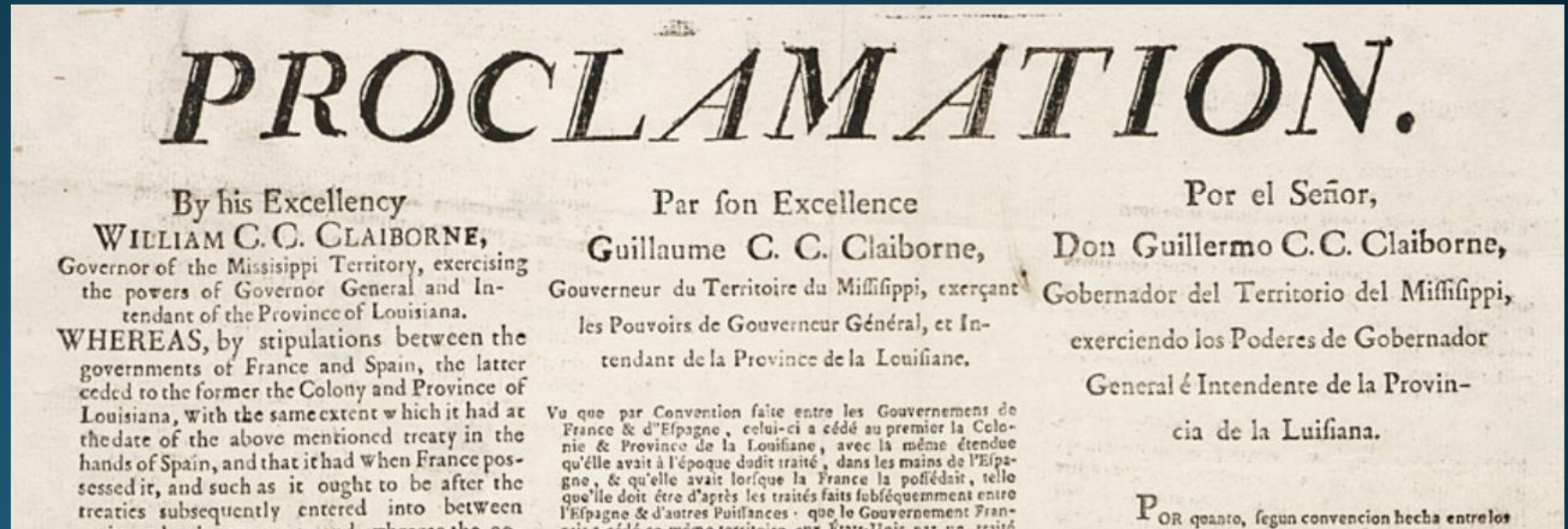
COLONIAL OWNERSHIP OF LOUISIANA

- 1699-1762 – FRANCE
- 1763-1800 – SPAIN
- 1800-1803 – FRANCE
- 1803 – UNITED STATES OF AMERICA
 - Louisiana Purchase



WILLIAM CLAIBORNE

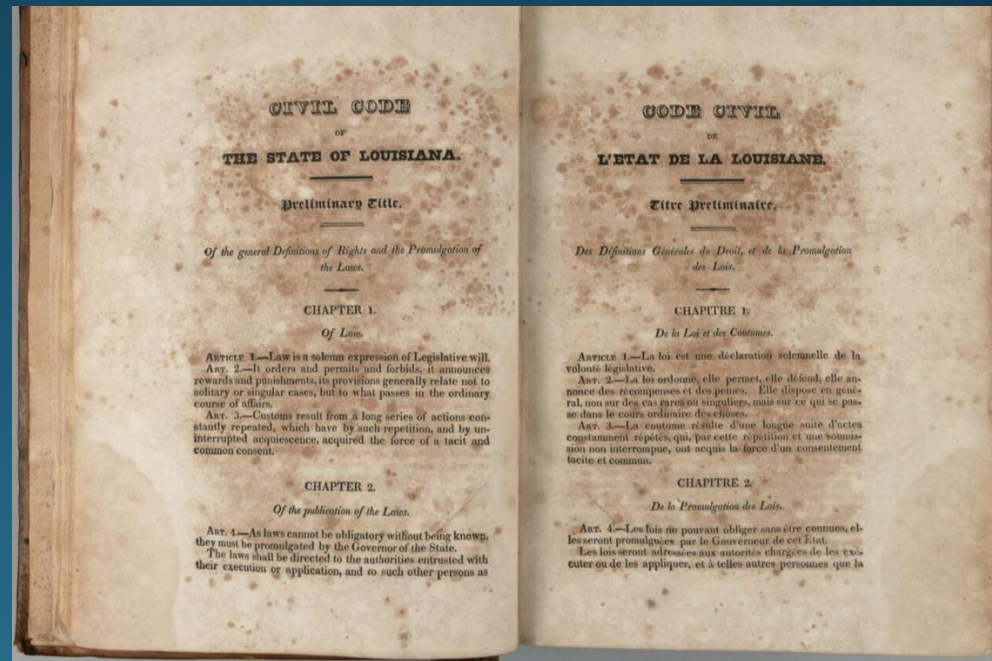
FIRST AMERICAN GOVERNOR OF LOUISIANA



"all Laws and municipal regulations which were in existance [sic] at the Cession of the late Government remain in force."

JAMES BROWN, LOUIS MOREAU-LISLET

- MARCH 31, 1808 - *LOUISIANA CIVIL CODE DIGEST (FRENCH: DIGESTE DE LA LOI CIVILE)*



- CONTINUALLY REVISED AND UPDATED SINCE

A MIX OF TRADITIONS

▶ **“[A]t its core, the private law remains largely ‘civilian.’ civil law predominates in a number of subfields, e.g., successions and property, but other subfields consist of a more or less equal ‘blending’ of rules of Anglo-American and civil law derivation, e.g., security devices, partnership and delicts (torts), and many subfields are governed entirely by law of Anglo-American derivation, e.g., commercial paper and corporations.”**

SUED IN LOUISIANA

- ▶ • **DO I NEED LOCAL COUNSEL?**
 - Yes, unless an exception applies.
- **CAN I APPEAR *PRO HAC VICE*?**
 - Yes, but you must have local counsel.
- **DO I NEED TO LEARN ANY FRENCH?**
 - Probably not, but we'll cover some confusing terms you'll encounter.

DO I NEED LOCAL COUNSEL?

- **TRUE RECIPROCITY LIMITED**
- **GENERALLY, MUST ASSOCIATE**
- **SOME PRIMARY EXCEPTIONS**
 - From state with mutual reciprocity without requirement of association
 - In-house counsel (4-year)
 - Discovery and other non-appearance matters
 - Anticipation of litigation

CAN I MOVE FOR *PRO HAC VICE* ADMISSION?

- **YES**

- Must associate with local counsel
- Application / \$450 fee / Disciplinary Counsel approval and letter
- Local counsel files ex-parte motion, with letter attached
- No “frequent appearances” constituting “regular practice”
- 20-day objection period
- **GET THE BALL ROLLING EARLY**

I AM ADMITTED. HOW WILL PRACTICE IN LOUISIANA DIFFER FROM TEXAS?

- JUDICIAL PHILOSOPHY
- CIVIL PROCEDURE AND PRACTICE
- SIGNIFICANT SUBSTANTIVE DIFFERENCES
- LEGAL TERMINOLOGY

JUDICIAL PHILOSOPHY

▶ STARE DECISIS (COMMON LAW)

JURISPRUDENCE CONSTANTE (CIVIL LAW)

- “The chief distinction between *stare decisis* and *jurisprudence constante* is that a single case affords sufficient foundation for *stare decisis*, while a series of adjudicated cases, all in accord, form the basis for *jurisprudence constante*.” (*Willis-Knighton Med. Ctr. v. Caddo-Shreveport Sales & Use Tax Comm'n.*, 903 So.2d 1071, at n.17 (La. 2005). (Opinion no. 2004-C-0473)).
- “[J]*urisprudence constante* is merely a secondary source of law, which cannot be authoritative and does not rise to the level of the source of law, which is legislation.” (*Royal v. Cook*, 984 So.2d 156 (La. Ct. App. 2008)).

PRESCRIPTION & STATUTE OF LIMITATIONS

- ▶ **• PRESCRIPTION AND PEREMPTION**

- TX Equivalents: Statute of Limitations and Statute of Repose

- **SIGNIFICANTLY DIFFERENT PRESCRIPTIVE PERIODS**

- Torts – 1 year (LA) – 2 years (TX)
- Breach of Contract – 10 years (LA) – 4 years (TX)

SERVICE AND PLEADING

SERVICE OF PROCESS

- Sheriff, or private process server upon motion (LACCP Art. 1291) vs. any person authorized by law (TRCP 103)

PLEADING DIFFERENCES

- Notice pleading vs. Fact pleading
- General denial vs. specific admissions/denials

- ▶ **ANSWER DEADLINES**

- Louisiana – 21 days
- Texas – 10:00 a.m. – first Monday after 20 days

- **DEFAULT**

- Louisiana – Preliminary Default
- Texas – Default Judgment

DEFENSES & EXCEPTIONS

- ▶ • **DECLINATORY**

- Declining the jurisdiction of the court

- **DILATORY**

- Delay – objections to the form of the proceeding or for more information

- **PEREMPTIVE**

- Grounds for dismissal of the suit

DISCOVERY

- **SHOULD BE FAMILIAR**
 - Modeled after Federal Rules
- **INTERROGATORIES**
 - TX – 25 interrogatories (Level II)
 - LA – 35 interrogatories

MINERAL ESTATES

• THE MINERAL ESTATE VERSUS MINERAL SERVITUDE

- Texas – Ownership in Place (Corporeal) – Surface and Mineral Estates may be severed
- Louisiana – Ownership of Right to Produce (Incorporeal) – Mineral Servitudes
 - Ownership does not occur until minerals are severed and reduced to possession

LESION BEYOND MOIETY

- **Sale of Corporeal Immovable (real property)**
- **Action by the seller**
- **Price was less than $\frac{1}{2}$ of the value of the immovable at the time of sale**
- **Remedy = rescission or damages**

FORCED HEIRSHIP

- **FORCED HEIR**

- Descendants of 1st degree that are 23 or younger at decedent's death; OR
- With mental incapacity or physical infirmity, incapable of taking care of their person or administering their estate
- May also have forced heir by representation, if parent of forced heir predeceases the decedent.

- **FORCED PORTION (“LEGITIME”)**

- $\frac{1}{4}$ (one forced heir); $\frac{1}{2}$ (2+ forced heirs)

NON-COMPETES

- **LOUISIANA – STRONG PUBLIC POLICY AGAINST NONCOMPETES**
 - Strictly construed
 - Must name exact geographical boundaries
 - Maximum duration of two years
 - No choice-of law workaround

- ▶ • **COMPARATIVE FAULT**

- Louisiana – Pure Comparative Fault
- Texas – Modified Comparative Fault (>50%)

- **LIABILITY OF DEFENDANTS**

- Louisiana – Joint and Divisible, unless intentional tort (Solidary liability).
- Texas – Several Liability, unless fault > 50% (Joint and Several).

PUNITIVE DAMAGES

- LOUISIANA

- Punitive damages generally forbidden
- Statutory Exceptions:
 - Driving While Intoxicated
 - Sexual Abuse of a Minor
 - Criminal Child Pornography
 - Art. 3546

THESAURUS

- **IN MOST CASES, SAME CONCEPTS, BUT DIFFERENT TERMINOLOGY**
 - Stephan Kinsella's 1994 publication, *A Civil Law to Common Law Dictionary* (available at <https://digitalcommons.law.lsu.edu/lalrev/vol54/iss5/5>).

PROCEDURAL TERMS

Louisiana	Texas
Concursus	Interpleader
Reconventional Demand	Counterclaim
Declinatory Exception	Motion to Dismiss (not merits) or Transfer Venue
Dilatory Exception	Special Exception
Peremptory Exception	Motion to Dismiss based on Merits
Preliminary Default	Default Judgment
Prescriptive Period	Statute of Limitations
Peremptive Period	Statute of Repose
Partition by Licitation	Partition by Sale
Tutorship	Guardianship of Minor
Curatorship / Interdiction	Guardianship of Adult
Suspensive Appeal	Supersedeas Appeal

PROPERTY TERMS

Louisiana	Texas
Usus, Fructus, Abusus	“Bundle of Rights”
Usufruct	Life Estate
Usufructuary	Life Tenant
Naked Ownership	Estate in Reversion / Remainder Interest / Remainderman
Movable/Immovable Property	Personal/Real Property
Corporeal/Incorporeal Property	Tangible/Intangible Property
Community of Aquets and Gains	Community Property
Emphyteusis	Long-Term Ground Lease
Servitude	Easement
Right of Use	License
Acquisitive Prescription	Adverse Possession
Arpent	.85 Acres

CONTRACT TERMS

Louisiana	Texas
Obligor/Obligee	Promisor/Promisee
Cause	Consideration
Error	Mistake
Suspensive Condition	Condition Precedent
Resolutive Condition	Condition Subsequent
Stipulation <i>Pour Autrui</i>	Third Party Beneficiary Contract
Natural Obligation	Promissory Estoppel
Absolute Nullity	Void
Relative Nullity	Voidable
Vices of Consent	Lack of Capacity, Fraud, Duress, Undue Influence
Simulation	Sham Transaction / Fraudulent Conveyance
Solidary Obligation (<i>In Solido</i>)	Joint & Several Liability

OTHER TERMS

Louisiana	Texas
Mandate	Agent
Ownership in Indivision	Joint Tenants
Pawn	Giving personal property as security for debt
Antichresis	Giving real property as security for debt
Synallagmatic Contract	Reciprocal Contract
Pact de Preference	Right of First Refusal
Fidei Commissum	(violation of) Rule Against Perpetuities
Delicts	Torts
Testament	Will
Dation en Paiement	Deed in Lieu of Foreclosure
Hypothec	Mortgage
Filiation	Paternity / Parentage

CONCLUSION

▶ LOUISIANA'S UNIQUE HISTORY YIELDED UNIQUE LAWS

BUT

CIVIL LAW AND COMMON LAW ARE MORE SIMILAR THAN THEY ARE DIFFERENT

FIND A LOCAL COUNSEL (AND A DICTIONARY)

GO FORTH AND PRACTICE WITH CONFIDENCE

THANK YOU

▶ CLE NUMBER:

174256192



www.hicks-thomas.com

Houston | Sacramento | Austin | Amarillo | Beaumont