

## LOUISIANA CIVIL CODE – VIVE LA DIFFERENCE!

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**To an average American lawyer it is bewildering that a single book of a few thousand sentences can constitute the entire private law of a single state. In fact the whole concept of lawmaking by means of generalizations in written form seems curious to him considering that the private law of a typical state fills whole libraries. Yet the *Louisiana Civil Code* still regulates all civil relations in the State of Louisiana.**

In the south-central part of the United States, at the mouth of the Mississippi river, lies the State of Louisiana. It fronts the Gulf of Mexico to the south and is bordered by Texas to the west, Arkansas to the north and Mississippi to the east. In terms of geographical location it is far away from France, yet the legal system of **the State of Louisiana is distinguished from the other 49 states in that it is based not on the common law but closely linked to the French tradition of civil law.**

The term "*civil*" is derived from Latin "*civilis*", which means pertaining to a community, city or citizens. As a result of different turns in its history, Louisiana, the only civil-law state in the United States, is ruled by the "*Louisiana Civil Code*" of 1825, closely connected with *Code Napoleon* of 1804. The legal system of Louisiana State is thus based on the Roman tradition rather than English common law. The *Louisiana Civil Code* was revised in 1970 and still remains in force in spite of the fact that its worth is often questioned.

In France, codification began in Napoleonic era. Until then, the law had varied substantially according to region and social class. After the French Revolution codification became necessary in order to consolidate the achievement of revolution and to effect a smooth transition from the past to the present. Political centralization with legislation as the chief source of law was necessary to ensure centralization of government authority.

Drafters of the *Code Napoleon* (1804) kept in mind that Napoleon was a layman in law. The style and language were therefore clear and precise. The features of the Code include its memorable phrases and its absence of cross-references or jargon.

In Louisiana, the civil law tradition dates back to 1712, when Antoine Crozat was granted a monopoly on commerce throughout the Louisiana territory. The Customs of Paris became the law of the territory and its inhabitants got used to the idea of living under French law<sup>1</sup>.

When Louisiana finally became the property of the United States (after the so-called "Louisiana Purchase") and the local inhabitants were pressed to convert to the common law, the citizens of Louisiana State objected. A clash of two legal traditions, civil versus common law, was inevitable.

As a result, the territory was split by the United States Congress Act of March 26 1804 into 2 smaller territories: the District of Louisiana and the Territory of Orleans (later: State of Louisiana). In June 1806, the Legislative Council authorized James Brown and Louis Moreau-Lislet to codify "the civil law by which this territory is now governed". In March 1808, the legislature enacted "**A Digest of the Civil Law now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to its Present System of Government**"<sup>2</sup>.

The legal source of the Digest, which became the basis for the later versions of the *Louisiana Civil Code*, was undoubtedly the *Code Napoleon* of 1804. About 85% of the Digest was derived from French sources, 70% of the total from the *French Civil Code (Code Napoleon)*. The rest of the provisions were influenced by Spanish, Roman and English sources.

Serious concern having been expressed in the Courts about the comprehensiveness and proper interpretation of the Digest, it was revised and in 1825 replaced with the *Louisiana Civil Code*. The Louisiana constitution vests the authority to make laws in the legislature, whereas the function of the courts is solely to apply the law to given sets of circumstances; previous decisions are not binding. The Code governs all personal and property rights and has been extended to civil and criminal procedures.

The *Louisiana Civil Code* is a collection of organically and logically interrelated articles. Much broader and slightly more verbose than the *Code Napoleon* (it contains over 3500 articles in comparison with the 2281 articles of the *Code Napoleon*), the *Louisiana Civil Code* is divided into 3 books: "Of Persons", "Of Things and the Different Modifications of Ownership" and "Of the Different Modes of Acquiring the Ownership of Things", which make its structure a general one, unlike a typical American lawbook. This feature clearly betrays the Roman pedigree of the code.

Its drafters clearly did a good job: **the *Louisiana Civil Code* is a code, a law school and an elementary legal doctrine, all in one package.**

The vocabulary of the *Louisiana Civil Code* also hints at its Roman lineage – the speech patterns used in its articles make them of general application. This phenomenon is hard to grasp for American lawyers who practise the common law, as they are accustomed to tons of paperwork devoted to a single case.

The expressions denoting concepts employed by the drafters of the Code are also of Roman origin, for example the concept of property comes directly from the Roman notion of *dominium*, based on three elements – *usus* (use), *fructus* (fruits) and *abusus* (the power to sell). Anyone looking for life estate will have to content himself with a rough equivalent: *usufruct* (Latin: use and fruits). To the modern ear, the word *servitude* may have an ugly connotation (Latin: slavery). In the Code, servitudes consists of a limitation upon the ownership of one parcel of land for the benefit of another parcel.

The text of the *Louisiana Civil Code* is an ideal tool for translators who are in doubt as to the interpretation of a concept or possible equivalent of a civil law term in English. The clear and precise wording make it an excellent parallel text, especially as the phrases and terms contained in the Code have been in use for almost two centuries now. Moreover, it can serve as a guidebook and a textbook on civil law.

### **Bibliography**

1. Encyclopaedia Britannica, MICROPAEDIA 11:125.
2. Louisiana Civil Code 1992 (Revised and Amended Through the 1991 Third Extraordinary Session of the Legislature), St. Paul West Publishing Co., Minnesota 1992.
3. The Louisiana Civil Code – A Humanistic Appraisal, Tulane Law School, Herman-Cambe-Carbonneau, Louisiana, 1981.

### **Przypisy**

1. Law of feudal France: unwritten customary law regulating human relations in a stratified society.

2. In common-law countries, such as England or United States, general law codes are the exception rather than the rule, largely because much of the law is based on previous judicial decisions. In the United States codification exists in narrow form; States adopt their own codes covering different types of procedure or penal law.