

aba news and views

by Sara A. Austin

Since my last report, the ABA Midyear Meeting was held in Miami at the beginning of March 1995. If you are interested in the items voted upon during the YLD Mid-Year Assembly, (the business meeting), please contact me and I will be happy to forward a copy of my report to you.

Sara A. Austin is the PBA/YLD District Representative. She is with the York law firm of Countess Gilbert Andrews.

Additionally, I have moved to a new law firm. My current address is Countess Gilbert Andrews, 29 N. Duke St., York, Pa. 17401, phone (717) 848-4900, fax (717) 843-9039.

The next ABA/YLD event is the Spring AOP (Affiliate Outreach Project), to take place May 31-June 1 in San Antonio, Texas. My next column will contain a summary of events from the Spring AOP. ABA/YLD happenings for the next year area as follows:

Aug. 4-7	Annual Meeting, Chicago, IL
Aug. 4-5	YLD Assembly
Oct. 26-29	Fall AOP, Milwaukee, WI
Feb. 2-5	Mid-Year Meeting, Baltimore, MD
Feb. 2	YLD Assembly
May 30-June 2	Spring AOP, Tucson, AZ

If you would like information about the foregoing but don't receive it from the ABA or your local chair, please feel free to contact me.

Civil-law Terminology and its Relation to Common-Law Terminology

by N. Stephan Kinsella

As most lawyers know, Roman law and common law have been the major competing systems of law for centuries. The modern common law originated in England and spread to English colonies and commonwealths like America, Canada, and Australia; modern civil-law systems dominate virtually all of Europe and many other countries or jurisdictions besides (including Louisiana, Puerto Rico, South Africa, and Quebec, Canada's French province). Because of their different origins, even where legal concepts are similar common-law terminology differs from the civil law's.

In today's increasingly transnational world, common-law lawyers are exposed more and more often to civil-law terminology. They are exposed to it when they encounter European transactions; and in international law, many of the terms of which derive from French law or other civilian jurisdictions. In America itself, common-law lawyers sometimes come in contact with Louisiana's civil-law concepts and terminology. For example, oil and gas lawyers from Texas, Colorado, and Oklahoma, or lawyers from neighboring states such as Mississippi or Arkansas sometimes encounter Louisiana's unique civilian terminology and conceptual scheme when Louisiana law or transactions are at issue in a lawsuit or transaction. Louisiana's civil law derives from Spanish civil law, French civil law, and, ultimately, Roman law.

N. Stephan Kinsella practices with the Philadelphia firm of Schnader, Harrison, Segal & Lewis

Because Louisiana's civilian terminology is in English and the text of its Civil Code is largely based directly on the great French Code Napoleon, it can provide an exemplary civil-law terminology for Americans for comparison with American common-law terms. In the translation chart below and at right, I have attempted to correlate most of the common-law terms I know of that have at least a rough analogue in Louisiana's civil-law terminology. I have left out detailed definitions of these terms, providing brief explanatory notes only for a few entries. I have also left out unique civil-law terms which have no direct counterpart in the common law, such as alimentary duties, lesion beyond moiety and hypothecary action. Also omitted are unique common-law terms that have no exact counterpart in the civil law, such as the rule against perpetuities.

The terms correlated at right are not always exact synonyms of one another, but have at least a substantial overlap with one another. Where there are important differences between the analogous terms correlated, the brief explanatory notes highlight the differences. A second table provides cross-references to the main table. It should also be noted that some of the common-law terms listed below are also sometimes used in Louisiana (and sometimes erroneously, as when civilians speak of *stare decisis* instead of *jurisprudence constante*); and vice-versa, as when common-law statutes refer to "immovable" property. More detail on these terms, fuller definitions, and more complete references can be found in my article *A Civil Law to Common Law Dictionary*, 54 La. L. Rev. 1265 (1994).

Common Law to Civil Law Transactions

Common-law Term	Civil-law Term
Accord and satisfaction	Giving in payment, also know as Dation en paiement
Acre	Arpent. One arpent is approximately .85 acres
Agency	Mandate

continued on Page 13

Penn. Bar Ass'n Young Lawyers Div'n Newsletter¹²

Spring 1995

Agent	Mandatory
Appurtenant easement	Predial servitude
Arbitrator	Amicable compounder
Bilateral (or Reciprocal) contract	Synallagmatic contract
Commitment (e.g. of an insane person)	Interdiction
Condition precedent	Suspensive condition
Condition subsequent	Resolutive condition
Consideration (for a contract)	Cause. A conventional obligation (i.e. one arising from a contract) cannot exist without cause, the reason why a party obligates himself. Cause is not identical with consideration, however, and consideration is not even required in Louisiana — gratuitous contracts are possible.
Constructive possession	Civil possession
Contract	Conventional obligation. In Louisiana, a conventional obligation is what <i>arises</i> from a contract, although contracts themselves are sometimes erroneously referred to as conventional obligations.
Conveyance	Sale. Immovable property such as land is sold, not “conveyed,” just as movable property such as televisions is sold.
Counterclaim	Reconventional demand
County	Parish
Decedent	De cujus
Disinheritance	Disinherison
Easement in gross	Right of use. A right of use is a type of personal servitude. Also similar to the common-law’s right of way, privilege or profit in gross.
Estate in reversion (the residue of a life estate, also known as reversion)	Naked ownership (relating to a usufruct). The naked owner owns a thing burdened by a usufruct.
Extinguishment or merger (of rights)	Confusion
Fixtures	Component parts
Guardian	Tutor
Holographic will	Olographic testament
Intangibles	Incorporeals
Interest	Civil fruits
Interpleader	Concursus
Joint and several liability	Solidary liability. Also known as liability in solido.
Joint tenants or tenants in common	Co-owners (who own the same thing in indivision, each having the undivided share).
Life estate	Usufruct. However, a usufruct need not last for life.
Life tenant	Usufructuary
Limited partnership	Partnership in commendam
Loan for consumption	Mutuum
Loan for use	Commodatum
Merger of title	Confusion
Mineral estate	Mineral servitude. The mineral servitude contains the right to produce minerals and is extinguished by liberative prescription after 10 years of nonuse, whereas the mineral estate is a perpetual estate in land.
Moral consideration	Natural obligation
Personalty or personal property	Movables or movable property
Realty, real property, real estate	Immovables or immovable property
Rentals	Civil Fruits
Right of first refusal	Pacte de preference
Right of way	Right of use
Set-off	Compensation
Settlement (of a lawsuit)	Transaction or compromise
Slander of title	Jactitation. The jactitatory action is an action to remedy the jactitation.
Stare decisis	Jurisprudence constante. Courts in Louisiana are not technically bound by a single previous decision (i.e., <i>stare decisis</i>). However, when, by repeated decisions in a long line of cases, a rule of law has been accepted and applied by courts, the precedents may constitute <i>jurisprudence constante</i> , which has great weight in future decisions.
Statute of limitations	Liberative prescription and acquisitive prescription. Liberative prescription is a mode of barring actions as a result of inaction for a period of time. Acquisitive prescription is a mode of acquiring ownership by possession for a period of time.
Tangibles	Corporeals
Third party beneficiary, stipulation for the benefit of	Stipulation pour autri
Tolling of the statute of limitations	Suspension of prescription. If prescription is interrupted rather than suspended, the time that has run is not counted and prescription begins to run anew from the last day of the interruption.
Tort; tortious	Delict; delictual
Unjust enrichment	Repetition. Repetition is a demand or action for the restoration of money or a thing that was paid but that was not due.
Will	Testament

continued on Page 16

Cross-Reference Table

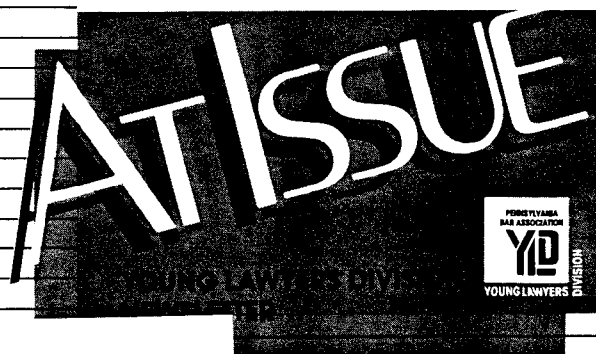
Civil-law Term	Place Discussed in Main Table	Civil-law Term	Place Discussed in Main Table
Acquisitive prescription	Statute of limitations	Mandatory	Agent
Amicable compounder	Arbitrator	Mandate	Agency
Arpent	Acre	Mineral servitude	Mineral estate
Cause	Consideration	Movables or movable property	Personalty or personal property
Civil fruits	Interest	Mutuum	Loan for consumption
Civil possession	Constructive possession	Naked ownership	Estate in reversion
Civil Fruits	Rentals	Natural obligation	Moral consideration
Co-owners	Joint tenants or tenants in common	Olographic testament	Holographic will
Commodatum	Loan for use	Pacte de preference	Right of first refusal
Compensation	Set-off	Parish	County
Component parts	Fixtures	Partnership in commendam	Limited partnership
Compromise	Settlement	Perdial servitude	Appurtenant easement
Concursus	Interpleader	Reconventional demand	Counterclaim
Confusion	Merger of title	Repetition	Unjust enrichment
Confusion	Extinguishment or merger	Resolutive condition	Condition subsequent
Conventional obligation	Contract	Right of use	Right of way
Corporeals	Tangibles	Right of use	Easement in gross
Dation en paiement	Accord and satisfaction	Sale	Conveyance
De cuius	Decedent	Solidary liability	Joint and several liability
Delict; delictual	Tort; tortious	Stipulation pour autri	Third-party beneficiary
Disinherison	Disinheritance	Suspension of prescription	Tolling of the statute of limitations
Giving in payment	Accord and satisfaction	Suspensive condition	Condition precedent
Immovables or immovable property	Realty, real property, real estate	Synallagmatic contract	Bilateral (or Reciprocal) contract
Incorporeals	Intangibles	Testament	Will
Interdiction	Commitment	Transaction or compromise	Settlement
Jactitation	Slander of title	Tutor	Guardian
Jurisprudence constante	Stare decisis	Usufruct	Life estate
Liability in solido	Joint and several liability	Usufructuary	Life tenant
Liberative prescription	Statute of limitations		

A newsletter published by the Pennsylvania Bar Association Young Lawyers Division, P.O. Box 186, Harrisburg, Pa. 17108-0186
John J. McNally III, Esq., Editor

yld docket of events

July 14-16 YLD Summer Conference
Toftrees Resort & Conference Center
State College

Oct. 19-22 PBA Midyear Meeting
The Greenbrier, West Virginia



159483
Steve Mendelsohn, Esq.
1600 Market St., Ste. 3600
Philadelphia, PA 19103

For information on these and
other PBA events, call
(800) 932-0311 in PA or
(717) 238-6715 out of state.

BULK RATE
U.S. POSTAGE
PAID
Permit No. 557
Harrisburg, PA