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Résumé de l'article

Le régime de la communauté de biens est critiqué par certains, loué par d'autres qui, fréquemment, l'évitent soigneusement pour eux et leurs proches et ne le conseillent pas à leurs clients. S'il est décrié, il existe dans la province de Québec, où il rend des services incontestables à la classe agricole en général. À ce titre il est intéressant, pour nous assureurs, de l'étudier dans ses relations avec l'assurance en particulier. Déjà nous avons présenté à nos lecteurs un premier article sur le sujet par notre regretté collaborateur Me Roch Brunet, qui traita des régimes matrimoniaux en général. C'est avec plaisir que nous leurs apportons aujourd'hui le texte d'une conférence prononcée en anglais par Me René Morin, vice-président du Trust Général du Canada, devant les membres d'une association d'assureurs de Montréal le 2 février 1918. Nos lecteurs liront avec intérêt cette excellente étude où M. Morin étudie avec beaucoup de compétence une question complexe dont bien des éléments sont épars. – A.

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Life Insurance in community of property

by

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Le régime de la communauté de biens est critiqué par certains, loué par d'autres qui, fréquemment, l'évitent soigneusement pour eux et leurs proches et ne le conseillent pas à leurs clients. S'il est décrié, il existe dans la province de Québec, où il rend des services incontestables à la classe agricole en général. A ce titre il est intéressant, pour nous assureurs, de l'étudier dans ses relations avec l'assurance en particulier. Déjà nous avons présenté à nos lecteurs un premier article sur le sujet par notre regretté collaborateur Me Roch Brunet, qui traita des régimes matrimoniaux en général. C'est avec plaisir que nous leurs apportons aujourd'hui le texte d'une conférence prononcée en anglais par Me René Morin, vice-président du Trust Général du Canada, devant les membres d'une association d'assu-

reurs de Montréal le 2 février 1948. Nos lecteurs liront avec intérêt cette excellente étude où M. Morin étudie avec beaucoup de compétence une question complexe dont bien des éléments sont épars. — A.

In inviting me at this first meeting of our association to discuss of life insurance policies under the matrimonial regime called community of property as it exists in the Province of Quebec, our president has paid me a compliment, as it is a subject not specifically dealt with in the Civil Code and only incidentally referred to in one section of the law respecting life insurance by husbands and parents.

The question has therefore to be considered in the light of the general rules governing community of property, rules which were enacted at a time when a contract of insurance having human life as its object was deemed immoral and incompatible with the dignity of man. They nevertheless have to be applied to life insurance policies in the same way as they are applied to the other assets of consorts married in community of property.

As you know, it is sometimes difficult to interpret a written law, and lawyers often differ on its meaning. Opinions which have to be arrived at merely through the application of general principles or rules of law, are liable to be controversial, and I do not pretend to be able to express views with which you will be bound to agree.

The subject matter of the discussion calls for at least a summary knowledge of community of property. I will therefore endeavour to state briefly:

I. — What is community of property?
II. — When does it exist?
III. — What it consists of.
IV. — How it is administered.
V. — What happens at its dissolution.

I. — What is Community of property

Community of property may be assimilated to an irrevocable partnership which, in the absence of a marriage covenant excluding it, is established by law between husband and wife, from the moment of the celebration of their marriage, in respect of the property which they may then respectively possess, of the property which they will acquire through their industry during marriage and of that which may accrue to either of them through gift, legacy, inheritance or other equivalent title.

It may also be a conventional partnership created under the terms of a marriage contract stipulating community of property with the modifications agreed upon.

It is a peculiar partnership in this sense that, in the absence of any convention to the contrary, there is no equality of rights between the partners; the husband enjoying the exclusive power to manage the affairs of the partnership as long as it is not dissolved.

In an age where women are aspiring to enjoy all the rights, privileges and liberties of men, it is necessarily a system which, to many, appears outdated and objectionable.

If, however, during marriage, the husband possesses rights which are denied his wife, the latter, if she can prove that her property rights are being endangered by her husband's management of the community, may take legal action to obtain its dissolution, and after the community is dissolved, she in her turn or her heirs enjoy rights which are denied the husband, as she can renounce the community and thus free herself from its debts and, should the assets of the community be insufficient, she can claim and recover her own private assets and the indemnities to which she may be entitled from the personal assets of her husband.

In cases where the husband has been successful in business, she finds herself, at the dissolution of the community, entitled to one-half of its assets in full ownership, without any liability for succession duties, whilst if married in separation as to property, she would only receive a smaller portion should her husband die intestate, and should he leave a will, what it pleased his generosity to bequeath to her, subject in both cases to the payment of estate taxes which, in our time, constitute a liability that has to be reckoned with.

II. — When does it exist

Community of property exists between consorts in the Province of Quebec, when no covenant has been made before their marriage or should such a covenant be made, when it has not stipulated the contrary, that is to say, separation as to property.

The matrimonial regime thus established between consorts, either by law or by marriage covenant, becomes irrevocably the law governing the property relations between the consorts and can no longer be revoked or altered during married life save that, as above stated, under certain exceptional conditions, the community may be dissolved by a judgment of separation as to property or as to bed and board.

Whenever a man having his domicile in the Province of Quebec gets married, without a marriage covenant excluding community of property, he is married under the regime of community of property, whether the marriage is celebrated in the province or in a foreign country and whatever may be the residence or domicile of the bride, and he remains subject to the rules governing community of property, even should be subsequently leave his domicile to live permanently in another province or in another country.

The domicile of a person for all civil purposes, as defined by law, is at the place where he has his principal establishment.

As it does not always coincide with his "de facto" residence at the moment of his marriage, it is often difficult to determine his matrimonial status, but this is another subject involving questions of facts and intentions which are outside the scope of this discussion.

III. — What does it consist of?

We have now to find out which of the assets of the consorts enter the community or partnership formed between a husband and his wife by the mere fact of their marriage under Quebec laws without previous covenant and which remain their own private property, which we call their "propres".

Are part of the community:

1. All moveable assets, including household effects, accounts receivable, promissory notes, loans, bonds, shares and other securities possessed by either of the consorts at the time of their marriage.

2. All moveable assets which they acquire during marriage or which accrue to either of the consorts by gift, legacy, inheritance or equivalent title.

3. All immoveable property which they acquire during marriage.

4. All fruits, revenues, interests, income and arrears of whatsoever nature which fall due or are received during marriage from the assets of the community or from the assets which are excluded from the community and remain the private property or the "propres" of either of the consorts.

The consorts respectively retain the ownership of the real estate or immoveable property which they possess at the time of their marriage or which they may respectively acquire during marriage, by gifts, inheritance or some other equivalent title, though the income derived from them shall belong to the community.

Under this system, there may therefore be:

A. Assets which belong to the husband.

B. Assets which belong to the wife.

C. Assets which belong to the community, although as long as it subsists, the assets of the husband are practically merged with those of the community and are liable for its debts.

It is, however, possible for a husband or wife to receive, during marriage, by gift or legacy, some moveable assets which are transferred to them on condition that they be excluded from the community of property and remain "propres" to the consort to whom they are conveyed.

Such a condition is a valid one and so long as the assets thus transferred retain their identity and may be clearly distinguished from the assets of the community, they will not form part of it, but as soon as they lose their identity they fall into the community, though the consort who received them is entitled, at the dissolution of the marriage, to claim and recover from the community a compensation corresponding to the price at which they were disposed of or to their value; the wife, should the assets of the community be insufficient to meet her claims, being entitled to obtain indemnity therefor out of the personal assets of her husband.

The community does not only take over the assets of consorts; it assumes liability:

a) for all the moveable debts due by the consorts at the time of their marriage;

b) for all debts contracted by the husband during the community or by the wife with the consent of the husband, saving compensation in case where it is due;

c) for the interests of the debts which are personal to either of the consorts;

d) for the debts of a succession devolving to either consort during marriage, provided that debts of a succession composed of immoveables or other assets remaining "propres" to one of the consorts give the community, at its discretion, the right to claim compensation for the debts thus paid by it for the benefit or at the exoneration of one of the consorts.

IV. — How it is administered

Who manages the property of the consorts married in community of property ?

The husband alone, as already stated, has the management of the assets of the community and he may sell, alienate and hypothecate them without the concurrence of his wife though he is not permitted to dispose by gratuitous title of the immoveable property of the community or of an aliquot part of the moveables, except for the establishment of common children. He may, however, dispose of moveable things by gratuitous and particular title provided he does not reserve for himself the enjoyment thereof and that it be without fraud.

He moreover administers alone the private property or the "propres" of his wife though he may not without her consent dispose of her immoveables nor, I presume, of mortgage loans or of securities which would be her "en propres" and would have been registered in her own name.

Once community of property is established between consorts, either by law or by covenant, the rules and regu-

lations of community of property continue to apply to their assets, until the community is dissolved.

Neither the husband nor the wife are permitted to enrich themselves or to draw some personal profits or advantages to the detriment of one another either out of the assets of the community or out of those of each other, but the settlement of accounts between them only takes place at the dissolution of the community.

V. — Dissolution

Thus, when the community is dissolved, the consorts or their heirs must return to the mass of the community all they owe it by way of compensation or indemnity.

Should a personal debt of one consort, for instance a mortgage on a real estate which is a "propre", have been discharged by the community, the debtor consort will then have to reimburse the community for the sums it has thus paid at his exoneration.

In the same way, should funds be withdrawn from the community to improve a property belonging as a "propre" to one of the consorts, such consort, at its dissolution, will then be bound to reimburse to the community the cost of such improvements.

At its dissolution, each consort or his heirs pretakes out of the community before partition:

1° — such of his private property as did not enter the community, if it exists in kind or such property as has been expressly acquired in replacement of it.

2° — the price of such of his immoveables or other "propres" as have been alienated during community and have not been replaced.

3° — the indemnities due him by the community for whatsoever other cause.

After the pretakings have been effected and the debts paid out of the mass, the remainder is divided equally between the consorts or their representatives.

Conventional Community

Community of property may not only exist by law, it may also, as we have seen, be stipulated by marriage covenant between the consorts and modified by all kinds of agreements which then become the law governing the property rights of the consorts.

The usual modifications to the community of property as it exists by law consist in stipulations:

a) that the moveable property possessed by the consorts at the time of their marriage or which may accrue to them during marriage by gift, legacy, inheritance or other equivalent title shall not fall into the community but remain "propres" to the consort who owns or receives them. This is called a clause of "realization".

b) that the whole or a portion of the immoveables present or future of the consorts shall enter the community. This is a clause of "mobilization".

c) that a universal community extending to all property shall exists between the consorts.

d) that the consorts shall be separately liable for their debts contracted before marriage.

The general rules of legal community apply to conventional community in so far as they have not been modified or altered by the marriage covenant.

Life Insurance

I have now to deal with life insurance, which must be considered in the light of the basic principle governing community that the consorts are not permitted to derive any personal profit or particular advantage out of the assets of the

community or out of the private assets of each other, without owing full compensation to the community or to one another at its dissolution.

1. — I will start with the most common case of husband insuring his life for the benefit of his heirs and assigns.

So long as the community subsists, such insurance is part of the community and the premiums are paid out of the community's assets. Should the husband die before his wife, the proceeds of the policy become payable for one-half to his wife and for the other half to the heirs and legatees of the husband. In such case, no indemnity is due the community by the consorts.

The half devolving to the heirs and legatees of the husband is subject to succession duties but the wife has no estate tax to pay on her half of the proceeds of the insurance which was paid for out of her share of the assets of the community.

Should the husband survive his wife, its cash surrender value may be claimed from the Company having issued it for the benefit of the community or the legal representatives of the wife may assign their rights in it to the husband for a consideration to be agreed upon.

2. — If a husband having insured his life for the benefit of his wife predeceases her, she is then entitled to the whole proceeds of such insurance. Should we be guided merely by the rules of the community, she should owe compensation to her husband's heirs for the premiums paid out of her husband's share of the community for her personal advantage, but, in this case, she owes no such indemnity as the law allows a husband to insure his life for the benefit of his wife and, as head of the community, he has therefore the right to use some of the assets of the community to grant this particular benefit to his wife.

Under a specific provision of the Quebec succession duty Act, the whole proceeds of this insurance will be taxable

in the hands of the beneficiary, the wife, as part of her inheritance. Under the federal Act, a succession is deemed to include:

a) money received under a policy of insurance effected by any person on his life whether or not such insurance is payable to or in favor of a preferred beneficiary; or

b) a part of such money in proportion to premiums paid by the insured.

It may thus be claimed that the federal estate taxes should only be payable on one-half of the proceeds of such insurance, as the other half was really paid for out of the wife's share of the assets of the community. I am aware that such a claim has been advanced, but so far, the Department of National Revenue has not issued any ruling on it.

Should the wife predecease her husband, the benefits conferred upon her will then lapse and the husband, should he survive his wife longer than the year covered by the last premium payment made during the existence of the community and continue to pay the premiums thereafter, then becomes the sole owner of the policy, subject to the obligation of accounting to the community for the cash surrender value of such insurance policy at the date of the death of his wife.

Should the policy then have no surrender value, if the husband pays the subsequent premiums so as to eventually give a surrender value to the policy, he will have to account to the community for the proportion of such value represented by the premiums paid during community.

The half of such surrender value accruing to the heirs of the wife becomes an assets of her estate subject to succession duties.

3. — Should a policy be issued on the life of a husband for the benefit of common children, no indemnity would then be due the community because the husband, as head of the

community, had the power to dispose gratuitously of some of the assets of the community for their benefit.

Succession duties would then be payable by the beneficiaries on the whole amount of the insurance.

4. — Had an insurance policy been issued on the life of the husband before his marriage, it would have to be dealt with as if issued during marriage, as it would then have become an asset of the community.

12 If, however, the policy had been reserved to him as a "propre" under the marriage covenant, he would then retain the ownership of it, but, after marriage, the premiums thereon would become payable out of the assets of the community, and if his wife or their common children were named beneficiaries thereon, no indemnity would be due the community at its dissolution, but if the policy was payable to other beneficiaries, in particular children of a previous marriage or other third parties, the husband or his legal representatives would then have to indemnify the community for the premiums paid out of its assets.

5. — Should children of a previous marriage be named beneficiaries, under a policy issued before or during marriage, the husband would, at the dissolution of the community, by the previous death of his wife, have to compensate the community to the extent of the premiums paid out of its assets.

Had the community become dissolved by the death of the husband, the beneficiaries, child or children of a previous marriage, would be entitled to receive the proceeds of the policy and would have to pay the succession duties thereon, but insurance monies payable to named beneficiaries are not deemed to be derived from the succession of the insured, and in this case, the wife would apparently be entitled to claim from her husband's heirs or legatees, an indemnity for the premiums paid out of her half of the assets of the com-

munity for the particular advantage of her husband or of his children and such indemnity would become a liability of her husband's estate deductible from it for succession duty purposes.

Should the assets of the community be insufficient to meet the indemnity thus to the wife, some authors argue that the indemnity or the deficiency thereof might be recovered from the beneficiaries, on the ground that the attribution of benefits to them was of the nature of a donation on account of death and thus assimilated to a legacy subject to proportional reduction when the assets of the succession are insufficient to fully meet its liabilities.

6. — Had the husband's life been insured before marriage for the benefit of named third parties, such insurance would be deemed the property of the named beneficiaries and as the undertaking to pay the premiums thereon was a liability of the husband before his marriage, it became, at his marriage without covenant to the contrary, a liability of the community, and as the community paying the premiums on this policy would only have been paying its own debt, it would not, at its dissolution, be entitled to claim compensation, either from the beneficiaries or from the husband or his heirs, for the surrender value of the policy or for the premiums paid thereon by the community.

Should the attribution of benefits under such a policy be revoked during marriage, in favour of heirs or assigns or other undetermined beneficiaries, it would, by this fact, become an asset of the community.

Had the liability to pay such premiums been excluded from the community by a covenant to that effect, then the husband or his heirs would, at the dissolution of the community, have to indemnify the community for the premiums thus paid, as they would then have remained the personal debt of the husband instead of becoming a liability of the community.

Should the wife have predeceased her husband, the community at its dissolution would become entitled to claim compensation from the husband for the cash surrender value of such policy.

7. — Anyone of the consorts may also be named beneficiary of insurance policies issued on the lives of some of his parents or of his own children by a previous marriage or of some third parties entitled to have his life insured for the benefit of one of the consorts.

If such a policy becomes payable whilst the community subsists, the proceeds thereof become an asset of the commnity; otherwise, the community would have no right in the policy.

A distinction has to be made between an attribution of benefits and an assignment for value.

Should such a policy be assigned for value to either of the consorts, it will then become an asset of the community and if it did not mature during the community, the community at its dissolution would be entitled to an indemnity based either on its cash surrender value or on its real value as it may be established by mutual agreement.

You have seen that, in certain cases, the indemnity due the community consists in the surrender value of the policy at its dissolution, whilst in other cases, the premiums paid out of the community must be returned to it at its dissolution.

I believe that, when an insurance policy is made out for the benefit of children issued of a previous marriage of the husband or of other third parties other than the wife or common children whom the husband wishes to favor, he thus derives from it an advantage which is personal to him, and the indemnity which he then owes the community is a sum corresponding to the money taken out of it, whilst in other cases where the husband has derived no personal advantage,

the indemnity due the community is only the cash surrender value of the policy at the dissolution of the community.

Before 1931, the husband as head of the community, enjoyed the power to dispose gratuitously of the assets of the community provided he did it without fraud, but since 1931, his power to do so has been curtailed by an amendment to the law, under which he is not permitted to do so, except for the establishment of common children, though he may yet dispose of moveable things by gratuitous and particular title, provided he does not reserve for himself the enjoyment thereof and that it be without fraud.

Thus, in cases arisen before 1931, my conclusions would have been somewhat different, according to circumstances.

The subject, as you may deduce from this summary of the law on community of property, is a rather complex one and may give rise to a multiplicity of problems.

It is evident that the circumstances of each particular case must be carefully looked into.

In conclusion, I hope that the views which I have outlined may be of some help to you in the solution of the difficulties which arise in your dealings with insurance policies under the matrimonial regime of community of property, and at least, that you are not more confused in your mind than you were when you entered this hall.