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HIGHLIGHTS

Jurisprudential Highlights Torts and Procedure, Cases

Britt v. Riceland Petroleum Company, 240 So. 3d 986 (La. Ct. App. 3d Cir. 2018). The oil and gas company settled a legacy lawsuit seeking remediation of property contamination. The Court of Appeal correctly found that the trial court was correct in approving settlement without first conducting a contradictory hearing. § 4:7, n. 1.

In re Medical Review Panel Proceeding of Lyons, 245 So. 3d 254 (La. Ct. App. 2d Cir. 2017). Resident of assisted living facility fell from an open window on facility third floor. The Court of Appeal concluded that the facility was a qualified healthcare provider, and failure to secure resident was an omission constituting healthcare under the Act. § 15:4, n. 14.

Butler-Bowie v. Olive Branch Senior Care Center, 266 So. 3d 478 (La. Ct. App. 2d Cir. 2019). The estate of a deceased senior brought negligence action against senior living center alleging inadequate medical treatment. All the claims asserted by plaintiff fell under the Medical Malpractice Act. Plaintiff's failure to pay filing fees for a medical review panel rendered her request for a review panel invalid. § 15:4, n. 16.

Evans v. Heritage Manor Strat- more Nursing & Rehabilitation Center, L.L.C., 244 So. 3d 737 (La. Ct. App. 2d Cir. 2017). Nurse's act of striking patient in his face qualified as medical malpractice under the Act. § 15:4, n. 21.

Johnson v. Bhandari, 266 So. 3d 961 (La. Ct. App. 2d Cir. 2019). Patient's medical malpractice review panel was adverse to him so he filed a medical malpractice action which was denied because he failed to establish a standard of care. § 15:5, n. 1.

Capital One, N.A. v. Fontana, 252 So. 3d 995 (La. Ct. App. 5th Cir. 2018). The delay for filing a devolutive appeal began on the expiration of the delay for applying for a new trial. § 15:5, n. 2.

Guffey v. Lexington House, LLC, 254 So. 3d 1 (La. Ct. App. 3d Cir. 2018), rev'd, 2018-1568 La. 5/8/19, 2019 WL

2041788 (La. 2019). Action for wrongful death against nursing home for injuries incurred when patient was dropped while transferring her from bath chair to bed. The word “claimant” means any person under the Act. § 15:10, n. 1.

Crockerham v. Louisiana Medical Mutual Insurance Company, 255 So. 3d 604 (La. Ct. App. 1st Cir. 2018). Negligent credentialing of physician to conduct robotic assisted laparoscopic hysterectomy procedure. § 15:11, n. 1.

Cupit o/b/o Cupit v. Twin City Fire Insurance Co., 240 So. 3d 993 (La. Ct. App. 3d Cir. 2018). Client filed while legal malpractice action against attorney who represented client in a medical malpractice case. The attorney moved for summary judgment and provided an expert opinion letter in support of his motion. Plaintiff client failed to timely file affidavit in opposition. The summary judgment was granted. § 15:24, n. 2.

Rushing v. Simpson, 264 So. 3d 612 (La. Ct. App. 2d Cir. 2019). Peremption was applied to plaintiff’s suit for a nonclient action against her attorney. The time periods set by R.S. 9:5605(A) are peremptive, not merely prescriptive. § 15:28, n. 1.

Wainwright v. Tyler, 253 So. 3d 203 (La. Ct. App. 2d Cir. 2018). Motion to strike under C.C.P. 971 was granted against defamation action filed against city personnel. § 17:5, n. 1.

Doyle v. Lonesome Development, Limited Liability Company, 254 So. 3d 714 (La. Ct. App. 1st Cir. 2018). The undeveloped areas within a subdivision were formed for recreational purposes and subject to the immunity protection. § 18:28, n. 1.

Martin v. National City Mortgage Company, 261 So. 3d 144 (La. Ct. App. 2d Cir. 2018). The denial of lender’s application for supervisory writs did not interrupt the three year abandonment period. § 27:10, n. 1.

Anderson v. City of New Orleans, 248 So. 3d 428 (La. Ct. App. 4th Cir. 2018). Class definition was inappropriately overbroad and was reversed. § 27:11, n. 1.

Frigon v. Universal Pictures, Inc., 255 So. 3d 591 (La. Ct. App. 1st Cir. 2018). Succession representative did not have a right to control the commercial appropriation of decedent’s identity. Movie studio’s production of the movie based on the life of a decedent was an exercise of free speech in connection with a public issue. § 27:21, n. 1.

HIGHLIGHTS

McCall v. Marshall, 244 So. 3d 1213 (La. Ct. App. 2d Cir. 2017). Default judgment awarded against contractor by homeowner was reversed where no affidavits or other evidence existed in the appellate record to support homeowner’s claims. § 27:39, n. 2.

Save Our Hills v. Louisiana Department of Environmental Quality, 266 So. 3d 916 (La. Ct. App. 1st Cir. 2018). The Department of Environmental Quality (R.S. 30:2004) granted an air permit to a gravel and sand mine operator. The grant of the permit was in spite of the opposition of 224 neighboring homeowners; but the Court of Appeal approved the grant. § 27:50, n. 1.

Congregation of Immaculate Conception Roman Catholic Church of Parish of Calcasieu v. Sam Istre Construction, Inc., 253 So. 3d 196 (La. Ct. App. 3d Cir. 2018). The one year limitations on actions contained in the Act are prescriptive, not peremptive, which is a serious difference. § 27:53, n. 2.

Master Craft Construction, LLC v. Pronoun, Inc., 258 So. 3d 802 (La. Ct. App. 3d Cir. 2017). Under the provisions of R.S. 9:4210 an arbitration award could be overturned only on specified grounds which were not found here. § 27:53, n. 2.

Bernhard MCC, LLC v. Zeringue, 266 So. 3d 537 (La. Ct. App. 5th Cir. 2019). Preliminary injunction was invalid for failure to sufficiently specify the things restrained, “. . . we find that the judgment is invalid as an injunction because it fails to describe with specificity the prohibited conduct.” § 27:63, n. 1.

Meredith v. I Am Music, LLC, 265 So. 3d 1143 (La. Ct. App. 1st Cir. 2019). Plaintiff’s mandatory preliminary injunction ordering the producer to return computer files containing 16 songs recorded by plaintiff at a live concert was denied. The opinion explores in depth the difference between an ordinary prohibitory injunction and a mandatory injunction. § 27:63, n. 1.

Succession of Anderson, 264 So. 3d 684 (La. Ct. App. 2d Cir. 2019). Decedent’s adult child was fully qualified to challenge validity of decedent’s alleged testament which contained as signatures color copies of decedent’s signature. § 27:77 (new), Wills.

Nola East, LLC v. Sims, 265 So. 3d 1147 (La. Ct. App. 4th Cir. 2019). Motion for new trial was granted against landlord who was granted a rule for possession and tenant’s defenses were denied. § 27:78 (new), n. 1.

Davidson v. Sanders, 261 So. 3d 889 (La. Ct. App. 3d Cir. 2018). Purchaser of a home brought a breach of contract action against sellers who alleged that plaintiff's action was in redhibition and was thus prescribed. Seller moved for summary judgment which was denied. The difference between an action in contract and one in redhibition is serious. § 27:79 (new), n. 1.

**CHANGES IN THE CODE OF
CIVIL PROCEDURE
BY 2019 LEGISLATION**

<u>Articles</u>	<u>Act. No.</u>	<u>Subject</u>
87	121	Is repealed in its entirety. (See R.S. 15:572.8).
192.2	406	Orders payment to an interpreter for his services, said payment to be paid out of the appropriate court fund. The amount paid out of the fund may be taxed by the court as cost to the court to be reimbursed to the fund. (See R.S. 46:2134).
2334	415	At the time and place designated for the sale, the sheriff shall read aloud the advertisement describing the property and shall also read aloud a mortgage certificate and any other certificate required by law. (See R.S. 13:4345).
4521(A)(3)	17	“However, the court shall not order funds which will be paid to a unemancipated minor who is in the legal custody of the Department of Children and Family Services to be placed in trust if the amount of the judgment or settlement is less than fifty thousand dollars.”
4843(E) and (H)	135	Changes the city court jurisdiction of the city court of Lake Charles to include cases where the amount in dispute, or the value of the property involved does not exceed fifty thousand dollars.
5059(C)(2)	300	Adds Department of Environmental Quality, or the Department of Insurance relative to examination reports in R.S. 22:1983.

CHANGES IN THE CIVIL CODE
BY 2019 LEGISLATION

<u>Articles</u>	<u>Act. No.</u>	<u>Subject</u>
96, 367, 2333 and to enact Article 90.1	401	Impediment of age, “a minor under the age of 16 may not contract marriage. A minor 16 or 17 years of age may not contract marriage with a person of the age of majority when there is an age difference of three years or greater between them.” (The Act contains elaborate further provisions on the civil effects of the absolutely null marriage and other problems).
1968, and 2982 through 2984	106	All relative to aleatory contracts, to give examples of obligations with unlawful causes including those that arise with gaming, gambling, and wagering not authorized by law. (See elaborate initial Revision Comments).
3249, 3267, 3269, and 3274	325	To provide for privileges on immovables in an elaborate revision of the Private Works Act. (See R.S. 9:4801, 4806, and numerous articles.) This is a massive revision of the Private Works Act, including R.S. 9:4801(5), 4802 and others. You must read this entire act carefully because the amendments are wide-spread and affect numerous articles. (R.S. 9:4803 and others.)

SELECTED STATUTORY CHANGES IN TITLE 9
BY 2019 LEGISLATION

<u>R.S. 9</u>	<u>Act. No.</u>	<u>Subject</u>
9:221, 253, and 255	401	“No marriage license for a minor under the age of 16 shall be issued. No marriage license for a minor of the age of 16 or 17 shall be issued where there is an age difference of three years or greater between the persons seeking their marriage license.”
9:306(A)	239	“Upon the motion of any party or its own motion, the court may for good cause shown or upon agreement of the parties require the parties in a custody or visitation proceeding to attend and complete a court-approved program designed to educate and inform the parties of the needs of the children.”
9:1123.112(C)	228	Regulates the insurance policies on condominiums to provide for coverage of betterments and improvements.
9:1783(A)	334	Regulates the functioning in Louisiana of an out of state trust company and requires that the out of state trust company maintain a trust office in the state of Louisiana. (R.S. 6:626). Authorizes the functioning in Louisiana of a trust company organized under the laws of another state operating in Louisiana under R.S. 6:626. Authorizes the functioning in Louisiana of a trust company organized under the laws of another state operating in Louisiana under R.S. 6:626.

<u>R.S. 9</u>	<u>Act. No.</u>	<u>Subject</u>
9:2713 through 2713.9, to enact; and to repeal 9:2715	260	Enacts the Louisiana Structured Settlement Protection Act. Elaborate provisions for a Structured Settlement. The Act contains provisions for all definitions and requirements. The Act itself must be read carefully to get the grasp of the Act.
9:2795.7	36	Defines the program for “community service litter abatement, beautification, and maintenance programs”; and sets forth the rules and regulations for participants in the program and numerous other regulations. Limits the liability of those participating in the program.
9:3403(A), and numerous others	19	An elaborate redoing of procedures in the Secretary of State’s Office, “relative to the state’s office to provide for filing procedures, to provide for withdrawal procedures; to provide for revocation or suspension of certificate of authority; to provide for conversion of state of organization requests; to provide for confidentiality of information.” You must read this entire Act carefully because the changes are significant and numerous.
46:236.2	277	Regulates change of the payee of a support order to the Department of Children and Family Services.
9:5610 is enacted	323	Establishes a one-year prescriptive period and a three-year preemptive period in actions for damages against real estate appraisers. The Act specifies that the one-year period shall be prescriptive but that the three-year period shall be preemptive.

SELECTED STATUTORY CHANGES IN TITLE 13
BY 2019 LEGISLATION

<u>R.S. 13</u>	<u>Act. No.</u>	<u>Subject</u>
13:3881(A)(6)	197	The refundable portion of the child tax credit is immune from seizure.
13:50	178	Gives the detail for the increase of judicial salaries.
13:5109.1 is enacted	35	No settlement agreement of a claim against the state shall contain a provision prohibiting the disclosure by the claimant of the terms of or the facts associated with the underlying claim of the settlement agreement when the underlying claim is based on an allegation of sexual harassment or sexual assault and public funds are paid in whole or in part in satisfaction of terms of the settlement agreement.



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