

RECODIFYING EMANCIPATION: A PRÉCIS OF THE 2009 REVISION OF LOUISIANA EMANCIPATION LAW

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In 2009, reforms to the emancipation provisions of the Louisiana Civil Code and Louisiana Code of Civil Procedure became effective.¹ These reforms, undertaken as part of the on-going revision of the Louisiana Civil Code,² modernized, simplified, and clarified Louisiana's substantive and procedural emancipation law.

Today, as yesterday, the emancipation of minors is rare.³ Most minors reach the age of majority at eighteen without being emancipated. Emancipation, however, plays an important role in the law of persons. Emancipation provides the substantive ability and procedural means to bestow upon a minor some or all of the attributes of a major, including, for example, the right to administer property and the right to create conventional obligations. In addition, emancipation provides the ability and means to relieve a minor's parents or tutor of liability for the delictual acts of the wayward minor.

This Article discusses and evaluates this important and long-needed recodification of Louisiana emancipation law. It considers the origins and

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1. See Act of July 7, 2008, No. 786, 2008 La. Acts 2977 (codified as amended at LA. CIV. CODE ANN. arts. 365-71 (2009)).

2. In 1948, the Louisiana Legislature charged the Louisiana State Law Institute with the responsibility of revising the Louisiana Civil Code.

3. See MARCEL PLANIOL, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL [TREATISE ON THE CIVIL LAW § 1983 (La. State Law Inst. trans., 12th ed. 1939) (noting that out of more than 660,000 young people who reached majority each year in France, only 3,500 were emancipated). Given that the age of majority is now 18 rather than 21, the pool of minors eligible for emancipation is even smaller. See Minutes of the La. State Law Inst. Council Meeting (Nov. 9, 2004), at 2 [hereinafter Minutes of Nov. 9, 2004 LSLI Council Meeting] (on file with authors).

early development of emancipation law in Louisiana. It then discusses and evaluates the 2009 recodification of emancipation law and procedure. It concludes with a critique of the 2009 revisions.

I. ORIGINS OF THE LAW OF EMANCIPATION

A. CODE NAPOLEON

Emancipation as originally enacted in Louisiana was derived from French law. Constructed as a fusion of Roman concepts, the French viewed emancipation as an intermediary status between complete incapacity that strikes a minor and the absolute liberty vested in a major.⁴ An emancipated minor was not elevated to the status of major but was given a preview of the control and responsibility awaiting him.⁵ Planiol compared it to a type of “training or noviate.”⁶

The Code Napoleon recognized two types of emancipation: emancipation by marriage⁷ and emancipation by declaration.⁸ A declaration could be made by the father, or in default of the father, the mother, after the minor reached the age of fifteen years.⁹ In default of both the father and mother, a declaration could be made by the justice of the peace, based on the recommendation of the family council,¹⁰ after the minor reached the age of eighteen years.¹¹ Originally, in the proposed draft of the French Code

4. Under ancient Roman law, emancipation relinquished parental power and made the child of a family “sui juris.” The child’s incapacity, however, was unaffected. PLANIOL, *supra* note 3, § 1984. The Romans recognized another concept of “*venia aetatis*” or “coming of age,” under which minors of a certain age were given anticipated capacity. *Id.* France combined these concepts to create modern French emancipation. *Id.* For a general discussion of the status of persons in French and Roman law, see 1 JEAN DOMAT, THE CIVIL LAW IN ITS NATURAL ORDER 132-48 (photo reprint 1980) (William Strahan trans., Luther S. Cushing ed., 1850).

5. AMOS AND WALTON’S INTRODUCTION TO FRENCH LAW 45-46 (F.H. Lawson et al. eds., 3d ed. 1967).

6. PLANIOL, *supra* note 3, § 1983. Emancipation was used, generally, to allow a minor to engage in business. *Id.*

7. THE CODE NAPOLEON, VERBALLY TRANSLATED FROM THE FRENCH art. 476 (Bryant Barrett trans., LawBook Exchange 2004) (1811) [hereinafter CODE NAPOLEON].

8. *Id.* at arts. 477-79.

9. *Id.* at art. 477; *see also* PLANIOL, *supra* note 3, § 1986 (noting that the right of emancipation belongs in principle to the parents because they surrender attributes of paternal power).

10. The family council was an assembly, comprised of six or more relatives, relatives-in-law, or friends of the minor, half from the mother’s side and half from the father’s side, presided over by the justice of the peace. CODE NAPOLEON, *supra* note 7, at arts. 405-19; *see also* PLANIOL, *supra* note 3, §§ 1770, 1773, 1778-83.

11. CODE NAPOLEON, *supra* note 7, at arts. 478-79 (allowing relations to the degree of first cousins of the minor to petition the justice of the peace to convene a family council to deliberate the minor’s emancipation); *see also* Planiol, *supra* note 3, § 1987.

Napoleon (Projet du Gouvernement), a child could never be emancipated by declaration before the age of eighteen years. This idea was not universally accepted, and ultimately, in the Code Napoleon, emancipation after the age of fifteen years was allowed but only through the declaration of the father or mother.¹²

Emancipation by declaration required formality, limited only in its nature as a private act.¹³ For a father or mother, the signed declaration was presented to the justice of the peace.¹⁴ If the minor was emancipated through a family meeting, the justice of the peace authorized the emancipation by his own declaration.¹⁵ Neither concurrence of the minor nor notice to the minor was necessary for a valid emancipation by declaration.

Emancipation by marriage was the only tacit emancipation recognized by the Code Napoleon. Any minor who married was emancipated by operation of law without the need for a declaration.¹⁶ Emancipation was a necessary consequence of marriage because marriage conflicted with the exercise of paternal power over a minor. According to early French doctrine, a minor husband needed independence because he became the head of the family; a wife likewise needed her husband, and not her father, as her guide.¹⁷ Regardless of the minor's age and even against the wishes of the minor's parents, the act of marriage alone emancipated the minor.¹⁸

With one exception, the capacity of an emancipated minor consisted of purely administrative acts.¹⁹ The Code did not define administrative acts, but did specifically sanction making leases and receiving revenues.²⁰ The Code clearly forbade bringing or defending a real action, receiving revenues and discharging debts for a capital sum,²¹ borrowing money,²² and selling or

12. PLANIOL, *supra* note 3, § 1989; CODE NAPOLEON, *supra* note 7, at art. 477.

13. PLANIOL, *supra* note 3, § 1992. The declaration was housed in the formal records of the clerk of court for the justice of the peace.

14. *Id.*

15. *Id.*

16. *See* CODE NAPOLEON, *supra* note 7, at art. 476.

17. PLANIOL, *supra* note 3, § 1996. *But see* DOMAT, *supra* note 4, at 145 n.i (noting that under Roman law the son and the daughter that were married remained under the authority of the father unless he emancipated them).

18. PLANIOL, *supra* note 3, § 1997. Emancipation assumes the existence of a valid or putative marriage. *Id.*

19. When a minor entered into a trade, he was given the status of major for all acts relative to that trade. CODE NAPOLEON, *supra* note 7, at art. 487.

20. *Id.* at art. 481.

21. *Id.* at art. 482. A minor must receive the assistance of the curator. *Id.*

22. *Id.* at art. 483. A minor must have permission of the family council, as confirmed by the civil court. *Id.*

alienating immovable property²³ without the aid of a curator or in some cases the family council. Although many acts were not contemplated in the Code, courts in France permitted the emancipated minor to purchase immovables and, in some cases, sell corporeal movables, without the assistance of a curator.²⁴ A minor who entered into a trade, however, was elevated to the status of major for all acts relative to that trade.²⁵

The French recognized that emancipated minors who perform purely administrative acts nevertheless ran the risk of exceeding the limits of their resources. To prevent a minor's financial ruin, it was suggested in the *Projet* that a minor's obligations could be limited to the amount of his income.²⁶ That idea was abandoned, however, because of the practical problems of enforcement.²⁷ Rather, courts were given the right to reduce the minor's obligations when they were excessive, considering the minor's resources, the good or bad faith of those contracting with the minor, and the utility of the expenses.²⁸ Courts also had the option of revoking emancipation in the event it reduced the minor's contracts.²⁹ Revocation, however, was permitted only in the case of emancipation by declaration.³⁰ A minor reverted to his status of full incapacity upon revocation, and remained there until majority.³¹

B. THE LOUISIANA CIVIL CODES OF 1808, 1825, AND 1870

The Digest of the Civil Laws of 1808,³² commonly referred to as the

23. CODE NAPOLEON, *supra* note 7, at art. 484. A minor must meet the prerequisites of an unemancipated minor, which includes authorization by the family council, as confirmed by the civil court. *Id.* at arts. 484, 457-58.

24. PLANIOL, *supra* note 3, § 2002. Emancipated minors were allowed to purchase immovables on the theory that article 484 of the Code Napoleon allowed reduction of obligations made by the minor through contracts of purchase. *Id.* If reduction was available, then the law must have contemplated contracts of purchase made by minors. *Id.* Whether and to what extent a minor could sell corporeal movables was unsettled. *See id.* Even though non-administrative sales of corporeal movables were permitted, the sale by a minor of an entire set of furniture of considerable value was held to need the assistance of a curator to be valid. *Id.*

25. CODE NAPOLEON, *supra* note 7, at art. 487.

26. PLANIOL, *supra* note 3, § 2005.

27. *Id.*

28. CODE NAPOLEON, *supra* note 7, at art. 484. Some confusion existed over the right of courts to reduce the obligation of a minor, even when the minor performed an act outside of the scope of his capacity, i.e., an act that was not purely administrative. PLANIOL, *supra* note 3, § 2005 & n.4. The remedy of reduction was intended to apply to acts that are within the minor's capacity but that exceed the scope of his resources. *Id.* § 2005. Acts that are not purely administrative should be annulled, rather than reduced. *Id.*

29. CODE NAPOLEON, *supra* note 7, at art. 485.

30. PLANIOL, *supra* note 3, § 2032. Emancipation by marriage was irrevocable. *Id.* § 1998.

31. CODE NAPOLEON, *supra* note 7, at art. 486. A minor reached the age of majority at 21 years of age. *Id.* at art. 488.

32. A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (photo.

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Civil Code of 1808, mirrored that of the Code Napoleon with some notable exceptions. Louisiana recognized emancipation by marriage³³ and by declaration,³⁴ but unlike the French, Louisiana gave the minor the right to seek emancipation after the death of his parents. A minor without a mother and father, after the age of 18 years, could petition a judge for emancipation if so recommended after a family meeting.³⁵ French law only allowed the minor's guardian or close relations, after the death of the minor's father or mother, to convene a family meeting to emancipate the minor (which Louisiana also recognized).³⁶ No provision in early French law, either explicitly or implicitly, gave the minor the right to petition for emancipation.³⁷

Like the French, acts of emancipated minors were limited to full administration, except for those minors engaged in trade.³⁸ However, rather than reducing the obligations of an emancipated minor when they reached "excess," Louisiana adopted the idea suggested in the French *Projet* and reduced obligations when the minor bound himself for more than one year of his revenues.³⁹ Louisiana also prohibited a minor from disposing of his movables or immovables by donation *inter vivos*, a concept absent in the Code Napoleon but suggested in the French *Projet*.⁴⁰ To protect a minor's revenues

reprint of de la Vergne vol., *Claitor's Publ'g Div.* 1971) (1808) [hereinafter *DIGEST OF 1808*].

33. Initially, unlike the French, a minor who married without the consent of his parents or tutor was not deemed to be emancipated. *Guillebert v. Grenier*, 32 So. 238, 239 (La. 1902). Later, however, the Louisiana Supreme Court concluded that a married minor over the age of eighteen is completely emancipated whether or not the parent or tutor consents to the marriage. *Succession of Hecker*, 185 So. 32, 33 (La. 1938).

34. In the Code of 1808, the declaration of the parents was subject to more formality, namely a notary and two witnesses. *DIGEST OF 1808*, *supra* note 32, at art. 88 (1808), *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160; *see also* *Willet v. Tessier*, 15 La. 13, 13 (1840) (finding that an express verbal emancipation is invalid); *Jonau v. Blanchard*, 2 Rob. 513 (La. 1842), *available at* 1842 WL 1756, at *3 (construing a notarial act that authorized a minor to enter into a partnership as an emancipation).

35. *DIGEST OF 1808*, *supra* note 32, at art. 89, *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160.

36. *CODE NAPOLEON*, *supra* note 7, at arts. 478-79; *see also* *PLANIOL*, *supra* note 3, § 1987.

37. The French allowed a minor to request the convocation of the family council to seek emancipation in 1964. Law No. 64-1230 of Dec. 11, 1964, *Dalloz, Législation* [D.L.], art. 1 (now *CODE CIVIL* [C. CIV.] art. 479 (Fr.)).

38. *DIGEST OF 1808*, *supra* note 32, at arts. 91, 97, *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160. Minors engaged in trade enjoyed full majority for acts related to that trade. *Id.* at art. 97. "Trade" was defined as an occupation, employment, or business carried on for profit, gain, or livelihood. *Roy v. Mutual Rice Co.*, 149 So. 508, 511 (La. 1933).

39. *DIGEST OF 1808*, *supra* note 32, at art. 92, *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160.

40. *DIGEST OF 1808*, *supra* note 32, at art. 95, *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160; *see also* *PROJET DU GOUVERNEMENT* bk. I, tit. IX, art. 110, para. 1 (1800); *Johnson v. Alden*, 15 La. Ann. 505 (1860), *available at* 1860 WL 5397, at *1 (holding that donations made by an emancipated minor are relatively null and can be ratified or confirmed).

after his emancipation, Louisiana law required that a minor's property be invested into movable or immovable property at the time of his emancipation, a concept not found in the French system.⁴¹ Finally, even though Louisiana welcomed the French principles of emancipation, it failed to address revocation of emancipation or its effects.

In the Civil Code of 1825, Louisiana provided an additional choice for minors seeking emancipation. Extracting from *Las Siete Partidas*, a minor child could request emancipation by reason of poor treatment.⁴² Without the consent of his mother or father, a minor could seek emancipation at any age when his parents "ill treat him excessively, refuse him support, or give him corrupt examples."⁴³ The minor did not have to request a family meeting, but could rely on the discretion of the judge. It appeared, however, that the minor was still limited to acts of administration. Additionally, revocation of emancipation was addressed, and similar to the French model, revocation could result when the minor exceeded his powers, returning the minor to pre-emancipation status.⁴⁴

By 1870, the Code closely resembled Louisiana's pre-revision scheme. For the first time full emancipation was recognized by the Code.⁴⁵ A third type of emancipation conferred full majority at a minor's request, with the consent of his father and mother or tutor, after the minor reached the age of eighteen.⁴⁶ The consent of the parents was not needed when the minor petitioned the court by reason of ill treatment.⁴⁷ For a minor subject to tutorship, consent of the tutor was necessary; in the absence of consent, the tutor had to appear and show cause why the emancipation was not warranted. Unlike prior law, a minor judicially emancipated could request and receive full

41. DIGEST OF 1808, *supra* note 32, at art. 90, *repealed by* Great Repealing Act of 1828, No. 83, § 25, 1828 La. Acts 160 ("So soon as a minor shall be emancipated, the sums coming to him, for the balance of the account of his curatorship, shall be laid out in the purchase of some movable or immovable property, so as to secure him a revenue; . . ."). This article was suppressed in the Code of 1825. See *Additions and Amendment to the Civil Code of the State of Louisiana*, commonly referred to as the *Projet of the Civil Code of 1825* [hereinafter *Projet of 1825*].

42. See *Projet of 1825, supra* note 41, at 29. *Las Siete Partidas*, a seven-part Castilian code created around the 13th century, articulated four ways in which a father could be compelled to emancipate the child. See *LAS SIETE PARTIDAS*, pt. IV, tit. XVIII, Law 18 (Samuel Parsons Scott trans., 1931).

43. LA. CIV. CODE art. 371 (1825) (amended 2009).

44. LA. CIV. CODE arts. 380-81 (1825) (vacated 2009). The court would appoint another curator to a minor who had been emancipated against the will of his parents. *Id.* The irrevocability of emancipation by marriage was not specifically addressed until the 1870 Code. LA. CIV. CODE art. 383 (1870) (vacated 2009).

45. Act of Jan. 23, 1829, No. 17, 1829 La. Acts 24.

46. *Id.* The Act of Jan. 23, 192, as amended, was the predecessor to Article 385 of the Louisiana Civil Code of 1870.

47. LA. CIV. CODE arts. 368, 387 (1870) (amended in part and repealed in part 2009).

capacity, even when unrelated to his trade, rather than being relegated to acts of administration.⁴⁸

Under the 1870 Code, emancipation took three forms: emancipation conferring the power of administration, emancipation by marriage, and emancipation conferring majority. Emancipation that provided only administrative capacity to a minor could be accomplished by notarial declaration of the parents after the minor reached the age of fifteen, or by the judicial petition of the minor or a relative, with consent of the parents or tutor, after the minor reached the age of eighteen.⁴⁹ A minor who was poorly treated could seek emancipation without consent at any age.⁵⁰ Emancipation by marriage, the only tacit emancipation, likewise bestowed the power of administration.⁵¹ Only judicial emancipation could confer the power of majority and only with the consent of the minor and his parents after the age of eighteen, unless the minor sought emancipation for poor treatment.⁵²

II. PRE-REVISION LOUISIANA LAW

From the 1870 Code until the revision of 2009, the law of emancipation remained relatively constant. In 1908, the legislature added a class of minors who could achieve full majority without seeking a judicial emancipation by “splitting” the capacity of a married minor. A married minor who reached the age of eighteen was given the full power of majority, while married minors under the age of eighteen maintained only powers of administration.⁵³ Freeing older married minors of the limitations of administration was yet another step in conferring more power to minors, a pattern that began in the Civil Code of 1808 and reached its pinnacle in the late 1900s.

In 1972, the Louisiana legislature reduced the age of majority to

48. Additionally, after passage of the 1870 Code of Practice, an emancipated minor could appear in court without the benefit of a curator. *See* LA. CODE CIV. PROC. ANN. art. 682 cmt. c (2004). Article 375, which prohibited the appearance of emancipated minors in court proceedings, was expressly repealed in 1960. Act of June 22, 1960, No. 30, 1960 La. Acts 99.

49. LA. CIV. CODE arts. 366-67 (1870) (amended 2009). The minor was allowed to petition for powers of administration only, but the minor still needed the consent of his parents or tutor. LA. CIV. CODE arts. 367, 385, 387 (1870) (amended in part, vacated in part and repealed in part 2009).

50. LA. CIV. CODE art. 368 (1870) (amended 2009).

51. LA. CIV. CODE arts. 379, 384 (1870) (vacated 2009).

52. LA. CIV. CODE art. 385.

53. *See* Act of July 8, 1908, No. 224, 1908 La. Acts 341 (amending and reenacting LA. CIV. CODE art. 382 (vacated 2009)); *see also* Act of June 14, 1966, No. 17, 1966 La. Acts 105 (amending and reenacting LA. CIV. CODE arts. 373, 382 (1870) (vacated 2009)) (clarifying that a minor who marries after the age of eighteen is also relieved of minority and those married minors under the age of eighteen enjoy only powers of administration).

eighteen, eliminating three years of minority.⁵⁴ The law of emancipation, in turn, required curative changes. Judicial emancipation of a minor over the age of eighteen was repealed as unnecessary.⁵⁵ Emancipation by a minor for poor treatment remained.⁵⁶ Because of the split nature of capacity by married minors, emancipation by marriage again only conferred powers of administration.⁵⁷

By 1976, judicial emancipation reappeared for minors over the age of sixteen.⁵⁸ A sixteen year old minor still had to obtain the consent of his parents or tutor and could only petition for full power of majority.⁵⁹ Two years later, the split nature of capacity for married minors returned, and those over the age of sixteen were given full power of majority.⁶⁰ Children in the last two years of minority could reach the “magic age of reason” as determined by a judge or by reason of marriage. Emancipation by declaration was still available to the parents of a minor who attained the age of fifteen years.⁶¹

Emancipation immediately prior to the revision remained a tripartite system: (1) emancipation conferring the power of administration,⁶² (2)

54. Act of June 25, 1972, No. 98, 1972 La. Acts 336. Interestingly, the age of majority in France was reduced to eighteen just two years later. Law. No. 74-631 of July 5, 1974, Dalloz, *Législation* [D.L.], art. 1 (now CODE CIVIL [C. CIV.] art. 488 (Fr.)).

55. Act of July 12, 1972, No. 346, 1972 La. Acts 864 (repealing LA. CIV. CODE ANN. arts. 367, 385); see also Malcolm S. Murchison, *The Work of the Louisiana Legislature for the 1976 Regular Session*, 37 LA. L. REV. 89, 104-05 (1976) (noting a potential problem with the repeal).

56. See LA. CIV. CODE art. 368 (1870) (amended 2009).

57. Act of July 12, 1972, No. 346, 1972 La. Acts 864 (amending and reenacting LA. CIV. CODE ANN. art. 382 (vacated 2009)).

58. Act of July 20, 1976, No. 155, 1976 La. Acts 538 (enacting LA. CIV. CODE ANN. art. 385 (repealed 2009)). If the judge was satisfied that good reason existed for emancipation and the minor was capable of managing his own affairs, a judgment of emancipation was entered. LA. CODE CIV. PROC. ANN. art. 3993 (2003) (amended 2009).

59. LA. CODE CIV. PROC. ANN. art. 3992, 3994 (2003) (amended 2009). With the repeal of Article 367 of the Louisiana Civil Code, a minor theoretically could no longer petition for emancipation conferring only the power of administration, unless he had alleged ill treatment.

60. Act of June 22, 1978, No. 73, 1978 La. Acts 310 (amending and reenacting LA. CIV. CODE ANN. art. 382 (vacated 2009)).

61. LA. CIV. CODE art. 366 (1870) (amended 2009).

62. LA. CIV. CODE arts. 366-78 (1870) (amended 2009). Capacity is a necessary corollary to emancipation, and emancipation conferring administration does not give the minor full contractual capacity. See Melvin John Dugas, *The Contractual Capacity of Minors: A Survey of the Prior Law and the New Articles*, 62 TUL. L. REV. 745, 763-64 (1988) (arguing that the law giving contractual capacity to fully emancipated minors should be qualified by the limitations placed on minors who enjoy only acts of administration). But see LA. CIV. CODE ANN. art. 1922 cmt. (b) (2008) (noting that whether the intermediate category of emancipation conferring administration enjoys full contractual capacity is uncertain). For a historical perspective on the capacity of the minor, see Robert A. Pascal, *Contracts of the Minor or His Representative Under the Louisiana Civil Code*, 8 LA. L. REV. 383 (1947-48).

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emancipation by marriage,⁶³ and (3) emancipation conferring majority.⁶⁴ Emancipation conferring the power of administration could occur in one of two ways: (a) a notarial declaration signed by the minor's parents or tutor after the minor reached the age of fifteen or (b) a judicial petition by the minor when he has been subject to poor treatment. Emancipation by marriage automatically occurred at marriage, but minors under the age of sixteen received only powers of administration; minors aged sixteen or seventeen attained full majority. Emancipation conferring majority was available only through a judicial petition of the minor, with consent of his parents or tutor, after the minor reached the age of sixteen.

Case law in the area has been sparse and has added little to the language of the Civil Code. In fact, more than half of the reported cases took place in the 1800s. Only five cases have been reported since the age of majority was reduced to eighteen.⁶⁵

III. THE 2009 LOUISIANA RECODIFICATION

In 2004, the Louisiana State Law Institute (LSLI) created the Emancipation Committee and charged it to propose revisions to the entire body of Louisiana emancipation law, including the substantive articles of the Louisiana Civil Code and procedural provisions of the Louisiana Code of Civil Procedure.⁶⁶ Other than giving the committee this general charge, the LSLI gave the committee no directive as to how to address any then-

63. LA. CIV. CODE arts. 379-84 (1870) (vacated 2009).

64. LA. CIV. CODE arts. 385 (1870) (vacated 2009); *see also* LA. CODE CIV. PROC. ANN. arts. 3991-94 (2003) (amended 2009). Louisiana law makes clear that a fully emancipated minor enjoys full contractual capacity. LA. CIV. CODE ANN. art. 1922 (2008); *see also* source cited *supra* note 57.

65. *Wilkinson v. Wilkinson*, 323 So. 2d 120 (La. 1975) (finding prenuptial agreement void because wife was an unemancipated minor at the time of execution of agreement); *Turner v. Bucher*, 308 So. 2d 270 (La. 1975) (finding parental liability for the acts of a minor under Civil Code article 2318 to be strict liability); *Cox v. Gaylord Container Corp.*, No. 2003-CA-0692 (La. Ct. App. 1 Cir. 2/16/05); 897 So. 2d 1 (concluding that statute that forbids suits by an unemancipated child against a parent deferred cause of action until daughter reached majority or was emancipated); *Held v. Wilt*, 610 So. 2d 1103 (La. Ct. App. 5 Cir. 1992) (concluding that emancipation by notarial act relieved parents of vicarious liability under Article 2318 of the Louisiana Civil Code); *Keller v. Rednour*, 416 So. 2d 357 (La. Ct. App. 4 Cir. 1982) (finding that a parent whose minor child was emancipated by notarial act could remain liable for the damage caused by the minor).

66. The Emancipation Committee was comprised of several former members of the LSLI Interdiction Committee, which revised the interdiction provisions of the Civil Code and Code of Civil Procedure in the later 1990s and early 2000s. This was not accidental. Emancipation presents many of the same fundamental issues relevant to interdiction. While interdiction strips an adult of the capacity to make juridical acts, emancipation bestows upon a minor that capacity. In this sense, interdiction and emancipation are mirror images of one another. *See* Minutes of Nov. 9, 2004 LSLI Emancipation Committee, *supra* note 3, at 2.

existing emancipation policy, doctrine, or procedure. Thus, when the committee commenced its work on the emancipation recodification project in late 2004,⁶⁷ it did so *carte blanche*.

From 2004-2008, the Emancipation Committee prepared dozens of drafts⁶⁸ of legislation and made numerous proposals to LSLI Council. Throughout this drafting, debate, and revision process, the committee and council considered innumerable issues, some large and many small. Two issues, however, predominated. The first issue—and without a doubt the most controversial—was whether and how a parent or tutor could be relieved from vicarious liability for the delictual obligations of a minor. On the one hand, some members of the committee and council believed that it should be procedurally difficult (or impossible) for a parent or tutor to be relieved of such liability. On the other hand, other members believed that the practical difficulties associated with exercising meaningful control over a teenage minor suggested that a parent or tutor should be able to avoid such obligations through emancipation. In the end, the council recommended, and the legislature enacted, revisions to Civil Code article 2318 that relieve a parent or tutor of vicarious liability for the torts of an emancipated minor—but only under limited circumstances.⁶⁹

The second dominant issue was whether a parent or tutor should be permitted to emancipate a minor by notarial act. The Emancipation Committee initially proposed abolishing emancipation by notarial act and recommended instead that emancipation be accomplished only through judgment or marriage. Parents and minor children would assuredly understand the consequences of emancipation if judicial oversight was required. Eventually, however, due to concerns over cost and ease, the council and the legislature chose to retain emancipation by notarial act, but to make such emancipation limited in scope.⁷⁰

After working for nearly four years on the emancipation recodification project, the Emancipation Committee and Council forwarded a draft bill to the legislature in the spring of 2008. The legislature thereafter considered the bill during its 2008 Regular Session. The bill passed through committee and both houses of the legislature without opposition or substantive

67. Minutes of Nov. 9, 2004 LSLI Emancipation Committee, *supra* note 3, at 1-3.

68. The committee considered emancipation laws from various other jurisdictions, including France, Quebec, Italy, Spain, Puerto Rico, Mexico, the Philippines, Mongolia, Ukraine, Belgium, Switzerland, and the Russian Federation, among others. *See* Research Prepared by La. State Law Inst. Staff (Dec. 1, 2004); Minutes of Nov. 9, 2004 LSLI Emancipation Committee, *supra* note 3, at 3.

69. *See* LA. CIV. CODE ANN. art. 2318 (Supp. 2010).

70. *See* LA. CIV. CODE ANN. arts. 365, 368 (Supp. 2010).

amendment. Governor Bobby Jindal signed the emancipation bill into law as Act 786 in August 2008, and its substantive articles and procedural provisions became effective on January 1, 2009.⁷¹ These new articles and provisions are discussed below.

IV. CIVIL CODE REVISIONS

The recodification of the Louisiana Civil Code emancipation articles provides for three types of emancipation: “judicial emancipation, emancipation by marriage, and limited emancipation by authentic act.”⁷² The prior article also set forth three types of emancipation, but in so doing, it defined these types in part using the *means* to obtain emancipation and in part using the *effects* of emancipation.⁷³ The revision consistently defines the types of emancipation using only the means of emancipation.

“Judicial emancipation” is obtained through judgment. Under article 366, a court “may” order “full or limited emancipation” of a minor sixteen years of age or older for “good cause.”⁷⁴ Because this article provides that a court “may” order emancipation, emancipation is never mandatory and is always a matter within the sound discretion of the court. Moreover, the standard for emancipation—good cause—is indeterminate by design. Rather than listing defined categories of circumstances in which emancipation is permissible, the article uses the term good cause to allow parties to seek and courts to grant emancipation in a wide variety of unpredictable situations.⁷⁵ For example, good cause may exist when a minor’s parents need to be protected (for example, from obligations created by a wayward, runaway child).⁷⁶ Good cause may also exist when a minor needs capacity to enter into juridical acts (for example, to enter into

71. See Act of July 7, 2008, No. 786, § 3, 2008 La. Acts 2977 (“This Act shall be effective on January 1, 2009.”).

72. LA. CIV. CODE ANN. art. 365 (Supp. 2010).

73. Former Article 365 provided for “[e]mancipation conferring the power of administration” (effect), “[e]mancipation by marriage” (means), and “[e]mancipation relieving the minor from the time prescribed by law for attaining the age of majority” (effect). See LA. CIV. CODE art. 365 (1870) (amended 2009).

74. LA. CIV. CODE ANN. art. 366 (Supp. 2010). Judicial emancipation is effective “when the judgment is signed.” See LA. CIV. CODE ANN. art. 369 (Supp. 2010). Significantly, all forms of emancipation are “wholly prospective.” *Id.* revision cmt. That is, the emancipation of a minor does not validate or affirm any juridical act that the minor attempted to make prior to the effective date of emancipation. *Id.*

75. The LSLI Council rejected efforts to over-complicate this straightforward standard for judicial emancipation by, among other things, rejecting an effort to define the prerequisite to emancipation to include good cause and the additional requirement that emancipation also be “in the best interest of the minor.” See Minutes of the La. State Law Inst. Council Meeting (Oct. 14, 2006), at 9 [hereinafter Minutes of Oct. 14, 2006 LSLI Council Meeting].

76. See LA. CIV. CODE ANN. art. 366 cmt. (g) (Supp. 2010).

contractual obligations in the course of operating a business).⁷⁷ In either case, the good-cause standard is inclusive enough to permit judicial emancipation. Finally, the revision gives courts the option to order either “full judicial emancipation,” which confers “all effects of majority,”⁷⁸ or to order “limited emancipation,” which confers only those effects of majority called for by the particular needs of the minor or the minor’s parents under the circumstances.⁷⁹

Judicial emancipation can be modified or terminated by a court “for good cause.”⁸⁰ Like the standard for granting judicial emancipation, the standard for modifying or terminating such emancipation is indeterminate and highly discretionary. For example, good cause may exist when the grounds for emancipation no longer exist or circumstances have changed. When good cause exists, the court, in its discretion, can modify the judgment to make a full judicial emancipation a limited one, or simply terminate the judgment altogether. Upon termination, the minor returns to the same authority to which he was subject prior to emancipation, or, for good cause, to any other authority prescribed by the court in the judgment of modification or termination.⁸¹ To protect third persons,⁸² termination or modification of judicial emancipation is wholly prospective, and does not affect the validity of juridical acts of the emancipated minor prior to the effective date of modification or termination.⁸³

“Emancipation by marriage” is obtained through marriage. Under

77. *See* LA. CIV. CODE ANN. art. 366 cmt. (h) (Supp. 2010).

78. Article 366 qualifies the ability of courts to confer “all effects of majority” with the language “unless otherwise provided by law.” *See* LA. CIV. CODE ANN. art. 366 (Supp. 2010). The LSLI recommended this language to clarify that laws regulating the conduct of those under the age of eighteen are still applicable to emancipated minors. *See id.* cmt. (c). Therefore, other laws that, for example, prohibit minors from drinking alcohol, using tobacco, or attending certain movies, are fully applicable to emancipated minors. While helpful, this qualification was not technically necessary, given that emancipation affects only a minor’s capacity to enter into juridical acts and nothing more.

79. For example, a court might decide to order only the “limited emancipation” of a minor who needed capacity to enter into contracts to further a business, but who did not need the ability to donate property. *See* LA. CIV. CODE ANN. art. 366 cmt. (d) (Supp. 2010).

80. *See* LA. CIV. CODE ANN. art. 370 (Supp. 2010).

81. *See* LA. CIV. CODE ANN. art. 370 cmt (d) (Supp. 2010).

82. Also to protect third persons,

[a] judgment modifying or terminating a judgment of emancipation is effective toward third persons as to immovable property when the judgment is filed for registry in the conveyance records of the parish in which the property is situated, and as to movables when the judgment is filed for registry in the conveyance records of the parish or parishes in which the minor was domiciled at the time of the judgment.

LA. CIV. CODE ANN. art. 370.

83. LA. CIV. CODE ANN. art. 370 (Supp. 2010).

article 367, a minor “is fully emancipated by marriage.”⁸⁴ This article applies to any minor who marries, irrespective of the minor’s age at marriage.⁸⁵ Emancipation by marriage⁸⁶ is permanent: it is unaffected by subsequent termination⁸⁷ of the marriage, and it is not otherwise subject to modification or termination.⁸⁸

“Limited emancipation by authentic act”⁸⁹ is obtained through an act of emancipation executed by the minor⁹⁰ (age sixteen or older) and the minor’s parents or tutor before a notary and two witnesses.⁹¹ Under article 368, such emancipation is “limited” and confers only the “capacity to make the kinds of juridical acts specified therein.”⁹² Because emancipation by authentic act is “limited,” and because it confers only “capacity” to make specified⁹³ “juridical acts,” the revision clarifies that such emancipation does *not* relieve the parents or tutors “from liability for the damages

84. See LA. CIV. CODE ANN. art. 367 (Supp. 2010). Emancipation by marriage is effective “upon marriage.” See LA. CIV. CODE ANN. art. 369 (Supp. 2010).

85. Under prior law, a married minor under the age of sixteen only received powers of administration. See LA. CIV. CODE ANN. art. 382 (2007) (vacated 2009).

86. LA. CIV. CODE ANN. art. 367 (Supp. 2010). A minor in an absolutely-null marriage is likewise fully emancipated if the marriage is a “putative marriage.” Emancipation is a “civil effect” of a putative marriage. See *id.* cmt. (b) (“As used in this Article, the term ‘marriage’ includes both lawful marriages and putative marriages.”). Likewise, a marriage between minors without the consent of their parents is a legal and valid marriage, and results in emancipation of the minor. See *State v. Priest*, 27 So. 2d 173, 174 (La. 1946).

87. A marriage terminates by death or divorce. See LA. CIV. CODE ANN. art. 101 (2007). Thus, divorce or death (of the minor’s spouse) will not affect the minor’s full emancipation. See LA. CIV. CODE ANN. art. 367 cmt. (c) (Supp. 2010).

88. LA. CIV. CODE ANN. art. 367.

89. During the revision process, the LSLI debated whether this form of emancipation should remain in the Civil Code. Ultimately, the Council voted to retain notarial emancipation, but only as a low-cost means to grant a minor limited capacity to make juridical acts. The Council specifically rejected notarial emancipation as a means to absolve the minor’s parents or tutor of vicarious tort liability. See, e.g., Minutes of La. State Law Inst. Council Meeting (May 21, 2005), at 1-2 [hereinafter Minutes of May 21, 2005 LSLI Council Meeting] (on file with authors); Minutes of Oct. 14, 2006 LSLI Council Meeting, *supra* note 75, at 10; Minutes of La. State Law Inst. Council Meeting (Dec. 9, 2006), at 7 (on file with authors).

90. Under prior law, the minor did not have to be a party to the act of emancipation. See LA. CIV. CODE art. 366 (1870) (amended 2009). Thus, the minor could be emancipated without even knowing it. Given the oddity of this regime, the 2009 revision specifically requires that the minor be a party to the act. LA. CIV. CODE ANN. art. 368 (Supp. 2010); see also Minutes of Nov. 9, 2004 LSLI Emancipation Committee, *supra* note 3, at 2.

91. See LA. CIV. CODE ANN. art. 368 (Supp. 2010). Limited emancipation by authentic act becomes effective “when the act is executed.” See LA. CIV. CODE ANN. art. 369 (Supp. 2010).

92. See LA. CIV. CODE ANN. art. 368.

93. The authentic act could provide that the “minor has capacity to execute all juridical acts, or certain kinds of juridical acts, or only specific juridical acts.” See LA. CIV. CODE ANN. art. 368 cmt. (b). Thus, for example, an authentic act of emancipation could give a minor capacity to incur all contractual obligations, but not to make donations.

occasioned by their minor child.”⁹⁴

Limited emancipation by authentic act can be modified or terminated by the parties⁹⁵ for any reason, or by a court for good cause.⁹⁶ A court might modify or terminate such an emancipation if, for example, the emancipated minor was unadvisedly alienating his property or was being taken advantage of by others. To protect third persons,⁹⁷ termination or modification of limited emancipation by authentic act (whether by subsequent act or by court order) is wholly prospective and does not affect the validity of a juridical act of the emancipated minor prior to the effective date of modification or termination.⁹⁸

The last Civil Code article modified in the emancipation revision process was the most controversial.⁹⁹ This article—article 2318—addresses the vicarious liability of a minor’s parents or tutor for “damages occasioned by their minor child.”¹⁰⁰ Under pre-revision article 2318, parents were strictly liable for the tortious conduct of their unemancipated children as a matter of law.¹⁰¹ Under pre-revision article 2318, it was clear that *judicial* emancipation relieved parents from such strict liability.¹⁰² It was not clear,

94. See LA. CIV. CODE ANN. art. 368 cmt. (a).

95. The parties can modify such emancipation simply by executing another authentic act. See LA. CIV. CODE ANN. art. 371 (Supp. 2010).

96. See *id.*

97. Also to protect third persons,

[an] authentic act or judgment modifying or terminating limited emancipation by authentic act is effective toward third persons as to immovable property when the act or judgment is filed for registry in the conveyance records of the parish in which the property is situated and as to movables when the act or judgment is filed for registry in the conveyance records of the parish or parishes in which the minor was domiciled at the time of the act [or judgment] terminating limited emancipation by authentic act.

LA. CIV. CODE ANN. art. 371 (Supp. 2010). Note that the legislature inadvertently omitted the language bracketed above.

98. *Id.*

99. The Council debated this issue for many hours over the course of several meetings. See, e.g., Minutes of May 21, 2005 LSLI Council Meeting, *supra* note 89, at 1-2 (“As a matter of policy and by a vote of 14-11, the Council decided that parents should be able to eliminate their vicarious liability for the torts of their minor child by emancipating that child by the forms of ‘judicial emancipation’ and ‘emancipation by marriage.’”); Minutes of La. State Law Inst. Council Meeting (May 19, 2007), at 6 [hereinafter Minutes of May 19, 2007 LSLI Council Meeting] (on file with authors); Minutes of La. State Law Inst. Council Meeting (Oct. 17, 2007), at 1 (on file with authors).

100. LA. CIV. CODE ANN. art. 2318 (Supp. 2010).

101. LA. CIV. CODE art. 2318 (1870) (amended 2009). Pre-revision Article 2318 provided:

The father and mother and, after the decease of either, the surviving parent, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. . . . The same responsibility attaches to the tutors of minors.

Id.

102. *Speziale v. Kohnke*, 194 So. 2d 485, 488 (La. Ct. App. 4 Cir. 1967) (holding that judicial

however, whether parents who had merely executed an act of *notarial* emancipation were relieved from such vicarious liability.¹⁰³ Because pre-revision notarial emancipation conferred only the power of administration upon the minor, the child remained under a regime of parental authority (or tutorship) post-“emancipation.”¹⁰⁴ As a result, the parents (or tutor) arguably remained vicariously liable for the torts of that child.¹⁰⁵ Notwithstanding this logic, at least one pre-revision court had concluded that *any* form of emancipation—whether notarial, by marriage, or judicial—relieved the parents of vicarious liability for the minor’s torts.¹⁰⁶

The 2009 revision to article 2318 resolves this uncertainty. The LSLI Council wanted to assure that parents could *not* relieve themselves of vicarious responsibility merely by executing an authentic act of emancipation. However, the Council wanted to assure that a means existed for a parent to be relieved of liability under appropriate circumstances.¹⁰⁷ With this goal in mind, the LSLI proposed, and the Legislature enacted, a revision to article 2318 under which parents and tutors are:

not responsible for the damage occasioned by their minor child who has been emancipated by marriage, by judgment of full emancipation, or by judgment of limited emancipation that expressly relieves the parents of liability for damages occasioned by their minor child. . . . The same responsibility attaches to the tutors of minors.¹⁰⁸

Thus, under the revision, parents and tutors have no vicarious responsibility for their minors’ torts only after full judicial emancipation or after emancipation by marriage. They remain strictly liable, however, after an emancipation by authentic act or after a limited judicial emancipation that does not expressly relieve the parents (or tutors) of such liability.¹⁰⁹

emancipation relieves parents of liability for the minor’s acts); *see also* Held v. Wilt, 610 So. 2d 1103, 1104-05 (La. Ct. App. 5 Cir. 1992) (holding that notarial emancipation relieves parents of liability for the minor’s acts).

103. *Compare* Keller v. Rednour, 416 So. 2d 357 (La. Ct. App. 4 Cir. 1982) (assuming that emancipation by notarial act did not relieve the parents of vicarious liability for the acts of the minor), *with* Held v. Wilt, 610 So. 2d 1103, 1104-05 (La. Ct. App. 5 Cir. 1992) (concluding that emancipation by notarial act of the parents relieved the parents of liability for damage caused by the minor).

104. Held v. Wilt, 610 So. 2d 1103, 1105 (La. Ct. App. 5 Cir. 1992).

105. *Id.* (noting that for a parent to be relieved of liability, the child should be fully emancipated, but concluding that the issue was one for the legislature, not the court).

106. *Id.*

107. *See* Minutes of May 21, 2005 LSLI Council Meeting, *supra* note 89, at 1-2.

108. LA. CIV. CODE ANN. art. 2318 (Supp. 2010).

109. The revision comment to article 2318 states: “Under the Revision, an emancipation by authentic act has limited effects and does not affect the liability of a parent under Civil Code Article 2318.” LA. CIV. CODE ANN. art. 2318 revision cmt.

V. CODE OF CIVIL PROCEDURE REVISIONS

The revisions to the Louisiana Code of Civil Procedure emancipation articles principally set forth the procedures for obtaining judicial emancipation. In addition, the revised articles set forth the procedures for modifying or terminating judicial emancipation or emancipation by notarial act.

Any judicial proceeding relating to emancipation is commenced through the filing of a petition for judicial emancipation.¹¹⁰ Such a petition may be filed by a minor age sixteen or older, by a minor's parents or tutor, or jointly by the minor and the minor's parents or tutor.¹¹¹ The Code of Civil Procedure sets forth detailed pleading requirements for any petition seeking judicial emancipation.¹¹²

As to a petition by a minor, a minor can "individually without the participation of his tutor or administrator" file a petition for judicial emancipation.¹¹³ The minor's petition must name the minor's parents or tutor as parties defendant and must be served personally on the defendant(s).

As to a petition by a parent or tutor, such a petition must name the minor as the party defendant and must be served personally¹¹⁴ on the

110. LA. CODE CIV. PROC. ANN. art. 3991 (Supp. 2010). However, a proceeding to modify or terminate a judgment of emancipation or an act of limited emancipation by authentic act need not be commenced through the filing of a petition. LA. CODE CIV. PROC. ANN. art. 3997 (Supp. 2010). Such a proceeding can be commenced "[o]n motion of the court or any person." *Id.*

111. LA. CODE CIV. PROC. ANN. art. 3993 (Supp. 2010). The proper venue for such a petition is "the parish where a party is domiciled." *See id.* Given that the unemancipated minor's domicile will always be the same as "his father, mother, or tutor," in actuality the only "party" whose domicile is relevant to venue is the unemancipated minor's "father, mother or tutor." *Id.* cmt. (a); *see also* Minutes of the La. State Law Inst. Emancipation Committee (Jan. 21, 2005), at 6 (on file with authors). Moreover, a minor cannot change domicile simply by leaving home without parental consent. *See* LA. CIV. CODE ANN. art. 218 (2007) ("An unemancipated minor can not quit the parental house without the permission of his father and mother. . . ."); *see also* Minutes of the La. State Law Inst. Emancipation Committee (Apr. 8, 2005), at 7 [hereinafter Minutes of Apr. 8, 2005 LSLI Emancipation Committee] (on file with authors).

112. *See* LA. CODE CIV. PROC. ANN. art. 3992 (Supp. 2010). Among other requirements, the petition must set forth "[t]he reasons why good cause exists for emancipation," "the effects of majority sought to be conferred upon the minor" if limited judicial emancipation is requested, and a "descriptive list of the property of the minor." *Id.*

113. *See* LA. CODE CIV. PROC. ANN. art. 3991 (Supp. 2010). This language was necessary because without express authority, an unemancipated minor would lack the procedural capacity to file suit in on his own behalf. Rather, the administrator of the minor's affairs, or the minor's tutor, would be required to sue on behalf of the minor. *See* LA. CODE CIV. PROC. ANN. art. 683 (2007 & Supp. 2010); *see also* LA. CODE CIV. PROC. ANN. art. 3991 cmt. (a).

114. This was a significant policy choice made by the Council in an effort to make certain that the minor is aware of any emancipation effort. *See* Minutes of the La. State Law Inst. Council

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minor.¹¹⁵ Significantly, whenever a parent or tutor petitions for judicial emancipation, the court must appoint a lawyer to represent the defendant in the emancipation proceedings. The petition of the parents or tutor must be served on the lawyer in addition to the minor.¹¹⁶

As to a joint petition, the minor and the minor's parents or tutor may jointly petition for judicial emancipation. The court need not appoint a lawyer for the minor, and service is unnecessary.¹¹⁷ The LSLI Council called for this mode of judicial emancipation to provide an easy, low-cost means to fully emancipate a minor.¹¹⁸

An emancipation hearing—whether on a petition for emancipation or to modify or terminate emancipation—is conducted as a summary proceeding.¹¹⁹ Therefore, the issuance of a citation is unnecessary, and any party can bring the matter to hearing simply by filing a rule to show cause. At a contested emancipation hearing, the minor must be present unless good cause exists for the minor's absence.¹²⁰ For example, if the minor is a runaway, good cause would exist for the minor to be absent from a hearing on the parents' petition for emancipation. The burden of proving good cause by a preponderance of the evidence rests with the petitioner.¹²¹ As to uncontested emancipation proceedings instituted by joint petition, the court need not conduct a hearing and can grant judicial emancipation on the parties' joint motion.¹²²

Whether granted after a full-blown hearing or on joint motion, any judgment of *limited* emancipation must specify the effects of majority conferred upon the minor, and must state that the minor retains all other effects of minority.¹²³ This requirement exists so that there is no confusion as to the scope and effect of such a judgment by those who subsequently

(Dec. 9, 2006), at 8 [hereinafter Minutes of LSLI Dec. 9, 2005 Council] (on file with authors).

115. If the minor is absent and cannot be found, a curator could be appointed to accept service in accordance with the curatorship articles of the Code of Civil Procedure. See LA. CODE CIV. PROC. ANN. art. 3991 cmt. (b) (Supp. 2010).

116. See LA. CODE CIV. PROC. ANN. art. 3991.

117. *Id.*

118. See Minutes of LSLI Dec. 9, 2005 Council, *supra* note 112, at 6.

119. LA. CODE CIV. PROC. ANN. art. 3994(A) (Supp. 2010).

120. LA. CODE CIV. PROC. ANN. art. 3994(B).

121. Early drafts of the revision expressly set forth the burden of proof as “by a preponderance of the evidence.” See Memorandum from the La. State Law Inst. Emancipation Committee (Jan. 16, 2005), at 3 (containing the Reporter's draft legislation) (on file with authors). This language was deleted in subsequent drafts as unnecessary given that the “preponderance of the evidence” standard is the default burden of proof in civil proceedings.

122. LA. CODE CIV. PROC. ANN. art. 3994(C) (Supp. 2010).

123. LA. CODE CIV. PROC. ANN. art. 3995 (Supp. 2010).

rely on a judgment of limited emancipation. To protect third parties,¹²⁴ a judgment granting, modifying, or terminating emancipation must be filed for registry¹²⁵ by the clerk of court “in the conveyance records of the parish in which the judgment was rendered” and by the petitioner “in the conveyance records of every other parish in which the minor owns immovable property.”¹²⁶

An appeal from any emancipation judgment¹²⁷ is devolutive, and the operative effect of the trial court’s judgment cannot be suspended. To protect third parties with whom the emancipated minor may deal during the pendency of any such appeal, the code expressly provides that “[t]he validity of an act of the minor shall not be affected by the subsequent modification or termination of the judgment.”¹²⁸

Finally, if the minor’s emancipation becomes unnecessary or harmful to the minor, “the court or any person”¹²⁹ can file a motion to modify or terminate the minor’s emancipation.¹³⁰ This provision applies to judicial emancipation and to limited emancipation by notarial act.¹³¹ The standard for granting a motion to terminate or modify emancipation is the flexible and familiar “good cause” standard used throughout the 2009 revision.

VI. CONCLUSION

The revision is not expected to generate significant changes in the use of emancipation. Emancipation will remain rare. The revision did, however, resolve uncertainties regarding parental liability and offer greater discretion to parents and the courts to permit limited or full emancipation, depending on the

124. The Emancipation Committee was particularly concerned about protecting third persons with whom a previously-emancipated minor might deal. *See Minutes of the La. State Law Inst. Emancipation Committee (Nov. 9, 2006)*, at 8 (on file with authors).

125. The Emancipation Committee consulted with the LSLI Registry Committee to assure consistency in issues pertaining to recordation. *Minutes of Apr. 8, 2005 LSLI Emancipation Committee*, *supra* note 111, at 8.

126. LA. CODE CIV. PROC. ANN. art. 3998 (Supp. 2010). Under this article, the petitioner must record the judgment in the conveyance records within fifteen (15) days of the signing of the judgment. *Id.* at art. 3998(B).

127. Including appeals from judgments “granting, modifying, or terminating emancipation.” LA. CODE CIV. PROC. ANN. art. 3996 (Supp. 2010).

128. *Id.*

129. Note that while only a minor, parent or tutor can seek emancipation, *see* LA. CODE CIV. PROC. ANN. art. 3991 (Supp. 2010), “any person” can seek to terminate or modify emancipation. *See* LA. CODE CIV. PROC. ANN. art. 3997 (Supp. 2010). Indeed, the LSLI Council rejected an effort to limit those who could seek termination or modification to “any party.” *See Minutes of May 19, 2007 LSLI Council Meeting*, *supra* note 99, at 4.

130. LA. CODE CIV. PROC. ANN. art. 3997 (Supp. 2010).

131. *Id.* It does not apply to emancipation by marriage, which is permanent. LA. CIV. CODE ANN. art. 367 (Supp. 2010) (“Emancipation by marriage may not be modified or terminated.”).

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circumstances of the minor.

The revision resolved whether parents, through an authentic act of emancipation, can relieve themselves from vicarious liability for the acts of their minor child. After the revision, judicial emancipation is the only means to relieve a parent of vicarious responsibility for the torts of their minor child. Parents can no longer rely on a judicially unregulated act to shield themselves from liability without adequate cause.

The revision created a limited judicial emancipation to confer on the minor the capacity to make specified juridical acts. Similar to limited interdiction, limited emancipation can give a minor capacity to act in certain circumstances (e.g. when necessary to run a business), but maintains restrictions on a minor's unlimited capacity to act. This tailor-made approach to emancipation gives courts needed discretion to balance the needs of a minor to be free from parental or tutor control with protection over the youngest members of society. The revision also permits limited emancipation by authentic act, without court intervention, as a cost effective approach to allow parents or tutors and their children to agree on appropriate controls while giving the minor capacity to act. Unlike pre-revision law, however, the minor must be a party to the act.

The revision offers a clear, concise, and manageable approach to give minors the ability to spring from parental or tutor control when needed. Derived originally from seventeenth century French and Spanish law, the Louisiana law of emancipation was in need of a comprehensive review and revision. As envisioned by the Legislature, the contemplative LSLI process resulted in a reasoned scheme that clarified and simplified the law, and should serve the citizens of Louisiana for years to come.