I. INTRODUCTION

Across the centuries of western sociological and juridical thought the rights, requirements, and burdens placed on the marriage relationship have reflected the ethical and moral customs of the area and the time. Because perceptions of ethical and moral right or wrong are continually in a state of flux, interpersonal relationships reflect that uncertainty; and because law can neither depart from ethical custom nor lag behind it, the law is also constantly evolving.

For the majority of Americans, heterosexual cohabitation in a marriage relationship most often entails civil predicates such as blood tests, licenses and certificates, together with some sort of secular or religious solemnization. Yet today, more than ever before, the phenomenon of unwed cohabitation is not only alive and well, but is destined to expand even more dramatically in future years. The bureau of census statistics indicates that during the 1960's the number of persons living together "without benefit of clergy" increased by over seven hundred percent. By 1978 that figure had doubled again, to more than one million couples. Among persons under twenty-five years of age, the numbers had augmented eight fold. Indeed, the "practice of unwed cohabitation
has become so common today as to demand candid recognition in even the most conservative and genteel circles."

The United States may be on the verge of a period of widespread judicial recognition of marriage's "shadow institution." Currently, a clearly discernable trend has evolved which not only rejects the traditional approach of refusing to grant any relief to aggrieved cohabitants, but also exhibits a certain acquiescence to alternatives to formal legal marriage. The problems attendant to informal marriage exist throughout the world; in the face of profound changes constantly occurring on the world social, economic, and political scenes, the legal profession must inevitably examine how other nations have solved, or are seeking to solve, similar dilemmas.

It is the purpose of this Article to examine carefully and to compare the respective treatment of unwed cohabitants in Louisiana and in France with regard to whether a surviving partner will be entitled to assert a claim for damages against a third party for the wrongful death of the other cohabitant. An examination of the evolution of French legal theory reveals that Louisiana is tracking prior French thought in the areas of dissolution of burdens imposed by the state on consorts in union libre, notions of reparable damage, and the emergence of a concept of true need rather than moral worthiness or specifically enumerated relationships as a prerequisite to an action for damages. In order to properly illuminate this narrow area of legislative enactment and judicial construction, it will be necessary to delve into the collateral area of the history of judicial burdens placed on those who have not submitted to a formal marriage ceremony. Additionally, some definitional problems in the area of unwed cohabitation will be analyzed, and an effort will be made to recount the juridical history of unwed cohabitation within the context of the evolving conceptions of reparable injury in the respective jurisdictions.

\footnote{Lorio, Concubinage and its Alternatives: A Proposal for a More Perfect Union, 26 Loy. L. Rev. 1, 2 (1980).}
\footnote{Glendon, supra note 2, at 688.}
II. FRENCH LEGAL RESPONSE TO UNWED COHABITATION

A. A Brief Survey of the French Court System

Before embarking on a detailed examination of the legal treatment of a concubine claiming recovery for damages sustained due to the accidental death of her partner, a cursory understanding of the French judicial organization is necessary in order to understand which courts have addressed the issue and why their opinions have been so diverse.

Prior to the reorganization of 1958 the court of general jurisdiction in the first instance was the tribunal civil, which could be found in each arrondissement. Superior to the civil courts were twenty-seven appellate courts (cours d'appel) which could sit in review of the courts of first instance. After the reorganization of 1958 the civil court took the name Tribunal de grande instance, and its numbers were significantly reduced.

Various courts have jurisdiction over criminal cases, depending on the gravity of the crime involved. For the purpose of this investigation, offenses are judged in the first instance by the Tribunal correctionnel, which is the criminal law equivalent of the civil court of major jurisdiction (Cour de grande instance). From that point appeals are taken to the correctional appeals chamber of the court of appeals.

Above these various criminal and civil courts and courts of appeals sits the French supreme court, which is denominated the Cour de cassation. In theory, the purpose of this court is limited to cassation, that is, setting aside judgments for errors of law made by the court below and referring the case for further disposition to the appellate court other than the one which created the error.

Within the French judicial structure, the Cour de cassation is

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7 R. David, French Law: Its Structure, Sources and Methodology 39 (M. Kindred trans. 1972). An arrondissement is the second administrative subdivision after the départements, of which there are ninety-five in France. Arrondissements are further divided into cantons and finally into communes.

8 Id. at 40. One hundred seventy-two courts of major jurisdiction have replaced 353 civil courts. The position of the courts of appeal was not changed in the reform, other than in the enlargement of their jurisdiction.

9 Id. at 41. If the offense is major (judged according to the penalty involved) it is denominated a crime and will be attended by the Cour d'assises.

10 Id. at 42.

11 Id.

unique in that it considers only questions of law, reserving all factual questions for determination by other tribunals. The role of the Cour de cassation is to ensure the consistency of French decisions from region to region.

The Cour de cassation has review powers over all judicial decisions no matter what the amount in controversy, so long as the decision is from a court of last resort. Thus the court may sit in review of a seemingly trifling sum of money, if the court considers the question of law to be one in need of uniformity throughout the country.

The Cour de cassation is composed of one criminal and one civil chamber. Before 1947, however, the Cour de cassation had three civil chambers and one criminal chamber. One of the civil chambers was called the request chamber (Chambre des requêts), which acted as a screening device for the other civil chambers. If the Chambre des requêts determined that the appeal had merit, then the case would be forwarded to the civil chamber. Upon a negative decision by the Chambre des requêts, however, that chamber would dismiss the appeal and write the opinion.

Cases taken from review by the Cour de cassation are usually heard by one section only. However, delicate cases or those likely to create conflicts with prior decisions may be adjudicated by the mixed chamber (Chambre mixte), which was formerly known as the Assemblée plénière civile. The Chambre mixte is composed of the president and one representative from each civil section of the civil chamber and of the president and a councilor from the criminal chamber.

B. The Unwed Cohabitant in French Case Law

1. Article 1382 and Evolving Concepts of Reparable Injury

According to the classical distinction, a concubinal relationship produces two types of effects: negative and positive. The negative effects attach to concubines an incapacity regarding the disposal of their possessions to one another, both inter vivos and testamen-

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13 Id. at 34. The courts of appeal have jurisdiction to review the findings of the court of first instance both as to law and fact.
14 R. David, supra note 7, at 43.
15 R. David & H. de Vries, supra note 12, at 35.
16 R. David, supra note 7, at 43.
17 Id. at 42.
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tary, without consideration.18 The positive effects fall generally into two categories, legislative and judicial. The positive legislative effects have evolved exclusively in this century and are largely the result of war-time aid programs to troops and dependents.19 The positive judicial effects are purely the creation of modern jurisprudence. They have evolved in the public courts and the administrative tribunals and in civil and criminal actions. These positive judicial effects in turn may be divided into two groups. Some address the consequences of concubinage which relate to the partners themselves or to their dependents, while others address the effects pertinent to third parties.

One of the most interesting and often debated questions in the broad area of positive effects of a concubinal relationship is whether consorts in union libre (practically speaking, concubines)20

18 Failure to follow established legal requirements for a valid marriage results in mandatory recission of gifts between persons living in concubinage. Code civil [C. civ.] art. 340. The law of November 16, 1912 modified article 340 of the Code civil, permitting research into the paternity of an illegitimate child in a case where the alleged father and mother have come from a state of notorious concubinage during the legal period of conception. H. Lalou, Traité Pratique de la Responsabilité Civile 160 (1949). For a complete discussion on the history and relevance of article 340, see L. Amiable, De la Preuve de la Paternité Hors Mariage (1885).

19 Since 1912, through a series of laws, administrative documents, and court decisions, France has broken with the tradition of the editors of the Code civil and has recognized a somewhat more precise state of concubinage in order to give to it certain legal effects.

Article 20 of the law of March 9, 1918 concerning rent provides a rent moratorium to persons who, whether parents or not, had lived prior to August 1, 1914 with the tenant in the leased premises and who could show that they were taken care of by the tenant. The changes in rental property laws on March 9, 1918 and on April 1, 1926 tacitly provided benefits to members of a concubinage, although denominating the beneficiaries as persons who lived habitually in the leased premises with the tenant or who lived habitually with the tenant. H. Lalou, supra note 18, at 126.

Another major area of legislation dealt with a consort's rights to government assistance due to her companion's military service. See generally Théry, Les "personnes à charge" et le droit de la famille, 1948 Juris-classeur Periodique [J.C.P.] I No. 739.

These laws came to a climax when on November 15, 1955 the Journal Officiel published a law allocating an annuity to "compagnes des militaires, marins ou civils morts pour la France." That law was comparable to benefits accorded previously to wives of seamen. See Granier, Epoque, concubine ou compagne?, 1956 J.C.P. I No. 1299 (discussion of 1955 law).

Several courts have addressed the issue of a male consort's right of recovery for the death of his companion. Earlier decisions rejected that argument as a matter of course. See, e.g., Judgment of Dec. 28, 1933, Cour d'appel, Aix, 1935 Recueil Dalloz Périodique et Critique [D.P.] II 41 note M. Nast; Judgment of Apr. 4, 1933, Cour d'appel, Angers, 1933 Recueil Hebdomadaire de Jurisprudence [D.H.] 356. See also Eimein, Le Problème de l'union libre, 34 Revue Trimestrielle de Droit Civil 747 (1935). It is recognized today that a man has an equal right to recovery with the woman, provided that the necessary judicial requirements are met. See Judgment of Feb. 27, 1970, Cass. ch. mixte, 1970 Dalloz-Sirey, Jurisprudence [D.S. Jurl.] 201 note R. Combaldieu.
may in the event of the death of the partner obtain damages as would be permitted to a person for the death of the spouse when the responsibility rests in a third party. Before examining the early case law on this issue it will be necessary to examine the operative statute and to define some terms to which it speaks.

The ancient jurisprudence consistently allowed a civil action for damages suffered by a widow and children due to the death of the husband or father. The 1818 decision of Rolland c. Gosse is the landmark decision on the right to civil damages accruing to the survivor of one wrongfully killed after the enactment of the Code civil. That decision permitted a widow to sue police authorities for the use of excessive force in arresting her husband, after a criminal action brought by the state against the officers had been dismissed. This decision was predicated on the language of article 1382 of the Code Napoléon.

Article 1382 is always invoked by a claimant when seeking to recover damages for injury caused either negligently or delictually by another. That article is brief and states in unconditional terms that “any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation.” In order that an act engage the responsibility of its author it is necessary first, that the act constitute a fault, second, that it be imputable to the author, and third, that it cause certain and actual injury.

Superimposed on this enabling law is the concept of indirect damage (dommage par ricochet). When a victim dies, those who are close to him sustain, or may sustain, an indirect injury. The French call this injury préjudice or dommage d'intérêts, and that category is further subdivided into dommage matériel and dommage moral. Dommage matériel results notably in the cessation of assistance provided by the deceased and might be called in English legal terms “loss of support.” Dommage moral is the sadness which

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81 “In 1690, Lebrun was found guilty of the murder of Mme. Mazel, and sentenced to pay her sons eight hundred livres as civil damages. In the same year his innocence was discovered and Gerlac, the real murderer, was convicted and condemned to pay eight thousand livres as damages to the sons of Madame Mazel.” Hubgh v. New Orleans and Carrollton RR. Co., 6 La. Ann. 495, 501-03 (1851).
83 Id. A detailed discussion of this decision is found in Hubgh v. New Orleans and Carrollton RR. Co., 6 La. Ann. 495, 501-03 (1851).
84 C. civ. art. 1382.
85 J. Braucher, La Notion actuelle du concubinage 72, 73 (1932).
is caused by the loss of a loved one and might be denominated "loss of affection" in English.28

Initially, during the 19th century, the jurisprudence declared that those persons having a right to recover for the death of another were only those who could establish a relationship of kinship or consanguinity (lien de parenté)27 or a legally recognized relationship with the deceased.28 However, in 1853 the Cour de cassation proclaimed that recovery for loss of affection (préjudice moral) caused by accidental death was not predicated on either a lien de parenté or a relationship recognized by law.29 Ten years later the criminal chamber of that same court30 affirmed that article 1382, in according a right of recovery for the accidental death of another, is not limited in its application either as to the nature of the act which caused the injury or the nature of the relationship uniting the victim and the claimant.31 This decision recognized the right of a brother to sue for recovery of damages for the death of his brother. The decision was significant because it rejected the necessity of a reciprocal right of support (lien alimentaire) existing between the claimant and the deceased as a prerequisite to recovery under article 1382.32

In 1922 and 1923 the courts did much to break down the requirements of a legally recognized relationship, a relationship of kinship or consanguinity, or a reciprocal obligation of support as prerequisites to recovery under article 1382. In 1922 the Chambre des requêts admitted a claim by a daughter-in-law to recover for the loss of affection caused by the accidental death of her mother-in-law, holding for the first time that a right of recovery attaches to all persons having proved a profound grief, notwithstanding that the relationship was neither one legally recognized nor one of kin-

28 For a detailed analysis of damages in France, see Catala and Weir, Delict and Torts: A Study in Parallel, 38 Tul. L. Rev. 663, 678-85 (1964).
27 J. Beaucher, supra note 25, at 65.
28 Id.
31 Id. at 102.
32 Prior to 1923 some courts had required in addition to a familial relationship (lien de parenté) a right of support flowing from the claimant to the deceased. J. Beaucher, supra note 25, at 65. Some courts even required that this right of support be reciprocal, that is, flowing in both directions. See Judgment of Nov. 18, 1905, Cour d'appel, Grenoble, 1905 D.P. II 479; Judgment of Dec. 27, 1901, Cour d'appel, Besançon, 1903 D.P. II 155; Judgment of Jan. 23, 1899, Cour d'appel, Dovai, 1899 S. Jur. II 296; Judgment of Nov. 14, 1888, Cour d'appel, Besançon, 1890 D.P. II 239.
ship or consanguinity. In 1923 the Cour de cassation recognized the principle that there is no need to establish a mutual obligation of support to meet the burden of proof required to recover for damages caused by the death of another. That decision opened the door to claims on the part of parents and other sufficiently close relatives who could demonstrate true and sincere injury.

The first French decision rendered on the precise issue of a concubine's right of recovery dates from that same year. A decision of the Cour d'appel de Paris permitted a woman living in concubinage to make a claim for damages due to the death of her concubine and awarded her damages for loss of support. The court noted that they had been living together for twenty years, that a child had been born of their union, and that they were considered as mother and father. Lalou, in his comments on that case, pointed out that the court's requirement of "préjudice direct" meant not that the injury itself must be direct, but that the injury must be the cause of the damage to the concubine. Lalou cited as authority Démolombe, who stated that "indirect injury will create civil responsibility, provided that it is immediate, and a direct cause of a delict or quasi delict." Démolombe also mentioned several persons who might move against the person responsible for the death: "All those who may prove injury, even if the injury is indirect: spouses, parents, brothers and sisters." Lalou further stated that "for the same reasons, one must add this association of fact which is that of a concubine, when damages for loss of support are proven."

In 1924 the court of Montpellier rendered a similar decision. That tribunal awarded ten thousand francs as dommage d'intérêts to a woman who had been living with the deceased for several years and to whom was born a child of the union. This case added

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86 Id.
87 Id. at 34-35.
89 Id. at 34.
97 S1 G. DÉMOLOMBE, COURS DE CODE NAPOLÉON 673 (1880).
40 A fait has been defined as that which unjustly injures the right of another, whether by action or omission. A fait is a délit when the action or inaction was intentional. A fait is a quasi délit when a person through imprudence or negligence voluntarily causes damage to another. 2 F. MOURLON, CODE NAPOLÉON: L'EXPOSÉ DES PRINCIPES GÉNÉRAUX 870 (1858).
41 Id. at 34.
to the earlier Parisian decision by recognizing that a concubine had a right to recover not only for loss of support, but also for injury occurring from the loss of affection resulting from the accident.\textsuperscript{43}

The Chambre criminelle of the Cour de cassation addressed the question for the first time in 1926\textsuperscript{44} when an appeal was taken by a concubine from an adverse decision in the Cour d'appel d'Angers. The Chambre criminelle reversed the decision of the Cour d'appel d'Angers by examining the plain language of article 1382. "Article 1382 establishes that there will be a right of recovery to any person who injures another person, without making any distinctions regarding the nature of the injury proven, the action which caused injury, and in the case of death, the nature of the relationship the cessation of which caused injury to the claimant."\textsuperscript{45} The Chambre criminelle held on appeal that the judges, by rejecting the concubine's claim for relief on the basis that there was no legally protected relationship between her and the deceased, incorrectly introduced restrictions which were not found in the language of the article.\textsuperscript{46} The interpretation of article 1382 in that decision was followed by numerous other decisions based on the same rationale. While it is true that from time to time the Chambre criminelle rejected the claims of concubines, none of the rejections invoked the illicit character of the relationship. In those instances the court focused on the certainty or uncertainty of the alleged damages.\textsuperscript{47} In 1930 the Chambre criminelle reaffirmed the right of a concubine to recover not only for damages resulting from loss of support, but also for loss of affection caused by the death of her partner.\textsuperscript{48}

After these early years, characterized by a general acceptance of a concubine's claim for recovery, there began to evolve a dichotomy among the three courts faced with the issue. Because the elements upon which article 1382 predicates a right of recovery are clear and subject to very little interpretation, the varying decisions resulted from differing juridical conceptions of dommage réparable (those damages legally susceptible to indemnification).\textsuperscript{49}

\textsuperscript{43} Judgment of June 24, 1924, Cour d'appel, Montpelier, 1924 D.P. II 145.
\textsuperscript{44} Judgment of Nov. 26, 1926, Cass. crim., 1927 D.P. I 73 note H. Lalou.
\textsuperscript{45} Id.
\textsuperscript{46} J. BEAUCHER, supra note 25, at 55 n.l.
\textsuperscript{47} See N. JEANMART, LES EFFETS CIVILS DE LA VIE COMMUNE EN DÉHORS DU MARIAGE 163, 164 (1975).
\textsuperscript{47} Vidal, L'arret de la chambre mixte du 27 février 1970, le droit à réparation de la concubine et le concept de dommage réparable, 1971 J.C.P. I No. 2390.
Judges in the *Cour de cassation* were inclined to look only to the question of whether or not a victim had actually furnished pecuniary aid to a claimant, without becoming involved in the facts which deemed such support appropriate. In that way they avoided the question posed by some judges as to the legitimacy of the interest or the relationship which was damaged. In an effort to determine the certainty of the alleged injury under article 1382, judges sought to determine whether the concubinage was merely transitory or, on the contrary, a veritable concubinage, characterized by stable relations, analogous to a marriage situation which was regarded as dignified and moral. Under this "certainty of the injury" approach, some courts awarded damages to concubines for the loss of gratuitous subsidies provided by the companion.

Those judges who employed the legitimate interest test continually rejected the concubine's claims, either because of the inherent immorality of the relationship or because, in their view, concubinal relations, even those established over a substantial period of time and emulating the marriage relationship, could never present a character of desirable stability.

The failure to promulgate a decisive standard of review thus caused the courts of appeals to adopt extremist positions on both sides of the issue, some courts denying all rights of recovery to a concubine, others being more beneficient. Two examples illustrate these positions.

The first was a decision of the *Tribunal correctional de la Seine* which faced two women claimants: the widow, who for several years had lived in concubinage with a third party, and the concubine of the deceased. The court rejected the claim of the lawful wife in favor of the rights of the concubine. This was one of the rare early decisions which accorded to the concubine a right of recovery in spite of the adulterous nature of the relationship.

The second decision, rendered by the *Cour de Paris*, concerned

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60 1 H. MAZEAUD, L. MAZEAUD, & E. TUNC, *TRAITÉ THÉORIQUE ET PRATIQUE DE LA RÉSPONSIBILITÉ CIVILE* 384-87 (1932) [hereinafter cited as MAZEAUD & TUNC].
61 Id.
63 MAZEAUD & TUNC, supra note 50, at 384-87.
64 Judgment of Feb. 12, 1931, Trib. corr. de la Seine, 1931 D.P. II 57 note Voirin.
65 Id.
66 Id.
two women claimants, each involved in a concubinal relationship with the deceased. In fact, each lived in separate cities and was held out to the community as the spouse of the deceased. The court of appeals accorded a right of recovery to each claimant. This decision was quashed on appeal, the court deducing from the duality of the concubines an inherent instability of the relationships, although not before incurring the acrimony of Professor H. Mazeaud, who declared that the court was legitimizing polygamy and the union libre at the same time.

The decisions rendered by the criminal chamber of the Cour de cassation, however, were not persuasive to the Conseil d'état. In its decision in the case of la Demoiselle Rucheton, who claimed a right to a life annuity based on her concubinal relationship with the deceased, the court rejected her claim on the ground that she had no legally recognizable relationship with the deceased and thus could not legitimately claim a right of support from him. The Conseil d'état based its decision on the persuasive arguments of the Commissaire du Gouvernement that the application of article 1382 was predicated not only on the existence of an interest, but also on the existence of a right which has been removed or destroyed. According to this rationale, in the absence of a right to support provided by her concubine, there has been no destruction of a right.

This decision imposed a double burden of proof on a concubine seeking recovery. First, a relationship of kinship or consanguinity must be proved, and secondly, the existence of an obligation of support (obligation alimentaire) with the victim must be established. Consequently, in the case of injury par ricochet, only those persons claiming a legally recognized relationship (lien de droit) in the sense of a right of support would have standing to assert damages.

The inability of the courts to define and follow concise guide-

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58 Id.
59 See N. Jeanmart, supra note 47, at 166. In reversing the lower court's decision it was held that "the state of matrimony creates an absolute obstacle to the recognition of a right of recovery in a concubine." Id.
60 See id.
61 See Mazeaud & Tunc, supra note 50, at 385.
63 See N. Jeanmart, supra note 47, at 167.
lines for granting a concubine a right of recovery finally resulted in the intervention of the Cour de cassation's civil chamber in 1937. In an apparent reaction to the increasingly accepted "extremist positions" and in an effort to act as a homogenizer of the law, that tribunal adopted the doctrine which had been previously enunciated by the Conseil d'État. The civil chamber of the Cour de cassation declared that only those damages to a legitimate and legally protected interest would be deemed reparable. The court went on to clarify this ambiguous formula by explaining that the interest must be born of a legitimate right and, in addition, that a legal relationship must exist between the plaintiff and the person whose death caused the damages. In that decision the court went on to make other comments which would be juridically influential for over thirty-five years: "In each instance a concubinal relationship remains, no matter what the length of its duration, a situation of fact, rather than of law, which may not create rights for the benefit of the couple and against third parties. Concubinal relationships, due to their irregularity may not be raised to the level of legitimate interests which are legally protectable." The formula employed by the civil chamber seemed to require more than simply a legitimate interest. A concubine by definition could not demonstrate a legitimate injury, i.e. a legally protected damage, since the situation was by definition illegitimate. The concubine's claim was rejected, however, not only because the damages which she invoked were immoral or illegitimate, but also because the concubinal relationship did not give her any rights in her relationship with her partner. Because she had no rights accruing from the relationship, there were none to assert for her benefit against third parties.

In that same year the Chambre criminelle of the Cour de cassation handed down three decisions which, although less severe in import than the decisions of the Chambre civile, are nevertheless recognized as a reactionary retreat from the widespread acceptance of the claims of concubines which had become so prevalent in prior years.

In the first two decisions, it was reestablished that a right of recovery on the part of a concubine is dependent on certain and ac-
tual damages; however, the third decision, l'arrêt Cabassut, was in all ways a decision of policy. In its ruling, the court overturned a decision of the Court of Nîmes, which had specified that such damages may not result from the cessation of assistance provided by the victim to the claimant, when that assistance could not be accurately measured in real financial terms. If it is true that the action of the concubine was denied not according to the legitimacy of the interest which was damaged, but according to the certainty of its valuation, it may be argued that the court implicitly intended to limit the certainty of the damage to the situation where the claimant was the recipient of a legal right of support (créancier légal d'aliments) flowing from the deceased. Thus reappeared one of the conditions established by the Conseil d'État in the Rucheton case for the granting of a right of recovery for damages resulting from the accidental death of another.

The application of the decisions of 1937, both civil and criminal, resulted in the rejection of numerous claims which equity might have accepted. The Chambre civile justified this narrow viewpoint by adopting a restrictive test that required a legitimate and legally protected relationship as a prerequisite for recovery, thus effectively barring most concubines' claims. The Chambre criminelle test, although seemingly unreceptive to such claims, was in reality more malleable to the legitimate interests of those asserting rights. Just after the Cabassut decision, the Chambre criminelle handed down several decisions which unequivocally denied rights of action to concubines and illegitimate children alike. In a decision in April 1938, however, that court seemed to vacillate by holding that a right of recovery might be justified by the stability of a concubinal relationship. In 1954 the court admitted

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69 Id. (Cabassut c. Bourret).
70 Id. at 7.
71 N. Jeannmart, supra note 47, at 166-67.
72 The origins of codified equity provisions in French law can be found in article 4 of the Code civil of 1804. In addition, article 11 of the avant Projet of the Code provided: "In civil law matters, where there is no express law, the judge is a minister of equity. Equity itself is an appeal to natural law and to received usages where positive law is silent." Although that provision was not adopted into the Code Napoléon, the philosophical foundations of its language nevertheless were influential on French jurisprudence. See generally Ramos, Equity in the Civil Law—A Comparative Essay, 44 Tul. L. Rev. 720 (1970).
73 See N. Jeannmart, supra note 47, at 169 (discussion of viewpoints).
75 Id.
the existence of reparable damages where the circumstances were such that a child had been recognized by its parents, banns had been posted in preparation for a wedding, and a second child was expected imminently. In 1956 the Chambre criminelle permitted an action to recover damages for both loss of support and loss of affection on the part of a fiancée because the woman had proved direct, actual, and certain damages due to the death of her fiancé. This same approach was accepted in 1959 to allow a claim by a woman who was cohabiting with a member of the foreign legion and who was waiting for a judicial determination that her husband was dead so that she could marry her partner. In that case, where opposing arguments raised the issues of instability, immorality, and the possible adulterous character of the relationship, the court was satisfied to look to the generality of the terms of article 1382 in awarding the claim. However, in 1966, faced with a particularly delicate case of an adulterous concubinage and when the legitimate spouse was herself interpleaded in the case, the Chambre criminelle rejected the concubine’s rights even though she was unaware of the delictual character of the relationship. While the court stressed that the relationship’s lack of stability was the determining factor in its decision, it is clear that the court was also quite cognizant of the adulterous nature of the relationship. Thus the criminal chamber had adopted yet another approach to the problem. The right of a concubine to recover would be recognized, provided the relationship was neither precarious nor delictual. The

77 Judgment of Dec. 16, 1954, Cass. crim., 1955 J.C.P. II No. 8505. Banns of matrimony are defined as:
Public notice or proclamation of a matrimonial contract, and the intended celebration of the marriage of the parties in pursuance of such contract. Such announcement is required by certain religions to be made in a church or chapel, during service, on three consecutive Sundays before the marriage is celebrated. The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place.
80 See supra notes 49-54 and accompanying text (discussion of decisions accepting concubines’ claims for dommage d’intérêts).
81 Judgment of Jan. 20, 1966, Cass. crim., 1966 D.S. Jur. 184. That court held that article 1382 formulates no distinctions concerning the nature of the action which caused the injury and, in the case of the death of the victim, establishes no requirements concerning the relationship which must have existed between the claimant and the deceased, as long as there is not a delictual character to the relationship. Id.
82 Id.
first element was subject to interpretation while the second was more precise. In determining precariousness, the courts looked to the duration of the relationship, its notoriety, and its resemblance to a legally recognized marriage. Ten years came to be recognized as an adequate length of time. Other factors taken into consideration included whether the neighbors considered the relationship to be a true marriage and whether there were children in the home.

From 1937 to 1970 the civil chambers continued to systematically refuse any right of recovery to a concubine for the accidental death of her companion, thus remaining committed to the previously enunciated formula of legally protected and legitimate interests. The rigorous application of that test caused the Cour de cassation to reject claims by fiancées, both simple and concubinal, as well as a claim by a fiancée in the name of the child of the deceased. The court in effect held that no legally protected legitimate interest exists between a fiancée and her fiancé, or between a child of a fiancée and a fiancé, even where the death of the fiancé occurred only a few days prior to the marriage.

The formula adopted by the Chambre civile was ineffectually applied, causing commentators, particularly in the late 1960’s, to question exactly where were the legally protected and legitimate interests which the court was so demure to discover. On one occasion, for example, the Chambre civile accepted a claim by an illegitimate child for damages sustained by the loss of his father, even though paternity had not been established. Yet soon after that decision, the court rejected a claim by a concubine even though at the time of the victim’s death the couple had made elaborate wedding plans. The court displayed its unpredictable tendencies in yet another decision in which it permitted recovery on the part of a student for the death of his tutor in recognition of the devotion and affection held for each other. Even more astounding is the Chambre civile’s decision allowing recovery for the loss of affection sustained by the owner of a race horse for the accidental death of

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his animal, the requirement of a legally protectable and legitimate interest notwithstanding. With these cases in mind, it is truly baffling how the court could, as late as 1965, decorously hold that a concubinage, whatever its form or duration, is a situation of fact which is not and will not be raised to the level of a legally protected and legitimate interest.

2. Veuve Gaudras and its Progeny: The Emergence of Uniform Standards and Consistent Application

The decision of the Chambre mixte of the Cour de cassation on February 27, 1970 brought to a conclusion the visceral disagreement between the Chambre criminelle and the Chambre civile regarding the rights of those living together in union libre to recover for the death of their partners. In that case the second civil chamber had taken jurisdiction of an appeal from the Cour d'appel de Paris which had rejected an action for damages by Madame Gaudras against Monsieur Dangereux. Dangereux was recognized as being completely responsible for the death of the man with whom Gaudras had lived for thirty-five years without marriage. The court of appeals, after observing that the relationship offered guarantees of stability and was not delictual in character, nevertheless reversed the court of first instance which had recognized her rights of recovery. Thus, the Cour d'appel de Paris nonsuited the claim of Madame Gaudras, solely on the basis that the concubinage did not create rights between the partners nor for their enrichment vis-à-vis third parties. Upon review, the Chambre mixte concluded that “in thus subordinating the application of article 1382 of the Code civil to a condition which is not contained therein, the cour d'appel violated the above mentioned text.”

The Cour de cassation, recognizing a need for uniformity among its decisions, adopted the position of the Chambre criminelle (at least insofar as the outcome is concerned) and reproduced the same formula which motivated the decision of the Chambre criminelle in 1863.
Although the results of the deliberations of the Chambre mixte were in conformity with those previously promulgated by the Chambre criminelle, several distinctions should be recognized. On the one hand, the Chambre mixte did not try to justify its decision outside of the general language of article 1382, whereas the Chambre criminelle had the habit of justifying a concubine's recovery by involving extenuating circumstances which excused the concubinal relationship. On the other hand, the Chambre mixte did not predicate the concubine's right of recovery on stability of the relationship or on the absence of delictual character. The Chambre criminelle, however, recognized these elements as *sine qua non* for the grounding of an action for recovery. Despite the generality of the facts, this decision was only controlling in cases where there was a *union libre* between free individuals. Yet at the same time it must be recognized that the Chambre mixte did not expressly affirm the exclusion of all actions by members of an adulterous relationship.

In France, since February 27, 1970, the jurisprudence seems to have firmly adopted the interpretation of "*dommage*" in article 1382 which was established in the *Gaudras c. Dangereux* decision. It is thus not necessary for the application of that article that damages result from the attachment of a legally protected right on the part of the claimant. It will be sufficient in the eyes of the court if the injury is found in the loss of a legitimate and certain advantageous situation. It is clear that in 1970, to the satisfaction of many jurists, the court recognized in a partner of a simple concubinage the right to pursue indemnification for damages sustained by the loss of the companion.

A serious change in the law of the criminal chamber began to evolve soon thereafter, however, as several claims by partners in adulterous relationships were warmly received by the court. In...
addition, a court of appeals has simultaneously accorded a right of recovery to a widow and a concubine of the deceased, both for loss of support and loss of affection. It is true that in the interval, adultery, which had constituted a penal delict, was depenalized by the law of July 13, 1975 pursuant to French divorce reforms. Yet if adultery ceased to be a penal infraction, it still remains a civil wrong, and adulterous concubinage is still illegitimate if not illicit. At this early stage it is not completely certain that the Chambre civile, which has traditionally been more severe than other chambers, will accept the notion of granting recovery to adulterers.

The Conseil d'État, as we have seen, has traditionally been unreceptive to the claims for recovery brought by concubines due to the death of their companions. After having ruled for many years that only legally recognized rights or interests which had been removed or destroyed (droits lésés) were susceptible to reparation, the court abandoned that standard in 1951. In its stead the court required the existence of a simple and legitimate interest. While it would appear that such an approach would open the door to consorts in union libre, the test was interpreted by the court in such a way as to require that in order for the interests to be reparable, they must not be of an immoral character or an illegal nature.

It was not until 1978 in the decision of la Dame Muesser, veuve Lecompte that the Conseil d'État finally admitted that a concubine might merit some legal protections and might recover damages for loss of affection due to the death of her companion. Based on the facts of the case, the court held that it was no longer wise to employ the situation juridiquement protégée test which had survived unscathed since 1951. The court also remarked that a concubinage might very well have ties of affection equally as strong as a legal marriage and that the exigencies of modern society rendered fruitless the adoption of such an empty and moralistic position.

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99 See supra notes 62-64.
100 Judgment of July 28, 1951, Conseil d'État, 1952 S. Jur. III 96. This court held that despite the fact that the deceased's parents had no legal right to support from their child, that is, no droit lésé, a recovery should nevertheless be permitted. Id.
101 Id.
103 Id.
104 Id.
Although the Conseil d'état has finally followed the direction of the Cour de cassation, it should be noted that it will only recognize a right of recovery in those situations where the union is stable and continuous.\textsuperscript{105}

III. Judicial Treatment of Unwed Cohabitants in Louisiana

A. Louisiana Definitions

In Louisiana concubinage has been defined as "the act or practice of cohabiting without the authority of legal marriage."\textsuperscript{106} It has also been said that the word concubinage describes "a status resembling marriage" and does not denote "mere acts of fornication or adultery, however frequent or even habitual."\textsuperscript{107} The term has also been applied to "one who occupies the position, performs the duties, and assumes the responsibilities of marriage, "without legal title and privileges flowing from a legal marriage."\textsuperscript{108} Thus it has been held that a common law marriage cannot be contracted in Louisiana by virtue of that state’s statutory requirements\textsuperscript{109} and that a so-called common law marriage entered into in Louisiana is recognized merely as a state of concubinage.\textsuperscript{110} Finally, in this basic definition it must be mentioned that concubinage status only exists where both parties proceed in bad faith.\textsuperscript{111} This is because of additional provisions in the Louisiana code regarding putative marriages. Those sections cause the civil effects\textsuperscript{112} of marriage to flow in favor of a party who marries in good faith and in favor of the children born of that union, as though the marriage had been legally consummated.\textsuperscript{113}

\textsuperscript{105} A. Conderylle, Le "pretium affectionis": un piège pour le juge administratif, 1979 Recueil Dalloz Sirey Chronique [D.S. Chr.] I 173.
\textsuperscript{106} DIGEST OF LOUISIANA CIVIL LAWS, book 3, tit. 10, art. 2 (1808).
\textsuperscript{107} Succession of Franz, 232 La. 310, 322, 94 So. 2d 270 (1957).
\textsuperscript{108} Purvis v. Purvis, 162 So. 239, 240 (La. App. 1935).
\textsuperscript{109} Articles 86 through 89 of the Louisiana Civil Code clearly enunciate that Louisiana law, not any other law, controls all aspects of marriage. See PASCAL, LOUISIANA FAMILY LAW COURSE 40-44 (1973) (discussion of requirements for a valid marriage in Louisiana).
\textsuperscript{110} Succession of Marinoni, 177 La. 592, 610, 148 So. 888, 894 (1933).
\textsuperscript{111} Carmena v. Blaney, 16 La. Ann. 245, 246 (1861); Texada v. Spence, 166 La. 1020, 118 So. 120 (1928).
\textsuperscript{112} The words "civil effects" are used without restriction and necessarily embrace all civil effects given to marriage by the law. Comments on the identical article in the French code provide that such a marriage, "although actually null, has the effect as if it were not null,—the ordinary effects of a valid marriage." Smith v. Smith, 43 La. Ann. 1140, 1142, 10 So. 248, 250 (1891); King v. Cancienne, 316 So. 2d 366, 371 (La. 1975).
\textsuperscript{113} The theory of putative marriages is based on the canonical law of France and has no Roman law source. Because many persons in good faith ran the risk of contracting null
B. Statutory Burdens on Unwed Cohabitants in Louisiana

The desire to control the private lives of the citizenry through the granting of legal effects to property disposition permeates the whole history of law and is one reason that adequate definitions for concubinal relations became necessary in Louisiana. In the early years of the nineteenth century, the Louisiana legislature determined to include in Louisiana law the ancient French maxim "don de concubin à concubine ne vaut" which was first enunciated in codified form in France by the Avant Projet du Gouvernement.\(^{114}\) That provision was not adopted in France, largely due to the belief that for reasons of public policy there should not be an investigation into the private life and an inquiry into the weaknesses of those no longer present to defend themselves. The result of the removal of that burden in France gave rise to the harm which it was intended to suppress, that is, it encouraged concubinage "by leaving concubines the hope, and almost the certainty, that their shameful conduct would be rewarded."\(^{115}\)

The Louisiana legislature, in order to avoid the "evil" of concubinage on one hand and the "evil" of public scandal and gossip on the other, opted for a middle course. This was accomplished by restricting the capacity to immovables only and by substituting the word "open" for "notorious" so that mere notoriety should not suffice, but absence of concealment or disguise should be requisite.\(^{116}\)

marriages, "a palliative had to be found at any price." 1 M. Planiol & G. Ripert, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL 1094 (12th ed. 1939). Article 117 of the Louisiana Civil Code provides that "the marriage, which has been declared null, produces nevertheless its civil effects as it relates to the parties and their children, if it has been contracted in good faith." LA. Civ. CODE ANN. art. 117 (West 1952). Article 118 states that "if only one of the parties acted in good faith the marriage produces its civil effects only in his or her favor, and in favor of the children born of the marriage." Id. art. 118.

Articles 117 and 118 were not contained in the Digest of 1808; they were incorporated in the Civil Code of 1825 and reproduced articles 201 and 202 of the Code Napoléon of 1804. King v. Cancienne, 316 So. 2d 366, 371 (La. 1975). See also Comment, The Putative Marriage Doctrine in Louisiana, 12 Loy. L. REV. 89 (1965).

"Those who have lived together in open concubinage are respectively incapable of making donations to each other." FRENCH PROJET DU GOUVERNMENT (1800) book 3, title 9, art. II.

114 "Those who have lived together in open concubinage are respectively incapable of making donations to each other." FRENCH PROJET DU GOUVERNMENT (1800) book 3, title 9, art. II.


The conclusion is inescapable, since secret and closed concubinage is not condemned by the article, that the penalty of incapacity was leveled solely and only at the openness or publicness of the illicit relation, by the flaunting of public decency and the setting of a bad example, and thereby corrupting the morals of the
The resulting approach is revealed through comparing the Digest of 1808 and the 1825 Code. The Digest of 1808 provided that "[t]hose who have lived together in open concubinage, are respectively incapable to make to each other any universal donation, or on an universal title, whether between inter vivos, or mortis causa." When the Code was revised in 1825, this complete nullification of gifts between concubines was abandoned. The new statute stated:

Those who have lived together in open concubinage are respectively incapable of making to each other, whether inter vivos or mortis causa, any donations of immovables; and if they make a donation of movables, it cannot exceed one-tenth of the part of the value of the whole estate. Those who afterwards marry are excepted from this rule.

Thus was established the major hindrance placed on those choosing to live together as husband and wife without benefit of civil approbation. The courts were not forced to determine whether a concubinage existed, but rather whether the relationship was so open and notorious as to invoke the sanctions of article 1468 (article 1481 of the revised code of 1870). If the relationship were more secret than open, the survivor would be entitled to an interest in realty and perhaps a great deal more than one-tenth of the value of the estate.

The interpretation placed by the Louisiana courts on the words "open concubinage" has been held to involve a question of fact and has led to the consideration of some very interesting factual situations.

The landmark case on the issue of open concubinage vel non is Succession of Jahraus. The Jahraus court recognized that:

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community. Open concubinage is an offense against society, so that, if a couple clandestinely and secretly live together so secretly and quietly and otherwise respectfully, their wrongdoing is not publicly known, they do not come within the provisions of the article.

Id.


18 PROJET OF THE LOUISIANA CIVIL CODE OF 1825, tit. 2, ch. 2 (Louisiana Legal Archives 1937).

19 The purpose of the law is to discourage a man and woman from living together openly as husband and wife without a ceremonial marriage, in the interest of "good morals, of public order, and the preservation of society." Cole v. Lucas, 2 La. Ann. 946, 952 (1847).

20 Layre v. Pasco, 5 Rob. 9, 12 (La. 1843).

21 114 La. 456, 38 So. 417 (1905).
residing together is a frequent concomitant of concubinage, but it is not an essential feature. There may be concubinage, and open concubinage at that, without it, just as there may be marriage without it... What the law aims at is the relation, the permanent relation, of living together as man and wife without being married, and, if that relation is maintained openly, the condition of 1481 is fulfilled, even though the parties don't [sic] reside together.122

In perhaps the most celebrated decision, Succession of Lannes,123 the court held that where the parties lived as husband and wife such that friends, neighbors, and acquaintances regarded them as such, the concubinage was not open, but secret, thereby enabling the claimant to take one-half of the decedent’s estate in accordance with his will. The court stated that “wherever the parties by being discrete have kept their relationship from being known, it has been held that the concubinage is closed and not open.”124 The court then admitted that it was just as possible to hide behind the guise of marriage in causing the concubinal relationship to remain secret. Indeed, had Louisiana recognized the doctrine of common law marriages, the parties would have been husband and wife.

Despite the more recent holding of Succession of Lannes, earlier Louisiana courts held that the lawmakers did not intend by enacting article 1481 to offer a premium for the successful concealment from the general public of undoubtedly existing relations of concubinage.125

122 Id. at 418.
123 187 La. 17, 174 So. 94 (1937). The facts of that case indicate that Mr. Lannes began living with a widow, Emma Stevens. They held each other out to society as husband and wife and were known as such. They lived in eleven different residences, and the child born of the union was also unaware that his parents never submitted to a civil ceremony. It did not appear in the record why they never married, but is has been opined that it was because they did not want others to know that they had not been previously married. After living together for thirty-five years he died leaving a holographic will dividing his estate equally between his brother and Emma Stevens “my life long friend.” The will was contested by the brother of the deceased on the ground that she was his open concubine. Professor Daggett commented that “[t]here could hardly be a higher ideal of marriage in the realistic and unceremonial sense than to meet death with the thought that the associate had been a life long friend.” Daggett, Legal Controls in Family Law, 23 Iowa L. Rev. 215, 223 (1938). “A wise and just majority found for the wife by a masterful manipulation of the distinction between ‘open’ and ‘closed’ concubinage, the latter variety being less harmful to the public welfare and hence unreproubed by the statute involved.” Id.
124 187 La. 17, 174 So. 94 (1937).
125 Succession of Filhiol, 119 La. 998, 1009, 44 So. 843, 847 (1907).
Louisiana courts have constantly justified a concubine's legal disabilities by claiming that it was for the protection of society and in the interest of good morals.\textsuperscript{126} It became necessary, however, for the courts in the interest of equity to permit qualified inroads into the doctrine established in article 1481. For example, it was held that good morals and the interests of society will not prevent a concubine from asserting claims arising out of business transactions between the partners, independent of the concubinage.\textsuperscript{127} If the motive of the concubinage was a business venture and the concubinage was "merely a consequence of the familiarity," the relationship will not prevent or destroy any right which the concubine might have against the paramour in remuneration.\textsuperscript{128} In addition, if the concubine contributed capital and labor to the business prior to the concubinal relationship, equitable principles permitted recovery of one-half of the property acquired during the relationship.\textsuperscript{129} The decision of \textit{Prieto v. Succession of Prieto}\textsuperscript{130} affirmed the right of a concubine to assert any claim arising out of business conducted with the paramour, even a claim whose initial motive was the relationship itself, provided that the business was independent of the concubinage.\textsuperscript{131}

\textsuperscript{126} Among those court-sanctioned disabilities were the following:
  
  Concubinage alone is not sufficient consideration to support a contract between a concubine and a paramour. Succession of Coste, 43 La. Ann. 144, 9 So. 62 (1890); Cole v. Cole, 7 Mart. (n.s.) 414 (La. 1829).

  Persons living together in open concubinage may not donate to each other in excess of one-tenth of the total value of the donor's estate, limited to moveables only. See Succession of Bosquet, 10 Rob. 143 (La. 1835); Lowery v. Kline, 6 La. 381 (1834); Comment, \textit{What Constitutes Open Concubinage in Louisiana}, 12 Tul. L. Rev. 447, 448 (1938).

  Concubines may not receive money for services rendered to the paramour if the services are not distinguishable from those a concubine would ordinarily be expected to perform. Simpson v. Normand, 51 La. Ann. 1355, 26 So. 266 (1899).

  If the original nature for the relationship was concubinage and no labor or assets were contributed for the acquisition of the paramour's assets, she has no rights of recovery save that specifically provided by statute. Succession of Morivant, 46 La. Ann. 301, 14 So. 922 (1894); Succession of Llula, 44 La. Ann. 61, 10 So. 406 (1892). Purvis v. Purvis, 162 So. 239 (La. App. 1935). See generally Note, \textit{Domestic Relations—Partnership—Right of Concubine to Share in Paramour's Estate}, 32 Tul. L. Rev. 127 (1957).

\textsuperscript{127} Heatwole v. Stansburg, 212 La. 685, 33 So. 2d 196 (1947).

\textsuperscript{128} Viens v. Brikle, 8 Mart. 11, 13 (La. 1820); Lagarde v. Dabon, 155 La. 25, 98 So. 744 (1924).


\textsuperscript{130} 165 La. 710, 115 So. 911 (1928).

\textsuperscript{131} \textit{Id.}
The next expansion of the restrictive doctrine of article 1481 involved the area of insurance law, including claims arising due to a concubine's status as beneficiary. It has been well established that in order to protect public morals and the principles of forced heirship, a husband was not allowed to make a donation of immovables to his concubine and, if movables were donated, they might not exceed one-tenth of the value of the entire estate. Significantly, these provisions have been held inapplicable to insurance policies because they were drafted prior to the inception of the large body of law known as insurance law.

The first Louisiana court to decide this issue treated life insurance as a donation and reduced the recovery to one-tenth of the proceeds by applying article 1481 of the Louisiana Civil Code. In the same year, however, a concubine was permitted to collect all of the proceeds of a policy; the court distinguished the cases by noting that the successful claimant had actually paid the premiums herself. Consequently, the proceeds could not be classified as a donation within the meaning of article 1481. Later, it was noted that where a concubinal relationship was secret rather than open, article 1481 would not apply and the concubine would be permitted to collect all of the proceeds.

Today a concubine is entitled to the proceeds by mere virtue of the fact that the concubine is the named beneficiary. In fact, Louisiana courts have even held that an insured is within his legal rights to make his concubine, with whom he is living in adultery, beneficiary of his life insurance policy to the detriment of his wife and daughter, with the concubine entitled to the proceeds of the policy upon his death.

C. Unwed Cohabitants and Article 2315: The Evolution of a Non-Right in Louisiana

The last major issue to be addressed is whether a consort in union libre (a paramour or concubine, to use the proper Louisiana legal parlance) is permitted to assert a claim based on the death of

133 Succession of Johnson, 115 La. 20, 38 So. 880 (1905).
134 Id. at 22, 38 So. at 881.
his or her companion. In order to give to this question the attention which it merits, it is necessary to examine the Louisiana wrongful death statute and the history of wrongful death litigation in Louisiana.138

I. History of Wrongful Death Actions

Prior to 1851, no suit was litigated in Louisiana involving an action for the recovery of damages resulting from the death of another. The first case, Hubgh v. New Orleans and Carrollton RR. Co.,139 was brought under article 2294 of the Civil Code of 1825. That article, originally enacted as article 16 of Title 3 of Book 3 of the Digest of 1808, merely stated that "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."140 The statute was effectively modified, however, when the Civil Code of 1825 adopted without comment article 1382 of the Code Napoléon of 1804.141 The avowed purpose of that provision in France (and arguably in Louisiana, since the section was adopted without comment) was to provide an action for personal damages resulting from the death of another through the delictual action of a third party. The legal right and cause of action of one injured by loss of economic aid or love and affection were independent of any action which the deceased might have had and which would have passed to his heirs at death.142

In the Hubgh decision, the decedent's widow brought an action based on article 2294 on behalf of her and her minor children founded upon direct injury to themselves, independent from any action which her deceased husband might have transmitted. She claimed a right of action on the same ground on which it had been permitted in France. She argued that the legislative intent was identical since the articles of France and Louisiana were identical in language.143 In addition, she cited the famous case Rolland c.

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139 6 La. Ann. 495 (1851).
140 This article adopted literally Book III, title III, article 16 of the FRENCH PROJET DU GOUVERNEMENT of 1800.
141 "Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer" (Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it). PROJET OF THE LOUISIANA CIVIL CODE OF 1825, tit. IV, ch. II, § 1, at 293 (Louisiana Legal Archives 1937).
143 Id. at 512-13.
Gosse, the landmark case under the French *Code Napoléon* in which the court recognized that a widow had a right of action for the wrongful death of her husband caused by the defendant Rolland. The *Hubgh* court reasoned that while the decisions of the *Cour de cassation* were proper constructions of article 1382 according to French law, it did not follow that the Louisiana provision should be interpreted in precisely the same manner even though the language was identical. Additionally, the Louisiana court explained that the Louisiana legal system contained many laws which differed from those prevailing in France, primarily due to the recent Spanish influence in the region. Thus they held that "no civil action could be maintained under the common law by relations for the death of a free person." That court buttressed its holding by stating that the fact that actions had never been brought for wrongful death under Roman or Spanish law was sufficient to establish that such an action could not be brought in Louisiana absent legislation.

The *Hubgh* decision provoked legislative action in the form of an amendment to article 1382. That amendment added the following words to the article: "The right of action shall survive in case of death in favor of the minor children and widow of the deceased or either of them, and in default of these in favor of the surviving

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146 6 La. Ann. at 497.
147 Id. at 510 (emphasis added). The language used by Mr. Justice Eustice is somewhat unclear, as Louisiana is a civil law jurisdiction, not common law. Further examination of the decision, however, clarifies his reasoning:

We consider it unquestionable that no civil action can be maintained under the common law by the relations, for the death of a free person. . . . Finding that no such action was ever instituted in this state our inquiries were necessarily directed to the examination of the former jurisprudence of Louisiana, in order to ascertain whether the action could be based on any well recognized principle in the Roman law or the Spanish laws. If the uniform understanding of the bar, deducible from the fact that no such suit was brought, has recognized the prevalence of the same principle in this state, which has obtained in England and the United States, the present state of things, on this subject, it would not be proper to disturb for light reasons, or, for anything short of a clear and decided command of the law. There is no thing shown which would authorize a court to abandon a course which has been followed by a people with whom we have derived a large portion of our laws and been continued in by the States of the Union. In the Legislative power alone to provide the remedy sought, if public policy requires its introduction.

Id. at 513-14.
148 Id. at 510.
149 1855 La. Laws 223.
father and mother or either of them, for the space of one year from
death."\textsuperscript{100} It was in that amended form that the statute became
article 2315 of the Revised Civil Code of 1870.

It should be noted that the statute as adopted in 1870 recog-
nized only a single right of action: the action which originally ac-
crued to the deceased for his pain and suffering and which at his
death survived him in favor of the beneficiary named under the
article. This right vested in the beneficiary solely because of the
beneficiary's survival, provided that the wronged party died within
one year after the wrongful act without having exercised his right
of recovery. In 1870, no right of action existed for any loss or injury
suffered by a surviving relation as a result of the death of the per-
son injured. This omission was remedied by an amendment in act
71 of 1884 through the addition of the following paragraph: "The
survivors above mentioned may also recover the damages sustained
by them by the death of the parent or child, or husband or wife, as
the case may be."\textsuperscript{101} In 1908 the "brothers and sisters, or either of
them, in default of the survival of the preceding named benefi-
ciaries" were extended this same right of action. This amendment
provided that "should the deceased leave a widow together with
minor children, the right of action shall accrue to both the widow
and the minor children; provided further that the right of action
shall accrue to the major children only in those cases where there
is not surviving widow or children."\textsuperscript{102} Thereafter the legislature
amended the article to give a surviving husband the same right
which had previously been accorded to a widow.\textsuperscript{103} The final
amendment to this article in 1932 extended a similar right of ac-
tion in favor of an adoptive parent or parents or adopted

\textsuperscript{100} Id.

\textsuperscript{101} It is noteworthy that the act of 1884 merely supplied a remedy which the court held in
\textit{Hubgh} did not exist under the code. The legislature carefully confined the transmission of
the right of action, therefore, to "the survivor above mentioned," i.e. to those who are men-
tioned in article 2315 of the Revised Civil Code. The result of this "is that the right of
action for damages for personal injury, whether the injured person died from the effect
thereof or subsequently from some other cause, is just the same under the legislative
57, 59, 23 So. 100, 102 (1898).

What the \textit{Chivers} court meant was that the statute of 1884 had not extended the surviv-
ing right of action to any other survivors than those mentioned in the act of 1855, but had
given to the survivors therein mentioned an additional right of action for the damages suf-
f ered by them in consequence of the other's death. \textit{See Flash v. La. Western R.R. Co.}, 137
La. 352, 68 So. 636 (1915).

\textsuperscript{102} 1908 La. Acts 120.

\textsuperscript{103} 1918 La. Acts 159.
persons.\textsuperscript{154} The first case in Louisiana to actually grant a surviving beneficiary damages suffered due to the wrongful death of the deceased under article 2315 of the Civil Code as amended in 1884 was decided in 1889.\textsuperscript{155} In that decision, the parents of the deceased successfully sued for damages, not for the son's suffering, but for their loss of support and grief.\textsuperscript{156} In the numerous cases following that decision, the statement has been made repeatedly that the wrongful death statute in Louisiana is \textit{sui generis}, that those who are not included are excluded, and that the article cannot be construed to confer a right upon persons not expressly mentioned.\textsuperscript{157}

2. \textit{Judicial Construction of "Surviving Spouse" Under the Wrongful Death Statute}

While the judicial construction of the term "surviving spouse" has been strict, the courts have made certain concessions in the interest of fairness, particularly when the result would otherwise cause the claimants to become wards of the state. Those held to be entitled to bring an action as a surviving "spouse" have been a spouse legally separated from the victim,\textsuperscript{158} a spouse physically

\textsuperscript{154} 1932 La. Acts 159. Thus article 2315 now provides for two types of death actions. One type, commonly called a survival action, is for the damages sustained by the victim for which he could have recovered had he lived. The other type, commonly called a wrongful death action, is for damages to survivors occasioned by the victim's death.

Further, article 2315 designates those persons who may bring wrongful death actions and those persons who may bring survival actions. There are three separate classes of beneficiaries, and the wording of the article clearly indicates that each class excludes the following class: if the spouse and child or children survive the decedent, no member of class two or class three may bring an action; if neither spouse nor children survive, but the father and mother or either of them survives, then no member of class three has an action. Moreover, the general rule is that persons not specifically enumerated in the three classes are simply without a remedy for the death. See Wakefield v. Government Employees Ins. Co., 253 So. 2d 667 (La. App. 1971), \textit{writ denied}, 260 La. 286, 255 So. 2d 771 (1972); Payne v. Georgetown Lumber Co., 117 La. 983, 42 So. 475 (1906); Dar v. Brinkman, 136 So. 2d 463 (La. App. 1962); Ayala v. Bailey Elec. Co., Inc., 318 So. 2d 645 (La. App. 1975); Howard v. Hardware Mutual Casualty Co., 253 So. 2d 555 (La. App. 1971), \textit{writ denied}, 260 La. 19, 254 So. 2d 620 (1971); Roundtree v. Technical Welding & Fabrication Co., 364 So. 2d 1325 (La. App. 1978). \textit{See also} Kelly v. Hartford Accident and Indemnity Co., 294 F.2d 400 (1961); Lewis v. Allis Chalmers Corp., 625 F.2d 1129 (1980) (Federal viewpoint); King v. Cancienne, 316 So. 2d 366, 371 (serious questioning of this general rule).

\textsuperscript{155} \textit{Id.}

\textsuperscript{156} \textit{Id.}

\textsuperscript{157} See, \textit{e.g.}, Thompson v. Vestal Lumber Manufacturing Co., 16 So. 2d 594 (La. App. 1943).

\textsuperscript{158} Harris v. Lumberman's Mut. Cas. Co., 48 So. 2d 728 (La. App. 1950). The court held that the "legal as well as the ordinary meaning of spouse is one's wife or husband. Marriage
separated from the victim and living with another man, a spouse by virtue of meeting common law marriage requirements in the state of Florida, a spouse who remarried subsequent to the injury and death of her first husband, and a "subsequent spouse" who married the decedent after the injury occurred.

The courts further relaxed the strict view on the issue of whether a putative spouse was a "spouse" entitled to recovery under article 2315. The early decisions in this area generally followed *Vaughn v. Dalton-Lard Company*, which held that article 2315 did not create a right of action in favor of a putative spouse and that the right to bring a wrongful death action is not a civil effect of marriage. That decision was overruled in *King v. Cancienne*, in which the court stated that:

> just as it is obvious under our previous holdings that a putative spouse could inherit the deceased's spouse right of action under Louisiana C.C. article 2315, it necessarily follows that a putative spouse may maintain an individual action for the personal damages suffered because of the loss of the deceased spouse. The right of action provided by 2315 is a civil effect of marriage produced in favor of a good faith spouse."

In spite of the language in the *King* decision recognizing the possibility that the beneficiaries named in 2315 might be illustrative rather than exclusive and despite scholarly criticism of strict

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160 Dobyns v. Yazoo & Miss. R.R. Co., 119 La. 72, 43 So. 934 (1907).
162 "The right to institute these statutory actions does not arise until the marriage has been dissolved by death, and it is therefore, not the result of the contract of marriage. Hence the contention that a plaintiff's right to sue springs from the putative marriage as one of its civil effects is not well founded." Id. at 65, 43 So. at 928.
163 316 So. 2d 366 (La. 1975).
164 *Id.* at 371.
165 Prior to *King*, it had been universally held that the article must be strictly construed and that the listing in the statute was exclusive. The *King* court recognized the possibility that the listing was merely illustrative, but did not address the issue in any more specificity other than to declare that a putative spouse was implicitly included in the list. It is certain that any other expansion of those persons covered in article 2315 will lean heavily on the
construction of the article, Louisiana tribunals have been exceedingly hesitant to grant rights of recovery to concubines for the death of their companions under either article 2315 or the workmen's compensation articles.

3. Claims Under the Louisiana Workmen's Compensation Statute

In addition to the article 2315, the provisions of the Louisiana workmen's compensation statute are significant when considering the claims of unwed cohabitants in Louisiana and in France. An "exclusivity" provision in the workmen's compensation statute limits the remedies available to an employee or his dependent to those remedies provided by the Compensation Act. Thus, if the Compensation Act applies to an injury, any tort action under article 2315 is thereby precluded.

For many years the judicial construction of the workmen's compensation statute denied the right of concubines to share in the benefits accruing due to the injury or death of her companion. The court made clear in Moore v. Capital Glass & Supply Co. that the denial was based on concepts of social morality and of just punishment for those living together out of wedlock by citing the statement that "as for the woman who cannot produce a marriage certificate the bench is cold and unsympathetic. She is not a member of the employee's family, and consequently is not entitled to compensation." Mr. Justice Tate, in a dissenting opinion in a later case, castigated the court for improperly superimposing on the statutory concept of dependency the additional hurdle of moral worthiness. In 1978 Mr. Justice Tate transformed that
dissenting opinion into the majority holding in *Henderson v. Travelers Insurance Co.*,\(^\text{178}\) in which the Supreme Court of Louisiana expressly overruled *Humphreys* and declared that a concubine was entitled to workmen's compensation benefits on the ground that she was a dependent member of the decedent's family.\(^\text{174}\)

In 1982 the First Circuit Court of Appeals of Louisiana rendered a decision which, although following *Henderson*, placed a strong burden of proof on a concubine claiming relief under the workmen's compensation law by virtue of dependence on a deceased "spouse." In *Castle v. Prudhomme Tank Truck Line, Inc.*,\(^\text{175}\) the court identified two classes of claimants under the Louisiana workmen's compensation statute: those conclusively presumed to be dependent upon a deceased employee (surviving spouses actually living with the deceased at the time of accident or death and, with some exceptions, minor children dependent upon the parent with whom he or she is living at the time of the injury or death of that parent) and all other classes of people.\(^\text{176}\) The question of legal or actual dependency\(^\text{177}\) in the latter class is determined on an ad hoc basis in accordance with the facts at the time of the injury or death of the employee. The *Castle* court applied the law to the

time *Humphreys* came up for review to the Supreme Court of Louisiana, Mr. Justice Tate had been elevated to the position of an associate justice on the court, but was recused from reconsideration of the appeal due to his earlier involvement with the case at the First Circuit Court of Appeals.

Similar to the approach of the Criminal Chamber of the Court of Cassation, Justice Tate looked to the stability of the relationship as proof of the resulting inequity to "Malacy Humphreys, the 'common law' wife with whom for twenty-five years he had lived in a stable union and who was the mother of his dependent minor child whose compensation award we have affirmed." \(^\text{Id.}\)

\(^\text{112}\) 354 So. 2d 1031 (La. 1978).

\(^\text{114}\) *Id.* at 1034. It should be noted, however, that the court limited the import of that holding by making clear that such a right would accrue to a concubine only when her claim would not infringe upon any share of compensation benefits to which statutorily entitled claimants such as the wife, children, and parents were preferentially entitled. The facts in *Henderson* reflected that the concubine had been living in a stable relationship for eleven years with the deceased who had no wife, parents, children, or collaterals.

\(^\text{116}\) 417 So. 2d 1205 (La. App 1982).

\(^\text{117}\) *Id.* at 1207.

\(^\text{117}\) The Louisiana Supreme Court in *Thompson v. Vestal Lumber and Mfg. Co.*, 208 La. 83, 118, 22 So. 2d 842, 853 (1945), emphasized that: the word "legal" in the term "legal dependent" . . . does not mean legitimate—as distinguishing legitimate from illegitimate relations of the deceased employee. The term "legal dependents" means dependents who are legally entitled to compensation under the statute. The term is applicable to actually dependent members of the family of the deceased, as well as to the surviving relations who are conclusively presumed to have been dependent upon his earnings for support.
“relevant” facts and determined that a plaintiff concubine and her three minor children who had lived with the decedent for sixteen months and who had pooled their weekly incomes in order to pay utilities, trailer notes, food, and other expenses had not established a relationship with ties strong enough to establish true dependence and thereby to invoke the protection of the Louisiana workmen’s compensation law. Although there were other facts in that case mitigating against the plaintiff’s claim (at the time of his death the decedent remained married to another woman), it appears that an unwed cohabitant’s claim under the compensation law is of questionable merit and is dependent upon the charity of the court on a given day.

4. Claims Under Article 2315

The only case on point in which a concubine filed a claim under article 2315 for the death of her paramour occurred in 1965. In Whatley v. Dupuy, the mother, the concubine, and the illegitimate children each sought damages for the death of the son, paramour, and father, respectively, who was himself survived by a lawful wife and two legitimate children. Recognizing the miniscule chances of pursuing such an action under the totality of the language of article 2315, it was argued that a right of action should be granted under the first paragraph of article 2315, as originally enacted, since the parties were damaged by Whatley’s death and his death was caused by the negligence of the defendants. The argument was summarily rejected on two grounds. First, article 2315 as originally enacted provided no action for wrongful death. Second, the court held that the right to proceed under the first paragraph of 2315 is regulated by the remainder of the statute and only those named therein may maintain an action for wrongful death. The court did not address the holding in King v. Cancienne regarding the possible illustrative, nonexclusive nature of the lan-

178 417 So. 2d at 1209 (La. App. 1982).
180 "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." DIGEST OF LOUISIANA CIVIL LAWS, book 3, tit. 4, art. 15 (1808).
181 The court did not bother to look into the correctness of those early decisions which construed that section, but merely cited them in corpus for the proposition that not until 1884 after the article was amended were any actions recognized. "In the absence of the amendments made to the original article no right of action would exist at all." Whatley v. Dupuy, 178 So. 2d 438, 441 (La. App. 1965).
182 Id.
guage in article 2315.

IV. COMPARING THE DEVELOPMENT OF THE LAW OF WRONGFUL DEATH ACTIONS IN FRANCE AND LOUISIANA

While the Louisiana and French legal systems both proceed from common philosophical ground, an examination of history and scholarly criticism discloses that Louisiana's skewed approach to the issue of the rights of unwed cohabitants may in large part be attributed to common law inroads into pure civil law methodology. The first such inroad is a failure of the courts to broadly construe the language of the French codal article 1382, which was introduced verbatim into Louisiana jurisprudence in 1825. A second civil law interpretation of that article in its incipiency would have obviated the necessity for subsequent legislative amendment. The second major inroad into civil law methodology is reflected in Louisiana court decisions holding that article 2315, being in derogation of the common law, demands strict construction. That strict interpretation has resulted in the frequent denial of a remedy to those claimants who do not fall within the enumerated statutory class of beneficiaries. This second common law intrusion came subsequent to the first and probably would never have occurred had the jurists been true to their civil law heritage in the first instance. Had article 2315 been properly construed, there would have been no need for legislative expansion of the article. Had there not been legislative expansion, there would have been no need for strict statutory construction. Louisiana legal scholars have long recognized both of these blunders.

183 Professor Morrow recognized the danger and even the reality of common law philosophical encroachment into civilian methodology. He assigned the causes of such encroachment to Louisiana's isolation from other civil law jurisdictions, the flooding of the state bench and bar by lawyers trained in common law tradition, the unavailability of civilian doctrinal writing in English, the zeal of American law book publishers, and inadequate training in the civilian philosophy by the Louisiana bar. Morrow, Louisiana Blueprint, 17 Tul. L. Rev. 351, 394 (1943).

184 French judicial construction of this article stems from as early as 1818, and although the article has seen a great deal of evolution in that country, the need for additional legislative enactment has not yet been felt.

It should be noted that the code went unchanged for such a long period of time in France partly because at the outset there was provided no method for periodic re-codification. The code was conceived to be a restatement of natural law. The code "was the result of a burst of nationalism, in which masses of people made solid gains which became consecrated in the written Code rather than the written constitution, as in this country. The natural reaction was to regard the Code as a sacred document not to be tampered with." Id. at 369.

185 See, e.g., Comment, Wrongful Death and Survival of Tort Actions in Louisiana, 1
On the other hand, few codal provisions have received as much legislative attention as has the Louisiana article 2315. The seven amendments to that article reflect a considerable amount of legislative dissatisfaction with early judicial interpretation of the provision. The Louisiana Supreme Court's refusal in the Hubgh case to follow the apparent intent of the authors of the 1825 code to avoid strict common law rules on the abatement of actions was the catalyst for the first augmentation of that section. In 1884 the second amendment completely negated the effects of the Hubgh decision, thereby granting to certain statutory beneficiaries the right of recovery for the wrongful death of a victim to whom they were legitimately related. The third, fourth, fifth, and sixth amendments, each of which expanded the beneficiaries covered, reflected the common goals of the legislature and judiciary in this area. The seventh amendment merely provided some procedural improvements in the existing law. Had the legislature desired a more simple path, it could have adopted a statute which included as beneficiaries anyone dependent on the victim, as does French jurisprudence. In lieu of simplicity, however, classes were expanded to definite limits by each amendment, and the adoption of the common law tenet of strict construction limited those classes to the beneficiaries expressly designated therein.168

V. PROPOSALS FOR CHANGE

Owing to the confusion which has historically been part and parcel of article 2315, few sections have been the object of such abundant scholarly comment and legislative proposal. The majority of those proposals stem from a recognition that under the Louisiana statute, as amended, people who have suffered loss are frequently unable to recover because they have not been specifically enumerated as beneficiaries under the statutory scheme.167 Other criticisms stem from the confusion caused by the inability of the courts to fashion from the statute a clear and concise delineation of


168 Comment, Survival Actions, supra note 185, at 353.

167 Comment, Wrongful Death and Survival, supra note 185, at 95.
wrongful death and survival actions.\textsuperscript{188}

Some commentators have suggested that article 2315 be returned to its form as originally enacted\textsuperscript{188} or be accompanied by minor changes\textsuperscript{189} to act as a survival statute, with the legislature simultaneously enacting a new wrongful death statute and some enabling provisions in the code of civil procedure. Other commentators advocate that all survivorship and wrongful death actions be instituted by the personal representatives of the estate and that the proceeds be distributed according to existing laws.\textsuperscript{191} Still others have made proposals for sweeping reform in the Louisiana Civil Code to provide the greatest degree of predictability for those living in \textit{union libre}.\textsuperscript{192} All of the commentators cited have recognized various inequities present in the Louisiana statute currently in force. Because their proposals are based on current statutory and case law which have been influenced by traditional notions of immorality and public policy, however, their solutions are less than ideal. Only when outdated concepts are replaced with a desire to recognize and ameliorate the suffering of true dependents will a statutory scheme become effective.

Professor Oppenheim's proposals would cause a wrongful death action to vest in the personal representative of the estate who would distribute any recovery according to the laws of intestate succession.\textsuperscript{193} Both Professor Johnson\textsuperscript{194} and a student commentator\textsuperscript{195} advocate the wholesale cleansing of article 2315, as amended, together with the simultaneous enactment of a new wrongful death statute. One advocates distributing the proceeds of a successful action to the "next of kin," while Johnson would adopt the present statutory treatment of classing the beneficiaries and ranking them such that one class will be exclusive of all others. None of these statutory proposals takes into account a dependent, yet unnamed, individual. Only Professor Oppenheim even recognizes the issue, and he disposes of it by contending that most people would be provided for under his proposal.\textsuperscript{196}

\textsuperscript{188} See Oppenheim, \textit{supra} note 185, at 386; Johnson, \textit{supra} note 138, at 7-13.

\textsuperscript{189} Johnson, \textit{supra} note 138, at 54.

\textsuperscript{189} Comment, \textit{Wrongful Death and Survival}, \textit{supra} note 185, at 94.

\textsuperscript{191} Oppenheim, \textit{supra} note 185, at 420-24.

\textsuperscript{192} Fine, \textit{supra} note 3, at 163.

\textsuperscript{193} Oppenheim, \textit{supra} note 185, at 420-24.

\textsuperscript{194} Johnson, \textit{supra} note 138, at 54.

\textsuperscript{195} Comment, \textit{Wrongful Death and Survival}, \textit{supra} note 185, at 94.

\textsuperscript{196} Oppenheim, \textit{supra} note 185, at 429.
Professor Fine comes closer to providing for the truly dependent in his catalogue of proposed statutory changes to equitably provide for those in union libre. Article 11 of his proposed draft provides that "[m]embers of a l'union libre may exercise rights against third parties for their injury to other members of l'union." Footnoting that proposal, he adds that "[t]he article includes, but is not limited to, actions for wrongful death. A consequential amendment to article 2315 of the Louisiana Civil Code may be required." This approach misses the mark on two grounds: first, by failing to provide specific statutory proposals for changes in article 2315 and second, by making any possible recovery dependent upon the maintenance of such a relationship for more than three years. While the establishment of a time frame around which recovery might be granted or denied is convenient for the sake of predictability, it ignores the primary issue: how to most effectively provide for the needs of unnamed dependents.

VI. Conclusion

None of the legislative changes proposed thus far would guarantee a right of action for injury or wrongful death by unwed cohabitants. The Louisiana legal system should be altered in such a way as to provide more adequately for all those who suffer injury and can demonstrate sufficient dependence on the party injured or deceased.

Whether this can be accomplished absent legislative intervention is doubtful. While it is clear that prior legislative enactment has only exacerbated the legal problems, it is believed that with adequate scholarly assistance a cogent and complete system can be devised to clarify the entire area presently addressed by article 2315.

There are at least two avenues of legislative approach providing for unnamed dependents. It has been prophesied that any future amendments to the article would be in an effort to expand the list of statutory beneficiaries. This is perhaps the most obvious approach to the problem. It is arguable that the statute could be amended to meet this goal by inserting a clause similar to that utilized in the workmen's compensation statute which provides for

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197 Fine, supra note 3, at 164.
198 Id. at 177.
199 Id. at 177 n.58.
200 Id. at 176.
201 Comment, Survival Actions, supra note 185, at 353.
compensation benefits to accrue to dependent members of the deceased's family household. In addition, it could be expanded to encompass any person or entity dependent upon the deceased. It is submitted that the mirroring of the workmen's compensation statute, while constituting an improvement over the status quo, would not be the most advantageous approach. While existing parameters would be expanded, some dependents might still be omitted. Further, if the workmen's compensation act or even an expanded version of its language were adopted, the state of Louisiana would continue to be controlled by the existent hoary doctrine of strict construction of article 2315.

Re-establishing article 2315 as originally enacted in France and later in Louisiana is a more preferable solution. A properly broad civilian construction of that basic and clear provision would permit all dependents, whether spouses, family members, relatives, consorts, or entities, to pursue an action for tangible damages caused by the negligence of a third party. Only the present lack of information about civilian conceptualism stands in the way of the recognition of its demonstrably superior utility and liberality. An examination of the historical development of the French codal provision would allow Louisiana jurists to enrich modern legal scholarship through a familiarization with continental methods and experiences. Of equal importance, pitfalls previously encountered in France could be circumvented in Louisiana.
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DAVID HULL for his paper

DISPLACED PERSONS: "THE NEW REFUGEES"

Judges for the Award this year were:

Professor Dean Rusk, University of Georgia School of Law
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Mr. John Carr, Shaw, Pittman, Potts & Trowbridge Law Firm, Washington, D.C.