



# **DECEMBER CLE BY THE HOUR**

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**The Shreveport Bar Association**

**HELPFUL HINTS FROM A TO Z  
FROM FANNIN STREET**

***Hon. Jeanette G. Garrett***  
*Second Circuit Court of Appeal*

# **HELPFUL HINTS FROM A TO Z FROM FANNIN AND OTHER STREETS**

Presentation for  
The Shreveport Bar Association

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December CLE by the Hour  
Seminar

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December 10, 2019

Presented by:

Judge Jeanette G. Garrett  
Second Circuit Court of Appeal  
430 Fannin Street  
Shreveport, LA 71101

## **“A” Attorney Fees**

***Luv N’ Care, Ltd. v. Jackel Int’l Ltd.***, 52,615 (La. App. 2 Cir. 4/10/19), 269 So. 3d 1136, *writ granted sub nom. Luv N’ Care, LTD v. Jackel Int’l Ltd.*, 2019-00749 (La. 10/8/19), 2019 WL 5386318

- Underlying issue was a complicated intellectual property dispute over manufacture and distribution of sippy cups.
- After a trial, the defendant was enjoined from selling the cups.
- Contempt issue arose later as to whether the injunction had been violated by the defendant through its sale of a “Tomme Tippee Sippee Trainer.”
- The defendant prevailed on the contempt hearing.
- Are fancy New York intellectual property lawyers entitled to New York rates OR is it Monroe rates? NY rates - \$162,000+
- No evidence in record to show that any local lawyers specialized here.
- Prevailing party in a contempt proceeding entitled to attorney fees, under La. R.S. 13:4611 (1)(g). Plaintiff lost and had to pay attorney’s fees.

## **Arbitration**

***Traders’ Mart, Inc. v. AOS, Inc.***, 52,592 (La. App. 2 Cir. 4/10/19), 268 So. 3d 420

- Can a non-signatory be bound by an arbitration clause?
- Yes – under very limited circumstances under doctrine of “direct benefits estoppel.”
- Here, the stock brokerage business was bound by the provisions in the independent contractor agreement signed by the individual stock broker with AOS, Inc.
- Non-signatory must have actual knowledge of the agreement, embrace the contract, and have benefitted.

## **“B” Batson**

*State of Louisiana v. Patricia Hampton*, 52,403 (La. App. 2 Cir. 11/14/18), 261 So. 3d 993, *reh’g denied* (1/17/19), *writ denied*, 2019-0287 (La. 4/29/19), 268 So. 3d 1029

- Former town clerk’s conviction for theft of water department funds was reversed on appeal due to *Batson* errors committed during jury selection.
- The assistant D.A. utilized the wrong legal standard by arguing an outdated standard of “systematic exclusion,” and the trial court used the wrong standard.
- *Batson* is codified in La. C. Cr. P. art. 795.
- U.S. Constitution forbids striking even a single prospective juror for a discriminatory purpose.
- Case illustrates the importance of (1) making a record as to jury composition, and (2) keeping current on the constantly evolving jurisprudence on *Batson* by both the La. Supreme Court and the U.S. Supreme Court.

*Foster v. Chatman*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1737, 195 L. Ed. 2d 1 (2016).

- Georgia conviction.
- Peremptory strikes against all four prospective black jurors.
- After conviction, defendant sought access to State’s file under Georgia Open Records Act.
- Prosecutor’s notes showed purposeful discrimination in exclusion of two black jurors.

### **Why should civil lawyers have to keep up with criminal law?**

- Civil lawyers must keep up with the developing laws as *Batson* violations also apply in civil jury trials, are structural errors, and not subject to a harmless error analysis.

- *See Alex v. Rayne Concrete Service*, 951 So. 2d 138 (La. 1/26/07).
- An attorney's "gut feeling" that a prospective juror did not like him was insufficient to rebut *prima facie* case of racial discrimination in this civil jury trial.
- Issue can be raised either in a writ or on appeal.

## **"C" Custody**

***Wylie v. Wylie***, 52,800 (La. App. 2 Cir. 5/22/19), 273 So. 3d 1256

- Temporarily assigned Barksdale Air Force Base military father allowed to relocate 11-year-old child to Florida in connection with job transfer.
- Mother engaged in parental alienation behavior.
- Mother had long history of poor decision making with little concern for impact on others.
- One example was her initiation of a romantic relationship with recently widowed next door neighbor and getting matching tattoos, while still married to Wylie.

## **"D" Duty**

***Saldana v. Larue Trucking, LLC***, 52,589 (La. App. 2 Cir. 4/10/19), 268 So. 3d 430, *reh'g denied* (5/16/19), *writ denied*, 2019-00994 (La. 10/1/19), 280 So. 3d 159

- Three vehicle accident.
- Plaintiff's car collides with a parked 18-wheeler log truck in Tensas Parish, while passing another log truck.
- Did a timber company in charge of the logging operation voluntarily assume a duty to place warning signs near the logging road site and highway alerting motorists about logging operations and hazardous conditions?

- Trial court reasoned no statutory law requires this and, thus, there was no duty.
- We reversed and found genuine issues of material fact existed in this case regarding voluntary assumption of a duty, due to actions undertaken by the timber company.
- Under some circumstances, existence of a duty can be a mixed question of law and facts.

## **“E” Evidence**

***Wood v. Hackler***, 52,791 (La. App. 2 Cir. 8/14/19), 276 So. 3d 1136

- Issue in case is whether plaintiffs properly served the defendant under the La. Long Arm statute to support the default judgment the defendant now seeks to annul.
- The plaintiffs relied upon a website with the following address: <https://nuwber.com> to obtain an address on Gardenia Street in Longview.
- Returned envelope had several confusing USPS stamps, but one showed “Notify Sender of New Address... Pegues PL, Longview.”
- Although jurisprudence doesn’t require that a letter be claimed, the plaintiff failed to prove they sent it to the correct address.
- “Just as a document or report from a private investigator is not self-authenticated, the same is true for the Internet. Stated perspicuously, the Internet is not self-proving.”
- Plaintiff made no showing the website was reliable.
- This case has implications for court-appointed curators.

## **“F” Fire**

***Myles v. Howell***, 52,460 (La. App. 2 Cir. 1/16/19), 265 So. 3d 22

- Very tragic apartment fire with multiple deaths and complicated family trees.
- Question is order of deaths so as to determine who survives whom for wrongful death actions and who has the right of action.
- Trial court had to consider extensive testimony concerning order of deaths, times noted on death certificates.
- See La. R.S. 9:111 and brain deaths.

***Myles o/b/o Myles v. Howell***, 52,716 (La. App. 2 Cir. 6/26/19), 277 So. 3d 1218, *writ denied*, 2019-01207 (La. 10/15/19), 2019 WL 5569455

- Man who fathered child while he was in prison and never provided any support had “abandoned” child for purposes of La. C.C. arts. 2315.1(E) and 2315.2(E) and, therefore, has no right of action for wrongful death of the child.
- Although La. C.C. art. 2315 does not define abandonment, La. C.C. art 3506 does – left for 12 months and failure to provide care and support without just cause.

## “G” Government

***Town of Sterlington v. Greater Ouachita Water Co.***, 52,482 (La. App. 2 Cir. 4/10/19), 268 So. 3d 1257, *reh’g denied* (5/16/19), *writ denied*, 2019-00717 (La. 9/24/19), 279 So. 3d 931, and *writ denied*, 2019-00913 (La. 9/24/19), 279 So. 3d 386

- Unsuccessful expropriation action over water treatment.
- Prevailing party entitled to attorney fees.
- Problem is how do you collect?
- Trial court cannot grant a writ of mandamus ordering City to pay the judgment – “overstepped its constitutional authority.”
- Lengthy discussion of “trichotomous” branching of authority under our government systems.

- Big difference between the power of a court to grant a judgment and then to enforce it.

## **“H” Hair Salon**

***Koertge v. State Farm Fire & Cas. Ins. Co.***, 52,503 (La. App. 2 Cir. 2/27/19), 266 So. 3d 441

- Teenager suffered third degree chemical burns during a “highlight” job at “The Mane Design,” resulting in necessity for hair follicle transplants.
- \$265,000 general damages.
- \$101,520 for past medicals.
- \$10,000 in future meds, increased on appeal because defendant had no evidence to dispute the treating doctor’s opinion that more transplants and scar revision surgeries were needed, plus additional sums for counseling, due to trauma suffered by plaintiff.
- Mother not entitled to loss of consortium damages.

## **“I” Immunity**

***Estis v. Mills***, 52,820 (La. App. 2 Cir. 8/14/19), 276 So. 3d 1117

- Defendant shot and killed plaintiffs’ 10-month-old German Shepherd puppy “Bella” for harassing his horses.
- Trial court granted defendant’s motion for summary judgment, premised under the immunity provisions of La. R.S. 3:2654, which allows killing of dogs that harass livestock.
- Reversed on appeal because immunity is an affirmative defense, which must be pled in the answer.

***Grimsley v. Liberty Mutual Ins. Co.***, 52,872 (La. App. 2 Cir. 8/14/19), 276 So. 3d 1142



- Plaintiff collided, at night, with a temporary construction barrier.
- Highway construction company that followed plans and specifications developed by DOTD highway department entitled to immunity from third party tort suit under La. R.S. 9:2771.
- Contractor followed plans and specs, which did not require nighttime reflectors on barriers.
- Affidavit of plaintiff's expert had no facts or industry standards to support his opinion regarding lack of reflectors.

## **Insulin**

***McDonald v. Orr Motors of Little Rock, Inc.***, 52,225 (La. App. 2 Cir. 9/26/18), 256 So. 3d 1132

- Remember the “Twinkie” defense in California?
- Plaintiff attempts to rescind purchase of Kia by contending her insulin level was too low.
- Trial court found she had capacity to consent because she drove herself to dealership, executed paperwork, etc.

## **“J” Juvenile Plaintiff**

***Jackson v. Minden Police Dep’t***, 52,489 (La. App. 2 Cir. 2/27/19), 266 So. 3d 462, *reh’g denied* (4/4/19), *writ denied*, 2019-00697 (La. 9/6/19), 278 So. 3d 373

- Mother, on behalf of her teenaged daughter who alleged she had been raped, sued the Minden Police Department and City of Minden for failing to order a rape kit test.
- Daughter had attempted suicide.
- Our court overruled the trial court and held that a cause of action was alleged here due to mandatory reporting

and investigation provisions contained in the La. Children's Code involving child sexual abuse matters.

- When children are involved, there are heightened duties to investigate.
- Cases involving loss of evidence in matters involving adults were distinguished.

## **“K” Kiosks**

***State v. Turner***, 52,510 (La. App. 2 Cir. 4/10/19), 267 So. 3d 1202

- Defendant robs college-aged pizza delivery driver of pizzas, wallet with minimal cash, and cell phone.
- Defendant later sells cell phone at an ECO “kiosk” in Walmart.
- Unbeknownst to defendant, an employee in San Diego who monitors the transaction takes pictures of everyone who sells cell phones and requires a picture ID.
- Cell phones and data therefrom have become invaluable crime solving tools. (See *Riley v. California*, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), holding that, generally, police must obtain a warrant to search digital information or a cell phone seized from person arrested.)

## **“L” Long Arm**

***J & J Livestock, LLC v. Musa Slaughterhouse, LLC***, 52,651 (La. App. 2 Cir. 4/10/19), 268 So. 3d 1232

- Claiborne Parish plaintiff sells livestock to Florida slaughterhouse.
- Plaintiff sues on open account, serves via La. long arm laws and obtains default judgment.

- Defendants move to annul judgment on basis of lack of jurisdiction.
- Hearing held and trial court finds Louisiana has jurisdiction.
- Good discussion of “minimum contacts” with La. in order to support jurisdiction here.
- Traveling to La. to pick up livestock coupled with telephone calls to order livestock was sufficient minimum contact with La. as to two defendants; one was let out.

***Wood v. Hackler, supra.***

- Address obtained from Internet.
- Letter unclaimed, but also stamped “Notify Sender of New Address on Pegues Place.”
- Default judgment obtained via La. long arm statute annulled here due to lack of notice.

**“M” Mental Anguish as a Result of Damage to Property**

***Enriquez v. Safeway Ins. Co. of Louisiana***, 52,425 (La. App. 2 Cir. 1/16/19), 264 So. 3d 648

- Lincoln Town Car crashes into front of plaintiffs’ house at 7:40 a.m., causing significant property damage.
- Extensive discussion of proper damage awards for “loss of use” (do not have to move out and incur rent) and inconvenience (bugs, inspections, can’t find matching brick).
- Plaintiffs not entitled to damages for mental anguish because no “psychic trauma” proven here.
- See survey of all the case law.

**“N” Nelson Bunker Hunt**

***Compass Energy Operating, LLC v. Robena Prop. & Royalty Co., Ltd***, 52,468 (La. App. 2 Cir. 2/27/19), 265 So. 3d 1160, *reh'g denied* (4/4/19)

- Case discusses the continuing “tsunami” effect of Nelson Bunker Hunt’s silver fiasco and bankruptcy proceedings.
- Concursus proceeding in Jackson Parish involving ownership of mineral interests.
- Complicated title case involving trusts and bankruptcies and who now owns the minerals.
- A trust created by a U.S. bankruptcy court in Texas is not an inter vivos or a testamentary trust as contemplated by the La. Trust Code.
- Case has to be remanded to determine what properties went into the trust.
- Dirt lawyers would like to read.

## **Notice**

***Howell v. Jurgens***, 52,458 (La. App. 2 Cir. 1/16/19), 264 So. 3d 1233

- Nothing in record to demonstrate that either the defendant or her former attorney were ever notified of a court hearing that was rescheduled.
- Absent notice of a hearing, court cannot grant a judgment.
- Only in Winn Parish does this routinely occur!!

## **“O” Open and Obvious**

***Lafitte v. D & J Commercial***, 52,823 (La. App. 2 Cir. 8/14/19), 278 So. 3d 460

- Plaintiff fell on a concrete parking lot ramp at Dollar Store.
- Ramp had been there for many years and was open and obvious.

- Although not ADA compliant, this does not make it unreasonably dangerous or defective.
- Defendant entitled to summary judgment.

***Sepulvado v. Travelers Ins. - Charter Oak Fire Ins. Co.***, 52,415 (La. App. 2 Cir. 11/8/18), 261 So. 3d 980

- Plaintiff falls on ice in parking lot at Yokem Toyota.
- Plaintiff knew it was an icy day, as son was with them due to school closure.
- Presence of ice was an “open and obvious” condition.
- Defendant entitled to a summary judgment.

## “P” Prescription

***City Life Live, L.L.C. v. Post Office Employees Fed. Credit Union***, 52,616 (La. App. 2 Cir. 4/10/19), 268 So. 3d 1251

- When can an amended suit relate back to interrupt prescription?
- Credit union froze accounts in plaintiff’s name and an LLC’s name when they defaulted on a loan.
- This hampered plaintiffs’ ability to buy raw diamonds from Sierra Leone, and she sues the credit union for \$1 million in lost profits.
- Plaintiff amends suit two years later to add as plaintiff a Texas corporation that had the diamond contract – “Ros Di Mere, Inc.”
- Prescription arises – no relation back here as to Ros Di Mere’s claim.
- Plaintiff a sophisticated investor – had another LLC to protect her assets...“can’t have cake and eat it too!”
- No indication credit union had any knowledge about Ros Di Mere.

## **“Q” Quantum**

***Jack v. Eldorado Casino Shreveport Joint Venture, L.L.C.***, 52,454 (La. App. 2 Cir. 1/16/19), 264 So. 3d 599

- Casino cocktail waitress spills hot coffee on plaintiff while delivering tray full of drinks.
- Causes plaintiff to twist and injure her back.
- \$1.4 million judgment in a jury trial upheld.
- Battle of experts on plaintiff’s ability to continue to work at Velocity Care and proper award for future lost wages - \$317,460
- Defendant neglected to make proffer of “write off” amounts, so cannot complain on appeal.

***Berry v. Anco Insulations***, 52,671 (La. App. 2 Cir. 5/22/19), 273 So. 3d 595, *writ denied*, 2019-1032 (La. 10/1/19), 280 So. 3d 127

- Plaintiff’s husband worked at paper mill.
- Wife contracts mesothelioma from washing husband’s clothes with asbestos fibers on them.
- Jury awarded \$2 million in future meds, and trial court reduced it to \$1 million on JNOV.
- Upheld on appeal, even though she was reluctant to have the recommended surgery, and no firm figure was established.

***Hobley v. Caddo Par. Sch. Bd.***, 52,422 (La. App. 2 Cir. 1/16/19), 264 So. 3d 619

- Two boys are in minor school bus accident.
- Video indicated they were not hurt, but mother takes them to chiropractor who runs up a bill.
- Boys did not testify at trial.
- Trial court provided extensive reasons for ruling they were not hurt, but awarded “\$500 in damages” to each.

- Upheld on appeal – no manifest error. It’s an “in globo” award and sufficient to cover the \$238 cost of initial doctor visit and some general damages.

## “R” Recusals

***Daurbigney v. Liberty Pers. Ins. Co.***, 2018-929 (La. App. 3 Cir. 5/9/19), 272 So. 3d 69

- Race for seat on La. Supreme Court between Judges Marilyn Castle and Jimmy Genovese was rather contentious.
- Personal injury attorneys contributed money to PACs that ran ads in favor of Genovese.
- Two days before the election, Castle’s campaign committee (not a PAC) ran an ad listing the plaintiff’s attorneys who had contributed to the PAC, and the ad recited:

SHOULD PERSONAL INJURY LAWYERS  
PICK OUR NEXT SUPREME COURT JUSTICE  
Or should you? Personal Injury Lawyers have contributed over \$1,000,000 to Jimmy Genovese’s campaign. Then, when ethics laws prevented them from giving more, 18 of the wealthiest of them poured another \$945,000 into a PAC (*Restore Our Coast*) created to promote Genovese’s campaign.

- After Castle lost, the above referenced PI case being handled by Broussard and David is set for a hearing before Castle.
- Plaintiffs and their attorneys filed a Motion to Recuse Castle under La. C.C.P. art. 151(A)(4) – “bias” against the parties’ attorneys.
- Judge *ad hoc* denied motion reasoning no actual bias shown.
- *Per Curiam* panel of 3<sup>rd</sup> Circuit reverses – don’t have to prove actual bias.

- Under recent U.S. Supreme Court cases and La. Supreme Court cases, new test has constitutional components – “whether objectively speaking, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable.”

## “S” Successions

***Succession of Anderson***, 52,441 (La. App. 2 Cir. 1/16/19), 264 So. 3d 684, *writ not considered*, 2019-0445 (La. 5/6/19), 270 So. 3d 576, *reconsideration not considered*, 2019-00445 (La. 9/6/19), 278 So. 3d 362

- Multi-page will.
- “Color copies” of two signature pages is not an original signature, as required by La. C.C. art. 1577.
- Will is invalid.
- Error was discovered by Robert Foley when he examined the will to determine if signatures were forgeries.

***Succession of Elliott***, 52,595 (La. App. 2 Cir. 4/10/19), 269 So. 3d 1144, *writ denied sub nom. Succession of Elliot*, 2019-00723 (La. 9/6/19), 278 So. 3d 367

- Although termed “legally blind,” trial court made factual finding that Testator could still read.
- Will is valid and did not need the special attestation clause for sight impaired testators, under La. C.C. art. 1579 (the “reading along” statute).

***Succession of Hanna***, 52,664 (La. App. 2 Cir. 6/26/19), 2019 WL 2608363, *reh’g denied* (8/9/19), *writ granted*, 2019-01449 (La. 11/25/19), 2019 WL 6270568



- Attestation clause substantially complied with requirements for a notarial will, even though it did not state “at the end and on each other separate page.”

***Succession of Pesnell***, 52,740 (La. App. 2 Cir. 6/26/19), 277 So. 3d 842, *writ denied*, 2019-01194 (La. 10/15/19), 2019 WL 5569274

- Ditto.

NOTE: In both cases, the Testator actually signed on each page and the notaries were attorneys.

## “T” Tax Sales

***Hatfield v. Bossier Par. Police Jury***, 52,555 (La. App. 2 Cir. 4/10/19), 267 So. 3d 1224, *reh’g denied* (5/16/19)

- If property is adjudicated to governmental body, owner can still redeem, even though the three year period has lapsed.
- See La. R.S. 47:2246.
- Interesting situation where hangar property located at Downtown Shreveport Airport is in Bossier Parish.
- Error to grant Summary Judgment in favor of Police Jury.

## Text Messages

***Victus 1, Inc. v. Stocky’s World Famous Pizza #14, Inc.***, 52,221 (La. App. 2 Cir. 9/26/18), 256 So. 3d 1146

- Plaintiff is a business broker who contracted with defendant to help sell its pizza restaurant.
- Contract provision required that any modification be in writing and signed.
- One of many issues is whether some text messages sent between the parties modified the contract such that the defendant did not have to honor it.

- They do not.
- Although they may be “writings” under La. C.E. art. 1001(1), they were not signed.

## “U” Uninsured Motorist

**McGee v. Allstate Ins. Co.**, 52,299 (La. App. 2 Cir. 11/14/18), 259 So. 3d 1161, *writ denied*, 2018-2057 (La. 2/18/19), 265 So. 3d 773

- Single car accident.
- Plaintiff passenger cannot recover under the UM provisions of host driver’s Allstate policy due to exclusion.
- Plaintiff’s attorney gently warned that, although law is well settled, we declined to award damages for frivolous appeal.

**Jones v. Fin. Indem. Co.**, 52,421 (La. App. 2 Cir. 1/16/19), 264 So. 3d 660

- Texas law applies to calculations of UM benefits here.
- Plaintiff is a Texas resident; policy issued in Texas; all treatment was in Texas, except for the initial ER visit.
- Plaintiff didn’t prove all her injuries were caused by minor accident.
- Texas law limits recoverable amounts to what is “actually paid.”

## Unpaid Wages (Part II)

**Knight v. Tucker**, 52,438 (La. App. 2 Cir. 1/16/19), 263 So. 3d 625

- In Round 1, the accountant was found to be an employee and not an independent contractor.
- \$80,000 attorney fee award on a \$52,000 judgment, and \$4,500 more for appeal.

- Louisiana Wage Payment statute mandates an attorney fee award.
- Cases that are meant to be simple and tried by a rule can be quite complex and costly.

## “V” Venue

***Alost v. Lawler***, 2018-1271 (La. App. 1 Cir. 5/8/19), 277 So. 3d 329

- Displeased with the service his father received at the ER at Willis Knighton-Bossier, Danny Lawler, publisher of *The Inquisitor*, wrote articles with negative comments about Dr. Alost, the ER doctor, and Willis Knighton, including comments by Willis Knighton nurses that Dr. Alost was “the worst.”
- Defamation and damage suit were brought against Willis Knighton and Lawler in the 19<sup>th</sup> Judicial District Court.
- Willis Knighton filed venue exception and improper cumulation.
- Lawler filed venue exception and *forum non conveniens*.
- Trial court granted all the exceptions.
- The appellate court reversed the venue ruling as to Lawler.
- Because no evidence was introduced at the hearing, the trial court must accept the plaintiff’s allegations.
- Plaintiff alleged he sustained damage in East Baton Rouge Parish, and the articles in *The Inquisitor* were published “throughout the State of Louisiana via Facebook, the electronic version of *The Inquisitor*, and the physical version of the paper.”
- Plaintiff alleged defamation is “transitory.”
- Further, because the plaintiff is now domiciled in East Baton Rouge Parish, the exception of *forum non conveniens* doesn’t apply and the case can’t be transferred.

## “W” Writing

***Lucky v. Carr***, 52,434 (La. App. 2 Cir. 1/16/19), 264 So. 3d 693, *writ denied*, 2019-0261 (La. 4/8/19), 267 So. 3d 616

- Plaintiff sues defendant for violating her fiduciary duty to him under an alleged oral mandate/agency agreement that was never reduced to writing.
- Defendant purchased immovable property in her own name and never transferred it to plaintiff.
- Plaintiff's contention was she breached her agreement to transfer it to him, and he is entitled to all the royalties, value of property, etc.
- \$1.8 million judgment rendered in plaintiff's favor was reversed on appeal.
- Lack of written agency agreement precludes plaintiff's claim and you can't reframe the issue as one of breach of fiduciary duty to skirt the writing requirement.
- No enforceable agreement here and, thus, no duty was breached.

Also, see *Acurio v. Cage* following...

## **“X” Ex-Wives**

***Acurio v. Cage***, 52,309 (La. App. 2 Cir. 9/26/18), 257 So. 3d 824, *writ denied*, 2018-1762 (La. 1/8/19), 260 So. 3d 581

- They are back in court!!!
- After La. Supreme Court invalidated the pre-nup, ex-husband sues ex-wife for damages for alleged breach of contract for not confecting a valid pre-nup.
- Cannot have an oral agreement to make a pre-nup because pre-nup has to be in writing.
- Exception of no cause of action upheld.

## **“Y” Y-Shaped Intersection**

***Murphy v. Savannah***, 2018-0991 (La. 5/8/19), 2019 WL 2041785

- The “Y” intersection case we discussed last year.
- DOTD moved for Summary Judgment and had affidavits from (1) its civil engineer concerning no repairs or complaints, and (2) a civil engineer who opined it was not an unreasonably dangerous intersection.
- Plaintiff’s expert opined the layout of the intersection was a “contributing factor.”
- Trial court granted DOTD’s MSJ.
- Second Circuit reversed.
- La. Supreme Court reversed Second Circuit and reinstated the summary judgment.
- Plaintiff’s expert’s affidavit was devoid of any factual support and did not refute DOTD’s expert.
- $4 + 1 = 5$  votes for summary judgment.
- $5 + 3 = 8$  votes found genuine issues of material fact.
- Moral: Some judges are more important!!!

**“Z” Zipline**

***Chreene v. Prince***, 52,351 (La. App. 2 Cir. 9/26/18), 256 So. 3d 501

Query: Do you want to hire your children’s friends for summer jobs?

- 16 year old worked at zipline park in Arkansas owned by Rowdy Adventures, LLC/Prince and resided in a camp near the park.
- He gets drunk, borrows a vehicle, and dies in a one vehicle accident after missing a curve.
- Zipline owner not entitled to a summary judgment on issue of liability to child’s family because genuine issues of material fact existed on the plaintiffs’ “negligent supervision” claim.

- The parents contended the zipline owner had agreed to supervise the minor.
- Zipline owner also argued that this type of unforeseeable accident falls outside any such duty.
- No, plaintiffs' contention is that it is entirely foreseeable that unsupervised teenagers will consume alcohol and sustain injuries as a result of their intoxication.