

ADDING
— Quitclaim

COMMENTS

Does This Piece Fit? A Look at the Importation of the Common-Law Quitclaim Deed and After-Acquired Title Doctrine into Louisiana's Civil Code

I. INTRODUCTION

Modern civilian method often calls upon the courts to develop jurisprudential precepts In the promulgation or revision of a civil code the texts of earlier written laws, as well as custom and judicial expressions are merged, together with new policies, into the formal written text which constitutes a new point of departure for subsequent interpretation and development.¹

The Louisiana legislature has recently placed such a jurisprudential precept into Louisiana's Civil Code.² During the 1993 session, the Louisiana Legislature adopted the Louisiana State Law Institute's Proposed Civil Code article 2502, which becomes effective January 1, 1995. While the codification of a jurisprudential rule is entirely acceptable under the civilian codal scheme, it is nevertheless disturbing to learn that this particular Louisiana jurisprudence was developed with blind eyes toward Louisiana's Civil Code. It was developed primarily through the adoption of common-law theories and principles. Such an adoption of common-law solutions in Louisiana for specific problems "must be understood as something which is appropriate only within the relatively narrow areas where there is no existing rule of Louisiana law and for which there is no readily accessible answer in the Louisiana law or in the few familiar foreign civil law materials."³ The question is then raised: is the adoption of Article 2502 appropriate?

The promulgated article reads:

Art. 2502. Transfer of rights to a thing

A person may transfer to another whatever rights to a thing he may then have, without warranting the existence of any such rights. In such a case the transferor does not owe restitution of the price to the transferee in case of eviction, nor may that transfer be rescinded for lesion.

Such a transfer does not give rise to a presumption of bad faith on the part of the transferee and is a just title for the purposes of acquisitive prescription.

Copyright 1994, by LOUISIANA LAW REVIEW.

1. *Bergeron v. Bergeron*, 492 So. 2d 1193, 1197 (La. 1986).
2. 1993 La. Acts No. 841, § 1. Act 841 was enacted on suggestion from the Louisiana State Law Institute through its Proposed Louisiana Civil Code Revision of Sales articles.
3. Joseph Dainow, *The Louisiana Civil Law*, in Louisiana Civil Code at xi, xxvii (Joseph Dainow ed., 1947).

If the transferor acquires ownership of the thing after having transferred his rights to it, the after-acquired title of the transferor does not inure to the benefit of the transferee.⁴

In adopting this article, the legislature purports to codify the jurisprudential rules established in *Waterman v. Tidewater Associated Oil Co.*,⁵ *Read v. Hewitt*,⁶ and *Land Development Co. v. Schulz*.⁷ These cases recognized the use of the common-law quitclaim deed in Louisiana jurisdictions and set forth the rules governing its use.⁸ Of particular importance in this comment is the rule that the after-acquired title doctrine shall not apply to a sale by quitclaim deed.⁹

This comment will briefly discuss the necessity of the quitclaim deed in Louisiana. It will examine the current law of the quitclaim deed and the after-acquired title doctrine, and determine whether the language of new Article 2502 is consistent with the jurisprudential principles purportedly codified. This comment will examine the consistency between new Article 2502 and its neighboring Civil Code articles. Additionally, a general discussion of quitclaim deeds will be necessary.

Each article in a code should fit with one another as do the pieces of a puzzle. The articles must be read and interpreted together. Thus, the question is posed: *does Article 2502 fit?*

II. BACKGROUND AND DEVELOPMENT OF ARTICLE 2502

A. Common-Law Application

1. The Quitclaim Deed

The quitclaim deed is of common-law origins.¹⁰ The distinguishing characteristic of a quitclaim deed is that it "purports merely to convey whatever

4. 1993 La. Acts No. 841, § 1. This act contains the entire revision of the Louisiana Civil Code articles on sales, which becomes effective January 1, 1995.

5. 213 La. 588, 35 So. 2d 225 (1947).

6. 120 La. 288, 45 So. 143 (1907) (holding that a quitclaim deed is sufficient to support ten-year acquisitive prescription). This comment will not address this aspect of new La. Civ. Code art. 2502 (effective January 1, 1995).

7. 169 La. 1, 124 So. 125 (1929) (also holding that a quitclaim deed is sufficient to support ten-year acquisitive prescription). As stated *supra* note 6, this comment will not address this aspect of new Article 2502. See new La. Civ. Code art. 2502 cmt. (a) (effective January 1, 1995).

8. One early writer discussed the adequacy of Louisiana's Civil Code warranty articles in governing matters of conveyance, and attempted to demonstrate that the quitclaim deed is unnecessary in Louisiana. He argued Louisiana's "at peril and risk" deed achieves the same results as the quitclaim deed, rendering the quitclaim deed unnecessary in Louisiana. William M. Gordy, *The Legal Effect of Quitclaim Deeds in Louisiana*, 23 Tul. L. Rev. 533 (1949).

9. See *Waterman*, 213 La. at 611-12, 35 So. 2d at 233-34.

10. 3 American Law of Property: A Treatise on the Law of Property in the United States § 12.13, at 223 (A. James Casner ed., 1974).

title to the particular land the grantor may have, and its use excludes any implication that he has a good title, or any title at all."¹¹ Thus, it transfers only what interest the grantor may have in the property at the time of the conveyance with no implied warranty of title.¹²

The determination of whether a conveyance is a quitclaim deed is often difficult. The main factor to consider in labeling a conveyance as a quitclaim deed or as a form of deed that actually purports to convey property is the intent of the parties. Thus, an examination of all of the provisions of the deed, together with the positions of the parties, should be made to establish the character of the conveying instrument.¹³ Language of the deed does not necessarily determine its character. For example, the use of the word "quitclaim" in the instrument is not determinant of a quitclaim deed,¹⁴ nor is the use of the word "grant" determinant of some other form of deed.¹⁵ The use of the words "bargain and sell" together with "quitclaim" has not been consistently determinant either,¹⁶ nor has the presence of language creating a covenant of warranty.¹⁷ A more reliable factor to consider in determining the intent of the parties is the price paid.¹⁸ A nominal or very low price may be indicative of a quitclaim deed.¹⁹

A quitclaim deed may as effectually transfer title to realty as does any other method of conveyance if the grantor is seized of title at the time of the conveyance.²⁰ Yet, if the grantor has no title or interest at the time of conveyance, the quitclaim deed conveys nothing.²¹

11. 4 Herbert T. Tiffany, *The Law of Real Property* § 959, at 16 (3d ed. 1975).

12. 6A Richard R. Powell, *The Law of Real Property* § 897[1], at 81A-29 (Patrick J. Rohan ed., 1992).

13. See *Williams v. Rabb*, 161 S.W.2d 121 (Tex. Civ. App. 1942); *Balch v. Arnold*, 59 P. 434 (Wyo. 1899). See also *American Law of Property*, *supra* note 10, § 12.44, at 288; Tiffany, *supra* note 11, at 17.

14. *Wise v. Watts*, 239 F. 207 (9th Cir.), *cert. denied*, 244 U.S. 661, 37 S. Ct. 745 (1917); Tiffany, *supra* note 11, at 17.

15. *State v. Kemmerer*, 84 N.W. 771 (S.D. 1900).

16. See *Derrick v. Brown*, 66 Ala. 162 (1880) (holding that the deed was a quitclaim deed); *Gibson v. Chouteau*, 39 Mo. 536 (1866) (holding that such words indicate a quitclaim deed). *But see Touchard v. Crow*, 20 Cal. 150 (1862) (holding that such words are not strictly indicative of a quitclaim deed); *D'Wolf v. Haydn*, 24 Ill. 526 (1860) (holding that such words do not indicate a quitclaim deed).

17. See *Brown v. Harvey Coal Corp.*, 49 F.2d 434 (E.D. Ky. 1931); *Hunter v. Eastham*, 69 S.W. 66 (Tex. 1902); *Culmell v. Borroum*, 35 S.W. 942 (Tex. Civ. App. 1896); *Cummings v. Dearborn*, 56 Vt. 441 (1884).

18. See *Eastham v. Hunter*, 114 S.W. 97 (Tex. 1908); *Carleton v. Lombardi*, 16 S.W. 1081 (Tex. 1891); *Taylor v. Harrison*, 47 Tex. 454 (1877); *Balch v. Arnold*, 59 P. 434 (Wyo. 1899).

19. *Balch v. Arnold*, 59 P. 434 (Wyo. 1899).

20. Tiffany, *supra* note 11, at 16.

21. See *Chavis v. Hill*, 224 S.W.2d 808 (Ark. 1949); *Johnson v. Allen*, 285 P.2d 764 (Kan. 1955); *Winborn v. Alexander*, 279 S.W.2d 718 (Tenn. Ct. App. 1954); *Grange v. Kayser*, 80 S.W.2d 1007 (Tex. Civ. App. 1935).

2. Application of the After-Acquired Title Doctrine to Quitclaim Deeds

The after-acquired title doctrine represents the well-settled rule that "one who acquires a title or estate which he has previously conveyed is estopped to assert his after-acquired title as against the grantee or his successors."²² This rule, in effect, inserts a provision in the deed that it conveys not only the title or interest possessed by the grantor at the time of its execution, but also the title or interest he might subsequently acquire.²³ One limitation to the application of the after-acquired title doctrine is that a subsequently acquired title will not pass to the grantee who knew of the grantor's deficiencies.²⁴

After-acquired title is applied to estop a grantor from making an adverse claim against the title of his grantee when the grantor subsequently acquires title to the property he purportedly conveyed to his grantee by a warranty deed. This doctrine circumvents what would otherwise be a lengthy and circular judicial experience—grantor's petitory suit against grantee to be declared owner of the property, followed by grantee's suit against grantor to enforce grantor's warranty, and ultimately, the court's declaration that grantee is the owner of the property—by simply denying grantor any claim to the property he previously conveyed and warranted.²⁵ One court has held the doctrine is based upon the common-law rule of implied warranties, and thus will apply to a deed which purports to convey the property regardless of whether an express warranty is present in the deed.²⁶

The after-acquired title doctrine is generally not applicable at common law to a conveyance by quitclaim deed. Thus, a grantor who purports to convey only his present interest will not be estopped from asserting an after-acquired title.²⁷ The rationale is that the grantor purports to pass only his right, title, and interest that he has at the time of the conveyance, and not any title or interest he may later acquire. Additionally, after-acquired title operates to pass title only when what is purportedly conveyed is not conveyed. With a conveyance by a quitclaim deed, what is purportedly conveyed is in fact conveyed—the right or interest the grantor has at the time of the conveyance.

Furthermore, there is no implied warranty in a quitclaim deed, whereas the after-acquired title doctrine operates on the premise that the deed of conveyance impliedly warrants it is conveying present, as well as future, title. Thus, the incongruity of these two principles provides the basic reason for the common-law

22. American Law of Property, *supra* note 10, § 15.19, at 842.

23. See Warburton v. Kieferle, 287 P.2d 1 (Cal. Ct. App. 1955); Meyers v. American Oil Co., 5 So. 2d 218 (Miss. 1941).

24. See Schiltz v. Ferguson, 231 N.W. 358 (Iowa 1930); Flowers v. Crumbaugh, 221 S.W. 1074 (Ky. Ct. App. 1920); Town of Glenrock v. Abadie, 259 P.2d 766 (Wyo. 1953).

25. American Law of Property, *supra* note 10, § 15.19, at 843.

26. Robben v. Obering, 279 F.2d 381 (7th Cir. 1960).

27. American Law of Property, *supra* note 10, § 15.19, at 844; Tiffany, *supra* note 11, § 1231, at 1106.

holding that the after-acquired title doctrine does not inure to the benefit of a grantee under a quitclaim deed.²⁸ Nevertheless, this principle may be limited, as indicated by the following:

[T]his principle is applicable only to a deed of bargain and sale by release or quitclaim, in the strict and proper sense of that species of conveyance. And therefore, if the deed bears on its face evidence that the grantors intended to convey, and the grantee expected to become invested with, an estate of a particular description or quality, and that the bargain had proceeded upon that footing between the parties, then, although it may not contain any covenants of title in the technical sense of the term, still the legal operation and effect of the instrument will be as binding upon the grantor and those claiming under him, in respect to the estate thus described, as if a formal covenant to that effect had been inserted; at least, so far as to estop them from ever afterwards denying that he was seized of the particular estate at the time of the conveyance.²⁹

While all of the provisions of a conveyance are to be examined in determining its effect as a quitclaim deed or otherwise, the application of the after-acquired title doctrine does not depend exclusively upon the presence or absence of covenants in the deed.³⁰ However, if the covenant is one of further assurance, or if the deed recites the intention to pass a subsequently acquired title, such will pass to the grantee of the quitclaim deed.³¹ Nevertheless, the general rule remains:

[A] grantor conveying by deed of bargain and sale, by way of release or quitclaim of all his right and title to a tract of land, if made in good faith, and without any fraudulent representations, is not responsible for the goodness of the title beyond the covenants in his deed. . . . A deed of this character . . . does not operate to pass or bind an interest not then in existence.³²

However, this statement must be applied in conjunction with the rule "[w]hatever the form or nature of the instrument, if it affirms, either by implication or

28. Bilby v. Wire, 77 N.W.2d 882 (N.D. 1956).

29. Van Rensselaer v. Kearney, 52 U.S. (11 How.) 297, 322 (1850).

30. See Shumaker v. Johnson, 35 Ind. 33 (1871); Dean v. Doe, 8 Ind. 475 (1856); Hill v. Coburn, 75 A. 67 (Me. 1909); Wight v. Shaw, 5 Cush. 56 (Mass. 1849); Stoepler v. Silberberg, 119 S.W. 418 (Mo. 1909); Hall v. Chaffee, 14 N.H. 215 (1843).

31. Thornton v. Louch, 130 N.E. 467, 468 (Ill. 1921) (grantor recited "all right, title and interest the grantor has or may have") (emphasis added). See also Bennett v. Waller, 23 Ill. 97 (1859); Phelps v. Kellog, 15 Ill. 135 (1853); McAdams v. Bailey, 82 N.E. 1057 (Ind. 1907); Brenner v. J.J. Brenner Oyster Co., 292 P.2d 1052 (Wash. 1956); West Seattle Land & Improvement Co. v. Novelty Mill Co., 72 P. 69 (Wash. 1903).

32. Van Rensselaer, 52 U.S. (11 How.) at 322.

express terms, that the grantor is seized or possessed of a particular estate which the instrument purports to convey, it will be found an estoppel against the grantor."³³

B. Louisiana's Application

1. The Quitclaim Deed

In Louisiana, the codification of the quitclaim deed and the denial of the application of the after-acquired title doctrine to a quitclaim deed is based on *Waterman v. Tidewater Associated Oil Co.*³⁴ The disputed conveyance in the case, which was held to be a quitclaim deed, contained the following language:

[T]he said party of the first part . . . has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey and *quit claim* unto the said party of the second part, his heirs and assigns *forever*, all the right, title, interest, claim, and demand which said party of the first part has in and to the following described piece of land³⁵

Despite the acknowledgement by the *Waterman* court that Louisiana's Civil Code provides no provision for sales by quitclaim deeds,³⁶ the court decided to recognize the quitclaim deed.³⁷ It justified its decision stating, "quitclaim deeds are fully recognized in the jurisprudence and have many times been considered by our courts."³⁸

The court in *Waterman* chose to adopt the common-law definition of a quitclaim deed: "[O]ne which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, if any, at the time, rather than the property itself."³⁹ The supreme court also followed the common-law method of determining the character of the conveyance. Citing common-law cases, the court recognized that an examination must be made of the language and recitals used in the deed to determine the intent of the parties.⁴⁰ It also recognized that

33. *Hamblin v. Woolley*, 167 P.2d 100, 104 (Ariz. 1946).

34. 213 La. 588, 35 So. 2d 225 (1947). For more recent cases following the principles set forth in *Waterman*, see *Butler v. Bazemore*, 303 F.2d 188 (5th Cir. 1962); *Sabine Prod. Co. v. Guaranty Bank & Trust Co.*, 432 So. 2d 1047 (La. App. 1st Cir.), *writ denied*, 438 So. 2d 570 (1983); *Franks Petroleum, Inc. v. Mayo*, 438 So. 2d 696 (La. App. 2d Cir.), *writ denied*, 443 So. 2d 595 (1983); *Freeman v. Turner*, 373 So. 2d 732 (La. App. 2d Cir.), *writ refused*, 376 So. 2d 320 (1979); *Rycade Oil Corp. v. Board of Comm'rs*, 129 So. 2d 302 (La. App. 3d Cir. 1961).

35. *Waterman*, 213 La. at 598, 35 So. 2d at 229.

36. *Id.* at 602, 35 So. 2d at 230.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 602-03, 35 So. 2d at 230. It has been held that parol evidence may be utilized to

titling the conveyance a "quitclaim deed" or using the words "bargain and sale" is not conclusive.⁴¹ Additionally, the *Waterman* court accepted the common-law principle that title may be as effectually transferred by a quitclaim deed as by any other form of conveyance, but only to the extent the grantor had such title or interest at the time of the conveyance.⁴² Finally, *Waterman* recognized that a quitclaim deed "excludes any implication that [the grantor] has any title or interest."⁴³

2. Application of the After-Acquired Title Doctrine to Quitclaim Deeds

The doctrine of after-acquired title is only jurisprudentially present in Louisiana.⁴⁴ Louisiana recognizes this doctrine when the conveyance is by warranty deed. Thus, if a defect exists in such a conveyance, or the grantor lacks title, and the defect is subsequently cured in favor of the grantor, or the grantor subsequently acquires title, title inures to the benefit of the grantee.⁴⁵ *Waterman* recognized this doctrine is actually the enforcement of the grantor's obligation, under warranty, to deliver a good title.⁴⁶ Thus, it has been suggested that the application of the after-acquired title doctrine depends upon the presence and type of warranty in the conveyance.⁴⁷

ascertain the true intention of the parties in forming what is purported to be a quitclaim deed, unless the deed unambiguously indicates the intent of the parties. *Freeman v. Turner*, 373 So. 2d 732, 735 (La. App. 2d Cir.), *writ refused*, 376 So. 2d 320 (1979) (citing *McLeroy v. Duckworth*, 13 La. Ann. 410 (1858)); *Cattle Farms, Inc. v. Abercrombie*, 211 So. 2d 354 (La. App. 4th Cir. 1968).

41. *Waterman v. Tidewater Associated Oil Co.*, 213 La. 588, 603, 35 So. 2d 225, 230 (1947). See also *Armstrong v. Bates*, 61 So. 2d 466 (La. App. 1st Cir. 1952).

42. See also *Osborn v. Johnston*, 322 So. 2d 112 (La. 1975); *Clifton v. Liner*, 552 So. 2d 407 (La. App. 1st Cir. 1989); *Sabourin v. Jilek*, 128 So. 2d 698 (La. App. 4th Cir. 1961); *Armstrong v. Bates*, 61 So. 2d 466 (La. App. 1st Cir. 1952).

43. *Waterman*, 213 La. at 604, 35 So. 2d at 230-31. The court notes that despite this principle, a quitclaim deed is sufficient to support ten-year acquisitive prescription. It rationalizes this by stating "[t]his jurisprudence is to be regarded as an exception in favor of a good faith possessor holding under a quitclaim deed for, as a matter of fact, a conveyance of the vendor's title and interest in property does not convey the property itself." *Id.* at 604-05, 35 So. 2d at 231.

44. The doctrine has developed under La. Civ. Code art. 2452, entitled "Sale of the thing of another." New La. Civ. Code art. 2452 cmt. (e) (effective January 1, 1995) recognizes this, stating: Under this Article, the sale of a thing belonging to another becomes valid if the seller acquires ownership from the true owner before the buyer brings action for nullity. Once the buyer brings the action, however, the after-acquired title doctrine does not operate, and ownership thereof does not vest automatically in the buyer.

(citations omitted). See also *Sabine Prod. Co. v. Guaranty Bank & Trust Co.*, 432 So. 2d 1047, 1051 n.5 (La. App. 1st Cir. 1983).

45. *Rycade Oil Corp. v. Board of Comm'rs*, 129 So. 2d 302 (La. App. 3d Cir. 1961).

46. *Waterman*, 213 La. at 611, 35 So. 2d at 233.

47. *Gordy*, *supra* note 8. This argument is based upon the statement in *Waterman* that after-acquired title may apply to a sale without warranty because of Louisiana's unique warranty system, wherein a sale without warranty still contains an implied warranty of restitution of price.

Noting a quitclaim deed excludes any implication of warranty, the *Waterman* court, again following common law, stated the doctrine of after-acquired title does not apply to a quitclaim deed.⁴⁸ In additional support of this principle, the court recognized a quitclaim deed transfers only the grantor's *present* interest in the land, and not the land itself. As at common law, it is of great importance to examine the intent of the parties in the deed to determine whether the after-acquired title doctrine applies. If it is determined the grantor intends to convey the land, then the conveyance is not a quitclaim deed, and the doctrine of after-acquired title is applicable.⁴⁹

C. Louisiana's Warranty System and the After-Acquired Title Doctrine

Louisiana has a unique system of warranty of title against eviction with three types of sales: (1) sale with warranty; (2) sale without warranty; and (3) sale at the buyer's peril and risk. The importation of the quitclaim deed into Louisiana's Civil Code may provide for a fourth type of sale.⁵⁰ The first type, sale with warranty, is a full warranty deed. It is present when there is an express promise of warranty or where there is no stipulation against warranty. The recovery, if the vendee is evicted, is restitution of the price and any other related costs and damages suffered.⁵¹ The after-acquired title doctrine is unquestionably applicable to this type of sale.

The second type of sale in Louisiana is the sale without warranty—an express stipulation of no warranty. This is different from an express exclusion of warranty (a non-warranty deed) at common law because Louisiana still implies a warranty in this type of sale. This implied warranty is provided for in Louisiana Civil Code article 2505 (revised Civil Code article 2503). If an eviction occurs, the recovery under this type of warranty is only restitution of the purchase price.⁵² The *Waterman* court indicated the after-acquired title doctrine

This analogy between the right to restitution of price and the application of the after-acquired title doctrine is questioned *infra* part III.

48. *Waterman*, 213 La. at 611-12, 35 So. 2d at 233-34. See also *Freeman v. Turner*, 373 So. 2d 732 (La. App. 2d Cir.), writ refused, 376 So. 2d 320 (1979). *Waterman* disapproves of the prior holding in *Rapp v. Lowry*, 30 La. Ann. 1272 (1878), which applied the doctrine of after-acquired title to a conveyance by tax deed. The court in *Rapp* stated that "[i]t is shocking to morals, and to common honesty and decency, it can not be tolerated in law, that a vendor, even without warranty, should subsequently acquire a title superior to that which he conveyed to his vendee, and attempt to oust his vendee under that title." *Id.* at 1275-76. The *Waterman* court dispensed with this by labeling it as dicta, and stating that the author of the *Rapp* court must not have realized the consequences of the statement. *Waterman*, 213 La. at 613, 35 So. 2d at 234.

49. *Franks Petroleum, Inc. v. Mayo*, 438 So. 2d 696 (La. App. 2d Cir.), writ denied, 443 So. 2d 595 (1983).

50. Saul Litvinoff and Julio Romanach, Report to Louisiana Law Institute for the Revision of the Law of Sales (1988).

51. See La. Civ. Code art. 2506. New La. Civ. Code art. 2506 (effective January 1, 1995) does not purport to change this law.

52. See La. Civ. Code art. 2505. New La. Civ. Code art. 2503 (effective January 1, 1995)

may apply to a sale with this type of warranty, reasoning that it is merely the enforcement of warranty.⁵³ Such reasoning is premised on the idea that if a vendee would be entitled to a restitution of his price, he ought to also receive the benefit of any after-acquired title that was purportedly conveyed.⁵⁴

However, one federal court has declined to apply the doctrine of after-acquired title to a sale without warranty.⁵⁵ In doing so, the court misinterpreted the statement in *Butler v. Bazemore*⁵⁶ that "[t]he doctrine of after-acquired title applies only to a vendee holding by a warranty deed . . ."⁵⁷ It is respectfully submitted that the *Buras* court erred in its interpretation and application of Louisiana's implied warranty. The *Buras* court stated that *Butler* implies the after-acquired title doctrine does not apply when warranty is expressly excluded. However, *Butler* does not make such an implication; on the contrary, it notes the peculiarity of Louisiana's implied warranty and recognizes the after-acquired title doctrine will apply when an implied warranty is present. In Louisiana, warranty is implied even when the deed expressly states there is no warranty.⁵⁸ Thus, the after-acquired title doctrine should apply to a sale without warranty.

Additionally, *Buras* rejects the idea that because restitution of price is available, one should also receive the benefit of after-acquired title. *Buras* has not been followed, nor cited by any Louisiana courts. Accordingly, the parallelism of entitlement to restitution of price and the application of the after-acquired title doctrine has been recognized by later courts.⁵⁹

The third type of sale in Louisiana is the "at peril and risk" sale. It is present when: (1) the parties agree to exclude warranty and the buyer is aware of the danger of eviction; (2) the buyer states he is buying at his own peril and risk; or (3) the seller's obligation of returning the price has been expressly excluded.⁶⁰ This is a true non-warranty deed, and the vendee is not entitled to

states:

The warranty of title against eviction is implied in every sale. Nevertheless, the parties may agree to increase or to limit the warranty. They may also agree to an exclusion of the warranty, but even in that case the seller must return the price to the buyer if eviction occurs, unless it is clear that the buyer was aware of the danger of eviction, or the buyer has declared that he was buying at his peril and risk, or the seller's obligation of returning the price has been expressly excluded.

(emphasis added).

53. *Waterman v. Tidewater Associated Oil Co.*, 213 La. 588, 611, 35 So. 2d 225, 233 (1947). See also *Franks Petroleum, Inc. v. Mayo*, 438 So. 2d 696 (La. App. 2d Cir.), writ denied, 443 So. 2d 595 (1983).

54. See *Gordy*, *supra* note 8, at 541.

55. *United States v. Buras*, 458 F.2d 346 (5th Cir. 1972).

56. 303 F.2d 188 (5th Cir. 1962).

57. *Id.* at 194.

58. See La. Civ. Code arts. 2503 and 2505, and new La. Civ. Code art. 2503 (effective January 1, 1995).

59. See *Freeman v. Turner*, 373 So. 2d 732 (La. App. 2d Cir.), writ refused, 376 So. 2d 320 (1979). See also *Gordy*, *supra* note 8, at 541.

60. See new La. Civ. Code art. 2503 (effective January 1, 1995). This article changes the "and"

recover anything in the case of eviction. The after-acquired title doctrine does not apply to this type of warranty.⁶¹ Note, however, this principle is questionable, as indicated later in this comment.⁶²

It has been suggested that a quitclaim deed is nothing more than an "at peril and risk" sale.⁶³ Therefore, the reason given for the refusal to apply the after-acquired title doctrine to a quitclaim deed is the same as that given for a sale at the buyer's peril and risk: because restitution of the price is denied. The soundness of classifying a quitclaim deed into this third type of sale is certainly called into doubt by the placement of an additional article governing the quitclaim deed in Louisiana's Civil Code. Thus, the quitclaim deed may provide for a fourth type of sale in Louisiana, and there may be a different rationale for not applying the after-acquired title doctrine to a quitclaim deed than that used with the other types of sale.

III. ANALYSIS

A. A Fourth Type of Sale

A quitclaim deed differs from a sale at the buyer's peril and risk; the former purports to convey the vendor's present rights or interests in the property, while the latter purports to convey the property itself.⁶⁴ The respective articles governing both forms of conveyance state that the grantor does not owe a

between "danger of eviction" and "purchased at his peril and risk" in La. Civ. Code art. 2505 to an "or." However, this does not change the law. For an explanation, see *New Orleans & C.R.R. v. Jourdain's Heirs*, 34 La. Ann. 648 (1882).

61. *Freeman v. Turner*, 373 So. 2d 732 (La. App. 2d Cir.), writ refused, 376 So. 2d 320 (1979).

62. See discussion *infra* text accompanying notes 78-86.

63. *Gordy*, *supra* note 8, at 543.

64. One court has recently stated an important effect of this difference that should be mentioned. The third circuit in *Simmesport State Bank v. Roy*, 614 So. 2d 265 (La. App. 3d Cir. 1993), held the public records doctrine (La. R.S. 9:2721 and 9:2756 (1991)) does not apply to a quitclaim deed. The public records doctrine requires all contracts affecting immovables to be recorded to affect third parties. The court reasoned that because the grantor issued the quitclaim deed to the defendants subsequent to the sale to the plaintiff, the grantor had no interest that could pass to the defendant (grantee of the quitclaim deed), regardless of whether the defendant recorded before or after the plaintiff. *Simmesport State Bank*, 614 So. 2d at 267-68.

This holding is questionable. First, the court stated there is no jurisprudence that requires application of the public records doctrine to a quitclaim deed. *Id.* at 267. However, the court apparently overlooked *Williams v. White Castle Lumber & Shingle Co.*, 114 La. 448, 38 So. 414 (1905), which held a prior unrecorded conveyance is not effective against a subsequently acquired, but previously recorded quitclaim deed. Second, the majority common-law rule is that a recorded quitclaim deed will prevail over a prior unrecorded deed. See *Moelle v. Sherwood*, 148 U.S. 21, 13 S. Ct. 426 (1893), which is cited in the comments to new Article 2502 (effective January 1, 1995), and *Wilhelm v. Wilken*, 44 N.E. 82 (N.Y. 1896). See also *Tiffany*, *supra* note 11, § 1277, at 39; *American Law of Property*, *supra* note 10, § 17.16, at 585. This rule is consistent with the public records doctrine in Louisiana and should be followed.

restitution of price in the event of eviction.⁶⁵ It is this similarity, which existed jurisprudentially prior to the adoption of new Article 2502, that undoubtedly prompted the belief the quitclaim deed is unnecessary in Louisiana.⁶⁶

There are, however, justifications for the presence of the quitclaim deed in Louisiana. An examination of the codal structure of the revised Louisiana Civil Code articles on sales, effective January 1, 1995, may lead to the determination that new Article 2502⁶⁷ is to be utilized only to release an interest in property. However, a study of the history of this article reveals it is intended to operate as a means of conveyance. It provides a fourth type of conveyance; the conveyance of the grantor's present rights or interests in the property. This is different from a mere release; it is capable of transferring the property itself if the grantor is seized of the property at the time of the execution of the deed. A release does not transfer; it only prevents the grantor from challenging any title in which he has purportedly released his interest.

The application of Louisiana Civil Code article 1983, which requires all contracts be performed in good faith, helps elucidate the necessity of the quitclaim deed in Louisiana. If this article is properly observed, an exclusion of warranty in a deed purporting to convey property will be null if the seller is in bad faith at the time of the execution of the deed. Bad faith will exist even if the seller communicates to the buyer that he is not the owner,⁶⁸ and yet, the buyer still insists on the deed. Bad faith results because the seller purports to convey something he knowingly does not own.

However, a grantor of a quitclaim deed can execute such a deed under these same circumstances and not be deemed in bad faith. His limited liability, *i.e.*, complete non-warranty, is not voided. This dichotomy exists because the grantor of the quitclaim deed only purports to convey whatever present interests he may have in the property; he does not purport to convey the property itself. He is not purporting to sell something which he knowingly does not own.

This conveyance is analogous to the sale of a hope.⁶⁹ For example, if a civil or corporeal possessor who occupies land he knowingly does not own is approached by an individual who desires to obtain title and clear all claims against that property, the possessor cannot, in good faith, execute any type of deed that purports to convey the actual property, whether by warranty or not. He can, however, execute a quitclaim deed after stating he does not own the

65. New La. Civ. Code arts. 2502 (effective January 1, 1995) (governing the quitclaim deed) and 2503 (effective January 1, 1995) (governing the "at peril and risk" sale).

66. *Gordy*, *supra* note 8, at 544 (concluding the results achieved by the quitclaim deed can as effectively be reached through the use of Louisiana's "at peril and risk" sale).

67. This article is titled "Transfer of rights to a thing" and is a codal recognition of the quitclaim deed.

68. This is distinguishable from a communication by the grantor that he has a doubt as to his claim to the ownership of the property. This involves a certain and affirmative belief that he has no claim to the ownership of the property.

69. *Litvinoff & Romanach*, *supra* note 50, at 40 (stating it is the sale of the right to something uncertain to exist).

property. The quitclaim deed provides a form of conveyance which enables the grantee to quiet any possible claims the grantor may have to the property, while at the same time enabling him to acquire grantor's present interest in the property. Because of the inadequacy and disarray of the public records, a grantee may choose to purchase a quitclaim deed from a grantor, despite the grantor's insistence he has no ownership interest in the property. The quitclaim deed provides the grantee the opportunity to do so, while at the same time protecting the grantor from any invalidation of non-warranty due to his bad faith.⁷⁰

Though, when the seller is not in bad faith, the same result might be achieved by the use of a sale at the buyer's peril and risk, the quitclaim deed provides a manner of conveyance more consistent with the theory of "cause."⁷¹ A quitclaim deed allows individuals to express their true intentions in transacting for whatever interests the grantor may have to a certain described property, whereas a sale at the buyer's peril and risk openly purports to convey the entire property, while expressing doubt as to grantor's ownership interest. A quitclaim deed may be more appropriate than a sale at the buyer's peril and risk when the grantor, in good faith, doubts either the extent or the existence of his ownership interest. A quitclaim deed would express this doubt, whereas a conveyance that purports to convey the actual property would be a false statement of the parties' cause.

Despite the foregoing rationale, there is a more practical reason for the addition of the quitclaim deed as a fourth type of sale in Louisiana—the quitclaim deed is widely used in Louisiana by its practitioners and recognized by its courts. The drafters of Louisiana's laws have chosen to address this reality by adopting new Article 2502 to govern the use of the quitclaim deed. By doing so, the drafters have preserved the civilian concept of governance of general principles of law by a code. Though the jurisprudence addresses the matter, it is far more consistent with Louisiana's legal system to have a provision for this principle in the Louisiana Civil Code. The structure of a civil code causes articles within the code to effect the interpretation and meaning of other articles. Thus, the articles must be compatible and lead to consistent interpretations. The remaining sections will evaluate and discuss the compatibility of new Article 2502 with the other Civil Code articles.

B. Louisiana's Warranty Articles: Fitting in the Quitclaim Deed Article

Waterman followed the common-law jurisdictions when it stated that a conveyance by a quitclaim deed excludes any implication that the grantor has

70. Interview with Professor Saul Litvinoff, Reporter for the Louisiana Law Institute for the Proposed Louisiana Civil Code Revision of Sales, in Baton Rouge, La. (Oct. 13, 1993).

71. La. Civ. Code art. 1967.

any title or interest.⁷² This, in essence, states there is no warranty with a quitclaim deed. The codification apparently adopts this principle by providing the grantee of a conveyance by quitclaim deed is not entitled to a restitution of the price. This may, however, be inconsistent with Louisiana warranty because of the implied warranty present in this state. Recall there are three forms of Louisiana conveyances, other than the quitclaim deed, wherein implied warranty, and thus, restitution of price, can be avoided. They are the following: (1) a sale expressing non-warranty and containing the presence of knowledge by the vendee of the danger of eviction; (2) a sale stating it is at the buyer's peril and risk; and (3) a sale expressly providing there will be no restitution of the price.⁷³ The denial of restitution of price to the grantee of a quitclaim deed by operation of law apparently provides another situation wherein implied warranty is excluded. This is done, similar to a purchase at the buyer's peril and risk, without a determination of the buyer's knowledge of the danger of eviction.

As noted earlier, however, the mere use of the word "quitclaim" in the deed is insufficient alone to qualify the act as a quitclaim deed. A preliminary step to labeling a conveyance a quitclaim deed is the ascertainment of each party's intent in entering into the agreement. If the court determines the parties intended the effects of a quitclaim deed, it is also determining the vendee had knowledge of the danger of eviction, as uncertainty of title is one of the reasons for use of the quitclaim deed. The knowledge of the vendee needs to be examined to determine whether Louisiana's implied warranty has been excluded, i.e., whether the parties intended a quitclaim deed. If this is done in practice, the quitclaim deed in new Article 2502 may well conform to Louisiana's present warranty system, which only denies implied warranty when the buyer has knowledge of the danger of eviction or when the conveyance states "at buyer's peril and risk." However, if this is not practiced, this article has added a new form for excluding implied warranty by the use of magic words and without an examination of the buyer's knowledge of the danger of eviction.

Whether the quitclaim deed conforms to Louisiana's present warranty system or creates a new principle, the reason for the denial of use of the after-acquired title doctrine with the quitclaim deed is not based solely on a warranty/restitution of price analysis. This proposition is supported by the inclusion of express language, not found in the other conveyance articles, denying application of the after-acquired title doctrine to a conveyance by a quitclaim deed.⁷⁴ Following the common-law relationship of a quitclaim deed and the after-acquired title doctrine, *Waterman* stated the primary reason for not extending the doctrine of after-acquired title to a quitclaim deed: "[A] conveyance of that character transfers only the present interest of the vendor in the land and does not convey

72. *Waterman v. Tidewater Associated Oil Co.*, 213 La. 588, 603, 35 So. 2d 225, 230 (1947).

73. New La. Civ. Code art. 2503 (effective January 1, 1995).

74. "If the transferor acquires ownership of the thing after having transferred his rights to it, the after-acquired title of the transferor does not inure to the benefit of the transferee." New La. Civ. Code art. 2502 (effective January 1, 1995).

the property."⁷⁵ Therefore, what was purportedly conveyed—an interest—was in fact conveyed, and the vendee should not be entitled to something more than was bargained for, *i.e.*, an after-acquired title. A right was purchased and received, though it may not contain the right to the property. With a sale at the buyer's peril and risk, however, the buyer has not received what he purportedly purchased—the property, and he should receive any after-acquired title.

It is important to recall that the mere labeling of a conveyance is not conclusive.⁷⁶ A determination of the true form of the conveyance is necessary to determine the applicability of the after-acquired title doctrine.⁷⁷

C. Warranty of Vendor's Acts

1. Non-Quitclaim Deeds

"In all those cases the seller is liable for an eviction that is occasioned by his own act, and any agreement to the contrary is null."⁷⁸ "Warranty against the vendor's acts," another form of warranty against eviction, is a different type of warranty than the various forms of warranty of title previously discussed. The former can never be excluded, whereas the latter may be. This "warranty against the vendor's acts" is based upon the maxim: "*Quem de evictione tenet actio, eundem agentem repellit exceptio*," or "He who warrants cannot evict."⁷⁹ This has been interpreted to mean the vendor cannot evict his buyer by exercising an action in revindication or any other real action against him.⁸⁰ For example, if the vendor did not own the thing at the time of the sale, but he subsequently acquires ownership thereof by some means, or if he dies and the real owner of

75. *Waterman*, 213 La. at 611, 35 So. 2d at 233.

76. *Id.* at 603, 35 So. 2d at 230. See also *Armstrong v. Bates*, 61 So. 2d 466 (La. App. 1st Cir. 1952).

77. See *supra* text accompanying notes 34-51.

78. New La. Civ. Code art. 2503 (effective January 1, 1995). This article provides in full: The warranty against eviction is implied in every sale. Nevertheless, the parties may agree to increase or to limit the warranty. They may also agree to an exclusion of the warranty, but even in that case the seller must return the price to the buyer if eviction occurs, unless it is clear that the buyer was aware of the danger of eviction, or the buyer has declared that he was buying at his peril and risk, or the seller's obligation of returning the price has been expressly excluded.

In all those cases the seller is liable for an eviction that is occasioned by his own act, and any agreement to the contrary is null.

The buyer is subrogated to the rights in warranty of the seller against other persons, even when the warranty is excluded.

See also La. Civ. Code art. 2504 (1870): "Although it be agreed that the seller is not subject to warranty, he is, however, accountable for what results from his personal act; and any contrary agreement is void."

79. 2 Marcel Planiol & George Ripert, *Treatise on the Civil Law* § 1473, at 825 (Louisiana State Law Institute trans., West 1959) (1939).

80. *Id.*

the thing is his successor, the "warranty against the vendor's acts" will prevent the vendor or his successor, as the case may be, from exercising a real action against the buyer.⁸¹

It has been stated that the doctrine of after-acquired title developed as a method of enforcing the vendor's warranty against eviction, and, therefore, the doctrine should only apply when the vendee would be entitled to a restitution of price.⁸² The court in *Freeman v. Turner*⁸³ stated this principle in the negative:

Since the presence of a non-warranty deed, coupled either with the vendee's knowledge of the danger of eviction or a stipulation that the vendee purchases at his peril and risk, will relieve the vendor of liability for restitution of the price, the doctrine of after-acquired title should not apply to either situation.⁸⁴

This general statement overlooks the principle of warranty against eviction from the vendor's own acts, which should require the application of the after-acquired title doctrine. When the vendor has purported to transfer the property, "warranty against the vendor's acts" should prevent the vendor or his heirs from challenging the title of his vendee or his vendee's assigns, regardless of the type of warranty of title present.⁸⁵ Additionally, it should also prevent the vendor's assigns from challenging the title. The vendor purported to convey the title to the vendee, therefore, he should not be able to obtain, nor sell, that title to the detriment of his vendee, and any such act should be null.⁸⁶ If the vendor subsequently acquires the thing he previously purported to sell, the application of the after-acquired title doctrine would serve to uphold the "warranty against the vendor's acts." It should be applied to all deeds that purport to convey the property, warranty and non-warranty deeds alike. By passing title to the buyer, the vendor himself would be prevented from disturbing the buyer's possession, or from disturbing the buyer's possession by conveying to some third party who may challenge the buyer's title.

81. *Id.*

82. *Gordy*, *supra* note 8, at 541 (citing *Childs v. United States*, 5 F.2d 816 (5th Cir. 1925), and *Avery v. Allain*, 11 Rob. 436 (La. 1845)).

83. 373 So. 2d 732 (La. App. 2d Cir. 1979).

84. *Id.* at 734.

85. See Planiol & Ripert, *supra* note 79, §§ 1471-1472, at 824. Section 1471 provides: "The vendor, having engaged himself by the sale to procure the enjoyment of the thing for the buyer and to give him title, can do nothing in contravention of this obligation, either by disturbing the buyer in his possession, or by trying to take the thing away." Section 1472 provides in pertinent part: "This is so even in case of a simple disturbance in fact, which is not actionable if committed by a third person."

86. See *supra* notes 79-81 and accompanying text. The *Waterman* court also added support to this theory by stating that "it might be argued that the vendor would be precluded from subsequently acquiring an adverse title to the prejudice of the vendee under Article 2504 of the Civil Code." *Waterman v. Tidewater Associated Oil Co.*, 213 La. 588, 611, 35 So. 2d 225, 233 (1947).

is this the int.
issue of what is
received
at?

2. Quitclaim Deeds

Does the warranty against the vendor's (grantor's) acts apply to a quitclaim deed? In the revised sales articles, "warranty against the vendor's acts" is contained in the same article, revised Article 2503, as the other warranties against eviction, i.e., warranties of title, applicable to non-quitclaim deed conveyances.⁸⁷ The article governing quitclaim deeds, revised Article 2502, precedes this article, and contains no provision for "warranty against the vendor's acts."⁸⁸ Under the pre-revisionary structure, the "warranty against the vendor's acts" was in an article by itself,⁸⁹ which preceded the article governing the application and exclusion of warranty of title against eviction.⁹⁰ The use of strict codal construction leads one to conclude that by placing the "warranty against the vendor's acts" in the same revisionary article with the other warranty provisions for non-quitclaim deed conveyances, and at the same time providing no such "warranty against the vendor's acts" in the revisionary article governing quitclaim deeds, such warranty does not apply to a sale by quitclaim deed.

Prior to the adoption of the revised sales articles, however, a few courts did apply the "warranty against the vendor's acts" to a sale by quitclaim deed. The court in *Cattle Farms, Inc. v. Abercrombie*⁹¹ stated that pre-revisionary Article 2504 (revised Article 2503) prevented the vendor or his heirs from asserting any interest adverse to the vendee or his assigns.⁹² *Rapp v. Lowry*,⁹³ involving a conveyance by a tax deed, stated that an exclusion of warranty preventing restitution of price does not release the grantor of a quitclaim deed from responsibility for his own disturbances. Both *Cattle Farms, Inc.* and *Rapp* involved litigation wherein the original grantor or his heirs, and not assigns of the grantor, were parties. This is a distinguishing factor from *Waterman*, where the parties to the suit were successors at the end of an extensive chain of title, and were not heirs of the original parties. Thus, despite *Waterman's* disapproval of *Rapp*, prior to the revision of the sales articles it could have been argued that the after-acquired title doctrine was applicable to a quitclaim deed to enforce the "warranty against the vendor's acts" when the dispute involved the original grantor or his heirs. This would have suggested the holding of *Waterman*—that the doctrine of after-acquired title does not apply to a quitclaim deed—was overly broad. However, the codal structure of the revised sales articles refutes any implication that the "warranty against the vendor's acts" or the after-acquired title doctrine applies to a quitclaim deed.

87. New La. Civ. Code art. 2503 (effective January 1, 1995).

88. New La. Civ. Code art. 2502 (effective January 1, 1995).

89. La. Civ. Code art. 2504.

90. La. Civ. Code art. 2505.

91. 211 So. 2d 354, 362 (La. App. 4th Cir. 1968).

92. See also *Rodgers v. CNG Producing Co.*, 528 So. 2d 786 (La. App. 3d Cir.) (Yelverton, J., dissenting), writ denied, 532 So. 2d 180 (1988).

93. 30 La. Ann. 1272 (1878).

The application of the after-acquired title doctrine to a quitclaim deed is a contradiction: the former implies the conveyance includes future acquisitions, whereas the latter conveys only present interests. Because of this contradiction, the use of the after-acquired title doctrine to enforce the obligation of "warranty against the vendor's acts," as was suggested with the other types of conveyances, is not proper, nor is it necessary, under conveyances by a quitclaim deed. The "warranty against the vendor's acts" should not apply to a quitclaim deed as long as both parties were in good faith and in agreement that only the vendor's interests in the property at the time of the act were being transferred. It should not prevent the grantor from acquiring and maintaining or conveying a subsequently acquired interest, as the doctrine of after-acquired title would so preclude.

With a quitclaim deed, the grantor conveys to his grantee his present interest in the property at the time of the conveyance. When the grantor later conveys a subsequently acquired title, in which he previously had no interest, to a third party, he is conveying something different than he previously conveyed to the grantee of the quitclaim deed. Thus, it is acceptable for the grantor of a quitclaim deed to subsequently acquire an interest in the same property he had previously, in good faith, quitclaimed. In the final analysis, it is submitted that the denial of application of the after-acquired title doctrine to a quitclaim deed, as stated in new Article 2502, is consistent with the article providing for the warranty of the vendor's acts.

D. Warranty of Assignment of a Right: Existence of the Right

New Louisiana Civil Code article 2646 states that "[t]he assignor of a right warrants its existence at the time of the assignment." The predecessors to this article⁹⁴ stated that "[h]e who sells a credit or an incorporeal right, warrants its existence at the time of the transfer though no warranty be mentioned in the deed." This indicates an implied warranty imposed by this article.⁹⁵ The comments to the revised article indicate the new article does not change the law,⁹⁶ thus, this implied warranty is present in the revised article as well. Additionally, the Louisiana Supreme Court has approved the doctrine of implied warranty in conveyances of incorporeal rights.⁹⁷ Therefore, implied warranty under new Article 2646 is recognized in Louisiana.

Does this implied warranty of new Article 2646 apply to quitclaim deeds? New Article 2502 is titled "Transfer of rights to a thing," and governs the use of the quitclaim deed. The comments to the article state that it is an assignment

94. La. Civ. Code arts. 2646 and 2647.

95. See *Deas v. Lane*, 202 La. 933, 13 So. 2d 270 (1943); *Lemoine v. City of Shreveport*, 184 La. 221, 165 So. 873 (1936); *Lockwood Oil Co. v. Atkins*, 158 La. 610, 104 So. 386 (1925).

96. New La. Civ. Code art. 2646 cmt. (a) (effective January 1, 1995).

97. *Tomlinson v. Thurmon*, 189 La. 959, 967, 181 So. 458, 460-61 (1938).

of rights *without warranty*.⁹⁸ Thus, revised Article 2646, warranty of assignment of rights, would not apply to a quitclaim deed, due to the limitation of no warranty imposed by the comment to revised Article 2502.

This limitation is well-founded. Warranty against eviction, express and implied, is apparently avoided by the use of the quitclaim deed,⁹⁹ and therefore, the implied warranty of revised Article 2646 would also be avoided for the same reasons—an awareness by both parties that the grantor may not have title or rights to the property. The court in *Tomlinson v. Thurmon* stated:

[A]rticle 2505 [new Article 2503] which declares that even in case of the stipulation of no warranty, the seller, in case of eviction, is liable to restitution of the price, unless the buyer was aware, at the time of the sale of the danger of eviction, and purchased at his peril and risk. Article 2505 applies not only to the sale of corporeal things, but also to the sale of debts, or incorporeal rights [new Article 2646].¹⁰⁰

Therefore, warranty can be excluded in an assignment of a right just as it can be with conveyances of property. This warranty is excluded by the use of a quitclaim deed.

Accordingly, the presence of provisions for the quitclaim deed in the Civil Code is not in conflict with the warranty of assignment of rights. The implied warranty imposed on an assignment of a right is not operative against a quitclaim deed; therefore, it does not affect the application of the after-acquired title doctrine under a quitclaim deed.

IV. CONCLUSION

New Civil Code article 2502, effective January 1, 1995, is different from a non-warranty deed or a deed at the buyer's peril and risk. The former purports to sell the grantor's present rights in the property, while the latter two purport to convey the property itself. Therefore, this article provides a fourth type of conveyance in Louisiana. The key to determining the type of conveyance is in the language of the deed, which indicates the intent of the parties. If it is determined that the parties intended to convey and receive only the rights to the property, a quitclaim deed is present; however, if the parties intended to convey and receive the property itself, the deed is one of the other forms of conveyance.

The quitclaim deed fits into Louisiana's warranty system without conflict. Two alternative suggestions are advanced in support of this conclusion. First, the determination that the deed is a quitclaim involves the ascertainment that the grantee has knowledge of the danger of eviction. Therefore, it is consistent with the warranty principle to deny price restitution when the grantee has knowledge

98. New La. Civ. Code art. 2502 cmt. (c) (effective January 1, 1995).

99. See *supra* text accompanying notes 72-74 and 87-93.

100. *Tomlinson*, 189 La. at 968-69, 181 So. at 461.

of the danger of eviction. Second, the use of the quitclaim deed provides another form of express language for denying restitution of price, like the "at peril and risk" deed, without an examination of the grantee's knowledge. The first approach is more likely the correct one, and more consistent with the present codal warranty system.

The denial of the application of the after-acquired title doctrine to a quitclaim deed is consistent with the principle of a quitclaim deed and with the articles of Louisiana's Civil Code.¹⁰¹ The primary reason for the denial is that the after-acquired title doctrine requires an implication that a future interest is conveyed, whereas the very nature of a quitclaim deed denies such an implication.

The courts have also advanced a warranty against eviction analysis in denying application of the after-acquired title doctrine, analogizing a quitclaim deed to an "at peril and risk" deed, and denying after-acquired title because restitution of price is denied.¹⁰¹ Yet, in light of the "warranty against the vendor's acts," application of the after-acquired title doctrine should extend to all conveyances where the vendor purports to convey the property itself, regardless of the right to restitution of price. After-acquired title, however, should not apply to a quitclaim deed because the grantor conveyed what he purported to convey—a right.

Finally, the implied warranty of the existence of the right transferred (revised Article 2646) is avoided by the use of a quitclaim deed. Thus, new Article 2646 has no effect on new Article 2502.

In the final analysis, Article 2502, effective January 1, 1995, conforms to the principles set forth in the cases it purports to codify, and with the surrounding Louisiana Civil Code articles. Thus, it is a true codification. The piece fits.

Gregory Michael Anding

101. *Waterman v. Tidewater Associated Oil Co.*, 213 La. 588, 611, 35 So. 2d 225, 233 (1947); *Gordy*, *supra* note 8, at 541.