

A PRIMER ON NATURAL AND JURIDICAL PERSONS IN LOUISIANA

Monica Hof Wallace*

This Article is the first in a series of primers on Louisiana Family Law. The Louisiana Civil Code of 1870, as amended to date, operates as the primary source of law, with other ancillary statutes and codes on particular subject matters. The law of personality begins Book I of the Civil Code in pure civilian tradition—the orderly introduction into being as either a natural or juridical person. As unique as its heritage, Louisiana’s laws on personality outline what some may view as elementary, but necessarily form the foundation of personhood from which all rights and duties follow.

I. INTRODUCTION	407
II. NATURAL PERSONS	408
A. COMMENCEMENT OF NATURAL PERSONALITY	409
B. TERMINATION OF NATURAL PERSONALITY	412
C. EFFECTS OF NATURAL PERSONALITY ON UNBORN CHILDREN	415
III. JURIDICAL PERSONS.....	418
IV. HUMAN EMBRYO STATUTE	419

I. INTRODUCTION

Book I of the Louisiana Civil Code begins by defining two types of persons: natural and juridical.¹ In their simplest form, natural persons are human beings and juridical persons are entities.² A “person,” in its technical legal sense, signifies a

* Dean Marcel Garsaud, Jr. Distinguished Professor; Interim Director, Advocacy Center, Loyola University New Orleans College of Law.

1. LA. CIV. CODE ANN. art. 24 (2018).

2. *Id.* (“A natural person is a human being. A juridical person is an entity to which the law attributes personality, such as a corporation or a partnership.”).

subject of rights and duties. Prior to the comprehensive revision in 1987, the Civil Code distinguished persons based on their status, with corresponding rights and responsibilities based on one's status as a woman, a slave, or an illegitimate, just to name a few.³ Today, Title I of Book I has been simplified and defines persons as either natural or juridical, with a distinction made for natural persons who reach the age of majority.⁴ Although the law of personality is descriptive and does not invoke traditional legal challenges, it is noteworthy because it generates rights, responsibilities, and abilities, either actively or passively, to enjoy rights and engage in obligations.

II. NATURAL PERSONS

Natural personality begins at live birth and ends at death.⁵ Personality can have retroactive effect from the moment of conception if the unborn child is later born alive.⁶ Natural personality begins and ends at definable moments for most human beings—conception and death. However, because children are conceived outside of the womb, and because people disappear or are kept alive by life-sustaining measures, the law must carefully define birth and death.

The importance of natural personality should not be understated. “Natural persons enjoy [the] general legal capacity to have rights and duties.”⁷ Natural personality, however, does not automatically confer capacity to make juridical acts. To make binding juridical acts, one must be emancipated⁸ or reach the age of majority, which in Louisiana is the age of eighteen, assuming the major is not incapacitated for other reasons, such as interdiction or continuing tutorship.⁹

3. See generally LA. CIV. CODE bk. I, tit. I, chs. 1–2, arts. 1–19 (1808). Persons were distinguished in at least thirteen different ways and one's status affected one's rights and obligations. See Jeanne Louise Carriere, *From Status to Person in Book I, Title 1 of the Civil Code*, 73 TUL. L. REV. 1263 (1999), for an excellent discussion of the meaning and history of personality.

4. LA. CIV. CODE ANN. arts. 24, 27–29 (2018) (natural persons who reach the age of eighteen have the capacity to make juridical acts, while all natural persons, no matter the age, have general legal capacity).

5. LA. CIV. CODE ANN. art. 25 (2018).

6. LA. CIV. CODE ANN. art. 26 (2018).

7. LA. CIV. CODE ANN. art. 27 (2018).

8. See LA. CIV. CODE ANN. bk. I, tit. VIII, ch. 2 (2018), for a discussion on emancipation.

9. LA. CIV. CODE ANN. arts. 28–29 (2018). Special legislation exists on a minor's ability to contract marriage, see LA. CHILD. CODE ANN. art. 1545 (2018), and a

A. COMMENCEMENT OF NATURAL PERSONALITY

When a child is born alive, natural personality exists. A child that is stillborn has no natural personality, “except for . . . actions resulting from its wrongful death.”¹⁰ Live birth is necessary for natural personality to commence, but the child need not be capable of living on his or her own.¹¹ Once live birth occurs, the law provides that the child possessed natural personality from the moment of conception.¹² The moment of conception, however, is less clear.

Prior to January 1, 1988, conception “in the mother’s womb” was necessary for natural personality.¹³ Act 125 of 1987 eliminated that language and now article 26 provides that “an unborn child shall be considered a natural person . . . from the moment of conception.”¹⁴ Comment (a) to article 26 reflects that the provision is new but does not change the law.¹⁵ Comment (b), however, suggests a change in the law when it provides that “[a]n ‘unborn child’ may be a person even if it is in a test tube (rather than its mother’s womb).”¹⁶ Removing the language “in the mother’s womb” and replacing it with the term “conception” certainly connotes a change in the law given the timing of the revision—when in vitro fertilization was gaining wider use.¹⁷

minor’s ability to make donations *inter vivos* and *mortis causa*, see LA. CIV. CODE ANN. art. 1476 (2018).

10. LA. CIV. CODE ANN. art. 26 (2018). The 1987 revision codified this jurisprudential rule. See *Danos v. St. Pierre*, 402 So. 2d 633 (La. 1981); LA. CIV. CODE ANN. art. 26 cmt. (d) (rev. 1987).

11. See *generally In re P.V.W.*, 424 So. 2d 1015, 1016 (La. 1982) (finding that “a newborn infant whose brain was irreversibly damaged at birth and who was in a comatose state” was born alive and had natural personality). In the Digest of 1808, viability was a prerequisite for natural personality. See LA. CIV. CODE art. 6 (1808). The Civil Code of 1825 contained no prerequisite of viability, providing rather: “When the child is born alive, though it may have been extracted by force from its mother’s womb, and may have lived but an instant, provided the fact of its living be ascertained, it inherits the successions opened in its favor since its conception, and transmits them accordingly.” LA. CIV. CODE art. 950 (1825); see also LA. CIV. CODE art. 956 (1870).

12. LA. CIV. CODE ANN. art. 26 (2018).

13. LA. CIV. CODE ANN. art. 26 cmt. (a) (2018); LA. CIV. CODE art. 29 (1870).

14. LA. CIV. CODE ANN. art. 26 (2018).

15. LA. CIV. CODE ANN. art. 26 cmt. (a) (2018).

16. LA. CIV. CODE ANN. art. 26 cmt. (b) (2018). The meaning of the word “conception” likewise affects article 940, in chapter 5 entitled “Loss of Succession Rights,” which provides that “an unborn child conceived at the death of the decedent and thereafter born alive shall be considered to exist at the death of the decedent.” LA. CIV. CODE ANN. art. 940 (2018).

17. The first in vitro babies were born in Louisiana in 1985. Maki Somosot,

Whether natural personality begins in the test tube or in the mother's womb is further complicated by the provisions of the Human Embryo Statute. The Human Embryo Statute, contained in the Louisiana Revised Statutes and passed one year after the revision to article 26, provides that an in vitro fertilized ovum has juridical personality until it is implanted in the womb, "or at any other time when rights attach to an unborn child in accordance with the law."¹⁸ When reading comment (b) to article 26 in conjunction with § 123 of the Human Embryo Statute, the status of an in vitro fertilized human ovum as a natural or juridical person is unclear. Although an in vitro fertilized ovum has juridical capacity (the effect of which may give the in vitro ovum sufficient rights), the existence of natural personality before it is implanted in the womb is debatable.¹⁹

Other legislation, found in various sections of the Human Embryo Statute and in the Civil Code, provides some answers on the ability of unborn children to receive donations. Section 133 of the Human Embryo Statute provides that, "Inheritance rights will not flow to the in vitro fertilized ovum as a juridical person, unless the in vitro fertilized ovum develops into an unborn child that is born in a live birth, or at any other time when rights attach to an unborn child in accordance with law."²⁰ The negative inference suggests that inheritance rights *will flow* to an in vitro fertilized ovum once it is determined that the child was later born alive. In contrast, article 1474 of the Civil Code provides that to receive a donation *inter vivos*, the "unborn child must be in utero at the time the donation is made," and to receive a donation *mortis causa*, the "unborn child must be in utero at the time of the death of the testator."²¹ The right to receive the donations, in

State's First Test-Tube Triplets Celebrate 30th Birthday, HOUMA TODAY (July 29, 2015, 10:30 PM), <http://www.houmatoday.com/article/DA/20150729/News/608084917/HC/>.

18. LA. STAT. ANN. § 9:123 (2018).

19. Other sections of the Human Embryo Statute have references to the in vitro fertilized ovum as both a juridical person and a natural person. *Compare* LA. STAT. ANN. § 9:125 (2018) ("An in vitro fertilized ovum as a juridical person is recognized as a separate entity apart from the medical facility or clinic where it is housed or stored."), *and* LA. STAT. ANN. § 9:129 (2018) ("A viable in vitro fertilized ovum is a juridical person which shall not be intentionally destroyed . . ."), *with* LA. STAT. ANN. § 9:126 (2018) ("An in vitro fertilized human ovum is a biological human being which is not property of the physician which acts as an agent of fertilization, or the facility . . .").

20. LA. STAT. ANN. § 9:133 (2018).

21. LA. CIV. CODE ANN. art. 1474 (2018).

both cases, occurs “only if the child is born alive.”²²

According to the revision comment to article 1474, if any conflict exists between article 1474 and § 133 of the Human Embryo Statute, article 1474 should prevail.²³ Therefore, an in vitro fertilized ovum, if not yet implanted in the mother’s womb, has no capacity to receive a donation *inter vivos* or *mortis causa*. The in vitro fertilized ovum is classified as a juridical person but will have no inheritance rights until and unless the ovum is implanted in the mother’s womb. So, if the donor dies and leaves a will naming his “nieces and nephews” as legatees and one of his nieces is fertilized in vitro, but not yet placed in the mother’s womb, that child, if later born alive, has no capacity to receive from the donor. If the unborn child had been placed in the mother’s womb at the time of the donor’s death and was later born alive, she would have the capacity to receive because once implanted and later born alive, the in vitro fertilized ovum enjoys capacity to receive.²⁴

In 2001, the Louisiana legislature expanded the inheritance rights of a certain group of unborn children. With the enactment of Louisiana Revised Statutes § 9:391, children who are conceived *after* the death of a parent and are later born alive can have rights to inherit from the deceased parent even though the child had no personality—either natural or juridical—at the time of the parent’s death.²⁵ The statute permits a parent to authorize in writing the use of his or her gametes by the surviving spouse for the purpose of conceiving a child after his or her death.²⁶ In such a case, the child will be considered the child of the deceased parent as long as the child is born alive to the surviving spouse within three years of the death of the decedent.²⁷ Even though the child was not conceived, either in utero or in vitro, at the time

22. LA. CIV. CODE ANN. art. 1474 (2018).

23. LA. CIV. CODE ANN. art. 1474 cmt. (2018).

24. *See Tyler v. Lewis*, 78 So. 477 (La. 1918) (The court allowed a grandchild who was in her mother’s womb at the death of the grandfather to take pursuant to a testament that left “all [to] my grandchildren” because the child was born one hundred seventy-two days after her grandfather’s death and natural personality existed when the child was in utero.); *see also* KATHRYN VENTURATOS LORIO, SUCCESSIONS & DONATIONS § 9:2, in 10 LOUISIANA CIVIL LAW TREATISE 264–72 (2d ed. 2009).

25. LA. STAT. ANN. § 9:391.1 (2018). *See* John Randall Trahan, *Successions & Donations*, 64 LA. L. REV. 315, 317–22 (2004), for a discussion of the original bill and its amendments.

26. LA. STAT. ANN. § 9:391.1(A) (2018).

27. LA. STAT. ANN. § 9:391.1 (2018).

of the parent's death, specific legislation allows the child to have all rights as a natural person and child of the deceased parent.²⁸

Although Louisiana has been progressive in recognizing the rights of in vitro fertilized ovum as juridical persons, with legislation now elevating the rights of posthumously conceived children, the law creates a potential problem for children who are conceived in vitro prior to a parent's death, but not implanted into the womb. For example, assume a couple, with the aid of a fertility clinic, fertilizes the wife's human ovum and places the embryos in a state of cryopreservation. If the husband dies before the embryos are implanted into the wife, the child later born to the wife may not have capacity to receive property from the deceased father, because at the time of the father's death, the child was not yet in utero.²⁹ If the couple had merely stored the husband's gametes, and not yet fertilized the ovum, the statute on posthumously conceived children may have applied, giving the child rights to inherit from the deceased father.³⁰

B. TERMINATION OF NATURAL PERSONALITY

Termination of natural personality occurs at death, which can be established in one of two ways: (1) a doctor's certification of death; or (2) a judicial declaration of death.³¹ A doctor may certify death based on the statutory provision found in Louisiana Revised Statutes § 9:111, in which a person is considered dead if, in the opinion of a licensed physician, "the person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions."³² If, however, artificial means of support prevent a determination that respiratory and circulatory functions have ceased, then death occurs at "irreversible total cessation of brain function."³³ Death occurs "when the relevant

28. The revised statute specifically exempts any law to the contrary, which would include Civil Code article 1474. See John Randall Trahan, *Successions & Donations*, 64 LA. L. REV. 315 (2004), for a discussion of the statute.

29. See LA. CIV. CODE ANN. art. 1474 (2018) ("To be capable of receiving by donation *mortis causa*, an unborn child must be in utero at the time of the death of the testator.").

30. See LA. STAT. ANN. § 9:391.1 (2018).

31. See LA. STAT. ANN. § 9:111(A) (2018) (doctor's certification of death); LA. CIV. CODE ANN. arts. 30, 54 (2018) & LA. STAT. ANN. § 9:1441 (2018) (judicial declarations of death).

32. LA. STAT. ANN. § 9:111(A) (2018). The physician must be licensed in the state of Louisiana and must base his or her opinion on "ordinary standards of approved medical practice." *Id.*

33. *Id.* A pronouncement of death by the coroner may be based on observations

functions [have] ceased.”³⁴

In circumstances when a person has disappeared and no body has been found, a doctor’s certification of death is unavailable. The law therefore permits a court to issue a judicial declaration of death in three instances. First, under Louisiana Civil Code article 30, when a person has disappeared under circumstances when “death seems certain,” a judge can issue a declaration of death even though no body has been found.³⁵ In the only reported case to rely on article 30,³⁶ the court judicially declared the death of a resident of a mental health facility for purposes of a wrongful death claim.³⁷ The thirty-three-year resident of the facility went missing due to lack of adequate supervision.³⁸ He was completely dependent on the facility and on the administration of anti-seizure medication, he was legally blind, and he had the intelligence of a three-year-old.³⁹ The court applied the statutory presumption of death, noting the inherent inconsistency in having to prove that “death seems certain” by a preponderance of the evidence, but found that circumstantial evidence negated any hypothesis other than death.⁴⁰ The article 30 “death seems certain” standard would also be appropriate in a mass casualty situation, such as a plane crash or bombing, when proof is available that the individual was at the location where the casualty took place.⁴¹

Second, under the law of absent persons, a court can judicially declare the death of an absent person after the passage of five years.⁴² “Absent person” is a legal term of art that

and information from other medical personnel on the scene who have firsthand knowledge of the condition of the deceased. LA. STAT. ANN. § 9:111(B) (2018).

34. LA. STAT. ANN. § 9:111(A) (2018).

35. LA. CIV. CODE ANN. art. 30 (2018). Death must be proved by a preponderance of the evidence. LA. CIV. CODE ANN. art. 30 cmt. (b) (2018).

36. One other case mentioned article 30 in the context of stowaways on a ship who were allegedly thrown overboard, but the court did not apply the statutory presumption of death. *See Thornhill v. Otto Candies Inc.*, No. CIV. A. 94-1479, 1994 WL 532591, *1 n.3 (E.D. La. Sept. 28, 1994).

37. *See Jones v. State ex rel. Dep’t. of Health & Hosps.*, 95-1130 (La. App. 3 Cir. 3/27/96); 671 So. 2d 1074.

38. *Id.* at p. 2; 671 So. 2d at 1076.

39. *Id.*

40. *Id.* at p. 7; 671 So. 2d at 1078.

41. *See, e.g., Chiaramonte v. Chiaramonte*, 435 N.Y.S.2d 523, 525 (1981) (“[T]he general rule that death is presumed to occur at the end of an unexplained absence of five years does not apply where the absentee met his death in a perilous occurrence. In such a case, death is presumed to have occurred on the date of the accident.”).

42. LA. CIV. CODE ANN. art. 54 (2018). “If the absence began between August 26,

describes a person “who has no representative in this state and whose whereabouts are not known and cannot be ascertained by diligent effort.”⁴³ After the passage of five years, an interested party can petition the court to have the absent person declared dead, and the court will judicially declare the date of death.⁴⁴

The last instance in which a court can judicially declare death is based on a presumption of death for military personnel.⁴⁵ If a person is on active duty in the armed forces and has been reported missing under circumstances where the armed service accepts the presumption of death, Louisiana law likewise presumes death and a judicial declaration of death is available.⁴⁶

Termination of natural personality results in the opening of the deceased’s succession and the transmission of his estate to his heirs.⁴⁷ The decedent’s marriage is dissolved⁴⁸ and any community property regime in existence is terminated.⁴⁹ The decedent loses various other rights, including the right to custody, the right to be a tutor, and the right to make or receive donations *inter vivos* or *mortis causa*. Unless the right is strictly personal, the decedent’s heirs or representatives will have the ability to bring and defend actions, enforce or perform obligations, and transfer or receive property on behalf of the decedent’s estate.

For example, in Louisiana, after termination of natural personality, an individual is no longer a “patient” for purposes of a medical malpractice action. In *Gayden v. Tenet Healthsystem Memorial Medical Center, Inc.*, the decedent’s surviving family members could not bring a malpractice suit against a hospital that allegedly failed to properly refrigerate and preserve the patient’s body after death.⁵⁰ The court found that natural

2005, and September 30, 2005, and was related to Hurricane Katrina or Rita, the absent person” can be declared dead “after the passage of two years” as long as the absent person is not currently charged with a felony offense. *Id.*

43. LA. CIV. CODE ANN. art. 47 (2018).

44. LA. CIV. CODE ANN. art. 54 (2018). The law of absent persons contains a comprehensive scheme to deal with the succession and property rights of the absent person. See LA. CIV. CODE ANN. bk. I, tit. III (2018), for the rules on absent persons.

45. LA. STAT. ANN. § 9:1441 (2018).

46. *Id.*

47. LA. CIV. CODE ANN. arts. 871, 934 (2018).

48. LA. CIV. CODE ANN. art. 101 (2018).

49. LA. CIV. CODE ANN. art. 2356 (2018).

50. *Gayden v. Tenet Healthsystem Mem’l Med. Ctr., Inc.*, 2004-0807 (La. App. 4 Cir. 12/15/04); 891 So. 2d 734.

personality ceased at death.⁵¹

Additionally, after the termination of natural personality, the decedent can no longer be a proper party in litigation. In *Rainey v. Entergy Gulf States, Inc.*, the court concluded that any judgment rendered for or against a dead person was a nullity, so it was not permitted to render a decision until the proper plaintiffs were substituted for the decedent.⁵² In the personal injury action on behalf of the decedent against her former employer, the court found that the decedent's children were the proper plaintiffs.⁵³ When the decedent died, her right and her action to enforce an obligation against her former employer transmitted directly to her children.⁵⁴

C. EFFECTS OF NATURAL PERSONALITY ON UNBORN CHILDREN

For children born alive, natural personality commences at the moment of conception, entitling the child to legal rights and duties, including the right of inheritance,⁵⁵ and the right to bring claims under the worker's compensation laws⁵⁶ and social security laws.⁵⁷ In addition, the child born alive may bring claims in tort for prenatal injuries that caused damage to the child⁵⁸ or for the personal injuries of the parent.⁵⁹ Because natural personality commences only when a child is born alive, whether an action exists to protect a stillborn child has been the subject of controversy. For personal actions in tort and property actions for support, the Louisiana Supreme Court has provided much needed guidance.

51. *Gayden v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 2004-0807, p. 5 (La. App. 4 Cir. 12/15/04); 891 So. 2d 734, 736; *see also* LA. CIV. CODE ANN. art. 25 (2018).

52. *Rainey v. Entergy Gulf States, Inc.*, 2001-2414 (La. App. 1 Cir. 6/25/04); 885 So. 2d 1193.

53. *Id.* at p. 14; 885 So. 2d at 1203-04.

54. *Id.* at pp. 13-14; 885 So. 2d at 1203.

55. LA. CIV. CODE ANN. arts. 940, 1474 (2018); *see also* *Tyler v. Lewis*, 78 So. 477 (La. 1918) (The court allowed a grandchild who was in her mother's womb at the death of the grandfather to take pursuant to a testament that left "all [to] my grandchildren" because the child was born one hundred seventy-two days after her grandfather's death and natural personality existed when the child was in utero.).

56. *See Eason v. Alexander Shipyards*, 47 So. 2d 114, 118 (La. Ct. App. 1950).

57. *See* LA. STAT. ANN. § 9:391.1 cmt. (2018); *see also* *Astrue v. Capato ex rel. B.N.C.*, 566 U.S. 541 (2012).

58. *See* *Cooper v. Blanck*, 39 So. 2d 352 (La. Ct. App. 1923); *Vicknair v. Hibernia Bldg. Corp.*, 468 So. 2d 695 (La. Ct. App. 4 Cir. 1985); *Bunch v. Mercy Hosp.*, 404 So. 2d 520 (La. Ct. App. 4 Cir. 1981); *see also* *Vincent R. Johnson, Tort Liability for Prenatal Injury*, 24 TUL. L. REV. 435 (1950).

59. *See* *Badie v. Columbia Brewing Co.*, 77 So. 768 (La. 1918).

Parents of an unborn child who is stillborn can sue for the child's wrongful death, but not for the child's survival action or for damages based on bystander mental anguish. In 1981, in *Danos v. St. Pierre*, the Louisiana Supreme Court concluded that article 2315 of the Civil Code permits recovery for the wrongful death of a child even if the child never enjoys natural personality.⁶⁰ Article 26 of the Civil Code was later enacted to codify this jurisprudential rule.⁶¹ Then, in *Wartelle v. Women's & Children's Hospital, Inc.*, parents of a stillborn child sued not only for wrongful death, but for survival and bystander mental anguish due to the hospital's failure to monitor the child's fetal heart tones.⁶² The trial court awarded the parents damages based on the child's wrongful death, but dismissed the survival action and bystander claims because the child was not born alive.⁶³ The Louisiana Supreme Court affirmed.⁶⁴

The court examined article 26 of the Civil Code, which specifically provides that an unborn child is a natural person "for whatever relates to its interests from the moment of conception" if the child is born alive.⁶⁵ The only exception to the live birth requirement is an action resulting from the child's wrongful death.⁶⁶ The court was faced with whether this exception could extend to survival and bystander causes of action. In both the survival and bystander tort statutes, the victim is described as a "person," and because the child was not born alive, it did not acquire natural personality.⁶⁷ Because the unborn child had no rights, the court concluded that it could not transmit any rights.⁶⁸ The majority opinion was met with a strong dissent, authored by Justice Lemmon, who argued that the live birth exception for

60. *Danos v. St. Pierre*, 402 So. 2d 633, 638 (La. 1981).

61. LA. CIV. CODE ANN. art. 26 (2018) (added by Act 125 of the 1987 Regular Legislative Session).

62. *Wartelle v. Women's & Children's Hosp., Inc.*, 97-0744 (La. 12/02/97); 704 So. 2d 778.

63. *Id.*

64. *Id.*

65. LA. CIV. CODE ANN. art. 26 (2018).

66. LA. CIV. CODE ANN. art. 26 cmt. (d) (2018).

67. *See Wartelle*, 97-0744, pp. 3, 11; 704 So. 2d at 780, 784; LA. CIV. CODE ANN. art. 2315.1 (2018) (survival action) ("If a person who has been injured by an offense or quasi offense dies . . ."); *see also* LA. CIV. CODE ANN. art. 2315.6 (2018) (bystander mental anguish) ("To recover for mental anguish or emotional distress under this Article, the injured person must suffer such harm . . .").

68. *Wartelle*, 97-0744, p. 5; 704 So. 2d at 781.

wrongful death should extend to survival and bystander claims.⁶⁹ Justice Lemmon explained that a viable full-term fetus could experience pain, as could the laboring mother who could sense the pain of her soon-to-be born child, and recovery against the tortfeasor should not be affected simply because the child failed to live for an instant.⁷⁰

Outside of tort claims, the Louisiana Supreme Court has also concluded that the mother of an unborn child can sue to establish filiation and to obtain support from an alleged father *before* the child is born. In *Malek v. Yekani-Fard*, a pregnant woman filed suit to establish the paternity of the alleged father and to seek natal and prenatal expenses and support.⁷¹ The trial court dismissed the suit as premature because the child had yet to be born.⁷² The Louisiana Supreme Court reversed, concluding that parental filiation, support, and heirship are property rights of the unborn child.⁷³ At the time of conception, the child is capable of acquiring rights, and according to Planiol, “this personality is admitted only in the interest of the child.”⁷⁴ Because Louisiana recognizes an unborn child’s rights in property matters, the court found no reason to await birth to prove paternity and seek support.⁷⁵

Based on *Wartelle* and *Malek*, legal recognition can be given to an unborn child without live birth when necessary to protect its interests.⁷⁶ For example, parents are also able to acknowledge paternity of the child prior to birth.⁷⁷ In the context of tort, whether this recognition will ever extend to survival and bystander claims based on the death of an unborn fetus remains to be seen, although Justice Lemmon’s dissent in *Wartelle* provides a well-reasoned path to do so. Legal recognition will not be given to an unborn child if such recognition will result in a

69. *Wartelle v. Women’s & Children’s Hosp., Inc.*, 97-0744, p.2 (La. 12/02/97); 704 So. 2d 778, 786 (Lemmon, J., dissenting).

70. *Id.*

71. *Malek v. Yekani-Fard*, 422 So. 2d 1151 (La. 1982).

72. *Id.* at 1152.

73. *Id.* at 1154.

74. *Id.* at 1153 (quoting Planiol, *Civil Law Treatise*, Vol. I, Pt. 1, § 367, p. 245).

75. *Id.* at 1154–55 (Marcus, J., dissenting) (believing that property rights only accrue to the child once the child is born alive).

76. See Roy Edward Blossman, *An Unborn Child’s Right to Prove Filiation: Malek v. Yekani-Ford*, 44 LA. L. REV. 1777 (1984) (discussing the potential problems with the *Malek* decision and other states’ treatment of the issue).

77. See *Malek*, 422 So. 2d at 1154.

detriment to the child. For example, the husband of the mother cannot disavow paternity of a child prior to birth,⁷⁸ and prescription does not accrue against an unborn child for medical malpractice actions until the child is born alive.⁷⁹

III. JURIDICAL PERSONS

Juridical persons are entities “to which the law attributes personality.”⁸⁰ Entities such as corporations, partnerships, and associations are all juridical persons.⁸¹ Although less intuitive, ships, goods subject to civil forfeiture, and in vitro fertilized ovum are also juridical persons. The community of acquets and gains, however, is not a legal entity that has personality.⁸²

“The personality of a juridical person is distinct from [the personality] of its members.”⁸³ Juridical persons can be private persons or public persons, depending on the rule of law that governs the person.⁸⁴ “The state and its political subdivisions have dual personality” and act as both private and public persons.⁸⁵ When the state acts in its sovereign capacity for protection of the public, it acts as a public person, but when it performs under a contract, it acts as a private person.⁸⁶

Juridical persons, as long as they are in existence, have the capacity to make and receive donations. Article 1470 of the Civil Code provides that “[a]ll persons have the capacity to make and receive donations . . . except as expressly provided by law.”⁸⁷ No express provision of law prevents a juridical person from making or receiving donations. In 1964, however, the fourth circuit held that “persons” in the context of article 1470 referred only to natural persons.⁸⁸ In *Succession of Shepard*, an agency of the United States government was prohibited from accepting a testamentary bequest due to lack of capacity to inherit a donation

78. See LA. CIV. CODE ANN. art. 189 (2018).

79. *Bailey v. Khoury*, 2004-0620, p. 22 (La. 1/20/05); 891 So. 2d 1268, 1282–83.

80. LA. CIV. CODE ANN. art. 24 (2018).

81. See LA. CIV. CODE ANN. art. 24 cmt. (b) (2018).

82. ANDREA CARROLL & RICHARD D. MORENO, MATRIMONIAL REGIMES § 6.4, in 16 LOUISIANA CIVIL LAW TREATISE 524 n.47 (4th ed. 2017).

83. LA. CIV. CODE ANN. art. 24 (2018).

84. LA. CIV. CODE ANN. art. 24 cmt. (c) (2018).

85. *Id.*

86. *Id.*

87. LA. CIV. CODE ANN. art. 1470 (2018).

88. *Succession of Shepard*, 156 So. 2d 287, 291 (La. Ct. App. 4 Cir. 1963).

mortis causa.⁸⁹ This holding has been criticized by courts and commentators alike,⁹⁰ and later courts have limited the holding, finding that unincorporated associations,⁹¹ corporations,⁹² and agencies of municipal corporations⁹³ have the ability to receive donations. If a group exists without any organization or legal power, it would not qualify as a juridical person and would not be capable of making or receiving a donation.⁹⁴

IV. HUMAN EMBRYO STATUTE

The Human Embryo Statute, found in Louisiana Revised Statutes §§ 9:121–133, was added by Act 964 of 1986. The Human Embryo Statute provides legal status, rights, and governing rules for the in vitro fertilized human ovum.⁹⁵ The policy of the law is embodied in § 122, which prohibits the sale of human ovum or the farming of human ovum for research purposes, and defines its use as solely for the support and development of an in utero embryo.⁹⁶ Any viable in vitro fertilized human ovum is a juridical person and cannot be

89. Succession of Shepard, 156 So. 2d 287, 291 (La. Ct. App. 4 Cir. 1963).

90. See, e.g., LORIO, *supra* note 24; PETER S. TITLE, LOUISIANA REAL ESTATE TRANSACTIONS § 11:39, in 1 LA. PRAC. SERIES (2d ed. 2017); Charles G. Gladney, *Donations—Capacity of United States Government to Accept Donations Mortis Causa under Louisiana Law*, 24 LA. L. REV. 918, 920–21 (1964); *Lord v. Dist. VIII Baptist Convention*, 391 So. 2d 942, 943 (La. Ct. App. 2 Cir. 1980).

91. See *Lord*, 391 So. 2d at 943–44 (unincorporated association is a person and may acquire property through donation *inter vivos*); see also LA. STAT. ANN. § 9:1051 (2018) (corporations unauthorized by law may acquire and possess estates).

92. LA. STAT. ANN. § 12:207(B)(4) (2018).

93. Succession of Quillou, 221 So. 2d 651, 652 (La. Ct. App. 4 Cir. 1969) (affirming that an agency of the City of New Orleans is treated as a corporation and has the capacity to receive donations).

94. See, e.g., Succession of Fisher, 103 So. 2d 276, 283–84 (La. 1958); *Carr v. Hart*, 57 So. 2d 739, 740–41 (La. 1952); Succession of Hardesty, 22 La. Ann. 332, 333 (1870). See LORIO, *supra* note 24, for a detailed discussion of the capacity of juridical persons to make and receive donations.

95. For a critique of the statute, see Sarah A. Weber, *Dismantling the Dictated Moral Code: Modifying Louisiana's In Vitro Fertilization Statutes to Protect Patients' Procreative Liberty*, 51 LOY. L. REV. 549 (2005) (suggesting changes to the statute); Dian K. Yang, *What's Mine Is Mine, but What's Yours Should Also Be Mine: An Analysis of State Statutes That Mandate the Implantation of Frozen Preembryos*, 10 J.L. & POL'Y 587, 593–96 (2002) (questioning the constitutionality of Louisiana's statutes); Kevin U. Stephens, Sr., M.D., *Reproductive Capacity: What Does the Embryo Get?*, 24 S.U. L. REV. 263, 268–71 (1997) (raising unanswered questions in Louisiana's Human Embryo Statute); Robert J. Muller, *Davis v. Davis: The Applicability of Privacy and Property Rights to the Disposition of Frozen Preembryos in Intrafamilial Disputes*, 24 U. TOL. L. REV. 763, 769–70 (1993) (criticizing Louisiana's statute for failing to address IVF simply as a medical procedure).

96. LA. STAT. ANN. § 9:122 (2018).

destroyed, even by the sperm and egg donors.⁹⁷ If, however, an in vitro fertilized ovum fails to develop over a thirty-six hour period, it is not considered a juridical person and is non-viable.⁹⁸

Should the in vitro fertilization patients renounce, by notarial act, their rights to the fertilized ovum, the ovum can be adopted in accordance with the facility's procedures.⁹⁹ If the ovum has been cryopreserved but the patients choose not to allow adoption, the fertilized ovum cannot be discarded; rather, it must remain frozen indefinitely.¹⁰⁰ Although seemingly in conflict with the Civil Code, the statute provides that once the child is born alive, it receives inheritance rights as a juridical person—i.e., *before* it is implanted in the womb.¹⁰¹ Further, if the ovum is adopted by another couple, the couple is recognized as the legal parents of the ovum and no inheritance rights are retained from the in vitro fertilization patients.¹⁰² The physician, hospital, or clinic that acts in good faith in collecting, caring for, or transferring the human ovum has immunity against actions relating to succession rights or inheritance.¹⁰³

The in vitro fertilized human ovum is “a separate entity apart from the medical facility . . . where it is housed,”¹⁰⁴ and it is not the property of the physician, the facility, or the sperm and egg donors.¹⁰⁵ The sperm and egg donors, if expressing their identity, will have rights as parents, but the personality of the ovum remains.¹⁰⁶ Finally, the best interest of the in vitro fertilized ovum will apply to any disputes over the fertilized ovum.¹⁰⁷

97. LA. STAT. ANN. § 9:129 (2018).

98. *Id.* However, an exception exists if the ovum is cryopreserved.

99. LA. STAT. ANN. § 9:130 (2018). Patients may also renounce their rights in favor of another married couple. No compensation is permitted, and adoption shall occur when the married couple executes a notarial act of adoption and birth occurs. *Id.*

100. *See* LA. STAT. ANN. § 9:129 (2018).

101. LA. STAT. ANN. § 9:133 (2018); *see supra* notes 20–24 and accompanying text.

102. LA. STAT. ANN. § 9:133 (2018); *see also* LA. CIV. CODE ANN. art. 214 (2018).

103. LA. STAT. ANN. § 9:132 (2018).

104. LA. STAT. ANN. § 9:125 (2018). The in vitro fertilized ovum, as its own entity, can sue or be sued.

105. LA. STAT. ANN. § 9:126 (2018). If the donors fail to express their identity, the physician is deemed the temporary guardian until adoptive implantation can occur. A court can appoint a curator to protect the rights of the fertilized ovum. *Id.*

106. *See id.*

107. LA. STAT. ANN. § 9:131 (2018).

No Louisiana court has cited the Human Embryo Statute in a reported decision. In a noteworthy filing in 2016, two human embryos filed suit against their natural mother using the statute to provide them standing to sue.¹⁰⁸ The embryos, who were cryopreserved in California, were the beneficiaries of a Louisiana trust and sought an order of the court prohibiting their destruction and permitting their transfer, continued development, and birth with another woman.¹⁰⁹ The case was removed to federal court and dismissed on jurisdictional grounds because the embryos were conceived and stored in California and neither gamete provider had significant ties to Louisiana.¹¹⁰ Later, the father filed a request for custody of the human embryos on behalf of himself and the human embryos, which has yet to be concluded.¹¹¹ Notwithstanding the jurisdictional issues present in the case, the importance and use of the statute as it pertains to cryopreserved embryos is evident.

108. *See* Human Embryo #4 HB-A v. Vergara, No. CV 17-1498, 2017 WL 3686569 (E.D. La. Aug. 25, 2017).

109. The case was originally filed in the 24th Judicial District Court, Parish of Jefferson. Human Embryo #4 HB-A v. Vergara, No. 767-189, 2016 WL 7239128 (La. Dist. Ct. Dec. 7, 2016). It was removed by the defendant to the United States District Court for the Eastern District of Louisiana. Human Embryo #4 HB-A v. Vergara, No. CV 17-1498, 2017 WL 3686569 (E.D. La. Aug. 25, 2017).

110. *Human Embryo #4 HB-A*, No. CV 17-1498, 2017 WL 3686569.

111. After the federal case was dismissed, the father, on behalf of himself and the human embryos, filed a custody suit in the 25th Judicial District Court, Parish of Plaquemines, seeking full custody of the embryos. The mother removed the case to the United States District Court for the Eastern District of Louisiana, which granted the father's motion to remand. *Loeb v. Vergara*, No. CV 18-3165, 2018 WL 2289958 (E.D. La. May 18, 2018), *reconsideration denied*, No. CV 18-3165, 2018 WL 3374162 (E.D. La. July 11, 2018).