

NATIONAL REPORT: FRANCE

Prof. Frédérique Ferrand
Laurence Francoz-Terminal

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A. General

1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.

French law regulates opposite and same-sex marriages as well as opposite and same-sex registered partnerships (Pacte civil de solidarité, PACS). According to Art. 143 French Civil Code, a marriage is possible between two persons of the opposite or of the same sex ('deux personnes de sexe différent ou de même sexe'). Same-sex marriage was recently introduced in French law by Law Act no. 2013-404 of 17 May 2013.¹ The French Constitutional Council has held that the new statute is compatible with the Constitution.²

After several drafts³ which were presented between 1993 and 1998 and finally rejected, the registered partnership was created by Law Act no. 99-944 of 15 November 1999 *relative au pacte civil de solidarité*,⁴ which introduced a new Title (now Title XIII) in Book 1 of the French Civil Code (Art. 515-1 to 515-8). From the very beginning, the registered partnership called *pacte civil de solidarité* (PACS) was defined as 'a contract between two natural persons having reached the age of majority, of the opposite or same sex, in order to organise their living together'.⁵ The Constitutional Council⁶ held that the new statutes were compatible with the French Constitution, but it however formulated several interpretation guidelines to be followed by the courts (*réserves d'interprétation*). Three decrees followed to specify the

¹ *Loi no 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe*, Journal Officiel (JORF) no 114, 18 May 2013, at p. 8253. See also *Circulaire* of 29 May 2013 *de présentation de la loi ouvrant le mariage aux couples de personnes de même sexe (dispositions du Code civil)*.

² CC, 17 May 2013, no. 2013-669, at para. 22. '*Considérant, en troisième lieu, qu'en ouvrant l'accès à l'institution du mariage aux couples de personnes de même sexe, le législateur a estimé que la différence entre les couples formés d'un homme et d'une femme et les couples de personnes de même sexe ne justifiait plus que ces derniers ne puissent accéder au statut et à la protection juridique attachés au mariage; qu'il n'appartient pas au Conseil constitutionnel de substituer son appréciation à celle du législateur sur la prise en compte, en matière de mariage, de cette différence de situation*'.

³ *Contrat d'union civile, contrat d'union civile et sociale, contrat d'union sociale, pacte d'intérêt commun* were contemplated, see *J. Classeur Civil*, Art. 515-1 to 515-7-1, by F. GRANET-LAMBRECHTS, 2013, no. 3.

⁴ JORF no. 265, 16 November 1999, p. 16959.

⁵ Art. 515-1 of the French Civil Code: '*Un pacte civil de solidarité est un contrat conclu par deux personnes physiques majeures, de sexe différent ou de même sexe, pour organiser leur vie commune*'.

⁶ CC, 9 November 1999, no. 99-419 DC, JORF 16 Nov. 1999.

conditions for the application of the new statute.⁷ Law Act no. 99-944 of 15 November 1999 aimed to put an end to discrimination between same-sex and opposite-sex partners in the case law of the *Cour de cassation*⁸ (the highest civil and criminal court) and to adapt the law to social reality. It was then extensively amended by a new Law Act no. 2006-728 of 23 June 2006,⁹ which extended the legal effects of the PACS and therefore brought it more into line with a marriage.

Law Act no. 99-944 of 15 November 1999 also introduced in the French Civil Code a definition of 'informal relationships' (*concubinage*). According to Art. 515-8, it is '*une union de fait, caractérisée par une vie commune présentant un caractère de stabilité et de continuité, entre deux personnes, de sexe différent ou de même sexe, qui vivent en couple*' (a factual union, characterized by a common life with the character of stability and continuity, between two persons of the opposite or same sex, living as a couple). The law does not specify any duration to be taken into account in order to consider whether the stability and continuity of the relationship are established. The main change entailed by Art. 515-8 of the French Civil Code is to admit that '*concubinage*' can exist between same-sex partners, whereas the case law of the *Cour de cassation* restricted the possible legal effects of *concubinage* to opposite-sex partners.

2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?

Informal relationships as '*concubinage*' are only defined in Art. 515-8 of the French Civil Code (see under Question 1). '*Concubinage*' is also mentioned in different kinds of statutes such as the French Civil Code, the French Judicial Code, the French Social Security Code, the French Labour Code or the French Social Welfare and Family Code. Numerous rights are recognised for partners living together, especially in social security law.

Some examples can be provided:

- The 'recognized partner' (*concubin notoire*) can request the benefit of the transfer of a residential lease if the other partner dies or leaves the dwelling, subject to the condition that they had lived together for at least for one year (Art. 14 of Law Act

⁷ Décret no. 99-1089 of 21 December 1999 (for the application of Art. 515-1 et seq. of the French Civil Code), Décret no. 99-1090 of 21 December 1999 and Décret no. 99-1091 of 21 December 1999 (relating to the treatment of data and their retention), see *JORF* 24 December 1999, at pp. 19216 et seq.

⁸ See e.g. Cass. Soc., 11 July 1989, 2 decisions, *JCP G* 1990, II, 21 553 with note MEUNIER; Cass. Civ. III, 17 December 1997, no. 95-20779, *Dr. Famille* 1998, comm. 36 with note LÉCUYER. See also B. BEIGNIER, 'A propos du concubinage homosexuel', *D.*, 1998. at p. 215.

⁹ *JORF* 24 June 2006, at p. 9513.

- no. 89-462 of 6 July 1989).¹⁰ In contrast to spouses, partners in an informal relationship are not *ex lege* joint holders of the lease.
- According to Art. 828 of the French Code of Civil Procedure, in proceedings before the first-instance civil courts *juridiction de proximité* and *tribunal d'instance*,¹¹ a party can be represented or assisted by several persons, in particular their '*concubin*' (partner) or the person with whom they have entered into a PACS. These changes were introduced by Law Act no. 2007-1787 of 20 December 2007.
 - In the field of social security benefits, the partner (*concubin*) is treated in the same way as a spouse. According to Art. L. 161-14 of the French Social Security Code,¹² for example, the partner who lives together with a person covered by social security, and is effectively maintained by this person, can benefit from this social insurance.¹³ With regard to child benefit (*allocations familiales*), partners living together also have the same rights as married parents.
 - With regard to the death of a partner after an industrial accident, Art. L. 434-8 of the French Social Security Code states that the surviving spouse, partner (*concubin*) or PACS partner is entitled to a life pension (*rente viagère*).¹⁴ However, in the case of a new marriage, a PACS or an informal relationship (*concubinage*) of the entitled partner, the life pension ceases¹⁵ (Art. L. 434-9. Although some exceptions are provided when certain conditions apply if there are common children).
 - Since Law Act no. 2011-814 of 7 July 2011 (Art. L. 1231-1 of the French Social Welfare and Family Code), it is now possible for a person who has lived together with the recipient for at least two years to donate an organ for his or her benefit. The same applies to any person who can prove the existence of a close and stable relationship with the recipient for at least two years.
 - Assisted reproduction is not only available for spouses, but also for a man and a woman bound by a PACS or living together as *concubins*¹⁶ (see Art. 311-20 of the

¹⁰ Comp. ECtHR, *Kozak v. Poland*, No. 13102/02, 2.3.2010: In deciding the applicant's claim to be entitled to succeed to a tenancy, the domestic courts had concentrated almost exclusively on the homosexual nature of his relationship with his partner, concluding that, since Polish law did not recognise same-sex marriages, a *de facto* marital relationship could only exist between a man and a woman. In its choice of means to protect traditional families, the State had to take into account developments and changes in society, including the fact that there was not just one way or one choice in the sphere of leading and living one's family and private life. Given the State's narrow margin of appreciation in cases of a difference in treatment on the basis of sexual orientation, a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy could not be considered acceptable.

¹¹ The same applies before the Labour court (Art. R. 1453-2 of the French Labour Code) and the court for rural leases (Art. 884 French Code of Civil Procedure) etc. Before all these courts, the proceedings are oral and the parties are not under a duty to be represented by a lawyer. Before the Commercial court, the parties can be assisted or represented by 'any person of their choice' (Art. 853 French Code of Civil Procedure).

¹² Law Act no. 93-121 of 27 January 1993.

¹³ This applies for health insurance as well as for maternity benefit.

¹⁴ Law Act no. 2011-1906 of 21 December 2011.

¹⁵ The right to a life pension can be reactivated under some conditions if the new marriage, PACS or *concubinage* comes to an end.

¹⁶ Before Law Act no. 2011-814 of 7 July 2011, the *concubins* had to establish that they had been living together for at least two years. This requirement has now been deleted.

French Civil Code and Art. L. 2141-1 et seq. Social Welfare and French Family Code).¹⁷ *Concubins*, however, cannot adopt a child jointly.

By contrast, a widow(er)'s allowance (in the form of a retirement pension) is only paid to the surviving *spouse*¹⁸ (see Art. L. 353-1 of the French Social Security Code and Art. 48 *Code des pensions civiles et militaires* (French Code of civil and military pensions for civil servants and persons in military service)).¹⁹ Recently, the Court of cassation²⁰ has confirmed that the protection of marriage is an important and legitimate reason which can justify different treatment between married and non-married couples. The couple can choose freely to enter into a marriage or a registered partnership (*libre choix des intéressés*). By limiting the possibility to claim a widow(er)'s allowance to a spouse, Art. L. 353-1 of the French Social Security Code simply applies the consequences of a civil status specifically characterized by the legislator, so that the different treatment between married and non-married persons in respect of social rights is based on an '*objective criterion*'. According to the Court of cassation, this legal solution does not violate Art. 1 of the First Protocol to the ECHR nor Art. 14 ECHR.

In tax law, partners have to complete separate income tax returns; a common child has to be mentioned in the tax return of only one partner (if they have several common children, the partners can agree that one child will be declared by partner A and the other child by partner B. This may have interesting consequences since the parent including a child in his or her tax return receives some fiscal reductions). Property tax (*taxe foncière*) must be paid by the partner who is the owner of the property. If the partners have bought a property together, they are joint debtors of the property tax. The local residence tax (*taxe d'habitation*) has to be paid by the partner who is the leaseholder. By contrast, Art. 885 E of the French Tax Code states that in the case of a recognised *concubinage*, the tax base for the wealth tax (*impôt de solidarité sur la fortune*) takes all the property of both partners and their minor children into account.

3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases

The law of obligations and the law of property can also be used by partners in an informal relationship. Especially in the case of the breakup of the relationship, legal instruments such as unjust enrichment, *de facto* partnership (*société créée de fait*), and

¹⁷ According to the Constitutional council (CC, 17 May 2013, no. 2013-669), the principle of equality does not require in this respect that same-sex partners should be treated in the same way.

¹⁸ Cass. Civ. II, 23 January 2014, no. 13-11362, *RTD civ.* 2014, p.342.

¹⁹ The surviving spouse or ex-spouse entitled to the widow(er)'s pension loses this right upon his or her remarriage or '*concubinage notoire*' (recognised cohabitation), Art. 49 of the French Code of civil and military pensions.

²⁰ Cass. Civ. II, 23 January 2014, no. 13-11362, *Bull. Civ. II*, no. 23.

tort law are sometimes used to compensate one of the partners. See under Question 41 et seq. If they buy property together (joint ownership, *indivision*), the partners can agree on an accretion clause (*tontine, clause d'accroissement*). Indeed, at the time of the joint acquisition it is possible to insert in the contract a clause according to which each party will be reputed to have been the exclusive owner of the asset since its acquisition, provided the other party dies first.²¹ At the time of the death of one of the co-contracting parties, the other becomes retroactively the sole owner of the asset.²² This avoids the payment of inheritance taxes, which are very high if the partners are neither married nor registered partners (60%).²³ However, the French Tax Code lays down specific conditions which have to be fulfilled (the low amount of the transaction; the property purchased must be the partners' common and principal home...).

Cohabitants can also make the choice to acquire real estate under a real estate non-commercial company scheme (*Société civile immobilière*). According to this scheme the real estate is owned by the company and each of the cohabitants owes a percentage of the shares therein. Shares can be easily transferred from the one to the other according to general principles of company law.

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

According to Art. 515-8 of the French Civil Code, a *concubinage* is '*une union de fait, caractérisée par une vie commune présentant un caractère de stabilité et de continuité, entre deux personnes, de sexe différent ou de même sexe, qui vivent en couple*' (a factual union, characterized by common life with the character of stability and continuity, between two persons of the opposite or same sex, living as a couple). This means that a *concubinage* cannot be of a short duration, since stability and continuity are required. Living together is also a condition to be fulfilled. What is defined in Art. 515-8 is '*concubinage*', not any other kind of informal relationship. Only *concubinage* can lead to certain legal effects.

However, with regard to some legal effects which can possibly be derived from the informal relationship, the French civil courts do not always require that the condition of living together (*communauté d'habitation*) has to be fulfilled.²⁴

The definitions, or at least the conditions to be fulfilled to obtain legal advantages, may vary. Thus, some specific provisions contain further (or different) requirements.

²¹ The legality of such a clause has been established for a long time in French contract law. See Cass. Civ 1, 3 February 1959, D. 1960, at p. 592 note De LA MARNIERRE.

²² However, the Court of cassation held that such a clause was not valid and that the contract must be considered to be a bequest if the deceased partner was much older than her partner, was very ill and had solely paid the price of the property in full (Cass. Civ. I, 10 May 2007, no. 05-21011, *RJPF* 2007-9/31, with note VALORY.

²³ For more details, see under Question 52.

²⁴ See e.g. CA DOUAI, 8 September 2011, no 10/09189, JurisData no 2011-018543; CA DOUAI, 12 December 2002, no. 01/03255, *Dr. Famille* 2003, comm. 86, with note H. LÉCUYER.

See under Question 2: sometimes, it is required that both partners have been living together for at least two years (organ donation between partners who are both living), or one year for the transfer of the residential lease if the other partner dies or leaves the dwelling.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

No provision regulates when the relevant relationship begins.

This issue is considered to be purely factual, so that the commencement of the relationship can be established by any admissible means of evidence (witness testimony,²⁵ letters, official tax documents indicating a common address, *certificat de concubinage*²⁶ – which is a certificate issued by the town hall's administration, a lease contract, phone bills etc.).

b. When does the relevant relationship end?

No provision regulates when the relevant relationship ends.

This issue is considered to be purely factual, so that the termination of the relationship can be established by any admissible means of evidence. See under a).

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

The French Constitution does not contain any specific requirement with regard to spouses or partners in an informal relationship. Only the principle of equality (Art. 6 of the Declaration of Human and Civil Rights 1789, to which the French Constitution refers) can be mentioned with regard to possible discrimination between married and unmarried couples and/or between same-sex and opposite-sex partners. However, the French Constitutional Council held in 2011²⁷ that the principle of equality does not require that same-sex partners should be treated in the same way as opposite-sex partners. In particular, the right to normal family life does not imply the right to marriage for same-sex couples. The Constitutional Council accepted that

²⁵ CA Colmar, 8 February 2007, no. 2A04/01165.

²⁶ A *certificat de concubinage* can be issued by the administration services of the town hall. The requirements which have to be fulfilled are not the same in all towns. The partners can be requested to testify that they have been living together in a stable way and to present proof of their joint address. Sometimes, the presence of two witnesses (of the age of majority and not relatives of the partners) is required. According to a ministerial answer, such certificates, however, do not have any legal effect (Rép. Min. no 40233, JOAN Q 2 September 1996). Such a certificate can be required when the partner requests certain social benefits or the right to remain in the dwelling. However, some institutions and administrations have stopped requiring any *certificat de concubinage* and are satisfied with a simple *déclaration sur l'honneur* (an affidavit, a written sworn statement) by the partner(s).

²⁷ CC, 28 January 2011, no. 2011-92. See also CC, 29 July 2011, no. 2011-155 QPC.

the legislator could decide that the difference in the situation of same-sex and opposite-sex couples justified a different treatment with regard to family law rules.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

The French *Cour de cassation*, *Conseil d'État* (State Council, the highest administrative court) and *Conseil constitutionnel* (Constitutional Council) increasingly take the case law of the European Court of Human Rights (ECtHR) into account. However, the legislator's decision to allow same-sex marriages was independent of the ECtHR's case law, which does not require contracting states to go that far.²⁸

With regard to informal relationships, there has so far not been any specific influence by European legislation or case law on the legal position of informal relationships between a couple under French law.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

Initially, the Code Napoléon 1804 did not regulate informal relationships at all. 'Concubins' (the partners in an informal relationship) were supposed to 'ignore' the law, so that the law should also 'ignore' them. However, little by little, case law began to accept that some legal effects could be derived from the existence of a stable informal relationship. For the Court of cassation, until Law Act no. 99-944 of 15 November 1999, a 'concubinage' could only be an informal relationship between a man and a woman.²⁹ The court recognised a right to compensation for the surviving partner in case of a fatal accident caused by a third person,³⁰ even if the relationship was adulterous.³¹ Not only economic loss, but also non-pecuniary damage could be claimed.

The Court of cassation also held that in the case of the breakup of a relationship, a partner can claim compensation on the basis of general provisions (unjust enrichment, tort law, *de facto* partnership...).

²⁸ See e.g. ECtHR, *Schalk and Kopf v. Austria*, No. 30141/04, 24.6.2010.

²⁹ Cass. Soc., 11 July 1989, two decisions, *JCP G* 1990, II, 21 553 with note MEUNIER; Cass. Civ. III, 17 December 1997, no. 95-20779, *Bull. Civ. III*, no 225 ('*Mais attendu qu'ayant retenu, à bon droit, que le concubinage ne pouvait résulter que d'une relation stable et continue ayant l'apparence du mariage, donc entre un homme et une femme, la cour d'appel n'a violé ni l'article 26 du Pacte international relatif aux droits civils et politiques, ni l'article 8, alinéa 1er, de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales*'). However, some first-instance courts had ruled that the partner in a same-sex relationship could claim compensation for the damage caused to him or her due to the accidental death of his or her partner (TGI Belfort, 21 July 1995).

³⁰ Cass. Ch. mixte, 27 February 1970, *Dangereux*.

³¹ Cass. Crim., 19 June 1975, *Bérigaud*, *D.* 1975, jur., p. 679, with note TUNC.

In 1999, Law Act no. 99-944 of 15 November 1999 created the *pacte civil de solidarité* (PACS), which is a registered partnership between opposite or same-sex partners. It was amended by Law Act no. 2006-728 of 23 June 2006,³² which extended the effects of the PACS and therefore brought it more into line with a marriage.

Law Act no. 99-944 of 15 November 1999 also introduced in the French Civil Code a definition of 'informal relationships' (*concubinage*). According to Art. 515-8, it is '*une union de fait, caractérisée par une vie commune présentant un caractère de stabilité et de continuité, entre deux personnes, de sexe différent ou de même sexe, qui vivent en couple*' (a factual union, characterized by common life with the character of stability and continuity, between two persons of the opposite or same sex, living as a couple). This new provision introduced an important change since now a *concubinage* can also be regarded as existing between two men or two women, which the Court of cassation refused to admit.³³

In parallel with these evolutions in the civil law, several specific provisions contained in numerous pieces of legislation and Codes extended to partners in an informal relationship (*concubins*) and to partners in a PACS, rights which had already been granted to spouses (social security, labour law, judicial assistance and representation, assisted reproduction...). See the examples provided under Question 2.

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

There has been no recent proposal for reform in the area of informal relationships. As already seen, little by little, specific provisions of social, labour, civil and criminal law,³⁴ which apply to spouses, have been extended to partners in an informal relationship (*concubinage*) and to PACS partners. Recently, Law Act no. 2014-873 of 4 August 2014 has extended to partners in an informal relationship, or adapted for their benefit, certain regulations applying to spouses in the case of domestic violence, see under Question 23.

B. Statistics and estimations

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile?

³² JORF 24 June 2006, at p. 9513.

³³ See also *Conseil d'État* (the highest administrative court), 4 May 2001, *Association Promouvoir*, D. 2002, somm. p. 537 with note LEMOULAND: the nullity of the measure taken by the SNCF (railway company) to issue a '*carte couple*' to same-sex partners in an informal relationship before the coming into force of the Law Act of 15 November 1999.

³⁴ See e.g. Art. 132-80 of the French Criminal Code: the sanctions can be increased for some offences when they have been committed by a spouse, a partner in an informal relationship (*concubin*) or a partner in a PACS. Under some conditions, this can also apply to a *former* spouse or partner.

Where relevant and available, please provide information on the gender of the couple.

On the 1st of January 2014, France had 66 million inhabitants.

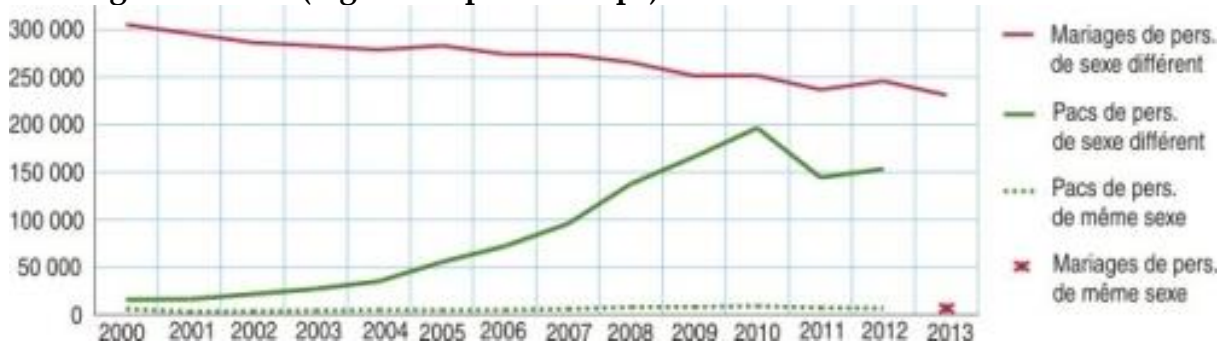
At the beginning of 2011, 32 million adults were living as a couple in France. 72% of them were married. Of the non-married couples, 7.2 million were living in an informal relationship and 1.4 million were registered partners (PACS). Below the age of 25, 84% of the adults living as a couple were living in an informal relationship.³⁵

Up to 2011 the number of marriages had decreased during the previous ten years. In 2012, however, it increased again (246,000). For 2013, the estimations indicate about 231,000 marriages.

In 2011 and 2012, there were 2 PACS for every 3 marriages entered into.³⁶

With regard to same-sex marriages, in 2012 3 out of 5 couples were male couples. 54% of same-sex registered partnerships were entered into by male partners.³⁷

Marriages and Pacs (registered partnerships)



Champ: France hors Mayotte

Sources: Insee, statistiques de l'état civil (mariages); Ministère de la Justice (Pacs).

³⁵ INSEE (National Institute for statistic and economic studies), TEF: ed. 2014.

³⁶ INSEE Première, no. 1482, January 2014.

³⁷ INSEE, TEF: ed. 2014.

Evolution of the number of marriages and PACS entered into 1990-2014

Year	Marriages			Pacs			Total Marriages and Pacs between opposite sex partners
	Opposite-sex partners	Same-sex partners	Total number	Opposite-sex partners	Same-sex partners	Total number	
2004	278,439	N/A ³⁸	278,439	35,057	5,023	40,080	313,496
2005	283,036	N/A	283,036	55,597	4,865	60,462	338,633
2006	273,914	N/A	273,914	72,276	5,071	77,347	346,190
2007	273,669	N/A	273,669	95,770	6,222	101,992	369,439
2008	265,404	N/A	265,404	137,744	8,194	145,938	403,148
2009	251,478	N/A	251,478	166,148	8,436	174,584	417,626
2010	251,654	N/A	251,654	196,416	9,145	205,561	448,070
2011	236,826	N/A	236,826	144,675	7,494	152,169	381,501
2012	245,930	N/A	245,930	153,670	6,969	160,639	399,600
2013	231,225	7,367	238,592	162,072	6,054	168,126	393,297
2014 ³⁹	231,000	10,000	241,000	- ⁴⁰	-	-	-

Scope: France without Mayotte until 2014 and with Mayotte for 2014.

Source: Insee, statistiques de l'état civil; SDSE, fichiers détails pacs, see www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF02327.

Marriages -

In 2012, 80.2 % of the men who married had not been previously married. 18.7 % of the women who married in 2012 were divorced or widows.

³⁸ Not applicable, a marriage between same-sex partners has only been possible since May 2013.

³⁹ Provisional statistics.

⁴⁰ Not available.

		Year of marriage						
		2003	2009	2010	2011	2012	2013 ⁴¹	
Total number of marriages		282,756	251,478	251,654	236,826	245,930	231,000	
Former marital status of the spouses	Male	Single	81.4%	79.3%	79.4%	79.4%	80.2%	-
		Widowed or divorced	18.6%	20.7%	20.6%	20.6%	19.8%	-
	Female	Single	82.6%	80.7%	80.8%	80.6%	81.3%	-
		Widowed or divorced	17.4%	19.3%	19.2%	19.4%	18.7%	-
Average age upon first marriage	Male	30.6	31.7	31.8	31.9	32.0	-	
	Female	28.5	29.8	30.0	30.1	30.2	-	
Average age upon marriage	Male	34.3	36.3	36.5	36.6	36.7	-	
	Female	31.6	33.5	33.8	34.0	34.0	-	

Scope: France without Mayotte, and without same-sex marriages.

Source: Insee, estimations de population et statistiques de l'état civil.

11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.

The INSEE has carried out an investigation relating to couples. The chart below relates to adults who declared that they lived as a couple.

In 2011, in metropolitan France, 23 million adult persons declared that they lived as a couple. 72% of them indicated that they were married and shared the same home with their opposite-sex spouse. 7 million were living in a so-called '*union libre*' (*concubinage*, an informal relationship) and 1.4 million had entered into a registered partnership.

The number of couples living in an informal relationship has been consistently increasing for the last 40 years.⁴²

4% of the adults who declared that they lived as a couple did not live in the same home as their partner. More than half of those persons not living together were below the age of 30. Between the ages of 30 and 59, one out of ten persons did not

⁴¹ Provisional statistics.

⁴² See INSEE (National Institute for statistic and economic studies), www.insee.fr/fr/themes/document.asp?ref_id=ip1435.

live together with his or her partner in the absence of common children. Most couples who did not live together were partners in an informal relationship.

In 2011, 200,000 persons were living as a couple with a same-sex partner. 16% of those couples were not living in the same home. 6 out of 10 such couples were male. 43% were registered partners (*pacés*).

	Total number of persons living as a couple	Cohabitant (living together)	Non-cohabitant (not living together)
Married	23,202,000 (73.1%)	23,001,000 (72.4%)	201,000 (0.6%)
Pacs (registered partnership)	1,377,000 (4.3%)	1,354,000 (4.3%)	23,000 (0.1%)
<i>Union libre</i> (informal relationship)	7,169,000 (22.6%)	6,079,000 (19.2%)	1,090,000 (3.4%)
Total	31,748,000 (100%)	30,434,000 (95.9%)	1,314,000 (4.1%)

Source: Insee, enquête Famille et logements 2011,⁴³ with an update: 26 February 2013

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

For young people between the ages of 18 and 24, see the chart below.

Cohabitation mode of young people (18-24 years) in 2011

Cohabitation mode	Number	Distribution		
		Total	Male	Female
Child of a couple	2,053,200	36.7%	41.0%	32.3%
Child in a single-parent family	774,800	13.8%	15.5%	12.2%
Living as a couple without children	708,400	12.7%	9.3%	16.1%
Living as a couple with children	259,900	4.6%	2.7%	6.6%
Single parent	76,000	1.4%	0.1%	2.6%
Living together with other persons	527,000	9.4%	9.7%	9.2%
Single	883,700	15.8%	14.9%	16.7%
Total	5,595,100	100%	100%	100%

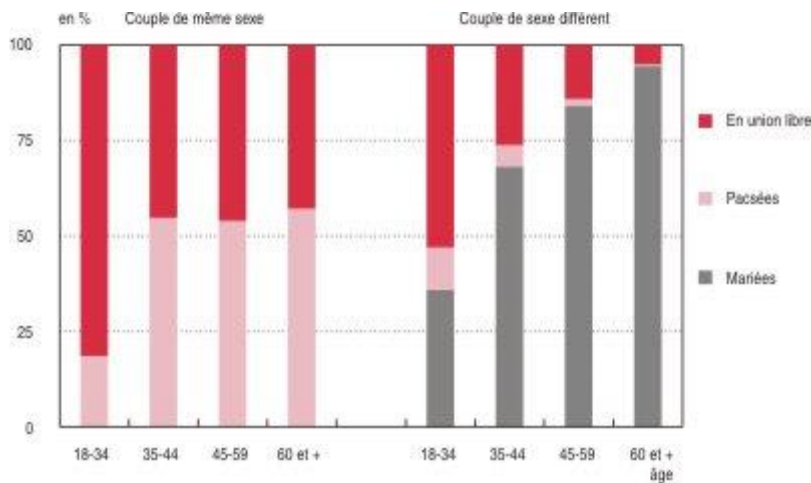
Source: Insee, RP2011 exploitation complémentaire.

See also the chart below which differentiates between

- Same-sex and opposite-sex couples

⁴³ See INSEE (National Institute for statistical and economic studies), www.insee.fr/fr/themes/document.asp?ref_id=ip1435#inter1.

- Married, registered partners and partners in an informal relationship
- Age of partners



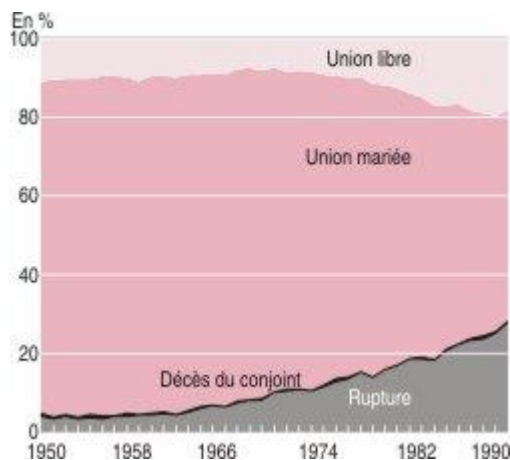
Source: Insee, enquête Famille et logements 2011.

- 13. How many couples living in an informal relationship enter into a formal relationship with each other:**
- Where there is a common child?
 - Where there is no common child?

No information could be found.

- 14. How many informal relationships are terminated:**
- Through separation of the partners?
 - Through the death of one of the partners?

INSEE carried out investigations which showed that in 1988, ten years after they started to live as a couple, 28% of the partners had separated, 1% had lost their partner (due to death), 53% were married and 18% were still living in an informal relationship (*union libre, concubinage*). However, these results are relatively old (1999).



Scope: persons over 18 in 1999 living as a couple or having lived as a couple.

Explanation: *rupture*: breakup; *décès du conjoint*: death of the partner; *union mariée*: marriage; *union libre*: informal relationship.

Source: enquête sur l'Étude de l'histoire familiale de 1999, Insee.⁴⁴

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

No statistics could be found in this respect. The statistics only indicate that the average age of the partners in an informal relationship is lower than the average age of married partners. According to an inquiry, the average duration of a partnership at the time when the inquiry was carried out (2005) was much shorter for informal relationships (7½ years) than for marriages (26 years).⁴⁵ Informal relationships do not last as long as marriages.

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

In 2013, 811,510 children were born in France. 57.2% of them were born outside a formal relationship.⁴⁶ The percentage of children born outside a formal relationship has been consistently increasing (47.4% in 2004; 51.7% in 2007; 54.9% in 2010). The most recent statistics for 2014 indicate that 820,000 children (58,2%) were born outside marriage.

The average age of the mother was 30.3 years in 2013. It has been consistently increasing since 1950 (27.7 years in 1950).

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

Any statistics on this specific point, if they exist at all, are very hard to find. Nevertheless, some relevant figures from 2011 can be found on children living in stepfamilies.⁴⁷ In 2011, a total of 960,000 children were living on a regular basis in stepfamilies, without regard to the matrimonial situation of the couple. Amongst them, 210,000 were living regularly with their father and his spouse, partner or cohabitant. The remaining 750,000 were living with their mother and her spouse, partner or cohabitant.

18. How many children are adopted within an informal relationship:

a. By one partner only?

⁴⁴ See INSEE (National Institute for statistic and economic studies), www.insee.fr/fr/themes/document.asp?reg_id=0&ref_id=IP1107&page=graph#graphique1aetb.

⁴⁵ F. PRIoux, 'Les couples non mariés en 2005: quelles différences avec les couples mariés?', *Politiques sociales et familiales*, 2009, at p. 90, available at: www.ined.fr/fichier/s_rubrique/185/psf96.fprioux.fr.pdf.

⁴⁶ See INSEE (National Institute for statistic and economic studies), www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATnon02231.

⁴⁷ INSEE (National Institute for statistic and economic studies), www.insee.fr/fr/themes/document.asp?ref_id=ip1470.

Adoption by one registered partner or one cohabitant only is possible according to French legal provisions.⁴⁸ The prospective adopter must be over 28 years of age, which is a legal prerequisite.⁴⁹ If international adoption or the adoption of a ward of the State is contemplated, administrative consent for the adoption is compulsory.⁵⁰

The fact that the prospective adopter is living with a partner or cohabitant will be taken into account by the social services. This element will be recorded in the welfare report that must be completed for the purposes of the administrative consent.

The French legal system has regulated two adoption schemes: plenary and simple adoption.

A *plenary adoption* annuls the original filiation of the child with his or her biological parent(s) and exclusively substitutes it with adoptive filiation.

A *simple adoption* creates adoptive filiation in addition to the pre-existing biological or adoptive filiation. The simple adoption scheme is possible regardless of the age of the child and in 86% of cases this concerns persons over 18 years of age, whereas, according to the French legal provisions, a plenary adoption can only be contemplated when the child is under 15 years of age.⁵¹

In 2007, adoption by one person only represented 18% of plenary adoption orders (12% were female adopters and 6% were male adopters), and 93% of them were not family adoptions.⁵²

Plenary adoptees considering the nature of the adoption and the adopter

Nature of adoption	Total adoptees	Single male adopter	Single female adopter	Couple adopting
Altogether	3,964 (100%)	242 (6.1%)	468 (11.8%)	3,254 (82.1%)
International adoption	2,824 (100%)	26 (0.9%)	422 (14.9%)	2,376 (84.1%)
National adoption	882 (100%)	0 (0%)	24 (2.7%)	858 (97.3%)
Family adoption	258 (100%)	216 (83.7%)	22 (8.5%)	20 (7.8%)

Source: Ministry of Justice – 2007 adoption enquiry.

⁴⁸ Art. 343-1 of the French Civil Code.

⁴⁹ Art. 343-1 of the French Civil Code.

⁵⁰ Art. R225-1 to R225-11 of the French Social Welfare and Family Code.

⁵¹ Art. 345 of the French Civil Code.

⁵² 472 plenary adoptions by one person only had been ordered in 2007 where the adoptee was not the child of the adopter’s spouse. Z. BELMOKTHAR, ‘Les adoptions simples et plénières en 2007’, 2009 report for the Director of civil affairs (*Direction des affaires civiles et du sceau*) by the French Ministry of Justice, available at: www.adoption.gouv.fr/IMG/pdf_1_1_stat_adoptions07_20090611.pdf.

In 2007, adoption by one person only represented 94% of simple adoption orders (72% were male adopters and 22% were female adopters), yet only 5% of them were not family adoptions, i.e. by a single person who was not the spouse of the child's parent.⁵³

b. Jointly by the couple?

A joint adoption in an informal relationship is prohibited under French law.⁵⁴

c. Where one partner adopted the child of the other?

According to the French legal provisions adoption is a privilege granted to a marriage.⁵⁵ Indeed, only marriage with the child's parent opens up the possibility for the prospective adopter to adopt the child of his or her spouse. In 2007, the adoption of the child of the spouse represented 7% of plenary adoption orders and 95% of simple adoption orders.⁵⁶

In a prospective adoption as far as minor children are concerned, plenary and simple adoptions must be distinguished.

Indeed, the plenary adoption of a minor child by the spouse of his or her parent has an identical effect compared to joint adoption by a couple. The joint exercise of parental responsibilities is granted to the initial parent (either biological or adoptive⁵⁷) and the second adoptive parent.⁵⁸

Regarding the same situation in the simple adoption scheme, however, parental responsibilities are vested in the adoptive parent too, but the joint exercise of parental responsibilities, by the initial parent with the adoptive parent, is subject to certain conditions. Indeed, parents must file a joint declaration of the joint exercise of parental responsibilities regarding the minor child.⁵⁹

Without marriage, the adoption of the child by the parent's partner or cohabitant has consistently been held by the *Cour de cassation* as being against the best interests of

⁵³ 1,176 simple adoptions by one person only had been ordered in 2007 where the adoptee was not the child of the adopter's spouse. Z. BELMOKTHAR, 'Les adoptions simples et plénières en 2007', 2009 report for the Director of civil affairs (*Direction des affaires civiles et du sceau*) by the French Ministry of Justice, available at: www.adoption.gouv.fr/IMG/pdf_1_1_stat_adoptions07_20090611.pdf.

⁵⁴ Art. 343 and 346 of the French Civil Code.

⁵⁵ Art. 343 and 346 of the French Civil Code.

⁵⁶ Z. BELMOKTHAR, 'Les adoptions simples et plénières en 2007', 2009 report for the Director of civil affairs (*Direction des affaires civiles et du sceau*) by the French Ministry of Justice, available at: www.adoption.gouv.fr/IMG/pdf_1_1_stat_adoptions07_20090611.pdf.

⁵⁷ Art. 345-1 and 360 of the French Civil Code open up the possibility to adopt the child of one's spouse irrespective of the nature of the filiation (either biological or adoptive) of the child with his or her initial parent.

⁵⁸ Art. 356 of the French Civil Code.

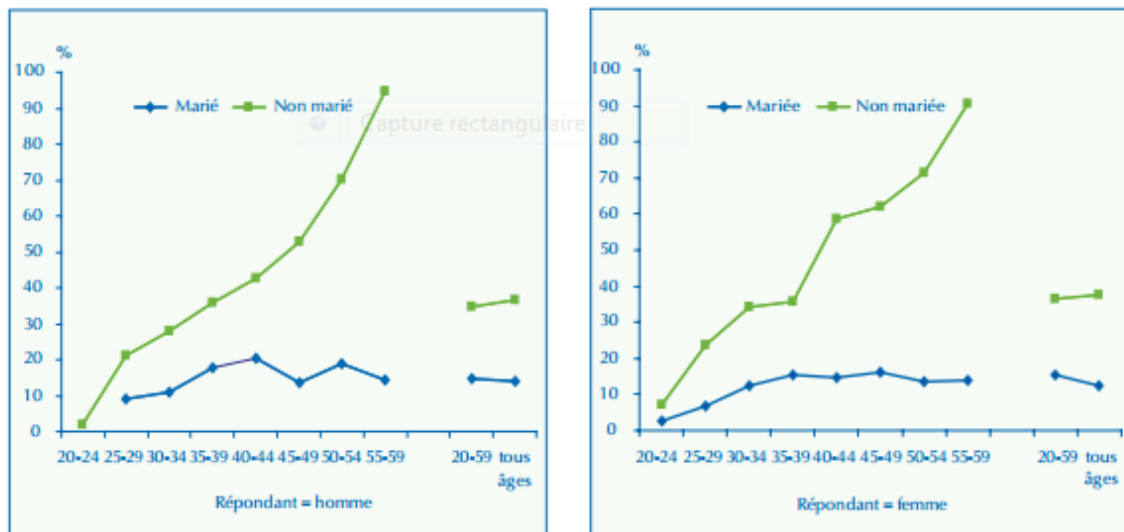
⁵⁹ Art. 365 of the French Civil Code.

the child when the initial parent wants to continue to raise the child after adoption.⁶⁰ Indeed, where the adopter and the initial parent are not married the first effect of a simple adoption of a minor child is to automatically deprive the initial parent of the exercise of parental responsibilities and to transfer them exclusively to the adoptive parent. As a consequence, the initial parent automatically loses the possibility to take any decision concerning the child's life, and this has been held to contradict the best interests of the child and to be inconsistent with the project of jointly raising a child. Although all the cases concerned same-sex couples who were not allowed to marry at that time,⁶¹ the sexual orientation of the prospective adopter and of the initial parent was not at stake in the *Cour de cassation's* reasoning on this issue.

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

The most recent figures found on this issue are statistics from 2005 but this specific point was not directly dealt with. Nevertheless, it emerges from the statistics that the proportion of informal relationships is much more important amongst second and following unions in one person's matrimonial life. The curve is exponential as far as the members of the couple are becoming older.⁶²

Graphique 3 - Pourcentage d'hommes et de femmes en couple dans une union de rang 2 (ou plus) selon leur âge et leur situation matrimoniale.



Source : enquête ERFI-GGS, INED-INSEE, 2005.
 Champ : ensemble des répondants à l'enquête vivant en couple.

⁶⁰ Cass. Civ 1, 20 February 2007, no. 06-15.647 and no. 06-15.676, available at: www.legifrance.gouv.fr

⁶¹ Same-sex marriages were legalized by the 2013 Act allowing same-sex couples to marry on an equal basis with heterosexual couples, Act no. 2013-404 of 17 May 2013.

⁶² F. PRIoux, 'Les couples non mariés en 2005: quelles différences avec les couples mariés?', *Politiques sociales et familiales*, 2009, at p. 91, available at: www.ined.fr/fichier/s_rubrique/185/psf96.fprioux.fr.pdf.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

a. Where there are no children in the household?

Partners in an informal relationship are not under a duty to support each other, financially or otherwise, when there are no children in the household.

b. Where there are common children in the household?

Partners in an informal relationship are not under a duty to support each other, financially or otherwise, when there are common children in the household. By contrast, each partner is under a duty to contribute to the maintenance of the common children (and of his or her own child).

c. Where there are other children in the household?

Partners in an informal relationship are not under a duty to support each other, financially or otherwise, when there are other children in the household. The parent of the child or of the children has to maintain them; the partner has no maintenance duty neither towards his or her partner nor with regard to the partner's children.

French law does not impose any maintenance obligation between partners in an informal relationship. However, the partners may agree on the payment of maintenance. According to the case law, if such a contractual obligation has been entered into by one of the partners, he or she has to fulfil it. Otherwise, it can be enforced. The French courts have often held that the purely natural obligation (*obligation naturelle*) on the part of the partners to provide mutual moral and financial support⁶³ can become a legal duty if the debtor spontaneously enforces this obligation.⁶⁴ This is for example the case where one of the partners has taken on the obligation to pay the rent for the common home⁶⁵ or to grant his or her partner the right to live in a dwelling for the rest of his or her life.⁶⁶

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

No. There is no legal obligation for partners in an informal relationship to contribute to the costs and expenses of their household.⁶⁷ On several occasions, the Court of cassation has held that the mandatory provisions called *régime primaire impératif*

⁶³ See Cass. Civ. I, 17 November 1999, no. 97-17541; Civ. I, 19 February 2002, no. 99-18928.

⁶⁴ Cass. Civ. I, 5 April 1993, no. 90-21734.

⁶⁵ Cass. Civ. I, 3 June 1998, no. 93-16664.

⁶⁶ Cass. Civ. I, 17 November 1999, no. 97-17541.

⁶⁷ Cass. civ. I, 19 April 2005, no. 01-17226, *Bull. Civ. I*, no. 187; *Dr. Fam.* 2005, no. 127 with note LARRIBAU-TERNEYRE; Civ. I, 28 November 2006, no. 04-15480, *Bull. Civ. I*, no. 517.

which apply to spouses (Art. 212 et seq. of the French Civil Code) cannot be extended to partners in an informal relationship.

However, the partners in an informal relationship can enter into an agreement (*convention de concubinage*) relating to their contribution to the costs and expenses of their household.⁶⁸

As for the refusal of the Court of cassation to apply to partners in an informal relationship Art. 220 of the French Civil Code,⁶⁹ which makes the spouse jointly and severally liable for any debts incurred by one spouse for the joint household and the raising of the children,⁷⁰ see under Question 31.

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

No. If the relationship comes to an end, French law does not give the partner who is not the owner or the tenant of the home the right to remain in the home against the will of the partner who is the owner. Whether the partners have common children or not does not make any difference.

However, Art. 373-2-2 of the French Civil Code states that child maintenance can take the form of a right of use (*droit d'usage*) or a housing right (*droit d'habitation*), so that indirectly through the maintenance of the child, the other partner living with the child can remain in the home belonging to the other partner. However, this cannot happen against the will of the partner who is the owner or the tenant of the home.

Where the partner who is the owner of the home claims for compensation for occupancy because the female partner is staying in the home with the common children, the Court of cassation has held that the lower court must examine whether this free occupancy is a way in which the father fulfils (or enforces) his duty to maintain the children.⁷¹

23. Are there specific rules on a partner's rights of occupancy of the home: a. In cases of domestic violence?

Law Act no. 2010-769 of 9 July 2010 introduced Title XIV to the French Civil Code which deals with protection measures in favour of victims of domestic violence (Art.

⁶⁸ Cass. Civ. I, 28 June 2005, no. 02-12767, *Bull. Civ. I*, no. 278.

⁶⁹ Cass. Civ. I, 27 April 2004, no. 02-16291, *Bull. Civ. I*, no. 113; Civ. I, 17 October 2000, no. 98-19527, *Bull. Civ. no. 244*: '*aucune disposition légale ne réglant la contribution des concubins aux charges de la vie commune, chacun d'eux doit, en l'absence de volonté exprimée à cet égard, supporter les dépenses de la vie courante qu'il a exposées*' (As no statutory provision regulates the *concubins'* contribution to the household expenses, each of them must – in the absence of a specific intention expressed in this regard – bear the household expenses he or she has incurred).

⁷⁰ For PACS partners, see Art. 515-4 of the French Civil code: they are jointly and severally liable towards third parties for any debts incurred by one partner for '*besoins de la vie courante*' (everyday needs).

⁷¹ Cass. Civ. I, 6 July 2011, no. 10-27070, *RTD civ.* 2011, p. 749, with note HAUSER.

515-9 et seq. French Civil Code). According to Art. 515-9, if violence committed between a couple, or by a former spouse, a former registered partner or a former partner in an informal relationship (*concubin*) endangers the victim and/or one or several of the children, the family judge can issue a protection order in favour of the victim.

The recent Law Act no. 2014-873 of 4 August 2014 has extended some regulations applying to spouses in the case of domestic violence to partners in an informal relationship or has adapted those regulations concerning such partners.⁷² Now, the family judge can issue a protection order (*ordonnance de protection*) not only if domestic violence is established, but also if there are 'serious reasons' to consider that the alleged violence is 'plausible' (*vraisemblable*), see Art. 515-11 of the French Civil Code. The protection order must be delivered as soon as possible. Since August 2014, similar rules apply to spouses and non-married partners with regard to the attribution of the home. Thus, Art. 515-11, no. 4 of the French Civil Code states that the family judge shall specify which of the registered partners or of the partners in an informal relationship (*concubins*) will remain in the family home and who will pay the costs of the home. In the absence of special circumstances, the enjoyment of the home should be allocated to the partner who is not the offender, even if he or she has obtained emergency housing. If there are common children, the family judge must also decide on the way in which parental responsibilities (Art. 515-11, no 5) can be exercised and on child maintenance. The victim can be authorised by the family judge to conceal his or her address and to indicate his or her attorney's address as his or her residence, or the address of the Public Prosecutor for all civil claims to which he or she is a party (Art. 515-11, no. 6). For everyday needs, the victim can also be authorised by the family judge to indicate as his or her residence the address of a 'qualified legal entity'. The protection order can now be issued for six months (Art. 515-12 of the French Civil Code. Until the Law Act of 4 August 2014, it was only four months).

b. In cases where the partner owning or renting the home is absent?

No, there is no specific provision in that case. Art. 112 et seq. of the French Civil Code contains general provisions on the legal meaning of absence (meaning doubts as to whether the absent person is still alive or not). The civil court can appoint relatives or 'any other person' to represent the person who is deemed to be absent (*presume absente*) and to administer his or her assets. There is no specific rule regulating the case of a simple absence.

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

a. Where the home is jointly owned by the partners?

⁷² See also *Circulaire* no. JUSCO1419203C of 7 August 2014, which explains the legal consequences of the Law Act of 4 August 2014.

Where the home is jointly owned by the partners: In this case, both partners' consent is necessary to dispose of the property (by means of a sale or donation). Both partners' consent is also required for a leasing agreement. There is no specific provision in the French Civil Code, so that the general rules apply. Several situations may arise with regard to mortgaging: 1) if both partners have agreed upon mortgaging (*hypothèque*), the mortgagee - in the absence of payment - can seize the property, which will be sold;⁷³ 2) if only one partner has obtained a mortgage on the home without the other partner's consent, the mortgagee cannot seize the property. He or she can only request the termination of the joint ownership before the courts (*indivision*);⁷⁴ 3) if one partner has entered into a mortgage only with regard to his or her share of the property, the same solution as under 2) applies: the mortgagee cannot directly seize the property but only request the termination of the joint ownership before the courts (the property will then be sold and the proceeds will be shared between the two partners), see Art. 815-7 of the French Civil Code, which is a general provision that applies in the case of joint ownership.

b. Where the home is owned by one of the partners?

Where the home is owned by one of the partners: The partner who is the owner of the property can sell or rent the home without the other partner's agreement. There is no specific provision in the French Civil Code. The general rules apply.

c. Where the home is jointly rented by the partners?

Where the home is jointly rented by the partners: Each partner is a party to the lease agreement (a lessee). Both partners are under a duty to pay the rent and rates (the lease contract can also include a clause making both partners jointly and severally liable. Such liability does not occur *ex lege*). If one wishes to terminate the lease, this has no effect with regard to the other partner who can remain in the home since he or she is also a leaseholder. The agreement of both partners is required for subletting.

d. Where the home is rented by one of the partners?

Where the home is rented by one of the partners: The partner who has rented the property can sublet the home without the other partner's agreement. He or she can also terminate the lease. In this latter case, however, under Art. 14 of Law Act no. 89-462 of 6 July 1989 the recognised partner (*concubin notoire*) can request the benefit of the transfer of the residential lease, subject to the condition that the partners have lived together for at least one year.⁷⁵

25. Under what circumstances and to what extent can one partner act as an agent for the other?

⁷³ Cass. Com., 18 February 2003, no. 00-11008, *Bull. Civ. IV*, no. 21.

⁷⁴ Cass. Civ. I, 19 November 1996, no. 94-22052.

⁷⁵ This also applies to a same-sex partner and is therefore in line with the ECtHR's case law, see ECtHR, *Karner v. Austria*, No. 40016/98, 14.7.2003.

There is no specific provision in this respect. Therefore, the general rules apply. A partner can allow the other partner to act as an agent for him or her. This falls under the general '*contrat de mandat*' (contract of agency).

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

Partners in an informal relationship become the joint owners of assets if they buy those assets jointly (*en indivision*) or receive them jointly, for example through a donation, bequest or will.

In the case of joint acquisition, each partner's ownership is determined regarding the specific contribution of each partner thereto. Where the issue is contested, and proof cannot be provided, an indivisible joint ownership (*indivision*) of 50/50 is presumed.⁷⁶

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

Household goods are not subject to specific provisions with regard to partners in an informal relationship. Therefore, acquisitions and/or transactions in respect of household goods are not regulated, in contrast to spouses. Whereas, according to Art. 215 para. 3 of the French Civil Code, a spouse cannot dispose of the rights relating to the family home and of the household goods in the family home without the consent of the other spouse,⁷⁷ there is no such provision which applies to partners in an informal relationship. Therefore, each partner can freely dispose of the household goods which belong to him or her.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

No.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

The ownership of assets as between the partners in an informal relationship is not regulated by specific statutory provisions. Therefore, the general rules apply.

⁷⁶ Case law has extended to cohabitants the legal presumption of the undivided right of ownership that is organised between spouses (art. 1538 of the French Civil Code) and between partners in a *pacte civil de solidarité* (art. 515-5 al. 2 of the French Civil Code).

⁷⁷ The spouse who has not agreed may claim for nullity within one year from the day on which he or she was informed about the act of disposal.

In respect of *movables*, proof of ownership can be established by any kind of written document (an invoice, purchase order etc.). If there is no written document, Art. 2276 of the French Civil Code states that for *tangible assets (meubles corporels)* ‘*en fait de meubles, la possession vaut titre*’. This means that in matters concerning (tangible) movables, possession is equivalent to title. This provision contains a rule of evidence (a rebuttable presumption according to which the person who possesses the movable is presumed to be the owner). This presumption, however, only applies if the possession is not ambiguous (*équivoque*).⁷⁸ In a judgment of 24 October 2012,⁷⁹ the Court of cassation held that this presumption arising out of possession cannot be rebutted by the sole evidence that a vehicle was wholly financed by the other partner.

Each former cohabitant owns the asset that is in his or her possession. Indeed, according to the general principles of property law, possession of an asset determines its ownership.⁸⁰ This principle is also applicable to money deposited in bank accounts. This presumption of ownership based on possession can be rebutted by proof of ownership (a bill, receipt...), but the burden of proof is a heavy one, and one cohabitant can face some difficulties in rebutting it. Indeed, the *Cour de cassation* has held that the exclusive financing of an asset does not amount to proof of ownership.⁸¹

As for intangible assets (*meubles incorporels*), the presumption laid down in Art. 2276 of the French Civil Code does not apply. Ownership can be proved by any means of evidence.⁸²

If a partner cannot prove that he or she is the owner of a movable, the asset is deemed to belong jointly to both partners (50/50). This mainly applies to movables which are in the common home.

In respect of immovable property, proof is provided by the title drawn up by the notary public. In a case where a property had been jointly purchased by the cohabitants (50/50) but the loan was only being repaid by the man (the woman was unemployed and had no earnings of her own), the Court of cassation⁸³ held that after the breakup the man had no claim against his former partner since it followed from the factual circumstances of the case that his intention had been to favour and reward his partner.

⁷⁸ As regards personal belongings, jewellery, professional instruments, etc., possession will probably not be ambiguous, whereas this will be the case for household goods.

⁷⁹ Cass. Civ. I, 24 October 2012, no 11-16431, *Bull. Civ. I*, no 214: ‘*la présomption qui résulte de la possession implique pour le demandeur en revendication de prouver le titre précaire en vertu duquel le prétendu possesseur détient un meuble ou le vice affectant sa possession, que ne suffit pas à caractériser le paiement du prix par le revendiquant, à défaut de quoi ce défendeur a titre pour le conserver*’.

⁸⁰ Art. 2276 of the French Civil Code.

⁸¹ Cass. Civ. I, 24 October 2012, no.11.16431.

⁸² Cass. Civ. I, 21 February 2006, no. 04-19667 and I. BARRIÈRE-BROUSSE and M. DOUCHY-LOUDOT, *Les contentieux familiaux*, Lextenso, Paris, 2013, at no. 609.

⁸³ Cass. Civ. I, 2 April 2014, no. 13-11025, *RTD civ.* 2014, at p. 702.

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

The ownership of assets is proved as regards third parties according to the general rules of property law. Property is determined according to the legal title thereto. The legal title can be based on acquisition by the cohabitant(s), on inheritance rights or on a donation. Where the act is encompassed in a notarial deed (*acte authentique*) or is in the form of a written document, proof of ownership is usually not too difficult to provide. Each former cohabitant owns the asset to which he or she holds the legal title.

With regard to movables, in the absence of any written document establishing who is the owner of a tangible asset (*meuble corporel*), Art. 2276 of the French Civil Code applies. It states that '*en fait de meubles, la possession vaut titre*'. This means that in matters relating to (tangible) movables, possession is equivalent to title. For more details, see Question 29. This presumption of ownership based on possession can be rebutted by proof of ownership (a bill, receipt...), but the burden of proof is a heavy one, and one cohabitant can face some difficulties in rebutting it.

With regard to immovables, proof is provided by the title drawn up by the notary public.

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

The French Court of cassation regularly reiterates that Art. 220 of the French Civil Code does not apply to partners in an informal relationship,⁸⁴ which shows that the lower courts tend to extend the scope of Art. 220 by considering that common life can lead to joint and several liability even if the partners are not married to each other.⁸⁵ This statutory provision states that each spouse is solely entitled to enter into a contract the object of which is the household or the raising of the children. All debts incurred in this respect by one spouse result in the other spouse being jointly and severally liable.

Partners in an informal relationship can only become jointly liable for debts if they both agree to the transaction.

32. On which assets can creditors recover joint debts?

In the case of a joint debt (which requires the consent of both partners), creditors can recover the debt from all the assets of both partners. However, general enforcement rules shall be taken into account, and they exclude some assets from the scope of

⁸⁴ See e.g. Cass. Civ. I, 11 January 1984, no. 82-16198, *Bull. Civ. I*, no. 12; 22 March 2011, no. 09-71261; 7 November 2012, no. 11-25430, *Bull. Civ. I*, no. 236.

⁸⁵ See e.g. CA BOURGES, 8 December 1997, *Dr. Famille* 1998, no 89, with note BEIGNIER.

seizure (for example, assets which are necessary for the profession of the debtor or for family life: tables, beds, chairs...).

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

There are no specific rules governing the administration of assets which are jointly owned by the partners in an informal relationship. Therefore, the general rules apply. Assets which are jointly owned by the partners in an informal relationship are subject to the rules on *indivision* (Art. 815 et seq. of the French Civil Code). Any partner can take any measures which are necessary for the preservation of joint assets, even in the absence of urgency (Art. 815-2 of the French Civil Code). According to Art. 815-3 para. 2 of the French Civil Code, a transaction which does not belong to the normal use of the joint assets, or through which the asset is disposed of, normally requires the consent of all the joint owners. If one of the joint owners openly administers the joint assets without any objection by the other joint owners, Art. 815-3 para. 4 of the French Civil Code qualifies this as a tacit contract of agency which applies to acts of administration, not to acts of disposal (and not to lease contracts).

If one of the joint owners cannot express his or her will (due to absence, illness etc.), the other owner can be judicially authorised to represent him or her generally or only for a specific transaction (Art. 815-4 of the French Civil Code).⁸⁶ In the absence of any judicial authorisation or agency, the rules relating to *gestion d'affaires* for a third party can apply if the necessary conditions are fulfilled.

Moreover, the president of the civil court (*tribunal de grande instance*) can order or authorise any urgent measure required by a common interest (Art. 815-6 of the French Civil Code)

The creditors of a joint owner are not allowed to seize his or her share of the joint assets, Art. 815-17 para. 2 of the French Civil Code. They can, however, demand that the asset be sold on behalf of their debtor.

By contrast, the common creditors of both joint owners can seize the joint assets.

According to Art. 815 of the French Civil Code, there is no obligation to remain in *indivision* (joint ownership). Therefore, each partner can demand that the asset be sold, except if, by a judgment or contract, joint ownership has been ordered or agreed for a specific period of time.

D. Separation

⁸⁶ According to Art. 815-5 of the French Civil Code, a joint owner can also request judicial authorisation to act alone if the other joint owner's refusal endangers the common interest.

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

According to French legislation and case law, the breakdown of an informal relationship does not provide a right to maintenance. Yet, specific property law and company law rules have been used by the courts at the time of a cohabitation breakdown to lessen the unfairness of particular situations.

The French theories of unjust enrichment⁸⁷ and of *de facto* corporation⁸⁸ apply to a cohabitation breakdown. They have provided for a lump-sum payment to one ex-cohabitant at the time of the breakdown where specific legal criteria have been met. Sometimes the fulfilment of a moral duty (*obligation naturelle*) by one ex-cohabitant has been opposed to defend a refund claim.

Claims which attempt to establish the existence of a *de facto* corporation between the cohabitants mostly concern situations where one cohabitant asserts that he or she has been involved, in one way or another, in the family company or craft industry run by the other. For the existence of a *de facto* corporation to be legally established between cohabitants, each of its composing elements, as determined by Art. 1832 of the French Civil Code, must be specifically proved. These are, firstly, the raising of capital (*apport en capital*) or sweat equity (*apport en industrie*); secondly, the *affectio societatis* between the two; and, thirdly, the common intention of sharing profits and losses. The burden of proof is a heavy one, however, especially where cohabitants are involved. Indeed, they often do not take the necessary precautions so as to be able to provide such evidence in the future. Case law is very restrictive and *affectio societatis* cannot be inferred from any financial contribution made to the acquisition of a chattel.⁸⁹ Moreover, any such claim is frequently unsuccessful due to the fact that the claimant fails to prove that the financial contribution that he or she made in the company or the assistance given in the management thereof exceeded the mutual aid that could be expected in a family relationship.⁹⁰

An action *de in rem verso*, based on unjust enrichment, allows one individual to claim against another for the recovery of sums paid but not due.⁹¹ This claim is most frequently instigated where one cohabitant has paid a mortgage or a loan on behalf of the other, or has incurred expenses in improving the other's asset or chattel. The legal criteria for such a refund are, firstly, the enrichment of one cohabitant's property, secondly the correlative loss suffered by the other, and thirdly the lack of any cause in that respect. This last element is the most difficult to prove between ex-cohabitants. Indeed, the intention to make a donation, the usual contributions to

⁸⁷ Art. 1371 of the French Civil Code. See Cass. Civ 1 15 October 1996 no. 94-20472; Cass. Civ 1 24 September 2008 no. 07-11928.

⁸⁸ Art. 1873 of the French Civil Code. See Cass. Com 23 June 2004, no. 00-18974.

⁸⁹ Cass. Civ. 1, 20 January 2010, no. 08-13200.

⁹⁰ See Cass. Civ. 1, 20 January 2010, no. 08-16105.

⁹¹ Art. 1371 of the French Civil Code.

common expenses or any advantage which is the natural result of life in common diminish any refund expectations.⁹²

Finally, the fact that an initial payment was based on a moral or natural duty counteracts a claim for a refund.⁹³ This rule has been used between ex-cohabitants to moderate a refund claim by one of them against the other where the payment which was made fulfilled a moral duty.⁹⁴ The fulfilment of a moral duty, whose specific performance cannot be claimed, should not be considered to be a donation. As a consequence, its value is not subjected to taxation.⁹⁵

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

- a. **The creditor's needs and the debtor's ability to pay maintenance?**
- b. **The creditor's contributions during the relationship (such as the raising of children)?**
- c. **The standard of living during the relationship?**
- d. **Other factors/circumstances (such as giving up his/her career)?**

Not applicable.

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

Not applicable.

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

Not applicable.

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

Not applicable.

39. Is the maintenance claim extinguished upon the claimant entering:

⁹² See Cass. Civ. 1 20 January 2010, no. 08-13400. The expenditure incurred by one cohabitant, who voluntarily paid for a loan contracted by the other party in order to repay to her ex-husband her share in a former common home, was balanced by the fact that he lived in the debtor's home with her and their common child for free. In contrast see Cass. Civ. 1 24 September 2008, no. 06-11294, where it was held that expenditures incurred by one cohabitant to renovate the house of the other, considering the value of the refurbishment and the quality thereof, exceeded any advantages emanating from life in common.

⁹³ Art. 1235 of the French Civil Code.

⁹⁴ The case law is fairly old on this point, but the principle could be reactivated Cass. Civ. 1, 6 October 1959, D. 1960, 515 with note MALAURIE.

⁹⁵ See Bulletin Officiel des Finances Publiques 11 December 2013 at para. 40. Available at: bofip.impots.gouv.fr/bofip/3357-PGP.html?identifiant=BOI-ENR-DMTG-20-10-10-20131211.

- a. Into a formal relationship with another person?
- b. Into an informal relationship with another person?

Not applicable.

40. How does the creditor's maintenance claim rank in relation to:

- a. The debtor's current spouse, registered partner, or partner in an informal relationship?
- b. The debtor's previous spouse, registered partner, or partner in an informal relationship?
- c. The debtor's children?
- d. The debtor's other relatives?

Not applicable.

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

There are no specific rules on the determination of property between ex-cohabitants. The general principles of property law are applicable to a separation.

Property is determined according to legal title. The legal title can be based on acquisition by the cohabitant(s), on inheritance rights or on a donation.

Where the act is encompassed in a notarial deed (*acte authentique*) or is in the form of a written document, proof of ownership is usually not too difficult to provide.

Each ex-cohabitant owns the asset to which he or she holds the legal title. Yet, there are some limitations to this.

Firstly, where the asset acquired by one cohabitant in his or her own name has been financed by resources held under indivisible joint ownership (*indivision*), and that the origin of these resources has been declared, then the mechanism of subrogation⁹⁶ will apply and the asset will be held as joint property.⁹⁷

Secondly, the mechanism of *accession*⁹⁸ is applicable to any building on the land owned by one of the cohabitants, regardless of the origin of the financing resources. If a cohabitant finances a building on the other cohabitant's land, the building will be

⁹⁶ Art. 815-10 al. 1 of the French Civil Code. See Cass. Civ 19 January 1979, *Bull.civ* I no. 13; *RTD civ.* 1982, p. 178 with note J. PATARIN.

⁹⁷ C. FLEURIOT, 'La liquidation des intérêts patrimoniaux entre concubins', Dossier: *Les conséquences patrimoniales de la séparation des couples non mariés*, Dalloz actualité du 30 septembre 2013. www.dalloz-actualite.fr/dossier/consequences-patrimoniales-de-separation-des-couples-non-maries#.VIrAFXt4zwI.

⁹⁸ Art. 546 of the French Civil Code: 'ownership of a thing, either movable or immovable, gives a right to everything it produces and to what is accessorially united to it, either naturally or artificially. That right is called a right of accession'.

owned by the cohabitant who owns the land, although the other cohabitant is entitled to a reward.⁹⁹

In the case of a joint acquisition, the ownership of each partner is determined regarding the specific contribution of each partner thereto. Where the issue is contested, and proof cannot be provided, an indivisible joint ownership (*indivision*) of 50/50 is presumed.¹⁰⁰

According to the legal provisions¹⁰¹ the division of joint property can be claimed at any time and a reward will be granted according to the participation in the financing of the asset. Where proof cannot be provided, the value of the asset will be split between the co-owners on a 50/50 basis and the reward will be correlatively adapted.

The indivisible joint ownership scheme opens up the right of a reward when the asset is used exclusively by one of the co-owners.¹⁰² When the asset is in the form of real estate, a reward is due even if the co-owner who exclusively used it did not personally occupy the premises.¹⁰³

The situation concerning everyday goods, where acquisition is not normally encompassed in a written document, is considered to be slightly different. Each ex-cohabitant owns the asset that is in his or her possession. Indeed, according to the general principles of property law, possession of an asset determines its ownership.¹⁰⁴ This principle is also applicable to money deposited in bank accounts. This presumption of ownership based on possession can be rebutted by proof of ownership (a bill, receipt, etc.), but the burden of proof is a heavy one, and one cohabitant can face serious difficulties in rebutting it. Indeed, the *Cour de cassation* has held that the exclusive financing of an asset does not amount to proof of ownership.¹⁰⁵ In that particular case one cohabitant had bought a car for the use of the other, without the intention of donating it. According to the court the exclusive financing of the car by one cohabitant did not corrupt the possession of the car by the other cohabitant who was the exclusive user thereof. Ownership is rooted in possession; where possession is not vitiated then ownership cannot be readily contested.¹⁰⁶

⁹⁹ Art. 555 para. 3 of the French Civil Code.

¹⁰⁰ Case law has extended to cohabitants the legal presumption of an undivided right of ownership that is organised between spouses (art. 1538 of the French Civil Code) and between partners in a *pacte civil de solidarité* (Art. 515-5 para. 2 of the French Civil Code).

¹⁰¹ Art. 815 of the French Civil Code.

¹⁰² Art. 815-9 of the French Civil Code.

¹⁰³ See Cass. Civ 1, 30 June 2004, no 02-20085.

¹⁰⁴ Art. 2276 of the French Civil Code.

¹⁰⁵ Cass. Civ 1, 24 October 2012, no.11.16431.

¹⁰⁶ This position has been disputed, see particularly W. DROSS, 'Le concubin qui a financé seul l'acquisition d'un bien peut-il exiger qu'il lui soit restitué après la rupture?', *RTD civ.*, 2013, at p. 153.

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

Home or household goods are not dealt with any differently from other assets. The general principles of property law are applicable thereto (see Question 41).

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

No such preferential rights exist regarding cohabitants in the French legal system. The general principles of property law are applicable thereto (see Question 41).

44. How are the joint debts of the partners settled?

Concerning debts, each cohabitant is personally liable for the debts he or she incurred either for the household or for herself or himself. The principle of joint liability for household debts, which applies to spouses¹⁰⁷ and to partners bound by a *Pacs*,¹⁰⁸ is not applicable to cohabitants. Where one cohabitant has paid the other's debt, he or she is entitled to a reward where evidence of such a payment is provided. The theory of unjust enrichment would support such a claim for a reward¹⁰⁹ (see Question 38).

Regarding joint debts contracted by cohabitants, each debtor is personally liable for his or her share of the debt. However, where joint liability has been provided for in the contract, they will be jointly liable for the full amount of the debt. Joint liability for debts, unless organised otherwise by legislation,¹¹⁰ must be expressly agreed upon by the parties.¹¹¹ Where co-debtors are jointly liable, the one who has paid the full debt is entitled to sue the other(s) in order to recover the amounts that are due.¹¹²

45. What date is decisive for the determination and the valuation of:

a. The assets?

The legal property regime which is applicable to cohabitants is the one of indivisible joint property (*indivision*). According to Art. 829 of the French Civil Code, the value

¹⁰⁷ Art. 220 of the French Civil Code.

¹⁰⁸ Art. 515-4 of the French Civil Code.

¹⁰⁹ Art. 1371 of the French Civil Code. See Cass. Civ 1, 15 October 1996 no. 94-20472; Cass. Civ 1, 24 September 2008 no. 07-11928.

¹¹⁰ Such is the case between spouses or partners bound by a *Pacs* for household debts, but joint liability for such debts is not extended to cohabitants.

¹¹¹ Art. 1202 of the French Civil Code.

¹¹² Art. 1204 of the French Civil Code.

of the assets subjected to indivisible joint property is assessed on the date of the act of sharing (*partage*) or the closest possible date thereto.

b. The debts?

The value of a debt is determined on the date when it becomes payable. The value thereof depends on the terms of the agreement between the creditor and the debtor. Banking and other interests can be determined in the contract.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

Only unjust enrichment or a *de facto* company can be raised to compensate for the losses suffered during the relationship by one of the former cohabitants (see Question 38).

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

According to French law the surviving partner has no inheritance rights on intestacy. A registered partner also has no such right.

Only spouses are entitled to inheritance rights on intestacy. The surviving spouse has an option depending on whether or not there are common children.¹¹³ In the presence of common children the surviving spouse has to opt for either the amount of $\frac{1}{4}$ of the estate of the deceased spouse on a full ownership basis or the usufruct of the all estate of the deceased spouse. Where the deceased spouse had children from a former union, the surviving spouse no longer has this option. He or she is entitled to the amount of $\frac{1}{4}$ of the estate of the deceased spouse on a full ownership basis. Where the spouse dies without children, the surviving spouse is entitled to half of the estate, the other half being granted to the deceased spouse's parents ($\frac{1}{4}$ each).¹¹⁴ Where the parents of the deceased spouse are no longer alive, the surviving spouse is the only heir on intestacy and is entitled to the full amount of the estate.¹¹⁵

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

No such right exists according to French law.

¹¹³ Art. 757 of the French Civil Code.

¹¹⁴ Art. 757-1 of the French Civil Code.

¹¹⁵ Art. 757-2 of the French Civil Code.

49. Are there specific rules dealing with the home and/or household goods?

On intestacy, no specific rules concerning cohabitation have been provided for regarding home or household goods. Indeed, the situation will be determined by the application of the general principles of property law. The key issue is proof of ownership. If the surviving partner is able to prove the full ownership of assets, the heirs will have no claim thereto. Where the heirs can prove the full ownership of the deceased cohabitant concerning the assets, the surviving partner will have no claim regarding them. If proof of ownership cannot be provided, the asset will be subjected to indivisible joint ownership (*indivision*) between the surviving partner and the heirs on a 50/50 basis (see Question 41). One of the joint owners can demand that the asset in question be sold.

Where the home was exclusively owned by the deceased cohabitant, the surviving partner has no right to remain in that home. If he or she is allowed to remain in the home by the heirs, they are entitled to an occupation fee (*indemnité d'occupation*).¹¹⁶

Money deposited in the bank account of the deceased partner is automatically blocked until the liquidation of the succession, even though a power of proxy concerning the bank account (*procuration*) was granted to the surviving partner during life in common.

The situation concerning a joint bank account (*compte bancaire joint*) and an undivided bank account (*compte bancaire indivis*) must be distinguished. Only an undivided bank account is automatically blocked upon the death of one of the co-holders. Money deposited in a joint bank account remains accessible to the surviving partner.¹¹⁷ Yet, the harshness of this situation can be lessened by a will (*testament*).

50. Can a partner dispose of property by will in favour of the surviving partner:

a. In general?

The testator can dispose of assets in favour of the surviving partner within the limits of the disposable portion (*quotité disponible*) of the estate, just as he or she can do in favour of anyone chosen by him or her, whether this is a member of the family or not.¹¹⁸ The disposable portion is limited where the deceased person is married or has children. See below.

b. If the testator is married to or is the registered partner of another person?

¹¹⁶ If the home was exclusively rented by the deceased cohabitant, the recognised partner (*concubin notoire*) can request the benefit of the transfer of the residential lease, subject to the condition that the partners lived together for at least one year (Art. 14 of Law Act no. 89-462 of 6 July 1989).

¹¹⁷ Service Public, 'Que devient un compte bancaire en case de décès?', available at: vosdroits.service-public.fr/particuliers/F1451.xhtml.

¹¹⁸ Art. 912 et seq. of the French Civil Code.

The registered partner is not an heir on intestacy. As a consequence the fact that the testator is bound by an undissolved civil partnership will have no impact on his or her legal capacity to dispose of assets in favour of his or her surviving cohabitant.

The surviving spouse is only a protected heir on intestacy where the testator has no living children or grandchildren.¹¹⁹ In this situation the disposable portion amounts to $\frac{3}{4}$ of the assets of the testator.¹²⁰ The surviving adulterous cohabitant can receive no more than this portion of the estate by will.

Where there are living descendants, the surviving spouse is not a protected heir and can be disinherited by will to favour the adulterous surviving cohabitant.¹²¹

c. If the testator has children?

According to French law, children (and the grandchildren on behalf of a deceased child) are protected heirs.¹²² The disposable portion that may benefit the surviving cohabitant will depend on the number of children.¹²³

If there is only one living child the disposable portion amounts to one half of the estate of the testator, $\frac{1}{3}$ thereof where there are two living children and $\frac{1}{4}$ thereof where there are three living children or more.¹²⁴

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

According to French law, a will is a strictly personal undertaking that can be validly made by the testator exclusively.¹²⁵ A joint will has no legal effect. Nevertheless, spouses, partners or cohabitants can make a will containing identical provisions so as to confirm their common intention. However, the will can always be revoked on a discretionary basis by the testator without notice to the other. The liability of the testator who has revoked his or her donation to the other party under a will, without

¹¹⁹ Indeed, if one child of the testator is deceased the grandchildren born from him or her can act on behalf of their parent for succession purposes. Irrespective of their number they count as one in the liquidation process. See Art. 913-1 of the French Civil Code.

¹²⁰ Art. 914-1 of the French Civil Code.

¹²¹ Cass. Plenary Assembly, 29 October 2004, no. 03.11238. The *Cour de Cassation* held that such a will did not contradict morality (*bonnes moeurs*) and denied the nullity claim on the ground of Art. 1133 of the French Civil Code.

¹²² Art. 913 and 913-1 of the French Civil Code.

¹²³ As mentioned above, irrespective of their number, grandchildren always count as one (the deceased child) in the liquidation process. See Art. 913-1 of the French Civil Code.

¹²⁴ Art. 913 of the French Civil Code.

¹²⁵ Art. 895 of the French Civil Code: 'The will is a legal act by which the testator disposes fully or partly of his or her estate or of his or her rights and interest, for the time after his or her death. This act can be revoked'.

notice to the beneficiary, cannot be claimed.¹²⁶ To be enforceable a will must be hand written and signed by the testator and it must be dated.

b. If either testator is married to or is the registered partner of another person?

A joint will is not legally enforceable according to French law.

c. If either testator has children?

A joint will is not legally enforceable according to French law.

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

a. In general?

To favour one person (a cohabitant or whatever he or she may be) by means of a will is allowed but only within the limits of the disposable portion (*quotité disponible*) of the assets of the testator (see Question 50). Irrespective of the legal technique used to favour the cohabitant, the taxes imposed upon such a donation are very dissuasive.

Indeed, where the donator and the beneficiary are not related by blood ties, by marriage or a registered partnership, for any donation between living persons or by a will after death, the tax to be paid amounts to 60% of the value of the assets and the amount of the abatement is the lowest.¹²⁷

The notary public (*notaire*) is the French legal professional who is legally competent to organise the succession of the deceased person. To favour the surviving cohabitant after death, some legal techniques are available.¹²⁸

The first is the indivisible joint ownership contract (*contrat d'indivision*). When cohabitants acquire an asset in common, the legal regime which is applicable is the one of indivisible joint property (*indivision*). At the time of acquisition, they can enter into a specific agreement aimed to regulate the administration of the asset after death. In this specific contract, it is possible to insert a clause according to which the administration of the asset is devolved to the surviving cohabitant after the death of the other cohabitant, so as to enable him or her to take the usual administration decisions without the formal agreement of the heirs of the deceased cohabitant. Indeed, at the time of death, indivisible joint property continues with the surviving cohabitant and the heirs representing the deceased cohabitant. It is possible to determine in the contract that any revocation of the administrator requires unanimity among the indivisible co-owners so as to protect the surviving cohabitant from being

¹²⁶ See Cass. Civ 1, 30 November 2004, no 02-20883. In this case, the testator posted the act of revocation of his will which benefited his cohabitant on the same day that he registered the will before his notary, without notice to the cohabitant who discovered the revocation at the time of the death of the 'testator'.

¹²⁷ See vosdroits.service-public.fr/particuliers/F14200.xhtml.

¹²⁸ See Dalloz Action *Droit de la famille* 2014-2015, no. 144.00 et seq.

revoked. But the most protective clause that could be inserted in such an agreement is the one according to which at the time of death the surviving indivisible co-owner is entitled to acquire the shares of the deceased indivisible co-owner in the joint property so as to become the exclusive owner of the asset.¹²⁹ The heirs are only entitled to compensation for the value of these shares; that value must be determined at the time of their acquisition.

Another technique is the one of joint acquisition of an asset with an accretion clause (*clause d'accroissement* or *tontine*). Indeed, at the time of the joint acquisition it is possible to insert a clause in the contract according to which each party will be reputed to have been the exclusive owner of the asset since acquisition provided the other party dies first.¹³⁰ At the time of the death of one of the co-contracting parties, the other becomes retroactively the sole owner of the asset. This clause is interpreted as being an aleatory contract, which is legal under Art. 1964 of the French Civil Code.¹³¹ This is not a donation since at the time of the contract a risk still exists, and indeed nobody can predict who will die first. This is not a transmission of property upon death since the surviving party is retroactively the exclusive owner since the date of the acquisition of the asset. Nevertheless, for tax purposes this scheme amounts to a liberality except where the acquired asset is the common home of the co-purchaser. In this last situation, the transmission will escape any taxation scheme where the value of the asset is below € 76,000.¹³² The accretion clause can be raised against any creditors of the deceased party, thereby making the asset unseizable.¹³³ The legal regime which is applicable to this asset before the death of one party or the other is the one of indivisible joint ownership.

A third technique is the joint cross-purchase of an asset (*achat croisé*) by cohabitants.¹³⁴ Indeed, according to the general principles of property law, property can be divided between bare ownership (*nue propriété*) and usufruct. At the time of acquisition, cohabitants can agree on a contract according to which each of them will acquire crossed bare ownership of 50% of the asset and usufruct of 50% thereof. At the time of death, bare ownership and usufruct merge together automatically. Then, the surviving cohabitant will obtain usufruct of 100% of the asset and 50% of the bare property, the second half of the bare property being transferred to the heirs of the deceased cohabitant. Usufruct of all of the asset is very protective for the surviving cohabitant and the reunification of bare property and usufruct upon death is free of any taxes.

Finally, a cohabitant can make the choice to acquire real estate under a real estate non-commercial company scheme (*Société civile immobilière*). According to this scheme the real estate is owned by the company and each of the cohabitants owns a

¹²⁹ This possibility is organised by Art. 1873-13 of the French Civil Code.

¹³⁰ The legality of such a clause has been established for a long time in French Contract Law. See Cass. Civ 1, 3 February 1959, D. 1960, p. 592 with note DE LA MARNIERRE.

¹³¹ Cass. Civ 1, 14 December 2004, no. 02-11088.

¹³² Art. 754A of the French General Tax Code.

¹³³ Cass. Civ 1, 18 November 1997, no. 95-20842.

¹³⁴ See Dalloz *Action Droit de la famille* 2014/2015 no. 144.14.

percentage of the shares therein. Shares can be easily transmitted from one cohabitant to the other according to general principles of company law.

b. If either partner is married to or is the registered partner of another person?

The fact that the deceased cohabitant was married to another person limits the possibility to organise, within an indivisible joint ownership contract, the preferential allocation (*attribution préférentielle*) of the shares of indivisible joint ownership at the time of death.

Indeed, such a contract cannot restrict the legal preferential allocation regime in favour of the surviving spouse organised by Art. 831 to 832-1 of the French Civil Code. The regime of preferential allocation to the benefit of the surviving spouse only applies to particular assets such as: family farms, family craft industries and family commercial businesses in which the surviving spouse participates, and any premises where the surviving spouse is permanently residing or working.

Regarding the legal technique of the accretion clause (*pacte de tontine*), this clause is valid, even if one of the co-owners was married to another person at the time of the acquisition of the asset.¹³⁵

c. If either partner has children?

If either partner has children the surviving cohabitant can be favoured by a will but only within the limits of the testator's disposable portion of assets (see Question 50). Any excess will be recoverable by the heirs.

53. Is the surviving partner entitled to a reserved share¹³⁶ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?

The surviving partner is not a protected heir. According to French legal provisions only the surviving spouse and the children can benefit from a reserved share.¹³⁷

54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?

No such statistics are available.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

¹³⁵ See. Cass. Civ 1, 11 January 1983, no. 81-16307.

¹³⁶ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

¹³⁷ Art. 913 to 914-1 of the French Civil Code.

No such statistics could be found.

It emerges from informal contacts with notaries public¹³⁸ that the National Record of wills (*Fichier central des disposition de dernières volontés*) does not make any distinction regarding the matrimonial situation of the testator, therefore making it impossible to obtain such information.

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

No such statistics are available. The beneficiary of a person's life insurance can be freely chosen by the insured person with a restriction on persons who are capable of exerting an undue influence (a religious minister, medical staff who treated the insured person, an employee working in a retirement home...).¹³⁹ The beneficiary, for his or her part, must consent to being a beneficiary of the contract. Once acceptance has occurred revocation is not anymore a possibility without the express consent of the beneficiary.¹⁴⁰

An adulterous cohabitant is not precluded from benefiting from a life insurance policy concluded by his or her married cohabitant. Indeed, the Plenary Assembly of the *Cour de cassation* has held that the benefit granted to the adulterous cohabitant does not contradict morality and cannot be annulled on the ground of Art. 1133 of the French Civil Code.¹⁴¹

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

No specific rules are applicable to agreements between cohabitants. The general principles of contract law will govern them.¹⁴²

58. Are partners in an informal relationship permitted to agree on the following issues:

a. The division of tasks as between the partners?

¹³⁸ Informal contact with M. FOUR-BROMET and J. POYET, both notaries public, respectively in Lyon and Cremieux.

¹³⁹ Art. 909 of the French Civil Code; Art. L331-4 of the French Welfare and Family Code.

¹⁴⁰ Art. L.132-9 of the French Insurance Code.

¹⁴¹ Cass. Ass. Plen 29 October 2004 no. 03-11.238. According to Art. 1133 of the French Civil Code, a contract is vitiated if its objective is illegal or if it contradicts morality or public order. Nullity can be ordered by the court.

¹⁴² Art. 1108 et seq. of the French Civil Code.

Some assets, rights or interests are excluded from the scope of such a contract.¹⁴³ Personal duties (*obligations de nature personnelle*) cannot be imposed on one person by means of a contract¹⁴⁴; indeed specific legal provisions determines this issue.¹⁴⁵ Cohabitation has no legal impact on the civil status of a person (*état des personnes*) and this cannot be altered by means of a contract. A cohabitation contract (*convention de concubinage*) can only aim at organizing the finances and property between the cohabitants. The division of tasks is naturally excluded from the contractual sphere. If such an agreement were intended, this would not be a contract and it could not be enforcement.

On the particular point of the division of tasks within the family, the 2014 Act on Male and Female Equality¹⁴⁶ was preceded by a Recommendation Report by the Social Affairs Committee (*Commission des affaires sociales*), delivered on 23 July 2013, that specifically pointed to the permanent inequality of the division of tasks between men and women within a family to the disadvantage of women who still bear the major part of such tasks.¹⁴⁷ This disequilibrium exists regardless of the matrimonial situation of the couple in question, whether they be married, partners or cohabitants.

b. The contributions to the costs and expenses of the household?

Cohabitants have no claim by one against the other for a contribution towards the costs and expenses of the household; only spouses and partners bound by a *Pacs* have such a reciprocal obligation.¹⁴⁸ But cohabitation contracts are nevertheless legal and are governed by the general principles of contract law.¹⁴⁹ They are legally enforceable as either private agreements or authentic contracts.

However, case law limits the scope of such a contract where it contradicts the public order provisions when organising the parental duty to maintain one's children. Indeed, in a 2006 case,¹⁵⁰ a cohabitation contract was nullified by the court because the agreement organizing the parental contribution to the maintenance of the common children after separation had been concluded without considering the resources of the debtor and the needs of the children, but rather on the basis of a fixed allowance amounting to half of the debtor's earnings. The court held that this

¹⁴³ Art. 1128 of the French Civil Code. For example, the civil status of an individual (*état des personnes*) is excluded from a contract and the right to use one's family name cannot be transferred by contract to the cohabitant.

¹⁴⁴ www.notaires.fr/fr/lunion-libre-ou-concubinage.

¹⁴⁵ For example, a duty of fidelity cannot be laid down in a contract between cohabitants. Any restriction on matrimonial freedom within such an agreement would legally vitiate that contract.

¹⁴⁶ Act no. 2014-873 of 4 August 2014.

¹⁴⁷ See the report at p. 27 et seq. The report is available at: www.senat.fr/rap/a12-794/a12-7941.pdf. For more details see the demographic study by A. REGNIER-LOILIER, 'L'arrivée d'un enfant modifie-t-elle la répartition des tâches domestiques au sein du couple?', *Population et Société*, 2009, available at: www.ined.fr/fichier/s_rubrique/19129/popetsoc_461.fr.pdf.

¹⁴⁸ Art. 214 of the French Civil Code (spouses) and Art. 515-4 of the French Civil Code (registered partners).

¹⁴⁹ Art. 1108 et seq. of the French Civil Code.

¹⁵⁰ Cass. Civ 1 20 June 2006, no. 05-17465.

contract contradicted not only the public order provisions organizing the duty to maintain one's children, but also individual rights in that it deterred the debtor from separating with the creditor.

c. Their property relationship?

Such cohabitation contracts (*convention de concubinage*) are legal and are governed by the general principles of contract law.¹⁵¹ They are legally enforceable as either private agreements or authentic contracts. However, where the donation or the sale of real estate is determined or regulated in a cohabitation contract, the document must comply with specific legal provisions regarding formal requirements and taxation provisions.

d. Maintenance?

No right to maintenance exists between cohabitants (see Question 34 et seq.). According to Art. 1235 of the French Civil Code, any payment must be justified by a pre-existing debt. As no maintenance obligation exists between them, no debt can support any payment made for the benefit of one cohabitant or the other. Any payment made without due cause is recoverable except where the payment has been made so as to fulfil a moral duty (*obligation naturelle*).¹⁵²

However, the case law is very strict on this issue and any novation of the moral duty into a legal obligation must be proved.¹⁵³ Proof can amount to a written document encompassing the novation or the implementation of the obligation (*commencement d'exécution*).¹⁵⁴ This requirement must be fulfilled except where the creditor has been unable to obtain a written document from the debtor¹⁵⁵ or where the parties have waived their right to have an acknowledgment of a debt, amounting to over € 1500, included in a written document.¹⁵⁶

Recent case law¹⁵⁷ has limited the effect of such an agreement, although it is in the form of a written contract regulating the 'termination of cohabitation' (*contrat de fin de concubinage*), where the obligation laid down in the contract exceeds that which could emanate from a moral duty. In this particular 2011 case the contract regulating the termination of cohabitation provided for the payment of a life allowance for the benefit of the female cohabitant. The amount of this allowance was determined in advance without any consideration being given to the needs of the creditor. Additionally, a commitment to pay the rent of her home before the implementation of the allowance had been agreed upon by the parties.

¹⁵¹ Art. 1108 et seq. of the French Civil Code.

¹⁵² Art. 1235 of the French Civil Code.

¹⁵³ See Cass. Civ 1, 23 May 2006, no. 04-19099; Cass. Civ. 1 29 June 2011, no. 10-12018.

¹⁵⁴ Cass. Civ 1 28 June 1954, Bull. civ. I, no. 214.

¹⁵⁵ Paris Court of Appeal, 9 April 1957, D. 1957, 455.

¹⁵⁶ Art. 1134 of the French Civil Code.

¹⁵⁷ Cass. Civ 1, 29 June 2011, no. 10-12018.

e. The duration of the agreement?

The general principles of contract law govern the duration of the agreement, within the limits of the public order provisions. Considering the recent case law on cohabitation contracts, it could be contemplated that where the agreed duration of the performance of such a contract would exceed that which could be expected from a moral duty, such an agreement could eventually be nullified.

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

Cohabitants are permitted to agree on the consequences of their separation within the limits described under Question 58.

60. Are the agreements binding:

a. Between the partners?

The agreement is binding between the partners within the limits described under Question 58.

b. In relation to third parties?

The agreement is binding in relation to third parties and especially in relation to children within the limits described under Question 58.

61. If agreements are not binding, what effect, if any, do they have?

Not applicable.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

No such legislative provisions exist in the French Legal system.

63. When can the agreement be made (before, during, or after the relationship)?

A cohabitation contract can be entered into at any time: before and during cohabitation and at the time of the separation.

64. What formal requirements, if any, govern the validity of agreements:

a. As between the partners?

No specific formal requirements govern the validity of agreements between cohabitants. The only requirements are those provided for the validity of specific acts that must be laid down in a written document¹⁵⁸ or in a notarial deed.¹⁵⁹

b. In relation to a third party?

No formal requirements govern the validity of agreements in relation to a third party. The only requirements are those mentioned in (a) above.

65. Is independent legal advice required?

No, compulsory legal advice is not required. Nevertheless, if the agreement is intended to be laid down in notarial deed, the assistance of a notary public is obligatory.

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

No statistics could be found, but it emerges from informal contacts with notaries public¹⁶⁰ that it is very rare for them to authenticate a cohabitation contract.¹⁶¹ The rarity of such agreements is even more significant compared to the important number of joint acquisitions of real estate by cohabitants, which must be laid down in a notarial deed on a compulsory basis. However, cohabitation contracts can be valid private agreements, but there is a great incentive for cohabitants who want to lay down their relationship in a formal agreement to register a civil partnership (*Pacs*) rather than to enter into a cohabitation contract.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

Contact with the National Chamber of Notaries Public has been unsuccessful. The principle of confidentiality which governs the records of notaries public has so far made it impossible to obtain such information.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

¹⁵⁸ Art. 1134 of the French Civil Code.

¹⁵⁹ A notarial deed is a legal requirement for any contract related to the sale of real estate, for a donation contract, and for agreements on succession (*pacte successoral*).

¹⁶⁰ Informal contacts with Mes L. AZILOU REYMONET, M. FOUR-BROMET and J. POYET, notaries public respectively in Crémieux, Pont de Cheruy and Lyon.

¹⁶¹ Me L. AZILOU REYMONET has never had an occasion to register such a contract in fifteen years as a notary public and Me M. FOUR-BROMET stated that she has registered a cohabitation contract once or twice at the maximum during the preceding year.

In case of disputes between partners in an informal relationship, the family judge (*juge aux affaires familiales*) has jurisdiction concerning the following matters:

- All disputes relating to the exercise of parental responsibilities: decisions on the child's residence, on contact, on child maintenance. For these disputes, the parties are not required to be represented by a lawyer.
- The sharing of assets and the settlement of joint ownership. Representation by counsel is mandatory.
- The protection of a partner in the case of domestic violence.

The same authority has jurisdiction concerning similar disputes between spouses or former spouses.

Since Law Act no. 2009-526 of 12 May 2009 aiming to simplify and clarify the law and to make proceedings more informal and Decree no. 2009-1591 of 15 December 2009, all disputes relating to the settlement of the partners' patrimonial interests are decided by the family judge, who now has jurisdiction concerning disputes arising out of the separation of couples. See Art. L. 213-3, 2° of the Judicial Organisation Code (*Code de l'organisation judiciaire, COJ*¹⁶²) and Art. 1136-1 of the French Code of Civil Procedure.¹⁶³ The court of appeal of Lyon,¹⁶⁴ for example, has determined that a dispute arising out of a loan granted by one partner to the other must be brought before the family judge.

The general civil court (*tribunal de grande instance*) decides on claims relating to filiation.

69. Is that the same authority as for spousal disputes?

Yes. Since Law Act no. 2009-526 of 12 May 2009 aiming to clarify and simplify the law and to make proceedings more informal and Decree no. 2009-1591 of 15 December 2009, the family judge has jurisdiction concerning disputes (the sharing of assets, child maintenance, the exercise of parental responsibilities, spousal maintenance etc.) arising out of the separation of all couples.

¹⁶² The family judge is in particular competent concerning the following matters in respect of non-married couples: 1) joint ownership by registered partners or partners in an informal relationship; 2) the settlement and sharing of the assets of registered partners or partners in an informal relationship; 3) claims relating to a) child maintenance and – for registered partners – to the contribution to the costs and expenses of their household; b) the exercise of parental responsibilities; c) protection against a violent spouse, registered partner or partner in an informal relationship (*concubin*) or against a former spouse, registered partner or *concubin*; f) protection of an adult when there is a risk of a forced marriage.

¹⁶³ Art. 1136-1 French Code of Civil Procedure: for disputes on spouses' matrimonial property regime, on joint ownership between registered partners or partners in an informal relationship, on the liquidation and settlement of the patrimonial interests of spouses, registered partners or partners in an informal relationship, the proceedings before the family judge follow the general rules on contentious proceedings before the *tribunal de grande instance*, which means that the parties must be represented by counsel.

¹⁶⁴ CA Lyon, 2nd ch. A, 2 July 2013, no. 13/03189.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

A specific provision in the French Civil Code (Art. 373-2-7) states that parents (who can be spouses, registered partners or partners in an informal relationship) can request the family judge to 'homologate' (ratify) their agreement organising the exercise of their parental responsibilities and setting the amount of child maintenance. According to para. 2, the judge will ratify the agreement, unless he or she is of the opinion that the agreement does not sufficiently protect the child's interests or that the parent's consent to the agreement was not made of his or her free will. This means that the partners (parents) may agree on the exercise of parental responsibilities and child maintenance, but that their agreement is subject to specific scrutiny by the family judge.

No similar statutory provision regulates the court's scrutiny of agreements on other matters entered into by partners in an informal relationship. Agreements between partners in an informal relationship made before the breakup of the relationship do not seem to be frequent.¹⁶⁵ Notaries have however suggested some model agreements.¹⁶⁶ They mostly contain an inventory of the assets (especially movables) of each partner and can regulate contributions to the expenses of the household as well as sharing arrangements in the case of a breakup. Such an agreement cannot impose *personal* duties on the partner(s).

After the breakup of the relationship, a partner can request the nullity of the agreement on the ground of a defect in consent (mistake, fraud or duress). The court can scrutinize the agreement in respect of the parties' consent and concerning public order requirements. If the agreement contains rules on the exercise of parental responsibilities, the court must also consider whether such agreements are compatible with the child's best interests (Art. 373-2-7 of the French Civil Code, see above).

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

Only an agreement between the partners relating to the exercise of their parental responsibilities and the amount of child maintenance is regulated by Art. 373-2-7 of the French Civil Code. This provision gives the court the authority to refuse to ratify such an agreement if it does not sufficiently protect the child's interests or if a parent's consent to the agreement was not given on the basis of his or her free will. Unfairness towards a partner and the rights of a third party are not grounds which can be considered by the court. If the court refuses to ratify (homologate) the

¹⁶⁵ They are indeed very rare, see I. BARRIÈRE-BROUSSE and M. DOUCHY-LOUDOT, *Les contentieux familiaux*, Lextenso, Paris, 2013, at no. 604.

¹⁶⁶ See D. FENOUILLET, 'Couple hors mariage et contrat', in: D. FENOUILLET and P. de VAREILLES SOMMIERES (eds.), *La contractualisation de la famille*, Economica, Paris, 2001.

agreement, it can try to find, together with the parents, a solution which is compatible with the child's interests. If this fails, the court (i.e. the family judge) will himself or herself decide on the exercise of parental responsibilities and on child maintenance.

With regard to agreements dealing with the partners' patrimonial interests (assets, contribution to the expenses of the household, liquidation and sharing after the breakup etc.), no specific statutory provision regulates the scope of the court's scrutiny. Generally, any unfairness towards a partner, the rights of a third party, or a change of circumstances are not taken into account.

Unfairness towards a partner can only be taken into account indirectly. For example, in an interesting judgment of 20 June 2006,¹⁶⁷ the Court of cassation confirmed a decision delivered by a court of appeal which nullified an agreement between the *concubins* (*convention de concubinage*) that stipulated that the unemployed partner (or the partner who gave up his or her employment in order to raise the children) could claim compensation from the other partner amounting to at least half of the other partner's income. The agreement did not determine the amount with regard to each parent's income and to the children's needs but as a lump sum, which - according to the Court of cassation - could result in the debtor being unable to fulfil his or her other maintenance duties. Moreover, the agreement was so coercive and compelling that it was considered by the Court of cassation to be a means to 'dissuade a partner from ending the relationship', which was 'contrary to the principle of personal freedom' and it therefore contravened the French public order. This shows that an agreement can be nullified if it infringes the personal freedoms of one of the partners.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

According to Art. 21 of the French Code of Civil Procedure, conciliation between the parties is part of the judge's task. The family judge can attempt to find reconciliation between the partners in an informal relationship. In particular in disputes relating to the exercise of parental responsibilities, Art. 373-2-10 French Civil Code requires the family judge to endeavour to find conciliation between the parties. The family judge can suggest mediation to the parents; if they agree, the judge appoints a family mediator. The judge can also enjoin the parties to take part in a meeting with a mediator who will inform them about the objective and the process of mediation.

The judge can more generally suggest mediation to any parties in any lawsuit.

Mediation is never mandatory. From 2012 to 2014, however, a pilot project introduced, for a three-year period, mandatory mediation before the civil courts of

¹⁶⁷ Cass. Civ I, 20 June 2006, no. 05-17475, *Bull. Civ.* No 312; *Dr. Fam.* 2006, no 155 with note LARRIBAU-TERNEYRE; *RTD civ.* 2006, p. 740, with note HAUSER.

Bordeaux and Arras¹⁶⁸: if an initial court order had ruled on the exercise of parental responsibilities and/or child maintenance, a parent was not allowed to directly seize the court once again to request a modification of the order. The seizure of the court had to be preceded by an attempt at family mediation, otherwise the claim was inadmissible. This did not apply, however, if the request brought by both parents was aimed at the ratification (*homologation*) of their agreement, or if there was a serious ground (*motif légitime*) not to try to mediate, or if the mediation attempt would infringe the right to have access to the court within a reasonable period of time. The French government must now draft a report on this experimental project and decide whether it should be extended to all French family courts.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

Under French law, an ADR clause is in principle enforceable. Therefore, if a party seizes the court without first trying to settle the dispute through the mechanism imposed in the ADR clause (mediation, conciliation), the claim will be dismissed (inadmissibility: *irrecevabilité*).¹⁶⁹

Recently, a judgment rendered by the Commercial chamber of the Court of cassation on 29 April 2014¹⁷⁰ required that the ADR clause should be sufficiently precise; otherwise, it does not lead to the inadmissibility of the claim brought to court before a conciliation attempt has taken place.

The attempt at conciliation or mediation cannot anymore take place after the start of the judicial proceedings.¹⁷¹ Until December 2014, if it had taken place before the court gives its judgment, the claim was not inadmissible, but the Court of cassation recently changed its case law on this issue.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

No statistics or estimations are available in this respect.

¹⁶⁸ Law Act no. 2011-1862 of 13 December 2011.

¹⁶⁹ For a conciliation clause, see Cass. Ch. Mixte, 13 February 2003, no. 00-19423 and 00-19424, *Bull. Ch. mixte* no 1: '*licite, la clause d'un contrat instituant une procédure de conciliation obligatoire et préalable à la saisine du juge, dont la mise en oeuvre suspend jusqu'à son issue le cours de la prescription, constitue une fin de non-recevoir qui s'impose au juge si les parties l'invoquent*'. For a mediation clause, see Cass. civ. I, 8 April 2009, no. 08-10866, *Bull. Civ. I*, no 78.

¹⁷⁰ No. 12-27004, *Bull. Civ. IV*, no. 76: '*Attendu que la clause contractuelle prévoyant une tentative de règlement amiable, non assortie de conditions particulières de mise en oeuvre, ne constitue pas une procédure de conciliation obligatoire préalable à la saisine du juge, dont le non-respect caractérise une fin de non-recevoir s'imposant à celui-ci*'.

¹⁷¹ Cass. Ch. mixte, 12 December 2014, no 13-19684. For a different solution, see an earlier decision Cass. Civ. II, 16 December 2010, no. 09-71575, *Bull. Civ. II*, no. 212.