



Informational Letter N°9

Retaining Walls¹ :

Mr. Franck Mustière is a new member of our association. His parents own the la Rimbert mansion in Saint Front and have been members of our association from the very start. Below, he presents an inventory of the jurisprudence² regarding the management/ownership of the retaining walls. This topic is one of the many concerns for all city dwellers among which are included some of our members.

« "With regard to retaining walls, the Civil Code is silent, and it is therefore the jurisprudence that has long established a presumption of non-adjacency (non-mitoyenneté).

Among the many decisions handed down one may cite the Judgment of the High Court of TOURS dated 10 July 1980 and the Judgment of the 3rd Civil Chamber of the Court of Cassation dated 15 June 1994 no.92-13487 according to which:

Retaining walls must be presumed to belong to the person(owner) for whom they provide support of the property and thus who benefits from them.

The Court of Cassation further stated, in the aforementioned 1994 decision:

A retaining wall is not a fence wall and therefore cannot be considered an adjoining wall.

Another Case 03-15.541 of 8 December 2004 in which the Court of Cassation, **after finding the absence of a title** to establish the private or adjoining character of the wall, and noted that **the profile of the land and the presence of two rows of barbacans** (openings in the wall

1 A stabilizing structure used to hold sloping ground in place and to prevent the erosion and the movement of soil. It must be substantial and sturdy enough to accommodate and redistribute the lateral pressure caused by sloping ground. It is normally designed with seepage holes, which allow collected ground water to escape.

2 Previously rendered decisions, which illustrate how a legal matter has been resolved. The decisions mentioned in this text are from the French Civil Code. The English translation is not to be taken as definitive interpretations of the French text.



to allow for rainwater flow), remembering that the **wall was used to support** the overhanging property and that **its low height on the upper-lower side** removed any aspect of a fence wall.

The High Court found that this was sufficient to infer that **this wall belonged exclusively to the owner of the overhanging land.**

This case law was reaffirmed by the Court of Cassation, 3rd Civil Chamber, in a judgment of 12 November 2008 (No. 07-19035).

More recently, in a judgment of 15 September 2015 (No. 12-25911) The 3rd Civil Chamber adjudicated exclusive ownership of a wall in favour of the overhanging land, whereas initially, according to the title deeds, the wall separating the two lands was described as a semi-detached. In this case, the owner of the overhanging land had filled the land to ensure the horizontality of his previously sloping land, which had forced him to transform the separation wall so that it would perform the land retention function in the future.

Given these details, **subject to verification that your title does not qualify as adjoining, a wall that separates you from your neighbour, it follows from the well-established case law that said wall belongs exclusively to your neighbour whose land overlooks yours.**

Under these conditions, your neighbour is responsible for the maintenance and repair of any damages to the wall. »

The third in a series of Informational Correspondance, this completes Mr. Meyer's property articles and the boundary surveyor's sections regarding matters of property limits..

So what are the precautions to take when buying a property or with respect to maintenance or renovation work?

- .Contact the town planning department who will inform you about the feasibility of your project as well as these administrative and neighbourhood implications.
- Get in touch with your notary to get a more detailed explanation of the contents of your deed of ownership.
- If you have any doubts or questions unresolved by your notary (regarding property limits), do not hesitate to contact a surveyor to help you clarify your questions.



Visit of the Poterne Tower :

We thank Mr. And Mrs. Douettée for opening their doors for us and allowing us to take a photograph in stone of a cannon/musket slit and an arrow slit, as a one-piece set dated by Ms. Baudry from the 13th century.



This defensive military equipment of the time allowed to open fire in parallel to the rampart and also to defend access to the door of the Poterne (a small gate/door that was integrated into the walls of a fortification, discreetly and which allowed the inhabitants of the castle to leave or return without the knowledge of the besieger..)

An awning built by a neighbour and attached to the tower, no longer gives access to this very interesting architectural element.



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Domfront : Août 2020

Votre Président dévoué,