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## Lease of Personal Services in Louisiana: Breach and Damages

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## COMMENTS

### LEASE OF PERSONAL SERVICES IN LOUISIANA: BREACH AND DAMAGES

Leases in Louisiana are of two kinds: the letting of things, and the letting of labor or industry.<sup>1</sup> The lease of a thing is a contract by which one party grants another the enjoyment of property in return for a price called rent.<sup>2</sup> The lease of labor, commonly called a lease of personal services or employment contract,<sup>3</sup> is a contract in which one party hires out his services to another in return for a price called salary.<sup>4</sup> The Civil Code has specific provisions dealing with the duration of the lease of things,<sup>5</sup> notice for its termination,<sup>6</sup> and the effect of continuing the relationship beyond the original term;<sup>7</sup> however, the Code is practically silent in providing for these matters<sup>8</sup> in a lease of personal services. Consequently, in determining the terminability of leases of personal services and remedies available to aggrieved parties, Louisiana courts have resorted to the contractual agreement of the parties and the general law of obligations.<sup>9</sup> In making these determinations, the courts have distinguished between leases of personal services *for* a term, *by* a term, and *at will*.

#### TERMINABILITY

##### *Contracts "For" or "By" a Term*

*General Provisions.* — If the employment contract is for or

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1. LA. CIVIL CODE arts. 2673, 2669 (1870).

2. *Id.* art. 2674.

3. A lease of personal services is to be distinguished from a joint enterprise. *Lowther v. Fireside Mutual Ins. Co.*, 228 La. 946, 84 So.2d 596 (1955); *Pennington v. Drews*, 212 La. 544, 33 So.2d 63 (1947).

4. LA. CIVIL CODE arts. 2675, 2745(1) (1870); 2 *PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE)* no. 1824 (1959).

5. LA. CIVIL CODE arts. 2685, 2687 (1870).

6. *Id.* art. 2686.

7. *Id.* arts. 2688, 2689.

8. *Id.* arts. 2745-2750. Article 2747 specifies that the servant attached to the person or family of the employer can be dismissed at any time and can leave the employment at any time, without cause. Articles 2748-2750, by their express language, recognize a contract with an agreed term. Articles 167 and 2746 place a limitation on the duration of the employment contract.

9. *Id.* art. 2688 specifically authorizes such reference. *E.g.*, *Word v. Winder*, 16 La. Ann. 111 (1861); *Trefethen v. Locke*, 16 La. Ann. 19 (1861); *Taylor v. Patterson*, 9 La. Ann. 251 (1854); *Adler v. Castle-Hirsch-Lamar*, 165 So. 478 (La. App. 2d Cir. 1936); *Smith v. Pollock Co.*, 3 La. App. 125 (2d Cir. 1925).

by a specific or ascertainable term,<sup>10</sup> the parties are held irrevocably bound to execute the contract until expiration of the specified term at the risk of being cast in damages for breach of contract.<sup>11</sup> In the absence of an express specified term, the parties' intention to contract for or by a fixed term may be shown by other means: *e.g.*, various contract provisions,<sup>12</sup> the specific nature of the work,<sup>13</sup> or certain circumstances surrounding the employment.<sup>14</sup> That the hiring is at a fixed salary per designated period of itself raises no presumption of hiring for or by that designated salary period.<sup>15</sup>

*Renewal and Notice.*—The articles of the Civil Code dealing with tacit reconduction<sup>16</sup> have been held not applicable to employment contracts.<sup>17</sup> Consequently, a contract of hiring for a designated term is not renewed for an additional period by

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10. Harrosh v. Fife Bros. Health Ass'n, 1 So.2d 323 (La. App. Orl. Cir. 1941) (hiring at \$25 per week to be increased \$5 per week each month until the weekly salary amounted to \$50 held a contract for a term; employee could not be discharged until salary amounted to \$50 per week).

11. Carlson v. Ewing, 219 La. 961, 54 So.2d 414 (1951); Hill v. American Co-op. Ass'n, 195 La. 590, 197 So. 241 (1940); Russell v. White Oil Corp., 162 La. 9, 110 So. 70 (1926); Dunbar v. Orleans Metal Bed Co., 145 La. 779, 82 So. 889 (1919); Camp v. Baldwin-Melville Co., 123 La. 257, 48 So. 927 (1909); Curtis v. Lehmann & Co., 115 La. 40, 38 So. 887 (1905); National A. F. Alarm Co. v. New Orleans & N.E. R.R., 115 La. 633, 39 So. 738 (1905); Madden v. Jacobs, 52 La. Ann. 2107, 28 So. 225 (1900); Tete v. Lanoux, 45 La. Ann. 1343, 14 So. 241 (1893); Jones v. Jackson, 22 La. Ann. 112 (1870); Krizan v. Storz Broadcasting Co., 145 So.2d 636 (La. App. 4th Cir. 1962); Leet v. Jones, 19 La. App. 542, 139 So. 711 (Orl. Cir. 1932); Henderson v. Haik, 4 La. App. 636 (Orl. Cir. 1926). *Cf.* LA. CIVIL CODE arts. 2748-2750 (1870); 2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1879 (1959).

12. Alba v. Moriarty & Co., 36 La. Ann. 680 (1884) (no definite term shown; proof employee would have refused employment unless "by the year"; contract held to be "by the year"). See also Sullivan v. New Orleans Stave Co., 44 La. Ann. 787, 11 So. 89 (1892).

13. The Louisiana courts have consistently held that employment of plantation overseers is presumed, because of the nature of the work, to be *by the year*, in the absence of stipulations to the contrary. Fletcher v. Crichton, 183 La. 551, 164 So. 411 (1935); Chenet v. Libby & Blouin, 156 La. 503, 100 So. 697 (1924); Lalande v. Aldrich, 41 La. Ann. 307, 6 So. 28 (1889); Miller v. Gidiere & Marmande, 36 La. Ann. 201 (1884); Travis v. Swearingen, 143 So. 509 (La. App. 1st Cir. 1932).

14. Woods v. Schumard & Co., 114 La. 451, 38 So. 416 (1905) (employee hired as "city manager" of insurance agency; stipulation employee pay out of commission all expenses, including license taxes; *held*, by necessary implication, term was for one year). See also Kramer v. Dixie Laundry Co., 8 Orl. App. 284 (La. App. Orl. Cir. 1911).

15. United Credit Co. v. Crosswell, 219 La. 993, 54 So.2d 425 (1951); Russell v. White Oil Corp., 162 La. 9, 110 So. 70 (1926); Binnion v. M. & D. Drugs, 8 So.2d 307 (La. App. 2d Cir. 1942).

16. LA. CIVIL CODE arts. 2688, 2689 (1870) (a lease of real estate continued beyond the specified term without a new agreement is presumed to continue on a month-to-month basis).

17. Russell v. White Oil Corp., 162 La. 9, 110 So. 70 (1926).

continuing employment beyond the term without a new agreement, but becomes terminable at will.<sup>18</sup> However, if the parties have agreed to employment *by* the term — by the week, month, or year — and neither party terminates the agreement at the expiration of a term, the contract continues to be by the term by operation of the agreement of the parties.<sup>19</sup> Since silence of the parties to a contract by the term continues the relationship from term to term, it follows that notice is necessary to terminate a contract *by* the term. There is no requirement of notice for termination of contracts *for* a term.<sup>20</sup>

*Length of Term.* — Articles 167 and 2746 of the Civil Code prohibit employees from binding themselves for a term exceeding five years, but employers are not so limited.<sup>21</sup> A lease of personal services for a specified term exceeding five years has been held irrevocable for a period of five years.<sup>22</sup> A recent Louisiana case upheld a lease of personal services in which the employer was bound for a term and the employee had reserved the right to withdraw at will.<sup>23</sup> In light of these decisions and the absence of limitation on the length of time for which an employer can bind himself, it seems possible an employer entering a lease of personal services for a term exceeding five years could be bound for the entire term, whereas the employee would be free to withdraw at will upon the expiration of five years, even without a contractual reservation of this right.<sup>24</sup>

18. *Ibid.*; National A. F. Alarm Co. v. New Orleans & N.E. R.R., 115 La. 633, 39 So. 738 (1905).

19. Fletcher v. Crichton, 183 La. 551, 164 So. 411 (1935); Chenet v. Libby & Blouin, 156 La. 503, 100 So. 697 (1924); Sullivan v. New Orleans Stave Co., 44 La. Ann. 787, 11 So. 89 (1892); Lalande v. Aldrich, 41 La. Ann. 307, 6 So. 28 (1889); Alba v. Moriarty, 36 La. Ann. 680 (1884).

20. When the parties agree to be bound only *for* a definite term, the obligations of both parties cease upon expiration of the agreed term without the necessity of notice. Russell v. White Oil Corp., 162 La. 9, 110 So. 70 (1926); National A. F. Alarm Co. v. New Orleans & N.E. R.R., 115 La. 633, 39 So. 738 (1905).

21. Article 167 is in the chapter "Of Free Servants"; Article 2746 specifies: "A man can only hire out his services for a certain limited time . . ." Thus, the statutory limitations on term of employment should apply only to employees. See Note, 13 TUL. L. REV. 467 (1939).

22. Shaughnessy v. D'Antoni, 100 F.2d 422 (5th Cir. 1938). *But cf.* Hill v. Missouri Pac. Ry., 8 F. Supp. 80 (D.C. La. 1934) (contract of employment for life held void).

23. Long v. Foster & Associates, 242 La. 295, 136 So.2d 48 (1961) (employment for a five-year term; only employee reserved right to withdraw at any time upon two weeks notice). This case raises an interesting question of a potestative condition, discussed in Note, 22 LA. L. REV. 872 (1962).

24. See Note, 9 TUL. L. REV. 444 (1935). *But see* Caldwell v. Turner, 129 La. 19, 24, 55 So. 695, 696 (1911) ("There was no time mentioned, as required by Civil Code art. 2746, and the engagement could not have been for a longer period than five years. Civil Code, art. 167."). *Cf.* Lowther v. Fireside Mutual Ins. Co., 228 La. 946, 84 So.2d 956 (1955); Page v. New Orleans Public Service,

*Contracts "At Will"*

Generally, a contract which does not specify a fixed or ascertainable term of employment is considered terminable at the will of either party<sup>25</sup> without the necessity of a period of notice unless specifically provided for in the agreement.<sup>26</sup> Employment for life is considered without a definite or ascertainable term; thus it is terminable at the will of either party.<sup>27</sup> However, it appears an employee who gives consideration besides the rendition of services for the employer's agreement to hire for life has an option to work for life with the employer bound to give life employment.<sup>28</sup>

A hiring of a servant attached to the person or family of the employer is terminable at the will of either party<sup>29</sup> even if the parties agree to a definite term of employment.<sup>30</sup>

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184 La. 617, 167 So. 99 (1936); *Pitcher v. United Oil & Gas Syndicate*, 174 La. 66, 139 So. 760 (1932); *Hill v. Missouri Pac. Ry.*, 8 F. Supp. 80 (D.C. La. 1934). These cases were apparently decided on the theory that since the employee could not bind himself for longer than five years because of Article 167, he could not hold the employer to a promise of life employment.

25. *Pechon v. National Corp. Service*, 234 La. 397, 100 So.2d 213 (1958); *Lowther v. Fireside Mutual Life Ins. Co.*, 228 La. 946, 84 So.2d 596 (1955); *United Credit Co. v. Crowell*, 219 La. 993, 54 So.2d 425 (1951); *Page v. New Orleans Public Service*, 184 La. 617, 167 So. 99 (1936); *Pitcher v. United Gas & Oil Syndicate*, 174 La. 66, 139 So. 760 (1932); *Baker v. Union Tank Car Co.*, 140 So.2d 397 (La. App. 1st Cir. 1962); *Manning v. City of Shreveport Transit Co.*, 130 So.2d 497 (La. App. 2d Cir. 1961); *Binnion v. M. & D. Drugs*, 8 So.2d 307 (La. App. 2d Cir. 1942), *cert. denied*.

26. *Railway Employees, AFL v. Louisiana & A. Ry.*, 30 F. Supp. 909 (D.C. La. 1940); *Leschen & Sons Rope Co. v. Patterson & Co.*, 130 La. 557, 58 So. 336 (1912); *Labatt v. Louisiana Adjustment Bureau*, 185 So. 702 (La. App. Orl. Cir. 1931).

27. *Pechon v. National Corp. Service*, 234 La. 397, 100 So.2d 213 (1958); *Lowther v. Fireside Mutual Life Ins. Co.*, 228 La. 946, 84 So.2d 596 (1955); *Page v. New Orleans Public Service*, 184 La. 617, 167 So. 99 (1936); *Pitcher v. United Oil & Gas Syndicate*, 174 La. 66, 139 So. 760 (1932).

28. See *Page v. New Orleans Public Service*, 184 La. 617, 167 So. 99 (1936); *Pitcher v. United Oil & Gas Syndicate*, 174 La. 66, 139 So. 760 (1932); Note, 9 TUL. L. REV. 444 (1935).

29. LA. CIVIL CODE art. 2747 (1870). See *Orphan Asylum v. Mississippi Marine Ins. Co.*, 8 La. 181 (1835) (an attorney at law not hired servant attached to person or family of client; Article 2747 not applicable to attorney-client relationship); *In re Dissolution of Mosquito Hawks, Inc.*, 109 So.2d 815 (La. App. Orl. Cir. 1959). For a discussion of the terminability of the attorney-client relation in Louisiana, see Comment, 18 LA. L. REV. 690, 697-705 (1958).

30. In *Bethmont v. Davis*, 11 Mart.(O.S.) 195, 199 (La. 1822), plaintiff, hired as a cook for a term of eighteen months, was discharged without cause before the expiration of the term. The Supreme Court held for the defendant-employer stating: "[I]t is precisely for cases of this kind that we must presume the law [Article 2747] to have been made. If the terms of the contract stated no period of service, the master would have the right to dismiss his servant without the authority of this provision in our Code."

## BREACH

*Contracts "For" or "By" a Term*

*Employer.* — An employer breaches the contract of employment by discharging the employee before expiration of the term "without any serious ground of complaint."<sup>31</sup> It has been held the employer is justified in discharging an employee guilty of the following actions: serious violation of the employer's rules and regulations governing employees;<sup>32</sup> insubordination and disrespectful conduct towards the employer;<sup>33</sup> failure to discharge duties properly;<sup>34</sup> abandonment of the employment.<sup>35</sup> On the other hand, the following have been held insufficient grounds for the employee's discharge: reduction of operating expenditures during a slack business period;<sup>36</sup> the employee's refusal to submit to a diminution of his salary for any part of the term of service;<sup>37</sup> refusal by the employee to perform under conditions violative of the terms of the contract;<sup>38</sup> the employee's having sued the employer for back salary;<sup>39</sup> destruction and subsequent dissolution of the employer's business;<sup>40</sup> death of the employer.<sup>41</sup>

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31. LA. CIVIL CODE art. 2749 (1870). The employee alleging wrongful discharge bears the burden of proving that the discharge was without just cause. *Nickerson v. Burnstein, Inc.*, 164 La. 1066, 115 So. 271 (1928); *Southern Tie Co. v. Signor Tie Co.*, 164 La. 1063, 115 So. 270 (1928); *Murphy v. Southern Mineral & Land Improvement Co.*, 130 La. 914, 58 So. 766 (1912); *Silverman v. Caddo Gas & Oil Co.*, 127 La. 923, 54 So. 289 (1911); *Blue v. Chandler*, 5 So. 2d 210 (La. App. 1st Cir. 1942); *Kottemann v. Gross*, 184 So. 380 (La. App. 1st Cir. 1938); *Wilson v. Yazoo & M.V. R.R.*, 181 So. 600 (La. App. 2d Cir. 1938).

32. *Caulfield v. Yazoo & M.V. R.R.*, 170 La. 155, 127 So. 585 (1930) (conductor failed to collect train fare from passenger).

33. *Railey v. Lanahan*, 34 La. Ann. 426 (1882) (employee persistently indulged in abusive and disrespectful language directed at his employer). See also *Blue v. Chandler*, 5 So. 2d 210 (La. App. 1st Cir. 1941).

34. *Hewitt v. Roudebush*, 24 La. Ann. 254 (1872) (employee failed to take proper care of machinery with which he worked).

35. *Ford v. Danks*, 16 La. Ann. 119 (1861) (employee abandoned employer's services for a day). It is doubtful that abandonment of the employment for a single day would be sufficient cause for discharge today.

36. *Van Denburgh v. Higginbotham, Inc.*, 168 La. 461, 122 So. 581 (1929); *Dunbar v. Orleans Metal Bed Co.*, 145 La. 779, 82 So. 889 (1919).

37. *Beckman v. New Orleans Cotton Press Co.*, 12 La. 67 (1838).

38. *Curtis v. Lehmann & Co.*, 115 La. 40, 38 So. 887 (1905) (plaintiff hired by written agreement as manager of sales force subsequently instructed to "take the road" as traveling salesman; discharged for refusing to do so).

39. *Birman v. Rau*, 7 Orl. App. 379 (La. App. Orl. Cir. 1910).

40. *Madden v. Jacobs*, 52 La. Ann. 2107, 28 So. 225 (1900) (employer's business destroyed by fire; no reservation of right to discharge for these reasons).

41. *Tete v. Lanoux*, 45 La. Ann. 1343, 14 So. 241 (1893); *Steedley v. Winbarg*, 44 So. 2d 193 (La. App. 2d Cir. 1950). Cf. LA. CIVIL CODE art. 2007 (1870).

Acts or words of the employer which convey to the employee the idea that his services are neither required nor will be accepted amount to discharge constituting not only just cause for the employee to leave, but also breach of contract by the employer unless the discharge was with just cause.<sup>42</sup> Furthermore, refusal to accept the services of an employee except on conditions violative of the terms of the contract is equivalent to a discharge.<sup>43</sup>

*Employee.* — An employee breaches the contract by leaving before expiration of the term "without having any just cause of complaint."<sup>44</sup> No case has been found in which the employer has sued the employee for leaving without just cause, but it has been held that an employee leaves with just cause when: his employer fails to pay the salary at the time fixed by the terms of the contract;<sup>45</sup> the employer refuses to pay an increase in salary as specifically provided by the contract;<sup>46</sup> the employer assigns the employment contract to another and the services to be performed are personal.<sup>47</sup>

### Contracts "At Will"

Since either party to a contract *at will* is empowered to recede without cause at any time,<sup>48</sup> it seems that a breach of this contract can occur, if at all, only when it is executory, *i.e.*, by either party refusing to begin performance thereunder.<sup>49</sup>

## DAMAGES AVAILABLE TO AGGRIEVED PARTIES

### Contracts "For" or "By" a Term

*Employee.* — Civil Code Article 2749 entitles an employee discharged without cause to salary for the unexpired portion of the term.<sup>50</sup> By judicial construction the benefit of this article has been extended to an employee who has left his employment

42. *Dunbar v. Orleans Metal Bed Co.*, 145 La. 779, 82 So. 889 (1919); *Kottemann v. Gross*, 184 So. 380 (La. App. 1st Cir. 1938).

43. *Curtis v. Lehmann & Co.*, 115 La. 40, 38 So. 887 (1905).

44. LA. CIVIL CODE art. 2750 (1870).

45. *Shaughnessy v. D'Antoni*, 100 F.2d 422 (5th Cir. 1938); *Lafrancois v. Charbonnet*, 5 Rob. 185 (La. 1843).

46. *Kottemann v. Gross*, 184 So. 380 (La. App. 1st Cir. 1938).

47. *Leet v. Jones*, 139 So. 711 (La. App. Orl. Cir. 1932) (plaintiff-partnership employee—entitled to salary plus percentage of earnings of partnership). See also LA. CIVIL CODE art. 2007 (1870).

48. See notes 25, 26 *supra*, and accompanying text.

49. See *Lloyd v. Dickson*, 121 La. 915, 919, 46 So. 919, 921 (1908) (dictum; by implication court indicates contract at will).

50. LA. CIVIL CODE art. 2749 (1870).

with just cause.<sup>51</sup> The employee's right to recover for the unexpired term accrues at the moment of his discharge;<sup>52</sup> it then becomes a vested right which can be affected neither by his refusal to return to the employment<sup>53</sup> nor by his subsequently leasing his services to another during the unexpired portion of the term.<sup>54</sup>

The courts consider Article 2749 a penal statute to be strictly construed.<sup>55</sup> Consequently, if the employer refuses to abide by the contract before the employee has performed any services thereunder, Article 2749 does not apply; the employee's remedy is an action in damages for breach of the executory contract.<sup>56</sup> The rationale is that Article 2749 requires a "sending away," and there can be none if the employee has not begun performance under the contract. The aggrieved employee's recovery of damages is reduced by earnings from services performed for another before expiration of the term of the original contract.<sup>57</sup>

*Employer.* — Article 2750 of the Civil Code provides an employee who leaves his employment without cause before the term of the contract has expired forfeits the wages due him and is compelled to "repay" all the money he has received "either as due for his wages or in advance thereof."<sup>58</sup> No case has been found in which an employer sued his employee for a return of all money received under the contract. However, one case indicated by way of dictum that Article 2750 would be literally followed in a proper case; the employee who left without cause

51. *Lefrancois v. Charbonnet*, 5 Rob. 185 (La. 1843); *Kottemann v. Gross*, 184 So. 380 (La. App. 1st Cir. 1938); *Leet v. Jones*, 139 So. 711 (La. App. Orl. Cir. 1932).

52. *Shoemaker v. Bryan*, 12 La. Ann. 697 (1857) (prescription begins to run at moment of discharge). See also LA. R.S. 23:631 (1950) (requires employers to pay employees within twenty-four hours after termination of employment).

53. *Dunbar v. Orleans Metal Bed Co.*, 145 La. 779, 82 So. 889 (1919); *Camp v. Baldwin-Melville Co.*, 123 La. 257, 48 So. 927 (1909); *Daspit v. D. H. Holmes Co.*, 120 La. 86, 44 So. 993 (1907); *Curtis v. Lehmann & Co.*, 115 La. 40, 38 So. 887 (1905); *Tete v. Lanoux*, 45 La. Ann. 1343, 14 So. 241 (1893). These cases stand for the further proposition that it is not necessary for the discharged employee to put the employer in default.

54. *Carlson v. Ewing*, 219 La. 961, 54 So. 2d 414 (1951); *Hill v. American Co-operative Ass'n*, 195 La. 590, 197 So. 241 (1940); *Woods v. Shumard & Co.*, 114 La. 451, 38 So. 416 (1905); *Shea v. Schlatre*, 1 Rob. 319 (La. 1842); *Sherburne v. Orleans Cotton Press*, 15 La. 360 (1840); see note 52 *supra*.

55. See note 56 *infra*.

56. LA. CIVIL CODE arts. 1926, 1930 (1870); *Word v. Winder*, 16 La. Ann. 111 (1861); *Trefethen v. Locke*, 16 La. Ann. 19 (1861); *Adler v. Castle-Hirsch-Lamar*, 165 So. 478 (La. App. 2d Cir. 1936); *Smith v. Pollock Co.*, 3 La. App. 125 (2d Cir. 1925); see also *Lloyd v. Dickson*, 121 La. 915, 46 So. 919 (1908).

57. *Word v. Winder*, 16 La. Ann. 111 (1861); see also *Trefethen v. Locke*, 16 La. Ann. 19 (1861).

58. LA. CIVIL CODE art. 2750 (1870).



before expiration of the term could be required to return all the money received under the contract.<sup>59</sup> It is submitted this dictum should be disregarded. The present Article 2750 is identical with the English text of its 1825 counterpart. However, the French text of the 1825 predecessor of Article 2750 clearly provided that although the employee would forfeit the unpaid wages due him, he could be compelled to return only that which had been paid him in advance of his services.<sup>60</sup> It is well settled that when there is a conflict between the English and French texts of the Louisiana Civil Code of 1825, the French text prevails.<sup>61</sup> It would be extremely harsh to require the employee to return all earnings received under the contract. Moreover, this would result in unjustly enriching the employer by virtue of the employee's service.

An employer who discharges an employee for just cause before expiration of the term is required to pay the salary for the time the employee has served.<sup>62</sup> The employer may, however, be entitled to damages resulting from the employee's wrongful act.<sup>63</sup> In assessing these damages, consideration is given not only to the alleged wrong, but also the inconvenience to which the employer is subjected in finding another employee.<sup>64</sup>

### *Contracts Terminable "At Will"*

Since the breach of a contract at will can occur only when the contract is executory,<sup>65</sup> breach of such a contract entitles the aggrieved party to recover only actual damages suffered.<sup>66</sup>

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59. Hill v. American Co-operative Ass'n, 195 La. 590, 197 So. 241 (1940) (discharge without cause found; employee awarded salary for remainder of term).

60. 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 1504-1505 (1940); LA. CIVIL CODE art. 2721 (1825) [LA. CIVIL CODE art. 2750 (1870)]: "*Si c'est au contraire la personne qui a ainsi engagé ses services, qui quitte le propriétaire sans cause légitime, elle perdra la salaire pour le temps qui s'est écoulé jusqu'alors sur son engagement, et sera obligée de restituer au propriétaire ce qu'elle aura reçu de lui d'avance sur l'année courante, ou sur le temps de l'engagement.*"

61. *E.g.*, State v. De Lavallade, 215 La. 123, 130, 39 So. 2d 845, 847 (1949); Sample v. Whitaker, 172 La. 722, 727, 135 So. 38, 40 (1931); Strauss v. New Orleans, 166 La. 1035, 1049, 118 So. 125, 131 (1928); Phelps v. Reinach, 38 La. Ann. 547, 551 (1886).

62. LA. R.S. 23:634 (1950); Wells v. Sherrill Hardwood Lumber Co., 151 La. 1081, 92 So. 706 (1922).

63. Taylor v. Paterson, 9 La. Ann. 251 (1854); Nolan v. Danks, 1 Rob. 332 (La. 1842).

64. Taylor v. Paterson, 9 La. Ann. 251 (1854).

65. See notes 48, 49 *supra*, and accompanying text.

66. LA. CIVIL CODE arts. 1926, 1930 (1870); Lloyd v. Dickson, 121 La. 915, 46 So. 919 (1908) (actual damages suffered recoverable; no indication by court that "good" or "bad" faith breach provisions of Article 1934 applicable).

## SUMMARY AND CONCLUSION

Since terminability and remedies available to the aggrieved party to a lease of personal services are dependent on the types of contract involved, the most important problem facing the courts is determining whether the contract is for a term, by a term, or at will. When the agreement sets definite or ascertainable dates for commencement and termination, this task is not difficult. If there is no set term, that the salary is fixed at so much per designated period does not alone raise a presumption that the term is *for* or *by* that designated period; it is necessary to consider other terms of the contract, the circumstances surrounding the employment, and the nature of the work to determine the type of contract involved.

Employment *by* the term is terminable only at the expiration of each agreed term; if neither party terminates the contract at that time, employment continues to be by the term. Employment *for* a term is terminated upon expiration of the agreed term; if the parties continue the relationship beyond the term without a new agreement the employment becomes one at will. Either party to an employment *at will* may recede at any time without cause.

An employee hired *for* or *by* the term and who is either discharged without cause or leaves with just cause before expiration of the term is entitled to salary for the unexpired term of the contract. An employer whose employee leaves without cause before expiration of the term should be entitled to retain unpaid wages and to a return of all wages paid "in advance" of services. The employer who discharges an employee for cause before expiration of the term may recover damages to compensate for the alleged wrong and the resulting inconvenience of finding another employee.

*Frank Fontenot*

## PROBLEMS IN DESCRIPTIONS OF LAND IN LOUISIANA

The Civil Code requirement that all sales of immovable property be in writing appears to recognize the untrustworthiness of oral testimony, which may be affected by various factors such as insufficient understanding, poor memory, and bad faith.<sup>1</sup>

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1. LA. CIVIL CODE art. 2275 (1870): "Every transfer of immovable property