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## Obligations - Revocability of Offers

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## OBLIGATIONS — REVOCABILITY OF OFFERS

In two recent Louisiana cases defendants made identically worded offers for home improvements to be made by plaintiff company, the agreements to become binding upon acceptance by an executive of plaintiff who was privileged to accept or reject the offers without liability. No time for acceptance was included in the offers or expressed verbally by the parties; however, in each case it was understood the work was to be financed by a loan to be arranged by plaintiff for defendant.

In each case defendant revoked his offer prior to acceptance, plaintiff sued for damages for breach of contract, and the trial court ruled for defendant. Both courts of appeal affirmed, holding the understanding that plaintiff would procure defendant a loan was not a circumstance implying defendant's offer was intended irrevocable for any extended period, and defendant's revocation prior to acceptance was effective. *Loeb v. Johnson*, 142 So. 2d 518 (La. App. 1st Cir. 1962); *National Co. v. Navarro*, 149 So. 2d 648 (La. App. 4th Cir. 1963).

Under Article 1800 of the Louisiana Civil Code<sup>1</sup> a contract is complete only upon the offeree's acceptance; if the offeror changes his intention prior to acceptance, no contract arises because a concurrence of the parties' wills is lacking. Article 1802<sup>2</sup> provides if an acceptance is made within "such time as the situation of the parties and the nature of the contract" indicate the offeror intended, the offeror becomes bound.<sup>3</sup> Article 1802 contemplates the situation in which the sequence of events is: offer, acceptance, and then an attempted revocation.<sup>4</sup> When this se-

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1. LA. CIVIL CODE art. 1800 (1870): "The contract, consisting of a proposition and the consent to it, the agreement is incomplete until the acceptance of the person to whom it is proposed. If he, who proposes, should before that consent is given, change his intention on the subject, the concurrence of the two wills is wanting, and there is no contract."

2. *Id.* art. 1802: "He is bound by his proposition, and the signification of his dissent will be of no avail, if the proposition be made in terms, which evince a design to give the other party the right of concluding the contract by his assent; and if that assent be given within such time as the situation of the parties and the nature of the contract shall prove it was the intention of the proposer to allow."

3. The test of Article 1802 was applied in *Union Sawmill Co. v. Mitchell*, 122 La. 900, 48 So. 317 (1909); *Nickerson v. Allen Bros. & Wadley, Ltd.*, 110 La. 194, 34 So. 410 (1903); *Boyd v. Cox*, 15 La. Ann. 609 (1860); *Ever-Tite Roofing Corp. v. Green*, 83 So. 2d 449 (La. App. 2d Cir. 1955); *Picou v. St. Bernard Parish School Board*, 132 So. 130 (La. App. Or. Cir. 1924); *Klefforth v. New Orleans Brewing Co.*, 8 Orl. App. 120 (La. App. Or. Cir. 1911). For a discussion of Article 1802 see Comment, 1 LA. L. REV. 182 (1938).

4. An exception to this scope of application may be found when the court pre-

quence is involved the Louisiana rule conforms with the common law view that acceptance creates a binding contract if made within a reasonable time as determined by the parties' intentions.<sup>5</sup>

Though Article 1800 might imply Louisiana follows the general common law rule that an offer may be revoked at any time prior to acceptance,<sup>6</sup> Article 1809<sup>7</sup> shows otherwise. Article 1809, after stating generally that an offer may be revoked before its acceptance, provides an exception if the offeror has not first allowed "such reasonable time as from the terms of his offer he has given, or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination." In contrast to Article 1802, Article 1809 is intended to govern situations in which attempted revocation *precedes* acceptance. Its clear effect is to create a period during which the offeror may not revoke his offer, when such a period is either expressly provided in the terms of the offer or implied by the circumstances.<sup>8</sup> Furthermore, Article 1809 by its terms requires no consideration to render effective such a provision for irrevocability.

Article 1809 is harmonious with the civilian concept that a party has legal capacity to bind himself by his will alone.<sup>9</sup> Although it has no counterpart in the Code Civil,<sup>10</sup> the principle

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cludes consideration of the question of effectiveness of revocation *prior* to acceptance by finding the acceptance ineffective because obviously untimely under Article 1802. This was apparently the case of *Klefforth v. New Orleans Brewing Co.*, 8 Orl. App. 120 (La. App. Orl. Cir. 1911).

5. *Cooke v. Oxley*, [K.B. 1790] 3 Term Rep. 656; RESTATEMENT, CONTRACTS §§ 34, 40 (1932); 1 CORBIN, CONTRACTS §§ 35, 36 (1950).

6. RESTATEMENT, CONTRACTS § 41 (1932); 1 CORBIN, CONTRACTS § 38 (1950).

7. LA. CIVIL CODE art. 1809 (1870): "The obligation of a contract not being complete, until the acceptance, or in cases where it is implied by law, until the circumstances, which raise such implication, are known to the party proposing; he may therefore revoke his offer or proposition before such acceptance, but not without allowing such reasonable time as from the terms of his offer he has given, or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination."

8. Smith, *An Analytical Discussion of the Promise of Sale and Related Subjects, Including Earnest Money*, 20 LA. L. REV. 522, 531 (1960); Smith, *A Refresher Course in Cause*, 12 LA. L. REV. 2, 32-33 (1951); Comments, 1 LA. L. REV. 182 (1938), 5 TUL. L. REV. 632, 634-35 (1931); Notes, 17 LA. L. REV. 240, 242 (1951), 23 TUL. L. REV. 286 (1948).

9. 2 COLIN ET CAPITANT, DROIT CIVIL FRANCAIS n° 28 (8th ed. 1935); 2 PLANIOL, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL FRANCAIS n° 945, 962-74 (11th ed. 1939); 6 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANCAIS n° 95 (1930); 3 TOULLIER, LE DROIT CIVIL FRANCAIS, TITRE III n° 17 (1846); Smith, *A Refresher Course in Cause*, 12 LA. L. REV. 2, 3-4, 31-32 (1951).

10. Dainow, *Concordance Table*, in LA. CIVIL CODE 686 (Dainow ed. 1961). For discussion of articles of the French Civil Code relating to revocability of offers, see Comment, 5 TUL. L. REV. 632, 639-40 (1931).

embodied in the article is recognized by a majority of French authorities.<sup>11</sup> Nevertheless, the Louisiana legislature seems to have virtually ignored this principle. Article 2462 of the Code has been twice amended<sup>12</sup> so that it now provides that one may purchase for consideration an option to accept or reject an offer to sell, thus making the offer irrevocable for a set period. Apparently, these amendments resulted in part not only from a failure to recognize Article 1809,<sup>13</sup> but also from the influence of the common law doctrine of consideration;<sup>14</sup> specifically, the majority view that the irrevocability of an offer can be rendered effective only by its being supported by consideration.<sup>15</sup>

Recognition of Article 1809 has also been lacking in Louisiana jurisprudence. Cases involving situations contemplated by Article 1809 have fallen into three groups characterized as follows: complete disregard of Article 1809, the courts upholding revocations under Article 1800 without submitting them to the test provided by 1809;<sup>16</sup> apparent recognition of possible appli-

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11. 4 AUBRY ET RAU, *DRIT CIVIL FRANCAIS* n° 343 (5th ed. 1916); 1 BAUDRY-LACANTINERIE ET BARDE, *TRAITÉ DES OBLIGATIONS* n° 33 (3d ed. 1906); 2 PLANIOL, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL* n°s 333-34 (3d ed. Ripert 1949); 3 TOULLIER, *LE DROIT CIVIL FRANCAIS*, TITRE III, n° 30 (1846). See also Smith, *An Analytical Discussion of the Promise of Sale and Related Subjects, Including Earnest Money*, 20 LA. L. REV. 522, 525, 531 (1960); Smith, *A Refresher Course in Cause*, 12 LA. L. REV. 2, 31-32 (1951).

12. La. Acts 1910, No. 249; La. Acts 1920, No. 27. LA. CIVIL CODE art. 2462 (1870) as presently amended reads in part: "One may purchase the right, or option to accept or reject, within a stipulated time, an offer or promise to sell, after the purchase of such option, for any consideration therein stipulated, such offer or promise cannot be withdrawn before the time agreed upon." For a thorough discussion of the problems raised by this article, see Smith, *An Analytical Discussion of the Promise of Sale and Related Subjects, Including Earnest Money*, 20 LA. L. REV. 522 (1960).

13. Had Article 1809 been recognized, the amendments to Article 2462 would have been unnecessary to render an offer of sale irrevocable during the offeror's lifetime. However, since Article 1810 provides an offer ceases upon offeror's death, the amendments might be construed as creating an exception to Article 1810 by providing for a contract of option which could be enforced by the offeree after the offeror's death, provided the term agreed upon had not expired. Further, the amendments might have been deliberately intended to change the law by removing all offers of sale from the scope of Article 1809 — at any rate, this is the apparent effect of the amendments. See Smith, *An Analytical Discussion of the Promise of Sale and Related Subjects, Including Earnest Money*, 20 LA. L. REV. 522, 523-32 (1960). By its terms Article 2462 applies only to offers of sale; thus it should not affect other types of offers falling within the scope of Article 1809. See Comments, 11 LA. L. REV. 182, 189 n. 47 (1938), 5 TUL. L. REV. 632, 639 (1931); Note, 23 TUL. L. REV. 286, 288 (1948).

14. Smith, *An Analytical Discussion of the Promise of Sale and Related Subjects, Including Earnest Money*, 20 LA. L. REV. 522, 531-32 (1960).

15. RESTATEMENT, CONTRACTS § 47 (1932); COBBIN, CONTRACTS §§ 42-44 (1950). There is a rising contrary view evidenced by Uniform Commercial Code § 2-205 providing for irrevocability of a "firm offer" without support of consideration.

16. *Detroit Football Co. v. Robinson*, 186 F. Supp. 933 (E.D. La. 1960);

cability of Article 1809, but avoidance of its application;<sup>17</sup> and recognition of the irrevocability of subcontractors' bids after the general bid has been accepted, but without reference to Article 1809.<sup>18</sup> Ironically, only a federal court has specifically recognized the applicability of Article 1809 to bidding situations.<sup>19</sup>

In both *Loeb v. Johnson* and *National Co. v. Navarro*, the mutual understanding that plaintiff would arrange a loan for defendants was urged as implying that defendants would allow a reasonable time for acceptance and that during that time the offer could not be revoked.<sup>20</sup> Both courts rejected this contention solely on the basis that procurement of a loan did not in fact imply a period during which the offer was to be irrevocable, rather than on the theory that had such a period been implied the revocation would nevertheless have been effective. Although the court in *Loeb* did not advert to Article 1809 explicitly, it stated the principle that "if a contract unqualifiedly provides that time will be afforded the principal to accept or reject the offer predicated upon making necessary financial arrangements for the offeror, then the offer remains open until such time has elapsed."<sup>21</sup> While the principle as stated refers only to an *express* provision for irrevocability the court's concern whether

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Miller v. Oden, 149 La. 771, 90 So. 167 (1921); Miller v. Douville, 45 La. Ann. 214, 12 So. 132 (1893); Certified Roofing Co. v. Jeffrion, 22 So. 2d 143 (La. App. Or. Cir. 1945) (acceptance late; but prior withdrawal of offer held effective without reference to Article 1809).

17. *Blanks v. Sutcliffe*, 122 La. 448, 47 So. 765 (1908); *Haneman v. Uhry*, 8 La. App. 534 (La. App. Or. Cir. 1928). In *Blanks* the court held the offeror entitled to revoke within a period expressly set for acceptance in spite of Article 1809 because the offer had been induced by misrepresentation, conceding only *arguendo* that in absence of misrepresentation the offer would have been irrevocable. In *Haneman* the court relied on *Blanks* to hold revocation effective in spite of Article 1809, though there were no unusual facts such as misrepresentation to support such holding in the face of an expressly provided period of irrevocability.

18. Housing Authority of the Town of Lake Arthur v. T. Miller & Sons, 239 La. 966, 120 So. 2d 494 (1960); *Harris v. Lillis*, 24 So. 2d 689 (La. App. Or. Cir. 1946) (dictum; acceptance prior to revocation, but affirmation of irrevocability of subcontractor's bid). Both decisions were based on the finding of a custom in the contracting business in accord with the principle affirmed by the courts.

19. *R. P. Farnsworth & Co. v. Albert*, 79 F. Supp. 27 (E.D. La. 1948), *rev'd*, 176 F.2d 198 (5th Cir. 1949). The district court, relying on custom, held revocation of subcontractor's bid ineffective without mention of Article 1809; the court of appeal recognized applicability of Article 1809, but found evidence insufficient to establish the existence of a custom or other facts implying the bid irrevocable.

20. Both plaintiffs relied on *Ever-Tite Roofing Corp. v. Green*, 83 So. 2d 449 (La. App. 2d Cir. 1955), in which the court applied Article 1802; delayed acceptance *before* revocation was held effective because within a reasonable time as implied by the understanding that offeree was to check offeror's credit before accepting. Both courts properly distinguish *Ever-Tite* on the basis that there acceptance had preceded revocation. See note 30 *infra* for further discussion.

21. 142 So. 2d at 520.

the transaction in fact *implied* such a provision<sup>22</sup> permits inference that such an implication would render the offer irrevocable. In *Navarro*, the court expressly referred to Article 1809<sup>23</sup> and recognized Toullier expressed the same rule in his commentaries.<sup>24</sup>

Up to this point both courts apparently approved the principle of Article 1809. However, upon detailed examination of the courts' reasoning a significant difference between the two opinions emerges, and doubt arises whether *Loeb* actually affirmed the principle that an offer can be rendered irrevocable when no consideration is given for the obligation not to revoke. In support of its finding the court in *Loeb* stated "there [was] no suggestion that Plaintiff intended by the contract to be bound to accept Defendant's offer provided a loan were obtained,"<sup>25</sup> and further, that if plaintiff were not so bound it was only fair that defendant should be free to revoke his offer. Apparently, the court objected to what would have been a lack of mutuality of obligation, the offeror bound during the period of acceptance, and the offeree free to accept or reject the offer.<sup>26</sup> This line of reasoning seems contrary to Article 1809, which calls for neither consideration nor mutuality of obligation to render an offer irrevocable. Furthermore, it does not accord with the civilian doctrine of cause or the principle that a party can bind himself through the exercise of his will alone.<sup>27</sup>

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22. *Ibid.*

23. The court interpreted Article 1809 to apply only when "the offer is of such a nature that from its very *terminology* the implication is present that the offeror intended to make it irrevocable for a reasonable period of time." (Emphasis added.) 149 So. 2d at 651. This seems an undue limitation since the article provides a period of irrevocability may be implied by "the circumstances of the case," much broader language than that used by the court.

24. *Id.* at 652. The court referred to the passage from Toullier cited in note 11 *supra* and applied by analogy to the instant case an example given by Toullier in which A contracts with B through an agent without mandate, the contract being subject to the condition that A ratify it. Toullier says B cannot withdraw prior to A's ratification, but A must ratify immediately upon learning of the contract to preclude B's effective withdrawal. It is submitted that this example, unless supplemented by further reasoning, is inapplicable to the instant case because in the latter there was (1) no ratification involved, but acceptance of an offer, and (2) the added circumstance of procuring the loan which might imply a period of irrevocability beyond the time the offeree had knowledge of the offer. The court, however, did not base its decision solely on this example.

25. 142 So. 2d at 520.

26. This reasoning was approved in *A. A. Home Improvement Co. v. Casem*, 145 So. 2d 624 (La. App. 4th Cir. 1962) (revocation before acceptance upheld solely on basis of *Loeb*). That the same court in *Navarro* made no reference to either *Loeb* or *Casem* and applied different reasoning seems to indicate a change of mind — in the writer's opinion, a salutary one.

27. See authorities cited note 11 *supra*.

The court in *Navarro*, without doing violence to civilian doctrine, seemed to infer from the transaction that the parties contemplated an immediate acceptance, the execution of the resulting contract being subject to a suspensive condition — the arrangement of the loan.<sup>28</sup> A finding of irrevocability would obviously protect the offeree — if the loan were procured he would be assured of a contract; if not, there being no contract, he would not be bound to perform without assurance of his co-contractant's ability to pay. Apparently the court reasoned that since the offeree could have had similar protection by accepting immediately, thus forming a contract suspensively conditioned on procuring the loan, the otherwise plausible inference of a period of irrevocability was negated. Actually, the court simply chose between two competing inferences (irrevocability of the offer and immediate contract suspensively conditioned), either of which *could* have been supported by the facts.

In view of the prior reluctance of the courts to recognize Article 1809, it is not surprising the court in *Navarro* chose the inference that enabled it to avoid the effect of Article 1809 and give preference to the general proposition of Article 1800 that an offer can be revoked at any time prior to acceptance. However, there may be another and very practical consideration underlying both courts' decisions, based on the type of situations envisioned by Article 1809. Because a revocation precedes acceptance in Article 1809 situations, if it appears the revocation was made in good faith, there arises a natural presumption that the offeror did not intend his offer to be irrevocable. This characteristic of the factual situations supposed by Article 1809, contrasted with the situations within the scope of Article 1802, may also explain in part why the courts have repeatedly given effect to the reasonable period during which acceptance is timely, provided in Article 1802,<sup>29</sup> but have been reluctant to apply Article 1809 to infer a period of irrevocability; this notwithstanding that the time periods in both articles are determined by substantially the same test.<sup>30</sup> In situations envisioned by Article 1802

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28. 149 So.2d at 653. After stating its finding that the necessity of financing did not imply the offer was irrevocable, the court said: "Had the offer been timely accepted and ripened into a contract, then the ability to procure financing would merely operate as a suspensive condition to suspend performance until the loan was procured, or negate the contract if financing was not available."

29. See note 3 *supra*, and accompanying text.

30. The test in Article 1802 is "the situation of the parties and the nature of the contract," while in Article 1809 it is "the circumstances of the case." Conceding *arguendo* these are the same, it does not necessarily follow that in a case

there is an offer, acceptance, and *then* an attempted revocation. Thus the natural presumption is in favor of the offeree, rather than the offeror as in Article 1809. Since the offeror attempted revocation only after acceptance of the offer, the immediate inference is that he must have intended to allow a reasonable period at least up to the time of acceptance during which the offer could be effectively accepted.<sup>31</sup>

In conclusion it seems a fair inference that although Article 2462 will be held to control offers of sale, the applicability of Article 1809 to other types of offers will be recognized; if the parties so intend, the offer will be irrevocable notwithstanding the absence of consideration. However, when irrevocability is only implied, in an Article 1809 situation any presumption will be in favor of the offeror and the offeree will be required to show a clear implication that irrevocability was intended. Finally, in cases involving financing of the contract's performance, the court is likely to infer the parties intended to be bound by an immediate acceptance, performance of the contract being suspensively conditioned on the financing, rather than inferring the offeror intended his offer irrevocable for any extended period.

*George A. Kimball, Jr.*

SUCCESSIONS — ACCEPTANCE AND RENUNCIATION —  
APPLICABILITY OF ARTICLE 1030'S  
PRESCRIPTIVE PERIOD

Plaintiff, praying to be declared owner of immovable property by inheritance, brought a petitory action attacking the failure to include her father in a 1920 judgment of possession rendered in her grandfather's succession. Besides denying the legitimacy of the plaintiff's father, defendants pleaded the action was barred, under Article 1030 of the Louisiana Civil Code, by plaintiff's failure to accept or reject her grandfather's

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like *Ever-Tite Roofing Corp. v. Green*, 83 So.2d 449 (La. App. 2d Cir. 1955), discussed note 22 *supra*, had the revocation *preceded* acceptance the court would have found a period of irrevocability implied from the same facts implying a reasonable time for acceptance under Article 1802, since the significant change in order of events destroys the presumption in favor of offeree and creates one in favor of the offeror. See note 31 *infra*, and text accompanying.

31. The writer does not mean to imply these presumptions will be absolutely controlling, but merely that in Article 1809 situations a greater burden of proof will fall on the offeree than in 1802 situations.