Promissory Estoppel and Louisiana

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PROMISSORY ESTOPPEL AND LOUISIANA

The common law doctrine of promissory estoppel has generally been set forth in Section 90 of the Restatement of Contracts, which reads as follows:

“A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.”

In Ducote v. Oden, counsel attempted to invoke the doctrine before the Louisiana Supreme Court. The case involved an alleged breach of an oral contract under which the plaintiff had removed overburden from defendant's gravel pit. Defendant allegedly agreed that the employment was to last three years and plaintiff in reliance on such assurances, incurred heavy expenditures by purchasing equipment necessary to comply with his obligation. Defendant, however, terminated the employment in about seven months. Left without means to pay for the equipment, plaintiff argued that defendant should have reasonably expected that his representations would induce the substantial change in position taken by him and that refusal to enforce the promise would result in injustice. Plaintiff, however, made no attempt to show the doctrine’s applicability under the provisions of the Civil Code. The Louisiana Supreme Court, in rejecting plaintiff’s contention, asserted that the theory of promissory estoppel was unknown to our law.

The result of this case prompted one commentator to declare:

“Some of the cases from common law jurisdictions demonstrate misapplications of Section 90 sufficiently flagrant to have given the draftsmen of that section cause to doubt the wisdom of its inclusion or the choice of language it con-

1. Restatement of Contracts § 90 (1932). Promissory estoppel as a contract doctrine has been expressly acknowledged for nearly fifty years. It was first formulated in 1920 by Samuel Williston, see 1 S. Williston, Contracts § 139 (1st ed. 1920). The doctrine was included as Section 90 in the Restatement of Contracts published in 1932. See generally Boyer, Promissory Estoppel: Requirements and Limitations of the Doctrine, 98 U. Pa. L. Rev. 459 (1950).
2. 221 La. 228, 59 So.2d 130 (1952).
3. Id. at 234, 59 So.2d at 132.
tains. It is heartening that our court is not willing to succumb to its wiles."

In competing systems of law it appears inevitable that similar solutions to nearly identical problems will be reached by employing totally different concepts. Louisiana contract law is based upon the civil law and is thus governed by the provisions of the Civil Code. Thus, if such promises are enforceable, they must be so only under the provisions of the Louisiana Civil Code. The purpose of this paper is to examine the application of the doctrine of promissory estoppel at common law and to compare it with the manner in which similar specific problems may be solved under the civil law. This comparison will demonstrate that there is no need for Louisiana courts to resort to an importation of the common law doctrine of promissory estoppel. In the past Louisiana courts have provided solutions to analogous problems simply by application of the general provisions of the civil code relating to contract, quasi-delict, and delict. Comparisons between applications of promissory estoppel under the common law and applications of the provisions of the Louisiana Civil Code are herein limited to two factual situations—enforcement of charitable subscriptions and subcontractor-contractor bid relations. These two factual situations have been selected because the doctrine of promissory estoppel is well established in the former while only emerging in the latter. In addition, these comparisons will serve to illustrate the basic distinctions between the common law and the civil law in relation to the formation of contracts. A final section is included for the purpose of demonstrating how the general principles expressed in the Code have been applied to miscellaneous factual situations to achieve a result similar to that reached by the use of promissory estoppel.

**Contract Principles: Basic Distinctions**

The most distinctive feature of the Anglo-American law of contract is the doctrine of consideration. It is based upon the

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5. "How consideration became an element of contract is not clear beyond a doubt. It is not thought that this was a mere accident of history. The enforcement of business transactions was, on the threshold of modern times, a social necessity, whereas the enforcement of gift promises was not, and might even be a social mischief. However this may be, the effect of the development has been that English law has never recognized the binding force..."
principle that for an informal contract to be valid it is necessary that a sufficient consideration be given for the promise contained therein. If there is no consideration the promise is gratuitous and is valid only when embodied in a sealed instrument. The American Law Institute has adopted a narrow definition of consideration based upon the theory of bargain and exchange. Nevertheless, it has also recognized that there are promises which create legal rights and duties despite the fact that they have not been bargained for or given in exchange for an act or forbearance, a change in legal relations, or for a return promise. A promise to pay a debt barred by the statute of limitations is enforceable, as is a promise to pay a debt discharged in bankruptcy. Promises to perform a voidable duty and those which reasonably induce definite and substantial action may likewise be enforced. Therefore, while the general rule obtains that no obligation is imposed upon one making an informal promise unless that promise is supported by consideration, the common law, as modified, attempts to provide enforceability between the extremes of a "naked promise" and one given for an equivalent. Included within the enforceable promises are those which fall under the doctrine of promissory estoppel. From the definition contained in Section 90 and from the cases, four essential elements have emerged for the enforcement of a promise inducing an unbargained for reliance. These are (1) the making of a promise which is of such character that the promisor should reasonably expect to induce action in reliance thereon; (2) the promisee must, in fact, reasonably rely thereon; (3) in so relying

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of agreement as such: it requires either the observation of a form or consideration." Note, 14 Int'l & Comp. L.Q. 675, 677 (1965). 8. A. Corbin, Contracts § 110 at 165 (student ed. 1952); 1 S. Williston, Contracts § 99 (rev. ed. 1938); Restatement of Contracts § 19 (1932). 7. The majority of states have abolished or modified the special effect of the seal so that a promise to be valid requires consideration whether or not it is made by a sealed instrument. This means that a promise not supported by consideration cannot be validly made. This principle has been modified in various ways, and in the particular rule of promissory estoppel. Note, 14 Int'l & Comp. L.Q. 675, 680 (1965). 8. Restatement of Contracts § 75 (1932): "(1) Consideration for a promise is (a) an act other than a promise, or (b) a forbearance, or (c) the creation, modification, or destruction of a legal relation, or (d) a return promise, bargained for and given in exchange for the promise. . . ." Comment (a): "No duty is generally imposed on one who makes an informal promise unless the promise is supported by sufficient consideration." 9. Restatement of Contracts § 86 (1932). 10. Id. at § 87. 11. Id. at § 89. 12. Id. at § 90.
the promisee must have suffered some economic detriment, and (4) injustice can be avoided only by enforcement of the promise.\textsuperscript{13} By the expanded application of this doctrine in recent times, the common law concept of contract has been widely broadened.

The principle of promissory estoppel has been applied to a variety of situations.\textsuperscript{14} The doctrine has been said to have arisen out of cases involving charitable subscriptions,\textsuperscript{15} and one jurisdiction has attempted to limit its application to that situation.\textsuperscript{16} The doctrine has often been applied in situations where the promisor has indicated an intention to abandon an existing legal right,\textsuperscript{17} and some courts have attempted to expand it no further.\textsuperscript{18} While its application has been liberal in the area of gratuitous promises,\textsuperscript{19} courts in the past have been quite reluctant to apply the principle to bargain transactions.\textsuperscript{20} More recently, however,

\textsuperscript{13} 1 A. CORBIN, CONTRACTS § 200 (1963); Note 13 VAND. L. REV. 705, 706 (1960).

\textsuperscript{14} See Boyer, Promissory Estoppel: Principle from Precedents, 50 MICH. L. REV. 639, 644 (1952) for an excellent discussion of the development and application of the doctrine. It is stated that the doctrine has been applied in at least five different fact situations:

(1) Charitable subscriptions,
(2) parol promises to give land,
(3) gratuitous bailment,
(4) gratuitous agency, and
(5) miscellaneous situations including pension plans, waiver, and rent reductions.

\textsuperscript{15} Note, 13 VAND. L. REV. 705, 706 (1960).

\textsuperscript{16} Comfort v. McCorkle, 149 Misc. 826, 268 N.Y.S. 192 (1933). The court in dictum restricted the application of § 90 to subscription and donation cases. See Boyer, Promissory Estoppel: Requirements and Limitations of the Doctrine, 98 U. PA. L. REV. 459, 479 (1950). “There is, however, a danger that courts will not understand the doctrine and be fearful of applying it. Unless this requirement [of action in reliance] is formulated so that it is readily understandable and applicable, the doctrine may be strictly limited in its use, thus failing to provide a needed amount of flexibility in contract law. Indications of this tendency are already apparent in holdings that promissory estoppel is to be employed only in charitable subscriptions, and is not to be resorted to in commercial transactions.”

\textsuperscript{17} Illustrative cases are: Waugh v. Lennard, 69 Ariz. 214, 211 P.2d 806 (1949) (not to plead statute of limitations); Miller v. Lowlor, 245 Iowa 1144, 66 N.W.2d 267 (1954) (not to plead Statute of Frauds); Edwards v. Smith, 322 S.W.2d 770 (Mo. 1959) (not to enforce acceleration clause). See also Annot., 48 A.L.R.2d 1058 (1956).


\textsuperscript{19} Illustrative cases are: Luck-Harblison-Jones, Inc. v. Universal Credit Co., 194 Miss. 663, 145 So. 623 (1933) (promise to provide insurance); Feinberg v. Pfeiffer Co., 322 S.W.2d 163 (Mo. 1959) (promise to pay a pension to an employee); In re Jamison's Estate, 202 S.W.2d 879 (Mo. 1947) (promise to reimburse loss on purchase price of stock); Schafer v. Fraser, 206 Ore. 446, 290 P.2d 190 (1955) (promise to contribute costs of a test suit).

\textsuperscript{20} James Baird Co. v. Gimbel Bros., Inc., 64 F.2d 344 (2d Cir. 1933).
the doctrine has been securing a firm foothold in transactions of a commercial character.21

The requirement of consideration in the Anglo-American law of contract has often been compared with the requirement of cause in the civil law.22 In this regard it has been said that in the modern civil law there is no principle more fundamental than that an agreement without any additional element suffices to constitute a contract, provided the agreement concerns a matter which is lawful.23 Therein, it is said, lies the crux of the difference between the two systems. The common law is committed to the theory of bargain and exchange and, with the few exceptions previously mentioned,24 will not enforce a promise unless the person making it has asked for and received something in exchange. The civil law, however, purports to recognize that a person may bind himself merely by expressing a will to do so and for that reason it regards a promise as enforceable merely because it is a promise.25 All that is required for a valid contract are parties capable of contracting, their consent legally given, and a lawful purpose.26 Although there is no requirement of consideration in the common law sense, every obligation must have a cause.27 "By the cause of the contract . . . is meant the consideration or motive for making it."28 Cause is thus identified

21. See Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948) (assurance of getting a franchise); Peoples Nat'l Bank v. Lineberger Const. Co., 219 Ark. 11, 240 S.W.2d 12 (1951) (bank loan made to subcontractor in reliance on contractor's promise that so much would be due the subcontractor at a future time); Drennan v. Star Paving Co., 51 Cal.2d 409, 333 P.2d 767 (1958) (subcontractor's bid irrevocable); Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958) (assurance of automobile dealership); Northwestern Eng'r Co. v. Ellerman, 69 S.D. 397, 10 N.W.2d 879 (1943) (subcontractor's promise to do work if general contractor received contract); Wheeler v. White, 398 S.W.2d 93 (Tex. 1965) (promise to furnish or obtain loan to finance construction of shopping center); Hoffman v. Red Owl Stores, Inc., 26 Wis.2d 683, 133 N.W.2d 267 (1963) (promise of a super market franchise at a certain price).

22. See generally Mehren, Civil Law Analogues to Consideration: An Exercise In Comparative Analysis, 72 Harv. L. Rev. 1009 (1959); Smith, A Refresher Course in Cause, 12 La. L. Rev. 1 (1951); Snellings, Cause and Consideration, 8 Tul. L. Rev. 178 (1934); Walton, Cause and Consideration in Contracts, 41 L.Q. Rev. 306 (1925).


24. See text at notes 9-12 supra.


27. Id. at art. 1893.

28. Id. at art. 1896. Domat has been credited as being the creator of the theory of cause and that theory is founded on three essential ideas: (1) In
with motive and as such becomes the ultimate objective of the contract. Since any cause not immoral or illegal is sufficient, it would be impossible to enumerate the various causes of a contract. The common law, however, generally recognizes a contract as actionable only where there is consideration. Since consideration is not present in every transaction, it could be said that the common law recognizes only one specific cause, namely consideration, in relation to the formation of contracts.

Article 1772 of the Louisiana Civil Code divides contracts "... in relation to the motive for making them" into gratuitous and onerous contracts. A contract is gratuitous if its object is to benefit the person with whom it is made even if it stems from a gratitude for a benefit previously received, or from the hope of receiving one in the future. An onerous contract involves equivalents where something is promised or given in return even though it be unequal in value. Thus, it can be seen that whether a contract is onerous or gratuitous depends upon its cause. If it arises out of a spirit of liberality it is gratuitous; if not, it is onerous.

While the Code lists a number of specific gratuitous contracts subject to special rules, the most important gratuitous contract is the donation which is defined as "an act by which the donor divests himself, at present and irrevocably of the thing given in favor of the donee who accepts it." The donation involves a depletion of the patrimony of the donor and is subject
to the requirement of authentic form which is not applicable to onerous contracts or to the special gratuitous contracts.\textsuperscript{84} Since the notarial act is a requirement peculiar to donations, it becomes necessary to identify such contracts. The French have allocated this task to the courts,\textsuperscript{85} but the redactors of the Louisiana Civil Code have provided a more precise method by incorporating articles for which the French have no equivalent. These articles divide donations into those that are purely gratuitous, those that are onerous, and those that are remunerative.\textsuperscript{86} Only those donations that are purely gratuitous and are made from the sole spirit of liberality are subject to authentic form and other rules applicable to donations. Onerous\textsuperscript{87} and remunerative\textsuperscript{88} donations are not considered as real donations and are treated as onerous contracts unless the value of the thing given exceeds by one-half the value of the charges imposed or the services rendered.\textsuperscript{89} Thus it can be seen that as to the requirement of form, in Louisiana a contract is either onerous or purely gratuitous. If it falls within the latter category, a notarial act is required for its validity.

\textit{Charitable Subscriptions}

The doctrine of promissory estoppel emerged out of cases involving charitable subscriptions.\textsuperscript{40} Normally, a charitable subscription is a promise to make a gift and as such does not purport to be a contract. It has been said that "gift and contract are antitheticals; the former appears to arise out of generosity, the latter out of bargain and \textit{quid pro quo}."\textsuperscript{41} Despite their gratuitous na-

\textsuperscript{34.} \textit{Id.} at art. 1536. The notarial act requirement serves several objectives: it provides proof of the transaction as well as of the capacity of the parties; it ensures that the donor has acted only after due deliberation and thus provides protection to his family and heirs. \textit{Note, 14 INT'L & COMP. L.Q.} 675 (1965).

\textsuperscript{35.} \textit{See S. Leviingoff, LOUISIANA CIVIL LAW TREATISE, OBLIGATIONS} § 101 (1969).

\textsuperscript{36.} LA. CIV. CODE art. 1523.

"There are three kinds of donations \textit{inter vivos}.

"The donation purely gratuitous, or that which is made without condition and merely from liberality;

"The onerous donation, or that which is burdened with charges imposed on the donee;

"The remunerative donation, or that the object of which is to recompense for services rendered."

\textsuperscript{37.} \textit{Id.} at art. 1534.

\textsuperscript{38.} \textit{Id.} at art. 1525.

\textsuperscript{39.} \textit{Id.} at art. 1526.


ture, court decisions have established the binding character of such promises where made to educational, religious, and other charitable groups.42 The common law, sensing a social need for the enforcement of such promises, sought a justification for their enforcement especially where the charity had taken action in reliance on them. Being bound by the bargain theory of contract the courts had to squeeze these cases into the mold of consideration and by employing various lines of reasoning were able to "torture" gifts into contracts. Since nearly everyone is familiar with the techniques employed by these courts it is only necessary to recite them.43 (1) The charitable subscription was viewed as an offer to enter into either a bilateral or unilateral contract. If the court was able to find a promise given by the charity, there was a bargain; consideration was present, and enforcement was assured.44 Likewise, if the charity had performed some act which could be construed as having been requested, performance of that act would serve as an acceptance creating an obligation to pay binding on the promisor.45 (2) Where there were a number of subscribers it was said that all subscribers had a common objective. They exchanged mutual promises and the promise of each subscriber furnished consideration for all the others.46 (3) Charitable subscriptions have also been enforced on the theory that there was an implied promise to devote the proceeds of such subscriptions to carrying out the purposes for which the charity was founded.47

Eventually many common law courts became dissatisfied with

42. A. CORBIN, CONTRACTS § 198 (student ed. 1952).
46. Christian College v. Hendley, 49 Cal. 347 (1874); Petry v. Trustees of Church of Christ, 95 Ind. 278 (1883); Higert v. Trustees, 53 Ind. 326 (1876); First Presbyterian Church v. Dennis, 178 Iowa 1352, 161 N.W. 183 (1917); Colmer College v. Hyland, 133 Kan. 232, 299 P. 807 (1931); Comstock v. Howd, 15 Mich. 236 (1867); Congregational Soc'y v. Perry, 6 N.H. 164 (1833); George v. Harris, 4 N.H. 533 (1829). See also S. WILLETSON, CONTRACTS §§ 117, 118 (1936).
the above rationalizations and shifted the emphasis away from bargain and consideration toward induced reliance as a consequence of the promise.\textsuperscript{48} This approach has been said to be more realistic, because it recognizes that these subscriptions are actually promises to make a gift and the finding of an "invented" or "illusory" consideration does not in fact change their character.\textsuperscript{49} The modern trend is to enforce such subscriptions where the charity has changed its position to its detriment in reliance on the promise and the change was reasonably foreseeable to the promisor, by estopping him from denying the existence of a sufficient consideration to support the promise. Courts have found reliance sufficient to bind the promisor where the charity has made purchases in connection with the erection of a church,\textsuperscript{50} contracted to erect a building,\textsuperscript{51} or purchased land, erected a building and operated a college.\textsuperscript{52} This approach is inherently fair. Where the charity has acted in reliance upon the promises represented by these subscriptions and has incurred expenses, buildings and other structures must be paid for and salaries must be met. If the subscriber is not made to pay, the charity will normally be left without the means of meeting these obligations. Since the subscriber by making the promise has encouraged the charity to incur expenses, it is only just that he be held liable on his promise to pay.

In Louisiana, a similar problem of justification is faced. However, since there is no requirement of consideration under the Civil Code, the problem is reduced to determining whether the subscription is a donation or an onerous contract. To arrive at a proper conclusion the court will look to the motive of the subscriber to determine whether he is acting from a pure spirit of liberality or whether he is seeking some objective beneficial to himself or to the community as a whole.\textsuperscript{53} The decision in \textit{Louisiana College v. Keller} is a good illustration of the manner in

\textsuperscript{48} See \textit{Furman Univ. v. Waller}, 124 S.C. 68, 117 S.E. 356 (1923).
\textsuperscript{49} See \textit{Floyd v. Christian Church Widows & Orphans Home}, 296 Ky. 196, 176 S.W.2d 125 (1943).
\textsuperscript{50} Calvary Presbyterian Church v. Brydon, 4 Cal. App.2d 676, 41 P.2d 377 (1935).
\textsuperscript{51} Trustees of Univ. of Pa. v. Cox's Ex'trs, 277 Pa. 512, 121 A. 314 (1923).
\textsuperscript{52} Koch v. Lay, 38 Mo. 147 (1866); \textit{Furman Univ. v. Waller}, 124 S.C. 68, 117 S.E. 356 (1923).
\textsuperscript{54} 10 La. 164 (1836).
which the civil law has been employed to uphold the validity of a charitable subscription. The case involved an action to recover an amount under a written subscription. The subscriber had agreed to pay the subscription provided the legislature would establish a college in the town of Jackson. Although the legislature responded favorably, defendant refused to pay alleging a lack of “consideration.” The court, in sustaining the validity of the subscription, stated that the consideration

“may have been the advantage the defendant expected to derive from the establishment of a college at his own door, by which he would save great expense in the education of his children, or it may have been a spirit of liberality and a desire to be distinguished as a patron of letters. . . . In contracts of beneficence, the intention to confer a benefit is a sufficient consideration.”

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The decision reaches the correct result while expressing conflicting views. It seems that the court was attempting to find “consideration,” but it spoke of consideration in terms of conferring a benefit which as a motive would render the contract gratuitous requiring a notarial act for its validity. Nevertheless, the apparent finding that the subscriber sought to be distinguished as a “patron of letters” or that he sought a reduction in the expense of educating his children illustrates that such motives are sufficient to render the transaction an onerous contract valid without necessity of authentic form.56

The same principle is illustrated in Baptist Hospital v. Cappel where defendant had subscribed for $500.00 to a hospital for the purpose of aiding in the erection of a home for nurses. Because of the possibility of a levee change, the site for the proposed home was changed to a location some distance away from the original site. Dissatisfied with the new location, defendant refused to pay. The court upheld the binding character of the subscription and reaffirmed the Keller rule reasoning that defendant’s motive in making the pledge was the prevention of the loss of accreditation by the training institution so that the nurses in training would not lose the time spent there. This having been accomplished, the change in location in no way altered

55. Id. at 167.
57. 129 So. 425 (La. App. 2d Cir. 1950).
the achievement of the end sought, and the pledge was binding.\textsuperscript{58}

The method employed by Louisiana courts is inescapably similar to that employed by common law courts attempting to enforce a charitable subscription upon the theory of bargain and exchange. The common law seeks to find consideration in the acts performed by the charity or in the pledges of other subscribers. Louisiana courts attempt to find that the cause is not a mere will to give but the attainment, as an end, of the establishment or maintenance of the institution to which the subscriber has pledged his support. Although the ultimate result is the same, the theory of cause is more realistic. Under the civil law a determination that the transaction is a donation necessarily precludes the possibility of there being a bargain; but simply finding no bargain does not result in a donation.\textsuperscript{59} Thus, while the common law has resorted to the doctrine of promissory estoppel to enforce those promises not supported by consideration, under the civil law such promises not being donations are enforceable without form.

\textit{Subcontractor Bids: Principles and Applications}

The second area of comparison concerns the application of

\textsuperscript{58} Id. at 427. \textit{See also} Dillard Univ. v. Longshoremen's Local \textsuperscript{1419}, 169 So.2d 221 (La. App. 4th Cir. 1964), where the statement was also made that an intention to confer a benefit was sufficient to sustain a pledge to a hospital expansion fund. (The action was dismissed, however, because the pledge had been signed by a union leader without proper authority to do so.) \textit{But see} Oglethorpe Univ. v. Salmon, 1 La. App. 845-46 (1st Cir. 1925), where the defendant had subscribed "for the purpose of founding a Southern Presbyterian University in the city of Atlanta, Georgia, to be forever held in trust and controlled by a self-perpetuating Board of Directors, each of whom shall be a member, in good and regular standing of a Presbyterian Church, and each of whom shall represent on said board—a gift of not less than $1000.00 to said University." The court seemed to ignore the Keller case by dismissing the suit on an exception of no cause of action for failure to allege in the petition the performance of the specific purposes for which the promise was given. Clearly, the court was looking for the common law consideration when it said: "The failure to allege these purposes and that they have been complied with is a failure to allege the consideration on which the promise was made, which cannot be assumed from the allegations in the petition." \textit{Id.} at 646. It has been said of this case: "If this case may be relied upon, the status of charitable subscriptions in Louisiana today would seem to be identical with their positions in common law jurisdictions. \textit{Cause} is left to one side, and, the ingenious concept of 'promissory estoppel' having yet to find its way within our borders, the courts will continue to grope for something in the nature of consideration that these commendable promises may be sustained. How much more satisfactory would be the giving effect to a unilateral declaration of will grounded on a good cause." Snellings, \textit{Cause and Consideration in Louisiana}, 8 Tul. L. Rev. 178, 206 (1934).

\textsuperscript{59} Smith, \textit{A Refresher Course in Cause}, 12 La. L. Rev. 1, 8 n.18 (1951).
the doctrine of promissory estoppel to cases involving bids by a subcontractor. These cases involve the principles of duration and revocation of offer, and in order to properly analyze them, a brief discussion of these principles is necessary.

At common law an offer is a proposal made by one party to another creating in the offeree the power of establishing a contract by making an appropriate acceptance. An offer, however, is revocable at the will of the offeror any time prior to acceptance unless supported by consideration. The offer remains revocable even though the offeror may have expressly promised not to revoke for a definite period of time. Nevertheless, in such a situation the acceptance must be made within the period specified or the offer will automatically terminate and the power of the offeree to accept will be lost. Where no time for acceptance has been specified, the offer remains open for a reasonable period of time, which has been said to be as long as it takes to respond to the offer through the same means of communication used to convey the offer, or through such means as may have been specified by the offeror. The offeree may, of course, reject the offer, or it may be terminated because of the death or subsequent legal incapacity of either party. Any revocation by the offeror, however, must be communicated to the offeree to be effective. The common law concept of consideration is as much involved in the principle of offer as it is with validity of contract, and the view that "... an offeror should not lose his legal free-

60. Restatement of Contracts § 24 (1932); 1 Corbin, Contracts §§ 11, 38 (1950); S. Williston, Contracts § 25 (stud. ed. 1938).
61. S. Williston, Contracts § 55 (stud. ed. 1938); 17 Am. Jur. 2d Contracts § 36 (1964). The right before acceptance to revoke an ordinary offer, or an offer not supported by consideration is unquestioned.
62. 1 A. Corbin, Contracts § 38 (1950); S. Williston, Contracts § 61 (stud. ed. 1938).
63. Restatement of Contracts § 40(1) (1932); 1 A. Corbin, Contracts § 35 (1950); S. Williston, Contracts § 53 (stud. ed. 1938).
64. Restatement of Contracts § 40 (1932); 1 A. Corbin, Contracts §§ 35, 36 (1950); S. Williston, Contracts § 54 (stud. ed. 1938).
67. Restatement of Contracts §§ 35, 48 (1932); 1 A. Corbin, Contracts § 54 (1950); S. Williston, Contracts §§ 50a, 62 (stud. ed. 1938).
68. Restatement of Contracts §§ 41, 42 (1932); 1 A. Corbin, Contracts § 29 (1950); S. Williston, Contracts § 56 (stud. ed. 1938).
dom to revoke his offer before acceptance, unless has has asked for and received something in return. . .”69 reflects this fact.

French law recognizes the binding effect of a manifested will even though nothing is sought in return. Since Louisiana derives its law from this source, it should follow that a person may make an offer, irrevocable for a period of time, merely by expressing a will to do so.70 The Louisiana Civil Code provides that a contract is not complete until there has been an acceptance of the offer by the offeree.71 However, the offeror is not allowed to withdraw his offer “. . . without allowing such reasonable time as from the terms of the offer he has given, or from the circumstances of the case he may be supposed to have intended to give the party, to communicate his determination.”72 Quite clearly, then, the code provides that the offeror cannot revoke (1) whenever he has expressly given the other party a certain period of time within which to communicate his acceptance, or (2) when no period has been specified, before such time as it may be presumed from the circumstances of the case that he intended to allow.73 It has been suggested that the “circumstances of the case” include not only the “situation of the parties and the nature of the contract,”74 but other factors such as “the experience of previous dealings between the parties, the conventional usages of a particular trade, and the nature of the thing which forms the object of the contract.”75 During the reasonable period of time, as determined by these circumstances, the offeror may not revoke and an acceptance communicated within such period will be considered as timely and effective.76 An acceptance made after this period has elapsed will be considered as untimely and may

70. Id.
71. LA. Civ. CODE art. 1800 provides: “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.”
72. Id. art. 1809.
74. Pascal, Duration and Revocability of an Offer, 1 LA. L. REV. 182, 189 (1939).
76. LA. Civ. CODE art. 1802 provides: “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 to 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 that it was the intention of the proposer to allow.”
be rejected.\textsuperscript{77} These are the principles as expressed in our Code.\textsuperscript{78} Although it has been said that the courts have tended to lose sight of them\textsuperscript{79} and have been reluctant to apply them,\textsuperscript{80} it has been aptly demonstrated that they are not entirely unsupported by the jurisprudence.\textsuperscript{81} Any reluctance that may exist has been attributed to the influence of the common law and its doctrine of consideration.\textsuperscript{82}

Promissory estoppel, as pointed out, has been freely applied in the area of gratuitous promises,\textsuperscript{83} but only recently\textsuperscript{84} and not vigorously\textsuperscript{85} been applied to commercial transactions. There is nothing in section 90 to indicate that it should not be so extended.\textsuperscript{86} That recital contains only those elements that must be established in order to recover, and there is no qualifications as to the factual situation to which the doctrine may be applied.\textsuperscript{87} Among those commercial transactions to which the doctrine has been applied are bids by a subcontractor.\textsuperscript{88} The most interesting case in this area is \textit{Drennan v. Star Paving Co.}\textsuperscript{89} Plaintiff-general contractor had called for bids in connection with a school construction job. Defendant-subcontractor submitted his paving bid by telephone the afternoon before plaintiff was to submit his bid on the general contract, as was the custom in the trade and community. Plaintiff did not immediately accept defendant's bid, but since it was the lowest, he used it in computing his own bid. As plaintiff was required to do, he included defendant's name as one of the subcontractors who were to perform and posted a

\begin{footnotes}
\item[77] LA. CIV. CODE art. 1801.
\item[79] Note, 7 La. L. Rev. 147, 148-49 (1946), and cases cited therein.
\item[80] See Smith, \textit{A Refresher Course in Cause}, 12 La. L. Rev. 1, 32 (1951), and cases cited therein.
\item[82] Smith, \textit{A Refresher Course in Cause}, 12 La. L. Rev. 1, 32 (1951); Note, 23 Tul. L. Rev. 286, 288 (1948).
\item[83] See note 19 supra.
\item[84] See note 21 supra.
\item[85] See Note, 32 S. Cal. L. Rev. 413 (1959).
\item[86] Id.
\item[87] See \textit{Restatement of Contracts} § 90 (1932).
\item[88] Robert Gordon, Inc. v. Ingersoll Rand Co., 117 F.2d 654 (7th Cir. 1941) ("The mere fact that the transaction is commercial in nature should not preclude the use of promissory estoppel." (dictum) \textit{Id.} at 661); Drennan v. Star Paving Co., 51 Cal.2d 409, 333 P.2d 757 (1958); Northwestern Eng't Co. v. Ellerman, 69 S.D. 397, 10 N.W.2d 879 (1943). \textit{Cf.} James Baird v. Gimbel Bros., 64 F.2d 344 (2d Cir. 1933).
\item[89] 51 Cal.2d 409, 333 P.2d 757 (1958).\end{footnotes}
bidder's bond of ten per cent of his total bid. Plaintiff was awarded the general contract on the very same day. When plaintiff visited defendant's office the next day, he intended to formally accept the offer, but was immediately informed that there had been a mistake in the estimate and that the subcontractor would not perform at the quoted price. Plaintiff demanded performance but defendant refused. Thereafter plaintiff secured another to do the paving at a higher price and sought to recover the excess as damages. The defense was that there was no enforceable contract since defendant's offer was revocable, and that he had revoked before the communication of plaintiff's acceptance. Plaintiff contended that his reliance upon defendant's offer was justifiable and that he had suffered a substantial loss in reliance thereon for which defendant was responsible. The court found that it was reasonably foreseeable that defendant's bid, if it were the lowest, would be used by the contractor in computing his bid. Since it had been so incorporated and the contractor had bound himself to perform at the stated price, he had undergone a prejudicial change in position. Under such circumstances the court held that there was an implied subsidiary promise not to revoke until the contractor had a reasonable opportunity, after being awarded the general contract, to accept. Defendant was then estopped to assert a lack of consideration for the promise.90

The decision, of course, is at war with the principle that an offeror is in complete control of his offer and may revoke at any time prior to acceptance by the offeree. It is clear that at common law the mere use of a subcontractor's bid does not constitute an acceptance of it.91 The court, however, saw a similarity between a justifiable reliance on an offer and the situation in which there is an attempt to revoke an offer for a unilateral contract after the offeree has begun his performance.92 The real

90. "Reasonable reliance resulting in foreseeable prejudicial change in position offers a compelling basis also for implying a subsidiary promise not to revoke an offer for a bilateral contract." Id. at 414, 333 P.2d at 760.
92. RESTATEMENT OF CONTRACTS § 45 (1932): "If an offer for a unilateral contract is made, and part of the consideration requested in the offer is given or tendered by the offeree in response thereto, the offeror is bound by a contract, the duty of immediate performance of which is conditional on the full consideration being given or tendered within the time stated in the offer, or, if no time is stated therein, within a reasonable time. "In such a case, it is now generally held that the offered promise becomes irrevocable (and in a sense 'binding') as soon as the offeree has partly performed. The promise has been made binding by the promisee's action in reliance; but that action is a part of the bargained-for equivalent. In some
similarity is that in both situations the law is concerned with the prevention of injustice to the offeree due to the fact that there is no enforceable contract. But, the reason for the absence of a contract in the two situations is different. In the former there has been no acceptance at all while in the latter the offeree has been prevented from completing an acceptance already commenced. The difference is quite important. In the first situation the offeree has not done what was requested. In the second, the very thing requested was being done prior to the offeror's intervention. In the unilateral contract situation, consideration for the implied subsidiary promise not to revoke is found in the commencement of performance; in the case of promissory estoppel, there being no consideration, whether there is sufficient justifiable reliance upon which to base an estoppel depends upon a finding that such reliance was reasonably foreseeable to the offeror.

The application of promissory estoppel to the relationship of prime contractor and subcontractor may be questioned on the
basis that it serves only to benefit the prime contractor who may be able, after utilizing the subcontractor's bid, to engage in "bid-peddling" and "bid-shopping" on the basis of that bid, while being secure in the realization that he may still hold the subcontractor to his bid.\textsuperscript{97} The subcontractor has no assurance, even if his bid has been utilized, that he will be awarded the subcontract.\textsuperscript{98} On the other hand, it may be said, at least in a case like \textit{Drennan} where prompt acceptance was attempted, that because the subcontractor is the one most qualified to determine the accuracy of his bid the mistake belongs to him and not to the prime contractor.\textsuperscript{99} Nevertheless, despite the general rule at common law that no duty is imposed upon one who makes an informal promise unsupported by consideration,\textsuperscript{100} the doctrine of promissory estoppel may be used to impose a duty where there has been foreseeable justifiable reliance, even to the extent of making a revocable offer irrevocable.

The Louisiana jurisprudence concerning bids by a subcontractor is equally intriguing. In \textit{Harris v. Lillis},\textsuperscript{101} defendant-subcontractor submitted his bid to perform certain roofing work on a proposed residence. Plaintiff-general contractor utilized defendant's bid in submitting his own, which was accepted by the owner shortly thereafter. After plaintiff had mailed a formal acceptance of defendant's bid, defendant attempted to revoke his offer. The lower court found that a contract had been formed by plaintiff's timely acceptance and consequently, defendant could not revoke his offer. The appellate court concurred in this finding, but without citation of any Code authority went on to add:

"Moreover it seems manifest that, in accordance with the custom prevailing in the building trade in New Orleans, an offer by a subcontractor to a general contractor to do

\begin{footnotesize}
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\item It has been suggested, however, that the contractor's problem could be solved by:
\begin{enumerate}
\item entering into an agreement with the subcontractor, conditional upon the contractor's bid being accepted; or
\item an option or a bid bond or other such device. However, it has been pointed out that such formal agreement is often impractical, because subcontractors frequently wait until the very last day to submit their bids in order to take advantage of using the latest market prices. Note, 26 Mo. L. REV. 356, 349 (1961).
\end{enumerate}
\item Note, 32 S. CAL. L. REV. 413, 418-19 (1959).
\item \textit{Restatement of Contracts} § 75, comment (a) (1932).
\item 24 So.2d 689 (La. App. Ori. Cir. 1946).
\end{enumerate}
\end{footnotesize}
work is irrevocable after the contractor has used the estimate of the subcontractor as a basis for his offer to the owner and the owner has accepted the general contractor's bid."102 (Emphasis added.)

In R. P. Farnsworth v. Albert,103 defendant-subcontractor submitted his bid for certain plastering work to plaintiff who, in reliance thereon, incorporated it into his bid which was subsequently submitted to and accepted by the owner. Defendant, upon discovering an error in his bid, communicated to plaintiff his intent to withdraw the offer. At that time there had been no attempt by plaintiff to communicate an acceptance to defendant. When plaintiff demanded performance and defendant refused, plaintiff secured the services of another at a higher price and brought an action against defendant for the difference. The defense was that the revocation prior to acceptance by the general contractor was timely and effective. The federal district court relying upon the ruling in Harris v. Lillis,104 held the offer to be irrevocable after its use by the general contractor and its acceptance by the owner, and thus gave the general contractor a reasonable time thereafter to accept the bid. The circuit court,105 however, was not convinced. It found that the alleged custom had been neither properly pleaded nor proved in the lower court. In addition it found that the lower court's reliance on Harris had been misplaced for the reason that the portion of the opinion dealing with the custom of the building trade in New Orleans was unnecessary to the decision in that case and constituted mere dictum.106 In remanding the case, however, the court clearly recognized that proof of the existence of such a custom would be relevant in determining, under the provisions of the Code, what could be presumed to have been the intention of the offeror.107

102. Id. at 691.
103. 79 F. Supp. 27 (E.D. La. 1948).
104. 24 So.2d 689 (La. App. Ori. Cir. 1946).
105. Albert v. R. P. Farnsworth, 176 F.2d 188 (5th Cir. 1949).
106. Id. at 201.
107. Id. at 203. "This is not to say, though, that on another trial, proof of a custom or practice would not be relevant in determining . . . whether the proposition was made 'in terms, which evince a design to give the other party the right of concluding the contract by his assent,' and whether the assent was 'given within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow,' or . . . that the offer was made 'allowing such reasonable time as from the terms of his 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.'"
The finding of the court as to the effect of the Harris case seems to have been correct. In that case, an acceptance had been timely communicated to the subcontractor before any attempt to withdraw had been made. Thus, the decision stands only for the proposition that a contract is completed by a timely acceptance of an offer, properly communicated, and not for the proposition that utilization of a subcontractor's bid by the contractor and acceptance by the owner thereafter serves to make the bid irrevocable. If the offer did not become irrevocable until its use by the contractor and acceptance by the owner, then it would necessarily follow that prior to that time it would be revocable at the will of the subcontractor. Such a proposition would be plainly contrary to the provisions of article 1809 of the Civil Code.108

The circumstances surrounding the relationship of contractor-subcontractor are quite susceptible to and should not depart from the general rule that an offer should remain open for a period of time "as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow." Among those circumstances to be considered are the custom and conventional usage of a particular trade and the previous dealings of the parties.109 When a subcontractor submits a bid to a general contractor it is understood that it is submitted on a competitive basis as one among many. It is certainly within the contemplation of the parties that if the subcontractor's bid is the "low bid," it will be utilized by the prime contractor in the submission of his own bid for the entire job. The subcontractor expects that if his bid is so used, he will be awarded the subcontract for which he extended the offer. It is also understood that whether or not the subcontractor gets the job necessarily depends upon whether the general contractor's bid is accepted by the owner. The subcontractor and the contractor each have an expectation in the possible profits to be derived from the entire transaction. These factors would seem to indicate that a reasonable period of time for acceptance is implied in the

108. Albert v. R. P. Farnsworth, 176 F.2d 198 (5th Cir. 1949). But see Schwenk, Culpa In Contrahendo in German, French and Louisiana Law, 15 Tul. L. Rev. 87 (1940), where an interpretation is given to Articles 1801, 1802, and 1809 which allows revocation of offers and protects the reliance of the offeree by the use of culpa in contrahendo.

109. See text at note 75 supra.
subcontractor's offer irrespective of the existence of any particular custom.110

The dicta in Harris v. Lillis111 appears to call for a result similar to that reached by the California court in Drennan v. Star Paving Co.112 and its application of promissory estoppel. The Louisiana Civil Code provides a remedy to the problem presented by the factual situation of that case without resort to promissory estoppel or evidence of custom. The Code requires an acceptance of an offer to complete the contract but the offeror may not revoke his offer without allowing such reasonable time as from the terms of his offer or from the circumstances of the case he may be supposed to have intended to give the party to communicate his acceptance.113

It has been suggested that article 1809 should be interpreted in such a manner so as to allow revocation of an offer while awarding recovery of the reliance interest on the basis of culpa in contrahendo.114 That doctrine, however, has apparently been utilized in German law to compensate for the absence of a general principle of delictual liability such as that contained in the Louisiana Civil Code.115 The Louisiana Civil Code provides that the obligation is complete when acceptance has been timely communicated despite an unlawful attempt at revocation.116 This principle has been given recognition by the courts which have awarded the full contractual interest where such attempt has been made.117 The doctrine is thus inapplicable to cases involv-

111. 24 So.2d 689 (La. App. Orl. Cir. 1946).
113. La. Civ. Code art. 1802. "He is bound by his proposition, and the signification of his dissent will be of no avail, ... if that assent be given within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow."
114. In German law the theory may be stated as follows "If a contract is or becomes void by the fault or misunderstanding of one party, the law imposes on the party who is at fault or whose act created the risk of misunderstanding, the liability to compensate the innocent party for any actual change of position in reliance on the apparently perfect contract." Schwenk, Culpa In Contrahendo in German, French and Louisiana Law, 15 TUL. L. REV. 87, 90 (1940).
115. La. Civ. Code art. 2315. “Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it.”
ing revocation of offer. If revocation were allowed, no contractual liability would result. If no contract results due to the fault of the offeror, liability should properly be predicated on quasi-delictual grounds.\textsuperscript{118}

\textbf{Miscellaneous: Louisiana Law}

Louisiana courts have enforced promises or representations upon which another has acted in a number of cases, thereby avoiding injustice. Relief in such cases has been afforded, not by resort to the common law doctrine of promissory estoppel, but by solutions consistent with the general principles of the Civil Code. A few cases will serve to illustrate.

In \textit{Choppin v. Dauphin}\textsuperscript{119} the owner of a tomb was held to be estopped to insist upon the removal therefrom of the remains of plaintiff's deceased relatives. The remains had been placed there in reliance upon the promise of defendant's ancestor that they should remain there forever. The court held that the promise was binding upon the ancestor during his lifetime, and after his death upon his heirs. In so holding the court stated:

"There was by his words and still more by his conduct, the manifestation of his purpose that the remains of the Choppins should have a final resting place in this tomb, and on the faith of that promise so distinctively avowed, these plaintiffs permitted the transfer of the remains of their dead. . . . The principle of estoppel so often applied in controversies involving pecuniary rights, will not permit the withdrawal of promises or engagements on which another has acted."\textsuperscript{120}

In \textit{Southern Discount Co. v. Williams},\textsuperscript{121} plaintiff, after an abortive attempt at settlement, agreed to give the defendant additional time to file an answer. Plaintiff, however, took a default judgment within twelve calendar days after making the promise. In setting aside the judgment, the appellate court declared that even though defendant's promise may have been

\begin{itemize}
  \item Id. at 1220, 20 So. at 682.
  \item 226 So.2d 60 (La. App. 4th Cir. 1969).
\end{itemize}
without "consideration," he was estopped to repudiate the promise upon which plaintiff had relied to her detriment.

In both these cases the elements of promissory estoppel are present. The language employed by the court is similar to that used by common law courts when enforcing a promise under that doctrine. Nevertheless, the true basis is clearly that of a completed contract. There was a promise or proposal based upon a lawful purpose, accepted by those to whom it was made.

In Marsalis v. LaSalle, plaintiff was bitten by a cat while in defendant's store. Defendant was not negligent as the cat had not previously exhibited dangerous tendencies. Recent reports of rabid animals aroused fear that the cat might be infected. Defendant promised to confine the animal for the necessary period of observation. The cat, however, was allowed its usual freedom whereupon it disappeared before the required period had elapsed. When plaintiff was required to undergo precautionary treatment from which she suffered an injurious reaction, she brought an action for damages. The court allowed recovery on the theory that while no initial duty was imposed upon defendant, she had given an express promise upon which plaintiff had relied. Defendant was thus liable for the bodily harm resulting from her failure to use reasonable care in discharging the obligation assumed.

In most common law jurisdictions there is no liability in tort for an injury caused by reliance on a gratuitous promise. The rule is apparently based upon two factors: (1) the requirement of consideration to render a promise enforceable, and (2) the general rule that no liability is imposed for failure to act when there is no duty to act. The rule, however, admits of an exception. Where one voluntarily undertakes to perform, even gratuitously, he assumes the obligation of exercising reasonable care in his performance. The basis for the exception lies in the fact that by commencement of performance he may have induced the plaintiff to refrain from taking action in his own behalf. The vitality of the rule remains, but has been seriously challenged by the expanded use of promissory estoppel.

122. 94 So. 2d 120 (La. App. Orl. Cir. 1957).
124. Id. at 187.
It is submitted that the basis of the obligation in Louisiana is the promise and not the undertaking. Failure to properly discharge the assumed obligation, whether it results from intention or negligence, constitutes fault imposing liability to indemnify for the harm caused. In Marsalis the court clearly stated that the express promise gave rise to the obligation. While quoting freely from the Restatement of Torts and actually basing its decision on a provision therein, the court was, in fact, providing a solution consistent with the principles of the Civil Code.

The principle expressed in Marsalis finds support in the later case of Hano v. Kinchen. In that case a buyer of hogs promised to provide compensation insurance to cover employees of the seller and actually withheld money from the purchase price to pay the premiums. In reliance, the seller failed to procure his own insurance and was held liable for his employee's injuries. In an action by the seller against the buyer, the buyer was held liable on the theory that his failure to perform the obligation so assumed required him to reimburse the loss suffered by the plaintiff.

The Louisiana Supreme Court in Ducote v. Oden clearly rejected the doctrine of promissory estoppel. It denied relief because the evidence was insufficient to show that the alleged representation was made, or if made, that the action of plaintiff had followed in reliance thereon. Assume, however, that representations had been made under such circumstances that it was reasonably foreseeable to the defendant that plaintiff would take action in reliance upon them. In the absence of a specific agreement as to the term of the employment the question arises

126. Restatement of Torts § 325 (1934): "One who gratuitously undertakes with another to do an act or to render services which he should recognize as necessary to the other's bodily safety and thereby leads the other in reasonable reliance upon the performance of such undertaking (a) to refrain from himself taking the necessary steps to secure his safety or from securing the then available protective action by third persons, or (b) to enter upon a course of conduct which is dangerous unless the undertaking is carried out, is subject to liability to the other for bodily harm resulting from the actor's failure to exercise reasonable care to carry out his undertaking.

"Comment (a) The actor may undertake to do an act or to render services either by an express promise to do so or by a course of conduct which the actor should realize would lead the other into the reasonable belief that the act would be done or the services rendered."

127. 122 So.2d 889 (La. App. 1st Cir. 1960).
128. See also Carpenter v. Madden, 90 So.2d 508 (La. App. 2d Cir. 1956).
129. 221 La. 228, 59 So.2d 130 (1952).
as to whether the plaintiff would have any recourse under Louisiana law. It is submitted that a basis for recovery is embodied in the general principle of delictual and quasi-delictual responsibility expressed in article 2315 of the Louisiana Civil Code. That article covers not only actions but omissions as well. It would appear that the Code indirectly imposes a duty upon the parties involved in negotiating a contract to act honestly and judiciously. The Code declares that where doubt or obscurity arises due to the lack of necessary explanation which one of the parties should have given, or from any negligence or fault of his, the agreement shall be construed against him. While it is true that the Code does not define fault and only provides for the responsibility of certain classes of persons with regard to their actions, it is not the sole source for prescribing what actions or omissions constitute fault. Where the positive law is silent, the judge is bound to proceed and decide equitably appealing to natural law and reason or to receive usages.

Conclusion

The common law of contracts is based upon consideration and the mutuality of bargain. The doctrine of promissory estoppel is based upon an unbargained-for reliance upon a promise where the reliance is both foreseeable to the promisor and detrimental to the promisee. It is used as a substitute for consideration and is thus predicated on the absence of an otherwise valid contract.

Louisiana contract law is governed by the provisions of the Civil Code which do not require consideration but utilize the analogous concept of cause. As indicated by the court in Ducote, there is no basis in the Code for the doctrine of promissory estoppel, and there is no need for Louisiana courts to adopt this device. The provisions of the Code provide a remedy in most analogous situations to which the doctrine has been applied. The following basic distinctions lend support to this conclusion.

(1) Under the concept of cause, it is generally believed that a mere manifestation of the intention to be bound will result in a binding obligation. At common law there must be something bargained for and given in exchange, or some equivalent. Because the concept of cause is thus broader than consideration,
more promises may be enforced without resort to promissory estoppel.

(2) At common law an offer unsupported by consideration is revocable at any time prior to acceptance. Under the Louisiana Civil Code an offer is irrevocable for a period of time as expressed by the person making it, or for a reasonable period to be implied from the nature of the contract and the circumstances of the case. At common law promissory estoppel has been used to render an otherwise revocable offer irrevocable in the face of justifiable reliance. In Louisiana there is no need to resort to this doctrine, as an acceptance timely communicated will create a binding obligation despite an unlawful attempt at revocation.

(3) The Louisiana Civil Code provides no catalogue of torts but contains a general principle of delictual and quasi-delictual responsibility which is susceptible of expansion and which may even be applied to negligent actions or omissions of parties negotiating a contract. Such an application would result in liability for harm caused by actions or omissions where the risk of harm was reasonably foreseeable to the one acting or refraining.

Frederick H. Sutherland

CONTINENTAL SHELF LAW: OUTDISTANCED BY SCIENCE AND TECHNOLOGY

In contrast to the traditionally slow development of legal systems which evolve over many years, an entire legal regime dealing with the continental shelf has developed since 1945. This unique birth of the legal framework for exploiting the natural resources of the continental shelf was precipitated by technological advances which made the newly discovered wealth of these areas accessible to exploitation. Far from being complete, this legal regime remains one of the most dynamic areas of international law. Science and technology are moving ahead far more rapidly than is the law governing this area of the marine environment. Thus, a very new body of law has already become in large part inadequate to deal with problems of far reaching economic