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## Private Law: Mandate

Milton M. Harrison

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erty he should be entitled to the benefit of his bargain. This rule is applied when the seller fails to deliver the thing he has sold or contracted to sell.<sup>9</sup> Consistency requires that the same rule be applied in the event of eviction.

## MANDATE

*Milton M. Harrison\**

In *Resweber v. Daspit*<sup>1</sup> the court was confronted with the narrow issue of whether a power of attorney to sell "all or any part or parts of the real, personal, or mixed estate" of the mandator was sufficiently descriptive of the property to render valid a sale by the mandatary. The question arises out of an interpretation of Civil Code articles 2994, 2996, and 2997. A mandate "to alienate . . . or give a mortgage, or do any other act of ownership," must be express under Civil Code article 2996. Furthermore, article 2997 provides that "the power must be express and special . . . to sell or to buy . . . ."

In the earlier cases of *Rownd v. Davidson*<sup>2</sup> and *Tensas Delta Land Company v. Fletcher*<sup>3</sup> the supreme court had held that powers of attorney to sell all real estate in specified parishes were sufficiently descriptive of the property. The instant case goes one step farther in holding that a power to sell all of the real estate of the mandator, without specifying the parish in which it is located, is sufficiently descriptive. After discussing the history of articles 2996 and 2997 of the Civil Code and comparing their language with the corresponding articles of the French Civil Code,<sup>4</sup> the court says that it is "aware that this holding in effect strikes the word 'special' from Article 2997."<sup>5</sup>

The courts are to be applauded for their decisions on this issue. However, it would have been preferable if, instead of focusing attention on the possible conflict between articles 2996 and 2997 and of striking the word "special" from article 2997, the court had simply interpreted article 2994. Civil Code article

9. See *Womack v. Sternberg*, 247 La. 566, 172 So.2d 683 (1965); *Rosenberg v. Derbes*, 165 La. 407, 115 So. 637 (1928); see also *Eanes v. McKnight*, 251 So.2d 491 (La. App. 1st Cir. 1971). See *Smith, Recovery of Damages for Non-Delivery and Eviction in Louisiana*, 17 LA. L. REV. 253 (1957).

\* Professor of Law, Louisiana State University.

1. 240 So.2d 376 (La. App. 3d Cir. 1970).

2. 113 La. 1047, 37 So. 965 (1905).

3. 132 La. 1021, 62 So. 129 (1913).

4. FRENCH CIV. CODE art. 1988.

5. 240 So.2d 376, 379 (La. App. 3d Cir. 1970).

2994 provides that the mandate "may be either general for all affairs, or special for one affair only." Does this mean that a mandate for more than one affair, but less than all, is neither general nor special? Although article 2997 requires that the power be *express* and *special* to "sell or buy," to "contract a loan or acknowledge a debt," or to "draw or endorse bills of exchange or promissory notes," it has never been seriously contended that each transaction, other than those involving sale, must be specified. The counterpart of article 2994 in the French Civil Code<sup>6</sup> provides that a special mandate is for one affair *or certain affairs only*. Despite the omission of the phrase "or certain affairs" in article 2994, this is the interpretation which should be given it, thus removing the unintended possibility of having a mandate which is neither general nor special and thereby giving meaning to articles 2996 and 2997 without change.

The court in *Krautkramer Ultrasonics, Inc. v. Port Allen Marine Service, Inc.*<sup>7</sup> was called upon to determine the effect of payment of a debt to a creditor's agent who was not authorized to receive payment. In determining that the facts did not justify finding that the principal had created *apparent authority* for the agent to receive the payment and thereby discharged the debt with reference to the creditor, the court took special notice of the fact that the doctrine of *apparent authority* is not expressly provided in the Louisiana Civil Code.<sup>8</sup> However, the court pointed out that the concept of *apparent authority* "is well embedded in our jurisprudence." The latter statement is so true that the courts have regularly applied the doctrine without even noting the absence of codal authority therefor. It is hoped that the supreme court will in the near future examine the place of *apparent authority* in the law of Louisiana and provide clarity to this issue.

## PARTNERSHIP

Milton M. Harrison\*

The supreme court held in the 1957 case of *State v. Peterson*<sup>1</sup>

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6. FRENCH CIV. CODE art. 1987: "*Il est ou spécial et pour une affaire ou certaines affaires seulement, ou général et pour toutes les affaires du mandat.*"

7. 248 So.2d 336 (La. App. 4th Cir. 1971), *rehearing denied* June 7, 1971.

8. See LA. CIV. CODE arts. 2985-3034.

\* Professor of Law, Louisiana State University.

1. 232 La. 931, 95 So.2d 608 (1957).