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Private Law: Partnership

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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[6] 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.*[7] 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.[8] 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*[1]

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 mandant."*

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

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

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

that a partner who misappropriates funds of the partnership cannot be prosecuted for the crime of theft. The basis of this decision was that a partner in a commercial partnership could be ultimately liable for all of the debts of the partnership under Civil Code article 2872, and therefore the taking was not of something belonging to another. In *State v. Morales*,[2] the court specifically overruled *State v. Peterson* in recognition of the fact that in Louisiana a partnership is a legal entity separate from the partners who form it. Therefore, the taking by a partner of partnership funds is a taking of something "of value which belongs to another." The *Peterson* case had been criticized,[3] and it is fortunate that the court in the recent case corrected its earlier erroneous position and clarified the law on this point.

In *McCray v. Blackburn*,[4] the court held that partners who covenant not to compete upon their withdrawal from the partnership are not subject to the statute[5] limiting the rights of employers to enforce non-competition agreements against their employees. The distinction is entirely proper and the purpose of protecting employees does not make necessary the same protection for partners entering a partnership.

SECURITY DEVICES

*Gerald Le Van**

Mortgages to Secure Future Advances

As it presently stands, *Thrift Funds Canal, Inc. v. Foy*[1] holds that a mortgage granted to secure future advances must say so. The supreme court has granted writs and its decision is expected during the current term. Suffice it to say, however, that *Foy* has created considerable stir.

In 1963, Foy executed a note in the amount of $10,000 secured by a first mortgage on an unimproved lot in Jefferson Parish. Three years later, in 1966, he executed a note to the same creditor

2. 256 La. 940, 240 So.2d 714 (1970).
3. *See The Work of the Louisiana Supreme Court for the 1956-1957 Term—Criminal Law and Procedure*, 18 LA. L. REV. 119, 120 (1957).
4. 236 So.2d 859 (La. App. 3d Cir. 1970).
5. LA. R.S. 23:921 (1950).

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1. 242 So.2d 253 (La. App. 4th Cir. 1970), *writs granted*, 257 La. 980, 244 So.2d 855 (1971).