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Nonpecuniary Damages in Breach of Contract: Louisiana Civil Code Article 1934

Steve M. Marks

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opportunity to act in a way that would have prevented the plaintiff's injuries. Such a showing will be more difficult to maintain the further removed in time and space the plaintiff is from the defendant's establishment.

Linton W. Carney

NONPECUNIARY DAMAGES IN BREACH OF CONTRACT: LOUISIANA CIVIL CODE
ARTICLE 1934

An action for breach of contract was brought against an automobile repairman who had unnecessarily delayed completion of repairs for five months. In addition to direct pecuniary loss, plaintiff sought damages for aggravation, distress, and inconvenience under Louisiana Civil Code article 1934(3).¹ The Louisiana Supreme Court *held* that plaintiff could not recover for the nonpecuniary damages because article 1934(3) contemplates only contracts a principal object of which is intellectual enjoyment notwithstanding other peripheral, incidental, or concurrent objects of physical gratification. *Meador v. Toyota of Jefferson, Inc.*, 332 So.2d 433 (La. 1976).

Article 1934 governs damages recoverable for breach of contract.² Excepting contracts having as an object the payment of money, the general rule is that damages due are the amount of the loss sustained and profit deprived.³ The first two modifications of this rule affect the quantum or

1. LA. CIV. CODE art. 1934 provides *inter alia*: "Where the object of the contract is any thing but the payment of money, the damages due to the creditor for its breach are the amount of the loss he has sustained, and the profit of which he has been deprived, under the following exceptions and modifications:

1. When the debtor has been guilty of no fraud or bad faith, he is liable only for such damages as were contemplated, or may reasonably be supposed to have entered into the contemplation of the parties at the time of the contract. By *bad faith* in this and the next rule, is not meant the mere breach of faith in not complying with the contract, but a designed breach of it from some motive of interest or ill will.

2. When the inexecution of the contract has proceeded from fraud or bad faith, the debtor shall not only be liable to such damages as were, or might have been foreseen at the time of making the contract, but also to such as are the immediate and direct consequence of the breach of that contract; but even when there is fraud, the damages can not exceed this.

3. Although the general rule is, that damages are the amount of the loss the creditor has sustained, or of the gain of which he has been deprived, yet there are cases in which damages may be assessed without calculating altogether on the

amount of damages recoverable. In the absence of fraud or bad faith, recovery is limited to foreseeable damages,⁴ whereas a breach proceeding from fraud or bad faith requires reparation of all damages of direct and immediate consequence of the breach.⁵ The third modification of the general rule provides for the assessment of damages not calculated altogether on pecuniary loss or deprivation of pecuniary gain, and specifically allows recovery for the breach of contracts having the "gratification of some intellectual enjoyment" as their object.⁶ Such objects are illustratively characterized by those founded in "religion, morality or taste, or some convenience or other gratification."⁷

Where Louisiana courts have denied recovery for nonpecuniary damages, there has been an expressed emphasis of the general rule that only the amount of pecuniary loss is recoverable with either no mention of article 1934(3) or perfunctory dismissal of its applicability.⁸ Recovery has been allowed for nonpecuniary damages when the breach was willful and

pecuniary loss, or the privation of pecuniary gain to the party. Where the contract has for its object the gratification of some intellectual enjoyment, whether in religion, morality or taste, or some convenience or other legal gratification, although these are not appreciated in money by the parties, yet damages are due for their breach; a contract for a religious or charitable foundation, a promise of marriage, or an engagement for a work of some of the fine arts, are objects and examples of this rule.

2. Nominate contracts treated by the Civil Code refer obliquely to article 1934 by alluding to "damages," "loss," or "penalty." See, e.g., LA. CIV. CODE arts. 2506(4) (eviction from thing sold), 2695 (lease), 2765 (letting out of labor), 2898 (loan), 3002 (power of attorney), 3075 (compromise), 3365 (mortgage).

3. *Id.* art. 1934 (first paragraph). See note 1, *supra*.

4. *Id.* art. 1934(1). See note 1, *supra*.

5. *Id.* art. 1934(2). See note 1, *supra*.

6. *Id.* art. 1934(3). See note 1, *supra*. The source of this modification has been attributed to TOULLIER, 6 DROIT CIVIL, Liv. III, Tit. III, Chap. III, Sec. IV, § III, n.293 (305 seq.) (1821) and DOMAT, I LOIX CIVILES, Part. I, Liv. III, Tit. V, Sec. II, ns. XI, XII (270) (1777). Batiza, *The Actual Sources of the Louisiana Projet of 1823: A General Analytical Survey*, 47 TUL. L. REV. 1, 80 (1972). For a discussion of the contribution of Domat see Comment, *Damages ex contractu: Recovery of Non-pecuniary Damages for Breach of Contract Under Louisiana Civil Code Article 1934*, 48 TUL. L. REV. 1160, 1173-74 (1974).

7. *Id.* art. 1934(3). See note 1, *supra*.

8. See *McNeill v. Elchinger*, 231 La. 1090, 93 So. 2d 669 (1957) (breach of community property settlement, holding "no law making such a claim cognizable"); *Tauzin v. Sam Broussard Plymouth, Inc.*, 283 So. 2d 266 (La. App. 3d Cir. 1973) (misrepresentation of car as new in sale, holding "no such showing here" that the contract falls within the exception of article 1934); *Moreau v. Marler Ford Co.*, 282 So. 2d 852 (La. App. 3d Cir. 1973) (delay in delivery of new truck, holding "not fall[ing] within the exception" of article 1934).

amounted to an independent tort⁹ or the contract was one strongly coupled with matters of personal sensibilities or family interests unquestionably within the contemplation of the parties at the time of the contract,¹⁰ including contracts the breach of which results in foreseeable serious bodily harm or death to a close relation.¹¹

For example, where the party breaching was apprised that the property to be sold, leased or constructed was to be used for a home, the transaction has been characterized as more than a mere business transaction for investment or pecuniary gain; and since a home is especially suited to personal and family taste and convenience, damages have been awarded for disappointment, discomfort, and inconvenience caused by the breach.¹² In

9. See *Vogel v. Saenger Theatres, Inc.*, 207 La. 835, 22 So. 2d 189 (1945) (cripple not admitted to theatre after purchasing ticket); *O'Meallie v. Moreau*, 116 La. 1020, 41 So. 243 (1906) (breach of contract to provide picnic area; article 1934 not mentioned); *Enders v. Skannal*, 35 La. Ann. 1000 (1883) (workers at sawmill on defendant's land driven off by threats and violence).

10. See *Graham v. Western Union Tel. Co.*, 109 La. 1069, 34 So. 91 (1903) (failure to promptly deliver telegram announcing serious illness and approaching death); *Lewis v. Holmes*, 109 La. 1030, 34 So. 66 (1903) (contract to provide wedding trousseau); *Grather v. Tipery Studios, Inc.*, 334 So. 2d 758 (La. App. 4th Cir. 1976) (photography at wedding unprofessionally performed); *Mitchell v. Shreveport Laundries, Inc.*, 221 La. 686, 61 So. 2d 539 (La. App. 2d Cir. 1952) (suit of clothes to be cleaned for wedding); *Garner v. Burnstein*, 1 La. App. 19 (La. App. Orl. Cir. 1924) (milliner failed to provide hat but no recovery because defendant not advised of the special purpose for which the hat was intended). See also *Caswell v. Reserve Nat'l Ins. Co.*, 272 So. 2d 37 (La. App. 4th Cir. 1973) (recovery denied for breach of health and accident contract by insurer because no evidence to show purpose was peace of mind).

11. See *Jiles v. Venus Community Center Benevolent Mut. Aid Ass'n*, 191 La. 803, 186 So. 342 (1939) (contract to provide doctor's services and medicines); *Holland v. St. Paul Mercury Ins. Co.*, 135 So. 2d 145 (La. App. 1st Cir. 1961) (child ate poison set out by defendant who had a contract to control pests in plaintiff's home).

12. See *Arquembourg v. Bourque*, 243 So. 2d 92 (La. App. 1st Cir. 1970), *cert. denied*, 257 La. 989, 244 So. 2d 859 (La. 1971) (delay in delivery of home causing considerable inconvenience); *Jack v. Henry*, 128 So. 2d 62 (La. App. 1st Cir. 1961) (construction of home with defects); *Meyer v. Succession of McClellan*, 30 So. 2d 788 (La. App. Orl. Cir. 1947) (lessor deprived of property for use as residence after lessee breached contract); *Melson v. Woodruff*, 23 So. 2d 364 (La. App. 1st Cir. 1945) (broker sold home after contract with plaintiff who had sold his own home in reliance). See also *Nickens v. McGehee*, 184 So. 2d 271 (La. App. 1st Cir.), *cert. denied*, 249 La. 199, 186 So. 2d 159 (1966) (mental anguish for damage to personal property of lessee due to defective conditions of leased residence). Contracts of alteration or restoration of buildings used as homes have not admitted recovery. See *Sahuc v. United States Fidelity and Guar. Co.*, 320 F.2d 18 (5th Cir. 1963) (faulty installation of hot water heater caused house to burn); *Baker v. Stamps*, 82 So. 2d 858 (La. App. Orl. Cir. 1955) (restoration of bathroom); *Lillis v. Anderson*, 21 So. 2d 389 (La. App. Orl. Cir. 1945) (repair of dilapidated home).

short, the courts have, without specific treatment of the language of article 1934(3), permitted recovery of nonpecuniary damages where the plaintiff's primary *motive* for entering the contract was not pecuniary or economic but fostering or protecting personal and family interests including feelings, sensibilities, taste, and convenience.¹³

In the instant case, the Louisiana Supreme Court noted initially that the nonpecuniary damages sought by the plaintiff were in fact suffered and that the amount of the lower court's award was "reasonable and proper."¹⁴ Considering the recoverability of these damages under article 1934(3), the court acquiesced in the position taken by both the plaintiff and defendant that "intellectual" gratification can be substantively distinguished from "physical" gratification under article 1934(3) and classified prior jurisprudence as "strict," "broad," or "liberal" with respect to the treatment of this distinction.¹⁵ Regarding these classifications of prior jurisprudence as indicative of the ambiguity of article 1934(3), the court considered the 1825 French version of this article¹⁶ and found the correct translation to be in part:

When the contract has for its object to confer to someone a purely intellectual enjoyment, such as those pertaining to religion, morality, taste, convenience or other gratifications of this sort¹⁷

13. This treatment by the courts of nonpecuniary damages under article 1934(3) is substantially in agreement with the common law. See 5 A. CORBIN, CORBIN ON CONTRACTS § 1076 at 425 (1963); 38 AM. JUR. 2d *Fright, Shock, and Mental Disturbance* § 33 (1968); 22 AM. JUR. 2d *Damages* § 245 (1965); Annot., 61 A.L.R. 3d 922 (1975). See also RESTATEMENT OF CONTRACTS § 341 (1932): "In actions for breach of contract, damages will not be given as compensation for mental suffering, except where the breach was wanton or reckless and caused bodily harm and where it was the wanton or reckless breach of a contract to render a performance of such a character that the defendant had reason to know when the contract was made that the breach would cause mental suffering for reasons other than mere pecuniary loss."

14. *Meador v. Toyota of Jefferson, Inc.*, 332 So. 2d 433, 434 (La. 1976).

15. *Id.* at 435. The "strict" interpretation of article 1934(3) permits nonpecuniary recovery when the object of the contract contains only elements of intellectual gratification; the "broad" interpretation allows nonpecuniary recovery when both physical and intellectual gratification are present; and the "liberal" interpretation provides nonpecuniary recovery even though only elements of physical gratification are found in the contractual object. For the source of this substantive position on the interpretation of article 1934(3) see Comment, *Damages ex contractu: Recovery of Nonpecuniary Damages for Breach of Contract Under Louisiana Civil Code Article 1934*, 48 TUL. L. REV. 1160 (1974), cited in 332 So. 2d at 435 n.5. See also note 42, *infra*.

16. LA. CIV. CODE art. 1928(3) (1825) provides *inter alia*: "Lorsque le contract à pour but de procurer à quelqu'un une jouissance purement intellectuelle, telle que celles qui tiennent à la religion, à la morale, au goût, à la commodité ou à toute autre espèce de satisfaction de ce genre"

17. 322 So. 2d at 436.

Contrasting the foregoing with the "mistranslation" of this article in the English version of the Louisiana Civil Code of 1825 which was repeated in Civil Code of 1870:¹⁸

Where the contract has for its object the gratification of some intellectual enjoyment, whether in religion, morality, or taste, *or some convenience or other legal gratification*¹⁹

the court concluded that the clause should be read as follows:

Where the contract has for its object the gratification of intellectual enjoyment, such as that pertaining to religion, *or morality, or taste, or convenience*²⁰

By this translation, the court removed what it recognized as the source of the ambiguity of article 1934(3): the asymmetrical qualification of "intellectual enjoyment" by "religion," "morality," "taste," and "convenience," contributed to the possibility that the phrase "or some convenience" could be regarded disjunctively. Hence a contract could have as its object "some convenience" and a breach would permit nonpecuniary recovery, thereby allowing recovery for breach of a contract the object of which is exclusively physical gratification.²¹

Regarding the above analysis of the French version as "at least persuasive," the court promulgated its interpretation of article 1934(3): where a principal or exclusive object of a contract is intellectual enjoyment, nonpecuniary damages resulting from its breach are recoverable, notwithstanding that a "peripheral, or incidental, or even perhaps concurrent" object of the contract may be physical gratification.²² Applying this interpretation to the instant fact situation, the court concluded that the plaintiff could not recover nonpecuniary damages since the principal object²³ was the repair of plaintiff's automobile with its consequent "utility or physical gratification."²⁴

The court's interpretation of article 1934(3) is founded on the unstated

18. LA. CIV. CODE art. 1934(3).

19. LA. CIV. CODE art. 1928(3) (1825) (Emphasis added).

20. 322 So. 2d at 437 (Emphasis added).

21. *Id.* at 436 n.9, 437.

22. *Id.* at 437.

23. The definition used by the court for the principal object of a contract was "the overriding concern of plaintiff evident to defendant at the time the contract was entered into." *Id.* Since the court found the plaintiff's concern was the repair of the car, the court was apparently using "object" in the technical, legal sense. *Id.* See generally the text at note 31, *infra*.

24. *Id.*

assumption that the article substantively differentiates between intellectual and physical gratification.²⁵ The court regarded "convenience" as exclusively physical gratification when viewed independently of the phrase "intellectual enjoyment," but found that "convenience" becomes an example of the intendment of that phrase when used to qualify it.²⁶

In the construction of laws, words are to be given their usual meaning according to their general and popular use.²⁷ "Convenience" popularly means advantage, commodity, personal comfort, or saving of trouble, and refers to a state or condition of matters.²⁸ While experienced through the physical senses, convenience means the associated intellectual appreciation. Equating convenience with physical gratification results in a confusion of the physical object productive of the convenient state with the convenient state itself.²⁹ The latter meaning is used in article 1934(3), and it is therefore immaterial whether or not "convenience" is taken as a qualification of "intellectual enjoyment" since the resulting ambiguity is merely structural and not substantive.

Another source of considerable conceptual difficulty in the interpretation of article 1934(3) is contained in a portion of the French version of that article not addressed by the court. In the phrase,

[w]here the contract has for its *object* the gratification of some intellectual enjoyment,³⁰

the source for "object" in the corresponding French version³¹ is the French word *but* instead of *objet*. *Objet* is used throughout the French version of the Louisiana Civil Code to refer to the object of a contract in its legal

25. See the text at note 15, *supra*.

26. 332 So. 2d at 437. No reason is given by the court for this metamorphosis of meaning under a mere change of grammatical structure.

27. LA. CIV. CODE art. 14.

28. THE OXFORD ENGLISH DICTIONARY 934 (1970). The French source for "convenience" is *commodité*, which stresses the idea of personal comfort. LA. CIV. CODE art. 1928 (1825). See note 16, *supra*; HARRAP'S NEW STANDARD FRENCH-ENGLISH DICTIONARY C-69 (1972).

29. The automobile provides a good example of this distinction. An automobile in a given instance may provide physical gratification, but it is the ongoing use of the auto that, in the context of American society, denominates the auto as a convenience amounting to a social necessity. Deprivation of one's personal auto for a long period of time is usually productive of considerable inconvenience to occupational, social, and personal life.

30. LA. CIV. CODE art. 1934(3) (Emphasis added).

31. LA. CIV. CODE art. 1928(3) (1825): "Lorsque le contract à pour *but* de procurer à quelqu'un une jouissance purement intellectuelle" (Emphasis added).

sense.³² *But* does not mean object in the technical, legal sense; rather it means object in its usual signification as end, purpose, or motive.³³ In the technical sense "object" is the performance required of the debtor and is pecuniary,³⁴ and hence is inappropriate as used in article 1934(3) to refer to intellectual or physical gratification. On the other hand, object in the sense of motive or purpose is appropriate. The most foreseeable consequence of a breach of a contract, whatever its object in the technical sense, is that the purpose or motive of the creditor in entering the contract will be defeated.³⁵

If the procurement of intellectual enjoyment, illustratively characterized in the broad and diverse fashion of article 1934(3),³⁶ is a sufficient motive for entering into a contract the breach of which permits recovery for nonpecuniary damage, the question naturally arises as to which motives or purposes are excluded from this exception to the general rule allowing only pecuniary recovery. The answer can be found in the structure and function of the article taken as a whole. The first paragraph of article 1934 and its first two modifications provide the foundation for the recovery of both pecuniary loss and privation of pecuniary gain. Contracts requiring such reparation would have a pecuniary motive or purpose. Article 1934(3) in contradistinction protects contracts with certain nonpecuniary purposes worthy of protection.³⁷ This approach gives the proper interpretation of article 1934(3)

32. See LA. CIV. CODE arts. 1877 *et seq.* (1825) which correspond to LA. CIV. CODE arts. 1883 *et seq.*

33. HARRAP'S NEW STANDARD FRENCH-ENGLISH DICTIONARY B-51 (1972).

34. IV AUBRY & RAU, COURS DE DROIT CIVIL FRANCAIS § 344 (6th ed. Martin) in 1 CIVIL LAW TRANSLATIONS 327 (1965); 1 S. LITVINOFF, OBLIGATIONS §§ 26-27, 41 in 6 LOUISIANA CIVIL LAW TREATISE 45-46, 57 (1969) [hereinafter cited as 1 LITVINOFF].

35. In requiring that the *purpose* of the obligation rather than the *damage* consequential to its breach be foreseeable, article 1934(3) requires a close connection between the obligation assumed and the nonpecuniary purpose or motive. For example, mental anguish consequential to property damage unrelated to the purpose of the obligation assumed should not be compensated. See, *e.g.*, *Sahuc v. United States Fidelity and Guar. Co.*, 320 F.2d 18 (5th Cir. 1963) (no recovery for mental anguish for faulty installation of hot water heater causing house to burn). Where the specific obligation assumed relates to the protection of another's personal property as in a contract of deposit or lease, recovery should be granted. See, *e.g.*, *Nickens v. McGehee*, 184 So. 2d 271 (La. App. 1st Cir.), *cert. denied*, 249 La. 199, 186 So. 2d 159 (1966); *Foster v. Abney*, 127 So. 435 (La. App. 1st Cir. 1930); see also *Nacol v. Wail, Inc.*, 219 So. 2d 333 (La. App. 1st Cir.), *cert. denied*, 253 La. 1094, 221 So. 2d 521 (1969) (recovery for damage to commercial property on leased premises). Justice Dixon's dissenting opinion in the instant case suggests awarding nonpecuniary damage for any property damage sustained, a suggestion which should be qualified in light of the foregoing. 332 So. 2d at 438-39.

36. See the text at note 7, *supra*.

37. See 1 LITVINOFF § 41 at 57.

for contracts which provide convenience to the creditor. Neither convenience born of pecuniary advantage nor incidental personal comfort or convenience provided by a contract entered into for a primary economic purpose is protected.

The principle of article 1934(3) can be restated in terms of the broad, illustrative nonpecuniary purposes as follows:

where the purpose or motive of the contract is primarily for personal, social, or family interests including comfort and convenience and is within the contemplation of the parties at the time of the contract, recovery for nonpecuniary damages will be given; however, where the purpose of the contract is primarily commercial, economic, or otherwise based on a pecuniary motive, recovery will not be given for nonpecuniary damages.

The essential difference between the court's interpretation of article 1934(3) in the instant case³⁸ and that posited by the foregoing analysis is that the former treats contracts having *objects* primarily of intellectual gratification differently from those having objects primarily of physical gratification, while the latter interpretation distinguishes contracts entered into for primarily pecuniary *purposes* from those entered into for motives which involve significant personal or family interests or other nonpecuniary purposes.

The psychological distinction between physical and intellectual gratification offered by the court is difficult to apply, as illustrated by two prior Supreme Court cases cited approvingly in *Meador*. In *Jiles v. Venus Community Center Benevolent Mutual Aid Association*,³⁹ an award was made for mental anguish caused by the death of a child associated with the breach of a contract to provide doctor's services and medicine. In *O'Meallie v. Moreau*,⁴⁰ damages for the vexation to a social group were awarded for the breach of a contract to provide a picnic area. In declaring these cases "not at variance"⁴¹ with the instant court's interpretation of article 1934(3), the court's reasoning compels the conclusion that the contracts involved in these cases had principal objects of intellectual gratification rather than physical gratification, a conclusion not altogether obvious. Considerable ambiguity and confusion results from imposing the distinction between physical and intellectual gratification as the object of the contract upon prior

38. See the text at note 22, *supra*.

39. 191 La. 803, 186 So. 342 (1939).

40. 116 La. 1020, 41 So. 243 (1906).

41. 332 So. 2d at 437.

decisions of the appellate courts applying article 1934(3).⁴² A complete absence of language in any of these decisions indicating that the distinction between physical and intellectual gratification was a factor in the decision is symptomatic of the inappropriateness of this distinction. However, these decisions can be easily harmonized with the broad principle of article 1934(3) that in the absence of an overriding pecuniary motive, certain nonpecuniary purposes will be protected.⁴³

The adoption of the principle of article 1934(3) as developed in the foregoing analysis is not a complete guide to the application of this article. A finding of whether the motive of the contract was pecuniary or nonpecuniary is required, as well as a decision that the nonpecuniary motive or purpose is significant enough to require protection.⁴⁴ This kind of policy determination

42. An exhaustive attempt to interpret prior decisions of the courts in terms of the distinction between physical and intellectual gratification found in contractual objects was undertaken by the commentator who originated this distinction. After concluding that "much of the jurisprudence is inconsistent and irreconcilable," that commentator questioned the integrity of the language of article 1934(3) rather than the integrity of the distinction. See Comment, *Damages ex contractu: Recovery of Nonpecuniary Damages for Breach of Contract Under Louisiana Civil Code Article 1934*, 48 TUL. L. REV. 1160, 1169 (1974).

43. See the text at note 13, *supra*. Some cases state this principle expressly. In *Jack v. Henry*, 128 So. 2d 62 (La. App. 1st Cir. 1961), a home was constructed with many defects, and, in awarding damages for general inconvenience and annoyance, the court said: "[I]t is clear [that] plaintiff herein was aware defendant desired the residence which is the subject matter of this controversy for occupancy as a home . . . not as an investment or for pecuniary gain or profit. It is equally certain [that] defendant planned the home in question to suit his individual needs and tastes . . ." *Id.* at 72. See also *Caswell v. Reserve Nat'l Ins. Co.*, 272 So. 2d 37 (La. App. 4th Cir. 1973) (health and accident insurance contract had payment of money [a pecuniary purpose] as the principal purpose with peace of mind as an incidental motive).

44. Absent contrary factual indications, in car sales and repairs, the most reasonable finding is that the auto is for personal use, *i.e.*, not for a pecuniary motive or business purpose. In the sale of a new car, the nonpecuniary interest is founded in taste and personal preference, and denial of protection for this interest is easily within the discretion of the court. See *Moreau v. Marler Ford Co.*, 282 So. 2d 852 (La. App. 3d Cir. 1973) (delay in delivery of new truck); *Tauzin v. Sam Broussard Plymouth, Inc.*, 283 So. 2d 266 (La. App. 3d Cir. 1973) (misrepresentation of car as new in sale).

For the repair of a personal auto, the nonpecuniary interest is founded in convenience resulting from prior dependence on the auto. See note 29, *supra*. In order to balance the interests of the auto mechanic and the consumer, a foreseeability limitation can be established by separating the obligation to repair the automobile within a reasonable time from the obligation to properly repair the auto. See also note 35, *supra*. A breach of the implied obligation to repair the auto within a reasonable time relates directly to the duty to avoid excessive inconvenience by unreasonable

is routine in tort law and the courts are more capable of performing this task than ferreting out illusory psychological distinctions between intellectual and physical gratification present in contractual objects.⁴⁵

Steve M. Marks

THE GAME'S AFOOT: THE STOREKEEPER'S HEIGHTENED RESPONSIBILITY FOR SLIP AND FALL ACCIDENTS

Since World War Two, the American business community has undergone tremendous changes, especially in its retail merchandising system. The small corner store has given way to national chain stores and self-service shopping. The local grocery has turned into a giant supermarket. As always, the law is running hard to keep stride with these changes, trying to maintain an equilibrium between public policy and private interests. In order to keep this balance of interests, our courts have had to redesign the legal relationship between patrons and proprietors. This note examines recent changes in Louisiana law affecting the responsibility of storekeepers for slip and fall injuries sustained in their stores.

Louisiana storekeepers owe an affirmative duty to their patrons to use ordinary or reasonable care¹ to provide safe aisles and passageways by means of clean-up and inspection procedures consistent with the purposes of the store.² While this language has been used consistently by the courts to

delay; whereas a breach of the obligation properly to repair the auto is less a "proximate" cause of inconvenience where the breach is unintentional. In the instant case the court noted at the outset that the damages sought were suffered and that the amount awarded was reasonable, thereby acknowledging the strong tie between the obligation to repair within a reasonable time and the inconvenience suffered because of its breach. See the text at note 14, *supra*.

45. See *Ward v. State Farm Mut. Auto. Ins. Co.*, 539 F.2d 1044 (5th Cir. 1976) (certified question to Louisiana Supreme Court concerning the application of the principle of the instant case to the breach of a contract of insurance).

1. *E.g.*, *Calamari v. Winn Dixie La., Inc.*, 300 So. 2d 653 (La. App. 4th Cir. 1974); *Broussard v. National Food Stores, Inc.*, 233 So. 2d 599 (La. App. 3d Cir. 1970), *aff'd* 258 La. 493, 246 So. 2d 838 (1971); *Lofton v. Travelers Ins. Co.*, 208 So. 2d 739 (La. App. 3d Cir. 1968).

2. *E.g.*, *Tripkovich v. Winn Dixie La., Inc.*, 284 So. 2d 80 (La. App. 4th Cir. 1973), *aff'd* 286 So. 2d 663 (1973); *Fontanille v. Winn Dixie La., Inc.*, 260 So. 2d 71 (La. App. 4th Cir. 1972); *Peters v. Great A. & P. Tea Co.*, 72 So. 2d 562 (La. App. 2d Cir. 1954).