Mistaken Assumptions and Misunderstandings of Contracting Parties - Louisiana Legislation and Jurisprudence

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The terms "mistaken assumption" and "misunderstanding" are being used with increasing frequency in endeavor to identify categories in the American law of mistake. Generally, mistaken assumption is used in describing a situation in which contracting parties mutually understand every provision they have made express but one or both are mistaken as to circumstances existing at the time their agreement is made. Misunderstanding, on the other hand, refers to a situation in which the parties have significantly different perceptions concerning the contractual commitments or other legal consequences to result from their communications. In the Louisiana Civil Code, both of these situations are classified as instances of error, but further classification and a consideration of a surprisingly large number of Code articles may be necessary in the resolution of particular problems. The Louisiana appellate courts also regard mistaken assumptions and misunderstandings as instances of error and generally address both situations in terms of a Code-based concept of "error as to principal cause." This article considers the Code articles and the jurisprudence concerning these topics. This task is undertaken with an awareness that the pertinent Code articles probably will be repealed and replaced by enactment of the Louisiana State Law Institute's proposal for revision of the Code's obligations title. However, the proposed legislation concerning error, in the language of the project's reporter,
would not significantly "change the law,"9 and thus, at least the existing jurisprudence, if not also the present legislation, should retain significance if the proposal is enacted.

THE CIVIL CODE ARTICLES CONCERNING ERROR

The largest number of the Code articles concerning the significance of error are found in the title, "Of Conventional Obligations," under the section heading, "Of the Consent Necessary to Give Validity to a Contract." Civil Code article 181910 provides that an expression of consent does not constitute the consent requisite to contractual commitment "where it has been produced by—[e]rror." Civil Code article 1823 addresses the identification of errors having this vitiating effect:

Errors may exist as to all the circumstances and facts which relate to a contract, but it is not every error that will invalidate it. To have that effect, the error must be in some point, which was a principal cause for making the contract, and it may be either as to the motive for making the contract, to the person with whom it is made, or to the subject matter of the contract itself.11

The Code then considers separately the categories of error thus identified. Error in the motive12 and error as to the person13 are treated through definition and examples. Next, the category named error as to the subject matter in article 1823 is treated under the heading, "Of Error as to the Nature and Object of the Contract." Here, the Code first refers to the situation where parties contemplate different generic contracts and classifies it as error "as to the nature of the contract."14 Next, error as to the

9. In House Bill 746 of the 1983 Regular Session, the principal error provisions are found in proposed articles 1948-1952. The statement concerning the impact of the enactment of these provisions is found in the comments to Civil Code articles 1950 and 1951. However, some change would be effected by enactment of article 1952.
10. Article 1819 provides:
   Consent being the concurrence of intention in two or more persons, with regard
to a matter understood by all, reciprocally communicated, and resulting in each
party from a free and deliberate exercise of the will, it follows that there is no
consent, not only where the intent has not been mutually communicated or im-
plied, as is provided in the preceding paragraph, but also where it has been pro-
duced by—
   Error;
   Fraud;
   Violence;
   Threats.

11. The French text of article 1817 of the Civil Code of 1825, the counterpart of pre-
sent Civil Code article 1823, contains no language corresponding to the reference in the
English text to "the motive for making the contract." The addition, however, is consistent
with the Civil Code's recognition of the category of error as to motive.
12. LA. CIV. CODE arts. 1824-1833.
13. LA. CIV. CODE arts. 1834-1840.
14. LA. CIV. CODE art. 1841.
"substance"[15] of an object is identified as an instance warranting rescission, and error as to the "substantial quality"[16] of an object is also identified as an occurrence justifying relief. Finally, rescission is provided for in case of "[e]rror as to the other qualities of the object" when those qualities are "the principal cause of making the contract."[17] The Code next addresses "errors of law"[18] and, consistent with article 1823's expression, limits rescission to situations where such error was the "only or principal cause" of the agreement.

These rather elaborate articles were first enacted in the Louisiana Civil Code of 1825. The Louisiana Civil Code or Digest of 1808, borrowing the approach of the French Civil Code, contained only a handful of articles addressing error as a concept applicable to contractual commitments in general.[19] Most of the articles added in 1825 can be traced readily to the commentaries of Toullier[20] in his treatise concerning the French Civil Code. His influence is clearly apparent in the Code articles concerning error "in the motive."

Error in the Motive

The first four articles of this category are particularly important. Civil Code articles 1824 and 1825,[21] along with other Code articles,[22] show that the Louisiana Civil Code, like Toullier, equates cause and motive and

15. Civil Code articles 1842-1845 are quoted infra text accompanying notes 52-55.  
16. LA. CIV. CODE arts. 1842, 1844.  
17. LA. CIV. CODE art. 1845.  
18. See LA. CIV. CODE art. 1846.  
19. The Louisiana Civil Code of 1808 contained the following provisions regarding error:  
"That is no valid consent that is given through error, or is extorted by violence or surprised by fraud." LA. DIGEST OF 1808 bk. III, tit. III, art. 9.  
"Error is a cause of nullity in an agreement, only when it falls on the very substance of the thing that is the object of it.  
It is not a cause of nullity, when it falls only on the person with whom one intended to contract, unless the consideration of that person be the principal cause of the agreement."

LD. art. 10. "An obligation without a cause, or with a false or unlawful cause, can have no effect." LD. art. 23. These provisions are expressed in the language of the significant error provisions of the French Civil Code. See FRENCH CIV. CODE arts. 1109-1110, 1131, respectively.


21. Article 1824 provides:  
The reality of the cause is a kind of precedent condition to the contract, without which the consent would not have been given, because the motive being that which determines the will, if there be no such cause where one was supposed to exist, or if it be falsely represented, there can be no valid consent.  
Article 1825 provides: "The error in the cause of a contract to have the effect of invalidating it, must be on the principal cause, when there are several; this principal cause is called the motive, and means that consideration without which the contract would not have been made."

22. See, e.g., LA. CIV. CODE arts. 1823, 1896.
links the concept with error. Cause, in the language of Civil Code article 1896, is "the consideration or motive" for incurring an obligation.23 In Toullier's words, cause is "the motive" that induces the making of the obligation, the "reason why it is made."24 Similarly, when article 182425 describes the "reality of the cause" as a "kind of precedent condition to the contract," it refers to the accuracy of an assumption upon which the enforceability of an agreement will depend. Article 182526 addresses the identification of such significant assumptions and provides that rescission is limited to situations in which error concerns the principal cause or motive.27 Civil Code article 1826 expresses the additional requirement often emphasized in the Louisiana jurisprudence: "No error in the motive can invalidate a contract, unless the other party was apprised that it was the principal cause of the agreement, or unless from the nature of the transaction it must be presumed that he knew it." Civil Code article 1827 emphasizes that a motive can have this "apparent" quality without having been made "an express condition" of an agreement.28 The remaining articles provide examples designed to illustrate the concept.

Civil Code article 1828 concerns an heir's agreement to pay a party who has sued him on an instrument thought to have been executed by his ancestor.29 The agreement is said to be void if the instrument is forged. Thus, the Code assumes that the heir who pays such a debt normally would regard genuineness as a matter of certainty and would not regard himself to be taking chances as to the matter. This assumption of

23. Civil Code article 1896 provides:
By the cause of the contract, in this section, is meant the consideration or motive for making it; and a contract is said to be without a cause, whenever the party was in error, supposing that which was his inducement for contracting to exist, when in fact it had never existed, or had ceased to exist before the contract was made.


25. See supra note 21.


27. The French text of article 1819 of the Civil Code of 1825, the counterpart of present Civil Code article 1825, did not utilize the term "motive" in its definition of principal cause. It read: "Pour que l'erreur sur la cause empêche le contrat d'être valide, il faut que cette cause soit la principale, lorsqu'il y en a plusieurs. Cette principale cause est celle sans laquelle le contrat n'aurait pas été fait."

28. Article 1827 provides:
But wherever the motive is apparent, although not made an express condition, if the error bears on that motive, the contract is void. A promise to give a certain sum to bear the expenses of a marriage, which the party supposes to have taken place, is not obligatory, if there be no marriage.

29. Article 1828 reads:
Thus, too, if a suit be brought on an obligation purporting to have been made by the ancestor of the defendant, and, supposing it to be true, the defendant enters into a compromise or promise to pay, the compromise or promise is void, if it should be afterwards discovered that the obligation was forged.
genuineness, although unexpressed, is nonetheless "apparent" in article 1827's sense, and it is identified as the heir's principal cause.

Civil Code article 1829 provides that the compromise of a suit is null if, unbeknown to the parties, the suit has been "finally decided" at the time the compromise is made. A suit is then said to be "finally decided" only when it is not subject "to appeal or revision." In the situation contemplated by the Code, the principal cause is putting an end to a dispute not yet conclusively resolved by the judicial process. Thus, a party who asserts that he would not have entered the agreement if he had been aware of the rendition of an appealable judgment does not register an actionable complaint. Such an assumption is not regarded as sufficiently fundamental or apparent so that the other party should understand the agreement to be conditioned upon the assumption's accuracy. Situations may arise, however, where the assumption that there has been no lower court judgment should be identified as a principal cause. In considering such a possibility, articles under the Code title, "Of Transaction or Compromise," also should be examined.

In any event, article 1829 uses the concept of principal cause to explain a risk allocation requiring a mistaken party to live with the terms of an agreement.

Civil Code article 1830 addresses a situation—very similar to the one described in article 1828. However, in this case the document prompting the agreement is misleading not because it is forged but because its dispositions have been superseded or its obligations have been extinguished. In Toullier's example, an heir and a supposed legatee reach agreement concerning a legacy contained in a testament which has been revoked by a second instrument. In the Code's view, the heir's principal cause is to settle matters with a person to whom the deceased intended to make a legacy. Thus, the heir is seen as having dealt in certainties and not to have been taking chances as to the possibility of revocation. In this regard, Louisiana Civil Code article 1831 is of particular interest as it recognizes that an agreement intended to put an end to "all differences generally"

30. Article 1829 reads:
   In the same manner a compromise of a suit and any obligation made in consequence of it, is void, if, at the time, but unknown to the parties, the suit be finally decided. But if the decision be not final, but subject to appeal or revision, the compromise is valid.
31. LA. Civ. CODE arts. 3071-3083.
32. Article 1830 provides: "A compromise also is void, where one of the parties is ignorant of the existence of a paper, which, being afterwards discovered, shows that the other had no right, and this, whether the other party knew the existence of the paper or not."
33. 3 C. TOULLIER, supra note 20, no. 45, at 263.
34. Civil Code article 1831 provides:
   But if the compromise be of all differences generally, and there were other subjects of dispute, besides that in which the error existed, of sufficient importance to raise a presumption that, even if the error had been discovered, the compromise would still have been made, then such error shall not invalidate the contract.
implies willingness to take some risk as to the accuracy of the information concerning the matters in dispute. Reference to Toullier again proves helpful. All of Toullier's examples of error in motive in compromise are based upon the French Civil Code articles regulating such agreements. Thus, in the passage in question, he is attempting to explain the provision of French Civil Code article 2057 in terms of his concept of motive. This article, the source of present Louisiana Civil Code article 3083, literally forecloses rescission based upon subsequently discovered documents in the case of a compromise of all affairs or differences. Thus, the principal cause contemplated by French Civil Code article 2057 and Louisiana Civil Code article 3083 is to achieve final settlement of a number of disputes in light of present information about them.

Finally, Louisiana Civil Code article 1833 treats the situation in which insurance is procured on an item that previously has been destroyed and the situation in which an annuity is purchased for a duration measured by the life of a person who previously has died. In both cases error as to the principal cause is found. In the language of the article, an agreement to take such chances must be "express."

Thus, in each of the Code's examples of error as to the motive, the framers seek to explain their solution in terms of assumptions upon which it was believed that parties would be proceeding in the absence of factors indicating a contrary understanding. In situations in which statutes do not prescribe an outcome, a similar inquiry is equally in order.

**Error as to the Person**

The Code articles concerning "Error as to the Person" are clearly

35. 3 C. Toullier, supra note 20, no. 45, at 263.
36. Article 3083 provides:

> When parties have compromised generally on all the differences, which they might have had with one another, the titles which they then know nothing of and which were afterwards discovered, are not a cause of rescinding the transaction, unless they have been kept concealed on purpose by the deed of one of the parties.

But the transaction becomes void, if it relates only to an object upon which it is proved by the titles newly discovered, that one of the parties has no right at all.

37. Article 1833 reads:

> Error in the motive also is shown in the case either of an insurance on property or an annuity on lives. If the property be lost, or the life be at an end, at the time of making the contract, there is no obligation, unless, in the case of the insurance, it be expressly stipulated that the insurer takes the risk of those events, from a period prior to the contract. If the same express stipulation takes place in the case of the annuity, it then becomes an insurance, and is valid for the same reason.

38. Civil Code articles 1834-1838 are the most significant of these provisions. Article 1834 provides: "Error as to the person, with whom the contract is made, will invalidate it, if the consideration of the person is the principal or only cause of the contract, as it always is in the contract of marriage." Article 1835 provides: "In contracts of beneficence, the consideration of the person is presumed by law to be the principal cause."
patterned upon Toullier's discussion of that topic. Consistent with his view, Civil Code article 1834 provides that error as to the person invalidates a contract "if the consideration of the person is the principal or only cause." The article also describes "the contract of marriage" as an instance where error has such "principal" significance. The Code gives no further assistance in identifying the legally significant assumptions concerning a prospective spouse. Toullier's commentary, however, suggests that error involving certain very significant assumptions as to "qualities" can be "determining motives" or "principal causes." As an example, he approvingly cites a French decision which declared null the marriage of a devout Catholic and an ordained monk who had not revealed his vocation. However, Toullier certainly believed that the assumptions providing basis for annulment should be extremely limited.

Civil Code article 1835 mirrors Toullier's view in providing that "the consideration of the person is presumed by law to be the principal cause" in "contracts of beneficence." Thus, in Toullier's example, the donee, who was erroneously believed to be the donor's nephew, can be required to relinquish the donation even though he shared the donor's belief that they were related.

Civil Code article 1836, a provision concerning onerous contracts and meriting detailed examination, provides: "In onerous contracts, such as sale, exchange, loan for interest, letting and hiring, the consideration of the person is by law generally presumed to be an incidental cause, not a motive for a contract." There is question, of course, as to the nature of the circumstances which might justify the classification of a cause as "principal" when it is "generally presumed" to be "incidental." Nonetheless, this language suggests that there is room for some flexibility in assessing the significance of assumptions as to a co-contractant in onerous contracts. In the examples of contracts in which the consideration of the person is not normally important, it is significant that the examples are not limited to obligations requiring immediate performance. For instance, the sale referred to is not described as a cash sale, and the loan for interest necessarily involves a term during which payment is not yet due. Under this view, parties who sell on credit or lend money would not normally be permitted to rescind transactions because of mistaken assumptions as to the identity or patrimony of their obligors. Consistently, if the item sold had not yet been delivered or the funds had not been advanced, failure to render performance would constitute breach. In the case of a cash sale or an exchange, the clear intention is to establish the irrelevance of a co-contractant's identity. The reference to "letting" is
in line with the previously discussed examples and is consistent also with Toullier's view.  

A lessor might have confused a lessee with a person having greater ability to pay, but he, like the money lender, will have a remedy only if payment is not made when it is due. Similarly, the lessor might be one notoriously difficult to endure. Nonetheless, at least "generally," the lessee remains obliged in the absence of conduct justifying dissolution of the lease agreement.

The inclusion of "hiring" with the other contracts is of interest for several reasons. First, the presence of this example may be attributable to a translator's license. The French text of the Civil Code of 1825 referred only to louage in its enumeration.  

Louage, in French law, includes both the lease of "things" and the lease of "services or labor." Thus, the translation of the term as "letting and hiring" may have expressed correctly the views of redactors who generally are believed to have drafted in French and not to have participated in subsequent translation. However, the particular services or labor of an individual and the other performances mentioned in article 1836 are quite distinguishable. Certainly, the skills of one party may be quite different from those of another he was mistakenly thought to be. The drafters of the Code clearly believed this distinction significant in certain instances. Thus, civil code article 1837 recognizes exceptions to article 1836:

If, from the nature of the onerous contract, it results that any particular skill or quality be required in its execution, which the party with whom the contract is made, is supposed to possess, then the consideration of the person is presumed to be the principal cause, and error as to the person invalidates the contract. Thus, if intending to employ an architect of great eminence, the party addresses himself by mistake to one of the same name, who has little or no skill, the promise made to him for compensation is void; but if anything be done by the person thus employed, who was ignorant of the mistake, a compensation, proportioned to his service, is due.

Thus, at least in the situation where a party believes he has secured the services of an eminent architect, he is regarded as having sought "particular skill or quality," and his agreement with one of like name and little skill provides basis for rescission. Because of the subjectivity in art

44. Id. no. 52, at 265.
45. The French text of article 1830 of the Civil Code of 1825 provided: "Dans les contrats onéreux, tels que la vente, l'échange, le prêt à intérêt, le louage, la considération de la personne est généralement présumée par la loi être une cause accessoire, mais non la principale cause."
46. For example, French Civil Code article 1708 states: "Il y a deux sortes de contrats de louage: Celui des choses, Et celui d'ouvrage." Louisiana Civil Code article 2673 similarly provides: "There are two species of contracts of lease, to wit: 1. The letting out of things. 2. The letting out of labor or industry."
and design, the party who mistakenly deals with an architect might be dissatisfied with the product no matter what the architect’s skills and reputation might be. Thus, the scope of article 1837’s “exception” to the “general” principal of article 1836 is difficult to determine. In this regard, certain articles under the section heading, “Of Strictly Personal, Heritable and Real Obligations,” should be considered. First, an obligation is strictly “personal” as to the “obligor” when it can be demanded only of him and cannot be enforced against his heirs. Further, a party to whom such an obligation is owed cannot be required to accept performance from anyone other than the obligor who owes the performance. Thus, the following portion of Civil Code article 2007 is particularly significant in interpreting articles 1836 and 1837:

All contracts for the hire of labor, skill or industry, without any distinction, whether they can be as well performed by any other as by the obligor, unless there be some special agreement to the contrary, are considered as personal on the part of the obligor, but heritable on the part of the obligee.

Accordingly, if a party contracts with a house painter with whom he intends to contract, the party can refuse to accept performance from anyone else the painter might seek to have perform in his stead, regardless of the skills of the proffered substitute. In this case, the Code respects the preference of the individual even though there are objective standards through which the comparative abilities of substitute painters might be measured. Because the identity of such an obligor is considered important once a contract has been made, the execution of an agreement with one mistaken for another logically should also be significant if error as to the person is to be recognized as a basis of rescission of onerous contracts. Because article 1837 makes clear that error does in certain instances provide basis for such relief, the intention may have been to include all instances where “labor, skill or industry” is involved in the sought after performance. If this were so, then the inclusion of “hiring” in the translation of louage in article 1836 was ill-advised.

The solution to this question can have practical significance. If an error as to the person is not encompassed by article 1837, the mistaken party is obligated to either accept performance from the party with whom he has dealt or compensate him so that he occupies the financial position he would have occupied if both the parties had performed.

48. La. Civ. Code art. 1997. It provides in pertinent part: “An obligation is strictly personal, when none but the obligee can enforce the performance or when it can be enforced only against the obligor.”
49. Although this principle is not expressly stated, it is implicit in Civil Code articles 2000, 2007-2008.
50. Civil Code article 1934 expresses the Code’s general provision concerning the consequences of breach of a contractual obligation.
hand, if relief is granted under article 1837, the contractor, under the express terms of the article, is entitled only to "a compensation, proportioned to his service" for any work he has done. However, because this compensation is obviously not predicated upon any enrichment of the mistaken party, the principle underlying the compensation must be the reparation of injury to a good faith party. Accordingly, if the contractor has foregone opportunities to enter like contractual arrangements because of his commitment to the mistaken party, he should be compensated so as to approximate the situation he would have occupied if he had never dealt with the mistaken party. Thus, in a situation where the Code permits rescission despite the good faith of the party not mistaken, it tempers its impact by requiring the restoration of this party to his previous position.

**Error as to the Nature of the Contract**

Civil Code article 1841, the only article addressing the present topic, provides:

> Error as to the nature of the contract will render it void.

> The nature of the contract is that which characterizes the obligation which it creates. Thus, if the party receives property, and from error or ambiguity in the words accompanying the delivery, believes that he has purchased, while he who delivers intends only to pledge, there is not [no] contract.

Under its literal terms, no contractual relationship results from a transaction within its description, and there appears to be no requirement that the perceptions of a party resisting the recognition of a contractual relationship be at least as well founded as those of a party seeking the recognition of the contractual relationship he perceived. Further, this article, unlike article 1837, does not address the possible civil responsibility of a party to whom the misunderstanding might be attributed. As to these matters, the usually helpful reference to Toullier provides no assistance.

**Error as to the Object of the Contract**

The four articles concerning error as to the "object" of contracts provide:

**Art. 1842. Error as to thing**

Error as to the thing, which is the subject of the contract, does not invalidate it, unless it bears on the substance or some substantial quality of the thing.  

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51. See supra p. 892.
52. LA. CIV. CODE art. 1842.
Art. 1843. Error as to substance
   There is error as to the substance, when the object is of a totally
different nature from that which is intended. Thus, if the object
of the stipulation be supposed by one or both the parties to be
an ingot of silver, and it really is a mass of some other metal
that resembles silver, there is an error bearing on the substance
of the object.53

Art. 1844. Error as to principal quality of object
   The error bears on the substantial quality of the object, when
such quality is that which gives it its greatest value. A contract
relative to a vase, supposed to be gold, is void, if it be only plated
with that metal.54

Art. 1845. Error as to other qualities of object
   Error as to the other qualities of the object of the contract,
only invalidates it, when those qualities are such as were the prin-
cipal cause of making the contract.55

Error as to the substance or error in substantia has long been a topic
of discussion in the civil law.56 Civil Code article 1843 is significant because
it literally provides that the error of one party alone is basis for rescis-
sion. There is no stated requirement that the complaining party be
reasonable in his conclusion as to substance, and article 1843 is not
expressly limited to situations where the party resisting rescission was or
should have been aware of the complaining party’s error. If no such limita-
tions were intended, a party’s reasonable expectations may be frustrated.
Nonetheless, in the example of the ingot sale, a good faith party would
at least be aware that the complaining party made an assumption as to
the ingot’s composition and that this assumption was crucial to his par-
ticipation in the sale. Also, unless there were other metals resembling silver
with similar market values, the party knowing the ingot to be of some
other metal would very likely be in bad faith, and thus, rescission would
be available on that basis.

The category of error as to “substantial quality” also presents cer-
tain difficulties. Foremost, it is necessary to determine whether rescission
is limited to situations where the party resisting rescission knew or should
have been aware of the other party’s belief in the existence of the absent
quality. Unlike article 1843, Civil Code article 1844 does not expressly

53. LA. CIV. CODE art. 1843.
54. LA. CIV. CODE art. 1844.
55. LA. CIV. CODE art. 1845.
56. See generally Litvinoff, Error in the Civil Law, in ESSAYS ON THE CIVIL LAW OF
OBLIGATIONS 222, 229 (J. Dainow ed. 1969).
provide that the requisite error is present when it is made by only one party, and its example refers only to a plated vase "supposed to be gold." If the assumption of one party alone suffices to establish error as to the substance in ingot sales, it is doubtful that something more would be required when the complaint is with a vase that is only gold plated. However, the situations can be distinguished. In practically all ingot sales, each party is aware that the other regards the item’s composition as a matter of paramount significance. On the other hand, in the case of a vase or other item crafted from raw material, one party might reasonably regard the material used as a matter of little importance. Thus, if the workmanship of the plated vase was such that other buyers would pay the agreed price with full awareness of what they were purchasing, the seller need not necessarily be aware that the buyer regards the item’s composition to be crucial. If error as to the substance and error as to a substantial quality were so distinguished, a party’s belief in the existence of a substantial quality would provide basis for rescission only if the other party were aware or should have been aware of this assumption. If, on the other hand, such awareness or opportunity for awareness is not considered requisite, the problem of identifying errors as to "substantial quality" remains.

Where the agreed price is within the range of prices for which items lacking the assumed attribute might be bought and sold by knowledgeable parties, it is certainly difficult to identify an absent quality as one which would give the item its greatest value. The presence of the nonexistent quality would in many instances give the item a greater market value, but without the quality, its market value would nonetheless approximate the price actually paid. Thus, even if error as to the presence of a "substantial quality" can be asserted when one party lacked basis to realize that such an error was occurring, it seems necessary that the value of the item with the quality be markedly greater than it would be without the quality. Hence, the redactors probably intended article 1844 to govern situations in which the party resisting rescission also believed the item to have the nonexistent quality or the price involved made the assumption of the existence of the quality quite reasonable. Furthermore, so to limit the concept of substantial quality would be consistent with Civil Code article 1845’s concept of error as to the principal cause.

In providing that error as to qualities other than substance and substantial quality do not provide basis for rescission unless these qualities are the "principal cause" of the agreement, article 1845 incorporates concepts of error as to motive." A buyer cannot, therefore, complain about the absence of an attribute he thought an item to possess unless his vendor should have perceived his belief. Further, the vendor should reasonably understand that the buyer would not purchase but for his belief that the

57. See supra text accompanying notes 21-37.
item possesses the attribute, and circumstances must exist so that the vendor cannot reasonably assert that the risk of the accuracy of the belief is borne by the vendee alone.

Error Of Law

Civil Code article 1846 states, as a matter of general principle, that "[e]rror in law, as well as error in fact, invalidates a contract, where such error is its only or principal cause." Thus, erroneous assumptions of law are included among those which may vitiate the consent requisite to contractual commitment. The article then enumerates instances where error of law provides no basis for relief. The first states that "if the contract . . . fulfilled any such natural obligation as might from its nature induce a presumption that it was made in consequence of the obligation, and not from error of right, then such error shall not be alleged to avoid the contract." An example is then provided: "Thus, the natural obligation to perform the will of the donor, prevents the donee from reclaiming legacies or gifts he has paid under a testament void only for want of form."

As in so many cases in the Code articles concerning error, Toullier's influence is present. There was nothing novel in his approach concerning the heir who pays a legacy without realizing that the will containing it is invalid for lack of form. However, Toullier's rationalization of the outcome is thought to be his own. He asserted that it was impossible to determine whether the error of law underlay the delivery of the legacy because the heir could have been motivated by a desire to comply with the expressed wishes of his ancestor. The fact that the heir asserts that he would not have paid the legacy if he had known that he could not be compelled to do so was believed to be inconclusive evidence of his prior motivations. One admittedly cannot be certain as to what the heir would have done had he had full knowledge of the situation. However, the person willing to pursue legal remedies to regain the legacy may be just the sort of person who would have knowingly disregarded his ancestor's last wishes if he had been aware of the opportunity. Nonetheless, Toullier, consistent with the view of Domat and French Civil Code article 1340, stated that the legacy could not be regained. Furthermore, he articulated the principle underlying this solution more generally. An error of law could not be regarded as the "principal cause" of a contract "if the contract could have had for its motive the desire to satisfy an imperfect or a natural obligation." This principle then was enacted in the antecedent of present Civil Code article 1846.

58. 3 C. TOULLIER, supra note 20, nos. 68-69, at 269. Domat, for instance, had expressed a similar view. 1 J. DOMAT, THE CIVIL LAW IN ITS NATURAL ORDER no. 1240, at 503 (Cushing ed. 1850).
59. See supra note 58.
60. 3 C. TOULLIER, supra note 20, no. 68, at 269.
61. 1A. CIV. CODE art. 1840 (1825).
The second part of article 1846 provides that a "contract, made for the purpose of avoiding litigation, cannot be rescinded for error of law." This provision is attributable to Toullier's discussion of the French Civil Code article so providing and restates the like provision presently contained in Louisiana Civil Code article 3078. The essence of compromise in Toullier's view is the existence of a dispute and the concomitant uncertainty as to how the controversy might ultimately be resolved through suit. Accordingly, in his example, if an uncle who believes his nephew is entitled to share with him in the succession of the nephew's first cousin executes an agreement with the nephew whereby the assets of the succession are partitioned equally, error of law is the only cause of the agreement, and it can be rescinded. Here, in the absence of any dispute whatsoever, the agreement had no purpose other than the equal division of goods between coheirs, and the uncle remains entitled to the entirety of the succession. On the other hand, if the nephew asserted a claim to the succession and the uncle resisted his demand, the uncle's subsequent agreement to share the succession equally would bind him despite his ignorance of the Code articles establishing his entitlement to the succession. In this case, in the face of conscious uncertainty as to the law, the parties' choice to put an end to their dispute does just that.

The third part of article 1846 was repealed in 1982. The provision was apparently drawn from Toullier's discussion of the partition involving the uncle and nephew who believed themselves to be coheirs and may reasonably be regarded as an effort to espouse Toullier's views. The significance of part three's last sentence concerning acquisitive prescription will not be discussed.

The fourth part of article 1846 states that a "judicial confession of a debt shall not be avoided by an allegation of error of law, though it may be by showing an error of fact." This provision is a restatement of the principle expressed in Civil Code article 2291, the counterpart of French Civil Code article 1356. Toullier's explanation of the under-

62. 3 C. Toullier, supra note 20, no. 71, at 269-70.
63. Article 3078 provides: "Transactions have, between the interested parties, a force equal to the authority of things adjudged. They can not be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected."
64. 3 C. Toullier, supra note 20, no. 73, at 270.
66. 3 C. Toullier, supra note 20, no. 63, at 267 & n.3; id. no. 73, at 270.
67. Article 2291 provides:
   The judicial confession is the declaration which the party, or his special attorney in fact, makes in a judicial proceeding.
   It amounts to full proof against him who has made it.
   It can not be divided against him.
   It can not be revoked, unless it be proved to have been made through an error in fact.
   It can not be revoked on a pretense of an error in law.
lying principle is identical to the one proffered in the case of the heir who delivered the legacy expressed in the will lacking requisite formalities. Thus, one who judicially confesses that he owes a legacy invalid for want of form or an obligation which on its face has prescribed is precluded from asserting his error. 44 In each case, the existence of a natural obligation provides a possible explanation of the party's conduct and in any event is regarded by the French and Louisiana Civil Codes as a sufficient basis for upholding the confession. 6 Error of fact, on the other hand, is a basis for complaint. Thus, an heir who judicially confesses an obligation to deliver a legacy can avoid the confession upon discovery of a codicil revoking the legacy in question. 70

The fifth part of article 1846 specifies that a "promise or contract, that destroys a prescriptive right, shall not be avoided by an allegation that the party was ignorant or in an error with regard to the law of prescription." In so providing, the Louisiana redactors followed Toullier's suggestion that the principle concerning error of law in judicial confessions be extended to extrajudicial commitments. 71

The last part of article 1846 concludes:

If a party has an exception, that destroys the natural as well as the perfect obligation, and, through error of law makes a promise or contract that destroys such exception, he may avail himself of such error; but if the exception destroys only the perfect, but not the natural obligation, error of law shall not avail to restore the exception.

The Code thereby states explicitly that a promise to render a performance that could not be enforced without the promise will be judicially enforced, despite any error of law, if the promise is one which fulfills a natural obligation. Accordingly, the heir who promises to deliver the legacy expressed in a will lacking the requisite formalities can be required to do so despite his contention that his promise was based solely upon belief in the will's validity. By its express repudiation of such a defense in a suit to enforce the promised performance, this subdivision undermines any contention that the first subdivision's similar expression concerning natural obligations is limited to situations where the natural obligation actually has been fulfilled.

Other Civil Code Articles

In addition to the articles assembled beneath the error headings, the Code contains a number of other articles that may require attention in

68. 3 C. TOULLIER, supra note 20, no. 74, at 271.
69. Id.; FRENCH CIV. CODE art. 1356; LA. CIV. CODE art. 2291, quoted supra note 67.
70. LA. CIV. CODE art. 2291, quoted supra note 67; 3 C. TOULLIER, supra note 20, no. 74, at 271.
71. 3 C. TOULLIER, supra note 20, no. 74, at 271.
the resolution of controversies involving mistaken assumptions or misunderstandings. The articles under the section heading, "Of the Cause or Consideration of Contracts," and those addressing impossibility of performance, for instance, should certainly be considered in any endeavor to formulate a general theory of error. Articles prescribing resolutions for particular controversies, including most notably a number of the articles concerning sales, are similarly relevant in searching for principles susceptible of more general application. Finally, several of the code articles concerning "Interpretation of Agreements" are significant in considering the extent to which contractual commitment, despite misunderstanding, can be recognized and defined in accordance with the perceptions of one of the parties. These articles and their possible implications will be examined in conjunction with the forthcoming discussion of the jurisprudence.

MISTAKEN ASSUMPTIONS

The Jurisprudential Concept of Error as to Principal Cause

In an overwhelming number of Louisiana appellate cases involving the legal significance of a contracting party's error, the courts identify the "principal cause" of the "agreement" and grant relief if the error is found to have affected this principal cause. This approach is not limited to situations where the error can be fitted into one of the Code categories of error as to "motive," "person," or "object of the contract." The courts have sought to identify principal cause even in situations where an obligation has been ambiguously defined and the parties have asserted different understandings as to the intended commitment. When the courts seek to identify principal cause, they consider the perceptions of the party resisting rescission, as well as those of the party asserting that his error is legally significant. In nearly all situations, the courts, in line with the provision in Civil Code article 1826 concerning error in the motive, have held that an erroneous assumption cannot be identified as a principal cause unless the party resisting rescission knew or had reasonable basis for recognizing the existence of the assumption and its significance to the complaining party. In addition to the case of error as to the "motive," the Code drafters clearly intended this restriction on the availability of relief to apply to most errors concerning the "qualities" of the "object of the

72. LA. CIV. CODE arts. 1893-1900.
73. LA. CIV. CODE arts. 1891, 2031-2033.
74. See, e.g., LA. CIV. CODE arts. 2443, 2452, 2455, 2520-2544.
76. See infra text accompanying notes 83-151.
77. See infra text accompanying notes 152-63.
78. Quoted supra p. 888.
79. One of the few cases departing from this practice is Pollard v. Ingram, 308 So. 2d 860 (La. App. 4th Cir. 1975).
contract.'" On the other hand, in the case of error as to the "nature" of an agreement, and error as to the "substance" or the "substantial quality" of a contractual object, the Code framers may have intended the existence of a party's error to be basis for relief even if the other party had no basis for perceiving that error was occurring. This was unquestionably the framers' intention in the case of certain errors "as to person." Accordingly, in the upcoming examination of cases resolved by the courts in terms of principal cause, effort will be made to identify situations involving errors within classifications expressly recognized by Code articles.

Beyond the prevalent assertion that a "motive" or "cause" cannot constitute a "principal cause" unless the party resisting rescission knew or had basis for knowing of its existence, the opinions of the appellate courts offer little doctrinal guidance concerning the factors to be weighed in allocating the risks of inaccurate assumptions by contracting parties. The opinion in the 1973 case of Cryer v. M & M Manufacturing Co., provides what is probably the most significant effort to express principles having general application.

Some motives are readily discernible from the inherent nature of a sale. For example, an immediate end of the buyer is to acquire ownership of the thing sold. That motive characterizes the transaction. Other motives, not discernible from the inherent nature of the sale, rise to the status of principal cause only when the parties contract on that basis. Although the parties need not make the motive an express condition of the contract, it must appear from all the circumstances that the existence of the sale has been subordinated to the reality of the motive. The special motive must have been a constitutive element of the accord of wills. The reality of the motive becomes a tacit condition of the contract. However, the opinion does not attempt to identify factors which, as a general proposition, will support a conclusion that a "motive" was a "constitutive element" or "tacit condition" of the contract. Nonetheless, the court does identify the factors influencing its decision in the controversy before it, and this identification, together with the previously quoted discussion, provides basis from which some generalizations might be drawn. Accordingly, the controversy involved will be examined carefully in subsequent discussion.

80. See supra text accompanying note 57.
81. See supra text accompanying notes 52-57.
82. See supra text accompanying notes 45-50.
83. 273 So. 2d 818 (La. 1973).
84. Id. at 822.
85. See infra text accompanying notes 108-19.
In some of the cases employing principal cause language in allocating the risk of inaccuracy of assumptions, the party seeking relief had articulated the assumption in question. In some situations, misrepresentations by the party seeking to uphold the transaction influenced the complaining party in reaching the assumption which proved inaccurate. In other cases, the courts' classifications of assumptions as principal causes were possibly affected by unarticulated judicial suspicions that unproved misrepresentations influenced the complaining party. However, the immediate discussion is limited to cases where no misrepresentations were established. The cases selected for discussion involve sales and assignments, the categories of contract most frequently involved in principal cause determinations.

**Decisions Not Involving Misrepresentations**

In the 1964 decision of *Stack v. Irwin*, the Louisiana Supreme Court identified an error "relating to the known, principal cause of the contract." The controversy concerned an agreement for the sale of immovable property. The buyer brought suit for rescission grounded upon the existence of latent defects in the property. The seller resisted the claim and reconvened for specific performance. Both the trial court and the court of appeal decreed specific performance but reduced the purchase price to compensate for latent defects. In reversing and recognizing the buyer's claim for rescission, the supreme court, in accordance with long standing jurisprudence, ruled that the agreement was not a sale but a contract to sell because the parties contemplated the subsequent execution of a formal act. Accordingly, the court found the sales articles regulating redhibitory defects to be inapplicable and sought to determine whether the buyer's error concerning the existence of the latent defects affected the principal cause of the contract. After quoting Civil Code article 1825, the court stated:

> This codal provision, in our opinion, contemplates a defect in the thing to be sold that renders it so imperfect that the contract would not have been made had the true facts been known. If such a defect existed, the fact that it can be remedied does not defeat the rescission of the contract, for the rescission is founded upon a vice of consent.
>
> As reflected by the record, the determining motive, or principal cause, of the plaintiff was to secure a residence so free of substantial defects that no major repairs would be required. From the negotiations, the motive that dominated the plaintiff was either known to the other parties to the contract or must be presumed to have been known.

86. 246 La. 777, 167 So. 2d 363 (1964).
87. 246 La. at 784, 167 So. 2d at 365.
88. 246 La. at 784-85, 167 So. 2d at 366 (footnotes omitted).
Thereafter, the court, considering the magnitude of the defects, concluded that rescission was warranted.

The Stack decision is interesting both in its conclusion concerning the applicability of the redhibition articles to contracts to sell and its discussion of factors bearing upon the identification of principal cause. As to the role of the redhibition articles, the traditional jurisprudential distinction between sales and contracts to sell provides a ready basis for denying the mandatory application of these articles. Nonetheless, the buyer under a contract to sell should certainly be entitled to any remedy that would be recognized under the redhibition articles if the sale were completed. On the other hand, under the redhibition articles, a price reduction, or, today, an opportunity to remedy deficiencies may be recognized as a permissible alternative to rescission. By finding that the availability of rescission was not dependent upon the rules of redhibition, the court avoided the constraints which might be imposed by prior decisions concerning the choice between rescission and price adjustment. This position is quite reasonable. The redhibition decisions normally concern situations where property has been delivered and the purchase price has been paid. Months may have passed between delivery and the discovery of the defects. Such factors may well have influenced past decisions to award a price adjustment as opposed to rescission. Thus, in a situation where the defects are discovered before the transaction progresses to its normal conclusion, it is reasonable to recognize rescission based upon the existence of serious defects, even if these defects might only be treated as a basis for price adjustment under the jurisprudence concerning redhibition in completed sales.

Turning to the decision's implications for a general theory of principal cause, the assumption recognized as a principal cause concerned the physical attributes of an object to be sold. The buyer was found to have assumed the object to be sound and without latent defects of magnitude necessitating what the court termed "major repairs," and the court easily concluded that the seller was aware or should have been aware that the buyer desired to acquire a house without such serious shortcomings. Buyers unquestionably prefer that structures be free of significant latent defects, and sellers certainly are aware of this preference. The significant question is why the parties are regarded as having dealt in certainties so that the validity of the transaction depends upon the absence of defective conditions. The reason the buyer does not bear the risk of the existence of defective conditions in the contract to sell is expressly found in the Civil Code articles governing sales. Although the court in Stack found these redhibition articles inapplicable to the contract to sell, these articles

89. See 2 S. Litvinoff, Obligations § 122 in 7 Louisiana Civil Law Treatise 225-31 (1975).
90. Since its amendment in 1974, Civil Code article 2531 has provided a seller "who knew not the vices of a thing" an opportunity to "repair, remedy or correct" them.
prescribe the risk allocation recognized in Stack through the language of principal cause. If the buyer in the completed sale is entitled to rescission or a monetary adjustment in the case of significant latent defects, the buyer under the contract to sell is entitled to at least that same protection. Thus, the redhibition articles make clear that the buyer is not to be regarded as having taken his chances concerning the existence of significant latent defects, and if the concept of principal cause is utilized in determining the significance of latent defects in a contract to sell, the acquisition of an item without significant latent defects is properly identified as the buyer's principal cause. Because the Code dictates the risk allocation recognized by the court in Stack and the court does not attempt to explain its principal cause identification except in stating that sellers know or should know of buyers' desires to avoid structures with significant latent defects, the implications of the decision for the identification of principal cause in other transactions are basically the inferences that can be drawn from the concept of redhibition.

Marchand v. United Companies Mortgages & Investments91 is another of the many cases holding that an erroneous assumption cannot be identified as a principal cause warranting rescission unless the party resisting rescission had reasonable basis for realizing that the assumption was being made. The buyer sought to rescind a completed sale of a residence based upon his erroneous belief that the lot included an acre of land. The buyer's belief as to the size of the lot was based upon dimensions supplied by a realtor who had previously appraised the property for the vendor. When the buyer consulted this realtor concerning the availability of housing, the realtor telephoned the vendor, and upon learning that the property in question might be purchased, he showed the buyer a copy of the appraisal, including a sketch depicting the property to have dimensions encompassing an area of one acre. The property itself had no fences or other visible boundaries. After the buyer and the realtor viewed the property, the buyer and a representative of the seller reached agreement for its sale, and a formal act of sale was ultimately executed. The act of sale correctly described the seller's interest and thus did not utilize dimensions defining an area of one acre. The trial court found that the buyer believed the lot to include an acre of land and that the realtor's erroneous belief as to the lot's size was based upon his own failure to make adequate investigation concerning its dimensions. Accepting these findings, the court of appeal ruled that the articles under the Code paragraph heading, "Of Error in the Motive," were applicable and concluded, in light of Civil Code article 1826, that rescission was available only if the seller knew or could be presumed to have known of the buyer's error. The court reasoned:

91. 335 So. 2d 795 (La. App. 1st Cir. 1976)
There is no question that vendee proceeded in this matter under an error of fact—he thought he was purchasing an acre of land when in fact he got much less. Further, it is clear from the testimony that the principal cause, or motive, for vendee's purchase was to acquire an acre of land, rather than simply a lot of any or average size. Regardless, though, of the importance of this criterion to the vendee, there is no evidence that the vendor was apprised of this motive. Nor can it be presumed that from the nature of the transaction the vendor knew it. The apparent motive in buying a house and lot is to acquire a suitable and adequate place in which to live. The testimony and evidence establishes that the property conveyed fit that purpose. Further, the price paid was fair considering the value of the property.\(^2\)

The court did not discuss the possibility of imputing the realtor's misrepresentations as to the lot's dimensions to the vendor. Even without this imputation, representatives of the corporate vendor had viewed the appraisal, and one might contend that the vendor as well as the vendee believed the property to have dimensions encompassing one acre. However, the written instrument of sale described only property actually owned by the seller. Thus, if the vendor is not to be held responsible for the realtor's misrepresentations or charged with awareness of their occurrence, the court was probably correct in finding that the vendor believed the buyer to intend to buy only what the vendor had to sell.

The court applied articles addressing error in the motive to the buyer's error concerning the dimensions of the property. These articles, standing alone, can certainly be read broadly to encompass this situation. However, other articles must also be considered in determining what the Code framers had in mind. Civil Code articles 1842-1845 address error as to the "object" of a contract and provide that such error invalidates a contract only when it bears on the object's substance, substantial quality, or other qualities which were the principal cause of making the contract.\(^3\) Because these articles clearly apply to physical characteristics of corporeal objects, they too must be considered in assessing the buyer's complaint. Civil Code article 1845 does not define principal cause but indicates that its identification depends on the particularities of the transaction. Thus, it is reasonable to employ the criteria of article 1826 in defining the term in the case of error as to the "object." Therefore, if the buyer's error as to the dimensions of the property is significant only if it can be classified as an error as to the principal cause under article 1845, the error of the buyer in *Marchand* provided no basis for relief because the seller neither knew nor was presumed to know of the buyer's error. Thus, the court's

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\(^2\) Id. at 797-98.

\(^3\) See supra text accompanying notes 52-57.
application of article 1826, as opposed to article 1845, did not affect the resolution of the controversy.

Theriot v. Chaudoir, an 1841 decision of the Louisiana Supreme Court, involves an interesting principal cause identification. The plaintiff, who had possession of two sections of land owned by the United States, transferred his "pretensions" to these tracts to the defendants through a written instrument, apparently entitled an act of sale. When the defendants subsequently refused to pay a note representing a portion of the purchase price, the plaintiff brought suit. Resisting the demand, the defendants alleged that an error in the motive entitled them to rescission of the transaction and return of the portion of the price they had paid. The defendants acknowledged awareness that the United States owned the property in question but contended "that they were led by plaintiff to believe that he had that sort of possession which from time to time Congress has approved of as entitling the possessor to a preference in a purchase from the United States." Congress, unbeknown to both parties, had previously designated the land in question as a "live oak reservation" and thereby minimized the likelihood of its availability in any future public offerings. The defendants contended that their error as to this occurrence provided basis for rescission. The plaintiff, on the other hand, contended that he transferred only his "possession and enjoyment and the hope that the United States would permit it to be continued." From the testimony concerning the parties' negotiations, the buyers' subsequent efforts to acquire the property from the government, and the magnitude of the price paid, the court concluded that both the plaintiff and the defendants had regarded the plaintiff's pretentions as entitling him to preference over other persons in any future offerings. Thus, the court held that rescission was appropriate because the tracts in question had already been reserved for governmental purposes.

The decision is reasonably based. Evidence proved that the buyers' participation in the transaction, to the seller's knowledge, was prompted by a desire to obtain a claim that would be recognized if the government decided to sell the tracts in question. Thus, it was necessary to determine whether the buyers should bear the risk of a preexisting decision to devote the land to governmental purposes. Two factors strongly suggested that the buyers should not be so burdened. First, the parties' attention was focused on the likelihood of future government decisions, and it was extremely unlikely that either side ever considered the possibility that the government's decision had already been made. This factor, of course, was not a conclusive basis for risk allocation. Nonetheless, it clearly evidenced that the parties were not engaging in conscious chance taking as to

94. 17 La. 445 (1841).
95. Id. at 446-47.
96. Id. at 447.
this risk. Second, the large price resulted in a significant disparity between the values of the performances or prestations. Disparity between these values (lesion) is in itself basis for relief in only very limited situations. Nonetheless, when the disparity is attributable to an error that substantially shaped the terms of the agreement, it is rational to regard the error as significant in the absence of strong reasons suggesting that it be disregarded. On this point, the court commented that "in a case of doubt [it] would incline in favor of a party striving to avoid a loss against one seeking to obtain a gain." 97

Walker v. Don Coleman Construction Co., 98 identified error in the principal cause as an alternative basis for rescinding an agreement to sell a 250 acre tract of immovable property. The buyer's commitment under the agreement was expressly conditioned upon the approval of the Department of Housing and Urban Development (HUD) of the property for subdivision development. For the first time in the Shreveport-Bossier area, HUD required an environmental impact statement to be submitted with the application for approval. Six months after imposing this requirement, HUD advised that its decision could not be reached until an impact study for a proposed parkway was completed. Some time thereafter the seller under the agreement to sell sued for rescission. At the time of trial, the parkway study, estimated to require a minimum of fourteen months for completion, had not begun. Thus, the earliest point at which HUD's decision might be announced would be approximately thirty-one months after the agreement had been entered. The trial court concluded that such an extended delay had not been contemplated by the parties and ruled that the agreement would be rescinded unless the buyer waived the condition and accepted performance.

On appeal, the buyer contended that Civil Code article 2038 99 requires parties who have not set a time limit for the happening of a condition to await its occurrence as long as it might possibly occur. The court of appeal reasoned that article 2038 is limited by Civil Code article 2037's requirement that a condition "be performed in the manner that it is probable that the parties wished and intended that it should be." Applying this principle to the situation before it, the court readily concluded that the parties could not possibly have anticipated the delay resulting from an environmental impact study dependent upon the completion of the parkway impact study. 100

97. Id. at 448.
98. 338 So. 2d 1183 (La. App. 2d Cir. 1976).
99. Article 2038 provides:
   When an obligation has been contracted on condition that an event shall happen within a limited time, the condition is considered as broken, when the time has expired without the event having taken place. If there be no time fixed, the condition may always be performed, and it is not considered as broken, until it is become certain that the event will not happen.
100. 338 So. 2d at 1185.
As an additional ground for rescission, the court identified "performance of the contract within a reasonable time"\textsuperscript{101} as a principal cause of the contract. This cause was found to be apparent from the inherent nature of an agreement to sell immovable property and from the circumstances evidencing the desire of the litigants to close the matter as rapidly as possible. The court stated that "the parties' failure to anticipate the unreasonable delay was error of fact sufficient to vitiate their consent and invalidate the contract."\textsuperscript{102}

The court's resolution of the controversy was well based. Once it concluded that article 2038 did not prescribe the outcome of the controversy, the same factors that provided the basis for concluding that the contract was subject to an implied term justified the court's conclusion that the consent was vitiated by error.

In \textit{Jefferson Truck Equipment Co. v. Guarisco Motor Co.},\textsuperscript{103} the plaintiff sued for the agreed price of a lifting device which it had installed on a truck supplied by the defendant. The defendant, who had the lifting device removed from the truck shortly after its installation, denied responsibility because the device's rated and guaranteed lifting capacity did not meet the specifications of the party for whom the device was being obtained. The plaintiff, however, asserted that it was fully aware of the manufacturer's rating and guarantee and that any "unilateral" error of the defendant as to these matters provided no basis for rescinding the transaction. The plaintiff acknowledged that it was aware that the defendant had been contemplating the acquisition of a lifting device of another manufacturer which had a rated lifting capacity in excess of the rated capacity of the device installed. However, the plaintiff contended that it had supplied literature revealing the latter device's rated capacity prior to the time that the defendant placed the order for its installation. The defendant, who had no background concerning lifting devices, asserted that he had been assured that the device he ordered was equivalent to the one he previously had been considering. The trial court found that the defendant had bargained for a device with a manufacturer's rating and guarantee that would meet its client's requirements but the plaintiff had contemplated the sale of a device having a mechanical performance capability meeting the needs of the defendant's client. Thus, it held the sale "invalid" because of the absence of a "meeting of the minds."

The court of appeal found that the plaintiff was "fully aware that defendant intended to purchase a device with a specified rated and guaranteed lifting . . . capacity"\textsuperscript{104} and that it "took it upon itself to

\textsuperscript{101} \textit{Id.} at 1186.
\textsuperscript{102} \textit{Id.}
\textsuperscript{103} 250 So. 2d 211 (La. App. 1st Cir. 1971).
\textsuperscript{104} \textit{Id.} at 215.
furnish defendant a crane that could possibly or probably do the work, but was not rated or guaranteed to do so." The legal issue, in the court's opinion, was the existence of "error as to the qualities of the crane relating to the principal cause of the contract." The court concluded that defendant's mistaken assumption as to the rated capacity was such an error. The basis for this classification was found in Civil Code articles 1826 and 1845. The court noted that an error not concerning substance or substantial quality may provide a basis for rescission under the latter article if the absent quality constitutes the principal cause for making the agreement. The court reasoned that principal cause under this article should be defined in light of article 1826, and that an error should not be so classified unless the party seeking to uphold the agreement was "apprised of" or "presumed" to have known of the resisting party's inaccurate assumption. Because the plaintiff was found to have had knowledge of the defendant's assumption, the agreement was held "subject to rescission for lack of requisite consent."

The controversy in Cryer v. M & M Manufacturing Co., presented interesting questions concerning the significance of error in agreements transferring incorporeal rights. Cryer, the holder of manufacturing rights to a newly designed kerosene heater, retained the services of a mechanical engineer to improve and test the heater for orchard heating services. After making improvements and conducting tests, the engineer submitted a written report specifying the heater's BTU output and identifying its suitable uses, including orchard heating. The report further provided that the tests extended over two 24-hour periods. Once the report was submitted, Cryer advised M & M Manufacturing Co. (M & M) of his willingness to discuss transfer of his rights and subsequently provided the company with a copy of the report and a sample heater. Approximately six weeks after the report and heater were delivered and M & M had demonstrated the heater to fruit and vegetable growers, Cryer and M & M entered into a written agreement for the transfer of manufacturing rights. The agreement described M & M's obligation in three separate paragraphs. The first described the payment of $12,500 in cash. The second identified a commitment to pay a "royalty" of $1.25 for each unit manufactured. The third set forth a commitment to "use due diligence and good business practices in expanding the manufacture and distribution" of the heater and provided that M & M was obligated to manufacture a minimum of 5000 units during the first year of production. Under further terms of the agreement, Cryer transferred the manufacturing and distribution rights with

105. Id.
106. Id. at 212.
107. Id. at 216.
109. Id. at 828 n.1.
"legal warranties." The agreement contained no express warranty as to the capacity of the heater or its suitability for particular heating purposes. During subsequent testing, M & M discovered that soot accumulation impaired the efficiency of the heater so that it could only produce heat sufficient to protect vegetation for periods of three to five hours. When extensive efforts to remedy the deficiency failed, M & M concluded that the heater was unmarketable and abandoned the project. At the end of the contract year, Cryer sued for $6250, the royalty for 5000 units. M & M, seeking rescission on grounds of error, failure of cause, and redhibition, reconvened. The trial court applied the Code articles concerning redhibition to the controversy, and because it found the heater imperfect and unsuitable for orchard heating, decreed a $6250 price reduction which extinguished the royalty claim. The court of appeal reversed and granted Cryer judgment for $6250.

In reviewing this judgment, the supreme court first addressed the applicability of the redhibition articles. Because the object of the sale, the right to manufacture and distribute, was incorporeal, the court concluded that the redhibition articles were inapplicable. The Court next addressed the contention that error and failure of cause provided basis for rescission. After characterizing the failure of cause argument as an alternative formulation of the complaint expressed in terms of error, the court contrasted error as to "the determining motive, or principal cause" with error as to a "subsidiary motive," a category of error said to have no effect upon a contract's validity. The court stated that a motive "discernible from the inherent nature" of a transaction was a principal cause and cited as an example the buyer's aim of acquiring ownership in the contract of sale. Motives not discernible from the inherent nature of the transaction, however, were said to "rise to the status of principal cause only when the parties contract on that basis."

The court then turned to the controversy before it and noted that the buyer did become owner of the right to manufacture and distribute. Thus, "the immediate end that characterizes a sale generally was achieved." Next, the court considered M & M's contention that an additional motive should be identified as a principal cause of the transaction. This motive, as understood by the court, was one to secure the manufacturing rights to a long-burning, high-output heater to sell to orchardists for freeze protection. M & M further contended that Cryer had represented the heater to have the qualities that M & M sought and that this representation provided an additional basis for identifying the assumption of the existence of these qualities as a principal cause. The court, however, in accordance with the findings of the lower courts, concluded

110. Id. at 820 n.3.
111. Id. at 822.
112. Id. at 823.
that Cryer had made no misrepresentations concerning the attributes of the heater. Thus the court refused to regard Cryer's supplying of a copy of the mechanical engineer's report as a representation that the engineer's conclusions concerning the heater were correct. After emphasizing that M & M had been given ample opportunity to test the device and finding that the seller intended that the manufacturer rely on its own skill and judgment as to the heater's performance, the court concluded:

The manufacturer was aware that the heater was newly developed. The purchase of manufacturing rights to it was speculative in some degree. One who expresses an unqualified will to purchase such rights should be bound accordingly unless the seller knows or should know that the purchaser's will is conditional. No basis for this knowledge appears in the record. Rather, it appears that, following the manufacturer's investigation and exercise of judgment, the seller reasonably contemplated an unconditional transaction. We find nothing in the contract or the circumstances under which it was formed to raise the manufacturer's expectations for the heater to the contractual level of principal cause.\footnote{Id. at 824.}

M & M's primary complaint concerned the inability of the heaters to sustain significant heat production over an extended period. Because the engineer's report described operation at a constant BTU level over twenty-four consecutive hours, M & M contended that both parties assumed this performance capability to exist. Thus, in M & M's view, the existence of this attribute was regarded as a matter of certainty, and the parties' error on this point should have provided basis for rescission. Cryer, on the other hand, asserted that he intended a transaction in which M & M would make its own assessment of performance capabilities and bear the risk of any inaccuracy in this assessment. If the engineer's report had not been supplied, the transaction would certainly be regulated in accordance with Cryer's view. The heater design was new, and no heaters had ever been in commercial use. Thus, in the absence of the engineer's report, M & M would have had no basis except its own testing for assessing performance capabilities and should certainly have been required to bear the risk of any inaccurate assessment it might make. The engineer's report, however, provided a basis for belief that sample heaters had successfully operated over twenty-four hour periods, and M & M's belief as to this extended operation capability could well have been classified as a principal cause. This is particularly so if Cryer were viewed as having represented that the engineer's report accurately described the results of tests actually conducted.

In examining the implications of the decision for a general theory

\footnote{Id. at 824.}
of principal cause, it is important to remember that the court described the transaction as somewhat speculative and concluded that the seller had reasonable basis for perceiving that the buyer was to determine the soundness of the design for itself. The decision thus illustrates that a party, although known by the other to participate in a transaction because of certain assumptions as to attributes of the contractual object, may bear the risk that his assumptions are inaccurate. In particular, the decision suggests that such a risk allocation may be appropriate where the party who asserts that he viewed his assumption as a matter of certainty might more rationally have assessed it in terms of probabilities.

The decision is of interest on another point. The majority, like the court of appeal, not only denied rescission of the sale but refused to relieve M & M of its expressed commitment to manufacture 5000 heaters. The dissent, however, while concurring in the decision to deny rescission of the sale, expressed opinion that M & M should be relieved of its remaining commitment. Justice Tate expressed his position in terms of principal cause and reasoned that the "speculative" nature of the sale agreement and an awareness that "refined development" depended to some extent upon the manufacturer's skill prevented recognition of error as to the principal cause in the transfer of the manufacturing rights. In his words, the manufacturer "took his chances that he would not be able to perfect a workable product." Nonetheless, he identified an error as to the principal cause of the obligation to pay royalty—an assumption that "the manufacturer could perfect a merchantable unit, using due diligence." He reasoned that the parties could not have contemplated a responsibility "to produce 5000 unworkable units or to pay royalty for the manufacture of an unusable product."

On rehearing, Justice Tate, joined by Justice Barham, advanced additional reasons for his position. His opinion was based principally upon the contention that the obligation to pay royalties was subject to an implied condition that M & M be able to manufacture a merchantable heater. Justice Tate was correct in observing that a party incurring multiple obligations in a single agreement might be relieved of one or more of these commitments without necessarily being relieved of all of them. The availability of such an approach in the instant case depends upon the characterization of the "royalty." If it is regarded as the deferred portion of an agreed purchase price, then the refusal to rescind the assignment requires the recognition of a responsibility to pay this sum. If, on the other hand, this responsibility is truly keyed to the manufacture of

114. Id. at 826-28 (Tate, J., dissenting in part).
115. Id. at 826.
116. Id. at 826-27.
117. Id. at 827.
118. Id. at 828-30.
items, then an assumption that these items will possess sufficient utility to have a realistic chance of sale could be recognized as a principal cause even though the shortcomings of the design itself are not accepted as basis for rescinding the transfer of manufacturing rights. The majority's rejection of this approach apparently stemmed from its unwillingness to regard the merits of the design as uncertain in the transfer but reasonably established in the case of the commitment to manufacture. This position, as acknowledged by Justice Tate, is quite persuasive. Nonetheless, if the obligation to pay a "royalty" on mandatory production is not regarded as an obligation to pay a deferred portion of the purchase price, the risk of inaccuracy of the buyer's assessments as to the merits of the design could be differently allocated in the case of each obligation.

Ratcliff v. McIlhenny also concerned risk allocation in the assignment of incorporeal rights. The plaintiff, who had acquired an option to purchase immovable property, assigned his rights under this agreement to the defendant. When the defendant refused to pay the credit portion of the agreed price, the plaintiff brought suit. The defendant asserted that the title of the party extending the option was unmerchantable and contended that his commitment to pay was therefore without consideration. In concluding that the defendant was indebted despite any unmerchantability, the court commented:

The assignment of an option to buy is therefore nothing more than the sale of an incorporeal right; and hence, all that the seller warrants is the existence of that right, not the solvency of the obligor (i.e. the ability of the obligor to perform his contract).

R. C. C. arts. 2646, 2647. If the Code allocates the risk of unmerchantability of title to the assignee in the assignment of an option, rescission grounded upon error is certainly precluded. Civil Code article 2647, however, does not expressly prescribe this allocation. This article, included in the chapter entitled, "Of the Assignment or Transfer of Credits and Other Incorporeal Rights," provides that "[t]he seller does not warrant the solvency of the debtor, unless he has agreed so to do." Accordingly, the assignee of a claim has no legal complaint against the assignor simply because the debtor's insolvency impairs the money value of a judgment against him. A statement negating such complaint need not be construed, as it was by the court, to encompass "the ability of the obligor to perform" and thus to foreclose the possibility of rescission grounded upon the assignee's error concerning the title of the party extending the option.

This is not to say that the court made an inappropriate risk alloc-
tion in the transaction. Louisiana courts have found a wide range of complaints to render title unmerchantable. Thus, parties familiar with transactions in immovables may well be cognizant of the risk that a title might be so regarded. Similarly, parties with such familiarity are probably also aware of the significant probability that a title examination was not conducted prior to the execution of the option agreement. Hence, the court may have correctly expressed the understanding of some assignees of options when it stated that the assignor in such a transaction purports only to have the contractual right to demand a conveyance by the party granting the option. Nonetheless, situations could arise in which the magnitude of the price of the assignment would negate any inference that the assignee was engaging in conscious risk taking as to title. Because these situations may occur and involve parties with little or no experience in such transactions, courts should reject the questionable construction of Civil Code article 2647 and thus hold open the possibility of relief grounded upon error in situations where the assignee could not reasonably have been perceived to contemplate a risk-taking transaction.

**Misrepresentation and Nondisclosure**

Louisiana Civil Code article 2529 provides: "A declaration made in good faith by the seller, that the thing has some quality which it is found not to have, gives rise to a redhibition, if this quality was the principal motive for making the purchase." This article has received surprisingly little attention in Louisiana jurisprudence. In the case of error analysis in general, Civil Code article 1845 provides for rescission in the case of error as to "the qualities of an object" when these qualities "were the principal cause of making the contract." As previously discussed, principal cause, as used in this article, has been defined in accordance with Civil Code article 1826. Thus, an assumption as to the existence of a quality of a contractual object is not defined as a principal cause unless the party resisting rescission knew or should have known that the assumption was crucial to the complaining party's participation in the transaction. Accordingly, when a party not only knows that an assumption is important to his co-contractant, but also has affirmed that the assumption is accurate, the assumption can be identified as one affecting principal cause without resort to Civil Code article 2529. However, because article 2529 was intended to identify certain representations as a basis for rescission when relief could not be had under the other articles concerning redhibition, it suggests that close questions might be resolved in favor of rescission when the party seeking to uphold the transaction has himself affirmed that a shared assumption is accurate. In any event, article 2529 has played a negligible role in the development of a general theory of

122. See supra text accompanying note 52.
123. See supra text accompanying notes 103-07.
124. See supra p. 888.
error and has received only slightly greater attention in the development of the law concerning the responsibility of a seller who has sold goods lacking qualities he has described.125

On the other hand, the cases concerning allegations of purposeful misrepresentations and impermissible nondisclosures have received an interesting treatment in terms of a concept of error as to principal cause. Stated simply, the Louisiana courts are extremely reluctant to classify assertions or suppressions as fraudulent.126 Nonetheless, in situations in which parties seeking to uphold transactions knew that significant assumptions of their co-contractants were erroneous, the courts are quite inclined to classify these assumptions as principal causes.

The case of Marcello v. Bussiere127 is illustrative. The plaintiff, the lessee of a building in which a lounge had been operated, agreed to sublease the building to the defendants. He also sold them bar equipment located within the premises. The bar was not in operation at the time of the transaction, and, after the defendants had begun renovation of the structure, they discovered that they could not obtain an alcoholic beverage license, and therefore, they discontinued payment of rent. The plaintiff sued for the rent for the remainder of the lease term, and the defendants, alleging fraud and error, reconvened for rescission of the lease and sale. The lounge had been closed for the six months immediately preceding the transaction because the local authorities had revoked the necessary alcoholic beverage license, and the defendants, in the words of the trial judge, were unable to obtain a license because of the “attitude” of the local officials concerning the “reputation” of the business. The defendants asserted that the plaintiff had advised that the lounge was closed for repairs and that he would obtain a license for them. The supreme court, after asserting that fraud must be proved by clear and convincing evidence, found the record to reveal that the plaintiff had at most asserted that he knew of no reason why the defendants could not obtain a license and that he had made no misrepresentations concerning the reasons for the closure. Nonetheless, the court readily concluded that the defendants’ principal cause, the acquisition of “a going bar-lounge business for their continued operation,” was known or should have been known to the plaintiff, and on this basis rescinded the lease and sale.128

Because the plaintiff knew that the license had been revoked and may well have known that the odds of reissuance were remote, the decision is certainly appropriate. On the other hand, if the plaintiff had had a

127. 284 So. 2d 892 (La. 1973).
128. Id. at 895.
license and the local authorities had refused to permit operation to be continued by the defendants, the court may very well have upheld the agreement. The plaintiff, in probability, would be charged with an awareness of the defendants' assumption that the authorities would permit their operation. Nonetheless, the plaintiff could convincingly assert that the defendants alone should bear the risk of the inaccuracy of this assumption. In any event, an awareness of the inaccuracy of a very significant assumption, in the instant case and in several others, unquestionably influenced principal cause identifications.

Error as to "Substance" and "Substantial Quality"

The Civil Code articles concerning error as to substance and substantial quality have been utilized in several decisions involving the transfer of rights to incorporeals. *Knight v. Lanfear,* an 1844 supreme court decision, is perhaps the first such case to classify an error as one as to substance. The transferee of a United States Treasury Note sued for return of the purchase price. The plaintiff established that the note had been redeemed and marked "cancelled" by the government and was thereafter "purloined" and chemically treated so that the inscription of cancellation was expunged. However, he was unable to show that the transferors were aware of these occurrences at the time of the transfer. Additionally, the transfer was accomplished under an indorsement "without recourse." The defendants contended that the government was delinquent in advising the public after discovering the misappropriation of the note and that this tardiness together with other of its actions estopped the government from asserting that the note had been discharged. The defendants further contended that their responsibility should be determined by the Civil Code articles regulating assignments and that these articles impose a warranty only as to the existence of indebtedness and not a warranty that the debtor will voluntarily pay. The court assumed that the conduct of the government entitled the transferee of the note to "demand its amount from the government." It nonetheless concluded that there was "error as to the substance of the object of the sale" and held that the transferee was entitled to judgment for the amount he had paid.

The decision is unquestionably well based. Normally, a transferor should be required to bear the risk that a seemingly genuine instrument is actually a cancelled instrument from which evidence of cancellation has been fraudulently removed. The assignment articles upon which the defendants relied prescribe this risk allocation when the maker of such an instrument is entitled to assert his discharge. These assignment articles

130. 7 Rob. 172 (La. 1844).
131. Civil Code art. 2646 retains almost the exact language of its antecedent, article
should not be construed to require a contrary allocation because of the possibility of an estoppel upon which the maker's responsibility might be based. Thus, unless the presence of a 'without recourse' indorsement is regarded as basis for allocating practically all risks to the transferee, he should be protected from an extremely remote risk which he obviously did not perceive.

The court in *Tircuit v. Gottlieb* also referred to error as to substance in a transaction involving the transfer of an incorporeal. The controversy concerned the significance of an agreement to apply the 'value' of what was believed to be a highway commission certificate to the payment of the purchase price of a new vehicle. The supposed highway commission certificate was subsequently discovered to be a certificate for the participation in the proceeds of a series of highway bonds which had no 'value.' Upon making this discovery, the car dealer refused to deliver a new vehicle without other arrangements being made for payment of the cash value which had been attributed to the certificate. The buyer, contending that he was entitled to a new vehicle without the necessity of making any further commitment, brought suit. The court, citing the Civil Code articles concerning error as to substance and error as to substantial quality, held that there was a 'mutual error' as to the nature of the certificate entitling the car dealer to rescind the agreement in the absence of a tender of a valid highway certificate or its value in cash.

*Albert E. Briede & Son, Inc. v. Murphy* is perhaps the most intriguing case dealing with the present topic. The opinion concerns a funeral home's claim against a widow who arranged for her husband's interment. The controversy arose when an insurance company which had issued both a burial insurance and a life insurance policy to the deceased refused to honor a claim for proceeds under the life insurance policy. The funeral home, which had received the policies from the widow on the day funeral arrangements were made, brought suit for what it viewed as the portion of the contract price not extinguished by the proceeds of the burial policy. The widow, on the other hand, asserted that the funeral home had agreed to accept the policies themselves in exchange for its rendition of services. The court found that the widow's selection of a casket more expensive

2616 of the Civil Code of 1825, which read: 'He who sells a debt or an incorporeal right, warrants its existence at the time of the transfer, though no warranty be mentioned in the deed.'

132. Under an express provision of present law, certain warranties are recognized in transfers of negotiable instruments under 'without recourse' indorsements. See La. R.S. 10:3-417(2)-(3) (1983). Furthermore, the French text of article 2616 of the Civil Code of 1825, the antecedent of Civil Code article 2646, provided that the transferor guaranteed the existence of the right even if the transfer were made *sans garantie.*

133. 151 So. 428 (La. App. 1st Cir. 1933).


135. 151 So. at 430.

than the one for which the burial insurance proceeds would pay was preceded by an examination of both policies by the funeral home's director. The court also found that the director had assured the widow that the policies would provide ample proceeds for the more expensive funeral she selected. It also observed that the funeral home's form contract document, which bore the widow's signature, included a notation by the director indicating that forty-three dollars was owed the widow. With reference to the funeral home's contention that the director had merely agreed to attempt to collect any proceeds from the policies and to apply them to the extinguishment of indebtedness, the court stated:

There can be no doubt that ordinarily if in the payment of an obligation something is given which both parties believe to be of a certain value and later it develops that it has no value, there has been a mistake of fact in the subject matter of the agreement, and it may be set aside and demand for payment made. 137

The court cited the Tircuit case and the Civil Code articles concerning errors as to substance and substantial quality as authority for this principle and then sought to explain why the principle was inappropriate in the situation before it. The court first observed that the same individual was president of the funeral home and the insurance company and noted that the evidence suggested that he was the sole shareholder of each. The court next emphasized that the burial policy would not pay for services rendered by any establishment except that of the plaintiff. The court then concluded that the widow was justified in believing that the policies were unconditionally accepted as payment for the funeral bill regardless of the actual intentions of the funeral director. Finally, the court expressed confidence that the director's actions had induced the widow to select the more costly funeral.

The court's articulation of a general rule and its bases for finding it inapplicable are all of interest. Discussion of its general proposition will be deferred until the remainder of the related cases have been examined. As to the proffered bases for finding the general rule inapplicable, it is difficult to determine the significance the court attributed to each of the factors it identified. Common ownership of the funeral home and the insurance company seems a questionable basis for distinguishing the situation. Assuming, however, that common ownership does provide basis for distinction, it would only be relevant in determining the significance of any representations by the director concerning the existence of insurance coverage. 138 The provision in the burial policy restrict-

137. Id. at 915.
138. If, for instance, the funeral director is regarded as an employee of an enterprise providing both funerals and insurance, there is greater basis for attaching legal significance to his assertions concerning the existence of insurance coverage than there would be if his enterprise devoted its energies exclusively to the provision of funeral services.
ing coverage to services performed by the plaintiff funeral home seems relevant only insofar as it might provide additional justification for the widow's reliance upon the director's assessments concerning the existence of life insurance coverage. The remaining two factors, however, unquestionably have relevance in risk allocation. If the widow had a reasonable basis for perceiving the transaction as one in which the assignment of the policies constituted the entirety of her performance, the court's decision is rational and is reasonably supported by the Civil Code. The director's notation concerning the cash policy and a balance owed to her, however, need not be regarded as basis for recognizing a contractual commitment unaffected by the funeral director's erroneous assumption as to the existence of an insurer's liability. In other words, classification of the arrangement as an exchange of services for an assignment of rights as opposed to the rendition of services for a price does not preclude the recognition of rescission through error analysis.

This is not to say, however, that assertions as to the existence of coverage are not germane to the allocation of the risk of their inaccuracy. Such assertions, at a minimum, can buttress a decision to recognize the erroneous assumption as to coverage as a basis for rescinding the agreement, no matter how it is characterized. Further, if rescission were recognized and an unjust enrichment claim were asserted by the funeral home, the misrepresentation could be regarded as justification for the enrichment. Such an approach could thus support an outcome like that reached by the court through its recognition of a contract unaffected by error.

In Ashley v. Schmalinski, the Louisiana Supreme Court classified erroneous assumptions concerning the attributes of immovable property as errors affecting substance. The party who erred concerning the property she acquired obtained judgment rescinding the transaction. However, the decision was clearly predicated upon the occurrence of fraudulent misrepresentations designed to induce plaintiff's erroneous beliefs. A real estate agent employed by plaintiff, with the assistance of a real estate agent engaged by defendant, fraudulently led the plaintiff to believe that the defendant's land was rich with timber and convenient to a railroad and would thus be suitable for cultivation if the timber were harvested. Further, the defendant was found to have at least suspected that plaintiff's agent was deceiving her as to the property's characteristics, and the court concluded that the defendant must be treated as one having actual

139. The Civil Code articles concerning interpretation of agreements include articles 1957 and 1958, which permit resolution of "doubt or obscurity" in accordance with the perceptions of one of the contracting parties. However, these articles assume some core of common understanding, and determining just what range of misunderstandings were contemplated by these articles is difficult.

140. Recall, for example, that Civil Code article 2646, quoted supra note 131, establishes a warranty as to an incorporeal's existence in contracts of assignment.

knowledge of the fraud. The court’s syllabus, along with its observation that parties must as a general rule inform themselves as to property they are acquiring, further illustrates that the decision was keyed to the occurrence of impermissible activity.

Jefferson Truck Equipment Co. v. Guarisco Motor Co. contains an interesting discussion concerning errors as to substance and the availability of relief grounded upon “unilateral error.” The error involved, however, was not classified as one affecting substance but as one affecting principal cause. The plaintiff contended that a unilateral error provided no basis for rescission. In refuting this contention, the court referred to Civil Code articles 1842-1844 and observed that article 1843 expressly recognizes the possibility of relief where only one party labors under error as to an item’s substance. The court then stated:

We see no valid basis for distinguishing between an error as to substance, error as to a substantial quality, and error as to a quality which is the principal cause of a contract. We conclude, therefore, that unilateral error in any one of these respects constitutes ground for rescission of an agreement.

Mechanical application of the court’s statement would result in the availability of relief in any instance where an error could be classified as one as to substance or substantial quality. For example, if parties contemplate different contractual objects, relief might be available without regard to the reasonableness of the perceptions of the parties because error as to the identity of the contractual object has several times been classified as error as to substance. However, it is uncertain whether the Jefferson Truck court would espouse this position. It was concerned with a situation in which the party seeking to uphold the transaction was not only aware of the assumption upon which the complaining party based its claim for rescission but also was aware that this assumption was erroneous. Additionally, the error was classified as one affecting principal cause. Thus, the statement concerning the availability of relief in the case of unilateral error as to substance could well have been made with similar controversies in mind. Nonetheless, the decision will certainly be cited in future controversies involving erroneous assumptions which might be classified as errors affecting substance or substantial quality.

In Arbutnot, Latham & Co. v. Cage Drew Co., the court rejected a contention that the alleged error affected a substantial quality of a right which the defendant had agreed to acquire. The defendant refused to fulfill its commitment to purchase various assets, including the registered

\[\text{142. 46 La. Ann. at 500.}\]
\[\text{143. 250 So. 2d 211 (La. App. 1st Cir. 1971).}\]
\[\text{144. \textit{Id.} at 216.}\]
\[\text{145. \textit{See infra} text accompanying notes 183-87.}\]
\[\text{146. 6 Orl. App. 374 (La. 1909).}\]
trademark of a coffee company in receivership, and the receivers sought specific performance. The defendant contended that corporations were not entitled to register trademarks under Louisiana statutes as it had originally believed when the parties entered into the agreement. The court expressed strong belief that corporations were entitled to avail themselves of the protections afforded by the statutes in question. It concluded, however, that the resolution of this question was not necessary to the disposition of the controversy. The court examined the statutes in question and concluded that they did not "purport to give to the one registering such trade mark any greater right of property therein than he would have had without such registry, or deny to any one who fails to register a trade mark any right or remedy which he would have had, had the statute not been passed." The court further observed that the statutes added little to the preexisting remedies available to victims of infringement. The court thus justified its conclusion that "the property right in a trade mark and its principal value as an asset are wholly independent of the provisions" of the legislation in question. Through this analysis, the court determined that the defendant's assumption as to the applicability of the statutes to trade marks of corporations, even if erroneous, did not bear upon a substantial quality: that is, the error did not affect a quality giving the right its greatest value, and thus provided no basis for rescission.

The supreme court in *Freligh v. Miller* found an error as to a substantial quality. A partner who had extinguished partnership indebtedness demanded contribution from one who had acquired a portion of another partner's interest. The defendant resisted the demand on the basis of misrepresentations concerning the existence of a "lucrative" partnership asset and insurance coverage protecting against the venture's most significant risk. The court found that these misrepresentations had been made by one of plaintiff's partners and probably by the partner who had transferred a portion of his interest to the defendant. Although the transferor had unquestionably been aware that the representations had been made, the opinion indicates that the transferor believed the representations to be true and that the plaintiff was unaware that they had been made. The court concluded that the plaintiff's rights could be no greater than the transferor's and ruled that a "contract made under such circumstances could not be binding as between the parties, because the error bore upon a substantial quality of the thing." The court emphasized that the two misrepresentations were so significant with reference to the enterprise that it could safely conclude that the transferee would not have

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147. The provisions in question were included in Act 49 of 1898.
148. 6 Orl. App. at 375.
149. *Id.*
150. 16 La. Ann. 418 (1862).
151. *Id.* at 420.
entered into the contract and paid the agreed sum had he known the true facts.

MISUNDERSTANDINGS

The Jurisprudence Generally

Principal cause language has at times been employed in dealing with parties who assert different understandings as to a commitment they endeavored to express. *Ouachita Air Conditioning v. Pierce* illustrates this practice. The defendant requested a representative of plaintiff to examine his home's malfunctioning central air conditioning system. After examination, the plaintiff advised the defendant that two compressors required replacement and recommended the installation of a single larger unit. The defendant agreed. A few hours after the installation, the defendant viewed the unit and immediately telephoned the plaintiff to relate that he had expected a unit manufactured by "York." The defendant had not previously stated that he desired a York unit, and the plaintiff had not advised that he intended to install an Amana unit. However, all major components of the home's preexisting system were York products. Subsequently, another party installed a York unit, and the defendant requested the plaintiff to retrieve the Amana it had provided. The plaintiff refused and sued for the contract price. The plaintiff contended that the defendant had expressed agreement to the installation of a four ton unit of unspecified brand and thus that it had fulfilled its obligation by installing a four ton unit having a cooling capacity equivalent to the units replaced. The defendant asserted that he had assumed that the major components in his home's complete York system would be replaced with York products. Citing Civil Code article 2456, he contended that no contract or sale was completed because there was never an agreement as to the object of the sale. Alternatively, relying on Civil Code article 1843, the defendant maintained that any contract recognized as a result of the transaction was subject to rescission for error as to substance.

The court accepted both of the defendant's arguments in rejecting the plaintiff's demand. Authority for the first proposition was found in Civil Code articles 2439 and 2456. In upholding the defendant's second contention, the court explained:

We are convinced that this case falls squarely under LSA-Civil Code Article 1845, in that there was error of fact as to the quality of the object, that is, the manufacturer of the unit, and that this quality was a principal cause of making the contract from defendant's standpoint. While the seller did not have actual knowledge that this was a principal cause or motive it should be presumed

152. 270 So. 2d 595 (La. App. 2d Cir. 1972).
that he knew it from the nature of the transaction and, therefore, the test of Article 1826 is met. Although [plaintiff] was in good faith, when he was confronted with a complete York system in which a major component needed replacing he should have been aware that without anything being said to the contrary, the buyer would expect replacement with the same brand of unit. The trial court was correct in setting aside the sale and rejecting plaintiff's demands.153

Because the court found the plaintiff unjustified in believing that the defendant had consented to the installation of a brand other than York, the decision is clearly consistent with the Civil Code. On the other hand, had the defendant been found to have indicated willingness to pay for any unit having capacity equivalent to the units being replaced, the court could have held him obligated in accordance with plaintiff's perceptions.

The Code framers clearly envisaged situations where a contractual obligation would be recognized in accordance with the perceptions of one party even though the perceptions of the other did not fully coincide. Civil Code articles 1957 and 1958, found within the Code section entitled, "Of the Interpretation of Agreements," address situations in which there is doubt or obscurity concerning an obligation. In its present form, article 1957 provides that "[i]n a doubtful case the agreement is interpreted against him who has contracted the obligation." Article 1958 continues: "But if the doubt or obscurity arise for the want of necessary explanation which one of the parties ought to have given, or from any other negligence or fault of his, the construction most favorable to the other party shall be adopted, whether he be obligor or obligee." The history of article 1957 raises an interesting question concerning situations in which doubt or obscurity cannot be attributed to negligence or fault of either party.154 For present purposes, however, the significant task is to identify the range of misunderstandings which may be resolved in accordance with the perceptions of one of the parties.

Civil Code article 1945 is relevant to this inquiry and provides in its final subdivision: "[I]t is the common intent of the parties—that is, the intention of all—that is to be sought for; if there was a difference in this intent, there was no common consent and, consequently, no contract." By describing willingness to incur responsibility as a requisite to contractual commitment, this article suggests that articles 1957 and 1958 have

153. Id. at 598.
154. In this situation, the literal terms of the present text of article 1957 prescribe an interpretation in favor of the obligee of the ambiguous or obscure commitment. Because the present text dates from an 1871 amendment to the Civil Code of 1870, the literal terms of the present text should probably be given effect. The article's antecedents, however, indicate basis for a contrary view. For the text of the antecedents, see 1972 COMPILED EDITION OF THE CIVIL CODE OF LOUISIANA art. 1957 (J. Dainow ed. 1973).
but a limited sphere of operation. Thus, articles 1957 and 1958, which clearly provide for the recognition of contractual commitment in some respects at variance with the perceptions of a contracting party, were probably intended for situations in which the parties have actually agreed to most of the details of the transaction. Under this view, a legal relationship would not be recognized in accordance with the perceptions of one party simply because his view is for some reason determined to be better based. It would also be necessary that the relationship perceived by the complaining party bear a substantial similarity to the relationship contemplated by the party whose perceptions are judicially preferred. The Civil Code, however, does not provide any additional criteria for determining when the requisite similarity is present. Nonetheless, certain considerations seem reasonable bases for limiting the instances in which contractual commitments can be recognized despite misunderstandings. For example, in determining whether a party is to be required to render a performance more onerous than the one he contemplated, the difference between the cost of the performances should certainly be relevant. Similarly, the utility to the obligee of a performance distinct from the performance he contemplated should be considered, as should the market value of the performances contemplated by each party. Additionally, the occurrence of full or partial performance by one or both parties might well play a significant role in resolving such problems.

In the situation presented in *Ouachita Air Conditioning*, the court could have recognized the contractual commitment in accordance with the perceptions of either the homeowner or the air conditioning contractor. Because the homeowner sought only rescission and not the recognition of a contractual commitment corresponding to his perceptions, the court was only faced with a choice between the recognition of the arrangement contemplated by the contractor and the denial of any contractual arrangement at all. Because the homeowner did not specify the brand to be used in replacing the deficient units, the contractor had a reasonable basis to believe that it was not restricted to the brand of the units it was replacing. Further, the contractor, as evidenced by its advertising practices, specialized in the brand it ultimately installed. Thus, the court could have viewed the homeowner as having agreed to the arrangement perceived by the contractor.\(^\text{155}\) Then, under the construction of the Code suggested in the preceding paragraph, it would have been necessary to determine whether the performance rendered and the performance contemplated by the homeowner were sufficiently similar to justify contractual commitment.

The court did not deny the theoretical possibility of recognizing the relationship asserted by the contractor. Instead, it concluded that a homeowner having a complete York system was amply justified in assum-

\(^{155}\) The court, however, found the homeowner to have been unaware of the contractor's specialty. 270 So. 2d at 596.
MISTAKEN ASSUMPTIONS

ing that a major component would be replaced by a York product in the absence of an express understanding to the contrary. Because the expense involved was considerable and the brand of the replacement unit would be important to most homeowners, the court reasonably concluded that a professional contractor should make his intentions clear to the consumer. The court thus reasonably refused to resolve the ambiguity in accordance with the understanding of the contractor.

The court’s opinion, however, is distinctive in employing principal cause language in concluding that the homeowner was not responsible for the agreed price. The court assumed the existence of a contract and then concluded that it was subject to rescission due to the homeowner’s belief concerning the brand the contractor was obligated to install, a belief classified as a principal cause.156 In all probability, the effort of the redactors of the Code to describe a concept of principal cause was in no way directed to the resolution of misunderstandings as to commitments to be incurred. To the contrary, the concept seems directed to the identification of erroneous assumptions providing basis for rescission in situations in which each party’s communications have been understood as they were intended.157 Nonetheless, the resolution of ambiguities and the identification of underlying assumptions as principal causes involve very similar inquiries. If contractual commitment is to be recognized despite ambiguity as to its terms, a court must find a rational basis for recognizing a relationship corresponding to the perceptions of one party as opposed to the other.158 Similarly, under the Code’s concept of principal cause, an underlying assumption is not recognized as basis for rescission unless circumstances provide a reasonable basis for recognizing that the assumption was being made.159 Thus, despite the circularity of resolving the ambiguity against the homeowner to recognize a contract and then regarding the same ambiguity as basis for rescission, the court engaged in the analysis prescribed by the interpretation articles, that is, it considered the possibility of circumstances which might provide basis for obligating one as he was perceived to have been obligated by the other.

Gibert v. Cook160 utilizes principal cause language in addressing a problem somewhat similar to that involved in Ouachita Air Conditioning. The plaintiff agreed to furnish and install a specified number of “ready-built” kitchen cabinets in the defendant’s residence. After a number of these cabinets had been installed, the defendant became dissatisfied with the installation and forbade further efforts of the plaintiff. He then hired another to remove and store the cabinets that had been installed. The

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156. Id. at 597.
157. See supra text accompanying notes 21-37.
158. See LA. Civ. CODE arts. 1945-1962 (“Of the Interpretation of Agreements”).
159. See supra text accompanying notes 21-37.
160. 144 So. 2d 683 (La. App. 4th Cir. 1962).
plaintiff sued for the value of the cabinets actually installed, a sum less than the agreed price for the entire job. The defendant’s primary complaint concerning the performance and the basis of his defense was the plaintiff’s inability to fit the cabinets within the available wallspace of the kitchen. The installation on one side of a kitchen window had necessitated the removal of two inches of the window trim. Similarly, removal of three inches of trim on the other side was contemplated in order to make room for the cabinets destined for that side of the room. The defendant contended that the plaintiff owed a contractual commitment to furnish cabinets which would fit within preexisting wallspace and thus that installation accomplished through removal of the window trim did not constitute performance. The plaintiff, on the other hand, asserted that the removal of the window trim was a contractually permissible means of installing an agreed number of ready-built cabinets which could not otherwise be fit on the kitchen walls.\textsuperscript{161} However, the plaintiff acknowledged that he had been aware that trim removal would be necessary when he agreed to do the job and that he had not advised the defendant of this necessity.

The district court had concluded “that the fitting of the cabinets without cutting the window trims was the principal cause, or motive, of the contract and that the parties had not agreed thereon, so there was not a meeting of the minds.”\textsuperscript{162} The fourth circuit, after approving the lower court’s conclusion that the defendant would not have agreed to the installation if he had known that it would entail removal of window trim, affirmed “the conclusion that perfectly fitted cabinets was the principal cause, or motive, of the contract”\textsuperscript{163} and declared the contract to be invalid.

The court’s rejection of the plaintiff’s demand was well based. A homeowner who is advised that a certain number of ready-built cabinets can be installed in his kitchen will normally assume that the installation will be accomplished without resort to methods like those employed in \textit{Gibert}. Thus, in the absence of factors strongly indicating that existing wallspace must be enlarged, the homeowner’s expectations should be honored, at least to the extent of denying the existence of an obligation to receive a performance necessitating an unanticipated enlargement.

Furthermore, circumstances such as those involved in \textit{Gibert} provide ample basis for the recognition of a contractual commitment to install in accordance with the perceptions of the homeowner. The homeowner in \textit{Gibert}, however, asserted no claim which might have necessitated the recognition of such a commitment. Thus, the court was only required to determine that the homeowner did not have to accept the performance

\textsuperscript{161.} \textit{Id.} at 684.
\textsuperscript{162.} \textit{Id.}
\textsuperscript{163.} \textit{Id.} at 685.
rendered by the plaintiff. In so doing, the fourth circuit, like the second circuit in *Ouachita Air Conditioning*, utilized principal cause language. The principal cause concept, as previously suggested, was probably not designed to deal with situations in which parties have different understandings as to the performance commitment incurred. If, in such situations, one party is not to be obligated in accordance with the perceptions of the other, it is somewhat awkward to describe an agreement subject to rescission because of error as to principal cause. Nonetheless, when the courts in *Ouachita Air Conditioning* and *Gibert* identified principal causes, they expressed their conclusions that the expectations of the complaining parties were reasonably based. They also impliedly indicated that a party whose perceptions are not as well founded may be obligated to receive or render a performance in some ways at variance with the one he contemplated.

In *Custom Builders & Supply v. Revels*, the court considered the significance of a misunderstanding as to the price of certain construction work. The defendant, a homeowner, requested the plaintiff construction company to submit a bid to perform renovation and additional construction in accordance with a set of specifications prepared by another. Pursuant to this request, an authorized representative of the company prepared a proposal which was subsequently signed by the homeowner. Thereafter, several interim payments were made, and substantially all of the specified work was accomplished. A dispute then developed as to the sum to be paid for the work. The construction company asserted that the document signed by both parties defined a "cost plus" arrangement whereby it was to be reimbursed its costs and receive a $2,000 return. The homeowner, to the contrary, contended that the document evidenced the construction company's commitment to perform the entire job for $16,500. In his opinion, the $2,000 figure was not a guaranteed but a projected return which, together with the contractor's estimated costs of $14,500, explained the basis for an unconditional commitment to perform the work for $16,500.

The trial court held that the contractor was obligated to perform the entire job for $16,500. Because the court of appeal concluded that each party had perceived the arrangement differently, it held that "there was no meeting of the minds, no consent, and . . . no contract." The court then resolved the conflict in accordance with principles of *quantum meruit* by defining the homeowner's enrichment as the enhanced value of his property attributable to the construction. Because the contractor's costs exceeded the enhancement so computed, judgment was rendered for the amount of the enhancement minus the sums previously paid.

In assessing the opinion, it should be noted that the court found the document ambiguous on its face. Nonetheless, the decision is significant

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164. 310 So. 2d 862 (La. App. 3d Cir. 1975).
165. *Id.* at 866.
in its refusal to resolve the ambiguity as to the price of the construction in favor of one party as opposed to the other. Several factors may have influenced the court’s decision. First, there was great disparity between the sums the homeowner and the contractor alleged to be due. Second, the document, while possibly subject to the homeowner’s alleged understanding, would be understood by most to describe a cost plus arrangement. Third, the actual expenses of the contractor were approximately seventy percent greater than the $14,500 it had estimated in the document.

When construction has been completed and the price for which it was to be done is ambiguous, factors which might justify a resolution in accordance with the perceptions of one of the parties must be considered. A property owner might be unable to afford a price higher than the one he understood, and in instances where he is financially well situated, the construction at a higher price might not be economically justifiable. On the other hand, a contractor must endeavor to recoup expenses and receive a return, ends which often would be frustrated if he were compensated with a sum less than he contemplated. Thus, one might expect a considerable judicial inclination to resolve ambiguity in favor of one party when his perceptions appear better based.

The court’s refusal to recognize a contract in Revels may have been influenced by an unarticulated concern for a $10,000 disparity between the contractor’s estimated and actual expenditures. Arguably, the contractor incurred an obligation to estimate probable costs with a degree of accuracy not afforded by an estimate which was only fifty-eight percent of actual cost. Further, the homeowner’s mistaken assumption as to the probable range of costs, an assumption attributable to fault of the contractor, could provide basis for rescission grounded upon error. Thus, even if the language of the document might more reasonably be understood to describe a relationship whereby the owner’s cost might exceed $16,500, the situation was not ripe for recognition of a commitment requiring the homeowner to pay a sum far greater than he had reasonably contemplated.

On the other hand, the contractor had understood that it was to be

166. Disregarding interim payments made by the homeowner, the homeowner viewed his obligation as $16,500, the contract price, plus $2,860.63 for approved construction not included in the original contract. Under the contractor’s view, the homeowner, disregarding interim payments, owed $29,752.37, a sum including compensation for the construction not originally planned.
167. The document is reproduced in the opinion. 310 So. 2d at 864.
168. This computation was accomplished by deducting the $2,860.63 attributable to additional construction from the $27,752.37 figure advanced by the contractor as its total cost.
169. Civil Code article 2315 provides ample basis for such a responsibility.
170. The estimated cost was $14,500. The actual cost was approximately $25,000. See supra note 168.
reimbursed its costs and had reasonable basis for believing that the homeowner had understood this also. Thus, a clear basis existed for recognizing an obligation of the homeowner to pay a sum exceeding the $16,500 limit he sought to impose. Under these circumstances, the denial of a contractual relationship and the measurement of enrichment in terms of enhanced property value were probably the only workable means to a just result. However, in light of the unique circumstances of the controversy, the decision's implications for resolution of ambiguities are probably limited.

North Development Co. v. McClure also involved an alleged misunderstanding as to the sum for which work was to be performed. The project included installation of streets and drainage structures and grading and dressing of lots in a subdivision development. The subcontractor, who completed the work in question, alleged a portion of the contract price to be a function of the total amount of earth moved and materials utilized. The general contractor, on the other hand, asserted that the subcontractor had agreed to perform the designated work for a lump sum and thus that quantities of earth and materials were without significance. Prior to the execution of the written contract, the developer's project engineer had supplied the subcontractor with a copy of plans and specifications along with an estimate of the quantities of work to be performed and the materials required. The subcontractor then prepared a bid proposal quoting "the unit cost" of each phase of work he proposed to undertake. This proposal, addressed to the project engineer, stated a "total estimated cost" of $57,814.30. When the written contract was executed by the contractor and subcontractor several months later, the project engineer's plans and specifications were referred to and the $57,814.30 figure was expressed and apparently was described as the contract price. The subcontractor, however, alleged that he signed a copy of his bid proposal at the time of the execution of the contract document and that he accordingly understood the agreement to provide for compensation in accordance with unit prices.

The trial court, after stating that the document should be construed against its preparer (the general contractor), concluded that each party had a different understanding and thus that there was no "meeting of the minds." It accordingly ruled that the contract was "vitiates." Then, in the absence of a contract, it considered the subcontractor's claim for labor and materials and concluded that the contractor had been enriched

171. 276 So. 2d 395 (La. App. 2d Cir. 1973).
172. The language of the written instrument clearly provided some support for the general contractor's position that the subcontractor was committed to perform for a lump sum. The instrument, however, is not reproduced in the court's decision.
173. The opinion does not indicate whether the general contractor disputed the subcontractor's assertion that a copy of the bid proposal was signed at that time.
by $73,634.90, the exact sum the subcontractor had alleged to be due under the contract. The second circuit affirmed the decision.

The appellate court's opinion, however, seems substantially influenced by a factor which had not been expressly identified by the trial court as a basis for its decision. After the subcontractor had submitted his bid proposal based upon the plans and specifications furnished by the project engineer, this engineer obtained FHA approval to lower the elevation of the entire subdivision, and under new plans and specifications designed to implement this change, the amount of excavation necessary for street installation was significantly increased. Neither the subcontractor nor the general contractor had knowledge of this change at the time they signed the written agreement. Thus, apart from any ambiguity as to price, the change in specifications in itself provided basis for rescission, and the court of appeal identified "mutual error of fact in regard to the extent of the work to be performed and the payments to be received therefor" as error precluding the recognition of contractual commitment.

Because the general contractor was unaware of the changed specifications at the time the written document was signed, and thus had no basis for believing the subcontractor to have promised to perform anything other than the work specified on the original plans, the court was certainly correct in concluding that the subcontractor incurred no obligation to perform the work defined by the modified plans. The subcontractor's performance, however, presented the possibility of finding the subsequent creation of a contractual relationship. For instance, had the general contractor learned of the modified specifications before the subcontractor made substantial progress in his performance, the court could have found the general contractor to have impliedly consented to compensate the subcontractor in accordance with the unit prices. If, on the other hand, the general contractor had no knowledge of the modifications prior to substantial performance by the subcontractor, then a responsibility to compensate according to unit prices could not be recognized on a truly consensual basis. The court of appeal discussed neither the contractor's knowledge nor the possibility of finding an implied agreement to pay unit prices. Instead, it accepted the trial court's conclusion that unit prices fairly measured the contractor's benefit.

In *Clement v. Sneed Brothers*, the Louisiana Supreme Court found the language of a written instrument to be ambiguous, and, in the absence

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174. The court later addressed the possibility that its conclusion of mutual error might be erroneous and concluded that judgment should be rendered for the subcontractor even if the general contractor had been aware of the plan modifications at the time the contract was signed. It stated: "Even assuming there was error only on the part of [the subcontractor], the same result would obtain as unilateral error of fact is sufficient to abrogate a contract." 276 So. 2d at 400.

175. 240 La. 48, 121 So. 2d 235 (1960).
of extrinsic evidence disclosing a mutual intention, it concluded that the supposed agreement was void. The instrument, styled a "Side Letter of Agreement," supplemented a standard form mineral lease. It expressed a commitment of the lessees to "drill or cause to be drilled a well on . . . land [of the lessor] or on lands that would be pooled therewith." After the passage of the time specified in the document for the commencement of drilling, the lessor sued for dissolution of the lease and damages. The trial court decreed the lease to be terminated and awarded $60,000 as damages. On appeal, the lessees contended that the document evidenced an obligation of the lessor to consent to voluntary unitization and that her arbitrary refusal to sign unitization contracts made their compliance with the drilling commitment impossible. The lessor, to the contrary, asserted that she incurred no such commitment and that the lessees' drilling commitment was unconditional. The court found that the language of the lease did not fully support the contention of either party. In particular, it noted the existence of provisions negating the existence of an unconditional drilling commitment by lessees and the absence of language expressly obligating the lessor to consent to reasonable proposals for voluntary unitization. Because the parties had entertained different intentions, the court concluded that no contractual agreement had been reached and consequently reversed the judgment awarding damages for violation of contractual commitment.

Because the lessees did not persist in asserting a claim dependent upon the recognition of the contract they alleged to exist, the court was not called upon to determine whether the lease could be upheld despite ambiguity and differing perceptions of the parties. However, the opinion suggests that an ambiguous instrument might be construed in accordance with the perceptions of the party whose perceptions are thought to be better grounded, and the concurring opinion of Justice McCaleb indicates that he, for one, would have been willing to adopt such an approach. Lyons Milling Co. v. Cusimano is another decision refusing to recognize contractual commitment because of ambiguity in the communications through which agreement was thought to have been achieved. The plaintiff, a flour miller in Kansas, sued the defendant, a macaroni manufacturer in New Orleans, for damages for the breach of a contract

176. 240 La. at 53, 121 So. 2d at 236.
177. In his concurring opinion, Justice McCaleb indicated that he believed the terms of the document to support the position of the lessees that the lessor was to include her lands in reasonable pooling arrangements. Thus, if her refusal was not to be classified as a breach, he would at least regard it as an occurrence relieving the lessees of their drilling commitment. Hence, he would have recognized the claim of the lessees to maintain the lease without payment of delay rentals. Because the lessees had abandoned their claim for that relief, Justice McCaleb concurred in the judgment reversing the lower court's judgment awarding damages for breach of contract. 240 La. at 59-62, 121 So. 2d at 238-40.
to purchase flour. The defendant contended that the flour shipped by the plaintiff did not meet the description of the flour he had ordered. When the defendant ordered through the plaintiff's sales representative in New Orleans, he emphasized that he desired to purchase only flour milled by a particular mill located in Lyons, Kansas. The defendant specified flour from this facility because its product in the past had had a gluten content well suited for the preparation of macaroni, whereas flour from another of Lyons' mills had proved deficient in qualities important in macaroni production. The plaintiff's sales representative acknowledged that the defendant had made his position clear and that he had endeavored to specify flour from the Lyons, Kansas mill in his telegram to the plaintiff relating the defendant's order. The sales representative's telegram was not introduced into evidence. However, Lyons' letter of confirmation was introduced, and it described the sale as one of "Telegram" flour (Lyons Milling Company's brand name), "f.o.b. Lyons, freight allowed." When flour not milled in Lyons, Kansas was shipped to New Orleans, the defendant refused to accept it. The plaintiff then insisted that the flour was the same quality as flour from its Lyons, Kansas mill, and the defendant expressed willingness to accept it if a test he proposed showed it to have the gluten content requisite for making macaroni. The plaintiff refused to permit such testing, and, after selling the flour to another, sued for damages.

The supreme court did not regard the New Orleans sales representative to be empowered to obligate the plaintiff. Thus, the defendant's relationship with the plaintiff depended upon the legal consequences to be attributed to the order submitted by the sales representative to the plaintiff and the plaintiff's letter of confirmation to the defendant. The court concluded that the defendant was not unreasonable in believing that the plaintiff had expressed commitment to ship flour from its Lyons, Kansas mill. Accordingly, the court held that "the error or misunderstanding of the parties permitted either of them to avoid the contract." 179

The court's resolution of the controversy was certainly correct. Because the defendant's offer to the plaintiff was formulated by the plaintiff's New Orleans "sales representative" who testified that the message expressed willingness to buy flour milled by a specific facility, the situation was inappropriate for recognizing a contractual commitment defined in accordance with the plaintiff's perceptions. On the other hand, the recognition of a contractual relationship in accordance with the defendant's perceptions might well have been justified. The court's emphasis on the reasonableness of the defendant's beliefs and its express reference to Civil Code articles permitting the recognition of contractual commitments in

179. 161 La. at 206, 108 So. at 416.
cases of ambiguous expression\textsuperscript{180} indicate that the court might well have been willing to recognize the contractual arrangement perceived by the defendant despite the plaintiff's contrary understanding. However, because the defendant sought only to defeat the plaintiff's claim for damages, the court was not called upon to discuss the possibility of recognizing such an arrangement.

The court in \textit{Talley v. Blake}\textsuperscript{181} considered whether individuals signing documents did so as parties to the transaction or as representatives of another they sought to obligate. One of the documents, a promissory note signed by both defendants, in no way mentioned the corporation for whom the defendants allegedly acted. The other document, an act of sale of corporate stock, clearly identified the defendants as purchasers. The plaintiff obtained judgment against both defendants \textit{in solido} in accordance with the terms of the promissory note. The defendants, both at trial and on appeal, contended that they had not intended to acquire the plaintiff's stock in their own right, but only for the corporation whose shares were being sold, and thus that they did not intend to incur personal liability by signing the note. The plaintiff maintained that he had viewed the defendants as the purchasers of the stock he sold and thus that he regarded their signatures on the note to evidence their personal obligations.

The court of appeal concluded that the defendants had failed to prove their lack of intention to obligate themselves personally. Further, the court asserted that the defendants would not have avoided responsibility by demonstrating the absence of such an intention, because the plaintiff was not required to presume that their principal motive was to purchase stock without incurring personal liability. Thus, the court used principal cause language to support the recognition of contractual commitment in accordance with the terms of unambiguous written instruments. Furthermore, if the note in question were negotiable, then, under the express provision of the Louisiana Revised Statutes,\textsuperscript{182} the presence of defendants' names without identification of their purported principal would preclude introduction of evidence of intention to act only in a representative capacity.

\textbf{Errors as to Substance}

Because the Civil Code articles addressing error as to "substance" could well provide basis for attaching legal significance to certain assump-

\textsuperscript{180} The court quoted Civil Code articles 1957 and 1958, quoted \textit{supra} p. 923. Civil Code article 2474 was also quoted. It provides: "The seller is bound to explain himself clearly respecting the extent of his obligations: any obscure or ambiguous clause is construed against him."

\textsuperscript{181} 322 So. 2d 877 (La. App. 1st Cir. 1975).

\textsuperscript{182} LA. R.S. 10:3-403 (1983).
tions which would not be apparent to perceptive co-contractants, the appellate cases concerning these articles warrant careful consideration. The following discussion concerns the cases addressing error in terms of substance and several factually similar cases in which this term was not employed. Cases concerning misunderstanding as to the identity of the contractual object provide the first topic of discussion. Thereafter, the decisions involving ambiguity in the expression of contractual commitments receive attention.

Because the Civil Code articles concerning error as to substance address assumptions concerning attributes of mutually identified contractual objects, it is initially surprising that a number of misunderstandings as to the identity of contractual objects are discussed in terms of error as to substance. This practice can be explained by the absence of codal articles expressly addressing such misunderstandings as to identity of objects and the undeniable susceptibility of existing provisions concerning substance to a fortiori extension. Further, the earliest Louisiana cases referring to error as to substance in this context were decided under the Digest or Civil Code of 1808, which, like the French Civil Code, made express reference only to error as to the “person” of a co-contractant and error as to “the very substance” of the contractual object. Thus, to ground relief upon error almost always required that the error be classified as one affecting substance.

Berard's Heirs v. Berard was perhaps the earliest case to employ such an approach in the case of misunderstanding as to the identity of the contractual object. In that case, the defendant, the highest bidder at the public sale of a succession asset, resisted his coheirs' demand for the purchase price by contending that he had not intended to buy the asset described in the procès-verbal. This document described the inchoate title to land under a "back concession." Evidence revealed, however, that the decedent and his son, the defendant, had located and regarded as the back concession land to which the decedent was not entitled under the terms of the grant. Although not entirely clear from the report, the land as located was probably surveyed as a succession asset, and this located land, as opposed to land clearly within the terms of the concession grant, was examined by the appraisers of the succession. In any event, the court concluded that the defendant's intention was to buy the tract which had actually been located. It further found that this located land did not belong to the succession and concluded that there was "error in the sale affecting the substance of the thing sold." Thus, the court rejected the de-

183. See supra note 19.
184. 2 La. 1 (1830). The controversy preceded the enactment of the Louisiana Civil Code of 1825.
185. 2 La. at 4.
mand of defendant’s coheirs to regulate the transaction in accordance with the terms of the adjudication.

Upon initial consideration, the decision appears particularly significant because bidders at a public sale should normally bear the risk of inaccuracy of their assumptions as to the identity of assets sold. However, the Berard situation is distinguishable. First, the litigation involved coheirs who probably were aware of the location their ancestor had made. Second, the succession proceedings themselves may well have supported the defendant’s contention concerning the identity of the property involved in the public sale. Finally, there may have been question as to whether the succession was entitled to the land to which the back concession had unquestionably pertained. Thus, apart from the case’s vintage, the highly unusual fact situation limits the implications of the decision for other controversies involving misunderstandings as to the identity of contractual objects.

Patterson v. Koops also concerned the significance of misunderstanding as to the identity of the object in a sale transaction. The seller sought specific performance of an alleged contract for the transfer of lots situated on Park Row. The defendant resisted the demand contending that he had intended to purchase lots on City Park Row and thus that error existed as to the subject of the contract. Both streets were located in what the court termed a “newly opened residential section.” The court described City Park Row as an improved thoroughfare and Park Row as a blind alley leading to the rear of the lots facing City Park Row. In addition to the Park Row lots involved in the demand for specific performance, the plaintiff also owned lots on City Park Row which bore “For Sale” signs of plaintiff’s brokers. The court found that the defendant believed the document he signed to concern lots on City Park Row and that he was unaware of the existence of Park Row. It also found that a clerk employed by one of plaintiff’s brokers had described Park Row and City Park Row as two names for a single street. The court concluded that there was no “meeting of the minds” and that the plaintiff’s demand for specific performance was properly denied. The articulated rationale of the decision is not limited to situations in which the perceptions of the party complaining of error are reasonably based. As in Berard, however, the unusual circumstances of the case provide ready basis for distinguishing future situations.

Lawrence v. Mount Zion Baptist Church is another decision refusing to recognize contractual commitment where parties contemplated

186. Id. at 3.
187. Id. at 2.
188. 10 Orl. App. 266 (La. 1913).
189. Id. at 268.
190. 1 La. App. 404 (Orl. 1925).
different contractual objects. The plaintiff, the owner of immovable property, sought damages for the breach of an alleged purchase agreement. The defendant resisted the demand by contending that it had intended to purchase another tract. Evidence clearly established that the parties had different tracts in mind. The misunderstanding began when the defendant's pastor expressed interest in property bearing a real estate agency's "For Sale" sign. The agent handling the transaction erroneously assumed that the pastor was referring to the plaintiff's property, which was situated on the same street approximately one block from the property the pastor sought to purchase. As a result of this error, the agent had the pastor sign a document describing the plaintiff's property instead of the property the pastor and his church sought to acquire.

In the course of its opinion rejecting the plaintiff's demand for damages, the court noted the absence of any evidence that the plaintiff's property also bore a "For Sale" sign and the presence of testimony that the municipal numbers upon the property which the defendant sought to purchase were not readily apparent. This discussion and other comments strongly suggest that the court believed the misunderstanding attributable in significant part to the fault of the agency and that this fault was in turn imputable to the plaintiff. However, the court expressly stated that such determinations were unnecessary to resolution of the controversy.

In support of this position it quoted the language of a Louisiana Supreme Court decision involving a factually dissimilar situation: "Error is error. No matter by whom or what induced, it vitiates the consent; and without consent, there can be no contract." Thus, the case can certainly be cited for the proposition that misunderstanding as to the identity of a contractual object, without regard to the reasonableness of the parties' perceptions, precludes the recognition of contractual commitment. As with the previously discussed cases, however, the context of the court's pronouncement should not be forgotten.

In Colas v. Donaldson, a buyer demanded rescission of an act of sale which did not include all of the land which he thought he was acquiring. The act of sale had been preceded by a purchase agreement identifying the property by the municipal numbers of the house which the buyer sought to purchase. After the act of sale had been executed and the buyer had moved his family into the residence, activities of the city prompted a survey which revealed that the property described in the act of sale did not include all property within the four fences surrounding the residence and that the residence itself was constructed partially upon the property of adjoining owners. The vendor, however, did have title to all the property described in the act of sale. Although the vendor resisted

191. Id. at 406.
192. Id.
193. Id. (quoting Newman v. Scarborough, 115 La. 860, 40 So. 248 (1905)).
the demand for rescission, he admitted at trial that he had believed that
he was selling all property enclosed within the physical boundaries sur-
rounding the residence. The court had little difficulty reaching its deci-
sion to grant rescission. The court observed that the buyer’s motive for
making the contract was wholly lacking and indicated that the buyer’s
error could be classified as one as to the substance of the contract.193

Schmitz v. Peterson194 involved a demand for rescission grounded upon
a realtor’s misrepresentation as to the location of land. The transferors
had no interest in any of the land exhibited to the acquirer, but they
apparently believed that their rights pertained to this tract. The court,
however, did not discuss the implications of any such mutual error. It
simply grounded its decision on the occurrence of misrepresentation as
to the substance of the contract.197 This decision was cited as authority
for a judgment of rescission in Anzelmo v. Industrial City Co.198 In
Anzelmo, the purchaser in a credit sale established that the property
described in the act of sale was not the property which had been shown
to him by a realtor who received a commission from the vendor. The
court ruled that testimony as to the agent’s representations was admissi-
ble despite the presence of language in the agreement to sell negating the
authority of agents to make representations concerning matters not ad-
dressed in that document. This ruling, together with the court’s syllabus
and its discussion of Schmitz, clearly establishes that the decision is
predicated upon misrepresentation.199

The Civil Code articles addressing error as to substance have also
been discussed in several decisions concerning misunderstandings as to the
performance to be rendered. The most significant of these, Lyons Milling
Co. v. Cusimano200 and Ouachita Air Conditioning v. Pierce,201 have been
previously considered in the discussion of the jurisprudential concept of
error as to principal cause. The courts in both cases add support to their
decisions by reference to the articles concerning error as to substance.

Error as to the Nature of the Contract

The literal terms of Civil Code article 1841 deny the existence of a
contractual arrangement in all cases of misunderstanding as to the nature

195. Id. at 392. See also Franklin v. Evans, 315 So. 2d 818 (La. App. 4th Cir. 1975);
Perdue v. Johnson, 35 So. 2d 158 (La. App. 2d Cir. 1948). Both decisions concerned
misrepresentations as to land boundaries made by real estate agents engaged by the sellers
of property, and both courts held that the buyers were entitled to rescind the contract of
sale because there was error as to substance.
196. 113 La. 134, 36 So. 915 (1904).
197. 113 La. at 138, 36 So. at 917.
198. 6 La. App. 79 (Orl. 1927).
199. Id. at 79, 81.
201. 270 So. 2d 595 (La. App. 2d Cir. 1972), discussed supra text accompanying notes
152-59.
of the contract. Thus, if a misunderstanding can be classified as one concerning the nature of the agreement, even an objectively unreasonable perception could be viewed as a bar to the recognition of a contractual relationship. The following discussion of appellate cases examines the courts' categorizations of misunderstandings and seeks to determine the extent to which the reasonableness of perceptions has affected the availability of relief.

Ostensible Sales

In several cases, parties who signed instruments of conveyance have alleged that they intended only to mortgage their interests. Green v. McDade is representative of the cases in which such contentions were successfully advanced. The plaintiff, who had signed an act of cash sale executed in authentic form, brought an action alleging slander of title by parties whose claims were based on that instrument. The defendants admitted the plaintiff's possession of the land in question, but denied his ownership, and the proceeding was accordingly conducted as a petitory action. When the defendants sought to establish their title by introducing the act of sale signed by the plaintiff, the plaintiff objected to the admission upon contention that the instrument was obtained by fraud and error. In particular, the plaintiff asserted that he was illiterate, that he had intended not to sell but only to mortgage the property, and that the recited cash price had not been paid. The act of sale was admitted into evidence, and the plaintiff was permitted to give testimony concerning his contentions. Although the trial judge believed that the original agreement was intended to be a sale with the right of redemption, he concluded that "the long silence of the plaintiff barred his right to recover." The court of appeal, in reversing this judgment and declaring the plaintiff to be the owner of the property, commented that the trial judge had failed to "carry his belief to the . . . proper conclusion" and ruled that the plaintiff had no burden of proving his entitlement to land he had continued to possess. Further, the opinion clearly reveals that the court believed that the defendants knew that the plaintiff contemplated only the creation of a mortgage.

In Baker v. Baker the Louisiana Supreme Court cited the preceding case approvingly and held testimonial evidence admissible to establish that a party who signed an act of sale had believed he was only securing indebtedness. However, the purported vendee was not the party asserting that a conveyance was intended, and he had in fact executed an act of sale unto the purported vendor after the latter had extinguished the in-

202. See supra p. 894.
203. 17 So. 2d 637 (La. App. 2d Cir. 1944).
204. Id. at 640.
205. 209 La. 1041, 26 So. 2d 132 (1946).
debtedness that the original act of sale was intended to secure. Accordingly, this decision, like the first, has little significance for the atypical situations in which parties truly contemplate different transactions.

Williams v. Robinson presented a situation extremely similar to the one resolved in Green. The plaintiff in possession of land sued the defendant for slander of title. The defendant, asserting that he had acquired the plaintiff’s interest, caused the proceeding to be conducted as a petitory action. Once again, the plaintiff alleged that he had only intended to mortgage his interest and that the act of sale bearing his signature was obtained by fraud or error. The court, emphasizing the plaintiff’s continued possession and his age and limited education, concluded that he had sustained his contention that he had not intended to sell his interest. Although this finding strongly suggests that the court believed that the defendant had been aware of the plaintiff’s intentions, it nonetheless stated that the plaintiff’s error alone provided basis for relief.

In Gross v. Brooks, the court indicated that rescission is available even though the named vendee believed that a conveyance was intended. The court first reviewed the testimony indicating the defendant’s awareness of the plaintiff’s belief as to the legal significance of the document. After concluding that the plaintiff had failed to establish misrepresentation concerning the transaction, the court considered the availability of rescission based solely upon the plaintiff’s belief as to the nature of the document in question. Citing Civil Code article 1841 and the three previously discussed cases, the plaintiff contended that his error alone entitled him to relief. The court did not dispute this contention but carefully reviewed the evidence in the three cases in which error was established and concluded that the plaintiff had failed to prove that he had not intended to convey his interest.

Release Documents

The Louisiana jurisprudence includes numerous cases concerning the rights of personal injury claimants who have signed release documents describing the extinction of the claim upon which suit is based. The claimants in these cases, of course, assert that they did not intend the documents to affect the claims in question. A number of the decisions address the issue in terms of error as to the nature of the contract. One of the most significant cases is the 1963 supreme court decision in Wise
The claimant, who was over seventy years old at the time of the accident in question, signed a release document reciting the receipt of $150 after receiving that sum from an insurance adjustor. The signing of the release occurred in the claimant's home less than twenty-four hours after she was injured. The claimant and the insurance adjustor gave different accounts of the transaction. According to the claimant, the adjustor stated that the driver who had caused her injury desired to help with medical expenses, and the adjustor assured her that this money would have nothing to do with her legal rights. She thus asserted that she signed the document to acknowledge receipt of money and to express her gratitude to the driver. Additionally, she alleged that she had not been in condition to read the document. On the other hand, the insurance adjustor asserted that he revealed his relationship with the insurer and the insured and that he advised the claimant that he desired to negotiate a settlement. He further related that he believed the claimant to have read the release because she held the document for a sufficient time for reading. However, he did acknowledge that the entire discussion and signing was accomplished in approximately fifteen minutes. The supreme court observed the need "to protect persons suffering personal injuries from the possibility of error inherent in quick releases, compromises or settlements." It then affirmed the trial court's judgment in favor of plaintiff, and in so doing it described her error as to the nature of the contract to be reasonably based. It did not, however, expressly find the alleged misrepresentations to have occurred.

*Wyatt v. Maryland Casualty Co.* is another decision finding a misunderstanding as to the nature of an arrangement. The plaintiff, who had been injured while driving his employer's truck, sued the driver of another vehicle and the driver's insurer. The defendants, asserting that the plaintiff's complaint had been released or compromised, filed an exception of *res judicata*. Their contention was based upon the presence of plaintiff's indorsement on a draft naming as payees the plaintiff, the plaintiff's employer, and a body shop that had repaired the damage the accident had caused to the truck belonging to the plaintiff's employer. The defendant's insurer, the issuer of the draft, had written it for the exact amount of the sum due to the body shop. The draft, on its reverse side, contained printed language providing that indorsements would extinguish all claims of all indorsers against the insurer and its insured. The draft had been forwarded to the plaintiff's employer, who indorsed, obtained the plaintiff's indorsement, and delivered the draft to the body shop. The plaintiff and the insurer never discussed the plaintiff's claim. The court acknowledged that the insurer's representative desired to ob-

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211. 244 La. 157, 151 So. 2d 356 (1963).
212. 244 La. at 173, 151 So. 2d at 362.
213. 160 So. 2d 383 (La. App. 2d Cir. 1964).
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tain releases from all parties concerned. However, it readily concurred in the trial court's conclusion that the plaintiff did not intend his indorsement to affect his claim for personal injuries.214

Howard v. Pan American Fire & Casualty Co.213 is of interest because it analyzes the supreme court's decision in Wise and illustrates that misunderstandings as to the nature of an arrangement seldom occur in the absence of misrepresentation. The plaintiff in Howard, like the plaintiff in Wise, signed a release document and subsequently asserted that he had not intended to relinquish his claims for personal injuries. He asserted that representations by an insurance adjustor caused him to believe that his signature served only to initiate the payment of funds needed for medical examination and treatment. The insurance adjustor, on the other hand, testified that he made no such misrepresentations. The trial judge believed the testimony of the insurance adjustor and concluded that no misrepresentation was made concerning the terms of the release document. After careful consideration, the court of appeal affirmed this finding.

In assessing the implications of the Wise case for the resolution of the situation under review, the court characterized the Wise decision as one that "rested primarily on a determination of credibility of witnesses."216 The court acknowledged that the Wise opinion directed that rush releases be carefully scrutinized but, nonetheless, concluded that the supreme court had not intended to foreclose the possibility of rapid settlement of a personal injury claim in a situation in which the claimant is fully aware of the significance of his actions. Further, the court did not rest its decision solely upon the finding that misrepresentation had not occurred; it also concluded that the plaintiff had in fact made no "error as to the matter in dispute or the nature of the contract."217

Because the cases finding error as to the nature of the contract have identified the misunderstanding itself as the basis for refusing to recognize contractual commitment, litigants opposing the recognition of contractual relationships have logically asserted that their erroneous assumptions are among those resulting in misunderstandings of this classification. As might be imagined, not all such contentions have been successful. For instance, in United Gas Pipeline Co. v. Singleton,218 a party sought to rescind a compromise document prescribing the extinction of a claim that he allegedly had not intended to extinguish. However, he readily acknowledged that the document was intended to extinguish certain of the disputes involved in the litigation. The party resisting rescission, on the other hand,

214. Id. at 386.
216. Id. at 757.
217. Id. at 758.
218. 241 So. 2d 93 (La. App. 3d Cir. 1970).
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contended that its representatives had intended to extinguish the claim in question. Further, the evidence in addition to the written document provided a reasonable basis for believing that the claim was being extinguished. The court emphasized that the only alleged error concerned the legal effect of the document on the claim in question and readily concluded that the party seeking rescission, because he knew the document to be "a compromise of litigation," had not labored under error as to the nature of the contract. Accordingly, the court proceeded to define the legal relationship in accordance with the views of the party whose perceptions were found to be better based.

Other Contracts

The Louisiana Supreme Court identified error as to the nature of a contract in Becker & Associates v. Lou-Ark Equipment Rentals Co. The controversy concerned the enforceability of an option to purchase a piece of heavy equipment that had been leased. The parties had signed separate lease and option documents, but neither document specified the duration of the option. The issue, as framed by the supreme court, was whether "the option was null and void for failure to stipulate a time period for the acceptance of the promise to sell." The court of appeal had reasoned that the duration of the option was limited by the duration of the lease which, because of the absence of a provision concerning duration, was a month to month arrangement under Civil Code article 2686. Accordingly, this court found the duration of the option to be sufficiently defined. Surprisingly, the supreme court rejected this construction and ruled that there had been but one continuous lease with no provision limiting its duration. On that basis, the court held the option provision unenforceable. Nonetheless, the court refused to ignore the option document and define the relationship of the parties solely in accordance with the terms of the lease document. Further, the court's statements concerning the availability of relief predicated upon one party's error as to the nature of a contract were made in discussing the rights of a party whose perceptions, at least in a lay person's view, were extremely well based.

Cameron Crew Boats v. Twin Disc, Inc., is another of the decisions classifying a misunderstanding as one concerning the nature of a

219. The text of the document is reproduced in the opinion. Id. at 96-97.
220. See id. at 100.
221. Id. at 98.
222. 331 So. 2d 474 (La. 1976).
223. Id. at 477.
224. The court denied the lessor the attorney fees stipulated in the lease document and concluded that the lessor should be compensated in the amount of the fair rental value of the equipment for the period it was in the lessee's possession. Id. at 477-78.
225. Id. at 477.
226. 325 So. 2d 684 (La. App. 1st Cir. 1976).
contractual arrangement. The controversy involved the legal relationship of a manufacturer of boat clutches and the manufacturer’s distributor, on the one hand, and a vessel owner who had dealt with the distributor, on the other. The clutch on a vessel had failed, and the owner brought the vessel to a “dealer” of the distributor. Neither the dealer nor the distributor had the parts necessary to accomplish the needed repair. Telephone discussions concerning the sale of a new clutch then occurred between the distributor and the dealer. The distributor’s manager testified that he proposed to sell a new clutch at his company’s cost, provided that the vessel owner transfer the broken clutch to the distributor and pay an additional $150 representing the cost of its repair. The vessel owner’s representative testified that he had only agreed to buy a new clutch and that he would not have consented to the transfer of a clutch that was still under warranty. He also testified that he expected the defective clutch to be repaired and returned to his company. The court found that the defective clutch had been under warranty and concluded that the vessel owner’s representative would not have traded away a fully warranted clutch and also have paid in excess of $2000 for a replacement. The court also found it equally apparent that the distributor did not intend to sell a new clutch at its cost. Accordingly, the court concluded that the parties reached no understanding as to the nature of the agreement and consequently that no contract had been made.

The court did not discuss the possibility of recognizing contractual commitment in accordance with the perceptions of one of the parties as opposed to those of the other. However, the court clearly believed that each party had a reasonable basis for its position, and its judgment substantially contributed toward the restoration of the vessel owner’s previous position without imposing any undue burden on the distributor. Nonetheless, the language of the opinion identifies misunderstanding as to the nature of a transaction, without reference to the reasonableness of the respective perceptions, as a barrier to the recognition of a contractual arrangement.

**Conclusion**

**Mistaken Assumptions**

In a vast majority of the cases concerning mistaken assumptions of contracting parties, the courts have addressed the significance of the assumptions in terms of error as to principal cause. Under this concept, rescission is available only when an erroneous assumption can be

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227. Both were made party defendants, and judgment was rendered against them *in solido*. *Id.* at 688.
228. *Id.* at 687.
229. *Id.*
230. *See supra* text accompanying notes 76-151.
identified as the principal cause of the agreement. In determining whether an assumption will be so classified, the courts examine the perceptions of the party resisting rescission as well as those of the party alleging his error to be legally significant. Further, almost all opinions assert that an assumption is not to be classified as a principal cause unless the party resisting rescission knew of the assumption or had a reasonable basis for perceiving its existence. Beyond this assertion, however, the decisions contain little doctrinal guidance concerning matters to be considered in principal cause identifications. Nonetheless, an examination of the decisions reveals several factors that clearly receive attention.

Of all the factors that have influenced decisions, disparity in the economic exchange is probably the most important. A number of decisions classify erroneous assumptions as principal causes in situations involving significant disparities. Additionally, significant disparities have also been present in other decisions decreeing rescission without reference to the language of principal cause. Further, the courts, on several occasions, have articulated a preference in “case of doubt . . . in favor of a party striving to avoid a loss against one seeking to obtain a gain.” However, the denial of rescission in other instances of significant disparity clearly illustrates that other factors are considered. In particular, assumptions are less likely to be classified as principal causes in transactions having a speculative element. This is certainly the case in instances of conscious risk taking, and there is also indication that parties who assert that they viewed assumptions as matters of certainty may be denied rescission in situations in which they might more rationally have assessed the matters in terms of probabilities. Also, decisions that involve disparity in values of prestations, as well as decisions that do not, indicate a judicial inclination to allocate the risk of inaccurate assumptions in accordance with the perceptions of the party whose view, in light of all circumstances, is thought to be better based. Thus, matters such as norms in business practices and comparative expertise of contracting parties have at times


232. See, e.g., Knight v. Lanfear, 7 Rob. 172 (La. 1844), discussed supra text accompanying notes 130-32; Tircuit v. Gottlieb, 151 So. 428 (La. App. 1st Cir. 1933), discussed supra text accompanying notes 133-35.


235. Id.


237. See, e.g., Ouachita Air Conditioning v. Pierce, 270 So. 2d 595 (La. App. 2d Cir. 1971), discussed supra text accompanying notes 152-59.
received mention in principal cause identifications. Similarly, notions of negligence or other responsibility for error have undoubtedly influenced decisions.234

In short, the concept of principal cause allows courts to weigh all factors that might reasonably be considered in risk allocation. Further, the relatively few decisions addressing mistaken assumptions in terms of error as to substance or substantial quality similarly consider these factors and reach conclusions that readily could have been expressed in terms of error as to principal cause.239

Misunderstandings

The term "misunderstanding," as used in this article, encompasses any situation in which contracting parties have significantly different perceptions concerning the contractual commitments or other legal consequences to result from their communications.240 Thus, misunderstandings extend from disagreements regulated as matters of contract interpretation241 to the extremely unusual situations in which parties actually contemplate different generic contracts.242 However, the Civil Code articles concerning the significance of misunderstandings are not as clear as they might be. Accordingly, in many situations the courts may properly consider a range of possible solutions extending from the recognition of contractual commitment defined in accordance with the perceptions of one of the parties to the refusal to recognize any legal consequences whatsoever. Between these extremes, the possibility exists of requiring monetary adjustments even in the absence of value transfers and, of course, the recognition of restitutory remedies in situations in which value transfers have occurred. With few exceptions,243 the cases considered in this article have either decreed rescission or ruled that no contractual relationship was ever created. Further, value transfers provided the basis for all monetary adjustments in situations in which a contractual relationship was not recognized.244

The preponderance of cases refusing to recognize contractual commitment is primarily attributable to the criteria utilized in case selection. The decisions discussed in this article were chosen because they either referred to the Civil Code articles concerning error or they cited, or were cited

238. See generally Palmer, supra note 126.
239. See supra text accompanying notes 130-51.
240. See supra text accompanying note 3.
242. This misunderstanding is termed "error as to the nature of the contract" in Civil Code article 1841.
243. See, e.g., Talley v. Blake, 322 So. 2d 877 (La. App. 1st Cir. 1975), discussed supra text accompanying notes 181-82.
244. See Custom Builders & Supply v. Revels, 310 So. 2d 862 (La. App. 3d Cir. 1975); North Dev. Co. v. McClure, 276 So. 2d 395 (La. App. 2d Cir. 1973), discussed supra text accompanying notes 164-174.
by, decisions concerning these articles. Accordingly, the misunderstandings that have been addressed as matters of interpretation and have been resolved by recognition of contractual commitments have not been discussed.245 Also, there has been no discussion of the cases in which the parol evidence rule246 was found to preclude the demonstration of alleged misunderstandings. In the overwhelming majority of the decisions refusing to recognize contractual commitment, the courts have emphasized the reasonableness of the perceptions of the party resisting the recognition.247 Further, on occasion, the courts, using the language of principal cause, have first assumed and then rescinded a contract because the party asserting its existence should have known that the other party perceived a relationship with different provisions.248 In short, the jurisprudence provides ample basis for the recognition of contractual commitment, despite misunderstanding, in accordance with the perceptions of the party whose views are found to have been better based.

Certain misunderstandings have been discussed in terms of error as to substance. Because the Code articles concerning error of this category indicate that reasonableness of error is not a requisite to relief,249 these decisions were given particular attention. In the cases treating error as to the identity of contractual objects as an error as to substance, the parties who successfully resisted the recognition of contractual commitment had reasonable bases for their perceptions.250 Further, in all but one of these cases,251 misrepresentations influenced the perceptions of the complaining party. However, the articulated rationales of these opinions are not predicated upon the existence of reasonable assumptions, and one of the opinions asserts that error itself, however occasioned, serves as an impediment to the recognition of contractual commitment.252 Nonetheless, the court advancing this contention expressed opinion that the misunderstanding was attributable to fault of agents of the party seeking the recognition of contractual commitment.253 Also, the cases which describe ambiguity as to the terms of contractual commitments in terms of error as to substance explicitly refer to the reasonableness of the perceptions of the parties who successfully resisted the recognition of contractual arrangements.254 In sum, while the language of certain opinions

245. Civil Code articles 1945-1962 address the resolution of controversies involving interpretation of contracts.
246. Civil Code article 2276 is the primary legislative basis of the jurisprudential concept.
247. See supra text accompanying notes 152-82.
248. See supra text accompanying notes 152-63.
249. See supra text accompanying notes 52-57.
250. See supra text accompanying notes 183-201.
252. Lawrence v. Mount Zion Baptist Church, 1 La. App. 404 (Orl. 1925), discussed supra text accompanying notes 190-93.
253. Id.
254. See supra text accompanying notes 202-21.
describes error as to substance, without restriction, as a factor precluding contractual commitment, research has uncovered no decision in which a party successfully asserting such error lacked reasonable basis for his opinion.

The cases concerning error as to the nature of the contract have provided the largest number of instances in which error, apart from its reasonableness, has been said to preclude the recognition of contractual commitment. In three decisions involving ostensible sales,255 purported vendors were found to have intended only to mortgage their interests, and legal relationships were defined in accordance with their intentions. Furthermore, one of these cases expressly states that error alone is basis for relief,256 and a fourth decision,257 in which no misunderstanding was found, also asserts that error, apart from misrepresentation, suffices. However, in all decisions refusing to recognize a transfer, the purported vendor remained in possession of the property in question, and the courts expressed belief that the purported vendee either knew or suspected that a transfer was not intended.258

Error as to the nature of the contract has also been identified where personal injury claimants have asserted that they were mistaken as to the contents of release documents. Thus, the courts, without finding misrepresentation by the party asserting a release to have been intended, have found that the signing of unambiguous release documents did not result in the relinquishment of claims the documents described.259 However, in all decisions in which the signing of documents was not regarded as a basis for extinguishing claims, the claimant had reasonable basis for believing that the document did not affect the claim in question.260

Finally, several other decisions identify error as to the nature of the contract as an occurrence precluding the recognition of contractual commitment.261 However, in these situations, the party resisting the recognition of the relationship also had a reasonable basis for believing that a distinct relationship was being entered.262

In sum, the courts have described the existence of error as to substance and error as to the nature of the contract as circumstances precluding the recognition of contractual commitment. However, research has identified no decision in which a party successfully asserting the existence of such error lacked reasonable basis for his perceptions.

255. See supra text accompanying notes 203-08.
256. Williams v. Robinson, 98 So. 2d 844 (La. App. 2d Cir. 1957), discussed supra text accompanying notes 207-08.
258. See supra text accompanying notes 203-10.
259. See supra text accompanying notes 211-21.
260. Id.
261. See supra text accompanying notes 222-29.
262. Id.