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Saul Litvinoff

THE 1984 REVISION OF THE LOUISIANA CIVIL CODE'S ARTICLES ON OBLIGATIONS—A STUDENT SYMPOSIUM

INTRODUCTION

*Saul Litvinoff**

The revision of the Louisiana law of obligations was enacted into law by Act 331 of 1984. The act, effective since January 1, 1985, amends and reenacts Titles III and IV of Book III of the Louisiana Civil Code, to comprise articles 1756 through 2057. That act also instructs the Louisiana State Law Institute to transfer and redesignate articles 2004 through 2006 of the Louisiana Civil Code of 1870 as R.S. 9:2785-2787. The purpose of that transfer and redesignation is to take out of the general law of obligations certain rules that, from a strictly systematic viewpoint, belong to succession law and are better lodged in the revised statutes until properly reevaluated and amended.

Act 331 further instructs the Louisiana State Law Institute to transfer and redesignate Civil Code articles 2251 through 2267, 2269 and 2270 as R.S. 9:2741-2759, for the purpose of eliminating from the civil code those rules of registry that are not substantive precepts but only contemplate matters of detail. It is hoped that the provisions thus transferred and redesignated will be soon replaced by a comprehensive statute covering all aspects of the recordation of instruments. The same act also instructs the Louisiana State Law Institute to transfer and redesignate article 2286 of the Louisiana Civil Code of 1870 as R.S. 13:4231. The purpose is to take the matter of *res judicata* out of the civil code where it does not belong.[1] In all these instances, Act 331 clearly expresses that the redesignation effects neither an amendment to nor a reenactment of the transferred articles.

The revision of the law of obligations is the culmination of twelve years of research, study, consultation and drafting undertaken by the Louisiana State Law Institute. For whatever merit the revision may be found to have, the credit belongs to the director, Professor William Crawford, members of the council, and staff of the Law Institute, who for many years trudged painstakingly through the rugged paths of the law of obligations, processing, distilling and molding the myriad of raw materials finally arranged into the projet made into legislation by Act 331.

From the viewpoint of the reporter the most significant change introduced by the revision consists, perhaps, in the rearrangement of the different topics of the law of obligations according to a different

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* Professor of Law; Reporter for the revision of the law of obligations.

1. See 7 Planiol & Ripert, *Traite Pratique De Droit Civil Francais*, 1014-15 (2d ed. 1954).

plan. Indeed, the order followed by the Louisiana Digest of 1808 and the codes of 1825 and 1870, as the one followed by their French ancestor, expounded the law of obligations in a manner that, through a century and one half, led to considerable confusion of obligation and contract.[2] A strenuous effort to eliminate that confusion has been made in the revision. An obligation is a legal relationship, whereas, a contract is an event as a consequence of which obligations are created.[3] Contract, however, is not the only source of obligations, as they may arise also from quasi-contract, delict and quasi-delict.[4] In the new manner of presentation, all that pertains to obligations in general, regardless of origin, such as classification into different kinds, proof and performance, is dealt with immediately after the initial general concepts. Contract, and its many incidents of formation, vices of consent and effects, is treated after obligations in general, just as one of the sources of which obligations derive. It might be said that the order of presentation of a subject is a matter of only didactic importance. Perhaps, this is so. Nevertheless, a method that facilitates the learning of the law is bound to further facilitate the understanding and application of the law by those devoted to that task.

The revision has endeavored to modernize the language of the civil code articles on obligations and to eliminate obsolete and duplicated provisions. For example, new article 1965 merely states that a contract may be invalidated on grounds of lesion only in the cases provided by law, thereby eliminating the duplication of treatment of that matter in articles 1860-1880, 2589-2600, 1398, 1406 and 1407 of the Louisiana Civil Code of 1870.

The revision has endeavored, also, to clarify some aspects of the law of obligations. For example, new article 1762 makes it clear that the situations that it contemplates are mere instances of events giving rise to a natural obligation, thereby eliminating the possibility that such situations be regarded as comprising an exclusive list.[5]

In some areas modernization has been accomplished, quite paradoxically, through a reversion to centuries-old civilian principles of Roman origin. Thus, where the requirement of a putting of the obligor in default is concerned, the revision concludes that the idea reflected in the Roman maxim *dies interpellat pro homine* is more in keeping with contemporary practices and expectations, with account being taken of the value given to time in the modern business world. As a consequence, new article 1990 provides that an obligor is put in default by the mere

2. See 1 S. Litvinoff, *Obligations* § 2, 8-10 (1969).
3. See New Civil Code articles 1756 & 1906.
4. See New Civil Code article 1757.
5. See 1 S. Litvinoff, supra note 1, §§ 351-354, 610-18.

arrival of the term for performance when such term is either clearly fixed or can be readily determined from the circumstances.[6]

Nevertheless, the revision enacted in 1984 effects no Copernican changes in the Louisiana law of obligations. Civilian principles that are as fundamental as they are traditional—some of them since the time of Justinian—have been retained. Cause, natural obligations and lesion are examples of basic ideas that have been thus preserved.

Though a detailed exposition of changes effected by the revision of the law of obligations exceeds the scope of this introductory note, at least a few of those changes not covered in the articles here prefaced merit cursory highlighting.

The principle of good faith, that article 1901 of the Louisiana Civil Code of 1870 related to the performance of contracts, has been extended to all obligations, regardless of origin. Thus, new article 1759 provides that good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation. The new precept, consistent with views adopted in modern civil codes, gives appropriate recognition to the overriding character of the principle of good faith and serves as a foundation for rules that, though not novel, are now formulated in legislative fashion for the first time. An example is the duty to mitigate damages expounded in new article 2002, a duty that behooves obligees of conventional as well as obligees of delictual obligations.

In the area of damages, new article 1998 changes the law in part by allowing recovery of damages for nonpecuniary loss when a contract was made for the gratification of a nonpecuniary interest and, because of circumstances surrounding its formation, or breach, the obligor knew, or should have known, that a breach would cause nonpecuniary loss. The same article allows that kind of recovery when, regardless of the nature of the contract or the purpose for which it was made, the obligor, through his breach, intended to aggrieve the feelings of the obligee. It is hoped that this kind of language, perhaps more precise than the one in which article 1934(3) of the Louisiana Civil Code of 1870 was couched, will allow the courts a more flexible approach to the problem of recovery for nonpecuniary loss in contractual matters.[7]

Concerning attorney fees, new article 1958 allows that kind of recovery when a contract is rescinded because of fraud, and new article 1964 allows such item of recovery when rescission is obtained on grounds of duress. In that manner, the policy reflected in the 1968 amendment to articles 2545 and 2547 of the Louisiana Civil Code has been widened in scope.

In the difficult matter of impossibility of performance, new article

6. See 2 S. Litvinoff, *Obligations* §§ 217-219, 401-08 (1975).
7. See Litvinoff, Moral Damages, 38 La. L. Rev. 1 (1977).

1877 states that, when a fortuitous event has made a party's performance impossible in part, the court may reduce the other party's counterperformance proportionally, or, according to the circumstances, may declare the contract dissolved. The law is thus changed since a court is now allowed to uphold a contract while reducing the extent of the performances to which the parties bound themselves, a change that may facilitate reasonable and fair solutions in situations where parties in good faith are overwhelmed by unforeseen adversity.

The scholarly essays that comprise the following symposium address themselves to other areas of the law of obligations where the revision has made readily noticeable changes if not of substance, then at least structure. Each essay provides a useful exegetical analysis of the new articles and shows the results of a contrast with the treatment given to the subject in the Louisiana Civil Code of 1870, without overlooking interpretation of the latter by the jurisprudence. The essay that deals with expression of consent through offer and acceptance clearly enhances the incorporation into the civil code of Louisiana of the concept of a revocable offer that now has a place beside the traditional Louisiana offer which is irrevocable for a reasonable period of time. It also discussed the adoption of two different approaches to the problem of the time of contract formation, a problem who solution depends now on the revocable or irrevocable character of the offer.

The essay devoted to detrimental reliance discloses some of the implication of having given legislative recognition to that reason for holding a party bound, and it explores the consequences of having thus expanded the traditional Louisiana doctrine of cause. The essay addressing the differences between remission of solidarity made to one obligor and remission of the solidary debt made to one obligor clearly explores the consequences of one and the other kind of remission and discusses the elimination of the need for a reservation of rights on the part of an obligee who does not intend to liberate all his solidary obligors.

The paper that deals with *stipulation pour autrui* raises the interesting question whether the revision does or does not change the law in that area and analyses the consequences of the incorporation of some rules which, although not new, had not been made express before the revision. The essay devoted to contract dissolution, beside an overview of that remedy, considers the recognition given to dissolution by a party's initiative as an alternative to judicial dissolution, thereby introducing flexibility into the rather rigid scheme contained in the Louisiana Civil Code of 1870. The paper that addressed assumption of obligations contains a serious effort to show why that manner of transferring obligations differs from the mechanics of third party-beneficiary contracts to which, occasionally, it is a counterpart and also shows that the implications of assumption of obligations, though alluded to, were not fully expounded in the code of 1870.

The writers of the following essays have done commendable work. They not only go into great detail when necessary, but they also contribute warranted criticism that may serve as a foundation for further improvement of the law. Their discussion of the new articles should prove useful to the bench and bar of Louisiana in applying the revised law of obligations to situations encountered in practical experience.