

# **Louisiana Law of Obligations in General**



# Louisiana Law of Obligations in General

A Comparative Civil Law  
Perspective

A Treatise

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Foreword

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# Foreword

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*“A teacher affects eternity; he can never tell where his influence stops.”*

Henry Adams

For 52 years and counting, Professor Alain Levasseur has affected eternity. A multilingual scholar at the LSU Paul M. Hebert Law Center, Professor Levasseur has been a dedicated teacher who challenges his students to be learned in the law as he imparts the vast knowledge and wisdom he has accumulated studying and teaching civil law systems and the law of obligations. His goal is always that his students would not only be practitioners, but also scholars of the law, who appreciate and comprehend the past and the continuing development of our civil law system.

As a recent student turned teaching assistant in his Legal Traditions class wrote: *“his demanding demeanor and immense intellect can initially intimidate, but that is immediately displaced by respect and admiration for his vast reservoir of knowledge and his ability to inspire legal scholarship and respect for Louisiana’s civil law heritage.”* Jacqueline W. Sanchez.

Professor Levasseur has shared his knowledge by teaching as a visiting professor in universities throughout the world, was the recipient of a prestigious Fulbright Scholarship, and was honored with a Doctor of Laws from two universities in France. A proficient writer, he has published 24 books in English, 8 books in French, and numerous scholarly legal articles in English, French, and Spanish.

Professor Levasseur is equally conversant in French and English, and possesses knowledge of Spanish—invaluable assets for a scholar given the influence of Spanish and French law in Louisiana. The private, substantive law of Louisiana is contained in the venerable Civil Code, which is historically tethered to the law of Spain, France, and Rome. History teaches that those who wrote the first Civil Code of Louisiana relied on a draft of the French Napoleonic Code. They initially wrote the Code in French, were influenced by the law of Spain (which, in turn, was influenced by the law of Rome), and then translated the Code into English. The Professor’s remarkable skill-set, based on his proficiency in the languages of the Civil Code, and his decades of studying and teaching the Law of Obligations, makes him imminently qualified to write this treatise.

As he recognizes in the first chapter, the law of obligations permeates our legal interactions, from the most mundane to multi-million-dollar transactions and throughout all manner of human interactions. I have known of his scholarship since the 1970s, when I was a student at the LSU Law Center. I appreciated his scholarship as a practicing attorney seeking support for a legal position being advocated. I am grateful for his scholarship as a Judge trying to resolve matters I am called upon to decide. His scholarship has inspired me to work harder and delve deeper in resolving the often vexing issues with which I am confronted as a Judge, while remaining true to our civil law heritage.

Professor Levasseur's treatise sparkles with brilliance from this tireless and dedicated scholar. This treatise represents an exhaustive and complete analysis. It is scholarly and worthy of praise for its stimulation of the intellect. However, the treatise also seeks to place at the command of practitioners and judges a body of learned information to assist in resolving issues within the law of obligations. In that respect, my learned friend serves our system of justice intellectually and practically. Professor Levasseur's hope, as one who has studied and taught the law of obligations throughout his career, is a return to the basics of our rich civil law heritage, which provides that the core principles are codified into a system that is the primary source of law. Although his treatise recognizes the secondary sources of law, such as case law and treatises, the foundation of any analysis is the Civil Code articles. Thus, his treatise is a civilian's "tool-box" with emphasis on the codal provision as the primary source of law, with the relevant doctrinal writing and case law indicated secondarily.

Often, I am challenged to resolve issues related to the law of obligations. Always, I turn to Professor Levasseur's scholarship for guidance and counsel. This prolific scholar has dedicated his professional life to in-depth study and the sharing of his wisdom and scholarship through his writings. He has served our civil law system well and this treatise continues that service.

John L. Weimer  
Justice, Louisiana Supreme Court

# Author's Notes

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We have chosen the following two quotes to provide a background we believe will help in understanding the approach we have purposefully taken in writing this Treatise:

*Legislation is not a pure act of power; it is an act of wisdom, justice and reason. The legislator does not exercise authority as much as he serves a sacred office. He must not forget that legislation is made for men and that men are not made for legislation. The role of legislation is to set, by taking a broad approach, the general propositions of the law, to establish principles which will be fertile in application, and not to get down to the details of questions which may arise in particular instances. It is for the judge and the jurist, imbued with the general spirit of the laws, to direct their application ... The legislator must pay attention to case law; it can enlighten him, and he can correct it; but there must be a body of case law ...*<sup>1</sup>

*[ ... ], civilian methodology and the civil code instruct that the sources of law are legislation and custom, and that legislation is the superior source of law. LSA-C.C. arts 1, 3. Legislation, which is defined as the solemn expression of legislative will, LSA-C.C. art. 2, is to be interpreted according to the rules set forth in the Civil Code. [arts 9–11] ... Although hesitant to disagree with two eminent scholars, we are constrained to follow the unambiguous words of the code article ... In Louisiana, legislation is superior to any source of law LSA-C.C. art. 2. We apply legislative provisions as written because this court cannot and should not ignore the plain expression of legislative will evidenced in the clear and unambiguous words of LSA-C.C. art. 466 ... Although jurisprudence is persuasive in analyzing statutory law in our civil law system, the courts are not the law-makers. The sources of law, as stated in the Civil Code, are legislation and custom. Judicial pronouncements are not sources of law. In our civilian jurisdiction, legislation, the solemn expression of the legislative will, is the superior source of law. Jurisprudence constante carries “considerable persuasive authority,” but is not the law and must yield to legislative pronouncements.*<sup>2</sup>

The presentation of this Treatise, the structure and design of its content are meant to illustrate the principles governing the sources of law in a civil law jurisdiction,

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1. Code Napoléon or Code Portalis, Alain Levasseur, 43 Tul. Law Review 762–774, 1969.

2. Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Commission, 903 So.2d 1071, 1085, 1086, 1092 and 1109, (La. 2005).

such as Louisiana, as these sources are outlined in the short excerpts, above, from Portalis' speech in his presentation of the French Civil Code to the Assemblies. These principles were followed and applied by Justice Weimer in the case cited above. Because the reader may not be familiar with those principles which constitute the framework of the civil law system, our presentation of the subject matter of this Treatise should be considered as an attempt to provide an explanation and offer several illustrations of their scope of application and working relationship in one of the most important subject matters of a Civil Code, the law of **"Obligations in General."**

In writing "Deciphering a Civil Code," one of our purposes was to give illustrations of the specificity of the civil law system and explain how its component parts work together in an effective synchronization. "Obligations" being the field of excellence of the civil law at work will serve to illustrate the principles governing the ranking of sources of law and their working relationship as emphasized by Portalis and as explained by the Louisiana Supreme Court in the words of Justice Weimer.

We have tried, as much as possible, to write a Treatise not for the rostrum of the law professors but for the benefit and use of judges and lawyers who are seeking a general and comprehensive treatment of the fundamental "Law of Obligations in General." For that reason, and to this end, we have worked at exposing and explaining the practical significance of the "Law of Obligations" with the support of references to the legal systems of Quebec and France, references that will lead the reader to as thorough as possible a comparative treatment of that most important Title 3 "Obligations in General" of Book 3 of the Louisiana Civil Code. Besides the inclusion of Civil Code articles from Quebec and France, we have translated writings from two major contemporary French treatises believing that they would be of great help in understanding the law of Louisiana on the same topics and, thereby, be of interest to Louisiana judges and lawyers. Our hope is that, although scholarly writings may, sometimes, be regarded as remote from the practice of law, judges and lawyers will include occasional citations to these writings in the context of the legal and practical problems they have to find solutions to on either side of the bar.

With this introductory background in mind, the reader should not be surprised by the structure of the seven chapters that make up this Treatise. Legislation being the primary source of law at civil law, as we are told by the very first two articles of the Louisiana Civil Code, we have chosen to begin every chapter in this Treatise with a listing of the relevant Code articles of the Louisiana Civil Code as well as, in most instances, Code articles from the French and Québec Civil Codes. The Code articles heading a particular subject matter are followed by our analysis of these articles. Our analysis, or doctrinal writing, is followed by a somewhat unique feature of this Treatise, a Section called "Going Beyond." This Section has been devised with one particular objective in mind: take the reader "beyond" the civil law of Louisiana and bring to his attention, through a comparative perspective, multiple aspects of the civil law of Obligations of France as it existed before the revision of 2016–17 [Pothier and Planiol: see Bibliography] and as it exists today under the newly adopted law of Obligations of 2016–17 [Terré, Simler, Lequette, Chénéde (Dalloz), and Malinvaud, Fenouillet,

Mekki (LexisNexis): see Bibliography]. Our translations in English of excerpts from these French legal scholars' writings, persuasive sources of law as they are, have been made with a focus more on the substantive understanding of these scholars' presentation of French law than on the written form of their expression. Therefore, our translations could be described as "liberal" rather than "literal"!

Each "Going Beyond" section is followed by a listing of a few recent Louisiana cases we have selected as being particularly relevant. These cases are meant to illustrate the courts' understanding of the concepts laid down in the Code articles given at the beginning of each Chapter and subsequently made the core of our analysis. Because we meant to give the reader only the sources of law governing a particular subject matter, we intentionally abstained from writing "our opinion," under the form of a case-note, on the cases we selected.

This Treatise could not have been written without the intellectual guidance and the moral support of Justice John Weimer of the Louisiana Supreme Court. Justice Weimer's keen understanding and skilled handling of the Louisiana Civil Code have been the motivation and encouragement I needed to write this Treatise. My work greatly benefitted from the editorial talent and expertise of Jennifer Lane who dedicated many, many weekends to make this Treatise a friendly, pleasant and, we believe, instructive reading overcoming, often, the esoteric and abstract, at times, nature of the subject matter of this Treatise. Many thanks to Alanna Clanton for the exceptional secretarial support she brought, with kindness and meticulousness, to this work.

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The originality of this Treatise calls, obviously, for the readers' comments, suggestions and criticisms. We welcome all the contributions, positive and negative, that the readers may want to make. They can only be of help in our attempt to improve on this Treatise and, may be, others to come.

A. A. L.



# Abbreviations

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La. Civ. Code	Louisiana Civil Code
La. Code Civ. Proc.	Louisiana Code of Civil Procedure
La. Rev. Stat.	Louisiana Revised Statutes
C. N.	Code Napoléon
F.C.C.	French Civil Code
C. C. Q.	Civil Code of Québec
J.C.P.	Jurisclasseur Périodique
R.T.D.C.	Revue Trimestrielle de Droit Civil

