

Louisiana Law of Contracts and Quasi-Contracts

Louisiana Law of Contracts and Quasi-Contracts

A Comparative Civil Law Perspective

A Treatise

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Foreword

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To two great Masters-Oracles of the Law, Philippe Malinvaud
and
François Terré.

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Foreword

Our dear friend, Professor Alain Levasseur, has joined with his colleague Professor Nikolaos Davrados to once again put pen to paper and write a Treatise on Contracts and Quasi-Contracts. They have followed the traditional civilian doctrinal approach in presenting the many interwoven legal features of the law of contracts and quasi-contracts. Both professors herein demonstrate their unmatched proficiency in legal scholarship and their versatility in both civil law and common law. A full discussion of their backgrounds, credentials, and robust scholarship is available in the “About the Authors” section.¹

“Obligation,” as it is defined in the Louisiana Civil Code, is a seminal feature of the private, substantive law of Louisiana, as well as other civil law jurisdictions, and is a unique feature of our own mixed legal system. Professors Levasseur and Davrados have produced a superb work of scholarship in this Treatise on *Louisiana Law of Contracts and Quasi-Contracts*,² an expansive and meticulous exploration of the articles of our Civil Code that govern Contracts, Quasi-Contracts and similar arrangements.

The basics of our civil law heritage provide that the core principles are codified into a system that is the primary source of law.³ History, cultural significance, and a rich legal civilian heritage are thus embodied in Louisiana’s venerable code of laws that traces its origins to the laws of Rome, Spain, and France and that has formed the legal basis for addressing private interactions for centuries. Having devoted decades of study and scholarly research to the law of obligations, Professors Levasseur and Davrados share their wisdom and knowledge and, here and there, rightfully indulge in a critical and constructive analysis of controversial issues.⁴ This Treatise provides the key to unlocking the meaning of the Civil Code’s most important parts, which seems only fitting as we approach the 200th anniversary of the Civil Code of 1825.⁵

1. See “About the Authors” and “Bibliography” in this Treatise.

2. This Treatise on *Louisiana Law of Contracts and Quasi-Contracts* follows the publication of a first Treatise on *Louisiana Law of Obligations in General, A Comparative Law Perspective* by A. Levasseur, published in 2020 by Carolina Academic Press.

3. *Code Napoléon or Code Portalis*, 43 *TULANE LAW REVIEW* 762–774 (1969).

4. See, in particular, Chapter 10 on Detrimental Reliance and Chapter 18 on Assignment.

5. However, as Portalis had written, “A host of things is . . . necessarily left to the province of custom, the discussion of learned men, and the decisions of judges.” Such can be found in the “Doctrine” and “Cases” subsections of each chapter.

In this volume, both authors are treating us to an artful blend of scholarly review and practical analysis of the Civil Code. As the foundation of our unique civil law system, each analysis of the Civil Code articles begins, as it must, with the text of the articles themselves. The citations to relevant cases or jurisprudence reinforce, and the excerpts from other prominent scholars in both the civil law and common law legal systems enrich, the reader's understanding of core principles. Each section takes the reader on an in-depth exploration of topics in a manner that seeks to enrich the intellect and to place at the command of practitioners and judges a resource to assist in resolving complex issues within the law of contracts and quasi-contracts. To that end, my learned friends continue to serve our system of justice intellectually and practically.

Professor Levasseur (now Emeritus Professor), as the lead author, is a prolific scholar who has dedicated his professional life to the detailed study and sharing of his wisdom and scholarship through his teaching and writings. He has served our civil law system well, and, with the support of the scholarship provided by Professor Nikolaos Davrados, this Treatise continues that service.

JLW

Authors' Notes

In the words of La. Civ. C. art. 1757, “[o]bligations arise from contracts and other declarations of will. They also arise from the law, regardless of a declaration of will, in instances such as . . . the management of the affairs of another, unjust enrichment and other acts or facts.” Having presented the fundamental law of “Obligations” in a first treatise which bears the title of *Louisiana Law of Obligations in General*, it is logical, and fitting within the structure of the Civil Code, for this second treatise to deal with the “Louisiana Law of Contracts and Quasi-Contracts.”

In writing this second treatise, we have followed the traditional civilian doctrinal approach in presenting the many interwoven legal features of the law of contracts and quasi-contracts. We have been inspired and guided by the writings of prominent French, Québécois, and Common Law legal scholars,¹ and we have carefully studied an extensive number of Louisiana Court decisions. In so doing, we have been respectful of the ranking of the Sources of Law in the Louisiana mixed legal system and particularly of the centrality to be given to the Civil Code as the enactment of the statement of Louisiana private law of general application.²

A significant portion of our treatise is devoted to the law of Quasi-Contracts, which has not been the topic of a legal treatise in Louisiana since the important revision of the relevant Civil Code provisions (articles 2292–2305) in 1995. Our discussion of quasi-contracts—especially our exposition of the institution of unjust enrichment—relies heavily on civilian doctrine and jurisprudence that recognized and formulated a nominate action for “enrichment without cause,” which was later codified in 1995.

We have followed as scrupulously as possible the actual structure of the Civil Code Titles, Chapters and Sections, particularly “Title 3. Obligations in General,” “Title 4. Conventional Obligations or Contracts,” “Title 5. Obligations Arising without Agreement” and “Title 7. Sale;” and all of Book 3 on “the Different Modes of Acquiring the Ownership of Things.” However, we felt that it was also our duty to be ‘positively and constructively’ critical of the present structure of the Civil Code

1. French scholars such as Pothier, Planiol, Terré and Simler, Malinvaud and Mekki, Malaurie and Aynès; Québécois scholars such as Baudouin, Jobin, Vézina, and Tancelin; and Common law scholars such as Blackstone, Atiyah, Farnsworth, and Treitel.

2. See Justice Nicholas Kasirer, “Keep Calm and Teach Gaius” in his review of the treatise *Louisiana Law of Obligations in General*, 76 LA. L. REV. 1165–1178 (2016).

whenever we could suggest, and even recommend, an alternative and more logical re-organization of some Sections or Chapters. As an illustration of our critical analysis, in the conclusion of our survey of “Assignment,” which is covered in the Civil Code under “Title 7. Sale,” we strongly recommend that the relevant provisions on “Assignment” be moved to “Chapter 4. Transfer of Obligations” under “Title 3. Obligations in General.” Likewise, as a second illustration of our critical analysis, it is our firm belief that “Section 3. Novation,” which is currently located in “Chapter 6. Extinction of Obligations,” should be moved under “Chapter 4. Transfer of Obligations” next to “Assumption of Obligations” and “Subrogation.”³

These two illustrations help to emphasize that, when applying the Civil Code articles, it is of the utmost importance to assign their proper legal characterization or qualification to the legal concepts or institutions which are governed by the Civil Code. For example, a unilateral juridical act cannot be characterized as a contract, an obligation to pay ‘damages’ for breach of contract cannot be characterized as an ‘alternative obligation’ to perform, an ‘offer’ cannot be characterized as a ‘promise,’ a ‘contract to sell’ is not an ‘option’ . . .⁴

As we did in our first *Treatise on Louisiana Law of Obligations in General*, we have incorporated at the end of each Chapter a Section entitled “Going Beyond” in which one will find references to the Civil Codes of France and Québec for the purpose of making constructive comparisons with the La. Civ. Code. We have also included excerpts from works of prominent jurists, or “oracles of the law” in the civil law as they were referred to by Roscoe Pound.⁵ We have also added a selection of cases that we considered to be particularly relevant, several of which are included in the casebook *Louisiana Law of Obligations, A Methodological and Comparative Perspective: Cases, Texts and Materials*.⁶

This second *Treatise* would not have been undertaken without the incentive, motivation, and example we found in several opinions of the Louisiana Supreme Court and some opinions of Courts of Appeal. We found in these selected opinions a well-articulated understanding of the ranking of the sources of law in the Louisiana civil law system, a skilled use of civil law methods of legal reasoning and interpretation, as well as pertinent references to the works of jurists.

This comprehensive, innovative and, we dare say, groundbreaking work in the Louisiana legal literature, could not have been completed in its present format without the exceptional community of spirit that motivated the two of us and without the support, dedication, conscientiousness and skill of our editor, Cindra (Cia) Fox.

3. Another more involved re-structuring of Code Articles and Sections is given in Chapter 6 — Agreements Preparatory: Pre-Contracts.

4. See Chapter 3 — An Exercise in Civil Law Methodology; see also Levasseur, *Vademecum*, op. cit. III.i.13.

5. Pound, Roscoe, “What is the Common Law,” 4 U. CHI. L. REV. 176–189, at 186 (1976).

6. Levasseur & Davrados, *CASEBOOK*, op. cit. III.i.19.

Thank you, Cia, for having allowed us to work with the peace of mind and confidence that you brought to our small team of 'civilian jurists.'

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About the Authors

PROFESSOR ALAIN LEVASSEUR is a graduate of the Universities of Paris (France) and Tulane. He was an associate with the Paris firm of Mudge, Rose, Guthrie & Alexander for a while, but left the firm to become a technical assistant at the World Bank in Washington, D.C. Professor Levasseur taught at Tulane Law School from 1970-1977, when he joined the LSU Law faculty. He is a member of the International Academy of Comparative Law, the Société de Législation Comparée, and the Louisiana State Law Institute; he serves on the editorial or advisory boards of the American Journal of Comparative Law, the *Revue Internationale de Droit Comparé*, the *Revue Trimestrielle de Droit Civil*, the *Revue Générale de Droit*, the *Foro de Derecho Mercantil*, and *e-Continental*; he is president of the Louisiana Chapter of the Association Henri Capitant and of the International Association of Legal Methodology. He has published extensively in the fields of Comparative Law, Civil Law (Civil Law System/Tradition, Obligations, Contracts, Sale and Lease, etc.), EU/EC Law, and U.S. Law (in French with Dalloz). He has been a regular visiting professor at the Universities of Aix-Paul Cézanne and Lyon III. He has taught for several years in the Paris summer program of the Fondation pour le Droit Continental. He has been honored with three Doctorats Honoris Causa, one from the University of Aix-Marseille Paul Cézanne (1999), another from the University of Paris-Panthéon Assas (2010), and a third Doctorat Honors Causa from the University of Bucharest in Romania (2019).

PROFESSOR NIKOLAOS DAVRADOS holds law degrees from the Universities of Oxford (England) and Athens (Greece). After completing his postdoctoral research at the University of Texas School of Law, he practiced in international business transactions and arbitration and served as a legal advisor to the Council of the European Union. Professor Davrados teaches and writes in the areas of civil law, conflict of laws, comparative law, and international business transactions. Prior to joining the LSU Law faculty, he taught at Loyola University New Orleans College of Law, University of Athens School of Law, and University of Nicosia (Cyprus) School of Law, where he is a visiting professor. Professor Davrados contributes to the Louisiana State Law Institute by serving on the council and several committees. He is a regular presenter at international conferences such as the International Academy of Comparative Law and the Academy of European Law.

Abbreviations

La. Civ. Code Louisiana Civil Code

La. Code Civ. Proc. Louisiana Code of Civil Procedure

BGB German Civil Code (Bürgerliches Gesetzbuch)

C.C.Q. Civil Code of Québec

C.N. Code Napoléon

F.C.C. French Civil Code

G.C.C. Greek Civil Code

