Louisiana Law of Contracts and Quasi-Contracts, A Précis

LOUISIANA CODE SERIES

Louisiana Pocket Civil Code 2022

LOUISIANA CIVIL CODE PRÉCIS SERIES

Louisiana Law of Obligations in General Alain Levasseur & Nikolaos Davrados 5th ed. 2024

Louisiana Law of Contracts and Quasi-Contracts Alain Levasseur & Nikolaos Davrados 2024

> Louisiana Law of Property John Randall Trahan 2012

LOUISIANA LAW OF SALE AND LEASE

Alain Levasseur & David Gruning

3rd ed. 2015

Louisiana Law of Security Devices

Michael H. Rubin

2nd ed. 2017

Louisiana Law of Successions and Donations

Elizabeth R. Carter

2021

Louisiana Law of Torts
Frank Maraist
2010

LOUISIANA LAW OF PERSONS Forthcoming

Louisiana Law of Contracts and Quasi-Contracts, A Précis

Alain A. Levasseur

PROFESSOR OF LAW, EMERITUS PAUL M. HEBERT LAW CENTER

Nikolaos A. Davrados

Professor of Law
Paul M. Hebert Law Center

EDITOR

Cindra Fox



Copyright © 2024 Carolina Academic Press All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Levasseur, Alain A., author. | Davrados, Nikolaos A., author.

Title: Louisiana law of contracts and quasi-contracts : a précis /

Alain A. Levasseur and Nikolaos A. Davrados.

Description: Durham, North Carolina : Carolina Academic Press, LLC, 2024. | Series: Louisiana: a précis | Includes bibliographical references and index.

Identifiers: LCCN 2023037565 | ISBN 9781531028206 (paperback) | ISBN 9781531028213 (ebook)

Subjects: LCSH: Contracts—Louisiana. | Obligations (Law)—
Louisiana. | Consent (Law)—Louisiana. | Breach of contract—
Louisiana. | Nullity—Louisiana. | Quasi contracts—Louisiana.

Classification: LCC KFL150 .L425 2024 | DDC 346.76302/2—dc23/eng/20231002

LC record available at https://lccn.loc.gov/2023037565

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

Revised printing

Contents

PART I · CONTRACTS	
La. Civ. C. Articles 1906 to 2044	_
Chapter One • Classification of Contracts	
La. Civ. C. Articles 1906 to 1917	
Article 1: Unilateral Contracts and Bilateral	
or Synallagmatic Contracts	
Article 2: Onerous and Gratuitous Contracts	
Article 3: Commutative and Aleatory Contracts	
Article 4: Principal and Accessory Contracts	
Article 5: Nominate and Innominate Contracts	
Article 6: Implied Kinds of Contracts	
§1. Consensual, Solemn, and Real Contracts.	
§ 2. Mutually Negotiated Contracts and Contracts of Adhesion.	
PART I.A • FORMATION OF CONTRACTS	_
La. Civ. C. Articles 1918 to 1982	
Chapter Two • Capacity	_
La. Civ. C. Articles 1918 to 1926	
Article 1: Incapacity of Enjoyment	

vi CONTENTS

Article 2: Incapacity of Exercise	31
§ 1. Scope of Nullity for Incapacity.	31
§ 2. Effect of Nullity for Incapacity.	32
Chapter Three • Consent	
La. Civ. C. Articles 1927 to 1947	35
Article 1: Existence and Expression of Consent	36
§1. Offer.	36
A. Offer or Promise to Contract.	36
1. Preliminary Negotiations.	36
2. Unilateral Promise.	37
B. Features of an Offer.	38
C. Form and Addressee of an Offer.	39
D. Duration or Binding Nature of an Offer.	40
§ 2. Acceptance.	41
A. Conditions of Substance.	41
B. Conditions of Form.	43
Article 2: Binding Nature of an Offer and Revocation	46
Article 3: Offer of a Reward and the Public	47
Chapter Four • Integrity of Consent and Vices of Consent	
La. Civ. C. Articles 1948 to 1965	49
Article 1: Error	50
§ 1. Concept of Error.	50
§ 2. Seriousness of the Error.	52
§ 3. Kinds of Serious Errors.	53
A. Error of Fact.	53
B. Error of Law.	58
C. Error as to the Person.	59
§ 4. Effect of Error.	62
A. Conditions.	62
1. Principal Cause.	62
2. Sharing and Communication.	63
3. Limitations.	64

CONTENTS	vii
Article 2: Fraud	64
§ 1. Concept of Fraud.	65
§ 2. Elements of Fraud.	66
A. Material Element.	66
B. Psychological/Moral Element.	67
C. Proof of Fraud.	69
§ 3. Effects of Fraud.	69
Article 3: Duress (Violence)	70
§ 1. Elements of Duress.	71
A. Material Element.	71
B. Psychological Element.	72
§ 2. Characteristics of Duress.	72
A. Source of Duress.	72
B. Reasonable Fear.	73
C. Unlawfulness.	73
§ 3. Legal Consequences.	75
Article 4: Lesion	75
Chapter Five • Cause	
La. Civ. C. Articles 1966 to 1970	77
Article 1: Brief Historical Survey of Cause	78
§ 1. Contemporary Theory of Cause.	80
§ 2. Legal Regime of Cause.	83
A. Existence of "the" Cause.	83
B. Common or Shared Cause.	85
C. Lawfulness of Cause.	88
Chapter Six • Object and Matter of Contracts	
La. Civ. C. Articles 1971 to 1977	91
Article 1: Legal Characteristics or Features of an Object	93
§ 1. Lawfulness of the Object.	93
§ 2. Determination of the Object.	94
A. Kind.	94

viii CONTENTS

B. Quantity.	95
C. Quality.	97
§ 3. Possibility or Impossibility of the Object.	98
Article 2: Promesse de Porte-Fort	99
§ 1. Description and Nature of a Promesse de Porte-Fort.	100
§ 2. Effects of a Promesse de Porte-Fort.	102
A. Ratification by the Third Person Principal.	102
B. Refusal by the Principal to Ratify.	103
Chapter Seven • Third Party Beneficiary— Stipulation Pour Autrui	
La. Civ. C. Articles 1978 to 1982	105
Article 1: Notion of a Stipulation for the Benefit of Another	106
Article 2: Conditions for a Valid Stipulation	107
§ 1. Conditions Pertaining to the Contract	
Between Stipulator and Promisor.	107
§ 2. Conditions Pertaining to the Stipulation.	108
Article 3: Effects of a Stipulation for the Benefit of Another	109
§ 1. Effects Between the Stipulator and the Promisor.	109
§ 2. Effects Between the Stipulator and the	
Third Party Beneficiary.	109
A. Consent and Revocation.	109
B. Onerous or Gratuitous Stipulation.	110
§3 Effects Between the Promisor and the	
Third Party Beneficiary.	111
PART I.B • EFFECTS OF CONTRACTS	
Chapter Eight • Effects of Conventional Obligations or Contracts	
La. Civ. C. Articles 1983 to 2012	115
Article 1: General Effects of All Contracts	116
§ 1. Effect of Law.	116
A. Three Sub-Effects or Consequences.	116

CONTENTS		ix
----------	--	----

 Agreements Must be Kept. 	116
2. Third Parties Only Benefit.	117
3. Dissolution by Agreement or by Law.	117
B. Open or Simulated Contract and Counterletter.	118
1. Simulation and Third Parties.	118
2. Counterletter and Third Parties.	120
§ 2. Good Faith.	122
Article 2: Specific Performance and Putting in Default	123
§ 1. Specific Performance.	123
§ 2. Putting in Default.	125
A. Purpose of Putting in Default.	126
B. Manners of Putting in Default.	127
C. Effects of Putting in Default.	128
D. Defenses Raised by the Obligor.	129
Article 3: Damages	129
§ 1. Stipulated Damages.	131
§ 2. Court Assessed Damages.	134
A. Principle and Qualifications.	135
B. Special Regimes.	137
1. Non-Pecuniary Loss.	137
2. Obligations in Money.	137
PART I. C • EXTINCTION AND INTERPRETATION	
OF CONTRACTS	
Chapter Nine • Dissolution and Nullity	
La. Civ. C. Articles 2013 to 2024,	
2029 to 2035	141
Article 1: Dissolution	141
§ 1. Grounds for Dissolution.	143
A. Grounds Outside the Control of the Obligor.	143
B. Grounds Within the Greater or Lesser Control	
of the Obligor.	144
§ 2. Mechanism of Dissolution.	146

X CONTENTS

§ 3. Effects of Dissolution.	148
A. Between the Parties.	148
B. On Third Parties.	150
Article 2: Nullity	151
§ 1. Kinds and Extent of Nullity.	153
A. Nullity of the Whole Contract:	
Absolute and Relative Nullity.	153
B. Nullity of a Provision: Relative Nullity.	156
§ 2. Effects of Nullity.	157
A. Right of Action.	157
B. Prescription.	158
C. Retroactivity.	159
1. Effects on the Parties.	160
2. Effects on Third Parties.	161
Chapter Ten • Interpretation of Contracts	
La. Civ. C. Articles 2045 to 2057	163
Article 1: Rules of Interpretation	164
Article 2: Difficulties of Interpretation	166
§ 1. Bending the Rules.	166
§ 2. Interpretation is Not Revision.	167
PART I. D • REVOCATORY AND OBLIQUE ACTIONS	3
Chapter Eleven • Revocatory and Oblique Actions La. Civ. C. Articles 2036 to 2044	17
Article 1: The Revocatory Action	171
§ 1. Conditions for the Existence of a Revocatory Action.	172
§ 2. Principal Effect of a Revocatory Action.	174
§ 3. Revocatory Action and Onerous Contracts.	174
§ 4. Revocatory Action and Gratuitous Contracts.	178
§ 5. Exceptions.	178

CONTENTS	xi

§ 6. Additional Requirements and Effects of a Revocatory Action.	
Article 2: The Oblique Action	1
PART II · QUASI-CONTRACTS	-
La. Civ. C. Articles 2292 to 2305	_
Chapter Twelve • Management of Affairs (<i>Negotiorum Gestio</i>) La. Civ. C. Articles 2292 to 2297	1
Article 1: Requirements of Negotiorum Gestio	1
§ 1. The Act of Management.	1
§ 2. Parties in the Management of Affairs.	1
A. The Manager.]
B. The Owner.]
Article 2: Effects of Negotiorum Gestio]
§ 1. Obligations of the Manager.]
A. Obligation of Diligence.]
B. Obligation of Perseverance.	1
C. Obligation to Account.	1
§ 2. Obligations of the Owner.	1
A. Obligation to Reimburse.	1
B. Obligation to Compensate.	1
§ 3. Obligations to Third Persons.	2
Article 3: Termination of Negotiorum Gestio	2
Chapter Thirteen • Payment of a Thing Not Due	
La. Civ. C. Articles 2299 to 2305	2
Article 1: Types of Undue Payments	2
§ 1. Payment Not Due Objectively.	2
§ 2. Payment Not Due Subjectively.	2

xii CONTENTS

Article 2: Restoration of Undue Payments	207
§ 1. Restoration of Things Other Than Money.	208
§ 2. Restoration of Money or Other Consumables.	210
Chapter Fourteen • Enrichment Without Cause	
La. Civ. C. Article 2298	211
Article 1: Requirements of Enrichment Without Cause	212
§ 1. Enrichment of the Obligor.	212
§ 2. Impoverishment of the Obligee.	214
§ 3. Causal Link Between Enrichment	
and Impoverishment.	215
§ 4. Lack of Cause for the Retention of Enrichment.	216
§ 5. No Other Remedy Available.	217
Article 2: Effects of Enrichment Without Cause	218
Appendix · Louisiana Civil Code	221
Appendix • Louisiana Code of Civil Procedure	259
Appendix • Illustrative Cases	265
Index	271

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 was 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 Honoris 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 organized by the International Academy of Comparative Law and the Academy of European Law.