LOUISIANA LAW OF SALE AND LEASE A PRÉCIS

LOUISIANA LAW OF SALE AND LEASE

A PRÉCIS

THIRD EDITION

ALAIN LEVASSEUR
Professor of Law, Emeritus
Louisiana State University
Paul M. Hebert Law Center

DAVID GRUNING
William L. Crowe, Sr. Professor of Law
Loyola University New Orleans
College of Law

With the Assistance of Mahogane Reed

CAROLINA ACADEMIC PRESS
Durham, North Carolina

ISBN: 978-1-63283-954-1 (Print)
ISBN: 978-1-63283-955-8 (eBook)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in render-ing legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2015 Carolina Academic Press, LLC
All Rights Reserved

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work.

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

2022 Printing
Printed in the United States of America

Louisiana Code Series

CIVIL CODE SERIES

LOUISIANA POCKET CIVIL CODE
2016

LOUISIANA CIVIL CODE PRÉCIS SERIES

LOUISIANA LAW OF OBLIGATIONS IN GENERAL
ALAIN LEVASSEUR
3RD ED. 2016

LOUISIANA LAW OF CONVENTIONAL OBLIGATIONS
ALAIN LEVASSEUR
2ND ED. 2016

LOUISIANA LAW OF SALE AND LEASE
ALAIN LEVASSEUR & DAVID GRUNING
3RD ED. 2016

LOUISIANA LAW OF TORTS
FRANK MARAIST
2010

LOUISIANA LAW OF SECURITY DEVICES
MICHAEL H. RUBIN
2ND ED. 2016

LOUISIANA LAW OF PROPERTY
JOHN RANDALL TRAHAN
2012

LOUISIANA LAW OF PERSONS
Forthcoming

LOUISIANA LAW OF SUCCESSIONS
Forthcoming

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, the Louisiana State Law Institute; he serves on the editorial or advisory boards of the American Journal of Comparative Law, the Revue Trimestrielle de Droit Civil, the Revue Générale de Droit, the Foro de Derecho Mercantil, and e-Competitions. 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/Lease), EU/EC Law, US Law (in French with Dalloz). He has been a regular visiting Professor at the Universities of Aix-Paul Cézanne and Lyon III.

David Gruning is the William L. Crowe, Sr., Distinguished Professor of Law at Loyola University, New Orleans. He graduated magna cum laude from Tulane Law School, is a member of the Order of the Coif, and was articles editor of the Tulane law review. He practiced law in New Orleans, before joining the Loyola law faculty in 1986. He was a visiting professor at the University of Montreal, Faculté de Droit, from 2001-2003. He presently serves on several committees of the Louisiana State Law Institute on civil and commercial law, and is a member of the American Law Institute.

Table of Contents

Part I: LOUISIANA LAW OF SALE 1

Introduction 1

Chapter 1 AGREEMENTS PREPARATORY TO A SALE OR PRE-CONTRACTS 3

Article 1. CONTRACT TO SELL 3
§ 1.1.1. BILATERAL CONTRACT TO SELL OR BILATERAL PROMISE OF SALE. 4
§ 1.1.2. BILATERAL CONTRACT TO SELL OR BILATERAL PROMISE OF SALE WITH EARNEST MONEY. 7
§ 1.1.3. OPTION. 9
§ 1.1.4. RIGHT OF FIRST REFUSAL. 13

Chapter 2 PERFECTION OF A CONTRACT OF SALE 17

Article 1. CAPACITY 17
Article 2. CONSENT 18
§ 2.2.1. CONSENT IN CONTRACTS OF SALE OF MOVABLES BETWEEN LAY PERSONS. 18
§ 2.2.2. CONSENT IN CONTRACTS OF SALE BETWEEN MERCHANTS: LSA-C.C. ART. 2601 § 2. 19
Article 3. THINGS THAT MAY BE SOLD 20
§ 2.3.1. NATURE OF THINGS. 20
§ 2.3.2. EXISTENCE OF THINGS. 21
§ 2.3.3. FUTURE THING. 21
§ 2.3.4. HOPE. 22
§ 2.3.5. SALE OF A RIGHT OR ASSIGNMENT OF A RIGHT? 23
§ 2.3.6. THING OF ANOTHER. 28
Article 4. PRICE 28
§ 2.4.1. FIXED PRICE OR DETERMINABLE PRICE. 29
§ 2.4.2. OUT OF PROPORTION PRICE. 30
Article 5. LESIONARY PRICE AND RECISSION FOR LESION BEYOND MOIETY 31
§ 2.5.1. CONDITIONS AND SCOPE OF APPLICATION OF THE ACTION IN LESION. 32
§ 2.5.2. EXERCISE OF THE ACTION AND RIGHTS OF THE PARTIES. . . . 32
§ 2.5.3. LESION AND INDIVISION. 35
Article 6. FORMS 35

Chapter 3 EFFECTS OF A CONTRACT OF SALE 37

Article 1. TRANSFER OF OWNERSHIP 37
§ 3.1.1. PRINCIPLES. 37
§ 3.1.2. MODIFICATIONS, ALTERATIONS OF THE PRINCIPLES. 39
Article 2. SALE WITH A RIGHT OF REDEMPTION 46
§ 3.2.1. CONCEPT. 46
§ 3.2.2. LEGAL REGIME. 47
Article 3. RISK OF LOSS 49
§ 3.3.1. RISK OF LOSS AND FORTUITOUS EVENT. 50
§ 3.3.2. RISK OF LOSS AND MOVABLES. 51

Chapter 4 OBLIGATIONS OF THE SELLER AND THE BUYER . . . 53

Article 1. OBLIGATIONS OF THE SELLER 53
§ 4.1.1. OBLIGATION TO DELIVER. 55
§ 4.1.2. OBLIGATION OF WARRANTY AGAINST EVICTION; WARRANTY OF LAW. 61
§ 4.1.3. CONVENTIONAL WARRANTY AGAINST EVICTION. 69
§ 4.1.4. WARRANTY OF FITNESS AND WARRANTY AGAINST DEFECTS. 71
Article 2. OBLIGATIONS OF THE BUYER 87
§ 4.2.1. OBLIGATION TO PAY THE PRICE. 87
§ 4.2.2. OBLIGATION TO TAKE DELIVERY OF THE THING. 89
APPENDICES
Appendix I LOUISIANA CIVIL CODE 2015 91
Appendix II CASES — ILLUSTRATIONS 117

Part II: LOUISIANA LAW OF LEASE 123

Introduction 123

Chapter 1 LEASE: NOTION AND ELEMENTS 125

Article 1. NOTED 125
Article 2. ELEMENTS OF A LEASE 125
§ 1.2.1. THE THING. 126
§ 1.2.2. RENT. 127
§ 1.2.3. TERM. 128

Chapter 2 THE OBLIGATIONS OF THE LESSOR AND THE LESSEE: DELIVERY, REPAIRS, IMPROVEMENTS 131

Article 1. THE LESSOR'S OBLIGATION TO DELIVER 131
§ 2.1.1. TIMELINESS. 131
§ 2.1.2. IN GOOD CONDITION. 132
§ 2.1.3. DELIVERY. 132
Article 2. THE LESSEE'S OBLIGATION TO USE THE THING AS A PRUDENT ADMINISTRATOR 132
Article 3. THE LESSOR'S OBLIGATION NOT TO ALTER THE THING DURING THE LEASE 135
Article 4. REPAIRS AND IMPROVEMENTS 135
§ 2.4.1. THE LESSEE'S OBLIGATION TO REPAIR. 135
§ 2.4.2. THE LESSOR'S OBLIGATION TO REPAIR. 136
§ 2.4.3. THE LESSOR'S RIGHT TO REPAIR. 137
§ 2.4.4. IMPROVEMENTS TO THE THING LEASED. 138

Chapter 3 THE LESSOR'S WARRANTIES 141

Article 1. WARRANTY AGAINST VICES OR DEFECTS 141
§ 3.1.1. LESSOR'S WARRANTY AND SELLER'S WARRANTY. 141
§ 3.1.2. THE LESSOR'S WARRANTY: LEGAL REGIME. 142
Article 2. THE LESSOR'S WARRANTY OF PEACEFUL POSSESSION 145
§ 3.2.1. THE LESSEE'S POSSESSION OF THE THING LEASED, THE RIGHT TO POSSESS, AND THIRD PERSON TRESPASSERS. 145
§ 3.2.2. DISTURBANCES IN FACT AND IN LAW. 147
§ 3.2.3. THE LESSOR'S DUTY NOT TO INTERFERE WITH THE LESSEE'S POSSESSION. 148
§ 3.2.4. RESIDENTIAL LEASE: DISTURBANCES BY INVITEES AND ADJACENT LESSEES. 148
§ 3.2.5. THE CALL IN WARRANTY. 149
§ 3.2.6. DEGREE OF DISTURBANCE. 150

Chapter 4 THE LESSOR'S RIGHTS:RENT AND SECURITIES . . . 153

Article 1. THE LESSEE'S OBLIGATION TO PAY RENT 153
Article 2. THE LESSOR'S SECURITY RIGHTS 154

Chapter 5 TERMINATION AND DISSOLUTION 157

Article 1. TRANSFER OF INTEREST BY LESSOR OR LESSEE 157
Article 2. TOTAL LOSS OF THE THING 158
Article 3. PARTIAL LOSS OF THE THING 159
Article 4. OTHER INSTANCES OF TERMINATION 160

§ 5.4.1. USUFRUCT. 160
§ 5.4.2. DEATH. 161
§ 5.4.3. RIGHT TO TERMINATE. 161
§ 5.4.4. OTHER CAUSES OF DISSOLUTION OF LEASES. 161
Article 5. LEASES WITH A FIXED TERM 161
§ 5.5.1. IN GENERAL. 161
§ 5.5.2. AGRICULTURAL AND NONAGRICULTURAL LEASES. 162
§ 5.5.3. RECONDUCTION-CONTINUITY 164
§ 5.5.4. EXTENSION. 164
§ 5.5.5. AMENDMENT. 165
Article 6. LEASES WITH AN INDETERMINATE TERM 165
APPENDICES
Appendix I LOUISIANA CIVIL CODE 2015 169
Appendix II CASES — ILLUSTRATIONS 179

Index 183