6 Answer: Prohibited substitution. Rationale: See #3. Here, both Toullier, on the one hand, and modern French doctrine and jurisprudence, on the other, would condemn the donation.

7 Answer: ? Explanation: See #3. *Je simplement ne peux pas dire!*

e) Sanctions

1] Possible solutions

Suppose that a certain donation is found to entail a prohibited substitution. What is the proper sanction? Is it the nullity of the entire act of donation or testament, as the case might be? Or is it just the nullity of the donation? Or is it the nullity of the charge to the first donee to deliver the thing to the second donee (substitute), so that the disposition stands as to the first donee (institute)?

2] Retained solution: nullity of the donation

What does CC art. 1520 suggest? *See also Successions of Walters*, 259 So.2d 12, 13 (La. 1972) (“the presence in a will of a bequest containing a prohibited substitution results only in the total nullity of that bequest, but does not affect the remaining valid dispositions of the will”), & *Succession of Gwatmey*, 364 So.2d 226 (La. App. 3d Cir. 1978) (“the effect of a prohibited substitution is to invalidate the entire disposition, and not merely the charge or direction as to the ultimate disposition of the donation”).

C Regimes applicable to particular types of donations

1 Donations inter vivos

a Special requirements: form

As an introduction to the topic of “donative formalities,” read, first, CC arts. 1536, 1539, 1554, and, then, the following doctrinal and jurisprudential materials. These materials review the history of those formalities and explain (and in some instances critique) the justifications that have been offered in support of them.\(^\text{17}\)

\(^\text{17}\) In many of these materials, you will find numerous references to the Ordinance of 1731. That legislation of the French *ancien régime* was the immediate source of CN art. 931, which, in turn, was the ultimate source of our CC art. 1536.
Savigny described “insinuation” this way: “a judicial procedure initiated upon the declaration of the parties” wherein the judge gave the donation his “attestation of authenticity.”

First, Emperor Antony the Pius, in a decree the text of which has not survived . . ., decided that a simple contract of donation, provided it had been made in writing and that the writing had been turned over to the donee, would be obligatory [when made] between ascendants and descendants. Second, in the first years of the 4th Century, we find in force a new theory that would rapidly lead to the desuetude of the lex Cincia [the earlier legislation on donations inter vivos]: I allude to the theory of “insinuation.” This word designates the copy or maybe the simple analysis of the act of donation [made] on the register of the superior magistrate or local judge. This formality, which was already in use, though not yet required, at the time of the jurisconsults, was imposed, for all donations and under pain of nullity, by Emperor Constance Chlore, who did it, I think, less to the end of provoking the donor to reflection than to the ends of assuring publicity for the donation and of preserving proof for it. Later, this requirement was limited to donations in excess of 200 solidi. Third, as a consequence of the innovation of Constance Chlore, his son, Constantine, ordered that every donation be consecrated by a writing. But that decision was abrogated by Theodosius the Young and Valentinian III.

What did this monarch [Justinian] do? Two things.

First, he decided that a simple contract of donation, whether written or not and regardless of the persons between whom it was made, became by itself a sufficient cause for an obligation . . .

Second, Justinian required insinuation only for donations in excess of 500 solidi. The omission of this formality carried with it absolute nullity, but only for the surplus. From this followed several consequences: (i) a donor who had not yet made delivery had no need of an exception [special procedural device of defense] in order to reject a demand by the donee as long as the donation did not surpass 500 solidi; (ii) upon delivering the thing, the donor put himself into a state of co-ownership by indivision with the donee, the latter of whom necessarily became a co-owner for the part that was equivalent to this sum; (iii) the donation did not constitute a just cause [just title] for usucaption [acquisitive prescription]; (iv) the death of the donor did not confirm the donation in any case. . .

By exception, Justinian exempted from insinuation (i) donations dotis causa [dowries] or propter nuptias [on account of marriage]; (ii) donations made or received by the Emperor; (iii) those intended to ransom captives; (iv) those whose cause was the reconstruction of a collapsed or burned house.

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5 Jose Maria Manresa y Navarro, Comentarios al Código Civil Español

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18 Savigny described “insinuation” this way: “a judicial procedure initiated upon the declaration of the parties” wherein the judge gave the donation his “attestation of authenticity.” 4 Frederick Carl von Savigny, Traité de Droit Romain § 165, at 223 (Charles Guenoux tr. [German to French] 1845).

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It would seem, then, that the authors of las Siete Partidas did little more than to restate the legislation of Justinian.

According to our own Professor McAuley, himself a former notaire, the phrase “authentic act en minute” is a short-hand reference to a specific kind of notarial procedure, the salient features of which are as follows: (i) the notary prepares but a single original of the act (multiple originals are not allowed); (ii) once the act has been signed, the notary himself retains and archives this original in a vault for safekeeping; and (iii) the notary makes a “minute entry” of the act (in the case of donation inter vivos, a bare-bones summary stating only the names of the parties and the nature of the act) on the répertoire (register or directory) that he keeps of all acts passed before him.

The perceptive reader will note that this account of the history of “form requirements” in French law includes no reference to the Roman law institution of “insinuation.” That is not because the French never had it; to the contrary, they certainly had it at one time, albeit it in modified form, and arguably still do, albeit...
in a barely recognizable form (in both ancient and modern French law, “insinuation” meant and still means simply “recording of an instrument in the public records,” so that no judge even takes a look at the donation, much less passes on its authenticity). The reason for the omission, rather, is that the authors of the text, like most other French legal scholars during the last 250 years, do not think of “insinuation” as a “form requirement.” And why not? By “form requirements,” they mean those requirements pertaining to documentation of donations that must be satisfied if the donation is to be valid as between the parties themselves (and their successors). Now, the “authentic act” requirement is a “form requirement” in this sense, for, without such an act, the donation is invalid (provided the donatum is immovable or incorporeal) as between the parties themselves (and their successors). But the “insinuation” requirement is not a “form requirement” in this sense, for a donation that is otherwise valid as between the parties (and their successors) is still so even if there’s no insinuation. For what, then, is insinuation necessary? To make the donation effective as against third persons (if, that is, the donatum is immovable: since 1804, donations of movables, be they corporeal or incorporeal, haven’t had to be insinuated at all). That kind of requirement the French (rightly) think of as a “publicity requirement” or, to use Louisiana’s terminology, a “public records doctrine” requirement. And, to the French way of thinking, this requirement, unlike the form requirements properly so called (e.g., the authentic act requirement), has nothing to do with protecting the donor or his family from ill-considered gratuities, but rather is designed solely to protect third persons who, but for this publicity requirement, might find themselves “surprised” by secret donations.

Robert Pothier, Traité des Donations Entre-Vifs sec. 2, art. 4, in 7 Œuvres de Pothier 474-75 (Dupin éd., nouv. éd. 1825)

The Ordinance of 1731, art. 1, requires that every act comporting to be a donation be passed before a notary and that the act be kept [by him] en minute, under pain of nullity.

The reason for this legislation was to prevent frauds. For the donor was not permitted and it was not within his power to make donations styled inter vivos, but over which he retained mastery [in that he could] revoke them during his life, [which he might try to do] by either keeping the act of donation with himself or by putting it into the hands of a trusted person with orders that he not remit it to the donee until after the donor’s death or when the donor should judge it appropriate. It was to take away this means of donating that the Ordinance required that the donation be kept en minute in the hands of a notary, a public person of whom the donor could not be the master. Without that, donations are suspected of not having the characteristic of irrevocability, which our legislation requires of donations inter vivos, and by reason of this suspicion they are declared null.22

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22 In Pothier’s view, clearly enough, the rationale behind the form requirements for donations inter vivos is linked to the principle that such donations must be truly “irrevocable,” to be precise, these requirements,
169. According to natural law, donations are subjected to no particular form: one would resort to a writing only so as to prove the existence of the contract more easily. Justinian retained this reasonable simplicity of principles, as much in the form of donations inter vivos as in that of other contracts. Donations could be made . . . verbally and a fortiori by private writings.

170. Neither the ancient ordinances nor the coutumes of France governed the form of donations by means of any particular dispositions. Nevertheless, inasmuch as private acts could serve to elude the dispositions of those coutumes under which the power of giving by testament was less extended than was the power to donate inter vivos, the validity of donations made under private signature came to be questioned. The opinions of the [French] jurisconsults were divided on this question.

The Ordinance of 1731 caused these doubts to cease by providing . . . that all acts purporting to be donations inter vivos will be passed before a notary and that the act will be kept [by him] en minute, under pain of nullity.”

171. The Code [Civil] suppressed the difference established by the coutumes in his judgment, serve as a guaranty that that principle will be respected. But this justification for the requirements, far from providing a completely satisfactory explanation for their existence, merely invites another question, namely, “Why is irrevocability so important?” Though Pothier doesn’t answer that question here, he does answer it elsewhere:

The reason why our law requires . . . the necessity of . . . irrevocability for the validity of donations is readily understandable. The spirit of our French law is inclined toward this: that goods remain within families and pass to the heirs. The dispositions of this law regarding separate property, as well as those regarding the customary reserve [forced portion], make this inclination well known.

In this view, . . . our laws have judged it appropriate, while preserving for individuals the right [to dispose of their property as they wish], nevertheless to impose a restraint that makes the exercise of this right more difficult for them. It is for that reason that these laws have ordered that one cannot validly donate [a thing] unless he relinquish control of the thing given as of the very moment of the donation and unless he forever deprive himself of the power of disposing of it. The objective [of this restraint] is that the natural attachment that one has for that which one possesses and the aversion that one has for depriving oneself of things will deter individuals from giving.

Thus, the rationale for the form requirements, as Pothier understands it, seems to be this. The form requirements are needed to insure that donations inter vivos are in fact irrevocable. Irrevocability, in turn, is needed to protect the legitimate expectation of the donor’s family to share in his wealth upon his death. Irrevocability does that by deterring the donor from giving away his wealth in the first place. How so? By making the donor himself, right now and up front, “feel the same pain” that his giving away his wealth will inflict on his family at the time of his death, namely, the pain of losing that wealth and not being able to get it back.
between the power to give by testament and the power to give *inter vivos*. As a result, the rationale that had led to the introduction, for donations, of the requirement of a notarial act *en minute* existed. Even so, the Ordinance of 1731 was copied verbatim into article 931, which provides: “Every act purporting to be a donation *inter vivos* will be passed before a notary in the ordinary form for contracts; and the act will be kept [by him] *en minute*, under pain of nullity.”

The form of donations *inter vivos* is, then, the same as that of all notarial contracts . . . . But the other contracts can be made under private signature, whereas donations must be passed before the notary.

. . .

187. Two different things must be considered here: the acceptance in itself and the solemnity [form] for the acceptance. One pertains to the substance of the contract; the other is only a formality of the civil law.

The acceptance is nothing other than the consent give by the donee to the offer of the donor. It is of the essence of a contract, which requires the consent of the two parties – the concourse of two wills. It is only at the moment of acceptance that the two wills are united; thus, it is the acceptance that renders the agreement complete.

The solemnity for the acceptance is the express mention that must be made of it [the acceptance] in positive terms and under penalty of nullity either in the act of donation itself or in a separate act that is both authentic and passed before a notary [and two witnesses]. Contracts other than donations are valid even though the acceptance is not referred to in express terms – even though it is manifested [i] only by the presence of the parties and is [therefore] only tacit or [ii] only by their signature.

The Roman law, which on this point was conformed to the simplicity of the natural law, made no distinction in this regard between donations and other contracts. But in customary French law, in which donations were viewed with an unfavorable eye, it was questioned whether a tacit acceptance was sufficient, and there were, in earlier times, a variety of doctrinal and jurisprudential opinions on this point. The Ordinance of 1731 adopted the opinion of those who contended that the acceptance had to be express and that it was impermissible to take into account the circumstances from which one might pretend to infer a tacit or presumed acceptance, even when the donee was present at the making of the act of donation, even when he signed it, or even when he was put into possession of the things given! The reasons for this exception to the general rules [i.e., that no particular form is required for the acceptance of a contract] can only be found in the marked aversion of the coutumes to donations. The Code Civil . . . has not re-established the . . . simplicity of principles with respect to the acceptance of donations. It has adhered, at least in part, to the dispositions of the Ordinance of 1731 . . . .


8. *Every act purporting to be a donation inter vivos must be passed before a notary.*

– *Rationale.* – Article 931 [CN] is thusly conceived: “Every act purporting to be a
donation inter vivos will be passed before a notary in the ordinary form for contracts; and the act will be kept [by him] en minute, under pain of nullity.”

That the necessity of passing an act before a notary has been seen as an essential guaranty of the certitude and independence of the will of the donor is incontestable. It is necessary to recognize, however, that this was not the principal rationale that directed the legislators of 1804. What they wanted, above all, was to attain the end ([inspired] by the example of the old law) that formed the predominant object of their preoccupation [in the domain of donations inter vivos], namely, to promote effectively the principle of the irrevocability of donations inter vivos. “The principal motive for this legislation,” Damours says of the Ordinance of 1731, was the irrevocability of donations.” And Pothier wrote, in the same vein, that “the Ordinance has this precaution in it in order to prevent the donor from being able to conserve the power to annihilate his donation, be it by retaining the act of donation with him or by putting it into the hands of a third person who would return it to the donor were he to ask for it back; that would be contrary to the irrevocability required in donations inter vivos.”

5 Marcel Planiol & Georges Ripert, TRAITÉ PRATIQUE DE DROIT CIVIL: DONATIONS ET TESTAMENTS n° 342, at 461-62
(André Trasbot & Yvon Loussouarn revs., 2d éd. 1957)

Value of the principle of solemnity. – . . .
The solemnity of the donation has been justified by three ideas, which can be traced to the law of the ancien régime:

23 At this point, Demolombe inserts a cross-reference to another part of his treatise on donations, namely, volume 1, n° 3-5. To understand what Demolombe means here, one must first read at least part of the cross-referenced material. Here it is:

3. First of all, it was necessary, we say, that the legislators intervene [i.e., adopt laws regulating donations] in the interest of the disposing party himself . . . .

. . .

5. . . .
Dispositions by gratuitous title, by virtue of the very fact that they deprive us of property without compensation and without equivalent, offer dangers of a special nature, against which it is important to protect, first of all, the disposing party himself.

These dangers, which exist in donations inter vivos, are still more to be feared in testaments, where the disposing party is neither warned nor protected by his own interest, since the act imposes on him no immediate sacrifice and which, in any event, can be made as he approaches death, when his faltering will can no longer resist the obsessions of all sorts with which it so often then besieged.

Here is the source of the entire order of rules that have been introduced in the interest of the disposing party, to the end of guaranteeing that the disposition is indeed the word of a healthy and free will . . . . Such are the rules on solemn formalities for donations inter vivos and testaments as well as the rules on capacity to dispose and to receive.
(i) The solemnity assures the liberty of the donor. The donor is often won over more or less effectively by the beneficiary; he who deprives himself for the benefit of another acts under a foreign influence that dominates his will. The presence of the notary is of such a nature as to repel or to diminish these influence and, at the very least, gives time for reflection.

(ii) The solemnity is attached to the idea of the conservation of goods within the family, which was so important in the old law. By imposing a solemn form, the law wished to draw the attention of the donor to the interest of his family and, in addition, to provide indisputable proof of the existence and the amount of the donations for the calculation of the reserve [forced portion] and the disposable portion.

(iii) The principle of the irrevocability of donations was recognized as early as the 16th century; to prevent any recovery of the effectuated donation, the law required the *en minute* notarial form. As a matter of history, this is perhaps indeed the principal reason for the solemnity. With an act under private signature, the donor would have had the *de facto* means of annihilating the liberality – by suppressing the title. . . .

All these justifications are insufficient. Leaving aside the idea of irrevocability, which will be evaluated later, the solemnity is illogical and ineffective. [i] It is *illogical* in the sense that there are well other means of ruining oneself and of ruining one’s family, all of which are just as dangerous as the donation. Numerous people who would never consent to an unreflected donation allow themselves to be tricked into onerous contracts by adept swindlers. [ii] But the solemnity is above all *ineffective*. In order to work usefully, it would have to cover all donations without exception. Now, that is radically impossible in an epoch where fortunes are created without difficulty and where one knows

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24 I find this criticism itself to be “illogical,” at least if its point is supposed to be that the solemnity requirement should be eliminated. All that the criticism establishes is that there is an inconsistency in the law. Now, this normative inconsistency, like every other normative inconsistency, might, as a logical matter, be resolved in either of two ways, namely, by eliminating one of the norms or the other and then subjecting the cases that were formerly covered by the eliminated norm to the norm that has been retained. Here, the two possibilities are (i) eliminate the form requirement for donations or (ii) subject other “dangerous” contracts to the form requirement (or, perhaps, to some functionally equivalent alternative). As between these alternatives, however, the criticism itself does not and, as a logical matter, *cannot* help us choose.

By the way, it seems to me that, since Planiol’s treatise was last revised (1957), Louisiana (as well as France) has, to a great extent, opted for the latter alternative. To be sure, Louisiana has not gone whole hog and required that onerous contracts be made in authentic form. But it has subjected a host of onerous contracts, in particular, those that are considered to be the most dangerous, to a variety of rules the point of which is the same as that of the form requirement for donations, namely, to give the contracting parties time to reflect and, if they so choose, to back out of the contract. I have in mind (i) the legislation that permits consumers who purchase goods in response to in-home or over-the-telephone solicitations to cancel their contracts within three days of making them, see La. Rev. Stat. 9:2711, 2711.1, & 3538 & La. Rev. Stat. 45:831(E); and (ii) the legislation that permits borrowers who apply for “consumer” or “federally related mortgage” loans to cancel their applications within five days of submitting them, see La. Rev. Stat. 9:3572.10. Thanks to this legislation, the “inconsistency” that had Planiol so ginned up has been significantly reduced, if not eliminated entirely.
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money, bearer paper, and checks.\(^\text{25}\) A manifestation of an outdated defiance toward liberalities, the solemnity is, in the end, a costly luxury that is used [only?] by vigilant and scrupulous persons for whom, by definition, such protection is particularly superfluous.

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\(^{25}\) Really? Why? As you will see below, Louisiana (unlike France) presently subjects gifts of some of the things Planiol mentions—the gratuitous issuance of negotiable instruments (e.g., promissory notes and checks) and the gratuitous issuance as well as the gratuitous transfer of non-negotiable instruments—to the form requirements for donations \textit{inter vivos}. Not only that, but numerous Latin American jurisdictions (again, unlike France) do the same even for gifts of cash (above certain amounts)!

See, e.g., \textit{Cód. Civ. Braz.} art. 1168 (“A donation is made by public writing or particular instrument. A verbal donation will be valid if it concerns goods that are movable and of small value and if it is followed immediately by delivery.”); \textit{Cód. Civ. Costa Rica} arts. 1397-1398 (“A verbal donation is permitted only when there has been a delivery and when it concerns movable goods whose value does not surpass two hundred colonos.”); \textit{Cód. Civ. Mex.} art. 2343 (“A verbal donation will produce effects only when the value of the movables does not surpass two hundred pesos.”); \textit{Cód. Civ. Peru} arts. 1474 (“[¶1.] A donation of a movable thing can be made verbally when it concerns objects of small value, but requires the simultaneous delivery of the thing given. [¶2.] A donation of movable things that is not covered by the previous paragraph will always be made in writing, under pain of nullity, identifying and stating the value of things of which it consists.”); \textit{Cód. Civ. Venez.} art. 1439 (“To be valid a donation must be made in authentic form and its acceptance must be made in the same manner . . . . When the donation is of a movable thing whose value does not exceed 2000 bolivars, no writing of any kind is necessary.”); see also \textit{Cód. Civ. Chil.} art. 1401 (“A donation \textit{inter vivos} that is not insinuated will have effect only up to the value of two centavos and will be null in the excess. By ‘insinuation’ is understood the authorization of the competent judge solicited by the donor or the donee.”); \textit{Cód. Civ. Colomb.} art. 1458 (the same). I submit that that which is, in fact, being done is, by definition, not “radically impossible.”
to the writing of a notarial act (B.G.B. art. 518). . . .

1452. The purpose of the formalities. – The formalities have been instituted for the protection of the family and of the disposing party. The counsel that the notary must give will lead the disposing party to reflect and will discourage or foil maneuvers of captation [undue influence]. Moreover, the sole fact that one must avow one’s intention before a notary is of such a nature as to cause a person who would consent to a liberality if it would remain secret to reverse himself.

In addition, a donation that would be valid without any form could remain unknown or form the object of great difficulties of proof, be it when revocation for ingratitude . . . is demanded or when the heirs require collation or reduction. The writing of an en minute act by a notary assures the excellent conservation of proof.

Finally, the writing of an authentic act guaranties the irrevocability of donations. In this the legislature has believed it sees a rule that is protective of the family.

NOTE

When Louisiana first codified its law of form requirements for donations inter vivos (back in 1808), it seems to have all but ignored the Romano-Spanish tradition and to have followed, instead, the French tradition, though with some interesting deviations.

Louisiana required insinuation, but only in its aberrant and watered-down French form. Thus, the only requirement was that the act of donation be recorded in the public records (the parties did not have to appear before a judge), the requirement applied only to donations of immovables (movables, whether corporeal or incorporeal, were exempt), and the only “sanction” for failure to meet the requirement was that the donation was to have no effect against third persons (as between the parties and their successors, insinuation was not a prerequisite to validity).

As for the form of the donative instrument itself, Louisiana, like France, required that the instrument be passed before and signed by a notary (as well as signed by the parties themselves). Beyond that point, however, the Louisiana redactors broke with their French counterparts. Oversimplifying somewhat, one could say that the former required at once both more and less than the latter. The Louisianans required less in this sense: the special “en minute” procedure used by French notaires was not required, that is, the notary who passed the act was not required to keep and archive the original or, for that matter, to keep any record of the act at all. The Louisianans required more in this sense: the

26 See supra note 44, p. 186, for a description of “insinuation” French style.

27 Why the redactors of the Digest of 1808 chose not to impose this requirement probably had something to do with the (dismal) state of notarial practice here in the early 19th Century. Prior to 1882, Louisiana notaries, even those in the big cities, were not required to maintain archives of the acts that had been passed before them. In that year, the Louisiana legislature imposed such a requirement for the first time ever, but limited its scope to Orleans Parish. See 1882 La. Acts No. 50. Thus, even after that time, notaries outside that parish were under no “archiving” obligation. See Atty. Gen. A.V. Coco, Notaries Public in
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instrument had to be passed before and signed by not only a notary (which was all that French law required), but also two witnesses.\(^{28}\)

With only a few exceptions (all of which will be noted below), Louisiana’s law regarding the form of donations *inter vivos* remains today as it was in 1808.

Deborah F. Zehner, Comment, *Louisiana’s Approach to Gratuitous Inter Vivos Dispositions*,
22 LOY. L. REV. 743, 747-48 (1976)

The courts have demanded stringent compliance with the form prescribed in the Civil Code for donations inter vivos. Policy considerations form the basis for such a strict construction. Since by its very nature a donation effects a transfer of property to another without any consideration flowing to the donor, strict requirements of form serve to protect the donor from any coercive influence to which he might be subjected in disposing of his property. By requiring donations inter vivos to be by authentic act, transfers become a matter of public record, openly entered into, with the risk of undue influence minimized. Or perhaps of utmost importance, the solemnity of an authentic act helps to impress upon the donor the gravity of depleting his patrimony during his lifetime, just as requiring a witness to take a solemn oath at trial calls his attention to the seriousness of his testimony. All of these policies are present and operations under the articles dealing with the form of donations inter vivos in the Louisiana Civil Code.

Succession of Miller, 405 So.2d 812, 819, 821-22  
(on rehearing) (La. 1981)

DIXON, C.J., dissenting.

In this state provisions for manual gifts were first codified in Article 1526 of the Civil Code of 1825. The Code Napoleon did not provide for manual gifts, and made no distinctions between corporeals and incorporeals or movables and immovables in regard to donations inter vivos. Instead, the Code provided that any instrument containing or importing ("portant") an inter vivos donation should be executed before a notary, in the form usual for contracts; the original instrument was to be kept on file by the notary. C.N.


\(^{28}\) Why the redactors of the Digest of 1808 chose to impose this requirement is not entirely clear. It is not unreasonable to assume, however, that they viewed the requirement as a substitute of sorts for the notarial “*en minute*” procedure, that is, as a measure that would (i) encourage the donor to reflect up on his decision, (ii) assure that the donation would, in fact, be “irrevocable,” and (iii) provide proof of the existence of the donation.
The primary purpose of requiring the notarial act was to insure the irrevocability of the donation; since the notary was required to retain the original copy of the act in his files, the donor was powerless to revoke the donation by destroying the instrument, as could be done in the case of an act under private signature. A secondary purpose of the requirement was thought to be to diminish any external influences that may have affected the donor. 3 M. Planiol, supra, s 2526, p. 233. Much the same purpose was achieved in the case of donations of movable things: a descriptive list of the effects was required to be annexed to the act of donation. C.N. 948. Compare C.C. 1538. This article contemplates the situation in which a donor makes a gift of a movable, yet nevertheless retains possession of it. Since the donor retains possession, it would be possible to transfer or destroy the objects of the gift. To prevent this, and to assure the irrevocability of the donation, the descriptive list served as a title to the movable effects. 3 M. Planiol, supra, ss 2556- 61, pp. 253-55.

Article 1526 of the Code of 1825, the predecessor of Article 1539, had no counterpart in the Digest of 1808 or in the Code Napoleon. The Louisiana articles, appearing to allow manual donation only of corporeal movables, worked a refinement upon traditional French law, in which no notarial act was required for any donation that was actually effected by the real delivery of the object donated. Corporeal movables, of course, were typically the object of such gifts, since the transfer of possession conferred ownership. Aubry & Rau, Droit Civil Francais s 659, pp. 109-111 (L.S.L.I. trans. 1969).

The Louisiana Civil Code made significant departures from the Code Napoleon, and it is not altogether clear why those changes were made. C.C. 1536, requiring a notarial act for donations inter vivos, applies to immovables and to incorporeal things such as rents, credits and rights or actions, none of which can be physically transferred from one person to another. The purpose of requiring a notarial act to effect donations of incorporeals and immovables would thus seem to be entirely evidentiary: the document manifests the delivery of things which cannot be seen or touched and things which, by definition, cannot easily be moved. The notarial act accomplishes a delivery of ownership. If, as has been suggested, the effort of preparing a notarial act is imposed to impress upon the donor the seriousness of the act of donation, it is impossible to explain why this same cautionary device is not imposed when donations of money are made, which could easily exceed the value of an incorporeal thing. Just as a tract of land cannot be physically transferred from one person to another, an incorporeal thing eludes delivery. Corporeal movables, however, are susceptible to physical transfer. Cf. C.C. 2247. It is for this reason alone that corporeal movable effects are exempted from the rule of C.C. 1536.

NOTE

In some modern codes there is no requirement that the donee’s acceptance of the donation, as opposed to the donor’s offer (or promise) of the donation, be in any particular
form. Examples include the *Burgerliches Gesetzbuch* (German Civil Code) (see § 518, which requires that the promise of donation be in notarial form but says nothing about the acceptance of that promise or of the eventual donation) and the *Code Civil Suisse* (Swiss Civil Code) (see arts. 242 & 243, which require that the promise to donate an immovable be made by authentic act and be filed for public registry but say nothing about the acceptance of that promise or the eventual donation).

### 1) The requirements

a) Act of (offer of) donation

1) General rule: by authentic act (CC art. 1541)

a] Explication

b] Scope: all donations IV of all things no matter what category

1) All donations IV

a] Donations that appear to be donations

b] Donations disguised as sales

* Illustration

DH 72. F wants to give his nephew, N, a tract of land, but doesn't want anyone else, especially not his son, S, to realize that it's a donation. And so F draws up a document, entitled "Act of Sale," in which he purports to "sell" N the tract of land for $50,000. N, too, signs the document. Of course, no such money ever changes hands. Sometime later, S discovers that the "sale" to N was really a sham. And then F dies. S now sues N to recover the tract of land on the theory that (i) the deal was really a donation and (ii) the donation was null for it was not in proper form. What result? Why? See CC art. 2027, sent. 2, & comments (b) & (d), and the jurisprudence that follows:

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*Lambert v. Penn Mutual Life Ins. Co.*, 24 So. 16 (La. 1898)

*Syllabus by the Court*

3. A donation made in the form of an onerous contract (without consideration, and really intended as a donation in disguise), to have effect as such must be passed before a notary public and two witnesses.
BLANCHARD, J.

Nor can we assent to the proposition that the assignment of the [rights] . . . by Mrs. Lambert to her husband is valid as a donation, as contended for it on the authority of Rev. Civ. Code, art. 1746. It is quite true that under that article one of the spouses may during marriage give to the other whatever he or she might give to a stranger. But this must be done pursuant to the directions of the law relative to donations. Id. art. 1536. The donation of incorporeal things, such as credits, rights, or actions, must be by public authentic act. This assignment was not such act. It is sought to overcome this difficulty, however, by the contention that the assignment is made in the form of a sale by private act, and, though not a sale, because without consideration, it is yet good, in this form of an onerous contract, as a donation, although not clothed with the formalities requisite for the validity of a donation. Several old decisions (Holmes v. Patterson, 5 Mart. [La.] 693; Trahan v. McMannus, 2 La. 215) are cited as sustaining this view. These cases were decided under Code 1808, page 220, whose article 53 provided that 'all acts containing donations must be passed before a notary and two witnesses,' etc. An essential difference, both in language and effect, will be noted between that article of the Code of 1808 and article 1523 of the Code of 1825, now article 1536 of the Revised Code, in respect to the form of donations. The donation in Trahan v. McMannus, 2 La. 215, was upheld because it did not profess on its face to be a donation, though it was in reality one in the guise of an onerous contract under private signature. As it was not an act by its terms containing a donation, it was held not to contravene the provisions of article 53 of the then Code. But this article was changed in the Code of 1825 so as to make the law declare that 'an act shall be passed before a notary and two witnesses of every donation,' etc. The 2 La. case, therefore, is not an authority under the altered conditions. This was pointed out in Brittain v. Richardson, 3 Reb. (La.) 81, where it was declared that all donations inter vivos must be passed before a notary and two witnesses. See, also, Rhodes v. Rhodes, 10 La. 90; Cole's Heirs v. Cole's Ex'rs, 7 Mrat. (N. S. 424; Miller v. Andrus, 1 La. Ann. 237; Soileau v. Rougeau, 2 La. Ann. 766; Atkinson v. Atkinson, 15 La. Ann. 491; Farrar v. Michoud, 22 La. Ann. 358. The conclusion we announce on this subject is that a donation made in the form of an onerous contract,—that is to say, an onerous contract which is not such because without consideration, and really intended as a donation in disguise,—to have effect as a donation, must be passed before a notary public and two witnesses.

2} All things

a} Immovables (CC art. 1536)

b} Incorporeals (CC art. 1536)

c} Corporeal movables (?) (CC art. 1538)
PART I: DONATIONS

c| Explication

What, exactly, is required? See CC art. 1536. Can defects in form later be “cured”? If so, how? See CC art. 1845.

2| Exceptions

a| Manual gift (CC art. 1543)

1) Explication


a) By donor himself to donee himself

b) By donor through representative to donee himself

DH 73. P hands $100 to his mandatary, M, with instructions that M hand it over to X. M does so. Has there been a manual delivery? Why or why not?

DH 74. The same as before (DH 73), except that, this time, P, instead of handing M $100, tells M to withdraw $100 from P's checking account and then hand it to X. Different result now? Why or why not?

DH 75. The same as before (DH 74), except that, this time, P, appoints X, the donee, as his mandatary for purposes of delivery and directs X to withdraw $100 from his checking account and then keep it (in other words, give it to himself). Different result now? Why or why not? See the jurisprudence that follows:

Succession of Gorman,
26 So.2d 150 (La. 1946)

ROGERS, Justice.

Mrs. Georgina Jepson Gorman died at her domicile in the City of New Orleans on September 1, 1942. . . . The items inventoried [by the executor of her testament] was . . a claim against Mrs. Margaret Muller for $2,643.92. The claim against Mrs. Muller was for money which, acting under a power of attorney, she drew out of a savings account in the name of Mrs. Gorman prior to her death. . . .

The record shows that the defendant, Mrs. Margaret Muller, and the decedent, Mrs. Georgina Gorman, were half sisters, the children of the same mother. On July 22, 1942,
Mrs. Gorman was ill and confined to the Mercy Hospital in the City of New Orleans. At that time she had on deposit in a savings account in the Whitney National Bank the sum of $2,643.92. She executed a power of attorney on the form provided by the bank authorizing Mrs. Margaret Muller to withdraw her money from the bank.

On July 22, 1942, the day the power of attorney was executed, Mrs. Muller withdrew $200; on August 6, 1942, she withdrew $2,000, and on August 28, 1942, she exhausted the account by withdrawing the balance. The death of Mrs. Gorman occurred four days later.

The tradition or delivery of movable effects takes place if the party to whom it is intended they should be transferred or delivered has them already in his possession. Civ.Code, art. 2478.

If the funds involved in this case had been in the actual possession of Mrs. Muller at the time her sister, Mrs. Gorman, expressed the desire to make the donation there would have been no necessity in order to perfect the manual gift to go through the ceremony of having Mrs. Muller turn the money over to Mrs. Gorman in order that Mrs. Gorman might immediately return the money to Mrs. Muller. The parties adopted the most expedient way of making and accepting the donation. It was not ineffective on that account. It would have been an idle ceremony for Mrs. Muller after withdrawing the money from the bank to hand it to Mrs. Gorman, the donor, so that Mrs. Gorman in turn might give it to Mrs. Muller, the donee. The law takes no account of useless formalities. In order to complete the manual gift it suffices that the will of the donor to give and the actual possession of the movable property by the donee operate simultaneously. In this case, the desire of Mrs. Gorman to make the gift was in full operation at the moment Mrs. Muller actually received the money from the bank. Succession of Zacharie, 119 La. 150, 43 So. 988. Gibson v. Hearn, 164 La. 65, 113 So. 766.

The mere circumstance that a person authorizes another to withdraw his funds from a bank under a power of attorney does not of itself constitute a donation of the funds, but if the evidence satisfactorily shows that the power of attorney was executed as one of the means of establishing a donation of the funds and the volition of the donor to make the gift is still in operation at the moment the donee actually receives the money from the bank, there would seem to be no good reason for holding the donation to be invalid.

Considering the testimony offered to establish the manual gift by Mrs. Gorman to her sister, Mrs. Muller, and the close personal relations existing between them, the transaction whereby Mrs. Muller came into possession of the jewelry and the money from Mrs. Gorman can be considered in no other light than as a donation.

c) By donor himself to representative of donee

DH 76. D hands $100 to M, X's general purpose mandatary, with instructions that M turn it over to X. Has there been a manual delivery? Why or why not?

DH 77. D deposits $100 into a savings account that belongs to X and has been set up in the
name of X. Has there been a manual delivery? Why or why not?

DH 78. D gives T, the tutor of X, $100, with instructions that the money is to be deposited in the account that T maintains for X's benefit. This account, though in T's name, indicates that T holds the accounts "as tutor for X." Has there been a manual delivery to X? Why or why not? See the jurisprudence that follows:

Allen v. Allen,
301 So. 2d 417 (La. App. 2d Cir. 1974)

HALL, J.

The issue presented by this appeal is whether two savings accounts in a savings and loan association in California are assets of the community of acquiets and gains formerly existing between Jack H. Allen and Joyce Reynolds Allen, now divorced, or whether the accounts are owned by their children through donations to the children made over a period of years. . . .

In 1963, Mr. and Mrs. Allen had a savings account in First Federal Savings & Loan Association in Monroe with a balance of over $700. They were advised of the tax advantages of putting savings in the children's names and reporting the income therefrom separately. The account at First Federal was closed out and a check issued to Mr. and Mrs. Allen for the balance, which was deposited in their checking account in a Monroe bank. A few days thereafter, two accounts were opened in the State Mutual Savings & Loan Association in California in the names "Mr. or Mrs. Jack H. Allen as guardian of the estate of Jacqueline Melinda Allen" and "Mr. or Mrs. Jack H. Allen as guardian of the estate of Robin Leslie Allen" and funds were deposited therein by Mr. and Mrs. Allen. Either Mr. or Mrs. Allen had the authority to make withdrawals.

Through the years thereafter, additional funds were deposited in the accounts by Mr. and Mrs. Allen . . . .

In about 1968, the names of the accounts were changed to Mrs. Joyce R. Allen, custodian for Jacqueline Melinda Allen and Robin Leslie Allen under the Louisiana Uniform Gifts to Minors Act. Only Mrs. Allen had authority to make withdrawals from the accounts. Separate income tax returns were filed in the children's names for 1969, showing interest income from each account of over $700 . . . .

Although the accounts were carried in the names of both parents as guardians and then in the name of Mrs. Allen as custodian, the provisions of the Louisiana Gifts to Minors Act, LSA-R.S. 9:735-742, were never complied with in that no deed of gift was ever signed.

The district court held the accounts are owned by the children and are not assets of the former community, the funds having been donated to the children by manual gift pursuant to Civil Code Art. 1539. Appellant contends there was no effective donation because the funds were not irrevocably vested in the donees as required by Civil Code
Art. 1468 since the parents retained control and the right to withdraw the funds. Appellant further contends the accounts are incorporeal rights which cannot be the subject of a manual gift but require authentic acts under Civil Code Arts. 1536 and 1538 . . . .

Pertinent to the issue presented are the following articles of the Civil Code:

"Art. 1546. A donation made to a minor, not emancipated, must be accepted by his tutor.

"Nevertheless, either parent of the minor, or any ascendant of the minor, whether the minor is emancipated or not, or the tutor of the minor, may accept the donation for the minor whether such parent or ascendant is the donor, or the tutor of the minor or both. And a donation to be held in trust for the minor may be accepted by the trustee alone."

In *Gibson*, the court held that a deposit by the donor into a bank account in the name of an agent for a minor donee was a donation of money, accompanied by a real delivery, and constituted a donation by manual gift. Money is a corporeal movable, and may be donated by manual gift. . . .

In the instant case, as in *Gibson*, the gifts were of money, accompanied by real delivery through deposit of the money in savings accounts in the name of a fiduciary for the minors.

The donors' intent to make irrevocable donations of the funds deposited into the accounts is manifest from the evidence. Appellant's own testimony was that this was done for tax purposes, which necessarily presupposes an irrevocable gift to lawfully receive the tax advantage of separate income. The accounts were continuously carried in the names of fiduciaries for the named minors. The permanent and irrevocable nature of the donations is further demonstrated by the fact that no funds were ever withdrawn in the more than ten years since the initial donations were made.

The only factor weighing against the irrevocability of the donations is that both parents at first and then one parent had the right to make withdrawals and to that extent retained control of the funds. However, the donees are minors and someone had to act for them -- logically, the parents.

The cases cited by appellant deserve careful consideration. In *Succession of Grubbs*, a husband deposited $10,000 in a savings account in the name of his wife. Withdrawals could be made by either the husband or wife. This court held there was not an effective donation because the husband attempted to transfer a savings account, an incorporeal immovable, without complying with C.C.Art. 1468 and because he retained the power of withdrawal. *Grubbs* is distinguishable from the instant case for two reasons. First, under the authority of *Gibson v. Hearne* we hold the gifts here were of money, a corporeal movable, not gifts of the accounts into which the money was deposited. Secondly, here the donees were minors and necessarily the authority to withdraw needed to be vested in someone, which was not the situation in *Grubbs*.

In *Basco*, Louis Basco opened a savings account in the name of "Joseph Basco, by Louis Basco." Louis had the sole right to make withdrawals. The court held the account was an incorporeal movable and since there was no compliance with C.C. Art.
1536 there was no valid donation to Joseph Basco. This case is distinguished from the instant case for the same reasons as stated above in connection with the *Grubbs* case.

In *Succession of Dykes, supra*, the accounts were opened by W. H. Dykes in the name of "W. H. Dykes or W. E. Dykes." The court held that conceding a donative intent, there was never a real delivery of the funds on deposit since W. H. Dykes remained the owner thereof and retained power of control and withdrawal until his death. In the instant case, the accounts were in the names of the donors only in a fiduciary capacity and their control was in the same capacity.

The accounts in question represent money donated to the children through manual gifts and are not assets of the community formerly existing between the divorced parents.

4) **By donor through representative to representative of donee**

DH 79. D appoints B as his mandatary, directing him (i) to sell a certain asset of D's and (ii) to hold the proceeds as mandatary for X. At the time, X knows nothing about it. But after B sells the asset and collects the proceeds, X "ratifies" B's acts. Has there been a manual delivery to X? Why or why not? *See* the jurisprudence that follows:

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*Chachere v. Dumartrait,*

2 La. 38 (1830)

This is an injunction suit, instituted by the wife, against the syndic of the creditors of her insolvent husband, B. Martel to restrain him [the syndic] from selling the immovable property . . . of the insolvent [her husband], until her claim for property and money brought into[the] marriage is first satisfied by a sale for cash. . . .

It appears from the evidence that some time after the marriage of the petitioner to B. Martel, on or about the year 1816, her father Louis Chachere, allowed her husband to sell two tracts of land, situated on the Carancro and in the Parish of St. Landry, to one William Johnson, for $1,600 and to receive the price. The title to Johnson was ratified and confirmed by L. Chachere the father of Madame Martel. The wife alleges this land was a donation from her father to her, though sold by her husband. Madame Boutte her sister testifies that Louis Chachere (*père*) purchased the land since sold by Martel to Johnson, for his daughter, Madame Martel to live on. And that Martel and his wife did live on it a year or more. Mr. Boutte, a brother-in-law of the plaintiff, states it was always understood in the family that the land on the Carancro, "sold to Johnson," belonged to "Madame Martel." . . .

The wife now claimed in her petition of injunction, the price of the land . . ., and to have so much of the property in the hands of Dumartrait the syndic, sold for cash as will satisfy this claim . . .

MATHEWS J. delivered the opinion of the Court.
The $1600 . . . seem[s] to have been considered [by the trial court] as a donation made to her [Madame Martel] by her father [Louis], which fell into the hands of her husband, the insolvent, and was by him appropriated to his own use.

The donation appears to have been made in the following manner: Chachere the father, was the owner of certain tracts of land of which he permitted the husband of his daughter to take possession and occupy for some time, who afterwards sold this property to one Johnson for $1600, which was paid (on Chachere's ratification and confirmation of sale) to his son-in-law. From the whole tenor of the evidence we do not doubt the intention of the father to give these tracts of land to his daughter as a marriage portion: but before any legal transfer was made to that effect, her husband was permitted to make the sale as above stated.

The price, although paid to him by the vendee must be considered as really due to the owner of the property, Chachere the father; and was left in the possession of the receiver as a donation to his wife, he received it as her agent, delivered from her father through the agency of the vendee of the land, who was really a purchaser from Chachere, altho' nominally from Martel. The donation was thus fully and completely effected. It was as fully executed as if the money had been delivered from the father to his daughter and by the latter transferred to her husband. If it was of moveable or personal property and was executed, it is good according to law. See La. Code, Art. 1528.

[NOTE]

By donor himself to both himself & donee

DH 80α. D opens an account in the name of D or X and then deposits $100 into the account. Not long thereafter, X withdraws the $100. Has there been a manual gift of money to X? Why or why not?

DH 80β. The same as before (DH 80α), except that X has not yet withdrawn the $100. Has there been a manual gift of money to X? Why or why not?

[NOTE]

The Louisiana Supreme Court once purported to sum up the requirements for the “manual gift” exception of CC art. 1539 this way:

[I]t is clear from this prior jurisprudence that there is no need for the donor to actually hand over the [donatum] to the donee. It is sufficient ‘that the will of the donor to give and actual possession of the movable property by the donee [or his representative] operate simultaneously.

Succession of Miller, 405 So. 2d 812, 819 (La. 1981) (on rehearing). Based on the hypotheticals set forth above, do you agree or disagree with this generalization?
2) Scope: corporeal movables only

a) Definitions

1/ Corporeal movables

What’s a corporeal movable? See CC art. 471.

2/ Incorporeal movables

What’s an incorporeal movable? See CC art. 472.

3) Illustrations

DH 81. A gives B, her cousin, a $100 bill. There’s no “act of donation”; the bill is delivered by hand. Any form problem here? Why or why not? See Succession of Hale, 26 La.Ann. 195 (1874) (“We think the evidence establishes that the donation was made in money, in the form of the manual gift, and that a notarial act of transfer was not requisite to its validity.”)

DH 83δ. A gives B, her cousin, a check, drawn on A’s account at Bayou Bank, payable to the order of B, that Bayou Bank had certified at A’s request. There’s no “act of donation”: the certified check is delivered by hand. Any form problem here? Why or why not? See the jurisprudence that follows:

Succession of Leroy,
103 So. 328 (La. 1925)

LAND, J.

... These oppositions... are based mainly upon the omission of the executor to include in said accounts, as a part of the assets of said estate, a certain check for $10,800, certified by the Whitney-Central National Bank, and delivered to the testator shortly before his death, as the balance due on the purchase price of certain real estate sold by him to P. H. Dubus. The executor contends, in answer to these oppositions, that said check was indorsed in blank, and was delivered to him by the testator, as a donation inter vivos by manual gift.

The question presented to us for decision in this case is whether such a check is susceptible of manual gift by delivery under article 1539 of the Civil Code, or whether an act passed before a notary and two witnesses is essential to the validity of such donation under article 1536 of said Code.

... The evidence in the case shows that this check had been delivered to the deceased after the sale, and that, about five hours before his death, deceased indorsed the check in
blank and handed it to Mahoney, with the statement, 'This is for you.' . . .

. . . The donee is the nephew of the deceased, is named as his executor in his last will and testament, and had attended to the legal business of decedent for a number of years without compensation.

The check in question is drawn by P. H. Dubus upon the Whitney-Central National Bank, is made payable to the order of D. B. H. Chaffe, attorney, and is indorsed by him payable to the order of J. Leroy. . . . Under this notation is the indorsement in blank signed 'M. J. Leroy.'

. . .

Under the latter article [CC art. 1539] this court has repeatedly held that the indorsement and delivery by the donor of a check payable to order constitutes a valid donation of the fund represented by such check, whether collected before or after the death of the donor.

. . .

This brings us to the consideration of the effect of the check in question being certified by the Whitney-Central National Bank.

'Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

'Where the holder of a check procure it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

'A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.'


Therefore the certification of the check in this case by the Whitney-Central National Bank rendered said bank primarily liable to the holder, Leroy, for the payment of the check. Such certification or acceptance, however, did not operate to make Leroy, the holder, the drawer of said check, nor did it have the effect of assigning to the credit of Leroy, as holder, the funds of the drawer in said bank, to the amount of the check certified.

As a matter of custom, when a check is certified, a bank charges the amount of the check at once to the account of the drawer, as the bank becomes primarily liable for the payment of the check.

The death of Leroy therefore did not affect the manual gift of this check to Edwin I. Mahoney, as said check was not drawn by Leroy upon his own funds in said bank. The bank was not the agent of Leroy. There was no mandate to be revoked by the demise of the donor, as the bank was primarily bound to pay such check, when presented by Leroy, as holder, or by his transferee, Mahoney.

We are therefore of the opinion, that there was a valid manual gift of the check in controversy to Mahoney by Leroy, although said check was not collected by Mahoney until after the death of the donor.
b] Endorsement/delivery of “documentary incorporeals”  
(CC art. 1550)  

What’s a “documentary incorporeal”? It’s the kind of thing referred to in CC art. 1550, par. 1, i.e., an “incorporeal movable of the kind that is evidenced by a certificate, document, instrument, or other writing”.

1} Commercial paper


... “(e) Donations inter vivos of instruments shall be governed by the provisions of this Chapter notwithstanding any other provision of the Louisiana Civil Code or of any other law of this state, relative to the form of donations inter vivos, to the contrary.”

NOTE

Many students, upon reading the statutory provision quoted above, jump to the conclusion that any and every gift of any and every kind of commercial paper is exempt from the form requirements of CC arts. 1541 et seq. Would that these students looked before they leapt! The truth is that the scope of the rule announced in that provision is radically limited in at least two significant respects.

First, that rule applies only to transfers of an instrument that, at the moment of the transfer, is already “negotiable.” Says who? The statute itself. Note that the provision, by its own terms, purports to apply only to donations inter vivos “of instruments.” Now, the term “instrument,” as used in this provision, “means a negotiable instrument.” La. Rev. Stat. 10:3-104(b); see also id. 1990 UCC cmt. (1). Accord Cynthia Samuel, Katherine Spaht, & Cynthia Picou, SUCCESIONS & DONATIONS: CASES & READINGS 414 (Fall 2000) (“If an instrument is marked non-negotiable, then the provisions of this statute do not apply and the instrument is subject to the general rules for donation of an incorporeal movable.”)

Second, that rule applies only to post-issuance gifts of instruments or, to put it another way, only to gifts of already-issued instruments. Says who? Again, the statute itself. The provision in question appears at the tail end of (and therefore is part of) § 3-203. Now, that section, as its title clearly indicates (“Transfer of instrument; rights acquired by transfer”), is concerned with “transfers” of instruments, properly so called. According to ¶(a) of the section, “[a]n instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving deliver the right to enforce the instrument.” La. Rev. Stat. 10:3-203(a) (emphasis added). As 1990 UCC cmt. (1), ¶ 3 points out, that language “excludes issue of an instrument” from the
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...scope of “transfer.” See also CC art. 1550 cmt. (b), pars. 2-3.29

DH 83α. A gives B, her cousin, a number of negotiable "bearer bonds" that had been issued to her (A) by Cajun, Inc. There’s no “act of donation”; the bonds are delivered by hand. Any form problem here?

DH 83β. A gives B, her cousin, a check, drawn on A’s account at Bayou Bank, payable to the order of B. There’s no “act of donation”: the check is delivered by hand. Any form problem here? Why or why not? See the jurisprudence that follows:

Succession of Schneider,
199 So.2d 564 (La. App. 3d Cir. 1967)

CULPEPPER, Judge.

The plaintiff, Laurence J. Habetz, filed this action against Reverend Leonard C. Habetz, testamentary executor of the Succession of Mrs. Gertrude Victoria Habetz Schneider, for judgment ordering the executor to pay plaintiff the sum of $35,000 out of the succession funds. Plaintiff alleges that, shortly before her death, Mrs. Schneider made a donation inter vivos to him of that amount by the manual gift of her check, which the bank refused to pay after her death. . . .

We, like the court below, have concluded that even assuming the facts to be substantially as asserted by plaintiff, the gift of the check did not, as a matter of law, constitute a valid manual gift of corporeal movable effects, within the meaning of LSA-C.C. Article 1539.

For purposes of our opinion, we will assume the following facts as proved: About 4 months before her death, Mrs. Schneider handed to her nephew, the plaintiff, a check for $35,000, stating that she wanted him to have this sum as a gift because he was not named as a legatee in her will. The check is dated March 13, 1965; the drawee is the First National Bank of Crowley; it is payable to the order of Laurence J. Habetz for the sum of $35,000; the word 'donation' is written in the lower left hand corner; and it is signed by Victoria Habetz Schneider, the decedent, as drawer.

No attempt was made by plaintiff to negotiate or present the check for payment or certification until after the death of Mrs. Schneider on July 16, 1965. About 10 days after her death, plaintiff endorsed the check 'For Deposit' and deposited it to his account in the

29 “‘Issue’ means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.” La. Rev. Stat. 10:3-105(a). Thus, if I draw up a promissory note that says “I owe you $100” and hand it to you or if I make out a check to your order and hand it to you, what I’ve done is to “issue” the note or check, not to “transfer” it. Of course, if you, then, in turn, gave that note or check to someone else, then that would be a “transfer,” not an “issuance.”
Louisiana Bank & Trust Company, of Crowley. On August 11, 1965 the Louisiana Bank & Trust Company returned the check to plaintiff unpaid, with a notation that the drawer of the check was deceased. .

Plaintiff contends that the gift of the check was a valid donation inter vivos of the sum of $35,000 under the provisions of LSA-C.C. Article 1539. .

Defendant contends that the mere issuance and delivery of donor's own check, prior to its acceptance by the drawee bank, is the gift of an incorporeal right and therefore not subject to donation inter vivos except under the form provided by LSA-C.C. Article 1536.

Construing these statutory provisions, our jurisprudence is established that the simple issuance and delivery of the depositor's own check to the payee does not operate as an assignment of any part of the funds of the drawer in the bank, even though the drawer has sufficient funds on deposit to cover the check. Hence, there is no privity between the holder of the check and the bank; and the holder has no cause of action against the bank for the funds.

Under these authorities, it is apparent that the gift of the donor's own check is not equivalent to the gift of the money on deposit in the bank. It is merely the gift of an incorporeal right to the donee to present the check to the bank for payment.

Underlying all of these decisions, including our own, is also the idea that where the donor's check is not presented for payment until long after the donor's death, there is just cause for suspicion. If the gift is proper, one would naturally expect the recipient of a large check to present it for payment immediately and not take the chance of the donor changing his mind or the funds on deposit being depleted. However, where the check is not made known until after the donor's death, there is just cause to suspect the donation. For, during his lifetime, the donor received no notice from the bank that the check had been paid. And, after the donor's death, he is not available to contradict or corroborate the gift. Hence, the courts are loath to recognize the mere manual delivery of the deceased donor's check, as being equivalent to delivery of the funds on deposit.

DH 83γ. Iota gives A, her sister, a check, drawn on Iota’s account at Creole Bank, payable to the order of A. The gift is memorialized by an authentic act of donation, which both Iota and A sign. Then A, after endorsing the check “in blank” (that is, she simply signs her name on the back of the check), gives it to B, her cousin. For this transfer between A and B, there’s no “act of donation”; A simply hands the endorsed check over to B. Any form problem here? Why or why not? See La. Rev. Stat. 10:3-205(b), sent. 2 (“When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone . . .”)

DH 83ε. A, the aunt of N, goes to the Bank and buys a certificate of deposit (“CD”). This CD, which (like most CDs) is non-negotiable, is issued in the name of A alone. Sometime later, A gives the CD to N with the intent to donate it. But no act is executed; rather, A simply indorses the CD on the back and hands it to N. Any form problem here? Why or why not? See the jurisprudence
that follows:

Montet v. Lyles,
638 So.2d 727 (La. App. 1st Cir. 1994)

CRAIN, J.

Sometime prior to February, 1991, Barbara Montet Lyles and her husband Larnel Lyles prepared to construct a home in Tangipahoa Parish. Before construction commenced Lena Montet (Barbara Montet Lyles' aunt) and the Lyleses agreed that a bedroom and bath would be added to the plans of the house which was to be constructed by the Lyleses so that Mrs. Montet could move in with the Lyleses. Mrs. Montet was approximately 81 years old at the time and suffered from diabetes and a heart condition.

Sometime in February, 1991, Mrs. Montet handed Mrs. Lyles a certificate of deposit (CD) in the sum of $30,000 issued in the names of Lena Montet or Barbara Lyles. In early June, 1991, Mrs. Lyles and Mrs. Montet had a disagreement regarding the cost of food needed for Mrs. Montet's special diet which was necessitated by her diabetic condition. On June 17, 1991, Mrs. Montet informed Mrs. Lyles that she was moving back to Metairie to live in an apartment complex where she had previously resided. Mrs. Lyles cashed in the CD on June 18, 1991. This was done without Mrs. Montet's consent. Mrs. Montet moved out of the Lyleses' residence on June 22, 1991. She thereafter instituted this suit against Barbara Montet Lyles and her husband Larnel Lyles for reimbursement of the sum represented by the certificate, as well as for other sums allegedly loaned to Mrs. Lyles.

DONATION OF THE CERTIFICATE OF DEPOSIT

Defendants admit in brief that the CD at issue was an incorporeal movable subject to the requirements of La.C.C. art. 1536, requiring donation by authentic act, which defendants admit was not accomplished in this case. In order for La.C.C. art. 1536 to be applicable as to form defendants are apparently conceding that the certificate of deposit was not negotiable pursuant to former La.R.S. 10:3-104. They contend, however, that the CD was negotiated by Mrs. Lyles, the donee, thus converting the CD to a corporeal movable in the form of cash which was placed into the donee's possession. Thus, the donation was perfected pursuant to La.C.C. art. 1539.

The CD was issued by Secor Bank in the names of Lena M. Montet or Barbara M. Lyles in the sum of $30,000 at the request of Mrs. Montet. It is undisputed that the money used to obtain the CD was solely that of Mrs. Montet; Mrs. Montet's tax identification number appeared on the CD; and she alone paid taxes on the interest generated by the CD.

If we assume, as defendants concede, that the CD was not negotiable and that La.C.C. art. 1536 controls as to form, it is uncontested that there was no transfer of the CD by authentic act. Thus, there is no valid donation of the CD as to form.
2) Shares of stock

NOTE

Under Louisiana’s investment securities law La. Rev. Stat. 10:8-101 et seq., certain types of securities, including shares of stock, can be transferred merely by “indorsement and delivery.” What that means is spelled out in §§ 8-309 & 8-308 of the statute:

§ 8-309. Effect of indorsement without delivery
An indorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificated security.

§ 8-308. Indorsements; instructions
(1) An indorsement of a certificated security[30] in registered form[31] is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written upon the back of the security.

DH 82. A gives B, her cousin, some shares of common stock issued by Microsoft, Inc. There’s no “act of donation”; the stock certificate is delivered by hand. Any form problem here? Why or why not?

c) Transfers to minors

NOTE

Under certain circumstances, Louisiana law permits an adult to transfer property to

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30 “A ‘certificated security’ is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is (i) represented by an instrument issued in bearer or registered form; (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interest, or obligations.” La. Rev. 10:8-102(1)(a).

31 “A certificated security is in ‘registered form’ if (i) it specifies a person entitled to the security or to the rights it represents and (ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.” La. Rev. Stat. 10:8-102(d).
a minor without having to comply with the form requirements of CC arts. 1536 et seq. See Uniform Transfers to Minors Act, La. Rev. Stat. 9:751-773. The kinds of property that may be so transferred include investment securities, money, life insurance, annuities, irrevocable present rights to future payments, corporeal movables for which a certificate of title has been issued by a government entity, and even immovables. Id. § 758. To be sure, the transfer of such property still must be memorialized in some form. But the form requirements are significantly less stringent than are those found in CC arts. 1536 et seq. For example, to transfer a certificated corporeal movable (e.g., an automobile), all that the donor must do is to have the certificate re-issued in his name “as custodian for [minor’s name here] under the Louisiana Uniform Transfers to Minors Act.” La. Rev. Stat. 9:758(A)(6)(a). To take another example, to create a bank account for a minor, all the donor must do is to send money to the bank with instructions that it be deposited into an account in his name “as custodian for [minor’s name here] under the Louisiana Uniform Transfers to Minors Act,” together with the bare bones “transfer form” (a simple act under private signature) described in § 758(B).

DH 83ζ. In honor of Lil-Fille’s 16th birthday, Pascal, Lil-Fille’s father, wants to buy her a tract of land. After he and the present owner, Olide, come to terms, they draw up an act of sale for the land in which the “buyer” is described as follows: “Pascal, as custodian for Lil-Fille, under the Louisiana Uniform Transfer to Minors Act.” Pascal then promptly files this act of sale into the public records. Any form problem here? Why or why not? See La. Rev. Stat. 9:759(A)(5).

b) Act of acceptance

1) Definition

2) Modes

a) General rule

1) Manner of manifestation: express (former CC art. 1540)

NOTE

Former CC art. 1540, ¶ 1 stated that the acceptance had to be expressed “in precise terms.” The Louisiana courts, following French doctrine, concluded (i) that the term "precise" would better have been translated as "express" and (ii) that all that was required for an "express acceptance" is some verbal acknowledgment from the donee that makes it clear that he is willing to take the thing offered. See, e.g., Rutherford v. Rutherford, 346 So.2d 667 (La. 1977). This paragraph of former article 1540 has not been reproduced. Has the law been changed?
2) Form of manifestation: authentic act (CC art. 1541)

   a) Statement

   b) Possibilities (CC art. 1544, par. 2):

      1/ Acceptance expressed in the act of donation

      2/ Acceptance expressed in a separate writing

   b) Exception: tacit (CC art. 1544, par. 3)

      1) Statement

      2) Scope: corporeal movables donated by manual gift

      3) Explication

3) Effectivity

When is the acceptance “effective”? In other words, precisely when, once the acceptance has been made, is the contract of donation considered to be “perfect” (complete)? See CC arts. 1544, par. 1, & 1551. What does “upon acceptance”, as used in CC art. 1551, mean? Is it when the donee writes up the act of acceptance? When, after having done that, he puts the act of acceptance in the post, in an envelope addressed to the donor? Not until the donor receives the act? Do the general rules on offer and acceptance have any bearing on these questions? See CC arts. 1934, 1935, 1938?

DH 84Æ. On June 1, 2002, Pascal, having decided he’d like to donate a certain tract of land to his son, Ti-Boy, who is away at college in Lafayette, makes out an act of donation to that effect, in authentic form, and then mails the act to Ti-Boy. When Ti-Boy receives the act, which occurs on June 3, 2002, he runs down to the office of his favorite notary, where he makes out an authentic act of acceptance. But neither Ti-Boy nor the notary bothers to send Pascal a copy of that act; nor does Ti-Boy acknowledge the donation in any other way (e.g., by letter, telephone call, e-mail). Two weeks later (on June 17, 2002), Pascal, having heard nothing from Ti-Boy, “revokes” his (offer of) donation to Ti-Boy; has his daughter, Lil-Fille, meet him at his notary’s office; and, once there, makes out another act of donation, also in authentic form, in which he donates the same land to Lil-Fille. Then and there, Lil-Fille accepts the donation in the same authentic act. Days later, Pascal dies. Which of Pascal’s children is entitled to the land – Ti-Boy or Lil-Fille? Why? See CC art.
1540, ¶ 2, & the doctrine that follows:

c) Recordation (*insinuation*)

2) The sanction

NOTE

Suppose that the parties to a purported donation *inter vivos* fail to put it (the offer of donation, the acceptance, or both) into proper form. What’s the result? What “sanction” does the law attach to such a purported donation?

Part of the answer is found in CC art. 1541. According to that article, the requirement that donations be in a specified form is imposed “under the penalty of absolute nullity.” The Louisiana jurisprudence has reached the same conclusion. *See Castleman v. Smith*, 86 So. 778, (La. 1920) (“The petition charges that the act is an attempted donation *inter vivos* of immovable property and incorporeal rights under private signature. Hence, . . . it was an absolute nullity . . . .'”) (emphasis added); *Stelly v. Vermillion Parish Police Jury*, 482 So.2d 1052, 1055 (La. App. 3d Cir. 1986) (“This purported act of donation of immovable property can be considered as nothing more than an act under private signature duly acknowledged and, as such, is absolutely null as a donation of immovable property.”) (emphasis added) (Knoll, J.); *Ducote v. Ducote*, 442 So.2d 1299, 1301-02 (La. App. 3d Cir. 1983) (“The purported donation of immovable and incorporeal property can be considered as nothing more than an act under private signature duly acknowledged and, as such, is absolutely null.”) (emphasis added).

That answer, however, cannot be approved, at least not without certain significant qualifications. Why not? Because it is contradicted, at least in part, by CC art. 1845. That article provides as follows:

A donation *inter vivos* that is null for lack of proper form may be confirmed by the donor but the confirmation must be made in the form required for a donation.

The universal successor of the donor may, after his death, expressly or tacitly confirm such a donation.

Where’s the contradiction? Consider this syllogism:

MP: If an act is absolutely null, then it cannot be confirmed. CC art. 2030, ¶ 1, sent. 2.

mp: A donation *inter vivos* that’s null for want of form can be confirmed. CC art. 1845.

QED: A donation *inter vivos* that’s null for want of form is not absolutely null.

Does that mean, then, that a donation *inter vivos* that’s null for want of proper form is relatively null? If, as our CC articles on nullity imply and as the conventional wisdom suggests, there’s only one alternative to absolute nullity, namely, relative nullity, then the answer would be and, as a matter of logic, could only be “yes.” But one can question
whether there is, in fact, only one such alternative.

This “binary” system of nullities, according to which every nullity is either absolute or relative, has come in for severe criticism in France. One of the problems with it, say the critics, is that it is overly-simplistic, in particular, that it fails to account for those nullities that have, at once, some of the characteristics of one and some of the characteristics of the other of the two supposedly exclusive category-types of nullity, nullities that, for that reason, “fall between the cracks” of those category-types. 32 According to the critics, the categories of “absolute” and “relative” nullity, far from constituting the only possibilities, are but the extreme “poles” of a “continuum” of nullities or, to use a different metaphor, are just “pure” strains of nullity that can be “mixed” to produce any number of “hybrid” strains.

Employing this theory of the “continuum” (or the “hybridization”) of nullities, France’s foremost family of civil law scholars, the Mazeauds, has offered up this analysis of our problem (that is, the problem of the nature of the sanction for donations inter vivos that are null for want of form):

Sanction of the form rules. – The required solemnities constitute elements of formation for the contract of donation, which therefore is included among the “solemn acts.” The nullity that sanctions the failure to observe them is absolute, at least in the sense that it can be demanded by any interested person, in particular, by the donor or his creditors. Moreover, contemporary jurisprudence submits the action in nullity to a [liberative] prescription of 30 years.33 But the absolute nullity in question here is a very peculiar one, for it approximates a relative nullity with respect to confirmation: . . . in the terms of article 1340 of the Code Civil, “after the death of the donor, his heirs can validly confirm a donation that is null in form.” Some have tried to explain this situation by pointing out that the heir has a natural obligation to accomplish the will of the deceased as it may have been expressed outside of legal forms.34 . . . [This] explanation is not satisfying. Article 1340 of the Code Civil demonstrates the accuracy of the critique that has been made against the French system of nullities, a system that is oversimplified in that it distinguishes only [two kinds of nullity:] the nullity open to challenge by every interested person [absolute] and that which benefits only a single person [relative]. Between the general interest and the particular interest, [there is another:] the interest of the

32 See, e.g., 2-1Henri & Léon Mazeaud et al., LEÇONS DE DROIT CIVIL: OBLIGATIONS nº 315, at 292 (François Chabas rev., 5th éd. 1999).

33 In French law, the right to seek judicial recognition of an absolutely nullity prescribes in 30 years. In Louisiana law, by contrast, that right is imprescriptible. See La. CC art. 2032, ¶ 1 (“Action for annulment of an absolutely null contract does not prescribe.”)

34 See La. CC art. 1762 (“Examples of circumstances giving rise to a natural obligation are . . . (3) When the universal successors are not bound by a civil obligation to execute the donations and other dispositions made by a deceased person that are null for want of form.”)
group – here, that of the family – [which] demands protection that ought not to surpass the members of this group. . . .

4-2 Henri & Léon Mazeaud et al., _Leçons de Droit Civil: Successions – Liberalités_ no 1456, at 645 (Laurent Leveneur & Sabine Mazeaud-Leveneur revs., 5th éd. 1999).

This analysis is compelling. If it is sound, then the “nullity” of donations _inter vivos_ that are made in improper form should be characterized as follows. Such a donation is a “mixed” nullity, but one that is much closer to the absolute nullity “pole” than to the relative nullity “pole” on the nullity “continuum.” In fact, it has one and only one attribute that’s associated with relative nullities, namely, it can be confirmed by either the donor himself or by his successors. All of its other attributes, however, are ones that are associated with absolute nullities, for example, (i) the act is considered to be null _ab initio_, that is, it is null even in the absence of a judicial declaration to that effect; (ii) the nullity may be invoked by any person – not just the donor or his successors – or may even be declared by the court on its own initiative; and (iii) the action to have it declared null never prescribes.

b  Revocation

1)  Introduction (CC arts. 1468 & 1556)

Behold, I tell you a mystery: though CC art. 1468 states that a donation _inter vivos_ is, by definition, “irrevocable,” CC art. 1556 purports to recognize several grounds upon which such a donation can supposedly be “revoked”? How might (should) the apparent antinomy between these two articles be resolved?

2)  Definition

What does “revocation” mean? (i) What is its _common_ meaning? In this instance, the answer can be found in the word’s etymology. The word is derived from the Latin prefix _re-_ , which means “again,” and the Latin verb _vocare_ , which means “to call.” A revocation, then, is a “calling back” of something. (ii) What is its _general legal_ meaning? See _Vocabulaire Juridique_ 712 (Gérard Cornu ed., 1987) (“Revocation. . . . 2.a. A unilateral act of retraction by which a person intends to put at nought a prior act of which he was the sold author or even a contract to which he is a party that that produces this effect in cases determined by legislation.”); _Private Law Dictionary and Bilingual Lexicons_ 381 (Paul-André Crépeau gen. ed., 2d ed. 1991) (“Revocation . . . 1. Termination of a juridical act resulting from a unilateral decision, with regard to an offer, a liberality, a mandate or a judicial admission.”) (iii) What is its meaning in this specific legal content, i.e., donations _inter vivos_ ? Figure this one out for yourself.

3)  Causes (CC art. 1556 et seq.)

a)  The listed causes (CC art. 1556)
PART I: DONATIONS

1] Pseudo-cause: non-fulfillment of suspensive condition

2] True causes
   
a] Occurrence of a resolutory condition

   b] Ingratitude (CC art. 1557)

   * Instances

   Is the list of instances of ingratitude set out in CC art. 1560 exhaustive or merely illustrative? Why?

   1} Attempted murder of donor

   2} Cruel treatment of, crimes against, or grievous injuries to donor

   Re-read the note, supra, at pp. 120-121 regarding the meaning of the phrase “cruel treatment, crimes, and grievous injuries.”

   a} Cruel treatment:
      
      1/ Mens rea: intent

      2/ Actus reus: physical mistreatment

   b} Crimes: intentional offenses against the person or property defined by the criminal law

   c} Grievous injuries:
      
      1/ Mens rea: intent

      2/ Actus reus: works, behavior, or even attitudes that damage his sentiments, honor or reputation

Whitman v. Whitman,
730 So.2d 1048 (La.App. 2 Cir. 1999)

DREW, J.
William Newell Whitman appeals the judgment revoking two donations made to him by his former wife during their marriage. Arguing that the transactions were onerous donations and that he fulfilled the obligations imposed by the donations, Mr. Whitman contends that the trial court erred in finding that the property transfers were gratuitous donations and subject to revocation for ingratitude.

**FACTS**

On June 10, 1997, Marilyn Mann Whitman sued Mr. Whitman for divorce based upon his alleged adultery on June 7, 1997. The couple married in 1981 and had no children. In addition to the divorce, Mrs. Whitman requested that the court revoke for ingratitude a donation she made to Mr. Whitman on December 31, 1985 of her one-half interest in immovable property. On August 21, 1997, the trial court signed a divorce judgment in favor of Mrs. Whitman.

Shortly after their 1981 wedding, Mrs. Whitman donated to her husband a one-half interest in an acre tract on which their home was later built. Mrs. Whitman testified she and Mr. Whitman had mortgaged the one-acre tract on two occasions and later paid off the loans.

Mrs. Whitman owned an undivided one-half interest of a 1/32 interest in a much larger tract, which fractional interest she had acquired from her mother. She owned an undivided 300-acre interest in the property in which a number of persons had ownership interests. In 1985, she donated to Mr. Whitman one-half of her undivided interest in that farm and timber land.

In written reasons signed April 28, 1998, the trial court noted that the divorce was granted on grounds of adultery. The trial judge found that Mrs. Whitman had met her burden of proof in establishing that she was entitled to revoke the inter vivos donations based upon ingratitude. La. C.C. art. 1560(2).

**DISCUSSION**

La. C.C. art. 1559(1) provides that a donation inter vivos may be revoked on account of ingratitude of the donee. Ingratitude can take place only in three cases: (1) if the donee has attempted to take the life of the donor, (2) the donee has been guilty of cruel treatment, crimes or grievous injuries against the donee, or (3) the donee has refused the donor food when the donor was in distress. La. C.C. art. 1560. Only art. 1560(2) has any application to this dispute. A revocation for ingratitude must be brought within one year from the act of ingratitude or from the day the act was made known to the donor. La. C.C. art. 1561. Revocations based on ingratitude do not affect any alienation or mortgages made by the donee or any real encumbrances the donee placed upon the thing provided those transactions occurred before the filing of the suit for revocation. La. C.C. art. 1562. When a donation is revoked for ingratitude, the donee is obligated to restore to the donor the value of the thing given, estimating the value according to its worth at the time the action for revocation is brought and the fruits from the day it is brought. La. C.C. art. 1563.

First, Mr. Whitman asserts that the trial court erred in concluding that the
donations were gratuitous and, therefore, subject to revocation for ingratitude.

. . .

Mrs. Whitman correctly argued that the donations were not ambiguous and imposed no charges on Mr. Whitman. Even if evidence outside the donations were considered, the evidence presented does not support that these donations were onerous ones.

. . .

As purely gratuitous donations, Mrs. Whitman's gifts of land to Mr. Whitman during their marriage were subject to revocation for ingratitude. We find no palpable error in the trial court's conclusion that Mr. Whitman's adultery constituted cruel treatment and grievous injury to Mrs. Whitman. Therefore, the gratuitous donations made by her to him were revocable. Pursuant to her timely action based on his ingratitude, the donations were validly revoked. La. C.C. arts. 1559, 1560(2) and 1561.

DH 86α. Olide gives his son, Renard, a tract of land, Terre Puante, as a gift. Sometime later, Olide promises to “put up” $50,000 to help Renard, a burgeoning entrepreneur, get his new nutria-products business off the ground. The promise is memorialized in authentic form. But when it comes time for Olide to pay up, he finds that, thanks to a series of recent financial reversals, he’s no longer in a position to do so. Renard then sues Olide to enforce the promise and, after getting a default judgment against Olide, proceeds to foreclose on Olide’s personal effects, which the sheriff seizes. Olide then sues Renard, seeking to revoke the donation of Terre Puante. What result would you predict? Why? See the following jurisprudence:

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Perry v. Perry,
507 So.2d 881 (La. App. 4th Cir. 1987)

KLEES, J.

. . .

The opposing parties in this case are father and son. The father, a part owner of Ogden--Perry Theaters, Inc., gave to his son over a period of years a substantial amount of stock in the corporation. When the son became an attorney, the father signed a written guarantee prepared by the son of a contract by which the corporation agreed to buy back the son’s stock to enable him to finance his law practice. . . . In the summer of 1985, the corporation ceased making payments due to its financial difficulties and subsequently filed for bankruptcy. The son then sued his father as guarantor on the contract, and on April 22, 1986, the district court rendered judgment against the father in the amount of $163,249.28.

Apparently unable to collect on the judgment, Mr. Perry, Jr. obtained a writ of fieri facias and directed the sheriff to seize various items of personal property located at his parents' home, including jewelry, appliances and furniture. During the seizure, at which the son was not present, his mother fainted and his father was summoned to
obtain medical attention for her.

Following this experience, Mr. Perry, Sr. and his wife filed a petition seeking a preliminary injunction against the seizure alleging, among other claims, that they were revoking for ingratitude various donations they had made to their son and that the revocation of these donations would be compensation for their judgment debt.

The trial judge's decision to grant the injunction was based on two underlying conclusions: (1) That the seizure of Mr. & Mrs. Perry's property instigated by their son is sufficient cause under the Civil Code for revocation of donations made to the son.

The appellant challenges both of these conclusions.

Article 1560 of the Civil Code provides that revocation on account of ingratitude can take place if the donee "has been guilty towards [the donor] of cruel treatment, crimes or grievous injuries." The trial judge found that the son's having directed the sheriff to seize personal property of his parents constitutes cruel treatment or grievous injury within the meaning of the article. We agree. Although we have found no cases on point, the discussion of revocation for ingratitude in the Civil Law Translations of Aubry and Rau defines "grievous injuries" as follows:

"Injuries" include any act naturally offensive to the donor. It may be the adultery of one of the spouses. . . . The act may consist of slanderous charges; of a seizure levied by the donee against the donor of whom he is creditor; or, in a proper case, even of the refusal to consent to the revocation.

4 C. Aubry & C. Rau, COURS DE DROIT CIVIL FRANCAIS, § 708 (La. State Law Institute Trans. Vol. 3, 1965) (Footnotes omitted; emphasis added.). A common understanding of the term "grievous injuries," bolstered by the above authority, leads us to conclude, as did the trial judge, that the actions of Mr. Perry, Jr. as creditor of his father are sufficient evidence of ingratitude to support revocation of any donations made to him.

DH 86β. The same as before (DH 83a), except that Renard’s suit against Olide is ex delicto rather than ex contractu, specifically, seeks indemnification for personal injuries Renard sustained as a result of Olide’s negligence. Should Renard’s “foreclosure” action still be regarded as an act of ingratitude? Why or why not?

DH 86γ. Olide, the incorporator, chairman of the board, and CEO of Cajun Nutria Products, Inc., gives some of his shares of stock in the company (a minority share) to his son, Renard. Over time, Renard becomes convinced that Olide is exploiting the corporation for his own benefit. And so Renard files a “shareholder derivative suit” against Olide, alleging not only breach of fiduciary duty, but also violations of RICO. Is the donee guilty of ingratitude? Why or why not? If so, what kind? See the jurisprudence that follows:

Spruiell v. Ludwig,
568 So.2d 133 (La. App. 5th Cir. 1990)
GOTHARD, Judge.

This appeal concerns four shareholder derivative actions and a reconventional demand for revocation of inter vivos donations which were consolidated for trial.

The roots of these cases began in the 1950's and 1960's when Edward B. Ludwig, Sr. began several family corporations to conduct the family business centered around steel, construction and real estate. In 1967...his son Edward B. Ludwig, Jr. (Buddy)...put together a project whereby Mr. Ludwig, Sr. invested $43,000 to buy land on which three industrial buildings were constructed for lease to a third party. A new corporation, Drawde-Allen, was formed to own and manage these buildings and any future industrial real estate the family might acquire. The sole shareholders were Edward B. Ludwig, Sr. and his wife Nella. Edward B. Ludwig, Sr. died in 1968.

...During the period from 1968 to 1983...the various corporations were managed on a day to day basis by Buddy. His sister, Joyce Ludwig Spruill, served as a director in several of the corporations. No formal corporate meetings were held. At any rate, the corporate proceedings are chronicled in written minutes and resolutions signed by Joyce and the various family members, who were directors in the corporations.

In 1976 Nella Ludwig began making inter vivos donations of stock to her children, Buddy and Joyce, and her grandchildren.

In 1983 Joyce and her children, now adults, received notice that two of the family corporations, Container Realty & Construction, Inc. and Drawde-Allen, Inc. were merging. Because they did not fully understand the ramifications or meaning of the merger, Joyce and her children (Catherine, Sidney and John), contacted Joyce's attorney and requested that he investigate the merger and their interests in the family businesses. Pursuant to the attorney's request for more information a meeting was held for the purpose of an examination of corporate books and records concerning the merger. The meeting deteriorated into a family feud pitting Joyce and her children against Nella, Buddy and Buddy's family.

Subsequently, Joyce and her children filed four separate shareholder derivative actions against Nella, Buddy and his family and against five family corporations. The petitions in all four suits are similar and assert that plaintiffs were damaged as a result of eleven transfers of immovable property to the detriment of the family corporations. The suits seek return of the immovable property to the corporations and an accounting of rentals or, in the alternative, damages.

As a result, Nella filed suit against Joyce and her children for revocation of donations for ingratitude based on the allegations in Joyce's petition.

In a reconventional demand Joyce asserts that defendants' actions constitute a pattern and practice of minority oppression in violation of 18 U.S.C. § 1961 et seq. (RICO).

The four derivative actions and the revocation action were consolidated for trial. After a trial on the merits, the trial court rendered judgment in favor of defendants in the derivative actions, finding actions prescribed on three of the transfers and that the remaining sales were proper and not in violation of plaintiffs' derivative rights. Additionally, the court ruled in favor of plaintiff in the revocation action finding that Joyce and her children acted in a manner that was "so cold and vituperative as to justify...".
the revocation action."

...  

REVOCA TION OF INTER VIVOS DONATION.

...  

Article 1559 of the Civil Code provides that an inter vivos donation may be revoked for ingratitude of the donee. Article 1560 explains that revocation can take place on account of ingratitude if the donee "has been guilty towards him (donor) of cruel treatment, crimes or grievous injuries." The trial court revoked the donations finding that, the "depth of ingratitude and perniciousness was demonstrated in the pleadings filed on behalf of the plaintiffs accusing defendant mother, Nella, and E.B. Ludwig, Jr., the defendant's son, of racketeering activities in violation of the Federal statutes."

At trial Nella testified that she was hurt and embarrassed by the selfishness and ingratitude of her daughter and grandchildren. Nella also testified that Joyce referred to her as a "crooked thief." Joyce and her children maintain that their action in bringing the shareholder derivative actions and making the reconventional demand to the revocation suit were solely to protect their rights and not intended as a personal attack on Nella.

Nella was sued in her capacity as director or shareholder in various corporations formed pursuant to R.S. 12:1 et seq. Despite Nella's testimony that the corporations involved were family matters and should not be aired in public, the law does not make that distinction between family and business corporations. Pursuant to R.S. 12:1 et seq. a minority shareholder has a right to bring a derivative action on behalf of the corporation. The minority shareholders in a derivative action are only nominal plaintiffs whose right to recover can only be asserted secondarily. . . .

We do not find that allegations of breach of fiduciary duty contained in the shareholder derivative pleadings asserting the corporations' right to recovery are sufficient to constitute grievous injury under the Civil Code. But the allegations go beyond the norm in shareholder's derivative actions. Joyce and her children made the direct allegation that Nella was guilty of wrongdoing to the extent that she incurred liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) embodied in 18 U.S.C.1961 et seq. The trial court relied heavily on these allegations of wrongdoing in the reconventional demand to the revocation suit in revoking the donations. The thrust of the allegation in the reconventional demand is that Nella, by filing the revocation action, formed a "deliberate attempt or scheme to appropriate unto the said defendant in reconvention your reconvenor's interest as minority stockholders in each .... corporation."

Grievous injuries are defined as follows:
"Injuries include any act naturally offensive to the donor. It may be the adultery of one of the spouses.... The act may consist of slanderous charges; of a seizure levied by the donee against the donor of whom he is creditor; or, in a proper case, even of the refusal to consent to the revocation."


The evidence adduced in the instant case reveals that Joyce and her children sought to obtain more of the family property for themselves. In order to do this they initiated a shareholder's derivative action through attorneys hired to represent their interests. As part
of their representation of their clients, and with the clients' understanding and acquiescence these attorneys filed a reconventional demand in response to Nella's suit for revocation. That demand implied unfounded claims of criminal activity. The demand, dismissed for failure to state a cause of action under 18 U.S.C.1961, was unnecessary to protect shareholder's rights as asserted by Joyce, et al in testimony given at trial.

The trial court found grievous injury sufficient to revoke the donations existed in the lack of concern and in the overt attempts to discredit Nella committed by Joyce and her family, acts so naturally offensive to the donor that they constitute grievous injury. We find no manifest error in that conclusion and uphold the trial court's action in that matter.

A Digest of
Porter v. Porter,
821 So. 2d 663
(La. App. 2d Cir. June 12, 2002)

Facts: This here’s a story ‘bout a man named Bill, his son Butch, and his grandson (by Butch) Jammy. All worked together in the family business – house moving –, which Bill owned.

One day, as Bill was near death, he decided to donate his interest in the movables used in the business as well as the land on which the business did its work to Butch (51%) and Jammy (49%), reserving for himself a usufruct on the land just in case he should survive. And survive he did.

Even up to this point, the parties had treated each other rather roughly. As the trial court put it, “the parties worked hard, drank beer, and were abusive to each other." Before long, however, this mutual “abuse” would escalate into a full-blown war.

The war started when Bill, not long after his brush with death, became convinced that Jammy was “drinking too much.” Concerned that Jammy, in a drunken stupor, might “write large checks” on his (Bill’s) account, to which Bill had previously given Jammy access (having named him a signatory), Bill removed Jammy as signatory and withdrew most of the funds from the account.

When Jammy and Butch learned what Bill had done with the account, the three apparently “had some words.” Bill responded by going out to the business site, where he removed equipment, confiscated the customer phone list, etc. In addition, he had the electricity to the business office cut off, referred business to competitors, and lodged false criminal complaints against Jammy and Butch with the sheriff’s office.

Jammy and Butch then sued Bill, alleging that he had breached his duties to the “partnership” that they claimed the three of them had formed to turn the business and had violated numerous provisions of the Unfair Trade Practices and Consumer Protection Law. In terms of remedies, Jammy and Butch sought not only damages for injuries to the partnership but also injunctive relief (including a TRO) prohibiting Bill from alienating or encumbering property of the business, interfering in the day-to-day operations of the business, referring customers to competitors, withdrawing funds from the company bank account, etc. The district court issued the TRO.
The next day Bill headed out to the business site again, supposedly to collect a load of tires that he claimed were his. Jammy and Butch then called the sheriff, complaining that a “theft” was in progress. When the deputy arrived, Bill told him he wasn’t going to abide by the TRO and left with the tires.

Around the same time, Bill showed up at Butch’s house and started peeping in the windows. Butch then confronted Bill, cursed him, ordered him to leave, and threatened to beat him up if he should ever return. Bill left cursing back.

Around the same time, one of Jammy’s friends, en route to a hunt, made the mistake of stopping by Jammy’s house at 4:00 am to ask for directions to “the hunting stand.” Jammy, assuming that the caller was Bill, greeted his friend with his pistol drawn. In retrospect, the friend testified at trial, he considered Jammy’s conduct to be entirely reasonable, for “Bill had already shot one person and ‘you never know what he’ll do’”.

Around the same time, Jammy and Butch took Bill’s “personal truck,” which at the time had Bill’s guns, checkbook, and briefcase in it. Bill then called the sheriff on them. When the deputy questioned them about it, they explained that they had thought the truck belonged to “the business,” rather than to Bill personally, for it had caution lights on top (used in moving houses on highways) and business logos on the sides. Recognizing their “mistake,” Jammy and Bill voluntarily returned the truck.

Around the same time, Bill headed out to the business site yet again, where he proceeded to interfere with Butch’s efforts to move certain equipment by forklift. Butch and Jammy again called out the sheriff’s deputies, but, as usual, their arrival left Bill unfazed. Bill drove his car into the path of Butch’s forklift. Though Butch tried to stop, it was too late: he struck Bill’s car. But then Butch, now furious, backed up his forklift and rammed Bill’s car again, this time deliberately. Bill then got out of his car, pushed one of the deputies aside, and shoved his finger into Jammy’s face. Somehow the deputy then managed to restore order.

That same day Bill finally answered the suit and, in connection therewith, reconvened against Butch and Jammy, seeking to revoke the donations he had made to them on the ground of “ingratitude.” Chief (but hardly alone) among their ungrateful acts, in his view, was their filing suit against him. Citing *Perry v. Perry*, 507 So. 2d 881 (La. App. 4th Cir. 1987) (donee found ungrateful for having sued donor and, after having obtained a judgment against him, having foreclosed on donor’s personal property) and *Spruiell v. Lugwig*, 568 So. 2d 133 (La. App. 5th Cir. 1990) (donee found ungrateful for having asserted a RICO claim in suit against donor), Bill contended that the donations should be upset on that basis alone. But they had been guilty of still other ungrateful acts, Bill continued, including (i) their having falsely accused him of theft, (ii) Butch’s having threatened to beat him up, (iii) Jammy’s having drawn a pistol on someone believing him to be Bill, (iv) their having stolen his truck, and (v) Butch’s having rammed his car with the forklift. After a trial on the merits, the district court rejected Bill’s reconventional demand.

Result: Affirmed (the donations may not be revoked for ingratitude).

Rationale: Though under “ordinary circumstances” misconduct like that of which the donees (Butch and Jammy) were guilty toward the donor (Bill) “would . . . demonstrate ingratitude,” under the peculiar circumstances present here it does not. Those peculiar circumstances include the “unusual family dynamics” of the parties, according to which verbally and on occasion even physically abusive behavior had become something of the norm. Other peculiar circumstances
included (i) that the donees’ misconduct in large part had been “provoked” by the donor, (ii) that the donees’ misconduct had consisted not so much of “offensive measures” as of “defensive measures aimed at preservation of life, livelihood, and property,” and (iii) that the donees’ misconduct had not been “committed maliciously or in total disregard for the well-being of” the donor. The court of appeal distinguished Perry and Spruiell on the grounds that, in those cases but unlike in this one, the legal actions that the donees had taken against the donor had been “unjustified” (Perry) or had been based on “unfounded” allegations (Spruiell).

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c] Failure to fulfill charges (CC arts. 1563-1565)

1) Exposition

2) Prerequisites: judicial declaration of dissolution (CC art. 1563)

3) Limitations

   a) Donations to charities: conditions / charges that become impracticable or impossible of fulfillment: cy-pres doctrine (9:2331)

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Cynthia Samuel, Katherine Spaht, & Cynthia Picou, Successions & Donations: Cases & Readings 440-41 (Fall 2000)

In De Pontalba v. New Orleans, supra, the act of donation was made in 1785 by the plaintiff’s father to the Ayuntamiento of the city of New Orleans. The court applied the laws of Spain, but in so doing, the court appears to recognize the exception made by the Spanish law for it concludes: "Unless the right of return, in case of inexecution of the mode, charge, or condition, be expressly stipulated in the act, these donations are irrevocable. The act in this case contains no such stipulations. * * *" It must be noted that the case was decided in 1884.

In Orleans Parish School Board v. Manson, 241 La. 1029, 132 So. 2d 885 (1961), noted in 22 Louisiana Law Review 681 (1962), the court states: "Since the School Board has long ago discontinued the use of the property for school purposes, the school building having been condemned and demolished in 1953, it would appear that the district judges was correct in holding that the defendants were entitled to have the donation revoked for noncompliance with the condition imposed by the donor. However, the School Board contests defendants' claim for a declaration of the right of revendication. It contends that the donation is to be regarded as a dedication *** for public use ***. Jaenke v. Taylor and Wilkie v. Walmsley were suits involving dedications of property for street purposes and the question was whether the land would revert to the original owners upon discontinuance of the public use. It was held, in line
with other authorities pertaining to dedications, that the property does not revert to the
original owner in the absence of an express reservation contained in the act of
dedication to that effect."

In *Board of Trustees v. Richardson*, 216 La. 633, 44 So. 2d 321 (1950), the court states:

In the case of *Board of Trustees of Ruston Circuit, M.E. Church, South v. Rudy*, 192 La. 200, 187 So. 549, 550, the court ** observed: "It has been held that where the donor does not place such a reservation in the act of
donation, the donee is granted a complete title," and concluded that inasmuch
as the act whereby Rudy donated certain property to the church did not contain
such a revisionary clause, the title was completely vested in the
church by the first deed and that the stipulation that it was “to be used for
religious purposes” was merely indicative of the motive for making the
donation. This holding is not only at variance with our civil law, as
hereinabove demonstrated, but it is also not supported by the authorities
relied upon by the author of the opinion and we will not, therefore, follow it.

The legislative recognition of the Cy-pres doctrine (R.S. 9:2331, *et seq.*, as last
amended by Act 43 of 1970) now makes it possible for a charitable legatee or donee to
obtain judicial approval for the administration of the subject matter of the donation or
bequest in a manner different from that which the parties had in mind, whenever the
circumstances have so changed since the execution of the donation as to render it
impractical or impossible to comply literally with the terms and conditions thereof. The
statute contains adequate provisions for a judicial declaration and determination that the
donation shall be administered differently from the manner originally contemplated.

DH 87a. Just before his death in 1963, Papére donated a portable office building to Sowela
Technical Institute, Inc. (SOTI). In the act of donation, Papére stipulated that the building was
given “on the condition that the building be forever used as a laboratory in which students will be
instructed in the fine art of mimeography.”35 Over the past several years, the “market” for persons
trained in mimeography has all but disappeared, inasmuch as that technology has now been
superseded (first, by photocopying, and later, by laser printing). As a result, the number of students
interested in studying mimeography long ago fell to zero. And so it is that SOTI’s board of directors
now wants to use the building for other instructional purposes. Can they do so? Why or why not?

b) **Donations to religious institutions:**

conditions/charges after lapse of 10 years

(9:2321)

Read La. Rev. Stat. 9:2321 & 2322. What is the real import of these provisions, particularly

35 If you’re old enough, you’ll remember “mimeographs” – the aromatic, purplish copies – from
elementary school.
the latter? See Cynthia Samuel, Katherine Spaht, & Cynthia Picou, Successions & Donations: Cases & Readings 440-41 (Fall 2000) (“The evident purpose of these statutes is to limit the effect of reverter clauses to ten years from the date of the donation, so that after ten years the donee may well ignore the conditions and dispose of the thing given in any manner he may please.”)

87β. Back in 1990, Olide, concerned about the destiny of his immortal soul, donated a portable office building to Our Lady of the Bayou Catholic Church. In the act of donation, Olide stipulated that the building was given “on the condition that the building be forever used as a chapel in which the faithful may offer devotions to Our Lady, the Blessed θεότοκος.” The church’s new pastor, Monsignor Nouveau, wants to use the building for another purpose, namely, to house the parish library. Can he divert it to that purpose? Why or why not?

b) The de-listed cause: legal or conventional return

In the revision of the law of donations inter vivos accomplished in 2009, the list of causes for the revocation of such donations was cut by one. Which one was that, and why was it cut? See CC art. 1156, cmt. (c). Let’s see if the revisers knew what they were talking about.

a) Legal return

1) Definition

2) Instance: the retour successoral (CC arts. 897-98)

b) Conventional return

1) Definition

2) Illustration

DH 85. X gives Y a tract of land subject to the proviso that if Y should predecease X, then ownership shall revert to X. Y predeceases X. Can X now "revoke" the donation? Why or why not?

4) Effects (CC art. 1558 et seq.)

a) In general:

1) Action to recover thing given

2) Remedies (restoration of thing given or its value) (CC art. 1560)

b) For particular causes
1] Ingratitude (CC art. 1561)

   a] Action

   1] Subjects

      a] Plaintiffs

         1/ Donor

         2/ His heirs (sometimes)

   And now, two more questions: (i) can the successors of one who has made a donation *inter vivos* to an ingrate sue to revoke the donation because of the donee’s ingratitude? See CC art. 1558, par. 2.

   And now, two more questions: (i) can the successors of one who has made a donation *inter vivos* to an ingrate sue to revoke the donation if the donor himself never discovered the ingratitude and (ii) if so, from what point in time does the liberative prescription of one year to which the action is subject begin to run in such a case.

   DH 87γ. Shortly before his death, which occurred on June 1, 2004, Pascal made two donations *inter vivos*: a gift of a tract of land to A; a gift of some cattle to B. Between the time at which he made these acts and that of his death, both of Pascal’s donees were, well, “naughty.” First, on April 1, 2004, A together tried to kill Pascal in his sleep. His effort was foiled by Pascal’s children, Ti-Boy and Lil-Fille, who rescued Pascal at the last minute. Though Pascal knew what A had done, he took no action against her. Then, on May 1, 2004, B falsely accused Pascal of a serious “sex crime.” Though Pascal did not learn of these accusations before his death, Ti-Boy and Lil-Fille learned of them one month after his death, i.e., on July 1, 2004. Ti-Boy and Lil-Fille now want to sue A and B to revoke the donations that Pascal made to them. With respect to each donation, answer the following questions: (i) Can Ti-Boy and Lil-Fille bring such an action? (ii) If so, how long do they have within which to bring it?

2] Defendants: donee or his successors

   Revocation on the ground of the donee’s ingratitude can, of course, be sought in an action brought against the donee. But what if the donee has died since the act of ingratitude? Can the action be brought against the donee’s successors? See CC art. 1558, par. 4. This is a new rule. Under the old law, the action lay against the donee and him only.

2] Prescription

   a] Delay: one year

   b] Trigger: the date on which the donor knew
or should have known of the act of ingratitude

b] Remedies

1} Where the donee has neither alienated nor encumbered the thing: return of the thing

2} Where the donee has alienated or encumbered the thing (CC art. 1559)

a} Pre lite alienations or encumbrances (Cc art. 1559, sent. 1): the alienation / encumbrance stands & donee pays donor for lost value

b} Pendente lite alienations or encumbrances (CC art. 1559, sents. 2 & 3)

1/ Where the donated thing was a movable (CC art. 1559, sent. 2)

a/ If alienation / encumbrance was onerous and if donee was in good faith, then (1) the alienation / encumbrance stands and (2) donee pays donor for lost value

b/ Otherwise, the alienation / encumbrance falls and donor recovers the thing

2/ Where the donated thing was an immovable: look to the law of registry (CC art. 1559, sent. 3)

a/ Where act of donation and lis pendens were filed, the alienation / encumbrance falls and donor recovers the thing

b/ Otherwise, that alienation / encumbrance stands the donee pays donor for lost value
DH 87.1α. Not long after Olide donated a farm to Clodice (his concubine), she mortgaged it to Bayou Bank to secure a $100,000 loan. Both the act of donation and the act of mortgage were recorded. Then one night Olide and Clodice got into a heated argument, during which Clodice attacked Olide with a meat cleaver. When Olide recovered from the attack, he sued Clodice, demanding that she return the farm to him on account of her “ingratitude. A few weeks later, Clodice defaulted on her loan from Bayou Bank. And so, the bank proceeded to foreclose on what it called its “mortgage on the farm.” In the meantime, Olide won his revocation suit against Clodice. Does the bank have an effective mortgage on the land, that is, one that’s effective against Olide? Why or why not? If it is effective against him, does he have any sort of recourse against Clodice?

DH 87.1α-1. The same as before (87.1α), except as follows: Clodice did not mortgage the farm to Bayou Bank until after she had attacked Olide with a meat cleaver, after Olide had sued her to revoke the donation, and after Olide had filed a notice of lis pendens into the public records in the parish in which the farm is located. What result now? Why? What would have been the result if Olide had not filed the notice of lis pendens? Why?

DH 87.1α-2. Not long after Pascal donated his pirogue to Olide, Olide falsely accused Pascal of various “sex crimes”. As soon as Pascal learned of this calumny, he sued Olide to revoke the donation on the ground of ingratitude. While the action was pending, Olide sold the pirogue, at fair market value, to Jean Sot, who knew nothing about Pascal’s revocation suit. Eventually Pascal won that suit. And now, he wants the pirogue back from Jean Sot. Can he get it? Why or why not? If he can’t what, if any, other remedy does he have? What would have been the result had Olide donated (instead of sold) the pirogue to Jean Sot? Why?

2] Failure to fulfill charges (CC arts. 1565 et seq.)
a] Action

1] Subjects

a] Plaintiffs: donor or his successors

b] Defendants: donee or his successors

2] Prescription (CC art. 1564)

a] Delay: five years

b] Trigger: day on which noncompliance begins

b] Remedies (CC art. 1565)

1] Where the donee has neither alienated nor encumbered the thing: return of the thing
PART I: DONATIONS

2) Where the donee has alienated or encumbered the thing (CC art. 1559)

a) Where the donated thing was a movable (CC art. 1565, par. 2)

1/ If alienation / encumbrance was onerous and if donee was in good faith, then (1) the alienation / encumbrance stands and (2) donee pays donor for lost value

2/ Otherwise, the alienation / encumbrance falls and donor recovers the thing

b) Where the donated thing was an immovable: look to the law of registry (CC art. 1565, par. 1, sent. 1)

DH 87.1β. Olide donated a farm to Clodice (his concubine) “on the condition that she not use it to grow tobacco.” The act of donation was recorded. Clodice, in turn, mortgaged the farm to Bayou Bank to secure a $100,000 loan. The act of mortgage was recorded. Before long, Clodice planted the farm in tobacco. When Olide learned of it, he sued her to revoke the donation. A few weeks later, Clodice defaulted on her loan from Bayou Bank. And so, the bank proceeded to foreclose on what it called its “mortgage on the farm.” In the meantime, Olide won his revocation suit against Clodice. Does the bank have an effective mortgage on the land, that is, one that’s effective against Olide? Why or why not? If it is effective against him, does he have any sort of recourse against Clodice? Would the result have been different if Olide had not recorded his act of donation? Why or why not?

DH 87.1β-1. Pascal donated his pirogue to Olide, subject to the charge that Olide “look after” Pascal’s camp for the next year. (Pascal was planning an extensive vacation to Provence.) Though Olide accepted and used the pirogue, he did not look after Pascal’s camp, in fact, let it fall into a state of disrepair. As soon as Pascal learned of Olide’s default, he sued Olide to revoke the donation on the ground of non-fulfillment of charges. While the action was pending, Olide sold the pirogue, at fair market value, to Jean Sot, who knew nothing about Pascal’s revocation suit. Eventually Pascal won that suit. And now, he wants the pirogue back from Jean Sot. Can he get it? Why or why not? If he can’t what, if any, other remedy does he have? What would have been the result had Olide donated (instead of sold) the pirogue to Jean Sot? Why?

3) Occurrence of resolutory condition

Who may bring an action to revoke a donation on the ground of the occurrence of a resolutory condition
condition? Against whom may it be brought? By what date must it be brought? What remedies are available? Do any of the articles in Section 3, Chapter 5, Title II, Book III of the Civil Code answer these questions?

4] Legal or conventional return

Who may bring an action to revoke a donation on the ground of a legal or conventional return? Against whom may it be brought? By what date must it be brought? What remedies are available? Do any of the articles in Section 3, Chapter 5, Title II, Book III of the Civil Code answer these questions?