D. Prerequisites to the Formation of Valid Contracts

There are, as we've said before, four prerequisites to the formation of a valid contract. What are they? Here's how Moreau-Lislet, Livingston, and Derbigny put it in the Code of 1825:

Four things are required for the validity of a contract: 1. Parties legally capable of contracting; 2. Their consent legally given; 3. A certain object, which forms the subject matter of the contract; 4. A licit cause.

CC art. 1772 (1825). We'll take the first and second in that order, but reverse the order of the third and the fourth.

1. Capacity
   a. Definition
      What do we mean by "capacity to contract"? See CC arts. 27 & 28 and the comments thereto & Weill and Terré, DROIT CIVIL: LES OBLIGATIONS n° 216, at 256 ("the aptitude of person to be the holder of rights and to exercise them" through "contract").
   b. Existence
      1) General Rule: Capacity Exists
         Is contractual capacity the rule or the exception? See CC art. 1918 & cmt. (a).
      2) Exceptions: Capacity Does Not Exist
         When is capacity lacking? See CC art. 1918; then read Trahan, Supp, 124 (definitions of emancipation and interdiction).
         a) Minority (without Emancipation)
            Who is a minor? See CC art. 29. Do all minors lack the capacity to contract or just some? See CC arts. 1918 & 1922. What is “emancipation? See CC arts. 366, 379, & 385.
         b) Interdiction
            What is “interdiction”? See CC arts. 389 & 390 (2001), depending on which version of the CC you have.
   c. Effects
      1) General Effect: Relative Nullity
         What are the consequences of an incapacity of exercise? See CC arts. 1919, 2029, & 2031.
      2) Specific Effects
         What does it mean to say that a contract is relatively null on account of an incapacity of exercise?
         a) Rescission
            1] In General
               COH 53. Clotile, Pascal's 95-year old mother, a chronic lush who suffers from episodes of paranoid delusion, has become too much for Pascal. So he decides to have her interdicted. After the judgment of interdiction, he confines her to an asylum. But one night she escapes. The next morning, she walks into the local Ford dealership owned by Olide, where she buys a Bronco, just like OJ's. Can the sale be rescinded? Why or why not? If so, by whom? Explain. See CC arts. 1920 & 1921; then read Trahan, Supp, 124-25
            2] Exceptions
               Is the rule that the incapable or his representative may rescind a contract an absolute rule, i.e., one that applies to all situations, or merely a general rule, i.e., one that admits of exceptions?
               a) Minors
                  1] Contracts for Support, Education, or Business
                     COH 54. Ti-Boy is Pascal's 15 year-old son. As it turns out, he's a master pirogue builder, so good,
in fact, that he has, with Pascal's blessing, set up a "pirogue shop," in which he makes and from which he
sells pirogues. Olide, Ti-Boy's godfather, buys such a pirogue from him. Can Ti-Boy or Pascal sue to
rescind the sale? Wh or why not? See CC art. 1924.

2) Contracts Made in Reasonable Reliance on Representations
   of Majority

   COH 55. Though Ti-Boy, Pascal's son, is only 15 years old, he looks like he's 21. One night he decides
to go to the local Seven-Eleven to get some spirits. As he takes his bottles of Ripple to the counter, he
presents his fake ID, which shows him to be 21, to the clerk. The sale is complete. On the way out of
the store, however, Ti-Boy runs into Pascal. Pascal, seeing what Ti-Boy's got, grabs him buy the ear, leads him
back into the store, and demands that the clerk undo the sale. Does Pascal or Ti-Boy have a right to rescind
the sale? Why or why not? See CC art. 1924.

   b) Non-interdicted PDRs

   Read Fidelity Financial Servs. v. McCoy, 392 So. 2d 118 (La. App. 1st Cir. 1980) [Levasseur, Text,
187-88]. Would the case be resolved the same way under current law, in particular, CC art. 1925? Why?
Read Trahan, Supp, 125-27.

   b) Confirmation

   Can a contract that's relatively null on account of want of capacity be confirmed? See CC arts. 2031,
\( \|$ 1, \) sent. 2, & , 1920. If it can be, then who can do it? See CC arts. 2031, \( \|$ 2, \) & 1920.

   c) Judicial Declaration

   Is a judicial declaration of nullity necessary before a contract made by an incapable can be regarded
as null? Or is such a contract null \textit{ab initio} without a judicial declaration? Explain. See CC art. 2033, \( \|$ 2. \)

2. Consent

   Read CC art. 1927, \( \|$ 1. \)

   a. Definition

   What does "consent" mean? See CC arts. 1927 & 1948.

   b. Declaration

   Read Trahan, Supp, 127-29 (Litvinoff re theories of will).

   1) The Problem

   The human will--the stuff out of which consent is supposedly made--is, in the first instance, an \textit{internal}
psychological phenomenon. But if it remains purely internal, if it's never manifested or declared in some
way, then it cannot possibly give rise to a contract. Humans, or at least most of them, can't read minds. And
so, if there's to be a "meeting" of the minds, there must, first of all, be a "speaking" of the minds.

   As we all know, however, what we say we want is sometimes out of sync with what we really want.
Each of us can recall instances in which he or she has, to one degree or another, failed to express his wishes
clearly or precisely. Indeed, it sometimes happens, through want of care or inattention, that we ask for the
very opposite of what we want.

   Now, when that happens, when there's a gap between our "internal" intent--what we really want in our
heart of hearts--and our "declared" intent--what we say we want, which intent forms the basis of our
"consent"? To put the question another way, what's the basis of consent--"subjective" will or "objective"
will?

   2) The Solutions

   a) The Extremes

      1) The Subjectivist Theory

      2) The Objectivist Theory

   b) The Mean: The "Hybrid" Theory

   COH 18. Jean Sot and Olide enter into negotiations for the lease of part of Jean Sot's estate. Though
Olide really doesn't want to be bound by the lease until he's had a chance to search the public records to
determine that Jean Sot's title is clear, he decides not to say anything about that to Jean Sot. After the deal
is closed, Olide tells Jean Sot that he'll "be out to take charge of the property as soon as I confirm your title." To which Jean Sot replies, "You'll take charge and pay the rent, etc. right now." "In that case," answers Olide, "the deal is off. That wasn't what I had in mind." What result? Why? See CC art. 2057, ¶2; Trahan, Supplement, 127-29 (Litvinoff, OBLIGATIONS § 135, at 226).

COH 19. Jean Sot and Olide enter into negotiations for the lease of part of Jean Sot's estate. Though Jean Sot wants to lease the back 40, Olide wants to lease the front 40. But neither of them ever realizes that there's this gulf between their subjective intentions. For you see, all throughout the negotiations, Jean Sot uses the expression "front 40" when referring to the land that's to be leased. Olide, for once, has no reason to know or even to suspect that what Jean Sot is saying and what he's thinking are two different things. The deal is closed. When Olide shows up to take over the front 40, Jean Sot, contending that he intended to lease the back 40, balks. What result? Why? See Trahan, Supplement, 127-29 (Litvinoff, OBLIGATIONS § 135, at 227).

c. Form
Must the parties' consent, to be effective at forming a valid contract, be manifested in any particular form? To be more concrete, must consent be written rather than oral or, if written, in any particular form?

1. Legally-Imposed Solemnity
Read CC art. 1927, ¶ 2.

COH 20. Suppose that Clodice and Olide, who are betrothed, agree that they want to replace the legal "community property" regime with a conventional "separation of property regime," one under which each will keep and acquire property separately from the other. They even declare this intention under oath before the Archbishop of New Orleans. Is their consent valid? Why or why not? See CC art. 2331.

2. Voluntary Solemnity
Read CC art. 1947.

d. Expression
Must the parties' consent, to be effective at forming a valid contract, be expressed in any particular manner? To be more concrete, must consent be express? Or can it be implied or tacit as well?

1) Express
2) Implied
Re-read CC art. 1927, ¶ 2.

COH 21. Pascal, who's forced to leave on a trip unexpectedly, sends Mr. Nutty by courier to Jean Sot for safekeeping. To Mr. Nutty's neck is attached a note from Pascal explaining the situation. When the courier arrives at Jean Sot's home, Jean Sot, after reading the note from Pascal, accepts delivery and takes Mr. Nutty in. Has Jean Sot consented to a contract of deposit with Pascal? Why or why not? If so, how? Explain. See CC art. 2933.

3) Tacit
But what if the parties neither say anything nor do anything that either expresses or even implies consent? What if they just keep quiet? Is it nevertheless possible for them to end up bound even then?

COH 22. Pascal leases an apartment to Clodice for a term of six months. After the term is up, Clodice stays on for a week without objection from Pascal. Is there now any sort of lease contract between Pascal and Clodice? If so, how did it arise? Where's the consent? See CC art. 2689.

e. Elements: Offer & Acceptance
Through want means is consent to a contract established? See CC art. 1927, ¶ 1.

1) Offer
a) Definition thereof
b) Prerequisites therefor
   1] Indicative of Intent to be Legally Bound
   2] Serious
   3] Addressed
4] Precise & Complete

COH 23. Olide and Jean Sot are drinking a few Miller High Life “tall boys” together at the local pub. At some point during their conversation, Jean Sot mentions that he's been thinking about leasing some property to grow some rice. When Olide hears that, he says, "Well, how much land do you need?" Jean Sot replies, "40 acres." "Well," says Olide, "I've got 100 acres presently lying fallow that would be perfect for rice farming. What d'you say I lease you 40 of those acres?" "It's a deal," says Jean Sot. Did Olide make a true offer to Jean Sot? More precisely, was Olide's "offer" "precise and complete"? Why or why not? See CC art. 2670.

5] Firm

COH 24.1. Olide offers to sell his pirogue to Pascal for $50, but reserves to himself the right to modify the price. Is there a "firm" offer? Why or why not?

COH 24.2. Clodice, an agent for Cajun Insurance Company, presents Jean Sot with a brochure which reads as follows: "We offer $100,000 of term life insurance for a premium of $10/month. All policies subject to approval by Executive Vice-President in charge of risk assessment." Is the company now making a "firm" offer of insurance to Jean Sot? Why or why not?

Read & brief Johnson v. Capital City Ford Co.[Levasseur, Text, 218-26].

c) Revocability

1] General Rule: Revocability

Are offers generally revocable or irrevocable?

Now, when is a revocation deemed to be effective? See CC arts. 1937 & 1938.

2] Exception: Irrevocability

a] Definition

What's an "irrevocable" offer? See CC art. 1928, ¶¶ 1 & 2.

b] Types

1} Express

COH 25.1. Pascal sends Jean Sot a telegram in which he offers to lease him the back 40 of Belle Terre. The telegram provides "I'll give you two weeks to make up your mind." Is this offer expressly irrevocable? Why or why not?

COH 25.2. Pascal sends Jean Sot a telegram in which he offers to lease him the back 40 of the Belle Terre. The telegram ends with this statement: "I don't need an answer right now. Think it over for a while, then let me know what you've decided." Is this offer expressly irrevocable? Why or why not?

2} Implied

Read & brief Ever-Tite Roofing Corp. v. Green, 83 So. 2d 449 (La. App. 2d Cir. 1955) [Levasseur, Text, 208-11], & National Roofing & Siding Co. v. Navarro, 149 So. 2d 648 (La. App. 4th Cir. 1963) [Levasseur, Text, 212-17]. Then read the following doctrinal material:


In French law, as it was shown, the solutions to the problem presented by the revocability of the offer have been the creation of the doctrine and the jurisprudence, as no detailed regulations can be found in the Code Napoleon. In effect, those solutions were presented as an elaboration on Article 1108 of the French Civil Code, which enumerates the requirements for a valid contract, and, among them, consent.

In Louisiana, on the contrary, the Civil Code devotes a series of articles to the detailed regulation of offer and acceptance. Those provisions were not found in the Civil Code of 1808, which corresponded with the French model, but were first proposed in the Projet of the
Louisiana Civil Code of 1825, and introduced into the Louisiana law with the Code enacted in that year. For reasons of clarity, the articles of the Louisiana Civil Code having a direct bearing are quoted:

"Article 1800: The contract, consisting of a proposition and the consent to it, the agreement is incomplete until the acceptance of the person to whom it is proposed. If he, who proposes, should before that consent is given, change his intention on the subject, the concurrence of the two wills is wanting, and there is no contract."

"Article 1801: The party proposing shall be presumed to continue in the intention, which his proposal expressed, if, on receiving the unqualified assent of him to whom the proposition is made, he do not signify the change of his intention."

"Article 1802: He is bound by his proposition, and the signification of his dissent will be of no avail, if the proposition be made in terms, which evince a design to give the other party the right of concluding the contract by his assent; and if that assent be given within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow."

"Article 1803: But when one party proposes, and the other assents, then the obligation is complete, and by virtue of the right each has impliedly given to the other, either of them may call for the aid of the law to enforce it."

"Article 1804: The acceptance needs not be made by the same act, or in point of time, immediately after the proposition; if made at any time before the person who offers or promises has changed his mind, or may reasonably be presumed to have done so, it is sufficient."

"Article 1809: The obligation of a contract not being complete, until the acceptance, or in cases where it is implied by law, until the circumstances which raise such implication, are known to the party proposing; he may therefore revoke his offer or proposition before such acceptance, but not without allowing such reasonable time as from the terms of his offer he has given, or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination."

The meaning of Article 1800 is clear in the sense that the contract is not complete until the acceptance takes place, and that, if there is a change in the proposer's intention, there will be no contract because of the lack of an accord of the wills—the essential element. As expressed in traditional doctrine, a man can always change his will, because of his natural freedom provided the change does not injure the right of another. No account has to be given for such change of will. But a question arises, then, as to whether the offer lasts indefinitely, if the offeror does not change his mind. This question has been traditionally answered in the negative, as the theory of the indefinite duration of an offer was never applied. The offeree, according to tradition, must give his answer promptly. He cannot, long after a proposition has been made to him, declare that he accepts it and demand performance, under pretext that the offer was never revoked. In civilian theory, therefore, an offer remains open until revoked, but, in the event of lack of revocation, is not maintained forever.

This invites a second question that should be raised in order to arrive at the correct interpretation of Article 1800: whether the offeror's change of intention must be expressed or whether his mere change of mind without being expressed to the offeree will suffice to prevent the formation of the contract. Apparently, Article 1800 does not introduce the requirement that the proposer shall express his change of intention. However, it is submitted that the principle of Article 1797 of the Louisiana Civil Code governs
not only the case of expression of intention, but the case of change of intention as well. As traditionally asserted, an unknown will does not enter the field of the law—une volonté qui n'est pas connue est, en jurisprudence, comme si elle n'existait pas. A change of mind, therefore, is nothing but the substitution of a new will for the previously expressed one, and, as such, cannot be operative until expressed in its turn; otherwise, legal effects would be given to something that, because of its being unknown, remains outside the legal field. But this should be understood with the following qualification: the change of intention must be expressed, or in some manner evidenced as long as the offer remains open or is deemed to remain open. It is obviously unnecessary for the offeror to express his change of intent when the offer is already terminated, because in such a situation the offeree no longer has the right of concluding the contract by his assent.

However, there is a limitation to the proposer's freedom to express his change of intention after the termination of the offer. Under Article 1801 if the offeree gives his acceptance when the offer can no longer be considered open, then the offeror must signify that he has changed his intention, otherwise he will be presumed to maintain his original proposal.

As shown above, the law does not presume that an offer remains indefinitely open. But, if the proposer does not express a change of mind, he will be presumed not to have changed it at least for a period of time. This is stated in the provisions of Article 1802: If the offeree gives his assent "within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow," the offeror's "signification of his dissent will be of no avail." In other words, the acceptance given within this period is timely, after its reception the offeror cannot allege that, before receiving it, he had changed his mind. He may change his mind before acceptance, provided he expresses this intention.

It is submitted that this is the right interpretation of Article 1801. If interpreted literally, the article might lead to the conclusion that the offer may be revoked after it has been accepted. But such a literal interpretation renders the article inconsistent with Articles 1798, 1800, 1802, 1803 and 1809, and establishes an unfair rule entirely opposed to the tenets of an immemorial tradition.

Therefore, Articles 1801 and 1802 are not properly concerned with the maintainability of the offer during a certain period of time, but with the expression of the offeror's dissent after a certain period of time has elapsed. These rules have to be interpreted against the background of the traditional concepts according to which a change of intent, although not expressed, eliminates the accord of the wills and prevents the creation of the contract. It is precisely the unrestrained operation of these ideas that the articles were meant to temper, by introducing a principle of fairness: the accord of the wills will be considered accomplished upon the acceptance whenever the offeror does not signify his dissent within a certain period of time.

A question has been raised as to the meaning of the words "the situation of the parties and the nature of the contract" in Louisiana Civil Code Article 1802. It has been said that the situation of the parties is an expression that should be interpreted as meaning that a distinction should be made according to whether the parties are face to face, or at a distance. This distinction seems obvious and, in its light, the words in question acquire a very clear meaning. However, these words do not only contain a reference to the location of the parties in space, but they can also mean something inherent to the parties' position, or status, such as, whether the parties are merchants or not, according to a distinction of long standing tradition in continental law.

As to the expression the nature of the contract, it has been suggested that the right interpretation lies in the distinction between bilateral and unilateral contracts. To arrive at this
conclusion, the possibility that the expression intended to mean the seriousness of the contemplated contract was discarded as "such an interpretation would evidently be contrary to the policy of a system which regulates the time for transmission of the acceptance, because it would introduce an element of uncertainty in the duration of the period of irrevocability." But, if it is agreed that Article 1802 does not regulate a period of irrevocability but is concerned with a different aspect, then there is no bar to admitting that, if not the seriousness, at least the importance of the contemplated contract might be one of the elements to which the expression here discussed alludes. Moreover, the nature of the contract also seems to mean the special kind of contract contemplated, according to the specific types regulated in Title VI, Book III, of the Code. This interpretation seems to find support in Louisiana Civil Code Article 1816. Thus, the position of the offeree may vary according to whether the offer was one of a mandate to perform an urgent act or an offer to sell when no special circumstances indicate that time is of the essence.

Article 1804 of the Louisiana Civil Code, in a manner consistent with Articles 1801 and 1802, as interpreted above, recognizes that offer and acceptance do not have to take place by the same act nor at the same time. The proposition and the assent may be separated by a delay, but not by an indefinite one, since after a certain period of time, the offeror may be presumed to have changed his mind without having signified it. The words in the article "any time before the person who offers or promises has changed his mind," must be interpreted in the light of the offeror's duty to express his dissent, already discussed in connection with Article 1801.

Articles 1805 through 1808 are not applicable here, for they deal with the conformity of the acceptance to the offer. Article 1809 contains the provisions that actually deal with the problem of duration of the offer.

This article says, very clearly, that the one who proposes cannot revoke the offer:

(1) When he has given the other party a period of time to communicate his determination. In other words, if a period of time for acceptance is named by the offeror, he cannot validly revoke during this period.

(2) When no period of time is named by the offeror, before such time as he is presumed to have given the other party to make known his determination, according to the circumstances of the case.

Due to the similarity of the language in Articles 1802 and 1809, it has been suggested that the words "the circumstances of the case," in the latter mean the same as the words "the situation of the parties and the nature of the contract," in the former. This is certainly a correct interpretation, as both the parties' situation and the nature of a contract share in the circumstances of a case. But it is submitted that other important elements also find their place within the scope of the circumstances of a case, such as the experience of previous dealings between the parties, the conventional usages of a particular trade, and the nature of the thing which forms the object of the contract.

But what is the reasonable time the offeror may be supposed to have given, according to the language found in Article 1309? When the actual time has been set forth by the proposer, there is, of course, no problem, as the period of time named by him is the reasonable time meant by the article. Where no such a time is named and, therefore, the presumption contained in the article is to be applied, the circumstances of the case should lead to finding a substitute for the offeror's intention.

It has been suggested that in such an event, the reasonable period is the time necessary for the communication of the acceptance, which "need not be more than but a moment if the parties are in the presence of each other; whereas in other situations, the time reasonably necessary would be that ordinarily required for the transmission of intelligence by the authorized or usual means of communication. In this respect, contracts made in
the present day by telephone or by radio should be interpreted as contracts by parties in the presence of each other."

It is submitted that this interpretation states, very correctly, what should be considered the minimum reasonable time the offeror may be presumed to have given, but that, in some cases, the circumstances may very well lead to the belief that a longer time should be presumed to have been given, as where the complexities of a contract demand special study or consideration.

Thus, the existence in the Louisiana law of a period of irrevocability of an offer seems to be the natural conclusion of a correct reading of the pertinent articles in the Civil Code.

Against a similar interpretation of Article 1309, the objection has been raised that the declared will of the party is made the sole test of a binding obligation. This, it was said, seems to be at odds with Article 1893, which declares that every obligation must have a cause, as defined in Article 1896. The following words were used: "If intention or declared will is not cause then these two articles are in conflict with Article 1809." Although a discussion of the problem of cause cannot be undertaken here, in order to overcome the objection it is sufficient to notice that Article 1893 refers to the cause of obligations in general, while Article 1896 clearly mentions the cause of a contract, or conventional obligation. As an offer is not yet a contract until accepted, Article 1896 does not contribute anything to the interpretation of Article 1809. In relation to Article 1893, it should be noticed that the obligation emerging out of Article 1809 is an obligation imposed by the law, which is the ultimate source of obligations. If that is the case, then it is not necessary to inquire about the motive, purpose, or end of which the cause consists, as a legal obligation arises upon the occurrence of a certain operative fact, without more. In this case, the declaration of will by the offeror is the operative fact that suffices to start the operation of the legal mechanism.

In French doctrine, those who adhere to the preliminary contract theory in order to ground the obligation of the offeror explain the cause, or but (end), of it is the principal contract intended if the offer is accepted.

It is submitted that no contractual nature can be attributed, in Louisiana law, to the offeror's obligation of maintaining his proposition during a reasonable period of time. In effect, Article 1810, which has no equivalent in the French Civil Code, denies such a possibility. According to this article, the offer expires with the death of the offeror, his survivors not being bound by his promise. If the obligation derived from Article 1809 were contractual, then the general rule of Article 1763 would apply. On the other hand, after a reasonable period of time, the un-accepted offer can be revoked by the sole dissent of the offeror, while the revocation of a contractual obligation requires the mutual consent of the parties.

In Louisiana law, due to the clear language of article 1809 of the Civil Code, the obligation to keep the offer open during a reasonable time is the direct effect of the proposer's declaration of will. It is not necessary, therefore, to resort to a fault theory, or a preliminary contract theory, as in French law, since, unlike the Code Napoleon, a clear provision in the Louisiana Civil Code lends support to the modern theory of the binding effects of the unilateral declaration of will.

The submitted interpretation of Article 1809 is consistent with modern law. As an example, the Uniform Commercial Code provides in Section 2-204:

"An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror."
... that defendant could not have expected from plaintiff an immediate reply or acceptance of her appointment.

In *Ever-Tite Roofing Corp. v. Green*, the defendants signed an instrument purporting to engage the services of plaintiff in re-roofing their home. The document contained a description of the work to be done and a statement of the price to be paid in monthly installments. It was signed by the plaintiff's sales representative with whom the negotiations had been conducted, although he had no authority to accept the contract on behalf of the plaintiff. The writing contained the following provision: "This agreement shall become binding only upon written acceptance hereof, by the principal or authorized officer of the Contractor, or upon commencing performance of the work. As the work was to be done entirely on credit, plaintiff had to obtain reports on defendant's credit rating and approval from the lending concern which was to finance the contract, all of which was known by defendants. Plaintiff gathered the necessary information, took the required steps in approximately seven days, and obtained the financing entity's approval. The next day, plaintiff engaged several workmen, loaded two trucks with roofing materials, and proceeded from Shreveport, where its branch was located—although the central office of plaintiff was in Houston, Texas—to defendant's residence in Webster Parish. Upon their arrival, plaintiff's workmen were notified by defendants that the work had been contracted to other parties two days before.

The lower court entered judgment for defendants, saying that they had timely notified plaintiff before "commencing performance of the work," and asserting that the notice given to plaintiff's workmen was sufficient to signify their intention to withdraw from the contract.

The court of appeal reversed, after quoting from the Restatement of the Law of Contracts, and held that the principles there stated are recognized in the Civil Code. The court cited Article 1809 and interpreted it as establishing that a reasonable time is contemplated where no time is expressed; what is reasonable depending upon the circumstances. The court concluded that the loading of the truck was the commencement of the work, which was one of the ways of accepting the offer, and took place within a reasonable time. At this moment there was a contract between the parties, a contract which defendants breached when engaging others to do the work.

This decision is consistent with what was said before about the real meaning of Article 1809. It is also consistent with Article 1802, since defendants could not validly signify their change of mind, as the acceptance had taken place within such time as the situation of the parties and the nature of the contract indicated that the defendants had allowed.

The court stressed the fact that the loading of the trucks with materials marked the commencement of performance." It is submitted that to be convincing this characterization of the act of acceptance should have been complemented by the presumption that defendants had waived their right to have the acceptance communicated to them. Such a waiver could have been found implied in the language of the contract, as the parties covenanted that "this agreement shall become binding ... upon commencing performance of the work." The same results could have been attained by asserting that the commencement of performance took place when plaintiff's workmen arrived at the defendants' home, since their presence there, enhanced by the loaded trucks, could have no meaning other than their readiness to perform. The defendants could not then have validly expressed a revocation that they had not expressed before. In other words, the defendant's signification of dissent was untimely under the circumstances.

In sum, although this case is one that lends itself to be better understood in the light of Article 1802, the court arrived at a very clear interpretation of Article 1809.
In *National Roofing & Siding Co. v. Navarro*, the defendants signed a document offering to pay plaintiff a certain sum of money to apply aluminum siding to their residence, and deposited $100 on account. The offer was submitted on a form prepared by the plaintiff contractor, and one of the clauses provided: "This contract is binding, subject only to acceptance by an executive of the National Roofing & Siding Co., who reserves the right to reject it without liability on its part." As to the financing of the contract, it seems that plaintiff would secure a loan for defendants from a certain financing company. But the day after the offer was signed, one of the defendants telephoned the plaintiff's salesman to inform him that they had changed their minds, and desired to cancel the contract. The defendant was then advised that the "contract" had been accepted, that the materials were already on delivery, and, therefore, there could be no cancellation. That same day, a small truck containing a few materials for use in application of the siding arrived at the defendant's home, but delivery was refused. The next day, the defendants received a letter from plaintiff informing them that the offer had been accepted. The letter had been mailed a few hours after plaintiff was notified, by telephone, of the revocation. In deciding this case, the court said that the general rule relating to offer and acceptance is stated in Article 1800, and it interpreted Article 1809 as a limitation of the principle set up in the former. Of Article 1809 the court stated: "This article obviously places a limitation upon the general rule that offers may be revoked any time before they are accepted, and is applicable where the offeror has expressly stated an intention to make the offer irrevocable within a stipulated period of time or where the offer is of such a nature that from its very terminology the implication is present that the offeror intended to make it irrevocable for a reasonable period of time, within which it would be necessary for the offeree to signify his acceptance."

Following this premise, the court finally concluded that the implication that the offeror intended to make his offer irrevocable for any period of time before acceptance cannot be supported by the necessity of procuring financing and, therefore, defendant's revocation was timely.

The interpretation given by the court to Article 1809 in the above-quoted paragraph contradicts, to some extent, what has been said in previous pages about the manner in which the article should be read. It is submitted that the court departed from the language of the legal precept by seeking something in the nature of the offer, or in its terminology, to give rise to the implication of a reasonable time for acceptance. Instead, it should have relied on the circumstances of the case, as the article has it, which leads directly to the situation of the parties and the nature of the contract, as stated in Article 1802. Thus, the interpretation formulated by the court could not account for the case of a contract by correspondence, thus eliminating partially the wealth of legal significance to be found in Article 1809.

But the real thread leading to the correct understanding of this decision lies in the following words: "an executive of plaintiff who was authorized to accept the offer was apprised thereof but had not accepted before the defendants revoked." This language means that in the instant case, as in another to be considered below, the court meant that the offer called for an immediate acceptance, perhaps because of the parties' location, perhaps because of the very nature of the contract. The parties being reciprocally within immediate reach, the rules of contracts between absent parties, the court seems to have thought, ought to be but very carefully applied, and, without clear indications to the contrary, the rules of arms-length contracts should prevail. According to the circumstances of this case, the defendant could revoke the offer not immediately accepted by plaintiff. It should be observed that this conclusion is consistent with the interpretation of Article 1809 as formulated in preceding pages.

In the same case, disposing of an argument raised on the grounds of a precedent, the court
said: "A case is authority for only what it actually decides." Such a statement formulates a strict, and very wise, principle of interpretation. Taking advantage of this principle, it can be said that this case is authority for the rule that offers of this kind call for immediate acceptance, or that the reasonable time implied for acceptance is as brief as the time it will take the offeree to learn of the offer and immediately communicate his assent. As this is what was decided, the manner in which the court read Article 1809 is, therefore, obiter dictum, according to the very principle stated by the same court.

c) Term

What's the effect of an irrevocable offer? For how long must it remain open?

1) Length of Delay Specified

COH 26. Pascal hears word that Jean Sot is interested in leasing 40 acres of land for rice farming. And so, Pascal sends him the following telegram dated Dec. 1, 1996: "Will lease back 40 of Belle Terre. Term: one year, beginning Jan. 1, 1997. Price: $5,000. Must have your answer by end of Dec. 31, 1996." Has Pascal made an offer? Why or why not? If so, what kind? Explain. If there has been an offer, for how long must it be "kept open"? Why? See CC art. 1928, ¶ 1.

2) Length of Delay Not Specified

Read CC art. 1928. What's a "reasonable" time?

COH 27. Alpha, thought its president, signed a document entitled "lease agreement," whereby Alpha offered to lease certain word processing equipment from Lanier. The lease agreement contained the following clause: "2. LANIER'S ACCEPTANCE. This lease is subject to approval by Lanier's home office and shall become effective only upon written communication of acceptance from Lanier to customer." The lease agreement also provided that Lanier was to arrange financing for Alpha. The Lanier representative promptly forwarded the document to the home office in Atlanta. When the home office went looking for a financier, however, it ran into trouble. Not until two and a half months later did Lanier finally line up the financing. A short time after that, Alpha, through its president, informed Lanier that the deal was off. Was this offer revocable or irrevocable? Why? If irrevocable, for how long did it have to be "kept open"? Why? See Lanier Business Prod., Inc. v. Alpha, Inc., 489 So. 2d 1033 (La. App. 1st Cir. 1986).

d) Expiration

1) Definition

Read CC art. 1932.

2) Causes

a) Death or Incapacity

Read CC art. 1929.

b) Lapse of Time

1) Irrevocable Offers

Read CC art. 1930.

2) Revocable Offers

Read CC art. 1931.

c) Counteroffer (?)

Read Trahan, Supp, 129-37.

d) Special Problems

1) Options

a) Definition

Read CC art. 1932.

COH 29. Olide, who's desperate for cash, proposes to lease the back 40 of Terre Puante to Jean Sot at a rent of $5000/year for a term of two years, beginning January 1, 1998. Jean Sot replies that, though he's interested, he'd be willing to commit himself only if Olide would be willing give him the right, should he...
desire to do so, to buy the land at the end of the lease for $100,000. Olide agrees. And so Olide draws up two documents. The first is a lease agreement. In the second document, Olide offers to sell Jean Sot the land for $100,000. This second document further provides that the "offer" shall remain irrevocable for "the term of the lease, i.e., two years." Both parties sign both agreements. How should the juridical act evidenced in the second document be classified? Is it an "irrevocable" offer or something else? If it’s the latter, what, precisely, is it? And how, precisely, does that "something else" differ from an irrevocable offer? Explain. See CC art. 1933.

b) Effects

What difference does it make whether a particular juridical act is a mere irrevocable offer, on the one hand, or an option contract, on the other? In other words, how are the juridical consequences of these two kinds of juridical acts different?

COH 30. Olide, without agreeing with Jean Sot on anything or even consulting with him, had offered to sell the back 40 of Terre Puante to him for $100,000, with the stipulation that the offer would remain open for 2 years. (i) What kind of juridical act would we have then? Why? (ii) Would that juridical act give rise to any rights that Jean Sot might be able to assign? For example, Can the offeree of an offer assign the benefits of the offer to someone else? Why? (iii) Would that juridical act give rise to any rights that Jean Sot's heirs might inherit in the event of his death? Why? See CC art. 1932.

COH 31. Now, recall the original hypothetical, i.e., that in which Olide and Jean Sot entered into the option contract. (i) Would that juridical act given rise to any rights that Jean Sot might be able to assign? Can the beneficiary of an option assign the benefits to someone else? (ii) Would that juridical act give rise to any rights that Jean Sot's heirs might inherit in the event of his death?

2) Rewards

Read CC arts. 1944 & 1945.

2) Acceptance

a) Definition

What's an "acceptance"?

b) Prerequisites

1] As to Mode of Expression

Re-read CC art. 1927, ¶ 2.

a] Express

b] Implied

Read CC arts. 1939-1940.

COH 32. Pascal sends Jean Sot a letter that reads as follows: "Jean Sot: I'll pay you $2000 if you'll tan my nutria hides. There are 100 of them. If you're interested, report to Belle Terre tomorrow to start the job." Jean Sot then writes back, "I'll be happy to do it." There was an offer. But was there an acceptance? Why or why not?

c] Tacit

An acceptance can sometimes be communicated by mere silence. But is that the general rule or the exception? Read CC art. 1942.

1] Silence as Acceptance by Virtue of the Law

Re-read CC art. 2689 (reconstruction).

COH 33. Olide owes Pascal $1000. Pascal, having just attended a mass in which the homily was entitled "Forgive Us Our Debts, As We Forgive Our Debtors," decides to remit the debt. Pascal then sends Olide a letter informing him of the decision. Olide, however, does and says nothing. In the course of time, Pascal dies, leaving behind a son, Ti-Boy. Ti-Boy, who didn't have the benefit of the homily, then sues Olide. What result? (i) Let's start by trying to figure out just what Pascal did or tried to do. (a) Can Pascal forgive the debt unilaterally, i.e., against the will of Olide? Why or why not? (b) If not, then how should we interpret Pascal's letter? Why? (ii) Assume that Pascal’s letter constitutes an offer to remit the debt. Has Olide
accepted it? Why or why not? See CC art. 1890.

2) Silence as Acceptance by Virtue of the Facts

Read CC art. 1942.

a) Practice of the Parties

Silence implies acceptance where the parties, through prior transactions, have established a practice according to which the offeree is presumed to accept unless he says otherwise.

b) Trade Usage

COH 34. Pascal, a winemaker, regularly purchases wine bottles from Olide, who runs a wine bottle reclamation business. The standing arrangement between them requires Olide to supply Pascal with 100 green-tinted wine bottles each month and for Pascal to pay Olide $50 within 5 days of delivery. But one day Olide, for reasons best known to him, sends Pascal a shipment of brown-tinted wine bottles. Time goes by, during which Pascal says and does nothing. At some point a few weeks later, Olide, not having received his payment, calls Pascal to ask what's up. "Tu fou bête! You sent me the wrong stuff. You think I'm going to pay you for that!" shouts Pascal. Olide then sues Pascal for breach of contract. In his defense, Pascal argues that there was no contract. Why not? He didn't accept Olide's "offer" of the brown bottles. What result? Why? See CC art. 2605.

2] As to the Time at Which It Must Be Expressed

At what point in time must the acceptance be expressed if it's to have its intended effect, i.e., to result in the formation of a contract?

3] At to Its Content

a) General Rule

COH 35. For years Olide has been after Pascal to sell him part of Belle Terre. Finally giving in, Pascal mails Olide the following offer: "Sale of Belle Terre back 40. Price: $3000/acre for total of $120,000." The next day, Olide mails this reply: "I accept the offer. Will buy back 30 acres at proposed price of $3000/acre, for total of $90,000." Weeks go by with no action. Eventually Pascal calls Olide to ask what was up. Olide's reply? I changed my mind. Pascal then sued Olide for specific performance. What result? Why? See CC art. 1943. Would the result be any different if the lack of conformity concerned a term that did not bear on an "essential element" of the contract? Explain.

b) Exceptions

Is the rule laid out in CC art. 1943 an absolute rule, i.e., one that applies in all conceivable situations, or merely a general rule, i.e., one that admits of exceptions? Read CC art. 2601 & cmt. (a). What are some of the exceptions?

4] As to the Person Who May Give It

c) Time of Effectivity

1] Significance

a) For Contractual Formation

b) For Contractual Effects

2] Timing Rules

a) Express Acceptance

1) Acceptance of Irrevocable Offer


COH 37. The same as before, except as follows. Olide's reply reaches Pascal's mailbox on May 1, 1997, the date on which the offer is set to expire. Pascal, who's always slow at getting to his mail, doesn't
take the reply out of his mailbox until one day after that, May 3, 1997, and doesn't get around to opening and reading the reply until one day after that, May 4, 1997. What result now? Why? See CC art. 1938.

2) Acceptance of Revocable Offer

OCH 38. Pascal mails Olide the following offer: "Lease of Belle Terre back 40. Price: $2,000. Term: 1 year. I reserve the right to revoke the offer at any time." On April 30, 1997, Olide drafts this reply: "I accept your offer." That same day, April 30, 1997, Olide places his reply in the mail. The next day, May 1, 1997, while the acceptance is still wending its way through the mail, Pascal loses his mind. Olide's reply reaches Pascal's mailbox the next day, May 2, 1997. Was Olide's acceptance timely? Why or why not? See CC art. 1935.

COH 39. The same as before, except as follows. Olide sends his reply to Pascal by E-Mail over the Internet. He does so even though (i) Pascal made the offer by mail, (ii) he and Pascal have never transacted business by E-Mail, and (iii) aside from themselves, few people in and around Gueydan, the town in which they live, are "on the net." Pascal does not check his E-Mail mailbox for messages before losing his mind. What result now? Why? See CC arts. 1935 & 1936.

b) Acceptance by Performance

Read CC arts. 1939 & 1940.

f. Qualities: Vices of Consent

If, as we've suggested, the binding force of contracts rests on the principle of "autonomy of the will," that is, the notion that one is bound only if one wills it, then there can be no contract where the will of one party or the other or both is not free. It simply makes no sense to say that a certain person "wills" something when he is forced or misled into wanting or desiring it.

1) Error


a) Definition

What does the term "error" mean? Let's see how you like these: (i) "an inexact representation of reality," MR § 133, at 133; (ii) "a false representation of reality. . . [;] a false or inexact idea that a contracting party makes with respect to one of the elements of the contract," WT § 159, at 185; (iii) "ignorance of that which really exists," "belief in the existence of that which does not exist," or "drawing erroneous conclusions of law from facts about which one is well informed," CC arts. 1821 & 1822 (1870).

b) Prerequisites for Vitiation of Consent

Is it every "error" in the sense in which we've just defined the term that vitiates consent? Or do only some errors that have that effect? What makes the difference? See CC art. 1949.

1) Relation to a Cause

a) Definition

Read CC art. 1949.

1) Cause

What's does the first component--"cause"--mean? Re-read CC art. 1967. Then read CC art.1949 cmt. (b).

2) Without Which the Obligation Would Not Have Been Incurred

Read CC art. 1949 cmt. (e). Has the supposed redundancy been cured?

b) Types

Under what circumstances might a particular error relate to a cause? See CC art. 1950. Is it the case that each of the types of error enumerated in the article is ipso facto, that is, in itself and without more, an error that "concerns a cause"? See CC art. 1950 cmt. (g).

1) Errors of Fact

a) Nature of the Contract

Read & brief Wise v. Prescott, 151 So. 2d 356 (Sup. 1963) [Levasseur, Text, 241-42, 244-47: skip
section entitled “On the Question of Liability of Public Service,” at 242-44].

b) Identity of the Thing That Is the Contractual Object

COH 40. Olide calls Pascal to ask if he has any nutria for sale. "Just one," says Pascal. "I've got him in a cage out back." "How much you askin'?” asks Olide. "Twenty dollars," says Pascal. "It's a deal," answers Olide. "You can come pick him up this afternoon. I'll bill you later," says Pascal. A few minutes later Olide arrived, picked up the nutria, and drove off. When Pascal agreed to the deal, he assumed that the nutria which was then in the cage was the wild one that he'd caught earlier that morning. But he was wrong. Unbeknownst to him, his mistress, Clodice, who can't stand Pascal's pet nutria, Mr. Nutty, had let the wild one out of the cage and put Mr. Nutty in it, just to get him out of the house. So, at the time of the sale, it was Mr. Nutty, not the wild nutria, that was in the cage. And, at the time of delivery, it was Mr. Nutty who got carried off. You may assume that though Olide knew who Mr. Nutty was and that Pascal would never sell him, Olide didn't notice that the nutria in the cage was Mr. Nutty. Pascal, to his horror, has now discovered his mistake. He has come to you for advice. What do you suggest? Why? See CC arts. 1949 & 1950.

b) Substantial Quality of the Thing That Is the Contractual Object

COH 41 (based on Jefferson Truck Equip. Co. v. Guarisco Motor Co., 250 So. 2d 211 (La. App. 1st Cir. 1971)). Athena Corp., a contractor, got a contract to lay a section of pipe. The job required a crane capable of lifting lengths of pipe weighing 2250 pounds and moving them a distance of 20 feet. Athena’s representative, Guarisco, contacted Tracey, a seller of construction machines (including cranes) to arrange for the purchase of a suitable crane. “Got any cranes that can lift 2250-lb pipes at 20 feet?” Guarisco asked. “As a matter of fact,” responded Tracey, “we just got in a new product—the Pitman 70-B crane—that should do the trick. If memory serves me, it can lift 2500-lb pipes at 25 feet.” Guarisco and Tracey then closed the deal on the Pitman 70-B. When the Pitman 70-B was delivered to the job site, Athena’s employees soon discovered that it couldn’t do the job, in fact, that the best it could do was to lift 2000-lb pipes at 18 feet. Athena now wants to return the Pitman 70-B and get its money back. Can it? Explain. See CC arts. 1949 & 1950. Assume that the Pitman 70-B’s maximum designed capacity was, in fact, for “2000-lb pipes at 18 feet.”

c) The Person of the Other Party

COH 42. A few years back, Pascal hired Cajun Stockbrokers to sell some shares of corporate stock that he'd inherited from his grandfather. Since Cajun had arranged for a sale on terms very favorable to Pascal, Pascal came away with a favorable impression of its work. So it was that, when Pascal inherited some shares of corporate stock from his grandmother, he called Cajun to inquire about its selling those shares as well. In the course of the conversation with the receptionist, Pascal mentioned his past experience with Cajun and how pleased he'd been with the results. Pascal then told the receptionist that he wanted to hire Cajun again. The receptionist promptly faxed him a contract, which he signed and promptly faxed back. Unbeknownst to Pascal, however, Cajun had undergone something of a shake-up since he'd last engaged their services. For one thing, Cajun was under knew management, namely, Olide. For another, it had hired a new stock trader, namely, Jean Sot. When Pascal showed up at Cajun's office and discovered that Cajun was now run by a thief and staffed by an idiot, he balked, refused to turn over his stock, and refused to pay the fee. Cajun then sued Pascal for breach of contract. In his defense, Pascal pleads error. What result? Why? See CC arts. 1949 & 1950.

d) The Qualities of the Other Party

COH 43. The Our Lady of the Bayou Catholic School put out a notice that it was looking for a new 1st grade teacher. Olide applied for the job and, amazingly enough, was hired. Though the notice hadn't said so, it was common knowledge that the school administrators were interested only in applicants who were "in good standing" with the church. And so it created quite a stir when the administrators learned that Olide was twice divorced and, worse still, was living in a state of open concubinage with a third woman. The school immediately brought suit to annul the contract. Their theory? Error. What result? Why? See CC arts. 1949
2] Errors of Law

COH 44. For years, Olide has had his eye on Belle Terre's back 40, which, in Olide's mind, would make a perfect site for a hazardous waste dump. Aware that such dumps are subject to intensive government regulation, he heads out to the library, finds the Revised Statutes that pertain to hazardous wastes, and studies them in order to determine if a dump can be situated on that property. Satisfied that there's no prohibition against it, he approaches Pascal and offers him $500,000 for the property. Pascal accepts. Once the deal's closed, Olide applies to DEQ for a hazardous waste disposal permit. Within a few days, Olide gets a call from the Assistant Secretary of the Hazardous Waste Division: "Olide, you ignorant slut! You can't build a hazardous waste dump." The secretary then proceeds to point out to Olide no less than ten statutory provisions that present insuperable obstacles to the construction of the dump. Some of those provisions Olide had missed; others he'd flat out misinterpreted. Olide now wants to rescind the sale on grounds of error. Can he? Why or why not? See CC arts. 1949; 1950 & cmt. (e).

2] Knowledge

a] Standard

Does the prerequisite of knowledge requirement entail a standard of subjective knowledge, objective knowledge, both, neither? See CC art. 1949.

b] Object

What must the party not in error know in order for consent to be vitiated? Is it the mistake itself or just the cause connected with the mistake?

COH 45. Pascal travels to New Orleans for a vacation. While there, he wanders into one of the many art galleries in the French Quarter. As he makes his way through the gallery, his eye falls on a painting that he takes to be the work of one of the group of 20th century American artists known as the Abstract Expressionists. A sales clerk approaches and ask if he likes it. "Yes," he responds, "I've always had a thing for Abstract Expressionist art." Unbeknownst to Pascal, his remark means nothing to the clerk, an engineering student who works nights at the gallery to earn tuition money. As it turns out, she has no idea what abstract expressionism is, much less whether the painting is of that genre. At any rate, Pascal ends up buying the painting. Back at home, he unfurls the painting and notices, for the first time, an inscription written in crayon on the back: "Beau Sot. Art Project. Our Lady of the Bayou Kindergarten. Class of 1997." Pascal now wants to undo the sale. Will he succeed? Why or why not? See CC art. 1949 & cmt. (e).

c) Classification According to the Number of Subjects Involved

The common law draws a sharp distinction between so-called "unilateral" errors and "mutual" errors. What's the former? What's the latter? And how are they treated differently at common law? See CC art. 1949 cmt. (d).

Do we recognize this distinction in Louisiana and, if we do, does the distinction have the same significance, i.e., the same consequences, here as it does in common law jurisdictions?

d] Illustrations

Read Griffin v. Seismic Servs., Inc., 259 So. 2d 923 (La. App. 1st Cir. 1972) [Levasseur, Text, 248-52].

d) Effects

What's the effect of the vitiation of consent through error; in other words, what juridical consequences follow where the consent of one or both of the parties is vitiated through error? See CC arts. 1927, 2029, 2031.

e) Remedies

What remedies are available to the party or parties in the event that their contract is null on account of error? As we'll see, the answer to this question is not as straightforward as one might think.

1] Nullification/Rescission

a] General Rule

To what remedy or, to be more precise, what kind of action, does nullity on account of error generally give rise? See CC art. 2032, ¶ 2, & art. 1952. And just who may bring this action? See CC art. 2331, ¶ 2.
And what relief does this remedy provide, practically speaking? See CC art. 2033, ¶ 1.

b) Exceptions

Is nullification or rescission available in every instance in which consent is vitiated by error?

1) Other Party Willing to Perform

Read CC art. 1951.

2) Other Party Has an Interest that Nullification/Rescission Would Jeopardize

COH 45. In the wake of a devastating hurricane, one that destroyed all of the buildings in town, the Greater Gueydan School District decides to rebuild the school. In response to the advertisement for the project, Olide, who's latest line of work is contracting, puts together a bid. But when he does so, he makes a simple, if serious, miscalculation. Though the project requires 10,000 board feet of lumber, Olide, in calculating his charge for the lumber, inadvertently omits a zero and ends up using 1,000 instead. As a result, his charge for the lumber, unbeknownst to him, is only a fraction of cost. When the bids are opened, Olide's, not surprisingly, turns out to be the lowest. After the district engineer, Jean Sot, certifies to the district that Olide's bid "meets our requirements," the district accepts the bid. Assume that the city engineer had a duty to check the bids for mathematical errors and, further, that a reasonably competent engineer would have caught Olide's. Soon after he begins work, Olide discovers his mistake and demands to be let out of the contract. The district refuses, noting (i) that there's not enough time left before the start of the new school year to readvertise the project, select a new contractor, and get the building rebuilt and (ii) that there's not enough money in the budget to finance the cost of readvertising anyway. What's the appropriate remedy for the parties? Explain. See CC art. 1952, ¶ 2, & cmt. (e).

3) Error Is Inexcusable

Do you remember Justice Blanche's dissent in Griffin? What was it that had the good judge all ginned up? Do you find any support for his position that result in the current legislation? In the comments thereto? See CC art. 1952 cmt. (d). And how, do you suppose, one ought to define "inexcusable" in this context? See AL, 50 LLR, 1, 36 (the error is inexcusable if the party in error "fail[ed] to take elementary precautions that would have avoided his falling into error, such as making certain that he was reasonably informed").

2) Damages

Let's suppose that the party in error is entitled to rescission, that is, that his case falls under none of the exceptions to the general rule. Does that mean that he gets off scott free?

a) General Rule

What's the general rule? See CC art. 1952, ¶ 1.

1) Scope: Kind of Error

The general rule clearly applies to instances of unilateral error. Can it be applied to instances of mutual error as well? Why or why not?

2) Relation to Exception to Nullification/Rescission Rule Where Nullification/Rescission Would Jeopardize an Interest of the Party Not in Error

Imagine your favorite case of unilateral error. Suppose that if the court were to annul the contract on grounds of error, then certain interests of the party not in error would be seriously damaged. What kind of case is this? A CC art. 1952, ¶ 1 case, in which case the contract should be rescinded and the party not in error given damages, or a CC art. 1952, ¶ 2 case, in which case the contract should be maintained and the party in error should be awarded reasonable compensation? How can you tell?

b) Exception

Is the party in error, in a case of unilateral error, always liable for any loss that the party not in error may suffer? See CC art. 1952, ¶ 1, last clause, & CC art. 1949 cmt. (d).

2) Fraud

a) Definition

b) Elements

1) Psychological Element

Fraud, as it's defined in CC art. 1953 and in civilian doctrine, requires a certain psychological element, what one might call the *mens rea*. What is it?

COH 46. Olide has long coveted Jean Sot's German-style accordion, which Jean Sot believes, righty as it turns out, once belonged to the legendary Clifton Chenier. Olide, however, has never been willing or able to pay Jean Sot's asking price of $5,000. And so Olide thinks up a new strategy. He hires a starving drama student from LSU to pose as a Cajun music historian, then directs him to visit Jean Sot and, after inspecting the accordion, to declare that it never belonged to Clifton Chenier. The actor does as he's told. Olide then offers Jean Sot $500 for the accordion, which Jean Sot, understandably enough, accepts. Sometime later Jean Sot learns the truth. When he does so, he brings suit to rescind the sale on grounds of fraud. Is he likely to succeed? Why or why not? See CC art. 1953.

2) Material Element

Fraud, as it's defined in CC art. 1953 and in civilian doctrine, also requires a certain material element, what one might call the *actus reus*? What is it? See CC art. 1953.

a) Fraudulent Action

1} Scheme

2} Lie

a} General Rule

b} Exceptions

Does every lie amount to an act of fraud?

1/ Puffing Wares

COH 47. Olide, who's now in the business of selling used farm equipment, puts out an ad in which he claims that "our prices are the lowest in town." He does so even though he knows full well that Pascal, one of his competitors, routinely underprices him. Jean Sot, relying on the ad, drops in at Olide's place and buys a tractor for $1000. Later that day, in a casual conversation with his friend Pascal, he learns that Pascal has a similar, if slightly superior, tractor available for sale at a price of $900. Jean Sot now wants to upset his sale with Olide. What result? Why?

2/ Misrepresentations of Capacity

COH 48. In order to gain entry to a certain river boat casino, Ti-Boy, Pascal's 15-year old son, tells the boat's gatekeeper that he's 21 years old and, further, produces a fake ID to back up that claim. Once inside, Ti-Boy hits a hot streak, amassing winnings of over $50,000. Before the night is up, the proprietor somehow learns that Ti-Boy is in fact a minor. The proprietor then demands that Ti-Boy return the winnings. Why? Because the casino's consent to the betting contracts whereby Ti-Boy earned those winnings was vitiated by fraud. What result? Why?

b) Fraudulent Inaction

1} Silence

WARNING: As far as I'm concerned, this is the only issue (when does silence amount to a suppression of the truth) in the whole law of “fraud *qua* vice of consent” that is even remotely interesting. It will, therefore, be tested with a vengeance! You must, therefore, know (i) the significance in this context of the notion of “duty to disclose” and (ii) the three competing views – the narrow, the broad, and the intermediate – of the circumstances under which one has a duty to disclose.

These topics are treated at length in the Trahan, Supp, 166-72 (Litvinoff) & 177-81 (others). In the past, many students, intimidated by the length and seeming complexity of this material have elected not to read it at all. They now work at Burger King. I strongly encourage you to avoid repeating their blunder.
a) The Possibility

COH 49. Finding herself in need of a new backhoe, Clodice drives out to Olide's used farm equipment lot. While there, she eventually finds one that she likes, she and Olide come to terms on the price, and she hauls away the backhoe. There's just one problem. The transmission has a latent, i.e., hidden, defect, one that the average buyer would never detect. And guess who knew about it? Olide. And guess who didn't say anything about it? Olide. Within a few weeks of the sale, the backhoe, not surprisingly, begins to experience transmission problems. When Clodice complains to some of Olide's employees, one of them tells her, "You didn't know about the transmission anomaly. We sure did? Weren't you told?" Upon getting this little bit of information, Clodice sues Olide to rescind the sale for fraud. In his defense, Olide argues that he could not have been guilty of fraud, for he never made any misleading representations. What result? Why? See CC arts. 1953, sent. 2, & CC art. 2545.

b) The Limit: the Duty to Disclose

COH 50. It's the year 2008, the last year of President Gore’s first term. Persuaded by the Pope's argument that the US embargo of Cuba is immoral and determined to make at least one policy decision on the basis of principle rather than polls before he leaves office, the President decides to lift the embargo. For reasons you can well understand, the decision is to kept hush-hush, or so the National Security Council directs. But that is not to be. As it turns out, on the very night on which the president convenes the NSC to consider the matter, Wong Duc Fu, a certain Chinese businessman, is spending the night in the Lincoln Bedroom at the White House, his reward for having made substantial contributions to various Democratic Party campaigns. While walking the corridors of the White House, he overhears a couple of the NSC staffers talking over the decision. The very next morning, after check out time, Wong Duc leaves the White House, heads to the airport, boards his jet, and flies straight to Havana. Once there, he meets with the leaders of the Tobacco Che, the largest tobacco farmers cooperative in Cuba, and offers to buy all of their produce for the next ten years at a price slightly above the market value. Naturally enough, he tells them nothing of the President's impending decision. Finding the offer suitable, the farmers cooperative agrees. A few days later, the President announces his decision. After he does so, the market price of Cuban tobacco, as Wong Duc fully expected, jumps to five times its previous value. The farmers cooperative, realizing it's been had, brings suit to rescind the sale. What result? Why?

1/ The Narrow Vision

What is the “narrow” view? Is there any “downside” to this position? Economically? Socially? Politically? Morally?

2/ The Broad Vision

Echoing the Roman Catholic theologian St. Thomas Aquinas and scores of canon law scholars, the French jurisconsult Pothier wrote that “the équité involved in every commutative contract forbids either party to take unfair advantage of the other, as each party is supposed to receive the equivalent of what he gives. Thus, neither should a seller be allowed to conceal information concerning events that would cause the price of the contractual object to come down, nor should a purchaser be allowed to conceal information concerning events that would cause the price to go up.” Leftists of various stripes (from true democratic socialists in Europe to “New Deal” Democrats in the US) have, not surprisingly, taken the same position: “a person's right to shroud in silence his knowledge of certain circumstances that, if known to the other party, might dissuade him from entering the contract, is a remnant of the individualism prevailing in the nineteenth century . . . [T]he social, economic and political changes that took place in the twentieth century call for change also in the criteria with which the honesty and sincerity of contracting parties ought to be judged.” Id.

Is there any authority for this position in our CC? Take a look, again, at CC art. 1759 and, for the first time, at CC art. 1983, sent. 2. What do they suggest?

Is there any “downside” to this position? Economically? Socially? Politically? Morally?

3/ The Intermediate Vision

COH 51. For a number of years Cajun Oil & Gas, at its own expense, has been working on a satellite-
borne electromagnetic resonance imaging system that will enable its engineers to identify subsurface anomalies that are indicative of vast underground mineral deposits. As soon as the system is in place above the earth, Cajun scans south Louisiana and discovers a number of areas that exhibit the indicative anomalies, including many that no one would have previously believed might contain minerals. Cajun then contacts the owners of the land and, without disclosing to them what it's discovered, offers to take mineral leases over the land at the going market rate. The owners agree. As soon as exploration begins, Cajun strikes paydirt and begins to pump out huge quantities of oil. Shortly thereafter the landowners learn of Cajun's new technology and, further, of what Cajun knew, but didn't say, about their land. The landowners sue to rescind on grounds of fraud. What result? Why? WARNING: There will be a problem like this on the exam; it is simply imperative that you understand how to solve it.

c) Prerequisites to Vitiation of Consent

Is it every event of fraud as we've just explained it that vitiates consent? Or do only some fraudulent events have that effect? What makes the difference?

1] The Fraud Induced an Error Regarding a Substantial Circumstance
   a] Necessity of Error

Read CC art. 1953.

b] Kind of Error Required

Is the kind of error required for fraud the same as or different from the kind of error that's involved in the vice of consent known as "error"? See CC art. 1955. If they're different, how are they different?

2] The Fraud Was Committed by a Party or by Third Party Where Party Knew or Should Have Known

a] General Rule

b] Exception

Read CC art. 1956.

3] The Truth Was Unascertainable

a] General Rule

COH 52.1. Clodice shows up at Olide's used farm equipment lot looking for a new backhoe. During the course of their negotiations, Olide represents that he's willing to sell the particular backhoe in which Clodice is interested for "blue book value," which he claims is $1,500. The true blue book value, however, is only $1,250, a fact of which Olide is fully aware. Clodice accepts the representation without question, even though she has a backhoe "blue book" of her own that shows the backhoe's true value. Sometime later, Clodice finds out that she's been had. She then brings suit against Olide to rescind the sale on account of fraud. What result? Why? See CC art. 1954, ¶ 1.

b] Exception

Is it always true that fraud does not vitiate consent if the defrauded party, with a minimum of effort, could have found out the truth himself?

COH 52.2. Recall the last hypothetical. Suppose that, at the time of the sale, Clodice and Olide were husband and wife. Then what result? Why? See CC art. 1954, ¶ 2.

d) Effects

What's the effect of the vitiation of consent through fraud; in other words, what juridical consequences follow where the consent of one or both of the parties is vitiated through error? See CC arts. 1927, 2029, & 2031.

e) Remedies

What remedies are available to the parties in the event that their contract is null on account of fraud? Read Trahan, Supp, 182-84.

1] Nullification/Rescission

To what remedy or, to be more precise, what kind of action, does nullity on account of fraud generally give rise? See CC arts. 2032, ¶ 2, & 1958. And just who may bring this action? See CC art. 2031, ¶ 2.
And what relief does this remedy provide, practically speaking? CC art. 2033, ¶ 1.

2) Damages +/- Attorney Fees

Is the defrauded party limited to rescission? If not, what else can he get and under what circumstances can he get it? See CC art. 1958.

3) Duress

Read CC arts. 1959-1960.

3. Cause

It's often said that there can be no contract without a cause. But is it contracts that have causes or something else? Look at CC art. 1966.

a. Definition

What's a "cause"? See CC art. 1967, ¶ 1.

1) By Exposition

a) The Alternatives

Read Trahan, Supp, 184-89 (Saul Litvinoff, Still Another Look at Cause, 48 La. L. Rev. 1, 14-21, 26 (1987)).

1] Objective Theory

CO 9.1. With his creditors barking at his heels, Jean Sot is desperate to raise some money. It just so happens that Jean Sot has a vacant building near Dung Beach in Cameron Parish that he'd really like to keep but can nevertheless do without. At the same time, as it turns out, Olide is looking to buy a building along the beautiful Louisiana Gulf Coast in which to open a clandestine sea turtle processing plant. Somehow, someway Olide learns that Jean Sot's looking to sell and Jean Sot learns that Olide's willing to buy a beach house. When they get together to negotiate the sale, Jean Sot happens to mention why he's selling, i.e., to raise funds to pay debts; Olide, for understandable reasons, doesn't volunteer why he's buying. And so it is that the two enter into an act of sale, one whereby Jean Sot sells and Olide buys Jean Sot's beach house. What, according to the objective theory, are the "causes" of Jean Sot's and Olide's respective duties under the contract? Explain.

2] Subjective Theory

CO 9.2. Recall CO 9.1. What, according to the subjective theory, are the "causes" of Jean Sot's and Olide's respective duties under the contract? Explain.

b) Louisiana's Choice: Inter-Subjectivity

Read Trahan, Supp, 189-92 (re the inter-subjective theory of cause).

CO 9.3. Recall CO 9.1. What, according to the inter-subjective theory, are the "causes" of Jean Sot's and Olide's respective duties under the contract? Explain.

2] By Contrast

With what common law institution is the notion of cause sometimes used interchangeably? Consider, for example, Davis-Delcambre Motors, Inc. v. Simon [Levasseur, Text, 315-22], in which the court, in one breath, spoke of "unlawful cause" and, in the next, spoke of something else unlawful. What was that "something else"?

Is it right to identify these two institutions with each other? Are they, in fact, the same? What is "consideration" anyway? The Restatement defines it as a "bargained for exchange" of promises or of a promise for a performance. Restatement (Second) of Contracts § 71. Black's Law Dictionary indicates that its "[s]ome right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given suffered, or undertaken by the other" that the promisor receives for his promise." Is that the same as or different from cause? If they're different, how are they different? See CC art. 1967 cmt. (c).

But if cause ≠ consideration, then what’s all this business in CC art. 1967 about promissory estoppel? Is promissory estoppel intimately related to “consideration” (as opposed to cause)?

b. Prerequisites

In order for a binding contract to arise, the cause of each obligation created thereby cause must possess certain qualities. What are they? Read Trahan, Supp., 192-99 (prerequisites for / defects in cause).

1. Present: the Problem of Absence of Cause

COH 11. Pascal and Olide enter into an act of sale whereby Pascal sells and Olide buys Mr. Nutty, Pascal's pet nutria, for $50. There's just one problem: unbeknownst to Pascal and Olide, Mr. Nutty had died in an unfortunate scrape with a combine just moments before the sale. When Pascal learns what happened, he calls Olide, gives him the bad news, and demands the Olide make payment. Olide refuses. Pascal sues. Does Olide have a defense? If so, what is it? Why? Hint: Focus your attention on the cause of Olide’s obligation to pay the price (rather than the cause / object of Pascal’s obligations to give & to deliver the thing).

COH 12. In search of a tractor, Jean Sot heads out to Olide's used farm equipment lot. When he finally settles on one of the tractors, Olide offers to sell it to him for a "fair price." Jean Sot "accepts" the offer. As the two make their way to the office, Perot shows up and, after producing a wad of cash, offers to buy that same tractor at twice its retail value. Olide then tells Jean Sot to take a hike. Jean Sot sues Olide. Does Olide have a defense? If so, what is it? Why? Hint: Focus your attention on the cause of Olide’s obligations to give and to deliver the thing (rather than the cause / object of Jean Sot’s obligation to pay the price).

2. True: the Problem of False Cause

The expression "problem of false cause" is equivocal, that is, it is used to refer to more than one referent, referents that, as it turns out, are radically different.

a. Unintentionally False Cause

COH 13. Following heavy rains in the Gueydan area, Bayou Egout overflows its banks, flooding Pascal's house on Belle Terre. When the flood water subsides, he goes to town in search of Jean Sot, finds him, and, after explaining the situation to him, hires him to "clean up" the house for $100. But when they got back to Belle Terre, they find that the work had already been done even before they had contract. By whom? By Olide, who did it at the behest of Julie, Pascal's wife. Pascal apologizes to Jean Sot for putting him to the trouble, but then dismisses him without payment. Jean Sot brings suit against Pascal for breach of contract, seeking to recover his $100 fee. What should be Pascal's defense? Why? Will it succeed? Why?


b. Intentionally False Cause

COH 14. While married to Olide, Clodice bore him two sons, twins in fact, whom they named Esau and Jacob. Now, "Jacob he loved, but Esau he hated." For that reason, Olide routinely bestowed on Jacob favors that he withheld from Esau. But Olide always did so craftily, without letting Esau or, more important, Clodice know what he was up to. For example, after the boys came of age, Olide got it into his head to the back 40 of his estate, Terre Puante, to Jacob. But did he do it through an act of donation? No. To keep up the appearance of impartiality, he drafted an instrument entitled "Act of Sale" whereby he purportedly sold and Jacob purportedly bought that land for $100,000, a sum slightly above the land's then market value. He and Jacob then executed the act before a notary and two witnesses. The instrument, of course, was a lie, for no money changed hands. Sometime later Olide died. In the ensuing probate proceedings, the court appointed Clodice as the administrator of the estate. When she found out about the true nature of the "sale" between Olide and Jacob, she brought suit, as the representative of his estate, to rescind the sale. On what grounds? That the cause of Olide's obligation to give the back 40 was "false." What result would you predict? Why? See CC arts. 1970 & 2025-2027.

COH 15. The same as before, except as follows. Olide doesn't die. Sometime after Jacob takes control of the back 40, he sells it--really sells it--to Jean Sot. Not long after that, Jacob, who's something of an
ingrate, begins to mistreat Olide, even goes so far as to beat him within an inch of his life. At that point, Olide sues Jacob and Jean Sot to recover the back 40. His theory? (i) The contract between Olide and Jacob was a relative simulation, in particular, a disguised donation. (ii) A donation may be revoked on grounds of ingratitude, CC art. 1559(1), e.g., where the donee "has been guilty of cruel treatment" towards the donor, CC art. 1560(2). (iii) Jacob, the donee, was guilty of cruel treatment towards Olide, the donor. What result would you predict? Why? See CC art. 2028, ¶ 1, & cmt. (d).

3. Lawful: the Problem of Unlawful Cause

Read & brief (i) West v. Loe Pipe Yard, 125 So. 2d 469 (La. App. 3d Cir. 1960) [Levasseur, Text, 311-15], & Davis-Delcambre Motors, Inc., 154 So. 2d 775 (La. App. 3d Cir. 1963) [Levasseur, Text, 315-22].

c. Effects of Defective Cause

What are the effects of a defect in cause? Read CC art. 2029-2031

1. Unlawful Cause
2. Absent/False Cause

d. Effects of Cessation/Failure of Cause

To what does the expression “failure of cause” refer? What are its effects? Read Trahan, Supp, 199-203 (failure of cause).

COH 16. Olide leases his tractor to Jean Sot for a term of ten days, starting on May 1, and for a price (rent) of $100, payable on May 1. When Jean Sot shows up at Olide’s place on May 1 to get the tractor, Olide tells him, “I’m sorry, but you’ll have to wait: I had to take the tractor into the shop for repairs, which should take a couple of days.” As Jean Sot turns to leave, Olide adds, “By the way, I’ll take the rent now, if you don’t mind.” Must Jean Sot pay the rent now? Why or why not?

COH 17. The same as before (COH 16), except as follows. This time, Jean Sot picks up the tractor and pays the rent on May 1. On the night of May 5, five days into the 10-day lease, the tractor is destroyed when a huge meteor strikes it. Jean Sot then demands that Olide refund to him ½ of the total rent or $50. Must Olide do so? Why or why not? See CC arts. 1876-1877.

4. Object

a. Definition

What does the term "object of the contract" mean? Isn’t the expression technically precise? Is it really “contracts” that have “objects”? Or is it something else? Read the following doctrinal material:

Boris Starck, Henri Roland & Laurent Boyer, 
OBLIGATIONS: 2. CONTRAT n° 493, at 210 (5th ed. 1995)

Object of the contract and object of the obligation. – The Code civil addresses at some times the “object of the contract” . . . and at other times the “object of the obligation.” Here there is a regrettable terminological imprecision. If one were to be completely rigorous, one could not possibly speak of the object of a contract, for a contract in itself has not object. The contract has only certain effects, which consist of the creation of one or several obligations. It is these obligations created by the contract that have an object: to deliver a thing, to give care, not to complete, etc. Speaking precisely, then, one ought to say “object of the obligation created by the contract” (to pay rent is the object of [one of] the obligation[s] that arises from a contract of lease). Thus, it is only elliptically that one speaks of the “object of the contract.” Notwithstanding this impropriety, the expression has been retained for its convenience.

One should, then, speak of “objects of the obligations created by contracts” rather than of “objects of contracts.” But what does that expression mean? Isn’t it equivocal? Read CC arts. 1756, sent. 2; 1973-1976.
Though all these articles speak of “objects,” do they refer to the same things?

COH 56. Pascal and Olide execute an act of sale whereby Pascal sells and Olide buys the back 40 of Belle Terre. What's the "object" of Pascal’s obligations in the first sense of the term, i.e., the object of the obligation properly so called? What's the "object" of Pascal’s obligations in the second sense of the term, i.e., the object of the performance of the obligation (the “thing” in the narrow sense of the word)?

How is “object” related to “cause”? Would it be fair to say that, in a synallagmatic contract, the object of party A’s obligation is, at the same time, the cause (or one of the causes, specifically, the objective cause) of party B’s reciprocal obligation? Consider, again, the last hypothetical. What did you conclude was the object (in the broader, more technical sense) of Pascal’s obligations as seller? Is that same thing not also the (objective) cause of Olide’s reciprocal obligation as buyer? What would you say is the object (in the broader, more technical sense) of Olide’s obligation as buyer? Is that not also the (objective) cause of Pascal’s reciprocal obligations as seller?

b. Prerequisites

For a contract to be valid, its object, as was already indicated, must possess certain qualities. What are they? See CC art. 1971.

1) Lawful

Read CC art. 7. Does that mean that every contract that derogates from a law is an absolute nullity? Explain.

a) Object of the Obligation: the Performance

COH 57. After Pascal refuses to sell the back 40 of Belle Terre to Jean Sot, Olide hires Jean Sot to set Belle Terre's vinyards on fire, for which Olide pays Jean Sot $100 up front. Jean Sot does as he's promised. But when he shows up at Olide's place to collect payment, Olide refuses to pay. Jean Sot then sues Olide for breach of contract. What would be Olide's defense? Explain. Will he succeed? Why or why not?

b) Object of the Performance: the Thing

COH 58. Olide, once again, finds himself in desperate need of money. So it is that he goes to Clodice with the following proposal: "My mother, who's now 95, has no other descendant but me. I'll sell you her estate--my future estate--, which is worth $20,000, for $15,000 right now." Clodice accepts. In the course of time, Olide's mother dies and Olide is recognized as her sole heir. Olide, however, refuses to transfer the estate to Clodice. Clodice then sues Olide, seeking specific performance of the contract. What should be Olide’s defense? Explain. CC art. 1976, ¶ 2. Will he succeed? Why or why not?

2) Possible

a) Object of the Obligation: the Performance

1] Absolute Impossibility

COH 59. Olide wins the lottery. Now he can realize his lifelong dream: to build a 10-story convention center on the outskirts of Gueydan. After acquiring a tract of land, he hires Cajun Contractors to build the facility. Shortly after Cajun begins work, its engineers discover that the land consists primarily of quicksand, so much quicksand, in fact, that the land could not support a 2-story high structure, much less a 10-story high structure, not even if the engineers were to employ the most advanced foundation-forming technology available. Having reached this conclusion, Cajun suspends work. Olide then brings suit against Cajun for breach of contract. What would be Cajun's defense? Explain. What result would you predict? Why?

2] Relative Impossibility

COH 60. The same as before, except as follows. There's a new foundation-forming technology that, if applied to Olide's land, could create a foundation capable of supporting a 10-story structure. But Cajun doesn't have it and, further, can't afford to buy it. How does Cajun's "impossible object” defense fare now? Why? See CC art. 1972.

b) Object of the Performance: the Thing

1] General Rule: Existence

COH 61. Pascal and Olide enter into an act of sale whereby Pascal sells and Olide buys Mr. Nutty,
Pascal's pet nutria, for $50. There's just one problem: unbeknownst to Pascal and Olide, Mr. Nutty had died in an unfortunate scrape with a combine just moments before the sale. When Pascal learns what happened, he tells Olide. Olide then demands that Pascal, in addition to refunding his money, pay him for certain damages that he claims he's sustained as a result of Pascal's "breach of contract." Pascal refuses. Olide sues. What would be Pascal's defense? Explain. Will it succeed? Why or why not?

2) Exception: Future Things

Does that mean that, in order for the object of a contract that concerns a thing to be possible, that thing must exist at the moment at which the contract is executed? Read CC art. 1976; then read Springs Thunder Agency, Inc. v. Odom Ins. Agency, Inc., 237 So. 2d 96 (La. App. 1st Cir. 1970) [Levasseur, Text, 277-80].

3) Determined or Determinable

a) Object of the Obligation: the Performance

COH 62. One night, as Olide sits in Le Cadien Assoif [The Thirsty Cajun] complaining about all of the little odd jobs he has to do around his place the next day, e.g., mending a fence, building a chicken coop, digging a new well. Jean Sot offers to "lend him a hand" with "a job or two," provided Olide gives him lunch and a few beers. Olide accepts. The next day Jean Sot fails to show up. Olide sues him for breach of contract. What would be Jean Sot's defense? Explain. Will it be successful? Why or why not?

b) Object of the Performance: the Thing

1) Kind

COH 63. The inventory in the cellars of Les Socos Sont Nous [Muscadines Are Us], Pascal's winery, includes several different types of Muscadine wine, including white wine, red wine, and blush wine. There's considerable variation in value across the range of these different products: the prices range from a low of $5/bottle to a high of $20/bottle. One night, after Pascal and Olide have gotten liquored up at Le Cadien Assoif, Pascal agrees to sell Olide 100 bottles of "wine" for $10/bottle. None of Pascal's wine products regularly sold for that price. The next day, Pascal thinks better of the deal and so, refuses to go through with it. Olide sues him for specific performance. What should be Pascal's defense? Explain. What result? Why? See CC art. 1973.

2) Quality

Read CC art. 1860.

3) Quantity

a) Degree of Determinacy Required

Read CC art. 1973; then read Tac Amusement Co. v. Henry, 238 So. 2d 398 (La. App. 4th Cir. 1970) [Levasseur, Text, 275-77].

b) Modes of Determination

1) By Third Party Arbiter

COH 64.1. Pascal and Olide enter into an act of sale whereby Pascal sells to Olide "at least 100 buckets of Red Ison Muscadines, the precise amount to be fixed by Jean Sot" for a price "between $1 and $2 per bucket, the price to be fixed by the president of the local Muscadine Growers Association (MGA)." Sometimes later Olide, having found a source of cheaper Muscadines, refuses to go through with the sale. What justification might Olide give for his refusal? Explain. What result? Why? See CC art. 1974, ¶ 1.

COH 64.2. The same as before, except that (i) Jean Sot refuses the job, i.e., refuses to fix the quantity of the Muscadines and (ii) the local MGA is disbanded before it's time for the president to set the price. Can't Olide now argue that the quantities of both the Muscadines and the money are indeterminate? Why or why not? See CC art. 1974, ¶ 2.

2) By Output/Requirements

COH 65. Jean Sot is a trapper; Olide, a tanner and processor of furs and skins; and Pascal, a furrier, i.e., a maker of fur coats and accessories. Olide approaches Jean Sot with a proposal: "Promise to supply me with all of the green nutria pelts I may need during 1997, and I'll promise to pay you $3/pelt." "About how many nutria pelts do you usually process?" asks Jean Sot. "Between 1000 and 2000," answers Olide.

Now, read Trahan, Supp, 203-06 (précis on nullity). This reading will help you “tie together” the “loose ends” of the law that governs the consequences of defects in contractual formation.