INTRODUCTION

A. This is a civil law course
B. This course is about more than contracts

Look at the Table of Contents to your Civil Code (in the 2002 Edition, it starts on p. XXV). In which "Book" of the Code is the subject of "Obligations" addressed? In which "Title" or "Titles"?

What's the name of Title III? What’s the name of Title IV? What’s the name of Title V? "Obligations Arising Without Agreement." What light, if any, does this organizational scheme shed on our question "Is 'obligations' coterminous with 'contracts'"?

But just what are these "other" obligations, that is, those that don't spring from contracts?

IH 1. Jean Sot, realizing that the next payment on his home mortgage will soon be due, makes out a check to the mortgage creditor, Cajun Bank & Trust, and mails it off. There's just one problem: Jean Sot, who's not very bright, mistakenly mails the payment to Creole Bank & Trust. Is there an obligation? If so, what is it? Hint: Look, first, at the title of "Title V, Book III" of the Civil Code, which appears just before article 2292, and, then, at that article (2299).

IH 2. Ti-Boy deliberately backs his pick-up truck over Lil-Fille's roses. Is there an obligation? If so, what is it? Hint: See CC art. 2315.

IH 3. Ti-Boy negligently backs his pick-up truck over Lil-Fille's roses. Is there an obligation? If so, what is it? Hint: Look at CC arts. 2315 & 2316.

PART I

OBLIGATIONS IN GENERAL

A. Definition of "Obligation"
   1. Common Definition: Duty
      How is the term "obligation" commonly used? What is the counterpart to or correlative of "duty"?
   2. Technical Definition: Juridical Bond/Relation
      Is the "technical" meaning of obligation the same? If so, how is it different? See CC art. 1756, sent. 1.

      a. Legal Relationship
         1) Legal Relationship
         What's the significance of defining "obligation" as a legal relationship?
         2) Legal Relationship
         a) Prolegomena: Juridical Relations
         Read Trahan, Supp, 2-5.
         1] Definition of Juridical Relation
         What is a "juridical relation"?
         2] Elements of Juridical Relations
         What are the "elements" of a juridical relation? In other words, what are the essential attributes of every juridical relation?
         a] Subjects
         1} Definition of Subject
         What do we mean by the "subjects" of juridical relations?
         2} Types of Subjects
         Every subject of a juridical relation, civil law scholars agree, falls into either of two categories. What are they? What's the difference?
b) **Objects**

What do we mean by the "object" of juridical relations?

b) **Conclusions: Obligations as a Kind of Juridical Relation**

b. **Performance by Obligor for Obligee**

What's the significance of defining obligation as a relationship "whereby a person, called the obligor, is bound to render a performance in favor of another, called the obligee"?

1) **Prolegomena: The Taxonomy of Juridical Relations in General**

Read Trahan, Supp, 5 (Weill & Terré, n° 239).

a) **First Division: Patrimonial Relations v. Extra-Patrimonial Relations**

Read Trahan, Supp, 5-9.

1] **Preliminary Matters**

a] **Explication of the Concept of Patrimony**

What does the term "patrimony" mean?

b] **The Distinction Between Patrimonial & Extra-Patrimonial Rights & Duties**

1} **Patrimonial Rights & Duties**

What do we mean by a patrimonial right or duty? What are some examples? See CC arts. 477, 533, 534, 646, 1906, 2292, 2298, 2299, 2315-2317.

2} **Extra-Patrimonial Rights & Duties**

What do we mean by an extra-patrimonial right or duty? What are some examples? See CC arts. 98, 215-17, 224, 227.

2] **The Distinction Between Patrimonial & Extra-Patrimonial Relations**

a] **Patrimonial Relations**

b] **Extra-Patrimonial Relations**

Read Trahan, Supp, 9-15.

1] **Real Relations**

a] **Definition**

What is a "real relation"? What's a real right? See CC art. 476 cmt. (b) & art. 1763 cmt. (b). What do we mean when we say that real rights confer direct and immediate authority over a thing? What do we mean when we say that real rights are held against the world?

Now, how is real obligation defined? See CC art. 1763. Isn't there something wrong with this concept? What is it? See id. cmt. (b). Wouldn't it be better to speak of a real duty? Why?

What do you think of this definition of “real relation”? It’s a juridical relation whereby "everybody else is obligated not to interfere with [the holder's] [use, enjoyment, and/or disposal] of a thing." Hans Kelsen, General Theory of Law & State 76 (Anders Wedberg tr., 1945).

b] **Elements**

1} **Subjects**

Who are the "subjects" of the juridical relation called "real relation"? Who's the active subject? Who's the passive subject?

2} **Object**

How should we describe the "object" of this relationship called "real relation"?

2] **Obligations**

a] **Definition**

What, again, is the definition of “obligation” (or “credit relation”)? See (again) CC art. 1756.

b] **Elements**

1} **Subjects**
Who are the "subjects" of the juridical relation called "obligation"? Who's the active subject? What is he called? Who's the passive subject? What's he called?

2) Objects

How should we describe the "object" of the juridical relation called "obligation"? What might that object entail? See CC art. 1756, sent. 2.

2) Conclusion: What Distinguishes Obligations from Other Members of the "Family" of Juridical Relations
   a) As Opposed to Extra-Patrimonial Relations
   b) As Opposed to Real Relations
B. Sources of Obligations
1. Explication
   a. Definition
      What do we mean by the expression "sources of obligations"? See CC art. 1757; Levasseur, Précis, 3; Trahan, Supp, 15-18.

   b. Categorization
      What are these sources or, more precisely, into what categories do these sources break out?
      1) Doctrinal Scheme
         How does the doctrine–or at least, modern doctrine–divide up the universe of sources of obligations?
         a) Juridical Facts
            Read Trahan, Supp, 18-19.
            1] Definition
               What's a juridical fact?
            2] Varieties
               a] Licit Facts
                  1} Management of the Affairs of Another
                     OGH 1. Pascal leaves his estate in Nulle Part, Louisiana for an extended vacation in Provençe, France. While he's away, a wildfire rages through the Nulle Part area, threatening Pascal's estate. Upon hearing of the fire, Pascal's friend Olide, acting on his own initiative, immediately takes a work crew out to Pascal's estate, where he builds several fire breaks at his own expense. As a result of his efforts, Pascal's estate is saved. Is there now a juridical relation (to be more precise, an obligation) between Pascal and Olide? If so, what rights and duties does this obligation entail? And what was its source? See CC arts. 2292 & 2297.
                  2} Payment of a Thing Not Due
                     OGH 2. For the past 30 years, Jean Sot has been faithfully making the monthly installment payments on his 30-year home mortgage loan. Though the payment he made last month was supposed to have been his last (it paid off the final balance), Jean Sot, who's not to bright, doesn’t realize it. And so, he mails off yet another payment to the bank. Is there now a juridical relation (to be more precise, an obligation) between Jean Sot and Creole? If so, what rights and duties does this relation entail? And what was its source? See CC arts. 2297 & 2304.
                  3} Unjustified Enrichment
                     OGH 3 (based on Edmonston v. A-Second Mortgage Co., 289 So. 2d 116 (La. 1974).) Edmonston took out a $16,000 loan from Insurance Company. To secure the loan, she (i) pledged to Insurance Company a life insurance policy that she and her husband had taken out on his life and (ii) gave Insurance Company a first mortgage on her land. Later, Edmonston borrowed $4,000 from Mortgage Company. To secure that loan, Edmonston gave Mortgage Company a second mortgage on her land. Still later, Edmonston ran into financial difficulty. To solve the problem, Edmonston worked out a new deal with Mortgage Company. For her part, Edmonston "dationed" her land to Mortgage Company. Mortgage Company, in return, declared its loan to Edmonston repaid (in other words, remitted her debt) and, further, "assumed" Edmonston’s obligations under the loan agreement with Insurance Company.

1 The term refers to a certain kind of contract for transferring property rights known in French as dation en paiement and in English as “giving in payment.” For an explication of the dation (that’s what most Louisiana lawyers call it), see CC arts. 2655-2659.

2 For an explication of “assumption,” see CC arts. 1821-1822.
Insurance Company did not, however, release Edmonston from those obligations. Not long thereafter Edmonston’s husband died. At that point, Insurance Company, as was its right, prevailed upon Edmonston to use the proceeds of the life insurance policy on her husband’s life to pay off the balance of her debt. Once Edmonston paid off the debt in this manner, there was, of course, no debt to Insurance Company “left” for Mortgage Company to repay (the debt Mortgage Company had promised Edmonston it would repay). Is there now a juridical relation (to be more precise, an obligation) between Edmonston and Mortgage Company? If so, what rights and duties does this relation entail? And what was its source? See CC 2298.

b] Illicit Facts

OGH 4. Jean Sot, out of sheer meanness, deliberately backs his tractor up over his neighbor’s flower bed, destroying $100 worth of the flowers. Is there now a juridical relation (to be more precise, an obligation) between Jean Sot and his neighbor, Clodice? If so, what rights and duties does it entail? And what was its source? See CC art. 2315;

OGH 5. Jean Sot, through inattention and carelessness, backs his tractor up over his neighbor’s flower bed, destroying $100 worth of the flowers. Is there now a juridical relation (to be more precise, an obligation) between Jean Sot and his neighbor, Clodice? If so, what rights and duties does it entail? And what was its source? See CC art. 2315;

2] Juridical Acts


a] Definition

What's a juridical act? When we speak of juridical "acts," are we talking about pieces of paper? To put it another way, when we speak of the "accomplishment" of a juridical act, do we have in mind the signing of some document labelled, for example, "Act of Sale" or "Last Will and Testament"? If not, then what is the relationship between, say, the “juridical act” of selling a house, on the one hand, and the “act of sale” that the seller and buyer write up and sign, on the other? How does juridical act, as just defined, differ from juridical fact, as we defined it earlier?

b] Varieties

1} Multilateral Acts

What's a multilateral act? What’s the common or familiar name for this "manifestation" of common wills or "accord" of wills? See CC art. 1906 & the name of Book III, Title IV of the CC.

OGH 6. Pascal, a law student, asks his friend, Olide, to type up a certain term paper for him by a certain date, for which Pascal offers to pay him $5 per page. Olide says, “Mais oui!” Is there now a juridical relation (to be more precise, an obligation) between Pascal and Olide? If so, what rights and duties does it entail? And what was its source? See CC arts. 2669, 2673, 2675.

2} Unilateral Acts

What's a unilateral act?

2) The Legislative Scheme

So much for the doctrine. But what about Louisiana law (i.e., legislation/custom)? Is there a legislative scheme for classifying "sources of obligations"? If so, does it reflect the modern doctrinal theory of those sources or something else? See CC art. 1759; Levasseur, Précis, 3-6.

2. The Significance of the Categories

Why does the "source" of the obligation matter?

a. The Pertinence of Will to Effectivity

b. Procedure

OGH 7. Pascal hires Olide, a cab driver from Jefferson Parish, to drive him from his home in Lafourche Parish out to the airport in Terrebonne Parish. Just after they cross the Terrebonnne Parish line, Olide, who is intoxicated, misjudges a curve in the road, sending the cab crashing into a ditch. As a direct result of the accident, Pascal sustains severe personal injuries. How long can Pascal wait before bringing suit against Olide? Where (in what venue) must the suit be brought? Why? Assume that Olide was “negligent” in misjudging the curve and that the cause of his negligence was his intoxication. See
CC arts. 3499, 3492; La. Code Civ. Proc. art. 76.1 (“An action on a contract may be brought in the parish where the contract was executed or the parish where any work or service was performed or was to be performed under the terms of the contract.”) & art. 74 (“An action for the recovery of damages for an offense or quasi-offense may be brought in the parish where the wrongful conduct occurred or in the parish where the damages were sustained.”).

c. Damages


Work the hypotheticals found in Trahan, Supp, 21-23.

C. Classification of Obligations

1. By Their Objects

Levasseur, Précis, 6-7.

a. Traditional Classification

When classified by their objects, obligations, the traditional theorist tell us, fall out into three categories. What are they? See CC art. 1756, sent. 2.

1) The Categories

a) To Give

What's an obligation "to give"? Does "give," as used in this context, have its ordinary meaning? Or does it have a special, technical meaning? Levasseur, Précis, 7-8.

OGH 9. Olide, behind the wheel of his new Mercedes, intentionally runs over Pascal in the parking lot, causing him to sustain personal injuries. There's now an obligation between them, namely, the obligation of tortfeasor-victim. As a part of that obligation, Olide owes a duty to repair the damage he's caused Pascal, in particular, to pay Pascal money. Can't we say that Olide has to "give" Pascal money, in the sense of "turning over" or "delivering" the money? And so, can't we say that the obligation is an obligation "to give"? Why or why not?

OGH 10. Pascal and Clodice agree that Pascal will sell her his estate, Belle Terre, for $250,000. There's now an obligation between them, namely, that of buyer and seller. As part of that obligation, Pascal executes an instrument--an "Act of Sale"--in which he transfers his ownership interest in the estate to Clodice. Can we say that Pascal has to "give" the estate to Clodice? How can we say that? He's getting paid isn't he? Isn't an exchange for payment the antithesis of "giving," at least in the sense of "making a gift"? Why or why not?

What are the possible “sources” of obligations to give? Can such an obligation ever arise from a juridical fact? Or do all such obligations spring from juridical acts? From what kinds of juridical acts can such obligations arise? Any and all of them? Or just certain kinds? See CC arts. 1468, 1469, 2439, 2660, 2655.

How, precisely, does one perform such an obligation, i.e., exactly what must one do to effect the transfer of ownership (or other real right)? Recall the earlier hypothetical in which Pascal agreed to sell and Clodice to buy Pascal's estate (OGH 10). How does Pascal discharge his duty to give, i.e., to transfer ownership of the estate? See CC art. 2456.

Now, is it always true that duties to give are automatically discharged through the very making of the juridical acts that create them?

OGH 11. Suppose that Pascal hires Jean Sot to build a chicken coop for him. Is ownership of the coop transferred when the agreement is reached? If not, then when?

OGH 12. Suppose that Pascal agrees to sell and Clodice to buy "ten buckets" of Pascal's socos, which, at the time of the agreement, are still hanging on Pascal’s vines. Is ownership of the grapes transferred when the agreement is reached? If not, then when? See CC art. 2657.

3 Cajun for “Muscadines,” one of the few strands of grape that are indigenous to the southern US.
b) To Do

What's an obligation "to do"? Does "do," as used in this context, have its ordinary meaning? Or does it, like "give," have a special, technical meaning? See Levasseur, Précis, 8-9.

OGH 14. Recall OGH 13, in which Pascal owes Clodice a duty to sign over his estate to her. Can't we say that the obligor--Pascal--owes a duty "to do"? Isn't "signing the act of sale" or, if there's no such act, "shaking hands" on the deal "doing" something? Why or why not?

1] Duties "to do" arising from juridical acts.

OGH 15. Pascal rents his farmhouse to Clodice for a year for $10,000. What kind of contract is this? Does Pascal have any duties to do? See CC art. 2692. Now what about Clodice? Does he have any such duties? See CC art. 2746.

OGH 16. Pascal hires Jean Sot to pick his Muscadines for $5.25/hour. What kind of contract is this? A "lease of services or labor." See CC art. 2745(1). Does Pascal have any duties to do? Now what about Jean Sot? Does he have any such duties?

OGH 17. Pascal agrees to sell and Clodice to buy Belle Terre for $250,000. We already know that Pascal, by entering into this agreement, simultaneously undertook and performed a duty to give Belle Terre to Clodice. But does he not, in addition, have some duty or duties to do? See CC art. 2475. What about Clodice? Does she have any such duties? See CC art. 2487.

2] Duties "to do" arising from licit juridical facts.

OGH 18. Pascal leaves for an extended vacation in Provençe, France, where he cannot be reached. While he's away, a fire rages through the area, threatening Belle Terre. His friend and neighbor, Olide, without consulting Pascal, springs into action, building firebreaks, etc. on Belle Terre to fend off the blaze, at great cost to himself. His efforts are successful. Does Pascal have any duties to do? See CC art. 2297.

OGH 19. Jean Sot, thinking that his monthly home mortgage payment is about due, makes out a check to the mortgage creditor, Cajun Bank & Trust, and mails it off. There's just one problem: Jean Sot finished paying off the mortgage last month. Does the Bank have any duties to do? See CC arts. 2299 & 2304, ¶ 1.

OGH 20. Pascal hires Jean Sot to harvest the Muscadines in his vineyard on Belle Terre. But Jean Sot, who's not to good with directions, ends up at Olide's estate, Terre Puante, where he picks Olide's Muscadines by mistake. Olide was planning on having them picked but had not yet gotten around to it. Does Olide have any duties to do? See CC art. 2292.

3] Duties "to do" arising from illicit juridical facts.

OGH 21. Clodice sprays some herbicide on her estate, Terre Facile, which runs off onto Pascal's estate, killing his Muscadines. It is determined that Clodice applied the herbicide in a negligent manner. Does Clodice have any duties to do? See CC arts. 2315 and 2316.

c) Not to Do

What's a duty "not to do"? Does "not to do," as used in this context, have its ordinary meaning? Or does it, like "give," have a special, technical meaning? See Levasseur, Précis, 9-10.

1] Duties "not to do" arising from juridical acts.

OGH 22. Recall OGH 15. Do Pascal and Clodice have any duties not to do? If so, what are they? See CC arts. 2698, 2710(1) & 2711.

OGH 23. Recall OGH 16. Suppose that Pascal and Jean Sot agree that their employment relationship shall endure throughout the harvest season, i.e., about one month. Do Pascal or Jean Sot have any duties not to do? If so, what are they? See CC arts. 2748 and 2749.

2] Duties "not to do" arising from licit juridical facts

OGH 24. Recall OGH 18. Suppose (i) that the threat was posed not by fire, but by slowly rising water in a nearby bayou and (ii) that Pascal could be immediately reached by telephone. Would Olide have a duty not to do? If so, what is it? See CC art. 2294.

3] Duties "not to do" arising from illicit juridical facts

Can an illicit juridical act, i.e., a tort, give rise to a duty not to do?
2) Significance of the Categories: Remedies

Why does the "object" of the obligation matter? In other words, what practical difference does it make whether a particular duty is one to give, to do, or not to do? Read CC arts. 1986-1987 and 1994.

a) Duty to Give
b) Duty to Do
   1] General rule
   2] Exception: duty to deliver
c) Duty Not to Do

b. Modern (Alternative) Classification

Read & Trahan, Supp, 23-27 (excerpts from various foreign civil law treatises re obligations of result & means).

1) The Categories
Read Levasseur, Précis, 10-11.
   a) Definitions
   What's an obligation or duty of result?
   b) Illustrations
      1] Duties to Give, Not to Do, and to Deliver
      2] Duties to Do Other than the Duty to Deliver
         a] Examples of Duties to Do that are Duties of Result
            1} Duties of result arising from juridical acts.

OGH 25. Recall OGH 15. Does Pascal have any duties to do that are also duties of result? If so, what is it? See CC art. 2692.

OGH 26. Pascal hires Jean Sot d/b/a Cajun Movers to move his furniture from his home in Nulle Part to an apartment he has taken in la ville grande ("the big city"), i.e., Gueydan. While Jean Sot is en route with the furniture from Nulle Part to Gueydan, he approaches a railroad track that spans the highway. Though Jean Sot, in crossing the track, slowed his truck to a crawl, the truck nevertheless bounced, causing a vase packed inside the truck to slip lose from the ropes that had secured it and to fall. The vase was a total loss. Pascal then brings suit against Cajun Movers, alleging that it breached the contract of transport and seeking to recover damages for the loss of the vase. The evidence presented at trial proves (i) the speed at which Jean Sot had crossed the track was reasonable (it was even slower than the speed at which others who transport breakable things on the highway typically cross it) and (ii) Jean Sot had secured the vase inside the truck in a reasonable fashion. Will Pascal recover? Why or why not? See CC art. 2754.

2} Duties of result arising from licit juridical facts.

OGH 27. Recall OGH 19. The Bank, clearly enough, had a duty to return the payment. But what kind of duty was that? A duty of result or a duty of means? A duty of result? Why?

b] Examples of Duties to Do that are Duties of Means
   1} Duties of means arising from juridical acts.

OGH 28. Recall OGH 15. Does Clodice have any duties to do that are also duties of means? Explain. See CC art. 2710.

OGH 29. When Pascal learns that there’s a small tumor growing on his liver, he hires Dr. Medecin, a surgeon, to remove the tumor surgically. The operation takes place. Though Dr. Medicin succeeds in removing most of the tumor, he can’t get all of it: the rest of it is “inoperable.” After the operation, when Pascal is informed of the results of the surgery and realizes he will soon die, he brings suit against Dr. Medicin, alleging that Dr. Medicin breached the surgical contract and seeking damages. The evidence produced at trial proves that both Dr. Medicin and the rest of the surgical team conducting themselves as reasonable medical professionals (i.e., met the applicable standard of care). What result would you predict? Why? See Alexander v. Alton Ochsner Medical Found., 276 So. 2d 794 (4th Cir. 1973) [Levasseur, Text, 38-39].

2} Duties of result arising from licit juridical facts.
OGH 30. Recall OGH 18. We've already established that Olide, once he undertook to "manage" this "affair" of Pascal, incurred a duty of result. Did he also incur a duty of means? Explain. See CC art. 2295.

2) Significance of the Categories: Burden of Proof

Why do we care whether a particular duty is one of result or means? See Levasseur, Précis, 12.

a) Duty of result
b) Duty of means

2. By (the Extent of) Their Effects

a. Prolegomena to the Analysis: Effects of Obligations in General

What are the effects of obligations? See CC art. 1758.

1) From the Standpoint of the Obligee

2) From the Standpoint of the Obligor

b. The Analysis

1) The Categories

a) Natural Obligation

Read Levasseur, Précis, 13-20; Trahan, Supp, 27-29.

1] Definition

What's a natural obligation? See CC arts. 1760 & 1-4; see also Litvinoff, Treatise ("[N]ot every duty in conscience [i.e., moral duty] will give rise to a natural obligation, but only those that the lawmaker and the courts deem most conforming to the general interest, and in accordance with the [social] consensus. . . . [T]he expression "natural obligation" is nothing but a convenient device to introduce moral considerations into the body of the law. An obligation which is labeled as natural is nothing but a moral duty regarded as susceptible of engendering certain legal effects.")

2] Examples

a] Prescription

OGH 31. After Professor Symeonides runs me down in the parking lot, causing me to sustain personal injuries, I wait over a year to bring suit against him. There was an obligation--a civil obligation--between us at one time, but is there one now? Why or why not? If not, does that mean there’s no obligation at all between us now? Why or why not? See CC arts. 3492 & 1762(1).

b] Relative nullity for lack of capacity

OGH 32. Ti-Boy, Clodice's 15-year old son, agrees to sell Olide (who knows Ti-Boy’s age) his pirogue for $5. Sometime later, before the pirogue has been delivered, Ti-Boy changes his mind. Can Olide sue to force Ti-Boy to deliver the pirogue? Why or why not? If not, does that mean that there’s no obligation at all between Olide and Ti-Boy now? Why or why not? See CC arts. 1918, 1923, 1924, & 1762(2).

c] Formal nullity of a testament

OGH 33. Papère, Clodice's elderly father, realizing that he's about to die, stumbles over to his 1950 edition Smith-Corona manual typewriter and hammers out a document that he entitles "Last Will & Testament." In it, he purports to "leave everything to my beloved daughter and only child, Clodice, except my collection of Dewey Balfa LPs, which I leave to my beloved grandson, Ti-Boy." After pulling the sheet from the typewriter and signing and dating it, he drops dead. Can Ti-Boy invoke legal process to force Papère's estate to execute the special bequest that Papère left him, i.e., to turn over the Dewey Balfa records to him? Why or why not? If not, then who gets the records? Why? Is there now no sort of obligation between that person and Ti-Boy? Explain. See CC arts. 1575, 888, & 1762(3).

Are there still other natural obligations, that is, natural obligations not listed in article 1762? See CC art. 1762 cmt. (b).

Read and brief Atkins v. Comm'r of Internal Revenue, 30 F.2d 761 (5th Cir. 1929) (Foster, J.) [Levasseur, Text, 1-4]. In connection therewith, read CC arts. 1227 & 1229.

Read and brief Succession of Jones, 505 So. 2d 841 (2d Cir. 1987) [Levasseur, Text, 13-18]. In connection therewith, read CC arts. 1530.
2) The Significance of the Distinction: Effects

Why do we care whether a particular obligation is natural or civil?

a) Civil Obligation: Full Effects

What are the effects of a civil obligation?

b) Natural Obligation: Limited Effects

What about the effects of a natural obligation? See CC art. 1761.

1) Unrecoverable Performance

OGH 34. As he was driving past Belle Terre one day, Jean Sot lost control of his tractor and veered straight into Pascal's Muscadine vineyards, destroying a good bit of the crop. Time rolled by. Then one day, about 18 months later, Pascal reminded Jean Sot of the accident, stated that Jean Sot "owed" him damages the value of the lost grapes, and demanded that he pay up immediately. Jean Sot made the payment. The very next day Jean Sot ran into Olide. When Jean Sot told Olide what had happened the day before, Olide shouted "Tu, bête chou! You didn't owe Pascal anything at all. His claim against you prescribed 6 months ago." Jean Sot then marched over to Belle Terre, where he demanded that Pascal return the payment. Pascal refused. Jean Sot then sued Pascal, seeking to recover what Jean Sot described as "the payment of a thing not due." Who wins? Why? See CC arts. 1761 & 1762(1); CC art. 1761 cmt. (b).

2) Onerous Cause

a) Definition: antithesis of "gratuitous"

b) Differences

1) Solemnities

Read CC arts. 2440 & 1536.

2) Restrictions

Read CC arts. 1227, 1530, 1497.A, 1503.

3. By Their Affinity to the Person of the Subject

Read Levasseur, Précis, 30-34.

a. The Categories

Into what categories do obligations break out when classified according to their affinity to the person of the subject? See CC art. 1765 & cmt. (b).

1) Statutory Definitions

a) Explication

What's an "impersonal" or, as the Civil Code ineptly puts it, "heritable" obligation? See CC art. 1765. What about a "strictly personal" obligation? See CC art. 1766.

b) Criticism: Transferability an Attribute of Rights & Duties, Not Obligations

Is it really appropriate--"accurate" might be the better term--to speak of "impersonal" and "strictly personal" obligations? Is it the transferability of the obligation as a whole that we're concerned about or is it the transfer of something "less" than the whole? Look, again, at the structure of the definitions set out in articles 1765 and 1766.

2) Criteria for Distinguishing the Categories

a) The Criteria Explained

1) General rule

What's the general rule? See CC art. 1765, ¶ 2.

OGH 35 (taken from Toullier's civil law treatise, the source of our articles on "heritable obligations"). Pascal loans Olide $10,000. Before Olide repays the loan, both Pascal and Olide die. Pascal is survived by one heir, his son, Ti-Boy; Olide, by one heir, his nephew, Jean-Claude. Can Ti-Boy demand that Jean-Claude repay the loan? Why or why not?
2) Exceptions

What's the exception? See CC art. 1765, ¶ 2.

a] Nature of the right or duty

1) Nontransferability in general

What, if anything, is unique to the nature of a "strictly personal" right or duty? See Ferguson v. Thomas, summarized in Bogart v. Caldwell, 66 So. 2d 629 (2d Cir. 1953) [Levasseur, Text, 26-27]; Levasseur, Précis, 32; 6 Toullier, DROIT CIVIL FRANÇAIS § 406, at 440 (2d ed. 1819) (a strictly personal obligation is one that is "naturally attached to the person" of the obligor or obligee); Justinian, C.6.51.9. (strictly personal obligations are those undertaken with the "intention . . . that the [designated] person alone . . . should perform the acts," as opposed to obligations in which "it makes no difference whether the act is to be done by the person mentioned . . . or by someone else . . .").

Read Johnson v. Levy, 43 So. 46 (La. 1907) [Levasseur, Text, 20-22]. How did the court characterize the duty (or duties) at issue in that case?

2) Presumptions of nontransferability

Read CC art. 766, ¶¶ 2 & 3. What's the difference between these two paragraphs?

a] The duty

Under what circumstances is the duty presumed to be nonheritable or, in other words, when is the obligation presumed to be strictly personal for the obligor? See CC art. 766, ¶ 2 & Johnson v. Levy, 43 So. 46 (La. 1907) (Monroe, J.) [Levasseur, Text, 20-22].

1/ Performance requiring special skills or qualifications

OGH 36. After Pascal checked into the local hospital complaining of chest pains, his doctors soon determined the cause of the problem: the arteries around his heart were almost completely blocked. Not wanting to undergo coronary by-pass surgery, Pascal then explored possible alternative procedures. He finally settled on a new ultrasound procedure that had been pioneered by Dr. LaCoeur, of Johns Hopkins Medical School. Since he could afford it, Pascal hired Dr. LaCoeur himself to perform the operation. On the eve of the date on which the operation had been scheduled, LaCoeur, having decided that he'd rather play golf than operate the next day, "delegated" the task to his junior assistant, Dr. Hart. Is LaCoeur now off the hook? And must Pascal now undergo surgery at the hands of Hart? Why or why not?

OGH 37. Olide has come up with a new scam to earn money: the development and marketing of a new line of skin care products called Cajun Care. To make the venture a success, he's convinced, he needs a high-profile celebrity of Cajun descent to endorse the product line. And so enters into an advertising contract with Ali Landry, former Miss Universe USA and now the "Doritos girl," a Cajun from Breaux Bridge, Louisiana. Before the first commercial is filmed, however, Ali learns of Olide's dubious character and of the equally dubious quality of his products. Rather than go through with the deal, she "assigns" her interest in the contract to Lil-Fille, who's just been crowned queen of the annual Louisiana Swine Festival. Can Ali get out from under her duty in this way? Is Olide now "stuck" with Lil-Fille the Swine Queen as his celebrity spokesperson? Why or why not?

2/ Performance of personal services

Read CC art. 1766 cmt. (c); Fletcher v. Richau [Levasseur, Text, 359-64]; Restatement of Contracts § 379 (1932):

§ 379. CONTRACT FOR PERSONAL SERVICE

A promise to render personal service or supervision will not be specifically enforced by an affirmative decree.

Comment

a. In applying the rule stated in the Section, it is the personal character of the performance to be rendered that is determinative, not the personal character of the duty to render it . . .

... .

c. Among the many varieties of person service contracts to which the rule of the Section
applies are those requiring performance as an actor, a singer, a sales-agent, a ball-player, a teacher, a mechanic, a valet, a cook, a railway gate-tender, a personal custodian of children. Among the contracts that are included are all contracts of employment creating the intimate relation of master and servant; the latter’s performance is personal service and that of the former frequently involves personal supervision.

Illustrations

1. A contracts with B to play the part of Hamlet at B’s theater. A wrongfully refuses to play his part. [Because A’s performance entails the rendition of a personal service,] B cannot get a decree requiring him to act . . .

3. A, who is a sculptor, contracts to design and execute a memorial statue for B . . . . A wrongfully refuses to do the work. [Because A’s performance entails the rendition of a personal service,] B cannot get a decree for specific performance.

4. A contracts to transfer specific land to B in return for B’s promise to give care and support for A’s sick wife. On breach by B, A cannot get a decree for specific performance[. for B’s performance entails the rendition of a personal service].

b) The right

Under what circumstances is the right presumed to be nonheritable or, in other words, when is the obligation presumed to be strictly personal for the obligee? See CC art. 766, ¶ 3. OGH 38 (based on Acosta v. Cole, 178 So. 2d 456 (La. App. 1st Cir. 1965)). Clodice, who's always dreamed of becoming a prima ballerina, hires Madame Jambes, the director of the local ballet society, to give her dance lessons. Before the lessons are complete, Clodice dies. She is survived by only one heir, her daughter, Lil-Fille. Can Lil-Fille now demand that Madame Jambes give her the rest of the lessons or, if Madame Jambes refuses, can Lil-Fille demand damages for nonperformance? Why or why not?

Read and brief Bogart v. Caldwell, 66 So. 2d 629 (2d Cir. 1953) [Levasseur, Text, 24-28].

OGH 39. Professor Trahan, a musical eccentric, enters into a long-term contract with the owner of a local CD store for the purchase of certain exotic 20th century classical music CDs, in particular, CDs featuring atonal, dodecaphonic, polychordal, and/or polymodal sacred choral music. Under the terms of the contract, the owner of the store, upon receiving a new CD of this kind, is to "sell" it to the professor, then deliver it to his law school office. In the course of time, the professor dies. Do his children, whom you can assume have more typical musical tastes, inherit his rights under the contract, i.e., the right to get title to and to receive delivery of the CDs? In other words, can they demand that the store owner now supply them with the CDs? Why or why not?

b) Will of the parties

OGH 40. Pascal loans Olide $10,000. The loan agreement stipulates that, in the event Olide dies without having repaid the loan in its entirety, then Olide's heirs "will not be held for the debt." Before he finishes paying off the loan, Olide dies. Can Pascal recover the outstanding balance from Jean-Claude, Olide's sole heir? Why or why not?

b. Significance of the Categories

Why might we care whether a particular right or duty is impersonal or strictly personal?

1) Transferability


2) Remedies

Review Fletcher v. Richou [Levasseur, Text, 359-64].

3) Dissolution

4. By Their Displacement In Time: Temporal Modalities

Obligations can also be classified according to their temporal displacement or, to put it another way, according to whether their existence or performance is displaced through time (either delayed or cut
a. The Categories

1) Pure & Simple Obligations

What's a "pure and simple" obligation? See CC art. 1777, ¶ 2; CC art. (1870) (“Simple obligations are such as are not dependent for their execution on any event provided for by the parties, and which are not agreed to become void, on the happening of any such event.”); Levasseur, Précis, 34; 1 Josserand, COURS DE DROIT CIVIL POSITIF FRANÇAIS n° 115, at 91("[R]ights pure and simple . . . are those . . . whose existence and performance are not suspended and that follow their normal course from the moment of their creation.")

OGH 41. During the Muscadine harvest season, Clodice calls Pascal on the phone and orders, i.e., buys, 10 pails of Pascal's best. Is there now an existing obligation between Clodice and Pascal? If so, when is performance due? Why?

OGH 42. While Pascal's away on vacation and out of touch, his friend Olide, without first consulting Pascal, intervenes to save Pascal's estate, Belle Terre, from a raging wildfire. In the process, Olide incurs substantial expenses. Is there now an existing obligation between Pascal and Olide? If so, when is performance due? Why?

2) Obligations Affected by Modalities

a) Definition of Modality

What's an obligation "affected by a modality"? An obligation is "affected by a modality" if (i) its existence has been displaced in time, that is, if (a) it does not immediately come into existence upon the occurrence of the juridical act or fact that gives rise to it or (b) its existence can be brought to an end through some event other than performance or (ii) its performance has been displaced in time, that is, if (b) the obligee cannot immediately demand performance or (b) the obligor cannot immediately render performance.

b) Types of Modalities

1] Term

a] Definition

What's a "term"? See CC art. 1778; Levasseur, Précis, 35.

b] Types of Term

1] By Their Effects

a] Suspensive Term

Read Levasseur, Précis, 36; then read & brief In re Liquidation of Hibernia Bank & Trust Co., 189 La. 813 (1938) [Levasseur, Text, 42-43].

b] Extinctive (Resolutory) Term

Read Levasseur, Précis, 36. Then read (but don’t brief) Housing Authority v. T. Miller & Sons, 120 So. 2d 494 (La. 1960) [Levasseur, Text, 43-49]. Which obligation was subject to a term? What kind was it?

2] By The Means of Their Determination

a] Fixed Term

What's a fixed term or, as the Civil Code calls it, a "certain" term? What are some examples? In re Liquidation of Hibernia Bank & Trust Co., 189 La. 813 (1938) [Levasseur, Text, 42-43]; Housing Authority v. T. Miller & Sons, 120 So. 2d 494 (La. 1960) [Levasseur, Text, 43-49].

OGH 43. Pascal buys a case of champagne from Olide, which Olide is to deliver to him on "Bastille Day." Bastille Day falls on the same day each year, namely, July 14. Is the term fixed? Why?

OGH 44. Pascal buys 100,000 doubloons from Olide, which Olide is to deliver to him on Mardi Gras morning. Is the term fixed? Why?

b] Unfixed (Variable) Term

What's an unfixed or variable term or, as the Civil Code refers to it, an "uncertain" term? See CC art. 1778
1/ Determinable Term
   a/ By the Occurrence of a Future and Certain Event

See Weill & Terré, Droit Civil: Les Obligations n° 905, at 986 ("The term is uncertain when it is attached to an event whose realization, though certain to occur, will take place at a moment that one cannot yet know.")

OGH 45. Pascal and his mistress, Clodice, who are now up in years, are shacked up in Pascal's house on Belle Terre. Thinking that he'd like to take a smaller place in town once Clodice dies, Pascal promises to sell and deliver his house to his son, Ti-Boy, "upon the death of Clodice." Is Pascal's duty to give and deliver the house subject to a term? If so, what kind--fixed or unfixed—and why?

OGH 46. It's 2035. Civil war has just broken out between Les Enfants d'Acadie, a militant Cajun separatist group, and the State of Louisiana. To raise funds to purchase weapons, the state borrows $10,000,000 from Hibernia National Bank. By the terms of the loan contract, the funds are to be repaid "when the present hostilities cease." Is the obligation subject to a term? If so, what kind--fixed or unfixed—and why?

b/ By the Intent of the Parties

An unfixed or uncertain term is also determinable, the Civil Code tells us, if it is "determinable . . . by the intent of the parties." What in the world does that mean?

OGH 47. Lil-Fille (aged 18), whom Theophile has asked to the senior prom, calls Julie, the only dressmaker in Nulle Part, and orders a "prom dress." Still later, Lil-Fille goes to Julie's shop, where she is fitted for the dress. Is Julie's duty to make and deliver the dress subject to a term? If so, what kind--fixed or unfixed? If unfixed, is it determinable or undeterminable? If determinable, how is it to be determined? Why?

OGH 48. After buying Pascal’s crop of Muscadines (which are still on the vine), Olide hires Jean Sot to “transport the Muscadines from Pascal’s vineyard to my [Olide’s] winery.” The Muscadines will not be ripe for several months yet. Is Jean Sot’s duty to carry the Muscadines subject to a term? If so, what kind--fixed or unfixed? If unfixed, is it determinable or undeterminable? If determinable, how is it to be determined? Why?

2/ Undeterminable Term

What's an undeterminable unfixed term?

OGH 49. In early March Pascal, the owner of Belle Terre, places a phone call to Jean Sot, a seasoned barn whitewasher. "Now that the weather's warming up, I'd like you to come whitewash my barn," begins Pascal. "Sounds good to me," replies Jean Sot. "How much do you charge?" asks Pascal. "For a barn the size of yours," answers Jean Sot, "$1000." "It's a deal." With that, they bid each other good bye and hang up. When can or must Jean Sot perform? Must he begin the job by any certain date? If not, is he free to wait as long as he pleases? Explain. See CC art. 1778 cmt. (e).

3} By Their Beneficiaries

Read Levasseur, Précis, 39-40.

1/ The Categories
   a/ For the Benefit of the Obligor

OGH 50. Pascal orders a new Balfa Toujours CD from the Cajun Music Club. The order form, which represents the contract between Pascal and the Club, states that the customer must "allow six weeks for delivery." Whom does this term benefit--Pascal or the Club? Why? Is he or it the obligor or the obligee? Why?

b/ For the Benefit of the Obligee

OGH 51. Pascal, who's about to leave on an extended trip to Provence, ask his buddy, Olide, if he'll keep Mr. Nutty, Pascal's pet nutria, while he's away. "How long will you be?" asks Olide. "I'm not sure. Just to be safe, you'd better plan on having to keep him for two weeks," replies Pascal. "Fine," Olide responds. Whom does this term benefit--Pascal or Olide? Why? Is he the obligor or the obligee? Why?

c/ For the Benefit of Both
Recall *Hibernia*. What was the nature of the term at issue there? Whom did that term benefit—the lender, Hibernia, or the borrower, Holmes? Why?

2/ The Presumption

How do we know into which of these three categories a particular term falls, i.e., whether it benefits the obligor alone, the obligee alone, or both the obligor and the obligee? Doesn't the Civil Code give us a rule to help us in doubtful situations? *See CC* arts. 1779 & 2057, ¶ 1.

4} By Their Sources

Read Levasseur, Précis, 38-39.

a} Conventional Term

We should note, however, that the conventional term comes in two varieties. What are they? OGH 52. In the bleak mid-winter, Pascal phones Jean Sot, a seasoned Muscadine harvester, and hires him to pick his Muscadines. Neither of them says word one about when Jean Sot is to perform this service. Is the obligation between them subject to a term or is it "pure and simple," so that Jean Sot must perform immediately? Why or why not?

b} Legal Term

What is a legal term? *See CC* art. 2685.

c} Judicial Term

What is a judicial term?

OGH 53. Clodice buys 10 nutria from Pascal on credit. According to their deal, Clodice is to remit payment 30 days after delivery. Though Pascal promptly delivers the Muscadines, Clodice fails to pay by the 30-day deadline. Pascal sues Clodice, seeking to resolve the sale, that is, seeking the return of the nutria. Clodice opposes the action, contending that she failed to make payment because she had temporarily fallen on hard financial times and further, that she could raise the money necessary for payment if she were given 30 more days. Can the court grant her request, that is, give her a grace period? Why or why not? *See CC* art. 2013, ¶ 2.

c] Calculation of Terms

How does one calculate the length of a term?

What if the terminal event is marked by a specific date? Read Trahan, Supp, 29-30.

What if the terminal event is the end of a specified "stretch" of time, e.g., 30 days? Recall the *Housing Authority* case. Miller supposed to keep its bid open for "30 days" after the bids were opened. Now, how did Miller count the 30-day period? How, to begin with, did Miller understand the word "day"—business day or 24-hour day? And so, when did Miller begin to count the period? Is this the right way to count such a period? Why or why not? If not, then what’s the right way? Does our current legislation reflect the same approach? *See CC* art. 1784 & cmt. (b).

d] Effects of Terms

Read Levasseur, Précis, 41-47.

1} Extinctive (Resolutory) Term

What are the effects of an "extinctive" or "resolutory" term?

2} Suspensive Term

What are the effects of a suspensive term?

a} Effects Before the Terminal Event

What effects does a suspensive term produce before the terminal event occurs? Read Trahan, Supp, 30.

1/ The Existence of the Obligation is Not Affected

a/ Obligor Can't Recover Voluntary Performance

OGH 54. The same as OGH 53, except that this time Pascal asks for payment on January 15, 1997 and Clodice complies. Can Clodice recover the payment, perhaps on the theory of "payment of a thing not yet due"? Can you answer this question without more information? If not, what else do you need to know? Why?
See CC art. 1781 & cmt. (b). So, what if Pascal tricked Clodice into making the payment? Could she recover it? Why or why not? What if Pascal forced her to make the payment at gunpoint? Could she recover it? Why or why not? What if Clodice made the payment mistakenly, for example, she intended to sent the money to another creditor, but sent it to Pascal by mistake? Could she recover it? Why or why not?

Does "voluntary," as used in article 1781, mean the same thing as "free," as used in article 1761, which concerns the recovery of the performance of a natural obligation? Why or why not?

Why is voluntary performance prior to the terminal event not considered to be the payment of a thing not due?

b/ Obligee Can Engage in Acts of Conservation

OGH 55. On December 1, 2000 Pascal buys Olide’s estate, Terre Puante, from Olide for $100,000. At Olide’s insistence (motivated by tax minimization concerns), the agreement, which is evidenced by an act under private signature, provides that the transfer is not to be effective until January 1, 2001. In the interim (between December 1 and January 1), Pascal learns (i) that Olide failed to file the act of sale into the public records and (ii) that Jean Sot has been “squatting” on part of the land for just shy of 30 years now. Pascal wants to know whether, at this time (circa December 15, 2000), he can (i) file the act of sale into the public records himself and/or (ii) file an action against Jean Sot to have him expelled from the land? Why or why not? See CC arts. 2442 & 3462.

2/ The Performance is Deferred

a/ If Term Benefits Obligor

1° Obligee Can't Demand Performance

OGH 56. On January 5, 1997, Clodice buys 10 nutria from Pascal on credit. According to their agreement, Clodice has 30 days from delivery to pay the price. Pascal delivers the nutria that same day, that is, January 5, 1997. It's now January 30, 1997. Can Pascal demand that Clodice pay up? Why or why not? See CC art. 1781.

2° Obligee Can't Claim Compensation

Recall the Hibernia case. What was it that the obligee, Holmes, sought in the liquidation proceedings? Did the court grant Holmes's demand? Why or why not? See CC art.1893.

3° Obligor Can't Claim Prescription

OGH 57. On January 1, 1997 Pascal loans Olide $100,000, which is to repaid in a single balloon payment on January 1, 2002. When that date rolls around, Olide refuses to pay. His reason? Citing CC art. 3494(3), which provides that "[a]n action on money lent" is "subject to a liberative prescription of three years," he argues that Pascal's right to demand payment has been lost through prescription. As Olide sees it, that right prescribed 3 years from the date of the loan, i.e., back on January 1, 2000. What result? Why?

b/ If Term Benefits Obligee

OGH 58. In October 1996, Clodice hires Olide, who's now running a florist shop, to supply fresh cut flowers for her daughter Tite-Fille's wedding, which is to take place on February 1, 1997. In December Olide makes arrangements to go on a skiing vacation, which is to begin on January 25, 1997. And so, on January 24, 1997, Olide, always thinking of himself first, delivers the flowers to the church. Can Olide do this, i.e., perform early? Why or why not?

b) Effects After the Terminal Event

What are the effects of a suspensive term after the occurrence of the terminal event? Read Trahan, Supp, 31-32.

e] Disappearance of the Term

Read Levasseur, Précis, 47.

1) Renunciation

What does "renunciation" mean in this context? See CC art. 1780 cmt. (b).

OGH 59. On January 1, 1997 Pascal loans Olide $100,000, which is to repaid, with 10% interest,
on January 1, 1998. The interest, you may assume, accrues daily. On October 1, 1997, Olide, who has unexpectedly come into a big sum of money, sends Pascal a check for $100,000 plus 3/4 of the annual interest—$7500 to which he attaches this note: "I hereby waive my right to delay repayment until 12/31. Consider this payment in full." Does Pascal have to accept the payment? Why or why not?

2) Insolvency

OGH 60. The same as the last hypothetical, except as follows. Through the course of the year, Olide suffers a number of financial reversals. By October 1, 1997, he's insolvent. Can Pascal now demand payment? Why or why not? See CC art. 1782.

3) Failure of Security

OGH 61. Pascal loans Olide $100,000 to finance the construction of a golf course, which Olide is to repay in a single balloon payment at the end of 5 years. The loan is secured by a mortgage on the golf course site. Before construction is complete, EPA announces that it's just discovered a nasty, reeking pool of CERCLA hazardous substances in the middle of the land. The effect of this announcement is to reduce the market value of the land to zero. Notwithstanding that the loan is not yet due, can't Pascal demand something of Olide? What? Why? See CC art. 1783.

2) Condition

Read Levasseur, Précis, 48; Trahan, Supp, 32-33.

a) Definition

Read Levasseur, Précis, 49-50.

1) By Exposition

What's a condition? See CC art. 1767 cmt. (c); Levasseur, Précis, 48.

What’s a conditional obligation? See CC art. 1767, ¶ 1.

a) Uncertain Event

What's an "uncertain event"? See Levasseur, Précis, 49.

OGH 62. Pascal gives his son Ti-Boy a house on Belle Terre, but with the following stipulation: "If you die before me, title to the house will return to me." Is Pascal’s obligation contingent on an “uncertain event”? Why or why not?

OGH 63. A municipal government, after receiving a federal grant for the construction of low-income housing, hires a local contractor to perform the work. The contract, however, contains the following stipulation: "The contract is subject to the approval of the Office of Housing & Urban Development." Does this case sound familiar? Is the government’s obligation contingent on an “uncertain event”? Why or why not?

OGH 64: On February 1, 1997 Olide and Pascal go to the docks at the Port of New Orleans to pick up a shipment of a tractor that Olide had ordered. But when they get there, they learn that the ship hasn't yet come in. As the day wears on and the ship still doesn't show up, Olide begins to grow worried. Hoping to console his friend, Pascal then makes this offer: "If something happened to the ship and the shipment is lost, I'll let you use my tractor until you can get a new one." Olide replies, "Okay." At the end of the day the dreaded news reaches them: the ship sank off the coast of Grand Isle the night before, January 31, 1997. Was the loss of the ship an "uncertain event"? Why or why not? See CC art. 1767 cmt. (e).

b) Dependency

What does it mean to say that a conditional obligation is "dependent" on an uncertain event? "Dependent" in what sense? Read Levasseur, Précis, 50-51.

1/ Resolutory Conditions

What's a resolutory condition? See CC art. 1767, ¶ 3.

OGH 65. Pascal gives his son Ti-Boy a house on Belle Terre, but with the following stipulation: "If you die before me, title to the house will return to me." Is there now an obligation between Pascal and Ti-Boy? If so, what kind? Is it dependent on the occurrence of some event? How so?

OGH 66. When Olide's tractor is lost at sea, Pascal lets him use Belle Terre's tractor until Olide is able to replace his. Is there an obligation between Pascal and Ti-Boy? If so, what kind? Is it dependent
on the occurrence of some event? How so?

2/ Suspensive Conditions

What's a suspensive condition? See CC art. 1767, ¶ 2.

OGH 67. Pascal promises his son Ti-Boy, who's now engaged to Jolie, that he will give him a house on Belle Terre "upon your marriage." Before the wedding takes place, can Ti-Boy demand that Pascal turn over title to the house? Why or why not?

OGH 68. A municipal government, after receiving a federal grant for the construction of low-income housing, hires a local contractor to perform the work. The contract, however, contains the following stipulation: "The contract is subject to the approval of the Office of Housing & Urban Development." Before HUD sends word of its decision, can the contractor demand to start construction? Why or why not?

Read CC art. 1771.

2} By Contrast

a} Conditions as Opposed to Terms

1/ Conditions in General v. Terms in General

How do conditions in general differ from terms in general?

OGH 69. Pascal's mother, Eunice, a devout Catholic aged 64, is on the brink of death. Concerned about her ultimate destiny, Eunice makes this request of Pascal: "When I die, please make a gift to St. Joseph’s Abbey over near Covington and, as you do so, tell the brothers it’s for me and ask the brothers to pray for my soul.” Pascal promises his mother that he will do it. Pascal's duty, clearly enough, is subject to a modality. What kind--a term or a condition? Why?

OGH 70. Pascal's mother, Eunice, a devout Catholic aged 64, is on the brink of death. Concerned about her ultimate destiny, Eunice makes this request of Pascal: “Please make a gift to St. Joseph’s Abbey over near Covington and, as you do so, tell the brothers it’s for me and ask the brothers to pray for my soul.” Pascal promises his mother that he will do it “no later than the end of this month.” Pascal's duty, clearly enough, is subject to a modality. What kind--a term or a condition? Why?

OGH 71. Pascal's mother, Eunice, a devout Catholic aged 64, is on the brink of death. Concerned about her ultimate destiny and determined to do something about it before she dies (so as to avoid even a moment in Purgatory), Eunice makes this request of Pascal: “Please make a gift to St. Joseph’s Abbey over near Covington and, as you do so, tell the brothers it’s for me and ask the brothers to pray for my soul.” Pascal tells his mother he’d like to help her, but that, owing to his financial situation, it’d be difficult for him to do it “before the end of this month.” And so Eunice makes this proposal: “Well, promise me that you’ll make the gift if I’m still alive at the end of this month.” Pascal so promises. Pascal's duty, clearly enough, is subject to a modality. What kind--a term or a condition? Why?

Read & brief Holmes Brick v. REO Constr., 253 So. 2d 562 (La. App. 1st Cir. 1971) [Levasseur, Text, 49-52]; then read Trahan, Supp, 34-35.

2/ Specific Kinds of Conditions v. Specific Kinds of Terms

a/ Resolutory Condition v. Extinctive Term

b/ Suspensive Condition v. Suspensive Term

b} Conditions as Opposed to Legal Requirements

Read CC arts. 242 and 2971. Are these supposed "conditions" really "conditions"? Why or why not?

c} Conditions as Opposed to Elements Constitutive of Contracts

Are the constitutive elements of this or that contract, that is, the elements that must exist if the contract is to be fully-formed and valid, be considered "conditions"? Would it be correct to say, to take one example, that the "consent of the parties" is a "condition" of every contract or, to take another example, that the buyer's undertaking to pay the price is a "condition" of every sale? Why or why not?

Is it nevertheless possible for the parties, by their mutual assent, to transform these constitutive
elements or prerequisites for contractual formation into suspensive conditions?

OGH 72. Pascal and Clodice sign an instrument entitled "Act of Sale of Nutria," whereby Pascal purports to sell Clodice 10 nutria, provided that she first "pay the purchase price of $250." This contract appears to be a "conditional sale." What's the supposed condition? Is such a proviso really a condition and is such a contract really a sale? Explain. See CC art. 2439.

OGH 73. Pascal and Olide enter a loan agreement, the terms of which provide that Pascal is to loan Olide $100,000 on March 1, 1997 and that Olide is to repay Pascal $100,000, without interest, "when and if Pascal demands it." This contract appears to be a "conditional loan." What's the supposed condition? But is such a proviso really a condition and is such a contract really a conditional loan? Explain. See CC art. 2910.

b) Types of Condition

1) By Their Effects: Suspensive v. Resolutory Conditions
2) By the Manner of Their Manifestation: Express v. Implied Conditions

Read CC art. 1768; Levasseur, Précis, 52.

OGH 74. Pascal sells Clodice 10 pails of Muscadines. At the appointed time, Pascal has Jean Sot deliver the Muscadines to Clodice's house. Is Clodice, without further ado, required to accept them? Why or why not? Look at CC arts. 2604 & 2605.

OGH 75. Mrs. Nutty, Pascal's pet female nutria, is now pregnant. Before Mrs. Nutty delivers, Pascal sells Clodice Mrs. Nutty's "litter." Is the contract subject to some sort of condition? Why or why not? If so, what? See CC art. 2450.

OGH 76. After Olide and Clodice announce their engagement to be married, Jean Sot sends them an "early" wedding present, the kind he'd always hoped he'd receive if he were ever to be married--a prize-winning sow. Is this donation subject to any sort of suspensive condition? Why or why not? If so, what? Here's a hint: what happens if, as is likely, Olide gets cold feet and jilts Clodice at the altar?

3) By Their Connection to the Will of the Parties: Casual, Potestative & Mixed Conditions

Read Levasseur, Précis, 54-59.

a) Casual

What's a "casual" condition? See CC art. 2023 (1870) ("That which depends on chance and is no way in the power of the creditor or debtor.")

OGH 77. In the immediate aftermath of heavy rains, Bayou Egout, which runs through Belle Terre, is rising fast and threatens to flood. Olide, upon learning of Pascal's predicament, calls him up and says, "If the bayou does flood and you're driven out of your house, you can stay in my guest room for just $10 a day." Pascal accepts the offer. Is the obligation between Pascal and Olide subject to a condition? Why or why not? If so, what?

b) Potestative

What's a "potestative" condition? See CC art. 2024 (1870) ("A potestative condition is that which causes the execution of the contract to depend on an event the occurrence or prevention of which is within the power of one or the other of the contracting parties.")

1/ Purely Potestative

What, to begin with, is a purely potestative condition? See CC art. 1770, ¶ 1& cmts. (d) & (e).

OGH 78. In the immediate aftermath of heavy rains, Bayou Egout, which runs through Belle Terre, is rising fast and threatens to flood. Olide, upon learning of Pascal's predicament, calls him up and says, "If the bayou does flood and you're driven out of your house, you can stay in my guest room for free, provided that it still suits me when you finally ask." Pascal accepts the offer. Is the obligation between Pascal and Olide subject to a condition? Why or why not? If so, what kind? Why?

OGH 79. Jean Sot's tractor has just broken down, preventing him from driving into town to pick up supplies. Olide promises to drive him to town the next morning "if I feel like it when I get up." Jean Sot accepts. The obligations to which this labor contract gives rise are clearly subject to a condition. But
what kind? Why?

2/ Simply (Partly) Potestative
What's the other kind of potestative condition, i.e., that which the doctrine calls "simply" potestative? See CC art. 1770, ¶ 1 & cmts. (d) & (e); Weill & Terré, Droit Civil: Les Obligations (in a simple potestative condition, though the event "depends in a certain measure on a voluntary act" of one party or the other, "it is also subordinated in part to contingencies of which [that party] is not the master"); Marty & Raynaud, Droit Civil: Les Obligations ("A condition is simply potestative when it presupposes the accomplishment by one party of an act that depends on his will, but does not depend on it alone, inasmuch as it is subjected to exterior contingencies.")

OGH 80. Pascal agrees to sell and Clodice agrees to buy Belle Terre "when and if Pascal moves to Gueydan." The obligations of Pascal and Clodice are clearly subject to a condition. What is it? And what kind is it? Why?

OGH 81. Olide hires Jean Sot as a salesman to peddle his new product line, Cajun Care skin cream, to prospective customers. According to the contract, Jean Sot is to be paid a certain sum for each presentation he makes, regardless whether he actually closes a sale. Now, isn't Olide's duty to pay Jean Sot subject to a condition? What kind is it? Why?

Read & brief DeMary v. Fontenot, 161 So. 2d 82 (La. App. 3d Cir. 1964) [Levasseur, Text, 53-56].

c} Mixed
What's a "mixed" condition? See CC art. (1870) ("A mixed condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event.")

OGH 82. Pascal promises to give his son Ti-Boy a house on Belle Terre "upon his marriage." Isn't Pascal's duty subject to a condition? What is it? And what kind is it? Why?

OGH 83. Olide hires Jean Sot as a salesman to peddle his new product line, Cajun Care skin cream, to prospective customers. According to the contract, Jean Sot is to be paid $20 for each sale he closes. Isn't Olide's duty subject to a condition? What is it? What kind is it? Why?

4} By Their Possibility: Possible v. Impossible Conditions
See Levasseur, Précis, 53; Marty & Raynaud, Droit Civil: Les Obligations ("Impossibility . . . exists . . . not only in the case of absolute impossibility, but also when the realization of the condition presupposes . . . the putting into effect of extraordinary means."); Trahan, Supp, 33-34.

OGH 83a. Olide says to Jean Sot, "I promise to give you $1,000 if you do not stop the sun in its course." Jean Sot replies, "I accept." Is Olide's obligation to pay Jean Sot the $1,000 null? Why or why not?

OGH 83b. Olide promises to give Jean Sot (who, despite years of art lessons, still paints like a chicken) a job if and when he "paints a painting of a blue dog just like Rodrigue." Is the condition attached to Olide's obligation to hire Jean Sot "impossible"? Why or why not?

5} By Their Sources: Conventional, Legal & Judicial
Like terms, conditions can emanate from any of three sources. What are they? What's a judicial condition? See CC art. 1767 cmt. (d).

c] Prohibited Conditions
1} Illegal Conditions
What's the effect of an illegal condition?

OGH 84. Clodice serves as the director of the Lake Arthur Housing Authority. Olide and Clodice enter into an act of sale for Olide's estate, Terre Puante, for $100,000, subject to the following proviso: "This contract is conditioned on buyer's seeing to it that seller is declared the low bidder on the city's public housing construction project." Once the bids are in, Clodice secretly opens them and, finding that Olide's is not, in fact, the lowest, reduces his bid to $1 below that of the true low bidder. When the bids are opened, Olide is declared the low bidder and, so, gets the job. Clodice then demands that Olide go through with the sale. Olide refuses, prompting Clodice to sue for specific performance. What result
would you predict? Why? See CC art. 1769.

OGH 85. Clodice serves as the director of the Lake Arthur Housing Authority. Olide and Clodice enter into an act of sale for Olide's estate, Terre Puante, for $100,000, subject to following proviso: "Title shall revest in seller in the event that buyer fails to assure that seller is declared the low bidder on the city's public housing construction project." Once the bids are in, Clodice does nothing: she doesn't even look at the bids to see if Olide's is the lowest. When the bids are opened, someone other than Olide is declared the low bidder and, so, gets the job. Olide then brings suit against Clodice, seeking the dissolution of the sale. His theory? That the contractual obligation, inasmuch as it was subject to an illegal condition, was null. What result would you predict? Why? See CC art. 1769 cmt. (a).

2) Impossible Conditions

What’s the effect of an impossible condition? See CC art. 1769.

3) Potestative Conditions

What’s the effect of a potestative condition?

Recall the DeMary case, i.e., the one that involved the sale of the race horses. Fontenot, the buyer, argued that the obligation between the seller, DeMary, and him was null. What was his argument? Did the court agree or disagree with that argument? Why? DeMary was decided under the Civil Code of 1870. Would the result be the same under the current legislation? Why or why not? See CC art. 1770, ¶ 1.

OGH 86. Olide's barn has just been damaged in a hailstorm. Jean Sot promises to “fix it tomorrow for free, if I feel like it when I wake up.” Olide accepts the offer. The next day Jean Sot, having decided that he does not feel like it, stays home. Meanwhile, Olide is waiting. When it becomes clear to him that Jean Sot will not show, Olide hires Ti-Boy to make the repairs. Then Olide sues Jean Sot to recover the cost of the repairs. What result would you predict? Why? See CC art. 1770, ¶ 1.

OGH 87. Eva, an elderly widow who has become scared to death to live alone, has for sometime been looking for someone to move into the apartment above her garage, hoping thereby to gain some measure of “security.” And so, she makes Ti-Boy, Pascal’s son, this offer: "I'll let you stay in my garage apartment for free, if you ever decide you want to." Ti-Boy, it turns out, has no need for the garage apartment (he lives in an upscale Gueydan penthouse rent-free at Pascal’s expense) and, in any event, doesn’t care for it (it’s small, ugly, and inconveniently-located). But then one morning, Ti-Boy – he’s not sure why – gets it into his head that he’d like to take the garage apartment after all. When he goes to Eva’s place, ready to move in, he discovers that Eva rented the apartment out to Achille earlier that morning. Outraged at this indignity, Ti-Boy sues Eva for damages for breach of contract. What result would you predict? Why?

OGH 88. Clodice's mobile home was destroyed in a hailstorm. Pascal, who has a garage apartment that’s so small, so dingy, and so inconveniently located that no one would want to rent it, calls her and makes this promise: "I'll let you stay in my garage apartment for free. But understand this: I reserve the right to terminate our relationship for any reason at any time." Clodice responds, "I accept. I'll move in tomorrow." True to her word, Clodice moves in the next day. There she remains for six weeks, at which time Pascal, who has found another down-on-his-luck friend whom he wants to help out, demands that she move out so that his other friend can move in. He does so even though he knows she has no money and no other place to go. And sure enough, once she’s been turned out, she ends up spending the night on the streets. The next day, she heads straight for the local legal aid office, secures legal counsel, and sues Pascal for breach of the lease contract. He defends on the ground that the lease was null, inasmuch as it was subject to a purely potestative condition. What result would you predict? Why? See CC art. 1770, ¶ 2, & the last ¶ of comment (f).

d) Determination of Conditions

How do the obligor and obligee of a conditional obligation determine whether the condition has or has not been fulfilled? See CC arts. 1773-1774 & 1772.

1) The General Rules

a) Positive Conditions
OGH 89. Pascal promises to give Ti-Boy a house if he, Ti-Boy, marries Jolie by June 1, 1997. Time goes by, June 1 passes, and Ti-Boy's still not hitched. What result? Why? See CC art. 1773, ¶ 1.


What happens if there's no deadline by which the event is to occur and it's still possible that the event might occur? See CC art. 1773, ¶ 2.

b} Negative Conditions

OGH 91. Pascal promises to give Ti-Boy a house provided that he doesn't marry Jolie before he (Ti-Boy) reaches the age of 25. Ti-Boy turned 25 yesterday and he's still single. What result? Why? See CC art. 1774.

OGH 92. Pascal promises to give Ti-Boy a house provided that he doesn't marry Jolie. There's no date attached to the condition. Will there ever come a time when this condition no longer hangs over Ti-Boy's head? Why or why not? See CC art. 1774.

2} The Exception

OGH 93. Olide and Clodice enter into an act of sale for Olide's estate, Terre Puante, for $100,000, subject to the proviso that "buyer obtain financing for the purchase within 30 days." A few days later, Clodice, having thought better of the deal, decides she wants out. And so, she never sends in her loan application to the bank. Not surprisingly, then, when the 30 days deadline passes, Clodice still has not obtained financing. When Olide learns what happened, he sues Clodice for breach of contract. What result would you predict? Why? See CC arts. 1773, 1772, 1759.

Recall Holmes Brick v. REO. What result did the court evidently believe it would have had to reach if it had classified the modality that affected the Phase II construction obligation as a "condition"? Why? Was that assumption correct? Why or why not? See CC arts. 1773, 1772, 1759.

e} Effects of Conditions

1} Before the Conditional Event Occurs

a} Resolutory Condition

Levasseur, Précis, 65-66.

b} Suspensive Condition

Levasseur, Précis, 62-65.

1/ Effects Arising From the Imperfection of the Obligation

a/ Obligee Can't Demand Performance
b/ Obligee Can't Claim Compensation
c/ Obligee Can't Claim Prescription
d/ Obligor Can Recover Performance

NOTE: We encounter here one of the few differences between the effects of suspensive conditions, on the one hand, and those of suspensive terms, on the other.

2/ Effects Arising From the Fact that the Obligation is at Least Partly Formed: Obligee Can Engage in Acts of Conservation

An obligation subject to a suspensive condition, we have said, is at least partly in existence or, to speak in more practical terms, is considered to exist for some limited purposes. What are the consequences of that fact?

OGH 94. On December 1, 2000 Pascal buys Olide's estate, Terre Puante, from Olide for $100,000. At Olide's insistence, the agreement, which is evidenced by an act under private signature, provides that the transfer shall not to be effective unless Olide finds an apartment in which to live in la grande ville, i.e., Gueydan, within the next six months. Halfway through the sixth month period and before Olide has found an apartment, Pascal learns (i) that Olide failed to file the act of sale into the public records and (ii) that Jean Sot has been “squating” on part of the land for just shy of 30 years now. Pascal wants to know whether, at this time, he can (i) file the act of sale into the public records himself and/or (ii) file an action
against Jean Sot to have him expelled from the land? Why or why not? See CC arts. 1771, 2442 & 3462.

2) After the Conditional Event Occurs

a) General Rule

Read CC art. 1775; Levasseur, Précis, 66-67.

1/ Suspensive Conditions

What does it mean to say that the fulfillment of a suspensive condition produces retroactive effects?

Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations in General § 5.12, at 100 ("Once the condition is fulfilled the contract is regarded as effective from that time it [the contract] was made."); Levasseur, Précis, 68-69.

OGH 95. Olide and Jean Sot enter into a contract of sale for Olide's estate, Terre Puante, for $100,000, subject to the proviso that Jean Sot obtain financing within 30 days. The act of sale is duly recorded. During that 30-day period, Olide mortgages his estate to Clodice to secure a loan and Jean Sot sells the estate to Pascal. Just before the end of the day, Jean Sot's loan application is approved. What happens now? In particular, what becomes of Olide's mortgage and Jean Sot's sale? Why?

2/ Resolutory Conditions

What does it mean to say that the fulfillment of a resolutory condition produces retroactive effects?

See Saúl Litvinoff, Louisiana Civil Law Treatise: Obligations in General § 5.12, at 101 ("Upon its fulfillment the contract is regarded as never having been made, and the parties return to their original positions"); Levasseur, Précis, 69-70.

OGH 96. Pascal donates a house on Belle Terre to Ti-Boy, subject to this proviso: "Title will vest in me should donee predecease me." The act of donation is duly recorded. Time goes by. During that time, Ti-Boy mortgages the house to the bank to secure a loan. Before the loan is paid off and while Pascal is still alive, Ti-Boy dies. What happens now? In particular, is the house still subject to the mortgage? Why or why not?

b) Exceptions

Read Trahan, Supp, 36-37 (Litvinoff on “limitations” to the rule of retroactivity).

OGH 97. Olide sells his estate, Terre Puante, to Jean Sot for $100,000, subject to the proviso that Olide may, if he so chooses, “buy back” the estate after 10 years (in other words, he retains a “right of redemption,” which is a kind of resolutory condition). The act of sale is not duly recorded. During the next several years, Jean Sot does three things with Terre Puante: (i) having discovered several “squatters” on the estate and concerned that, if they’re not kept at bay, they may acquire a possessory interest therein, he leases Terre Puante to Ti-Boy for a term of 10 years for a rent of $200 per month; (ii) he collects, keeps, and spends the rent that Ti-Boy pays him under that lease; and (iii) he mortgages Terre Puante to Cajun Bank to secure a loan. Just over ten years after the date of the sale between Olide and Jean Sot, Olide exercises his right of redemption, with the result that the sale is resolved and ownership of Terre Puante reverts to Olide. At that time, Jean Sot's lease to Ti-Boy and mortgage to Cajun are still in place. Assume that both the lease and the mortgage were recorded. What effect does the resolution of the sale have upon (i) the lease and (ii) the mortgage? (iii) Will Jean Sot now be required to refund to Olide the rents (“civil fruits” of the estate per CC art. 551) that he collected during the past ten years? Why? See CC art. 1775; Levasseur, Précis, 70-71.