LOUISIANA CIVIL LAW OBLIGATIONS
Professor Trahan

Key to

FINAL EXAMINATION

Spring 2000

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A

* The condition in question here was suspensive not resolutory 
† Purpose was to delay coming into effect of obligations, not to bring about termination of already-created obligations 

1 Saúl’s position: no contract formed b/c 
   a Condition failed 
   b Condition was purely potestative 
      * Obligation subject to purely potestative suspensive condition is null 

2 Alain’s rebuttal: contract formed b/c 
   a Condition was not purely potestative 
      1) a) Purely potestative only if subject to “whim” of obligor 
          b) Simply potestative if obligor’s discretion is effectively limited by “external” considerations 
      2) Here, even though Saúl reserved right not to buy farm, that decision undoubtedly was influenced by external considerations, e.g., cost and availability of farmland and profitability of rice framing 
   b Condition was fulfilled 
      1) General rule 
         a) Positive condition fails if event does not occur within time specified 
         b) 1] Buying farm was positive condition 
            2] That did not occur by deadline, May 1 
      2) Exception: 
         a) Condition deemed to be fulfilled if failure was caused by “fault” of party with an interest contrary to fulfillment 
         b) 1] Saúl had contrary interest 
            2] Non-fulfillment due to Saúl’s “fault”: he acted with specific intent to cause condition to fail 

3 Saúl’s rebuttal: no fault 
   a R1 
      1) Not enough for “fault” that obligor causes condition to fail: he must cause it to fail for an illegitimate motive, e.g., that he’s just “changed his mind” 
      2) Here, motive was to avoid losing money and, therefore, economic waste 
   b R2 
      1) No “fault” unless both parties fully expect obligor do make reasonable good faith effort to bring conditional event to pass 
      2) Here, no such expectation: reservation of right 

B

1 Saúl’s position: he has first lease of tractor 
   a 1) When condition is fulfilled, it has effect retroactive to date of contract. 
   2) In case of suspensive condition, effect of fulfillment is that obligation is deemed to have come into being on date of contract. 
   b 1) Condition gets fulfilled: Saúl buys farmland
2) Saúl’s lease antedates Katherine’s lease ................................................................. 1 2

Katherine’s rebuttal: Saúl’s “prior” lease not effective as to her ............................................. 1 2

a 1) At least some “third parties” are immune from “retroactive effects” of fulfillment of condition ................................................................. 2 3
   a) In case of contracts involving immovables, TPs are immune from such effects only if existence of conditional interest is not reflected in public records ................................................................................... 1 2
   b) No such restriction as to movables; therefore, TPs are always protected 1 2

b Tractor was a movable ........................................................................................................ 1 2

3 Saúl’s rebuttal
   * There may be restrictions even in case of immovables, e.g., immunity not available if third parties’ have actual or constructive knowledge of existence of conditional interest

4 Katherine’s surrebuttal
   * Wouldn’t matter anyway: Katherine had no actual or constructive knowledge . . . 1 2

C
   * The condition in question here was resolutory not suspensive ............................ 1 2
     † Purpose was to bring about termination of already-created obligations, not to delay coming into effect of obligations ................................................................. 1 2

1 Saúl’s position
   a A res’y cond’n that depends solely on the will of the obligor must be fulfilled in Gf 3
   b 1) The resolutory condition depended solely on Alain’s will ................................. 1 2
      * “at my sole discretion” ....................................................................................... 1 2
     2) Alain did not fulfill it in good faith ........................................................................ 1 2
        a) 1] To act in good faith, one must consider not only the advantages to oneself, but also the hardship to the other ............................. 2 3
        2] Termination for purely personal rather than business reasons can constitute bad faith ................................................................. 1 2
        3] Termination for spite or revenge is in bad faith ................................................. 1 2
     b) 1] Alain terminated out of desire for revenge ..................................................... 1 2
        2] Alain’s motives were purely personal; no legitimate business-related reason ....................................................................................... 1 2
        3] Alain did not consider undeniable hardship that termination would cause Saúl .............................................................................. 1 2
      * Much higher cost & possible loss of profitability ............................................. 1 2

2 Alain’s rebuttal
   a Legitimate business reason: to take advantage of offer to lease tractor at higher rate and for longer term (lease with Katherine) ................................................................. 1 2
   b Extent of hardship to Saúl not clear ....................................................................... 1 2

II ID __________

A Beverly ................................................................. 1 2 3
1 Extinguished by novation?  
   a  Definition  
   b  Objective: change of performance  
      *  Mere modifications are not objective novations:  
          1)  Change of place  
          2)  Substantial part of original performance still due  
   c  Effect  

2 Extinguished by compensation?  
*  But is F’s debt to S “certain” yet?  
*  NOTE: No “error” defense  

B  
1 Molly  
   *  NOTE: No “error” defense  
   a  Valid obligation to start with?  
      *  Relatively null: incapacity: interdict  
          †  Sal’s knowledge of interdiction irrelevant  
   b  Extinction of obligation  
      1)  By novation?  
          a )  Objective  
              1 ]  Change of performance: service ➞ money  
              2 ]  Extended term  
          b )  Subjective: change of obligor: Frank ➞ Ann  
              *  No clear intent to release Frank  
              *  NOTE: Sal can’t rebut by raising relative nullity  
      2)  By compensation?  

2 Ann  
   a  Assumption  
      1)  Between Oee & T  
          a )  Effects in general: quasi-solidarity  
          b )  Ability to raise F’s incapacity defense uncertain (impers)  
          c )  Can raise F’s compensation  
      2)  Between O’r & T  
          a )  Effects in general: solidarity  
          b )  1 ]  Can’t raise F’s incapacity defense (pers)  
              2 ]  Can raise F’s compensation defense (impers)  
   b  Delegation  
      1)  Effects in general: independent, parallel obligations  
      2)  a )  Can’t raise F’s incapacity defense (pers)  
          b )  Can raise F’s compensation defense (impers)  

NOTES: F’s incapacity defense is problematic  
*  S didn’t know  
*  F’s entry into trilateral operation: possible cure by tacit confirmation
* Because prescriptive period (1 year from tort) has passed as to all defendants, the obligation of each defendant is extinguished unless prescription was interrupted or suspended.

1 No cause for suspension.

2 Causes for interruption:
   a Babette: no defense.
      * Interruption by suit within prescriptive period.
   b Michel: no defense.
      * Interruption:
         a) Interruption of prescription as to one SO interrupts prescription as to all.
         1) Babette and Michel’s father, Marcel, were solidary bound.
            * Co-conspirators (CC art. 2324.A).
         2) Michel now steps into the shoes of his father, if only as to ½.
            * Isn’t solidarity non-heritable? Aren’t heirs of solidary obligor “jointly” bound?!
            † They are joint only as between themselves; they remain solidarily bound to surviving co-obligors as a unit.
            † CC art. 1799.
   c Mignon: no defense.
      1) Same analysis as for Michel.
      2) Not by acknowledgment by making partial payment.
         * More than a year passed between acknowledgment and suit.
      3) Not by renunciation/remission.
         * No evident intent to renounce/remit in return for payment.
   d Antoine: defense.
      1) No interruption.
         a) No cross-interruption of prescription as among joint obligors.
         b) Renunciation as to Annette destroyed solidarity as between her & other SOs.
         c) Antoine, as Annette’s heir, steps into her shoes.
      2) Not by acknowledgment by Annette’s procuring renunciation.
         * More than a year passed between acknowledgment and suit.
   e Amie: defense.
      * No interruption.
      1) Same analysis as for Antoine.
      2) Remission of her debt would have ended her solidary liability (if any) anyway.
   f Colette: defense.
      * No interruption.
      1) Remission of her debt ends not only her liability but also her solidarity (see supra).
      2) Not by acknowledgment by making payment, etc.
         * More than a year passed between acknowledgment and suit.
   g Celeste: defense.
      * No interruption.
         † Remission of debt of her principal ends not only liability but also solidarity.

1 Obligors no longer solidary bound:
   a Antoine: $40,000.
      1) Annette’s liability:
         a) Renunciation of one solidary obligor makes her jointly liable vis-a-vis other obligors for her virile share of original debt.
1] Here Annette & others were solidarily bound (see supra)
2] Within delictual obligations, virile shares are determined by fault ...... 1  2
3] Here, Annette was 1/4 at fault
4] 1/4 of $240,000 is $60,000 .......................................... 1
   b) But renounced obligors still shares the “risk of insolvency” with others ...... 2  3
    1] Babette’s share was $60,000 (see supra)  ........................................ 1
    2] Since there were three other solidary obligors to start with, each is liable for
        1/3 of Babette’s share or $20,000  .......................................... 1  2

NOTE: Annette’s $10,000 payment to Vincent did not reduce Annette’s debt. Why not? That was
   the “price” of the renunciation. .................................................. 1  2
2] Antoine’s liability: Heir of JO is jointly liable with co-heirs for his virile share of virile
    share of decedent’s joint debt ................................................. 1  2  3
    * ½ of $80,000 ................................................................. 1
   b Amie: $0 ................................................................. 1
      * Remitted ................................................................. 1
      † Remission extinguishes obligation .................................. 1  2
      † Silence in face of offer not a problem: acceptance of remission is presumed . 1  2
   c Colette: $0 ................................................................. 1
      * Remitted ................................................................. 1
      † Remission extinguishes obligation (see supra)
      † No incapacity problem: Colette was a major at time of remission .......... 1  2
   d Celeste: $0 ................................................................. 1
      1] Remission of principal releases surety as well .............................. 1  2
      2] Celeste was Colette’s functional surety .................................... 1
         * Where obligation “concerns” only one of many solidary obligors, the others are
            liable only as “sureties” for the “concerned” obligor ....................... 2  3
            † Where one obligor is actually at fault and another only technically at fault,
               e.g., vicariously liable, obligation “concerns” the former .............. 1  2

2 Obligors still solidary bound
   a Amount of solidary debt remaining: $70,000 ........................................ 1  2
      * As to Michel & Mignon, it’s $90,000 ........................................ 1  2
      1] Reduction for partial performance by Mignon: $20,000 ....................... 1  2
         * Partial performance by solidary obligor reduces solidarity debt dollar for dollar!
            2) Reduction for renunciation of Annette: $60,000 ............................ 1  2
               a) Renunciation of one SO gives others credit in amount of that obligor’s virile share
               b) Here, that was $60,000 (see supra) .................................... 1
      3] Reduction for remission of Amie: $10,000 ........................................ 1  2
         a) Obligee bears risk of post-remission insolvency up to amount of insolvent’s share
            that would have been borne by remitted obligor but for the remission ........ 2  3
            b) 1] Even though Annette’s solidarity renounced, she bore risk of insolvency (see
               supra)
               * That came to $20,000 (see supra) .................................... 1  2
               2] As joint heir of Annette, Amie was liable for her share of Annette’s debts . 1
                  a] Two heirs: ½ to each (see supra)
                  b] ½ of $20,000 is $10,000 ............................................... 1
      4] Reduction for remission of Colette: $80,000 .................................... 1  2
a) Initial reduction (pre-insolvency)
   1) Remission of one SO gives others credit of that obligor’s virile share
   2) Colette’s virile share: $60,000 (see supra)

b) Supplemental reduction (post-insolvency)
   1) Obligee bears risk of post-remission insolvency up to amount of insolvent’s
      share that would have been borne by remitted obligor (see supra)
   2) In the case of Colette, that would have been $20,000

NOTE: Colette’s payment of the extra $15,000 above her virile share did not reduce the solidary debt.
Why not? That was the “price” for her remission.

b Liability for that remaining solidary debt
   1) Mignon: $25,000
      a) Heir of SO is liable only for his virile share of debt owed by decedent
      b) Here, total debt is $90,000
      c) ⅓ of $90,000 is $30,000
      d) With her $20,000 payment, that falls to $10,000
      * Partial performance
   2) Michel: $45,000
      a) Heir of SO is liable only for his virile share of debt owed by decedent (see supra)
      b) Here, total debt is $90,000
      c) ½ of $90,000 is $45,000

   C
   1 Mignon: $0
   * No contribution rights between joint obligors
   2 Amie: $0
   * No right of contribution against remitted obligor
   3 Antoine: $5,000
      a) Marcel’s contribution rights: Marcel would have been entitled to collect $10,000 from
         Antoine
            1) Against Annette, Marcel would have been able to collect $20,000
               a) Not anything for her “original” virile share
               * No contribution rights against renounced obligor in absence of insolvency
               b) But her share of insolvent’s share: $20,000 (see supra)
            2) Antoine, as joint heir of Annette, is liable only for his virile share of Annette’s debt
               * Here, that’s $10,000 (see supra)
      b) Michel’s contribution rights: Michel, as joint heir, gets only his share of contribution right
         * ⅓ of $10,000
   4 Colette: $0
   * No contribution rights against remitted obligor (see supra)
   5 Celeste: $0
   * No contribution rights against remitted obligor (see supra)

IV

A Dum & Carroll v. Sharkie

1 Preliminaries
   a) Dum and/or Carroll can get priority over Sharkie if and only if they can show that they have
      some security interest in the thing that outranks Sharkie’s security interest
   b) Only one possibility: Dum and/or Carroll somehow acquired Lapin’s “lessor’s lien”
      1) There’s no other privilege that might conceivably have been available to Dum and/or
         Carroll
      2) Lapin’s lessor’s lien does outrank Sharkie’s security interest
Analysis

* Definition of subrogation: substitution; expectation of repayment; payment or loan

* Effect of subrogation: subrogee acquires all rights of Oee, including accessories

a Dum: yes

* Legal subrogation

1) If one pays debt owed "with" others, one is subrogated to rights of Oee v. others

L: Debt is owed "with others" when obligation is solidary or indivisible or otherwise when both obligors owe "the same thing" (Naquin)

F: Dee & Dum owed "same thing," i.e., full rent

* Debt might even be solidary (definition in Wooten dissent)

2) If inferior Oee pays superior Oee of common obligor, former Oee is subrogated to latter Oee’s rights against that Or

a) Pro: 1] Meets basic requirements: Lapin, as secured obligee, had priority over Dum, as unsecured obligee, of common obligor, Dee

2] Policy: allowing subrogation in such cases would encourage prompt payment of lessors for unpaid rent and, so, would lower cost of renting

b) Con: 1] Doctrinal obstacle:

a 1] Strong: This kind of legal subrogation available only to "strangers" to relation between obligor and obligee

2] Weak: This kind of legal subrogation not available when inferior obligee, by paying superior obligee, discharges his "own debt," i.e., one for which he is principally liable

b 1] Dum was certainly not a stranger

2] Dum, by paying Lapin, simply paid what he already owed anyway, i.e., his own debt: he owed 100% of rent himself

2] Policy: allowing subrogation in such cases would increase risk and so cost to secured lenders, thereby decreasing supply and raising cost of lending

b Carroll: probably

* Conventional subrogation by obligor

L: When Or pays off debt with funds loaned for that purpose, Or may subrogate lender to Oee’s rights against Or, if K b/n Or & lender is in writing & writing recites purpose of the loan

* Consent of obligee not required

F: 1) Loan from C to Dum made to pay off Lapin

2) Valid K

3) In writing

4) Writing reflects purpose

5) But is there "intent to subrogate"?

* Can be inferred from compliance with formalities (French doctrine)

B Dum v. Carroll

1 Problem: partial subrogation

a Dum can subrogated only up to what he paid

* Definitely true for legal subrogation

b Carroll can be subrogated only up to what he paid

* Evidently also true for conventional subrogation by obligor

2 Rule:

a No specific rule of priority as between partial conventional & partial legal subrogees

b By default, pro rata allocation is à propos

3 Result: $2000 to each
* Each gets subrogation as to ½ .............................................................. 1 2

V

ID __________

A

Ans: probably ..................................................................................................... 1

Rat:  1 False cause

a Argument

  1 ) L: Obligation based on a false cause is relatively null. ................. 2 3 3.5
  2 ) F: Jeanne-Marie’s lessor’s obligations were based on a false cause. .... 1 2
     a ] Cause is one’s “but for” reason for undertaking an obligation. ......... 1 2
     b ] Jeanne-Marie’s “but for” reason for undertaking lessor’s obligations was to
         obtain rent money from an activity that, in her eyes, was morally legitimate. 3
         * For her, performing abortions was not such an activity. ........... 1 2

b Rebuttal

  1 ) L: “Cause” includes only those “but for” reasons that enter the field of
       subjectivity. ......................................................................................... 2 3
       * Presumed to be only objective cause. Presumption overcome only if other
         party knows or should know of subjective cause. ......................... 1 2 3
  2 ) F: Jeanne-Marie’s cause was simply to get rent ......................... 1 2
     a ) That’s her objective cause as lessor ......................................... 1 2
     b ) Her subjective cause–not to obtain money from abortions–did not enter
       the field of intersubjectivity. .............................................................. 1 2
       * Mauvais neither knew nor should have know it ..................... 1 2
       † Jeanne-Marie never disclosed it .............................................. 1 2
       † Mauvais’ suspicions that “some people” might not want to
         deal with him if they knew his true purpose were probably
         not enough to justify finding that he “should have known”
         that Jeanne-Marie was, in fact, such a person. .................. 1 2

b SURREBUTTAL

  1 ) L: Knowledge of mandatary is imputed to mandator. ...................... 1 2
  2 ) F: Sarien, mandatary of Mauvais, knew (or should have known) that Jeanne-Marie
      would never take money generated by abortions. ................... 1 2

2 Error

a Argument

  1 ) L: Obligation assent to which is vitiated by error is relatively null. ...... 2 3 3.5
  2 ) F: Jeanne-Marie’s assent to lessor’s obligations was vitiated by error. ... 1 2
     a ] L:  1 ] Error = mistaken appreciation of reality ......................... 1 2
         2 ] Error must concern a “cause.” ............................................ 1 2
         a ] Definition of “cause” (see supra; score here, too, if
           repeated). .................................................................................. 1
         b ] Examples include error re object or qualities of person. 2 3
     b ) F: Here, error concerned a cause (score for generic answer here) .... 1 2
         1 ] “Object” error: would not have contracted if she had known what
           Mauvais intended to do ............................................................. 1 2 3
         2 ] Error re “qualities of the person”: would not have contracted if she
           had known character of Mauvais ............................................ 1 2 3

b Rebuttal

  1 ) L: Consent not vitiated unless other party knew or should have known of cause
as to which error occurs. .................................................. 2 3

2 )  F:  Mauvais neither knew nor should have known of this cause. ............... 1 2
† Jeanne-Marie never disclosed it ........................................ 1 2
† Mauvais’ suspicions that “some people” might not want to deal with him if
they knew his true purpose were probably not enough to justify finding that
he “should have known” that Jeanne-Marie was, in fact, such a person. .. 1 2

c Surrebuttal: but his mandatary, Sarien, did (see supra; score here, too, if repeated) . . . 1

3 Fraud
a Argument
1 )  L:  Obligation assent to which is vitiated by fraud is relatively null. . . . 2 3 3.5
2 )  F:  Jeanne-Marie’s assent to lessor’s obligations was vitiated by fraud. . . . 1 2
a )  Elements
   1 ]  Actus reus
   L:  Can involve suppression of truth ...................................... 1 2
   F:  Mauvais’ knowing failure to disclose the true nature of his
       activities–performing abortions–was such a suppression. . . . 1 2
   2 ]  Mens rea:
      L:  a ]  Intent to deceive ................................................. 1 2
      b ]  Intent to cause loss or inconvenience ................................. 1 2
      F:  a ]  Mauvais intended to mislead .................................... 1 2
           b ]  He must have known his activities would cause
                  “inconvenience” to pro-lifers ................................. 1 2
b ) Prerequisites
   1 ]  L:  No vitiation unless fraud induces error that substantially influences
        consent .................................................................. 1 2
   2 ]  F:  Here, fraud caused Jeanne-Marie to make such an error (see supra) 2

b Rebuttal
1 )  Actus reus
   a )  L:  No fraud from mere silence absent a duty to speak. ...................... 2 3
   b )  F:  Mauvais had no duty to speak. ........................................ 1 2
       1 ]  L:  No duty to speak unless (i) some statute specifically requires it or
            (ii) the silent party is a fiduciary of the other ...................... 1 2 3
       2 ]  F:  Here, (i) no such statute and (ii) no fiduciary duty ............. 1 2 3
   2 )  Mens rea:
      a )  Where’s the intent to deceive?  Is knowledge of possibility enough? . . . 1 2
      b )  Where’s the intent to gain an “unjust advantage” or cause “loss or
          inconvenience”?  Is knowledge of possibility enough? ............... 1 2 3

c Surrebuttal
1 )  L:  Alternative view: duty to speak is a function of duty of good faith . . . . 1 2 3
    *  Thus, each must disclose to the other any information that a reasonable
        person might want to know before entering into the contract ........ 1 2 3
   2 )  F:  A reasonable person would want to know if his property was to be used to
        establish an abortion clinic .............................................. 1 2
       *  Mauvais’ suspicions show that this is so ........................... 1 2

B

Ans:  probably not ................................................................. 1
Argument
   a  L:  1) When the cause of an obligation ceases to exist, the obligation, too, ceases to exist.
   2) The cause of the obligation ceases to exist when, as a result of an event posterior to the creation of the obligation (fortuitous event, force majeure, fault of the other party), the end pursued by the obligor cannot be realized.
   3) Examples include intervening illegality.
   b  F:  1) Cause of Mauvais’ obligation to pay rent was to operate an abortion clinic.
      a) Definition of cause (see supra; score here, too, if repeated)
      b) But for this desire, he would never have leased.
      2) Enactment of ordinance made realization of this end legally impossible.

Rebuttal
   a  Intersubjective theory (see supra; score here, too, if repeated)
   b  Mauvais’ cause was to lease premises to “run a medical clinic”
      1) His objective cause as lessee was simply to “get” leased premises
      2) His “broad” subjective cause –to run a medical clinic–did enter the field of intersubjectivity
         * Jeanne-Marie knew or should have known it
         † He revealed it publicly
      3) But his “narrow” subjective cause –to operate abortion clinic–did not enter the field of intersubjectivity
         * Jeanne-Marie neither knew nor should have known of this motive.
         † Mauvais never disclosed this motive

NOTE: Not–
   1 Not unlawful cause
      * Lawful cause is prerequisite for contractual formation
   2 Illegal object
      * Object of Mauvais’ obligation–to pay money–is not itself illegal
   3 Impossibility of performance
      * Performance of Mauvais’ obligation–to pay money–is still very possible