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Alexandru-Daniel On

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**REED V. ST. ROMAIN:  
EVERYDAY GIFT GIVING AND LEGAL TAXONOMY**

Alexandru-Daniel On\*

I. INTRODUCTION

The facts of *Reed v. St. Romain*<sup>1</sup> are rather mundane. A man, Alvin, gave his girlfriend at the time, Judy Ann, a diamond ring.<sup>2</sup> They later split up. Alvin contends that the ring was given in contemplation of marriage, as an engagement ring, and since they did not go through with the marriage, he wants the ring back.<sup>3</sup> Judy Ann says that it was nothing of the sort, and contends that it is her property. She argues that it was a “shut up” ring or an early Christmas present.<sup>4</sup>

Although the facts of this case are not very intricate, the law that ought to be applied in circumstances such as those described above is based on a taxonomy that is not easily navigable. Taxonomy is a central element in civilian legal thinking, and much of the civil law’s legal *imaginarium* is based on the intellectual

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1. *Reed v. St. Romain*, 2011-2207 (La. App. 1 Cir. 9/21/12), 2012 WL 4335329.

2. *Id.* at 1.

3. In support of his claim, Alvin Reed testified that he got down on one knee and asked Judy Ann to marry him, and she accepted. *Id.* He also introduced as evidence a photograph of her wearing the diamond ring on the “ring finger” and a copy of her address book where he was listed as her “fiancé.” *Id.*

4. Judy Ann St. Romain testified that Reed never asked her to marry him and that the present was given to her a few days before Christmas as an early Christmas present. *Id.* at 2. She added that they never called each other fiancées and that she listed Reed in her address book as her fiancé because she had always wished and hoped that one day they would be engaged. *Id.* Also, on cross-examination, Reed acknowledged that they had never set a date for the wedding. *Id.* Kristen Barnhardt, St. Romain’s daughter, also gave testimony supporting her mother’s side of the story. *Id.*

attempt to abstractly arrange the law into categories. The Aristotelian division, into categories and subcategories, brings logic, thoroughness and credibility to the system, but taxonomy has its traps and challenges. Civilian methodology requires that the facts of a case be placed inside the proper box or container in order to correctly determine the juridical effects of the facts in question, a process that can be relatively straightforward, but might also at times look like opening a Russian Matryoshka doll. Of course, things become even more challenging in borderline cases, when finding the right box also entails discovering the reasoning behind the categories (the *ratio legis*) and the boundaries between them.

The theoretical model for the law applicable to cases like *Reed* is more complex, yet more fluid and flexible than one would expect. The purpose of this case note is to go beyond the analysis and critique of the *Reed* opinion, and explore some distinctions that are essential to a better understanding of the law applicable in similar cases.

## II. DECISION OF THE COURT

The Court of Appeals in *Reed* focused on the issues of fact, and found that the trial court was not manifestly erroneous in deciding that the ring was a “shut up” ring and not an engagement ring.<sup>5</sup> Accordingly, Judy Ann was allowed to keep it. In its analysis, the court cited articles 1468<sup>6</sup> and 1556<sup>7</sup> of the Louisiana Civil Code and decided that, based on these articles, as applied to the facts, the parties entered into an “irrevocable donation.”

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5. *Id.* at 2-3.

6. LA. CIV. CODE art. 1468: “A donation inter vivos is a contract by which a person, called the donor, gratuitously divests himself, at present and irrevocably, of the thing given in favor of another, called the donee, who accepts it.”

7. LA. CIV. CODE art. 1556: “A donation inter vivos may be revoked because of ingratitude of the donee or dissolved for the nonfulfillment of a suspensive condition or the occurrence of a resolutive condition. A donation may also be dissolved for the nonperformance of other conditions or charges.”

## III. COMMENTARY

A. *A Brief and Cryptic Opinion*

One might reasonably wonder how the court arrived at this result, because the opinion lacks a proper and convincing demonstration. The main focus is on issues of fact, all the legal issues being treated in a rather brief and cryptic manner in just one paragraph at the beginning of the opinion.<sup>8</sup> The court simply cited the above-mentioned civil code articles, as if their recitation would automatically bring light as to how they apply to the facts of the case.

Based on the opinion as a whole, it is evident that the court had two possible legal rules in mind: on the one hand, if the ring was an early Christmas present or a “shut up” gift (and this version of the facts was found more plausible), this meant that the parties entered into a definitive, non-conditional donation (the court used the term “irrevocable”);<sup>9</sup> on the other hand, if the gift had been an engagement ring, this court probably would have found that the donation would have been subject to a resolutive condition.<sup>10</sup>

The court in the end decided the case correctly. Indeed, if the gift was not made in contemplation of marriage, as an engagement present, the donee became the owner from the moment the possession of the ring was exchanged (*traditio*),<sup>11</sup> and the donation was not subject to any condition.<sup>12</sup>

The facts from *Reed* present, however, an opportunity to discuss a few fine distinctions that are rarely mentioned in the legal literature. Placing a ring on a loved one’s finger can, according to the circumstances, be an act having the nature of either a usual gift

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8. Reed v. St. Romain, *supra* note 1, at 1.

9. “Non-conditional” and “irrevocable” are not synonyms. See *infra* Part III.C.

10. Based on the fact that LA. CIV. CODE art. 1556 was cited by the court.

11. LA. CIV. CODE art. 1543: “The donation inter vivos of a corporeal movable may also be made by delivery of the thing to the donee without any other formality.”

12. See *infra* Part III.C.

or a donation,<sup>13</sup> and such an act can be either definitive or conditional.<sup>14</sup> Surrounding circumstances such as the occasion when the gift was made, the value of the gift, the fortune of the donor, any accompanying words or gestures, and previous or subsequent conduct, can lead to a different interpretation of the facts, a different legal qualification of the act, and different juridical effects.

In *Reed*, the first distinction, between donations and usual gifts, was not even mentioned by the court, and it probably would not have made any difference in the outcome of the case. In future cases, however, this distinction might be quite important, and there is very little guidance in Louisiana doctrine on this issue.<sup>15</sup> The next section of this case note (section B) will analyze the distinction between the two types of acts based on the general theory of juridical acts, and section C will briefly discuss the distinction between conditional and non-conditional gifts.

## *B. Donations and Usual Gifts*

### *1. The General Theory of Juridical Acts—Basic Notions*

Although the answer might, at first sight, seem obvious, the first problem a court must consider in a case like *Reed* is whether the act of giving a ring to a loved one is juridical or non-juridical in nature.

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13. See *infra* Part III.B.

14. See *infra* Part III.C.

15. In Louisiana, the category of “usual gifts” is only briefly mentioned in the legal literature, and their treatment is limited to identifying the different requirements and effects of such acts in the law of successions or matrimonial regimes. See KATHRYN VENTURATOS LORIO, 10 LA. CIV. L. TREATISE, SUCCESSIONS AND DONATIONS § 7:14, 10:6 (2d ed., West 2009-2011); MAUNSEL W. HICKEY ET AL., 1 LA. PRAC. EST. PLAN. § 4:49, 4:85 (2013-2014 ed., West); KATHERINE S. SPAHT & RICHARD D. MORENO, 16 LA. CIV. L. TREATISE, MATRIMONIAL REGIMES § 1.10 (3d ed., West 2006-2012).

A juridical act is an act of volition, a manifestation of will, expressed with the intent to produce juridical effects.<sup>16</sup> An act of volition can be unilateral, giving rise to a *unilateral act*, or it can be *bilateral*, as it is most often the case, or *multilateral*, giving rise to a *contract* (a bilateral or multilateral act).

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16. ALAIN LEVASSEUR, RANDALL TRAHAN & SANDI VERNADO, *LOUISIANA LAW OF OBLIGATIONS. A METHODOLOGICAL & COMPARATIVE PERSPECTIVE* 3 (Carolina Academic Press 2013); FRANÇOIS TERRÉ, *INTRODUCTION GÉNÉRALE AU DROIT* 165 (7th ed., Dalloz 2006); JEAN CARBONNIER, *DROIT CIVIL. INTRODUCTION* 268 (22d ed., PUF 1994); Claude Brenner, *Acte juridique*, at no. 10, in *ENCYCLOPÉDIE DALLOZ. RÉPERTOIRE DE DROIT CIVIL* (Dalloz 2013). The term declaration of will (*déclaration de volonté*) has also been used in the literature. *See, e.g.*, FRIEDRICH CARL VON SAVIGNY, 2 *LE DROIT DES OBLIGATIONS. PARTIE DU DROIT ROMAIN ACTUEL* 82 (T. Hippert trans., Bruylant-Cristophe & Co. 1873). In Louisiana, the late Professor Saúl Litvinoff used the term “declaration” of will when proposing a definition for juridical acts. SAÚL LITVINOFF, 5 *LOUISIANA CIVIL LAW TREATISE. THE LAW OF OBLIGATIONS* 12 (WEST 2001); and SAÚL LITVINOFF & W. THOMAS TÊTE, *LOUISIANA LEGAL TRANSACTIONS. THE CIVIL LAW OF JURIDICAL ACTS* 105 (Claitor’s Publ’g Division 1969). The Louisiana Civil Code also refers to “other declarations of will” in article 1757, where the sources of obligations are enumerated. LA. CIV. CODE art. 1757. The term “manifestation” is preferable because it is broader, and encompasses all non-verbal communication. One might doubt, for instance, whether some manual gifts would be seen as originating from “declarations” of will, when all that the donor does is place a gift in the hands of the donee, without a written act or without saying anything.

It is also worth mentioning other definitions of juridical acts that have been proposed in doctrinal works. Some authors tried to improve the definition laid down above by adding reference to the obligational contents of juridical acts. *See* BORIS STARK, HENRI ROLAND & LAURENT BOYER, *INTRODUCTION AU DROIT* 553 (3d ed., Litec 1991). Others have tried to offer definitions where the subjective element (the will) is coupled with objective considerations, in order to better distinguish juridical acts from juridical facts. *See* EMMANUEL GOUNOT, *LE PRINCIPE DE L’AUTONOMIE EN DROIT PRIVÉ. CONTRIBUTION À L’ÉTUDE CRITIQUE DE L’INDIVIDUALISME JURIDIQUE* (Rousseau 1912) 246-47 (arguing that a juridical act is created only when the manifestation of will is aimed at *organizing* the effects of the act, and not merely intending them, thus (over)emphasizing the normative element of juridical acts); JACQUES MARTIN DE LA MOUTTE, *L’ACTE JURIDIQUE UNILATÉRAL; ESSAI SUR SA NOTION ET SA TECHNIQUE EN DROIT CIVIL* 26 (Bernard Frères 1951) (arguing that it is not enough for the will to intend the juridical effects generated by the act; the manifestation of will must also be “necessary” for the effects to be produced); and JEAN HAUSER, *OBJECTIVISME ET SUBJECTIVISME DANS L’ACTE JURIDIQUE* 70, 322 (L.G.D.J. 1971) (arguing that the role of the will is limited to the initiative to enter into an operation that has juridical content; in a view that combines objective and subjective elements, the author considers that the effects of the act spring exclusively from the law, but the actor’s initiative to enter into such an act, while not a source, is a necessary trigger).

A juridical act must cumulatively fulfill three conditions that can be extracted from the above-mentioned definition: (1) it needs to be a manifestation of will; (2) it must produce juridical effects; and (3) the juridical effects must be intended by the author.<sup>17</sup>

The latter condition is of special interest for the facts presented in *Reed*. By placing the ring on Judy Ann's finger, Alvin expressed his will.<sup>18</sup> Also, the act produced legal effects, as ownership of the ring was transferred to Judy Ann (the court later recognizing this translative effect in its decision). However, not all intentional acts of volition that produce juridical effects are juridical acts. Many are classified as juridical facts, like intentional delicts,<sup>19</sup> or the management of (another's) affairs.<sup>20</sup> What differentiates juridical acts from juridical facts is precisely the author's intent for the act to produce juridical effects. It is rather exotic to think, for instance, that somebody would commit a battery with the intent to pay reparation.<sup>21</sup> Also, in the case of a management of another's affairs, the specific intent is to help or act for the interest of another,<sup>22</sup> but not necessarily to generate the obligations that arise from this fact.<sup>23</sup>

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17. Brenner, *supra* note 16, at no. 10. The third condition need not be understood in its most absolute meaning. It is enough for the author of the act to understand and intend the principal effects of the act, and not every possible legal consequence that comes with concluding a juridical act.

18. Judy Ann's acceptance of the ring when placed on her finger makes the juridical act bilateral, as her will joined Alvin's to form a contract.

19. See LA. CIV. CODE art. 2315.

20. See LA. CIV. CODE art. 2292.

21. Some French scholars adjusted the definition of juridical acts in order to anticipate this sort of bizarre event, and argue that a juridical act is not simply an act wherein the juridical effects are intended, but also where the effects *necessarily* follow from that intent. MARTIN DE LA MOUTTE, *supra* note 16, at 26. For instance, if the actor commits a delict with the intent to pay reparation, the act would still be a delict and not a unilateral juridical act, because if the intent to pay reparation were missing, the act would produce effects anyway (as a delict). *Id.*

22. The intent to be of service to another need not be the exclusive reason why the *gestor* manages the affairs of another. A cause of action based on management of affairs is recognized even if he also had selfish reasons for rendering the performance. SAÛL LITVINOFF, *THE LAW OF OBLIGATIONS IN THE LOUISIANA JURISPRUDENCE: A COURSEBOOK* 465 (6th ed., LSU Law Center

More importantly, the intent to produce juridical effects also differentiates juridical acts from what could be called “non-juridical acts.” These acts take the form of agreements, which apparently resemble juridical acts, but in fact are not intended to be binding. The typical example is a gentlemen’s agreement,<sup>24</sup> practiced so often in commercial settings. Also, acts like helping, or promising to help, a friend move some furniture or paint his house, qualify as non-juridical manifestations of will.<sup>25</sup> If the intent to be legally bound is missing, as a matter of principle,<sup>26</sup> the manifestation of will cannot and will not produce juridical effects.

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2008); and *Standard Motor Car Co. v. State Farm Mut. Auto. Ins. Co.*, 97 So. 2d 435, 439 n.9 (La. Ct. App. 1957).

23. FRANÇOIS TERRÉ, PHILIPPE SIMLER & YVES LEQUETTE, *DROIT CIVIL. LES OBLIGATIONS* 991 (9th ed., Dalloz 2005).

24. See Bruno Oppetit, *L’engagement d’honneur*, D. 1979 Chron. 107. However, the idea that gentlemen’s agreements are non-juridical acts needs to be nuanced. While in some of these agreements the parties really intend to give rise to mere moral obligations, there are many situations in which the intent is to place the agreement outside of state law, but the effectivity of the agreement is beyond doubt, and the parties do feel bound by their promises. *Id.* at 108. See also Cass Com., January 23, 2007, D. 2007 Act. Jurisp. 442, obs. Xavier Delpech; RTD. Civ. 2007, at 340, obs. Jacques Mestre & Bertrand Fages. With a pluralist view on what the law is, one could argue that there are two types of gentlemen’s agreements: on the one hand, if the parties of the agreement do not want to be bound except in conscience, or otherwise said, the act shall not have any binding effect, the gentlemen’s agreement would be a veritable non-juridical act; on the other hand, if the gentlemen’s agreement is concluded with *the intent to apply a different law* to the transaction, a law other than state law, either created by the parties themselves, or chose by the parties from other non-etic regulatory sources (like, for instance, *lex mercatoria*), then it is a veritable juridical act, because the parties do intend to be bound by their will and subject the act to some form of normative background (*law lato sensu*).

25. For instance, if Primus promises to Secundus, his best friend, that he will help him with some gardening work, he is not bound by this promise, unless it is reasonable to think that the parties meant for the obligations resulting from the agreement to be legally enforceable. Other examples of apparent manifestations of will that are not intended to produce effects include: manifestations of will that were intended as mere jokes or jests, the recitation of a line in a theater play or on the set of a movie, the example a law professor gives in class, etc.

26. The exceptions to this rule are based on theories of good faith and reasonable reliance and are intended primarily to secure the setting for commercial or civil transactions. For instance, if a person makes an offer which apparently fulfills every condition of a valid offer, but does not really intend to be bound, his real intentions being reserved solely within his own mind, and a



Therefore, in order to determine whether or not the agreement between Alvin and Judy Ann is a juridical act, and, to be more exact, a contract, one would have to look into the specific intent of the parties.

## 2. Gift-Giving—Always a Juridical Act?

Under the civil code, gift giving implies donative intent (*animus donandi*). This intent usually is materialized into a contract of donation, which is a recognized juridical act,<sup>27</sup> and, more accurately, a nominate contract (its special rules regarding formation and effects being laid down in Book 3, Title 2 of the Louisiana Civil Code).

However, not all gifts necessarily fall within the scope of the provisions from this title of the code. Low value and symbolic gifts (like, for instance, Christmas or engagement presents), generically named “usual or customary gifts”<sup>28</sup> (*présents d’usage*),<sup>29</sup> are not subject to the codal provisions regarding donations. Some authors even wonder whether usual gifts can be placed within the category of juridical acts,<sup>30</sup> as they seem to have been exempted from many

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good faith offeree accepts the offer, the former will be bound by his declaration of will despite his real intent. LITVINOFF & TÊTE, *supra* note 16, at 114. In Germany, this principle has been codified in art. 116 of the BGB: “A declaration of intent is not void by virtue of the fact that the person declaring has made a mental reservation that he does not want the declaration made. The declaration is void if it is to be made to another person who knows of the reservation” (Translation by Langenscheidt Translation Service, available at [http://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.html](http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html)).

27. LA. CIV. CODE art. 1468.

28. LA. CIV. CODE art. 2349: “The donation of community property to a third person requires the concurrence of the spouses, but a spouse acting alone may make a *usual or customary gift* of a value commensurate with the economic position of the spouses at the time of the donation” (emphasis added).

29. M. E.-H. Perreau, *Courtoisie, complaisance et usages non obligatoires devant la jurisprudence*, 13 RTD Civ. 481, 512 (1914).

30. IONEL REGHINI, ȘERBAN DIACONESCU & PAUL VASILESCU, INTRODUCERE ÎN DREPTUL CIVIL 429-30 (Hamangiu 2013); and Perreau, *supra* note 29, at 512.

of the prerequisites of juridical acts, and are deprived of many of the usual effects of donations.

Usual gifts are exempted from capacity requirements. For instance, a minor can validly make an ordinary gift (like a modest Christmas present or a flower to a girlfriend),<sup>31</sup> although he does not have the capacity to make liberalities (donations or a testament).<sup>32</sup> Other legal restrictions also do not apply: usual gifts are not subject to the requirement of mutual consent of the spouses for the conclusion of gratuitous dispositions on community property;<sup>33</sup> as to their effects, usual gifts are not subject to collation,<sup>34</sup> and obviously, it would also be absurd to subject them to reduction. Also, they are, of course, not subject to the authentic form requirement.<sup>35</sup>

A gift is considered a *présent d'usage* when two conditions are fulfilled: (1) the value of the thing is low by comparison to the

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31. PHILIPPE MALAURIE ET AL., *DROIT CIVIL. LES SUCCESSIONS. LES LIBÉRALITÉS* 182 (Éditions Cujas 1998).

32. See LA. CIV. CODE art. 1476:

A minor under the age of sixteen years does not have capacity to make a donation either *inter vivos* or *mortis causa*, except in favor of his spouse or children.

A minor who has attained the age of sixteen years has capacity to make a donation, but only *mortis causa*. He may make a donation *inter vivos* in favor of his spouse or children.

33. LA. CIV. CODE art. 2349. See André Colmer, *Communauté*, at no. 801, in *ENCYCLOPÉDIE DALLOZ. RÉPERTOIRE DE DROIT CIVIL* (Daloz 2013).

34. LORIO, *supra* note 15, at 7:14; Succession of Gomez, 67 So. 2d 156, 162 (La. 1953). See also, art. 852 of the French Civil Code: “The expenses of food, support, education, apprenticeship, the ordinary costs of outfitting, those of weddings and *usual presents*, shall not be collated.” The Louisiana equivalent of the French article 852 is LA. CIV. CODE art. 1244, which is phrased differently: “Neither the expenses of board, support, education and apprenticeship are subject to collation, nor are marriage presents which do not exceed the disposable portion.” Usual presents are not enumerated in art. 1244, but based on the legislative history of this article, it must be interpreted as also excluding usual gifts from collation. LORIO, *supra* note 15, at 7:14.

35. Ibrahim Najjar, *Donations*, at no. 85, in *ENCYCLOPÉDIE DALLOZ. RÉPERTOIRE DE DROIT CIVIL* (Daloz 2013). The lack of authentic form is not necessarily an exception to the general rules that apply to other donations, because usual gifts are almost always made in the form of manual gifts.

fortune of the donor; and (2) the present is made on the occasion of a social event or in a family setting.<sup>36</sup>

In order to explain this *sui generis* category of gifts, French legal doctrine developed two main theories that attempt to explain their nature.

The first theory places usual gifts somewhere in-between moral and legal realms, by resorting to the mechanism of natural obligations.<sup>37</sup> This theory is based on the argument that since these gifts are made in social or family settings, the “donor” feels bound in conscience before making the gift, and the making of the gift relieves him of this moral duty. However, if the act of making usual gifts is seen as the performance of a pre-existing natural obligation, usual gifts are not, properly said, donations.<sup>38</sup> The performance of an obligation is incompatible with the ideas of “liberality” and “donative intent.” This onerous nature of usual gifts would explain the difference as to the exemption from collation, or from the rules regarding community property. Moreover, if the volitional act is considered non-judicial, and only the *traditio* (the performance) produces juridical effects, the rules regarding capacity can also be justified by this theory.

That being said, even though the effects of usual gifts are deduced very elegantly from the way natural obligations work, the whole theoretical construct is based on two fictions that ignore or distort the will of the parties. First, the role of the will as a basis for transferring ownership is minimized, and the translative effect of the act is linked to the transfer of possession alone (*traditio*). Second, this theory presumes that the intent to extinguish a moral duty is the cause of the act, and not the author’s liberal intent (*animus donandi*). The moral circumstances and the social pressure

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36. *Id.* at no. 86.

37. Perreau, *supra* note 29, at 512.

38. The performance of a natural obligation cannot be described as a liberality, the same way a contract wherein the objective cause of one of the obligations is a preexisting natural obligation cannot be a gratuitous act. LITVINOFF, 5 LOUISIANA CIVIL LAW TREATISE..., *supra* note 16, at 33.

that exist when making these presents can serve as a motive for making the gift (the subjective cause of the act), but the liberal intent is clearly present (the objective cause of the act is *animus donandi*).<sup>39</sup> It is rather cynical to describe giving a Christmas present as the fulfillment of a duty, and not gift-giving.

That is why the second theory, which describes usual gifts as veritable donations, a sub-category of manual gifts, subject to a different legal regime,<sup>40</sup> is more convincing.<sup>41</sup> When one makes an ordinary gift, the specific intent is to transmit, gratuitously, ownership of the object to the donee, and this intent is enough to characterize the act as juridical and, consequently, a donation. Custom and practical considerations justify the different legal regime applicable to this category of manual gifts, and not the mechanism of natural obligations: usual gifts are part of ordinary social interaction, their rules are dictated by local social standards (that might also vary in time), and are made on so many social occasions that it might be excessively burdensome to keep track of them in order to apply the full extent of consequences attached to donations.

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39. For a detailed presentation of the distinction between *subjective cause* and *objective cause*, see Judith Rochfeld, *Cause*, at nos. 14-19, in *ENCYCLOPÉDIE DALLOZ. RÉPERTOIRE DE DROIT CIVIL* (Dalloz 2013).

40. See Najjar, *supra* note 35, at no. 84.

41. A Spanish author has developed an intermediary opinion, which describes usual gifts as liberalities, and rejects the idea that such gifts are, in fact, a way of performing a preexisting natural obligation, but considers them some sort of *sui generis* liberalities, and not donations. Ramón M. Roca Sastre, *La donación remuneratoria*, 31 *REVISTA DE DERECHO PRIVADO* 823, 839-40 (1947). In support of this opinion, the author argues that the cause of usual gifts is the intent to conform to a prevailing usage, and not *animus donandi*. *Id.* at 840. Liberal intent (*animus donandi* or *animus testandi*) is what distinguishes liberalities from onerous acts, and to say that usual gifts are liberalities without *animus donandi* is a contradiction in terms. Furthermore, the author seems to reject the incidence of custom as the normative background for usual gifts and emphasized the role of prevailing usages, and that might have given rise to confusion between the cause of the act (an internal element) and the source of law that applies to usual gifts (an external element). See *id.* at 839. Saying that the cause of usual gifts is the intent to respect a prevailing usage is like saying that the cause of a sale is to respect the civil code.

Arguably, one could easily dismiss the hypothesis of usual gifts in a case like *Reed*, because the present was a diamond ring. Therefore, although the gift was made on the occasion of a social event (in either hypothesis: a Christmas present or on the occasion of the couple's engagement), a strong argument can be made that the gift is valuable enough to exclude any possibility of characterizing it as a usual or customary gift. The value of the diamond ring alone, however, is not enough. The *relative value* of the ring, determined by comparison with the donor's patrimonial situation, will determine whether or not the gift falls within one category or another, and not its objective value.<sup>42</sup>

### 3. *The Juridical Nature of Engagement Presents*

The distinction between donations, as regulated in the code, and usual gifts, is of particular significance in the context of engagement presents. Based on previous jurisprudence, in Louisiana engagement presents are considered to be conditional donations, because they are made in contemplation of marriage.<sup>43</sup>

This rule is of jurisprudential origin, and the question can come up in the future whether low-value engagement presents that would qualify as usual or customary gifts would be subject to the same type of resolutive condition. According to the natural obligation theory,<sup>44</sup> usual gifts could not be made conditional because they are in fact the means of performing a pre-existing obligation, and therefore, as soon as the gift is made, the obligation is

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42. See Cass 1re Civ., December 30, 1952, D. 1953 161, JCP 1953 II. 7475 (Fr.) (the French Court of Cassation decided in this case that, given the vast fortune of the donor, a sumptuous diamond bracelet was a usual or customary gift, even though it was objectively very valuable). *Contra*, see HICKEY ET AL., *supra* note 15, at § 4:49.

43. Decuers v. Bourdet, 10 La. App. 361, 120 So. 880 (1929); Daigle v. Fournet, 141 So. 2d 406 (La. Ct. App. 1962); Glass v. Wiltz, 551 So. 2d 32 (La. Ct. App. 1989); and Busse v. Lambert, 773 So. 2d 182 (La. App. 5 Cir. 2000).

44. See Perreau, *supra* note 29, at 512.

extinguished. However, based on the donation theory,<sup>45</sup> at least theoretically, even low-value gifts could be made conditional.

In France, low-value engagement presents are considered non-conditional, except for family heirlooms,<sup>46</sup> the resolutive condition being implied in the latter case in order to keep these objects in the family of the donor.

Seeing how the rules regarding engagement presents are deeply grounded in custom<sup>47</sup> or usages,<sup>48</sup> their possible transplant into Louisiana jurisprudence would need to be done with care.<sup>49</sup> Courts have to be deferential to the parties will, their societal expectations, and local customs or usages. There is no set recipe for determining what the parties intend and expect when making engagement presents, and U.S. jurisdictions give a powerful example in this regard, as other states have adopted substantially different rules in dealing with the issue of ownership of engagement presents when engagements are broken.<sup>50</sup>

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45. See Najjar, *supra* note 35, at no. 84.

46. GÉRARD CORNU, DROIT CIVIL. LA FAMILLE 272 (9th ed., Montchrestien 2006); PHILIPPE MALAURIE & HUGUES FULCHIRON, DROIT CIVIL. LA FAMILLE 78 (2d ed., Defrénois 2006); DROIT DE LA FAMILLE 58-59 (Pierre Murat dir., Dalloz Action 2008-2009); and JEAN HAUSER & DANIELE HUET-WEILLER, TRAITÉ DE DROIT CIVIL. LA FAMILLE. FONDATION ET VIE DE LA FAMILLE 41-42 (Jacques Ghestin dir., L.G.D.J. 1993).

47. CORNU, *supra* note 46, at 272. LA. CIV. CODE art. 1: “The sources of law are legislation and *custom*” (emphasis added).

48. LA. CIV. CODE art. 4: “When no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and *prevailing usages*” (emphasis added).

49. To this author’s knowledge, so far, Louisiana courts have not decided any case regarding low value engagement presents, especially based on the distinction between usual gifts and family heirlooms.

50. Today, based on the foundation of the set of rules that determine the fate of engagement presents after an engagement is broken, U.S. jurisdictions can be divided into two major categories: (1) States that apply a fault-based test for determining whether the donor can recover the ring (i.e., the donor can recover only if he is not at fault for breaking the engagement); (2) States that consider engagement presents conditional gifts, and recovery is not premised on fault (i.e., if the parties do not go through with the marriage, the donor can recover the ring even if he is at fault). See Brian L. Kruckenberg, “*I don’t*”: *Determining Ownership of the Engagement Ring When the Engagement Terminates* (note on Heiman v. Parrish, 942 P.2d 631 (Kan. 1997)), 37 WASHBURN L.J. 425, 434 (1997-1998); Rebecca Tushnet, *Rules of Engagement*,

*C. Conditional and Non-Conditional Gifts*

In determining whether or not a gift is conditional a court must find the common intent of the parties. The intent of the parties is usually deduced from the manifestation of will itself, which in cases where this takes the form of a written document, is rather straightforward by comparison to cases that involve manual gifts. The mere fact of placing a ring on someone's finger, like in the *Reed* case, by itself, can hardly explain whether the parties wanted to enter into a contract of donation, a loan, a sale, or some other contract. It is even harder to find that the parties intended to subject the rights or obligations from the act to a modality (a condition or a term). However, the accompanying circumstances of the act can shed light on the true intent of the parties, and based on these extraneous elements, both the nature and the contents of the act can be deduced. That is why the court in *Reed* focused so much on whether or not the gift was given with the occasion of the parties' engagement, or for some other reason (as a Christmas present, or a "shut up" present).

That being said, in its argument, the court made a serious terminological and conceptual mistake, when it stated *in dicta* that "if the ring was given in contemplation of marriage, it is a *revocable* donation because marriage is the condition which was not fulfilled."<sup>51</sup> A donation subject to a condition should never be confused with a revocable donation. The two concepts are different in both nature and effects.

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107 YALE L.J. 2583, 2591-2607 (1997-1998); *Property Law—Pennsylvania Supreme Court Holds That Engagement Rings Must Be Returned Regardless of who Broke the Engagement—Lindh v. Surnam* (case note), 742 A.2d 643 (Pa. 1999), 113 HARV. L. REV. 1876, 1876 (1999-2000); Barbara Frazier, "But I Can't Marry You": *Who is Entitled to the Engagement Ring When the Conditional Performance Falls Short of the Altar* (comment), 17 J. AM. ACAD. MATRIMONIAL L. 419, 426-38 (2001); and Brooke A. Blecher, *Broken Engagements: Who is Entitled to the Engagement Ring?*, 34 FAM L. Q. 579, 583-586 (2000-2001).

51. *Reed*, *supra* note 1, at 1 (emphasis added).

By default, donations, whether of substantial value or merely usual gifts, conditional or non-conditional, are irrevocable. The Louisiana Civil Code defines the contract of donation as: “a contract by which a person, called the donor, gratuitously divests himself, at present and *irrevocably*, of the thing given in favor of another, called the donee, who accepts it.”<sup>52</sup> The irrevocability prescribed by the civil code must be understood in the sense that the donor cannot change his mind after making the donation. If the donor reserves the possibility to take the gift back in any way that would depend solely on his will, the existence of *animus donandi* is in doubt (and a donation is not valid without a clear donative intent).<sup>53</sup> That is why article 1530 of the Louisiana Civil Code declares that a donation which is conditioned solely on the will of the donor is null.<sup>54</sup>

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52. LA. CIV. CODE art. 1468 (emphasis added).

53. This is a very old rule in the civil law, being embodied in a general maxim: “*donner et retenir ne vaut*.” The rule evolved from Roman law, where donations in general were always regarded with suspicion, and therefore were not considered binding until the corporeal possession of the donated thing was exchanged (*traditio*). FRANÇOIS TERRÉ, YVES LEQUETTE, DROIT CIVIL. LES SUCCESSIONS. LES LIBÉRALITÉS 351 (3d ed., Dalloz 1997). In the *Ancien Droit* (the French law that existed before the French revolution), the Roman rule was reinterpreted to mean that the act of donation cannot allow the donor to reclaim the alienated thing (in this form, the rule can be found in the Royal Ordinance of 1731 regarding donations). *Id.* Traditionally, the rule is said to be protective of the donor, who, knowing that the donation is irrevocable, is made aware of the significance of the act of donation, and is supposedly going to make donations only after seriously considering whether the act is necessary and whether by making the donation he is distributing his fortune fairly (particularly when donations are used as means of succession planning). *Id.* at 352, n.1. Some authors consider, however, that another, perhaps more important, reason behind the “*donner et retenir ne vaut*” rule is to protect the donee, who is left vulnerable, because the donor can revoke the gift at his whim. *Id.* at 352. MALAURIE ET AL., *supra* note 31, at 246. A different sanction for donations subject to potestative conditions would be necessary, if the principal reason would be the protection of the donee. Professor Philippe Malaurie proposed that the potestative condition be deemed not written (a sort of partial nullity), with the effect of making the donation definitive, instead of nullity of the entire act of donation, which would have the effect of bringing the object of the donation back into the patrimony of the donor. *Id.*

54. Article 1531 of the Louisiana Civil Code is an expression of the same idea. If the donation is conditioned on the payment of future or unexpressed debts and charges, the donor can eliminate the advantage conferred upon the donee simply by taking on more debts.



A conditional donation is perfectly valid, and remains irrevocable, as long as the condition is not dependent solely on the will of the donor. In the civil law, revocation implies the intervention of someone's will for the purpose of canceling out the effects of an initial manifestation of will.<sup>55</sup> In other words, in case of revocation two separate juridical acts are in play. The initial act would have to be a contract (the donation), and the subsequent act, the revocation, would be a unilateral act canceling the effects of the donation. It is important to emphasize that the subsequent unilateral act is the source for the effects on the rights or obligations of the first act. That is because, as opposed to revocation, when a condition is fulfilled, there is no second manifestation of will aimed at canceling the effects of another, initial, juridical act. The condition is a part of the initial act and its fulfillment or non-fulfillment will generate effects which are anticipated by the original act and flow from that original manifestation of will.

Revocation can be non-judicial or judicial. Non-judicial revocation operates only in special circumstances, like in cases of donations *mortis causa*.<sup>56</sup> Judicial revocation operates for cases of ingratitude.<sup>57</sup> A conditional donation is irrevocable, unless it falls within one of the special circumstances of revocable donations described above.<sup>58</sup>

In article 1556, the Louisiana Civil Code clearly makes a distinction between causes of revocation and causes of dissolution

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55. GÉRARD CORNU, *VOCABULAIRE JURIDIQUE* 920-921 (9th ed., PUF 2011).

56. LA. CIV. CODE art. 1469. Before 1942, former Louisiana Civil Code article 1749 provided that donations between spouses were revocable. Today, as a rule, donations between spouses are irrevocable. However, a right of revocation can be introduced by the parties by express stipulation in the act of donation, but only if the donation is made by notarial act. LA. REV. STAT. ANN. § 9:2351 (2005).

57. LA. CIV. CODE art. 1556. *See also* LA. CIV. CODE art. 1557.

58. For instance, a donation subject to a condition can, of course, be revoked for ingratitude by a court, but in that case the act of ingratitude, and not the condition, is what makes the donation revocable.

of a donation.<sup>59</sup> The ingratitude of the donee is a motive for revocation, whereas the nonfulfillment of a suspensive condition or the fulfillment of a resolutive condition leads to the dissolution of the donation.<sup>60</sup>

#### IV. CONCLUSION

This rather lengthy case note covers more than what would generally be necessary when discussing a case like *Reed*. In itself, the case is not very complex, and the decision of the court followed Louisiana law. Still, there are a couple of reasons why more ground is covered than what would generally be expected of a standard case note and why some taxonomical issues are treated at length.

First, a slight change in circumstances would have led the court towards a completely different result. If Alvin had made a formal engagement proposal when he gave the ring to Judy Ann, the donation would have been most probably considered subject to a resolutive condition.<sup>61</sup> Even then, things might have changed if the court found that the contract between the parties was an usual or customary gift, and not a conditional donation. And things might not stop there, other distinctions becoming relevant within each subcategory. That is why it is essential to clearly determine the facts in cases like *Reed*, and applying the law to these facts depends on a firm grasp on traditional distinctions of the civil law: between juridical and non-juridical acts, between donations and ordinary gifts, and between conditional and non-conditional gifts.

Second, the Civil Code does not have specific and detailed rules for circumstances such as those of the *Reed* case. The degree

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59. LA. CIV. CODE art. 1556: "A donation inter vivos may be *revoked* because of ingratitude of the donee or *dissolved* for the nonfulfillment of a suspensive condition or the occurrence of a resolutive condition. A donation may also be *dissolved* for the nonperformance of other conditions or charges" (emphasis added).

60. Dissolution in this case is not a sanction and should not be confused with dissolution as it appears in Title 4, Chapter 9 of the same Book 3.

61. *See supra* note 43.

of abstraction of the general theory of juridical acts is beyond what is necessary in a regulatory instrument,<sup>62</sup> and such general theories were developed after the *Code Napoléon* entered into force.<sup>63</sup> Also, while usual gifts are mentioned in the code, the distinction between these gifts and donations is not made clear, either in the code, the jurisprudence, or the existing Louisiana legal doctrine. Moreover, while there is more than enough information in the code regarding what a condition is and how conditions operate, the code itself contains inconsistencies,<sup>64</sup> and, as proved by the *Reed* opinion, courts, when discussing conditions, sometimes confuse some of the concepts used by the code.<sup>65</sup>

For these reasons, it was worth discussing at length the *Reed v. Saint Romain* case, even though the opinion remains, to this day, unpublished in the Southern Reporter. Beyond all practical concerns, this case provided the perfect alibi for a discussion on fundamental notions of private law and traditional civilian

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62. The Code is not a mere regulatory instrument, but also an instrument of liberty, as it creates a framework for the individual will to exert its normative power freely. A contract is the law for its parties. Based on deference to individual will, judges must devise the best methods of identifying and enforcing the nomothetic will. In the civil law, the intent of the parties is *the* criterion for the classification of an act and for determining its contents, and ultimately, its effects.

63. Brenner, *supra* note 16, at no. 5.

64. Although it is not the purpose of this case note to also make *de lege ferenda* propositions for the Louisiana Civil Code, one problem needs to be at least mentioned. While the sections of the code that define conditional obligations and describe their effects are relatively well written and modern (*see* arts. 1767-1776), article 1562 of the code (in a section that, improperly, is named “exceptions to the rule of the irrevocability of donations inter vivos”), oddly distinguishes between suspensive and resolutive conditions as to their effects. According to this article, resolutive conditions do not operate automatically, like suspensive conditions. The code makes resolutive conditions effective only (1) if the parties agree to “dissolve” the contract or (2) by way of court action. This creates a hybrid type of resolutive conditions, specific only to donations, which operate to some extent like the common law conditions subsequent, instead of operating *de iure* and retroactively, like the resolutive conditions described in articles 1767-1776 of the code. Louisiana jurisprudence has interpreted art. 1562 to mean that an action for rescission is needed in order to give effect to the resolutive condition, in the context of donations. *See* Busse v. Lambert, 773 So. 2d 182 (La. App. 5 Cir.); and Orleans Parish Sch. Bd. v. City of New Orleans, 700 So. 2d 870 (La. App. 4 Cir.).

65. *Supra* Part III.C.

categories. These concepts, and, of course, the taxonomy of juridical acts, need to be properly understood before arguing or deciding similar cases. But their study brings much more than just guidance for future cases. The general theory of juridical acts is at the height of abstraction, and more than anything, the structure, the finesse, the logic, the coherence and symmetry of its taxonomy, brings civilians closer to an ideal of order—a *right order*, for this world of men.<sup>66</sup>

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66. “Good order” or “ontological order,” as Professor Emeritus Robert A. Pascal would say. See Robert Anthony Pascal, *Of the Civil Code and Us*, 59 LA. L. REV. 301, 304, 323 (1998).