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LES OBLIGATIONS. By Jean-Louis Baudouin. Les Presses de L'Université de Montréal, Montreal, Quebec, Canada, 1970.

LA RESPONSABILITÉ CIVILE DÉLICTUELLE. By Jean-Louis Baudouin. Les Presses de L'Université de Montréal, Montreal, Quebec, Canada, 1973.

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In a significant effort, the University of Montreal Press is publishing a series of volumes on the civil law of Quebec. When completed, the series will constitute a *Traité élémentaire de droit civil*—a treatise on the civil law in the continental tradition. To date, the volumes which have appeared in this series are Baudouin on *Obligations*, Mayrand on *Intestate Successions*, Pineau on *Family Law*, and Baudouin on *Civil Delictual Liability*. In its particular field, each one of these volumes is a treatise unto itself. The idea of furnishing the students and practitioners with a comprehensive treatise on the Quebec civil law resembles greatly the endeavor in which the Louisiana State Law Institute is presently engaged.

In *Les obligations*, Professor Baudouin has drawn a vast and vivid panorama of that part of the civil law which contains most of the principles that govern the fundamental institutions of all the branches of that system of law. In a general introduction, Baudouin deals with the concept of obligation and explains the importance of the theory of obligations, discussing the moral, economic, political and sociological factors that have caused concept and theory to evolve. Thus, instead of being parts of a stagnant science of law, the theory of obligations has become a true reflection of the scale of shared values of politically organized society in a given moment of history.

After a discussion of the classification of obligations according to different criteria, Baudouin undertakes a detailed discussion of the sources of obligations, starting, of course, with contract. That source of obligations is presented in light of the principle of autonomy of the will which is expounded in historical perspective. The consequences of the principle are examined, and a realistic criticism is made from the viewpoint of modern legal and economic developments. The germane principle of contractual freedom is discussed in its form, content and limitations, and also in light of its connection with the concept of public order (*ordre public*).

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Baudouin explores in depth the requirements for the formation of a valid contract, without omitting a discussion of formalities. The synthesis achieved in his presentation of the subject of "cause" is remarkable and brilliant. Two highlights of this portion of the work merit special mention. In the first place, cause is shown as something which, in essence, does not differ from the contractual will, something which is, in sum, a particular aspect to the will of the parties. Secondly, two problems unsolved in traditional doctrine are reduced to one, and then given an answer. Indeed, the question whether cause is a concrete element (for example, the desire to own *that* particular thing which prompts the vendee to make a contract of sale) or an abstract element (always the same in a given kind of contract—for example, the obligation of the vendor which is the cause of the obligation of the vendee) has tortured the minds of inquisitive jurists for a long time. A parallel issue, the question whether the cause is found in a contract or in an obligation arising from it, has inflicted no lesser pain upon the civilian mind. For Baudouin, cause *in the abstract* is the cause of the obligation, while cause *in concrete* is the cause of the contract. The former is a concept remarkable for its theoretical futility; the latter is a useful tool to police the lawfulness and morality of agreements. In this context, Baudouin explains the diffidence of Quebec courts in handling the notion of cause while wisely avoiding its theoretical implications.

As a part of his discussion of contract formation, Baudouin introduces a general theory of nullities. Nullity is thus defined as a legal sanction attending a failure to meet a requirement, either of substance or of form, which is essential for the formation of a valid contract. The nullity of a contract is carefully distinguished from dissolution for nonperformance and from cancellation by the mutual agreement of the parties, and the effects of the sanction are explored in full. Baudouin is critical of the terminology chosen for the traditional doctrinal distinction between absolute and relative nullity. These words, says he, are one of the reasons why the distinction has been overstressed despite the fact that, in many instances, the nullity of certain acts does not fall entirely within any of those categories, but resembles both. From a viewpoint which is as contemporary as it is realistic, Baudouin criticizes the notion of "inexistent" acts, a notion that, to his mind, has overlooked the importance the law may give to the mere semblance of validity of a particular juridical act.

Baudouin's treatise explores in full the effects of contracts *vis-à-vis* the parties and also *vis-à-vis* third parties. The particular effects of synallagmatic contracts and the related topics, including the exception of nonperformance among others, are treated separately.

Concise and thorough is the discussion of quasi-contract as the second source of obligations. Institutions as deeply rooted in the civilian tradition as the management of the affairs of another, payment of the thing not owed, and unjust enrichment, are explained in such a manner that no relevant aspect is left aside.

The subject of effects of obligations is divided into a study of voluntary performance, and a study of forced execution which includes, of course, an intelligent discussion of the requirement of putting the obligor in default.

In his treatment of extinction of obligations Baudouin separates delegation from novation. That approach is as practical as fruitful because it enhances the importance of "delegation," an institution too often identified with novation in absolute terms. As presented by Baudouin, delegation is, indeed, a true reservoir of solutions for heretofore almost unsolvable theoretical problems, such as the legal nature of a letter of credit, or of a check, or of a bill of exchange.

The publisher's foreword states that Baudouin has followed a classical scheme in his presentation of the general theory of obligations. That statement can be easily controverted. Baudouin conducts his discussion of the subject along the lines of a plan of his own, where topics and institutions fall into place by the weight of their function, rather than by the force of conceptual symmetry. Aside from its remarkable didactic value, such a plan greatly enhances the pleasure of reading.

*La responsabilité civile délictuelle* is a separate volume entirely devoted to the third source of obligations, that is, delicts and quasi-delicts—offenses and quasi-offenses. In a gallant manner, the author explains that an act of conduct which transgresses a norm may give rise to three levels of liability: moral, criminal and civil. The first is concerned with remorse, the second with punishment, the third with reparation. The latter, based on the community's need for restoring the socio-economic balance which is altered when a norm is breached, has given rise to a legal discipline which, though remote in origin, has been immensely expanded in the course of time, due to significant factors such as the rise of a social consciousness with the attending idea of a social justice, the constant increase of the element of risk in everyday life, and the growth of insurance as a well-established social and business practice.

Baudouin isolates delictual from contractual and criminal liability. He shows that, from a theoretical viewpoint, delictual and contractual liability are almost identical. He then analyzes the significant differences that are found from a practical viewpoint, and finally

explains the intricacies of the problem that arises when a choice between the two regimes must be made.

The elements or conditions necessary to give rise to delictual liability are considered by the author in connection with liability for personal acts. Though these elements, namely, fault, damage and causal relation between fault and damage, must in many instances also be present for liability arising otherwise, it is systematically warranted to analyse them in this connection.

In addition to the liability arising from personal acts, Baudouin examines the liability that arises vicariously from the acts of another, and the objective or "strict" liability for the damage caused by things, as in the case of animals, dilapidated buildings and automobiles. A separate title is devoted to special liability regimes, such as workmen's compensation and the survival of actions. An opportune appendix deals with the problems of prescription.

The two volumes by Professor Baudouin reflect a marked awareness of the importance of the jurisprudence as a persuasive source of law in the civilian tradition. In the volume on delictual civil liability, however, the author realistically recognizes that in this area the jurisprudence has attained a higher rank. It cannot be otherwise, since in Quebec, as in France and Louisiana, the civil code contains only a few principles which have had to be considerably expanded through decisional law in order to meet the legal needs of increasingly complex societies.

The author has enriched the volume on delictual liability with statistics showing the weight attributable to certain factors in the determination of the scope of particular liability and the amount of damages. These contributions from relatively new disciplines, such as jurimetrics and the sociology of law, enhance the value of Baudouin's work in his successful effort to bring the civil law of obligations up to date.

In Quebec, as in Louisiana, the civil law of French derivation has been challenged by an environment permeated by the influence of another system of law. In both jurisdictions the law has evolved and grown not only as a response to changing societal ways, but also as a response to the need for coexisting with a different legal culture. The legal experience of Quebec is thus invaluable for Louisiana jurists who may find there an inspiration for adaptation and change, together with an example of respect for a rich tradition. In a refreshing way, so different from most of today's continental writings on the civil law, Baudouin shows the advantage of preserving this tradition.