UNIVERSITÀ DEGLI STUDI DI BARI ALDO MORO

Dipartimento Jonico in Sistemi Giuridici ed Economici del Mediterraneo: Società, Ambiente, Culture

Jonian Department - Mediterranean Economic and Legal Systems: Society, Environment, Cultures

ANNALI 2015 – ANNO III

(ESTRATTO)

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http://www.annalidipartimentojonico.org **ISBN:** 978-88-909569-4-2

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PROMISSORY ESTOPPEL IN SCOTS AND LOUISIANA LAWS: UNILATERAL PROMISE IN DISGUISE?[*]

ABSTRACT	
The essay explores the counterintuitive possibility of identifying the unilateral promise as a bargaining configuration or as an essential requirement of pre-contractual obligations, and ties to briefly describe the solution adopted in the 'mixed' jurisdictions of Scotland and Louisiana, that, on one hand, offer a remarkable recap of the legal traditions of common law and civil law and, on the other, emphasize the conceptual dichotomy relating to the institute of promissory estoppel, despite the fact that the doctrine of consideration has a reduced leeway in the two legal experiences.	Il saggio – prendendo le mosse dalla controintuitiva possibilità di individuare nella promessa unilaterale tanto una configurazione negoziale quanto il presupposto di un'obbligazione precontrattuale – si pone l'obiettivo di esaminare la soluzione elaborata nei sistemi misti della Scozia e Louisiana, da un lato, perché tali esperienze offrono una rilevante sintesi tra la tradizione di *common law* e quella di *civil law* e, dall'altro, in quanto tale dicotomia concettuale (sottesa all'istituto del *promissory estoppel*) è fortemente presente sebbene la dottrina della *consideration* abbia uno spazio limitato nei sistemi in commento.
Promissory estoppel – Unilateral promise – Mixed jurisdictions of Scotland and Louisiana	***Promissory estoppel* – Promessa unilaterale - Sistemi misti di Scozia e Louisiana**

1. The apparently counterintuitive possibility of framing the unilateral promise as a bargaining configuration, revolving around the idea that the promisor wants to stress the seriousness of the commitment, or as an essential requirement of pre-contractual obligation (closely linked to the desire to prot ect the expectation created

[*] Saggio sottoposto a referaggio secondo il sistema del doppio cieco.

in the promisee)[1] requires some crucial 'excursion' into the mixed jurisdictions of both Scotland and Louisiana, not only for the practical reason that they remarkably summarize the legal traditions of common law and civil law, but mainly because the conceptual dichotomy relating to the institute of promissory estoppels, is strongly present even though the doctrine of consideration is left with a somehow restricted space[2].

The following notes aim to be the first steps on the path towards examining the implications of the approaches by these mixed legal system.

2. Let's focus on the discipline of promise in Scotland. For this purpose, it will be important to start from the 'impact' of the 'istitutional writing'[3] (concerning private and criminal law) and, more precisely, of the Stair's *Istitutions of the law of Scotland* which is the most important contribute on the subject of the contract and promise[4]. In particular – moving from the belief that the canon law having taken off the exception of the civil law, *de nudo pacto non oritur action* [5]—, Stair rejected Groutius's requirement of acceptance emphasizing the binding power of the promise simple and pure: «Stair states that a promise is that which is simple and pure, and hath not implied as a condition, the acceptance of another, and he thus distinguishes an obliga-

[1] On these profiles see D.A. FARBER - J. H. MATHESON, *Beyond promissory estoppel: contract law and the 'invisible handshake'*, 52 *U. Chi. L. Rev.* 903 (1985); E. YORIO – S. THEL, *The Promissory basis of Section 90*, 101 Yale L. J. 111 (1991); P. PARDOLESI, *The double soul of promissory estoppel. A comparative view*, 18 *C.E.L.B* 1 (2012); ID., *Promissory estoppel: affidamento e vincolatività della promessa*, Bari, 2009, p. 19 ss.

[2] For an in-depth examination of the binding power of the promise in Scotland and in Louisiana see D. V. SNYDER, *Hunting promissory estoppel*, http://ssrn.com/abstract=1316358. On the concept of mixed jurisdictions see T. B. SMITH, *Scots law and roman-dutch law: a shared tradition*, in *Studies Critical and Comparative*, a cura di T.B. Smith, Edinburg, 1962, p. 46; R. ZIMMERMAN – D. VISSER, *Southern cross: civil law and common law in South Africa*, Oxford, 1996; E. ÖRÜCÜ – E. ATTWOOLL – S. COYLE, *Studies in legal system: mixed and mixing*, London, 1996; R. ZIMMERMAN – K. REID, *An history of private law in Scotland*, vol. I e II, Oxford, 2000; W. TETLEY, *Mixed jurisdictions: common law vs. civil law (codified and uncodified)*, 60 *La. L. Rev.* 677 (2000); V. V. PALMER, *Mixed jurisdiction worldwide: the third legal family*, Cambridge, 2001; J. M. SMITS, *The contribution of mixed legal system to european contract law*, Groningen, 2001; ID., *The making of European private law*, Oxford, 2002; R. ZIMMERMAN – K. REID, *European contract law: scots and south african prospective*, Edinburgh, 2006.

[3] On the sources of Scots law see, indicatively, M. WALKER, *Gli scritti istituzionali del diritto scozzese*, in *Riv. dir. civ.*, 1983, I, p. 509; A. F. RODGER, *Think about Scots law*, 1 *Edin. L. Rev.* 3 (1996), p. 12; A. C. BLACK, *The istitutional writers*, in AA. VV., *An introductory survey of the sources and literature of Scots law*, Edinburgh, 1936, p. 59.

[4] *The Institutions of the Law of Scotland deduced from its Originals, and collated with the Civil, Canon and Feudal Laws and with the Customs of Neighbouring Nations* was published in 1681 and represent the most important work of James Dalrymple, 1st Viscount Stair.

[5] «[E]cclesiastical courts maintained an important role in Scotland even after the Reformation, and the Court of Session was itself largely ecclesiastical in its conception, character, and outlook»: D.V. SNYDER, *op. cit.*, p. 28.

tion based on promise from an obligation based on a contract, which is the deed of two, the offerer and the accepter»[6]. However, this rule suffered a considerable reshaping because of the evidence system received in Scotland: «promises cannot be proved by witnesses, even for small amounts, unlike contracts»[7].

Therefore, until the publication of the *Requirement of Writing (Scotland) Act* 1995, also in the Scots legal system the use of the writing as a *vestimentum* of the agreement represent a fundamental requisite[8].

2.1. The Scottish legal system (as well as drafted in the institutional writing) was destined to a new restyling: the Acts of Union (passed by English and Scottish Parliaments in 1707), a part from led to the creation of the United Kingdom of Great Britain on 1 may of that year, caused a progressive colonization of the principles of the English common law with the result of separating the Scots rules from their Roman law origin[9].

A drastic opposition to the English colonization took place after the Second World War with the contribute of Thomas Broun Smith who brought «the Scots law of unilateral promise, if not into the forefront, at least out of obscurity»[10]: «I'm convinced that the civilian tradition in Scots – that element which is the most rational, equitable, universal and potentially creative – is in jeopardy at the same time. There are pressures from outside our system and weaknesses within»[11]. In other words, «what Smith did was to illustrate the elegance of the Scottish (…) solution and place it into a comparative context that gave it both pedigree and gravitas. His work take into account the great civil law families of French and German law and particularly addresses Roman-Dutch law and south African law. He explains where Stair's –and Scotland's- solution fits among those respectable traditions, and he demonstrates the superior doctrinal simplicity of a Scottish analysis of the problems posed by the cases»[12].

[6] D.V. SNYDER, *op. cit.*, p. 28 s.
[7] On this point see D. V. SNYDER, *op. cit.*, p. 29.
[8] For an in-depth examination of these aspects see, once again, L. VAGNI, *La promessa in Scozia. Per un percorso di diritto contrattuale europeo*, Milano, 2008, p. 169.
[9] On these profiles see C. MCDIARMID, *Scots law, the turning of the tide*, (1999) *Juridical Rev.* 156, p. 157.
[10] D.V. SNYDER, *op. cit.*, p. 30. On the works of T. B. Smith, see E. REID - D.L. CAREY MILLER, *A mixed legal system in transition: T.B. Smith and the progress of Scots law*, Edinburgh, 2005.
[11] T.B. SMITH, *Strange Gods: crisis of Scots law as civilian system*, in *Studies critical and comparative*, edited by T.B. Smith, Edinburgh, 1962, p. 73.
[12] D.V. SNYDER, *op. cit.*, p. 31 s.

These orientations were confirmed with the works on law of contracts which the *Scottish Law Commission* started in 1973 (exactly under the leadership of Smith)[13]. The final goal was to purify the discipline of the obligations from all the theories which brought it far from the Stair's contribution: «[t]he obligation to which such a promise gives rise […] is unilateral, in that it is the creation of the will of the promisor alone; this is so even though the promised performance is stipulated to be conditional upon some act or abstention by promisee»[14]. Nevertheless, the *Scottish Law Commission* didn't realize the goal to clarify the chaotic relationship between promise and contract in Scots law[15]: «[i]t is less clear whether the offeror is similarly entitled to deny the existence of a contract when the offeree claims that he relied upon the term in the offer to the effect that his silence would be construed as an acceptance, and that he intended his silence to be so regarded»[16].

2.2. Turning the glace on a doctrinal debate, there is still great uncertainty which is increased from the inactivity of the Scottish Parliament (who lost the possibility to conclude the path to recovery of the Stair's contribution began from the *Law Commission*)[17]. More in detail: with the *Requirement of Writing (Scotland) Act* 1995, the Scottish Parliament introduced merely few exceptions to the rule by which the binding power of the simple promise could be admitted only with the requisite of the *vestimentum*. In other words, «where one party has materially relied, the other party may not withdraw if doing so would result in material harm. The lack of formality is forgiven». Therefore, the die is cast: «[a]lthough the statutory language is lengthy and convoluted, this Scottish statute essentially states the principle of promissory estoppel as applied to the problems posed by the statute of frauds»[18].

In this perspective, is important to observe that in the *Requirement of Writing (Scotland) Act* 1995 there are some different shades compared with the discipline of the promissory estoppel in England and in North America: the most significant is the explicit request that the reliance of the promisee is supported by the "knowledge and

[13] On the contribution of T.B. Smith see H.L. MACQUEEN, *Glory with Gloak or the stake with Stair? T. B. Smith and the Scots law of contract,* in *A mixed legal system* cit., p. 138.
[14] See SCOTTISH LAW COMMISSION, *Memorandum n. 36, General introduction*, Edinburgh, 1977, p. 4: «[a]t least since the time of Stair the law of Scotland, diverging in this respect from the laws of most other civil law systems of Western Europe, has not required, before an obligation is recognized as coming into beign, that the promise accepts the benefit of the promise made in favour; it has consequently seen no need, as other system have, to resort to the device of a presumed acceptance by the beneficiary in order to hold the promisor to his undertaking».
[15] L. VAGNI, *op. cit.*, p. 216.
[16] SCOTTISH LAW COMMISSION, *Memorandum n. 36*, cit., p. 47.
[17] On this point see L. VAGNI, *op. cit.*, p. 267 s.
[18] D.V. SNYDER, *op. cit.*, p. 23.

acquiescience" of the promisor[19]. So that, moving from this perception, what is the real meaning of the requirement introduced by the Scottish Parliament? in particular, could it satisfied in the case in which the reliance is foreseeable (as we can see in the Section 90 of the Restatement Second of Contracts) or in the hypothesis in which is «expected and desidered, but the promisor has not been informed that it has actually taken place»[20]?

However, it is necessary to emphasize that to trace an hasty evaluation couldn't be of use. Instead, is important to underline that the inauspicious draft of the rule[21], on one hand, and the rarity of Scottish jurisprudence on this point[22], on the other hand, have reduced considerably its range of incidence.

Finally, is reasonable to conclude that the Scottish Parliament – allowing that the promise devoid of the requisite of the *vestimentum* was recognized from the legal system in the presence of the surrogate of the reliance of the promise – sides with the North America concept of promissory estoppel, but remains far from the implementation of the Stair's principle of the binding power of the promise simple and pure[23].

3. From Scotland to Louisiana, scouring the Atlantic, remain the suggestions of a mixed jurisdiction marked from the 'tangible' and 'singular' codification of the promissory estoppel[24].

Let's start from the analysis of one of the most relevant problem which has characterized the origin of the Civil Code of Louisiana: this codification itself contained the problematic word 'consideration', both in the central definition of cause (the article 1896 of the Civil Code of 1870 provides that for cause of contract "is meant the

[19] See S*ection* 1.(3) of the *Requirement of Writing (Scotland) Act* 1995: «Where a contract, obligation or trust mentioned in subsection (2) (a) above is not constituted in a written document complying with section 2 of this Act, but one of the parties to the contract, a creditor in the obligation or a beneficiary under the trust ("the first person") has acted or refrained from acting in reliance on the contract, obligation or trust with the knowledge and acquiescence of the other party to the contract, the debtor in the obligation or the truster ("the second person") — (a) the second person shall not be entitled to withdraw from the contract, obligation or trust; and (b) the contract, obligation or trust shall not be regarded as invalid, on the ground that it is not so constituted, if the condition set out in subsection (4) is satisfied».

[20] D.V. SNYDER, *op. cit.*, p. 23 s.: «there may be some work for the courts here, and it will be informative to observe the judicial reactions and whether the old stance on knowledge under *rei interventus* doctrine is continued. Certainly the promisor's knowledge and acquiescence would always be relevant to promissory estoppel, if for no other reason than the relevance of injustice».

[21] «The clarity that might be expected of a modern statutory codification of bar with respect to formalities, however, is arguably illusory in the case of the 1995 Act. Certainly the drafting is infelicitous, (…), and its circumlocution raises a number of technical questions of statutory interpretation that could make a real difference in the results of cases»: D.V. SNYDER, *op. cit.*, p. 24.

[22] On this profile see L. VAGNI, *op. cit.*, p. 229.

[23] For an in-depth examination of these aspects see, once again, L. VAGNI, *op. cit.*, p. 230.

[24] For the article 1967 of the Louisiana Code Civil see note 31.

consideration or motive for making it") and in other troublesome palces (for example the *options*)[25]. Although, this concept fomented a fair amount of Civilian angst in Louisiana, efforts were made to reconcile «these mentions of consideration with the indisputabily civilian notion of cause», on the one hand, supposing that the word consideration (as used in the Civile Code) «could be read to be a times synonymous with 'cause', and other times with 'onerous cause'» and, on the other hand, arguing that «the requirement that there be 'any consideration' for an option would be satisfied in virtually every option, given that the parties are interested in buying or selling, particularly since the flexible 'any consideration' therein stipulated formulation replaced the earlier, stricter requirement that the option be purchased for value»[26]. However, the effort produced didn't achieve resounding success. Actually, the Louisiana courts received an more severe approach requiring that «an option be supported by consideration, much as at common law»[27].

This scenario bacame more complicated when «Louisiana did recognize certain kinds of conventional obligations without any consideration at all, as long as formal requirements were met». In other words, Louisiana preserved «the possibility of a valid gratuitous contract, that is, promise of donation», as long as there were the presence of two fundamentals requisites: «[f]irst, the intent had to be expressed in a so-called authentic public act, that is, a writing 'passed before a notary public and two witnesses'. Second, the promise had to be accepted»[28].

A relevant step forward in the direction to assure greater systematic cohesion happened in 1985 with the revision of the Civil Code: first of all, references to consideration were excided. Instead, the revision reactivated the requisite of the cause with an important clarification: «Under this Article, the cause is not consideration»[29]. Coherently, with respect to the options, the revision requires no consideration and «the revision commentary states, with a certain amount of gumption, that the revision does no change the law». Finally, «the reference to consideration in the article on gra-

[25] D.V. SNYDER, *op. cit.*, p. 10 s., observes that the source of the art. 1896 of the Civil Code of 1970 has to be found in the art. 1887 of the French version of 1825: «On entend par la cause du contract (…) la consideration ou le motif qui a engagé à contracter». Moreover, "the French version is considered more authoritative than the English versions of either 1825 or 1870".

[26] D.V. SNYDER, *op. cit.*, at 12. For an in-depth examination of these aspects see S. LITVINOFF, *Obligations*, II, 1975, p. 107.

[27] In this sense see *Goodyear Tire & Rubber Co v. Ruiz*, 367 *So*2*d* 79 (*La Ct App.* 4*th Cir* 1979); *McCarthy v. Magliola*, 331 *So*2*d* 89 (*La Ct App.* 1*st Cir* 1976); *Davis v. Bray*, 191 *So*2*d* 774 (*La Ct App.* 2*d Cir* 1966); *Moresi v. Burleigh*, 127 *So* 624 (*La* 1930) *Gloven v. Abney*, 106 So 735 (*La* 1925);

[28] «This situation obtained at the same time as various mentions of consideration in other contexts muddied the Louisiana waters on whether the courts would follow the doctrine of cause exclusively or would revert to ideas of consideration. The legal situation in Louisiana was decidedly mixed»: D.V. SNYDER, *op. cit.*, p. 12.

[29] See La Civ. Code arts 1966 (requiring cause), 1967 (defining cause) & cmt (c).

tuitous contracts was also removed, without mention, with the usual comment that the revised article does not change the law»[30].

3.1. In light of these premise, is surprising that – in the article 1967 of the Civil Code[31] – the Louisiana State Law Institute showed his will to remove consideration from Louisiana obligations law and also to add promissory estoppel [with a meaning evidently inspired to the model expected in the *Section* 90 del *Restatement (Second) of Contracts*]: «this desire was made explicit in so many words when the Council instructed the reporter to draft an article that would make it quite clear that 'cause' is not 'consideration' in the Common Law sense, and, further, to introduce a concept analogous to detrimental reliance or promissory estoppel»[32].

In this perspective, is important to observe that, «as in the Common Law states, promissory estoppel got its start in late XIX nineteenth-century case law in which the equities of the case seemed to require enforcement of a promise that did not amount to the usual kind of contract»: often courts –in the lack of solution *ad hoc* – enforced promises on grounds that could be rationalized under the terms of promissory estoppel[33]. In particular, one of the most important cases is *Ducote v. Oden* which was decided from the Louisiana Supreme Court[34]. More in detail, the importance of this decision is connected to the observation that –nonetheless represented the emblem of the "rejection of common law doctrine"[35] – it was subjected to change of the orientation wanted from the Louisiana State Law Institute. Beyond the in-depth analysis of the main profiles concerning this litigation[36], is necessary to observe how the Louisiana Supreme Court –after repeating counsel's argument which sounded the very words of the Section 90 of the Restatement (Second) of Contracts — remaked that

[30] D.V. SNYDER, *op. cit.*, p. 13.
[31] See art. 1967: «Cause is the reason why a party obligates himself. A party may be obliged by a promise when he knew or should have known that promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable».
[32] See D.V. SNYDER, *op. cit.*, p. 33. For an in-depth examination of these profiles see *Louisiana State Law Institute, Revision of the Louisiana Civil Code of 1870, Book III – Obligations Revision – Cause*, 3 (20 Apr 1979).
[33] «So in the early Louisiana law, promissory estoppel percolated quietly through the cases, as elsewhere in the country»: D.V. SNYDER, *op. cit.*, p. 13.
[34] *Ducote v. Oden*, 59 *So*2*d* 130 (*La* 1952).
[35] D.V. SNYDER, *op. cit.*, p. 14
[36] On this point see D. V. SNYDER, *op. cit.*, p. 13 s., who observes how «[t]he court emphasized the weakness of the plaintiff's allegation that the promise took place in a casual (…) conversation in the stages of discussion, and even courts which accept the doctrine would likely find that the elemental promise had not been shown».

«[s]uch a theory is unknown to our law and could not be found in the all-important provisions of the Civil Code»[37].

Although it was clear the unmistakable separation from the common law solutions, the dramatic turn of events occurred in 1985 with the revision of the Code Civil: surplisingly the Louisiana State Law Institute stated, on one hand, to remove consideration from Louisiana obligation law and, on the other hand, to trasplant the model of North America promissory estoppel in the Civil Code. Therefore, «the irony is double-faced: not only are common law notions defining cause, positively and negatively, but promissory estoppel is being imported at the same time that chief doctrine that made it necessary is being deported». All that implied a wide effort of interpretation: the *cause*, rather than reveal "the motive for making a promise", should have represented the essential "reason" or, even better, «the reason that makes an obligation enforceable»[38].

Nevertheless, this change of horizon (which, on a systematic ground, involved the removal of the concept of consideration and the achievement of the notion of cause), the revision of 1895 didn't obtain the hoped results: «[i]n the proposed formulation, if the promise is supported by cause, it is for that very reason enforceable, by definition. Cause has been not only turned around, then, but made to serve the same function as consideration. To be clear, it did not employ the same test as consideration — no bargain was to be required — but the function of the doctrine was to be the same. At Common Law, if there is consideration the promise is enforceable, and otherwise not. Under the proposed formulation, if there is cause, the promise is enforceable, and otherwise not. This proposition is a far cry from the original scheme, and while Civilian in its adherence to a cause not identical to bargain, it is being driven by concerns emanating from the Common Law»[39].

This solution was confirmed from the arguments by means of whom the Louisiana State Law Institute justified the introduction of the discipline of promissory estoppel in the Code Civil: I) first of all, this institute «is consonant with the principles in the existing Code, including its Napoleonic general article on delictual obligation»; II) moreover, the implementation of promissory estoppel has been recognized in the case law was supported («[t]his proposition was a bit difficult in light of the Supreme Court of Louisiana decision in *Ducote v. Oden*, as mentioned above, but the reporter identified the undercurrent of cases that applied the principle *sub rosa* both before and after *Ducote*»); and III) finally, "the most remarkable argument", is that *promissory estoppel*, by virtue of his strong connenction both with the «delictual and quasi-

[37] *Ducote v. Oden* cit., p. 132.
[38] D.V. SNYDER, *op. cit.*, p. 34.
[39] See D.V. SNYDER, *op. cit.*, p. 34 s.

delictual obligations» and the *culpa in contraendo*, «is in essence a civil law doctrine anyway»[40].

In this context, in spite of the difficulty to justified the transplant of promissory estoppel in the Louisiana Civil Code (recognizing in his doctrine an ancient heritage of civil law)[41], it is required to underline how this institute «worked in many of the same sorts of jobs associated with promissory estoppel in the rest of the United States». Therefore, differently from the Scottish law (in which, on a pragmatic profile, the discipline of promissory estoppel has not obtained a wide success), promissory estoppel in Louisiana – getting a role of fundamental importance in the law of promise — has been applied in many cases concerning different problems as "option contracts", "irrevocable offers" and, more in general, "precontractual liability"[42].

4. Although the *ratio* of promissory estoppel follows remarkably different paths in the mixed legal systems we have briefly examined, there are intriguing points of proximity.

As previously mentioned, the Scots law of promise, moving from Stair's intuitions, came to envision the binding nature of the simple and pure promise: «[t]hat was his ground, and not the more delictual notion of reliance». Yet, another approach as-

[40] On this point see, more in detail, D.V. SNYDER, *op. cit.*, p. 35 s., who observes how promissory estoppel is linked «to the binding force of a unilateral declaration of will, the very same idea observed in Scotland, and most clearly in Stair. The crowning glory, though, goes to the assertion that estoppel is descendent from the Roman law doctrine of *venire contra factum proprium*. The assertion that promissory estoppel is not a common law invention after all, and is instead Roman and thus quintessentially of the civil law, is no less remarkable for its dubiety. *Venire contra factum proprium* is more generally viewed as being based on facts rather than executory promises, and is therefore closer to equitable estoppel (…) rather than promissory estoppel. Moreover, *venire contra factum proprium* is probably better attributed to the *ius commune*, and perhaps Bartolus originally, rather than Rome, as earlier research has shown. But these are scholastic points. The impetus came from the American Common Law and Restatement. The revision draft reproduces section 90, not a text from the Digest or from Bartolus, neither of which is very clearly about promissory estoppel anyway».

[41] «This view was certainly not shared by all participants in the legislative process. The extent to which promissory estoppel, with its delictual flavour, could be compatible with any civilian conception of cause seems to have been especially troublesome»: J. DU PLESSIS, *Common law influences on the law of contract and unjustified enrichment in some mixed legal systems*,78 *Tul. L. Rev.* 218, 228 (2003).

[42] See *Lafayette City-Parish Consol Govt*, 907 SO 2d 37 (La. 2005); *Baker v. LSU Health Scis Ctr, Inst of Professional Education*, 889 SO 2d 1178 (La. Ct. App. 2004); *Hibernia Nat'l Bank v. Antonini*, 862 SO 2d 331 (La. Ct. App. 2003); *Holt v. Bethany Land Co*, 843 SO 2d 606 (La. Ct. App. 2003); *Dan Rhodes Enters v. City of Lake Charles*, 857 SO 2d 1256 (La. Ct. App. 2003); *Jesco Constr Corp. v. Nationsbank Corp*, 830 SO 2d 989 (La. Ct. App. 2002) *Magic Moments Pizza, Inc v. Louisiana Restaurant Assn*, 819 SO 2d 1146 (La. Ct. App. 2002); *Haring v. Stinson* 756 SO 2d 1201 (La. 2000).
On these profiles see S.W. DE LONG, *The new requirement of enforcement reliance in commercial promissory estoppel: section 90 as catch-22*, 1997 *Wis L. Rev.* 943; R.A. HILLMAN, *Questioning the new consensus on promissory estoppel: an empirical and theoretical study*, (1998) *Colum. L. Rev.* 580; R.E. BARNETT, *The death of reliance*, (1996) 46 *J. Legal Educ.* 518; D.A. FARBER - J.H. MATHESON, *op. cit.*, p. 903; E. YORIO – S. THEL, *op. cit.*, p. 111.

sumes that «there could be liability even in the absence of a promise if a resolution (as opposed to promise) be holden forth to assure others»[43]. For example, in the South African legal system, where (as well as in the Scots law) the doctrine of consideration is ignored (and few space is allowed to the concept of cause), it has been necessary to elaborate 'mechanisms' aiming to trigger liability despite the lack of subjective consent (when justifiable reliance has been created in the counterparty).

Therefore, it is no surprise that the Louisiana solution is diametrically opposed to the path choose in Scotland. Though the promise fulfills a crucial role and the obligation is based on individual consensus, the option seems unmistakably delictual: «Loiusiana, after all, took its law not from the lawyers of the Church, concernend for the soul of the promisor, but from the Restatement of the American Common Law, concernend with equities that had to be recognized when the requirement of consideration or the disappearance of the seal visited injustice on relying promises»[44].

In light of the above, it is reasonable to conclude that in Louisiana the reliance (as long as reasonable and detrimental) fills an essential role: «the element of tort in Louisiana law is quite strong in comparative terms».

Nonetheless, the common need to overtake the difficulties connected to the case in which (in absence of a legitimate contract) the promisor's behavior has induced the justified reliance of the promise, has encouraged these two mixed legal system to adopt parallel outcomes (if considered from the standpoint of effectiveness) in the same time frame: «[t]oo much can be made of similar moves at similar times, and cries of convergence are sometimes too swiftly voiced. The fact of the moves and their timing, though, should at least be recorded, and some of the implications considered»[45].

[43] D.V. SNYDER, *op. cit.*, p. 54 s.
[44] D.V. SNYDER, *op. cit.*, p. 55.
[45] D.V. SNYDER, *op. cit.*, p. 56.