II. Things

III. Possession

IV. Modes of acquiring real rights based on possession
   A. Occupancy

   B. Quasi-occupancy

   C. Acquisitive prescription

5. Constitutive elements of acquisitive prescription
   a. Elements common to all modes of acquisitive prescription

   b. Elements peculiar to specific modes of acquisitive prescription
      1) Immovables
         a) Unabridged acquisitive prescription
            What, if any, unique or distinctive elements does unabridged acquisitive prescription of immovables have? *See CC art. 3486.*

         b) Abridged acquisitive prescription
            What about abridged acquisitive prescription of immovables? Does it have any unique or distinctive elements? What are they? *See CC arts. 3473 & 3475.* Is the list of distinctive elements found in these articles complete?

            (1) Just title
               (a) Juridical act
                  What is a juridical act? [Ouch: Traditions flashback!]

                     [1] Definition by exposition
                     Read CC art. 3483 cmt. (b) & Vocabulaire Juridique: (“Juridical act”: "A juridical operation consisting of a manifestation of the will (public or private, unilateral, multilateral, or collective), having for its object and its effect to produce a juridical consequence (the establishment of a rule, the modification of a juridical situation, the creation of a right, etc.")"

                     [2] Definition by example
                     Read CC art. 3483, sent. 1.

               (b) A real title
                  PH 144. Pascal agrees to sell and Clodice agrees to buy a certain tract of swampland. Before they close the deal, the two "walk the boundaries" of the tract that both believe to be the object of the sale. Part of that land lies in Section 1 and part in Section 2 of a certain range and township. The property description set forth in act of sale, however, includes only the land that lies in Section 1. The deal is closed and Clodice takes possession of "the land" on February 18, 1986. Today, February 23, 1996, Théophile, claiming to be the true owner of the land in Section 2, files a petitory action against her. Can Clodice, in her defense, contend that she has acquired ownership of that land through abridged acquisitive prescription? Why or why not? *See CC art. art. 3483 cmt. (e) (re “putative title”); Gabriel Marty & Pierre Raynaud, Droit Civil: Les Biens n° 200, at 257 (Patrice Jourdain rev., 3d ed., 1995) (“a putative title, that is to say, one that exists only in the mind of the possessor”).

               (c) A translative title
                  [1] Definition
                  Read CC art. cmt. (b). What does “translative” mean in this context?

                  [2] Distinctions
                     [a] Declarative acts
PH 145. Pascal, who acquired title to Belle Terre from Clodice, dies intestate, survived by two children, Ti-Boy and Tite-Fille. The children promptly initiate succession proceedings, at the conclusion of which the probate court issues a "judgment of possession," recognizing them as the co-owners of Belle Terre. Does that judgment give the children a just title to Belle Terre? Why or why not? If not, does that necessarily mean that Ti-Boy and Tite-Fille don't have just title to Belle Terre? Explain. See CC art. 3483 cmt. (b).

PH 146. The same as PH 145, except that Ti-Boy and Tite-Fille, after getting their judgment of possession, initiate partition proceedings to split Belle Terre between them. At the conclusion of the proceedings, the court issues a judgment awarding the western half to Ti-Boy and the eastern half to Tite-Fille. Does the partition judgment give each child a just title to his half of the estate? Why or why not? See CC art. 3483 cmt. (b).

[b] Acts involving personal rights

PH 147. Pascal leases to Jean Sot the "back forty" acres of Belle Terre for 30 years. Ten years and one day later, Jean Sot, while sipping vodka at the local tavern, brags to those within earshot that he's just acquired ownership of 40 acres of Pascal's land through acquisitive prescription. What do you think of his claim? Why? See CC art. 3483 cmt. (b). Isn't there an even more fundamental problem here than that signaled by cmt. (b)? What is it?

[c] Acts subject to suspensive conditions

Read CC art. 1767; then read Trahan, Supp, 136-38 (re conditional titles).

PH 148 (based on Jeanneney v. Devecey, BULL. CIV. III n° 417, at 317-18 (French cour de cassation). Let me take you back in time to the nadir of the Great Depression. The little town of Longleaf, Louisiana, desperate to provide housing for its now sizeable homeless population, decides to make a deal with the devil. Whose the devil? The Jeanneney Lumber Company, which operates a nearby sawmill and employs many of the town's homeless. What's the object of the deal? A pine-covered 40-acre tract of land that Longleaf owns and that Jeanneney has long coveted. What's the deal? That Longleaf will sell the tract to the company, provided that the company builds a multi-family housing unit for its workers and their families on part of the tract. The act of sale, which is dated September 3, 1933, contains the following provision: "Title in the Property shall not vest in Buyer unless Buyer constructs and opens a 50-family housing unit on the Property within one year of the date of this agreement." The company promptly takes possession of the land and, within a few days, starts clear-cutting it. But the company never manages to complete the multi-family housing unit. Twenty-nine years later, in 1963, A.J. "Smiley" Carruth shows up, claiming to be the true owner of the 40-acre tract. When the company refuses his demand to vacate the property, he files a petitory action against it. In its defense, the company argues, among other things, that it has acquired ownership of the land via abridged acquisitive prescription. What result would you predict? Why?

PH 149. The same as PH 148, except that the act of sale also contains the following clause: "Title to the land shall immediately revert to Seller in the event that Buyer closes, demolishes, or destroys the 50-family housing unit." This time, the company immediately builds the housing unit. Further, the housing unit is still open and operating when Smiley files his petitory action in 1963. What result would you predict now? Why?

[d] Acts invalid in form

PH 149. Olide, motivated by his deep love and affection for Clodice, decides to give her 10 acres of his estate, Terre Puante. Toward that end, he summons Clodice to a private meeting at his home. In her presence, he drafts and signs a document entitled "Act of Donation," then hands it to her. The act, you may assume, contains an adequate description of the affected property. Does Clodice have just title to the 10-acre tract? Why or why not? See CC arts. 1536 & 1539.

PH 150. The same as PH 149, except that Clodice, after leaving Olide's shack, heads over to Jean Sot's home on Terre Lourde. Representing that Olide has just donated to her a 10-acre stretch of Terre Puante, she offers to sell it to him for $100/acre, for a total of $1000. Jean Sot agrees. He then draws up a written act of sale, one that adequately describes the affected property, etc., and promptly files it in the public records. Does Jean Sot have a just title? Why or why not? See Clayton v. Rickerson (La. 1926) & Note [Yiannopoulos, Text, 462-64].

[e] Other absolutely null acts

Read Trahan, Supp, 138-42 (re null titles).
PH 151. Olide and Clodice, who've been hot for each for years, decide to give in to their feelings and shack up together. Because both have had disastrous experiences with cohabitation in the past, they decide to protect themselves by spelling out their rights vis-a-vis each other in a written pre-shack agreement. By the terms of that agreement, they promise, in the words of the comments to the Civil Code article 98, to "submit to each other's reasonable and normal sexual desires." Further, each gives to the other certain gifts, specifically, Olide grants Clodice the part of his estate, Terre Puante, that borders on a certain stream, while Clodice grants Olide 5 acres of timber-covered land within her estate, Terre Facile. Twelve years later, Pascal, claiming to own all of Terre Punate, including the part that Olide had transferred to Clodice, orders her off the property. She refuses, claiming abridged acquisitive prescription. What result would you predict? Why or why not? See CC art. 3483 cmt. (c), ¶ 3; CC art. 2030.

PH 152. Willy, the leftist from Arkansas who took over Olide's homestead out in the Louisiana backwoods, harvests Olide's marijuana crop. After it dries, he smokes it—all of it—in a single afternoon—and this time he even inhales. Along about 6:00 pm, while Willy's still flying high as a kite, a Russian exchange student named Boris, himself notorious for getting blasted on cheap vodka, happens by and offers to buy the property. After settling on a price, the two men draw up an act of sale, one that adequately describes the property. Boris writes Willy a check, Willy leaves, and Boris moves in. Twelve years later, Pascal shows up and, claiming to be the true owner, orders Boris off the place. Can Boris claim abridged acquisitive prescription? Why or why not? See CC arts. 1918, 1919, 2031.

PH 153. Clodice dies, survived by her daughter, Lil-Fille. The court appoints Olide to serve as the administrator of Clodice's estate. In that capacity, he sells Clodice's estate, Terre Facile, to himself in his personal capacity for fair market value, but without court approval. Ten years come and go. Can Olide claim that he is now the owner of Terre Facile thanks to abridged acquisitive prescription? Why or why not? See CCivProc art. 3194 ("A succession representative cannot in his personal capacity . . . make any contracts with the succession of which he is a representative. He cannot acquire any property of the succession . . . . All contracts prohibited by this article are voidable . . . .") & comment (b) thereto ("The contracts prohibited by Art. 3194 do not preclude ratification . . . .").

PH 154. Same as PH 151, i.e., that in which Clodice and Olide exchanged parts of their respective estates pursuant to their pre-shack agreement. Suppose that Clodice, the day after she and Olide sign the agreement, sells her new stake in Terre Puante to Jean Sot. Twelve years later, Pascal, claiming to be the true owner of Terre Puante, orders Jean Sot off the property. Does Jean Sot have just title? Why or why not?

(e) A written title

PH 155. Jean Sot, while out walking in the bayou country, comes across Olide, who is busy trying to set a marsh on fire. Assuming that Olide is the owner, Jean Sot asks him whether he'd be willing to sell the marsh and, if so, for how much. Olide says, "Sure, for $1000." Whereupon Jean Sot pulls $1000 cash from his wallet and hands it to Olide. Olide takes the money, the two shake hands, Olide leaves for Bolivia, and Jean Sot moves in. Twelve years later, Pascal, claiming to be the true owner of the marsh, orders Jean Sot to leave. Does Jean Sot have just title? Why or why not? See CC art. 3483 & cmt. (c).

(f) A recorded title

PH 156. The same as PH 155, except as follows. Olide, upon taking Jean Sot's money, writes out a document entitled "Act of Sale," one that adequately describes the marsh. Jean Sot then takes the act and, to make sure nothing happens to it, squirrels it away in his safety deposit box at Jambalaya Bank & Trust. What result would you predict now? Why? See CC art. 3483 & cmt. (d).

PH 157. The same as PH 156. On April 1, 1987, three years to the day after the date of the sale, Jean Sot learns from a slick local attorney, Edward Edwins, that acts affecting immovable property do not affect third persons unless and until they are filed in the public records. Jean Sot, no fool he, immediately retrieves his act of sale from the bank, takes it down to the courthouse, and files the act in the conveyance records. As before, Pascal shows up twelve years after the date of the sale, i.e., on April 1, 1996, claiming to be the owner and demanding that Jean Sot get out. What result would you predict now? Why?

Now, a little test of your ability to think. PH 157.1. Olide, representing himself to be the owner of a certain tract of land, sells that land to X. The sale is evidenced by a writing, signed by both of the parties; this writing is filed into the appropriate public records. X then dies, survived only by his two children, Y
and Z.

First scenario. – X, by testament, leaves “the tract of land” to Y and “all the rest of my property to Z.” Y and X then get a “judgment of possession” that purports to “put[ ] them into possession” (that’s how a standard judgment of possession reads) of X’s property, Y, into possession of the tract of land and X into possession of all the rest. Next, Y and Z then file the judgment of possession, together with the testament, into the appropriate public records. After that, Y exercises corpus on the tract of land. Question: Does Y have a “just title” to the tract of land? If so, what, precisely, is it? It can’t be the judgment of possession, can it? Is it the “particular legacy” in the testament? Wouldn’t that be sufficient? To be sure, the filing of the judgment of possession doesn’t “add” anything to the filing of the particular legacy. But does it “take away” anything?

Second scenario. – X dies intestate. Y and X then get a “judgment of possession” that purports to “put[ ] them into possession” (that’s how a standard judgment of possession reads) of all of X’s property, in indivision (co-ownership). Next, Y and Z then file the judgment of possession, into the appropriate public records. After that, Y and Z exercise corpus on the tract of land. Question: Does Y have a “just title” to his ½ interest in the tract of land? If so, what, precisely, is it? It can’t be the judgment of possession, can it? But if not that, then what else? In this scenario, there’s no legacy.

Third scenario. – X, by testament, leaves “all of my property to Y and Z.” Y and X then get a “judgment of possession” that purports to “put[ ] them into possession” (that’s how a standard judgment of possession reads) of all of X’s property, in indivision (co-ownership). Next, Y and Z then file the judgment of possession, together with the testament, into the appropriate public records. After that, Y and Z exercise corpus on the tract of land. Question: Does Y have a “just title” to his ½ interest in the tract of land? If so, what, precisely, is it? It can’t be the judgment of possession, can it? But if not that, then what else? Is it the “universal legacy” in the testament?

IMPORTANT NOTE: There are several morals to this story, the most important of which is this: Though a judgment of possession does not provide a just title, neither does it obliterate a just title that might otherwise be provided by some juridical act that happens to be associated with it, such as a legacy. In short, a judgment of possession neither adds to nor subtracts from whatever just title might otherwise be present.

(2) Good faith

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