LOUISIANA CIVIL LAW PROPERTY
Professor Trahan

Course Outline (cont’d): 13

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
            b) Abridged acquisitive prescription
               (1) Just title

   (2) Good faith
      Read Planiol, nn° 2667-2669, in Yiannopoulos, Text, at 364-65.
      (a) Substantive matters

         [1] Definition
         What is "good faith" for purposes of acquisitive prescription? See CC art. 3480.
         PH 158. While driving through the bayou country one day, Clodice comes upon Olide, who's out in
         a marsh trying to set it on fire. She stops and hails him. When he steps up to her car, she asks, "Do you own
         this marsh?" He replies, "No. It belongs to my boss, Pascal." She then asks, "Will you sell it to me?"
         "Well," he stammers, "I don't have that authority." She persists: "I'll make it worth your while." Finally,
         he relents and, for a handsome price, sells her the marsh. Is Clodice in good faith? Why or why not?

         PH 159. Pascal, the record title owner of Belle Terre, dies intestate, survived only by Ti-Boy, his 13-
         year old son. A few months later, Olide, sensing a rare business opportunity, approaches Ti-Boy and offers
         to buy Belle Terre from him for $10,000, a bargain-basement price. Ti-Boy, not knowing any better, agrees.
         Is Olide in good faith? Why or why not? See CC arts. 1918 & 1919; Planiol n° 2667, in Yiannopoulos, Text,
         at 364-65; Trahan, Supp, 138-42; CC art. 3452 (1870) ("The possessor in bad faith is he who possesses as
         master, but who assumes this quality, when he well knows that he has no title to the thing, or that his title
         is vicious and defective.")

         Is good faith "subjective" or "objective"? See CC arts. 3475, 3480 & 3481; CC art. 3480 cmt. (c).
         What do those terms mean in this context, anyway?

         PH 160. Jean Sot, passing by Belle Terre, stops to watch several men at work. As he watches, one
         man, Pascal, barks out orders to another, Olide, e.g., tote that barge, bale that hay, burn that marsh, after each
         of which Olide responds, "Right away, boss." As short while later, after Pascal has left, Jean Sot walks up
         to Olide and ask, "Do you own this land?" With a smile Olide responds, "Why sure I do." Any other person
         would have inferred from the circumstances that Olide was lying or, at the very least, that Olide's claim was
         highly suspicious. But not Jean Sot, who has an IQ of about 75. Is Jean Sot in good faith? Why or why not?
         Subjectively? Yes. Objectively? No. See the difference?

         PH 161. Jean Sot approaches Olide about the possibility of buying from him a certain tract of land.
As Jean Sot is well aware, the tract at one time belonged to the community of acquest and gains between Olide and Clodice, his former wife. Jean Sot also knows that Olide and Clodice were recently been divorced and, further, that the court allocated the tract to Olide. But Jean Sot, a lapsed Catholic, believes that the marriage cannot be considered legally undone and, consequently, ownership of the land will not vest in Olide unless and until the church annuls the marriage. As Jean Sot knows, that hasn't happened. At any rate, Jean Sot and Olide strike a deal and Jean Sot, with title in hand, takes possession of the tract. Is Jean Sot in good faith? Why or why not? See CC art. 3480; Board of Comm'r's v. S. D. Hunter Found., 354 So.2d 156, 161 (La. 1978) (“Unlike moral good faith or moral bad faith, which is solely subjective, legal good faith or legal bad faith is both subjective and objective.”).


Read CC art. 3482 & Trahan, Supp, 142 (re time at which good faith is required).

PH 162. After Clodice, the owner and possessor of Terre Facile, offers to sell Pascal a few acres out of her estate, Pascal hires a seasoned property attorney, Edward Edwins, to perform a title search, with a view to determining whether Clodice has merchantable title. The title search reveals nothing out of order. Satisfied that Clodice is the true owner, Pascal accepts her offer and the two close the deal. The date is March 1, 1985. One month later, on April 1, 1985, Pascal takes control of the tract, which he devotes to cattle grazing. One month after that, on May 1, 1985, Pascal receives some disturbing news: Clodice, it seems, had sold the same tract of land to Olide just a few months before she had sold it to him. When Pascal investigates the matter, he learns that the sale from Clodice to Olide had, in fact, taken place and that Olide had promptly submitted his act of sale to the clerk of court for filing, but that the clerk had misfiled it. That's why it hadn't turned up in the title search. Years pass. On April 2, 1995, Olide files a petitory action against Pascal, seeking to have him expelled from the property. In his defense, Pascal claims abridged acquisitive prescription. What result? Why? See CC art. 3482.

PH 163. The same as PH 162, except that, this time, Olide, unbeknownst to Pascal, immediately takes physical control of the tract on February 1, 1985, and that Pascal gets word of the prior deal between Clodice and Olide on March 15, 1985. Here, then, is the new time line: (i) date of sale by Clodice to Olide: February 1, 1985; (ii) date Olide takes control: February 1, 1985; (iii) date of sale by Clodice to Pascal: March 1, 1985; (iv) date Pascal loses good faith: March 15, 1985; (ii) date Pascal usurps physical control from Olide: April 1, 1985; (v) date Olide sues Pascal: April 2, 1995. What result now? Why? See CC art. 3482 cmt. (b).

PH 164. The same as PH 162, except as follows. Pascal hears rumors of a prior sale of the tract by Clodice to Olide, rumors he considers to be credible, before he buys the tract from Clodice. Meanwhile, unbeknownst to Pascal or Clodice, Théophile takes possession of the tract with the intent to possess it as owner. Pascal and Clodice then close the deal, as before, on March 1, 1985. A few days later, Pascal, who has still not taken control of the tract, launches an investigation into the rumors he'd heard about a prior sale by Clodice to Olide. On March 15, 1985, he concludes, correctly as it turns out, that those rumors were unfounded: there was no such prior sale. Then, on April 1, 1985, Pascal takes control of the tract, usurping Théophile's possession. What result now? Why?

(b) Procedural matters

[1] The presumption of good faith

Who bears the burden of proof on the issue of good faith—the person who claims abridged acquisitive prescription or the person who opposes that claim? See CC art. 3481, sent.1, & cmt. (b).

[2] Evidence of bad faith

How does the opponent of the putative possessor carry that burden or, in other words, rebut the presumption? See CC art. 3481, sent. 3.

[a] Errors of fact

1° In general

Does proof of an "error of fact," i.e., a mistake about the pertinent facts, defeat good faith? See CC art.
2° Special problems
   a° Quitclaim deeds


2° Clouds on title reflected in the public records

Read & brief Phillips v. Parker (La. 1986) [Yiannopoulos, Text, 368-74].

[2] Errors of law

Read & brief Lacour v. Sanders (La. App. 1983) [Yiannopoulos, Text, 377-81]; read Symeonides, Error of Law & Error of Fact [Yiannopoulos, Text, 381-86].

(3) Delay
   (a) Length

What’s the length of the delay? See CC arts. 3473 & 3475.
   (b) Tacking

Review Planiol, ELEMENTARY TREATISE, nn° 2673-2678, in Yiannopoulos, Text, 392-94.

NOTE: The English translation of Planiol’s work that’s reproduced for you in Yiannopoulos’ text (the Louisiana State Law Institute translation) is, at least at one point, misleading, if not down right wrong. The fifth paragraph in the excerpt from Planiol’s treatise should be translated as follows:

Assuming that the preceding possessor was himself in the process of prescribing, several combinations may arise. If both of the possessors were entitled to prescribe within from ten to twenty years, the new possessor would certainly have a right to join the two possessions [so as to satisfy the delay requirement of ten to twenty years]. The same result [i.e., permissibility of junction] would obtain if neither of the possessors was entitled to prescribe within these terms [i.e., by ten to twenty years]. For one possessor [the preceding possessor] as for the other [the new possessor], thirty-year prescription alone is possible. In these two cases [i.e., (i) where both possessors can claim the prescription of ten to twenty years and (ii) where both possessors can claim only the prescription of thirty years], the two successive possessions of the successor and his author may be added together. They are of the same nature and of the same quality.

Read & brief Bartlett v. Calhoun (La. 1982) [Yiannopoulos, Text, 397-401]. Note that the Bartlett court, which justified its conclusion, in part, on the authority of Planiol’s work, reproduced the Louisiana State Law Institution’s translation of that work without modification, specifically, without correcting the defect in the English translation of that work. Though this “oversight” by the court was of no moment in Bartlett (given the facts of the case, the court had no occasion to apply the principle that seems to be stated in the mistranslation), it could be of consequence in other cases. So, watch out!

CAVEAT: The French authors whom the Bartlett court quotes state that a particular successor (unlike a universal successor) “commences a new possession,” one that is “separate and distinct” from the possession of his ancestor in title. Great care must be taken in interpreting this proposition, lest it be misunderstood. Whatever else it means, it does not mean that the particular successor must himself exercise corpus. To the contrary, by virtue of the principle of “derivative corpus,” which we learned sometime earlier, the effects of any acts of corpus performed by the ancestor-in-title are always and in every case passed on to the successor, regardless whether the succession between them is universal or particular. The real – and the only – significance of the “new possession” proposition, then, is that a particular successor, if he wants to tack his ancestor’s time onto his own, must at a minimum and in all cases himself have animus domini and, if he wants to claim the benefits of abridged acquisitive prescription, must also himself be in good faith and have

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1 You **MUST** know this case better than the back of your hand!
just title.

2) Movables

Skipped.

IV. Ownership

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