I. Introduction: the domain of property law

A. Property

What is "property"?

1. Common connotations
   a. Things, i.e., physical objects
   b. Rights related to things

2. Technical connotations

How is the term used in legal speech?
   a. Things
      1) Definition & examples
      2) Exemplary CC arts. in which the term "property" is used in this sense
      See CC arts. 535 & 642.
   b. Rights related to things
      1) Broad sense: patrimonial rights
         a) Definition
         b) Exemplary CC arts. in which the term "property" is used in this sense
         See CC arts. 3182-3183.
         c) Examples of "property" in this sense
      2) Narrow sense: real rights
         a) Definition
         1] By exposition
            What's a "real right"? See CC art. 476 cmt. (b) & art. 1763 cmt. (b).
               a] Direct and immediate authority over a thing
               What do we mean when we say that real rights confer direct and immediate authority over a thing?
               b] Opposability to the world
               What do we mean when we say that real rights are held against the world?
               2] By contrast
               What is the counterpart of "real rights"? In other words, when one subtracts "real rights" from the larger category of "patrimonial rights," what's left?
               a] Definition of "obligation"
               What is a credit right (the right entailed in an "obligation")? See CC art. 476 cmt. (b) & art. 1756.
               What are some examples?
         b] Differences between real rights & personal rights
         How does a personal right differ from a real right?
            1] Connection with a thing
            2] Opposability
            3] Pursuit
         b] Varieties
            1] Principal real rights
               a] Definition
               b] Examples
            2] Accessory real rights

B. Property law: definition & scope

II. Things

A. Definition (see above)

B. Classification
   1) Analysis of CC art. 448

Is the typology of things set out in CC art. 448 complete? If not, what's missing?
2) Varieties
   a) Common, public & private things
      1) Common & noncommon things
         See Yiannopoulos, Treatise Excerpts, in Yiannopoulos, Text, 9-11; Trahan, Supp, 2-3.
         a] Definitions & illustrations
         What are "common" things? Examples? See CC art. 449.
         b] Significance: susceptibility of ownership
         What is the principal effect of classifying a particular thing as "common"?
      2) Public v. private things
         a] Explication
            1} Definitions
            Read CC arts. 450 & 453.
            a} Public things
               1/ Preliminary investigation: public v. private capacity
               What’s the difference between “public capacity” and “private capacity”? How is one to determine in which of these capacities the state or one of its political subdivisions holds a particular thing? See CC art. 450;
               2/ Subdivision: public things as a matter of law (necessarily public things) v. public things as a matter of fact (adventitiously public things)
               a/ Definitions
               1* Public things as a matter of law (necessarily public things)
               2* Public things as a matter of fact (adventitiously public things)
               b/ Criteria of distinction
               1* Public things as a matter of law (necessarily public things)
               2* Public things as a matter of fact (adventitiously public things)
               How does one identify a thing that’s public as a matter of law (necessarily public)?
               2* Public things as a matter of fact (adventitiously public)
               How does one identify a thing that’s public as a matter of fact (adventitiously public)? See Landry v. Council of the Parish of East Baton Rouge, 220 So. 2d 795 (La. App. 1st Cir. 1969); Town of Broussard v. Broussard Volunteer Fire Dept., 357 So.2d 25(La. App. 3d Cir. 1978) [handout]; City of New Iberia v. Romero, 391 So.2d 548 (La. App. 3 Cir. 1980) [handout].
               c/ Illustrations
               1* Public things as a matter of law (necessarily public things)
               Read CC art. 450, par. 2 & com. (g), par. 2; 451-452; & 455-460.
               2* Public things as a matter of fact (adventitiously public things)
               Read CC art. 450, par. 3 & com. (e), par. 2.
            b} Private things
               1/ Of private persons
               What are some examples of private things of individuals or other private persons?
               2/ Of the state and/or its political subdivisions
               What things might qualify as the "private" things of the state or a political subdivision, that is, as things that the state or a political subdivision owns in its private capacity? See CC art. 453 cmt. (b).
               b] Significance of the classifications
               1} Significance of the distinction between public and private things: susceptibility of private ownership
Why do we care whether something is public or private?

a) Ease of disposal

b) Vulnerability to acquisitive prescription

c) Susceptibility of (adverse) possession

PH 1. Olide pitches a tent on the riverwalk and, at same time, closes off an area on the inside of the Centroplex Arena. At both spots he posts signs that read "This here spot belongs to Olide. No trespassin'." No one disturbs him for a year. Then Mayor orders the police to throw Olide out. Olide, however, claims he's now acquired a "possessorly interest," namely, right to possess, both the riverwalk and his corner of the Centroplex Arena. What result? Is the result the same for both pieces of property? Why or why not? See CC arts. 3421 & 3422 & Landry, Broussard, Romero (supra).

2) Significance of the distinction between things public as a matter of law (necessarily public) and as a matter of fact (adventitiously public)

Why do we care whether a given "public" thing is public as matter of law (necessarily) or as a matter of fact (adventitiously)?

PH 2. By a strange coincidence, officials in the Department of Natural Resources, which oversees the state's interests in inland rivers, streams, & bayous, and officials in the Department of Transportation & Development, decide its time for the state to unload some of its property. And so the DNR folks decide to sell off a stretch of land under Bayou Manchac, just south of Baton Rouge, while the DOTD folks decide to sell off a stretch of land that lies beneath a small part of a State Highway 1 near Brusly that was recently abandoned. X, who's interested in buying both parcels, has come to you, her attorney, asking you if she should put out an offer on either or both. In particular, what she wants to know is whether DNR or DOTD, as the case might be, presently has the power to dispose of the thing that it has put up for sale. What will you tell her? Why?

b) Corporeal & incorporeal things

See Trahan, Supp, 4-6.

1] Definitions

a] Corporeals

What are "corporeal" things? See CC art. 461, par. 1.

b] Incorporeals

What are "incorporeal" things? See CC art. 461, par. 2.

2] Illustrations

a] Corporeals

Examples?

b] Incorporeals

Examples? See CC art. 461, ¶ 2.

* Complication

How should we classify things that, according to modern physics, have some sort of physical existence (i.e., exist in time and space and are susceptible of detection, measurement, etc.), but whose physical existence is not readily perceptible by the unaided human senses, e.g., energy (electrical, nuclear, etc.), power, radioactivity? See CC art. 461 cmt. (b).

3] Significance

Why do we care whether something is a corporeal or an incorporeal?

a] In property law

1} Objects of real rights

See CC arts. 630, 639, 646.

2} Objects of possession

See CC art. 3421.

b] Outside property law

1} Donations: formalities

PH 3. Clodice had a favorite cousin named Théophile on whom she liked to bestow great favors. Once Clodice directed Théophile to withdraw some funds from her (Clodice’s) savings account and to "keep them.” Later Clodice bought some bearer bonds (bonds payable to "Bearer") and then gave them to
Théophile to keep. Then Clodice died. In due time, Clodice's succession was opened. In the inventory of
the assets of Clodice's estate, the administrator included, among other things, the savings account funds and
the bearer bonds. Théophile filed a motion to traverse the inventory, arguing that it ought not to include the
account funds or the bonds. His argument? Clodice, before her death, had validly donated both of those
assets to Théophile, as provided for in CC art. 1539. What result? Why? See CC arts. 1536, 1539, & 473;
Succession of Miller, 405 So. 2d 812 (La. 1981) (rehearing) [Yiannopoulos, Text, 181-84 (omit the dissent)].

2) Sales: manner of delivery

See CC arts. 2477 & 2481.

c) Consumables & nonconsumables

See Yiannopoulos, Treatise §§ 5 & 6, in Yiannopoulos, Text, 653-55; Trahan, Supp, 6-7.

1) Definitions

a) Consumables

What are consumables things? See CC art. 536.

b) Nonconsumables

What are nonconsumables? See CC art. 537.

2) Illustrations

a) Consumables

Examples? See CC art. 536.

b) Nonconsumables

Examples? See CC art. 537.

3) Nature of the criterion for distinction

Is the criterion for distinguishing consumable from non-consumable things objective or subjective? In
other words, does the criterion take into account only the objective characteristics of the thing or, rather, only
the uses to which the parties intend to put the thing or some combination of the two?

PH 4. Suppose that Papère puts together a collection of rare early US-minted coins, which he displays
in a glass-covered display case. When Papère dies, the coin collection passes to his son, Pascal, subject to
a usufruct in favor of Papère's surviving spouse, Mamère. Now, what kind of thing is this collection? Can't
you make good arguments both ways? Which is right? Why?

4) Significance

a) In property law: nature & effects of usufruct

See CC arts. 538 and 539.

b) In obligations: contracts: loans

See CC arts. 2891, 2893, 2910.

d) Fungibles & nonfungibles

Skipped.

e) Divisible & indivisible

Skipped.

f) Single & composite


1) Definitions

a) Single things

What's a single thing?

b) Composite (complex) things

What's a composite thing? What's a "component part"? How are the two related?

2) Illustrations

a) Single things

Examples?

b) Composite things

Examples?

What are the component parts of a piece of furniture? A car? A ship? Now, how about the component
parts of a developed piece of land? See CC arts. 462, 463, 465, 467. Or of a building? See CC art. 466.

3) Significance: property & obligations law: ownership, sales & mortgage:

transfer & encumbrance
Why would anyone care whether a particular thing is single or composite? See CC art. 469.

PH 6. After buying a parcel of ground, Olide builds a house on it. And in that house, he puts a chandelier. Later, finding himself in need of cash, he goes to Cajun Bank, where he borrows $100,000. As collateral, he gives the bank a mortgage on “the land.” Time passes and Olide defaults. Fearful that the bank will soon foreclose on the land, Olide begins to take stuff out of the house, including the chandelier. When the bank learns of this, it brings an action against Olide for an injunction, directing him to restore the chandelier. Their theory, of course, is that the chandelier is subject to the mortgage. In reply, Olide says, “Ils ont pas raison.” ¹ The contract says ‘the land.’ So only the land is subject to the mortgage.” Who’s right? Why?

g) Principal & accessory

¹ Cajun for “dey ah wrong.”