INSTRUCTIONS

1. This is something between a closed-book and an open-book exam. Aside from the test packet itself, you may consult one and only one book, i.e., the Appendix.

2. Before you begin reading this portion of the exam, make sure you have all of the pages. There are twenty-four (24) pages in all.

3. Do not sign your test packet or your scantron sheet. Identify both using only your secret ID number. If you have a pre-printed exam number tag, use it. If not, just write the number out on the first page of the test packet. And on the scantron, put your ID number in the space marked “student ID number” and circle in the appropriate blanks below it.

4. You have a total of 285 minutes (4 hours, 45 minutes) to complete the exam. To assist you in budgeting your time, I have indicated the amount of time that I think you should spend on each Part and sub-Part of the exam. This time is also indicative of the weight I will assign to each Part and sub-Part for grading purposes.

   You may, of course, allocate your time as you wish. But be careful not to get behind. If you do, chances are you will never catch up.

5. In answering the “subjective” questions on the exam, be sure to justify every proposition that you assert. One of the major objectives of this exam is to test your ability to identify the applicable provisions of law, to resolve conflicts between them, and to apply them to the facts.

6. If you should encounter what you consider to be some anomaly, inconsistency, or contradiction in one of the narratives, DON’T JUST SIT THERE PUZZLED. Instead, come find me and ask me for a clarification.

   If, for some reason, you think that you need additional information in order to answer a question, DON’T ASSUME ANYTHING! Instead, come find me and ask me for clarification.

   During the exam period, I will be in my office (Room 328).

7. You should answer all questions, even those set in the past or the future, on the basis of the current law only. And, unless you’re given facts that clearly indicate otherwise, you are to apply Louisiana law only.

8. Record your answers to the multiple choice questions on your scantron sheet and your answers to the essay questions in the space provided in this test packet. DO NOT EXCEED THE SPACE PROVIDED.

9. After each objective question you will find three lines. If, because of some perceived deficiency in the pertinent facts as stated in the narrative or some perceived uncertainty in the applicable law, you believe (i) that two or more of the alternative answers provided for the question might be correct (depending on how the factual deficiency or legal uncertainty is resolved) or (ii) that none of them is correct, you may use these three lines to explain yourself. DO NOT MAKE A COMMENT on these lines UNLESS YOU PERCEIVE SUCH A PROBLEM and, if you make such a comment, DO NOT EXCEED THE SPACE PROVIDED.
On February 1, 2004, Alan, who, though he has had title to Tract 1 (see diagram) for some time, has never set foot on it himself, sells Barbara a usufruct over that tract. The act of sale, which is made in authentic form, is filed into the public records that same day (February 1, 2004). And starting that same day (February 1, 2004), Barbara, with Alan’s permission, plants much of the cleared part of the tract (see diagram) in cotton.¹

1

On June 1, 2004, Curt, who has no title to anything, shows up in the wooded part of Tract 1 (see diagram) and then, within and throughout that part of the tract, goes joy-riding on his horse. From then on he does the same thing off and on about twice or thrice each month. On October 1, 2004, Barbara, having discovered Curt's activities, accosts him, asserts that Alan is the owner and that she is his usufructuary, and tells Curt to get out. Curt says nothing, but he does load his horse into his horse carrier, as if he’s about to leave. She then leaves, confident that he’s on his way out. As soon as she is out of sight, however, he unloads the horse again and resumes joy-riding. Would you say that Curt was in possession of the wooded area on Tract 1 as of October 2, 2004? Why or why not?

a no: though he probably had animus domini (it is presumed and the evidence is probably insufficient to overcome the presumption), his activities on the tract probably were not sufficiently intensive or extensive to amount to corpus
b no: though he probably had corpus (his activities, though minimal and sporadic, were probably intense enough), he probably lacked animus domini (the fact that he stood silent when Barbara claimed ownership for Alan and then at least started to comply with her demand to leave is probably enough to prove it)
c no: he probably lacked both corpus (for the reason given in a) and animus domini (for the reason given in b)
d yes: he probably had both corpus (for the reason given in b) and animus domini (for the reasons given in a)
e none of the above

Now, forget the extra facts stated in the previous question (#1).

¹ Note that the facts stated in this paragraph form part of the facts for every one of the questions in this Part I of the exam (i.e., question #1 - question #8).
2 Suppose that on March 1, 2004, Danny, who has been hunting in the wooded part of Tract 1, spies Barbara working in the cotton fields. He then accosts her and, at the point of a knife, orders her off the tract. Barbara, in fear for her life, flees.

Could Barbara, as of March 2, 2004, have brought a possessory action against Danny to get an injunction ordering him to stay off Tract 1? Why or why not?

a no: a mere precarious detainer of a thing cannot bring a possessory action to obtain relief with respect to that thing itself; Barbara is a mere precarious detainer of Tract 1
b yes: a mere precarious detainer of a thing can bring a possessory action on behalf of the true possessor to obtain relief with respect to that thing itself; here, Barbara, the precarious detainer, can bring the action on behalf of Alan, the true possessor
c yes: a quasi-possessor of a real right on a thing can bring a possessory action to obtain relief with respect to that right; here, Barbara is the quasi-possessor of a personal servitude on Tract 1 (i.e., the usufruct)
d yes: the rationales given in both b and c are correct: Barbara can bring either (or both) a possessory action to protect Alan’s possession or a possessory action to protect her own quasi-possession
e no: d would be correct, except for the fact that neither Alan nor Barbara had yet acquired the right to possess or the right to quasi-possess, as the case might be, as of the time of the disturbance by Danny

Assume that the correct answer to the previous question (#2) is c or d (it matters not which). But suppose that Barbara, instead of resorting to court, resorts to force to drive Danny from Tract 1 (specifically, she brandishes her shotgun at him and sicks Hacksaw, her snarling attack alligator, on him, all the while screaming, "If I see you back here, I'm gonna feed you to Hacksaw.") The date of Danny’s hasty departure from the tract is March 15, 2004. Six months or so later, Barbara, having spotted Danny just beyond the border of Tract 1, shouts at him, “Don’t come any closer or you’re alligator bait.” Terrified, Danny runs off. Time goes by. On April 1, 2005, Barbara catches Danny out on the wooded part of Tract 1 picking mushrooms (which, you may assume, was a one-time, isolated event and, further, was the result of his mistake – he thought he was on another tract) and, as before, drives him off with her shotgun and Hacksaw. More time goes by. Then, on April 15, 2006, Barbara files a possessory action against Danny, seeking protection of her quasi-possessory interest in the usufruct. Which of the following obstacles stand(s) in the way of her success?

a Barbara's action is prescribed
b Barbara was not in quasi-possession (i.e., lacked quasi-animus and / or quasi-corpus) at the time of the disturbance (April 1, 2005)
c even if Barbara was in quasi-possession at the time of the disturbance, that quasi-possession was vitiated by violence
d more than one of the above: ____________

e maybe more than one of the above, but maybe just one of the above: the law applicable to
one of these “obstacles” is uncertain

Now, forget the extra facts stated in the texts of the previous two questions (#2 & #3).

4 On March 1, 2004, Barbara, apparently no longer content to have a mere usufruct on Tract 1, buys,
for fair market value, what purports to be a “full title” (that is, one that, if valid, would convey full
ownership) to the tract from Elton, whom she knows is not its true owner. The act of sale, which
is signed by both parties but is neither notarized nor witnessed, is filed into the public records that
same day. Thereafter Barbara uses Tract 1 as she had before (that is, she farms cotton on it). Who
had possession of Tract 1 as of March 2, 2004? Why?

a Barbara: her physical acts on the tract are sufficiently intense to qualify as corpus and her act
of obtaining full title to the tract makes it clear that she has animus domini
b Alan: he has his own animus domini and he has corpus vicariously through Barbara, who
was at the outset and still is his precarious possessor; Barbara has not yet done what is
necessary to terminate her precarious status, that is, to "intervert" her title

Now, forget the extra facts stated in the texts of the previous question (#4).

5 On July 1, 2004, Barbara, for reasons that are not clear, stops using her usufruct on Tract 1, in fact,
packs up, heads out, and leaves her cotton plants behind. On August 1, 2004, Danny acquires title to Tract 2 (see diagram), which overlaps a bit (the Overlap) (see diagram) with the "unoccupied" part of Tract 1 (that is, the part that Barbara is not farming). Danny immediately (that same day, August 1, 2004) starts to graze cattle on part of Tract 2. The part so used includes, but is not limited to, the southern half of the Overlap (see diagram), which is separated from the northern half by a ditch (see diagram). Suppose it is now March 1, 2005. Would Alan (to whom, you should assume, Barbara’s acts of corpus were imputable), as of that date, have had the right to possess the Overlap? Why or why not? Do not consider the theoretical complications created by the vice of discontinuity.

a  no: Alan never even established possession of the Overlap, for Barbara never set foot there (here activities were confined to other parts of Tract 1)

b  no: Alan, through Barbara’s corporeal possession of part of Tract 1, acquired constructive possession of the rest of that tract, including the Overlap, back on February 1, 2004; but he lost that possession when Barbara quit the tract (July 1, 2004), for at that point the corpus from which his constructive possession sprang was at an end; his constructive possession of the Overlap did not continue long enough (only 5 months) for him to acquire the right to possess it

c  yes: Alan, through Barbara’s corporeal possession of part of Tract 1, acquired constructive possession of the rest of that tract, including the Overlap, back on February 1, 2004; though Barbara later quit the tract (July 1, 2004), thereby ending Alan’s corpus, Alan nevertheless continued to have (and, indeed, still has) civil possession of the area over which Barbara had exercised corpus for him and, on that basis, continued to have constructive possession of the Overlap; the time of his constructive possession of the Overlap was long enough (13 months) for him to acquire the right to possess it

d  no: the rationale stated in c would be correct but for the fact that Danny, by his acts of corpus in the Overlap, effectively terminated Alan’s constructive possession thereof, specifically, evicted Alan from that possession, before he’d accumulated enough time for the right to possess there (he had only 6 months)

e  in part: the rationale stated in c is correct as to the northern part of the Overlap, but not as to the southern part of the Overlap; Danny, by his acts of corpus in southern half of the Overlap, effectively terminated Alan’s constructive possession thereof, specifically, evicted Alan from that possession, before he’d accumulated enough time for the right to possess there (he had only 6 months)

Now, forget the extra facts stated in the previous question (#5).

6  On August 1, 2004, Danny acquires title to Tract 2 (see diagram), which overlaps a bit (the Overlap) (see diagram) with the "unoccupied" part of Tract 1 (that is, the part that Barbara is not farming). Though Danny files his title to Tract 2 into the public records that same day (August 1, 2004), he never sets foot on Tract 2. Time flies. Before long it’s September 1, 2005. Could
Alan, as of that date, have brought a possessory action against Danny with respect to the part of Tract 1 that falls into the Overlap? Why or why not? Assume, for purposes of this question 6 only, that Alan was in possession of and had the right to possess Tract 1, including the Overlap, when Danny received and recorded his title to Tract 2.

a yes: Alan's possession of Tract 1 has not been disturbed
b no: Alan's possession of Tract 1 has not been disturbed

Assume, for purposes of this question 6 only, that Alan was in possession of and had the right to possess Tract 1, including the Overlap, when Danny received and recorded his title to Tract 2.

c yes: though Alan's right to complain of the disturbance caused by Danny’s receipt of his title to Tract 2 has prescribed, Alan’s right to complain of the disturbance caused by Danny’s recordation of that title has not
d yes: Alan can still complain about either / both (i) the disturbance caused by Danny’s receipt of his title to Tract 2 or / and (ii) the disturbance caused by Danny’s recordation of that title
e none of the above

On May 1, 2004 Barbara and Alan perish together in a tragic moss-gathering accident. Neither had made a testament. Barbara leaves no survivors; Alan’s sole successor is his cousin, Floyd, who not only doesn't know "didly" about Alan's property, but doesn't even know (not yet anyway) that Alan is dead! On April 1, 2005, Floyd, who has since learned of Alan's death and, in the course of investigating Alan's holdings, has learned of Tract 1, runs into Danny on the way to the tract. When Danny learns what Floyd's up to, Danny tells him, "Don't bother goin' out there to see Tract 1, 'cause it belongs to me." Floyd then turns around and heads straight to the courthouse, where he files a possessory action against Danny (April 1, 2005). Which of the following obstacles stand(s) in the way of his success? Do not consider the theoretical complications created by the vice of discontinuity.

a Floyd had not yet acquired the right to possess at the time of the suit (April 1, 2005)
b Floyd was not in possession at the time of the disturbance (April 1, 2005), for he lacked *animus domini* and / or *corpus*
c even if Floyd was in possession at the time of the disturbance, that possession was vitiated by equivocation
d there was, in fact, no "disturbance" of Floyd's possession sufficient to justify a possessory action
e none of the above (in other words, Floyd will succeed)
Assume that the correct answer to the previous question (#7) is e, that is, that Floyd would prevail in a possessory action against Danny (which would mean, among other things, that he acquired the right to possess at least as of April 1, 2005). On May 1, 2005, Danny drives his cattle on to Tract 1, where they remain for three months (until August 1, 2005). On that day (August 1, 2005), Floyd, who has finally shown up to inspect Tract 1, finds Danny’ cattle there and, having done so, drives them off it and then puts up a barbed wire fence to keep them out. The very next day (August 2, 2005), Danny tears Floyd’s fence down and drives his cattle back onto Tract 1, where they remain another three months (until November 3, 2005). On that day (November 3, 2005), Floyd, who has only now returned to Tract 1, finds Danny’ cattle there and, having done so, drives them off it and then puts up a stone wall to keep them out. The very next day (November 4, 2005), Danny breaks a hole in Floyd’s wall and drives his cattle back onto Tract 1, where they remain another three months (until February 4, 2006). On that day (February 4, 2006), Floyd, who has only now returned to Tract 1, finds Danny’ cattle there and, having done so, drives them off it and builds a huge moat to keep them out. The very next day (February 5, 2006), Danny builds a bridge over the moat and drives his cattle back onto Tract 1, where they remain for another three months (until May 5, 2006). On that day, Floyd, who has only now returned to Tract 1, finds Danny’ cattle there. This time Floyd, finally having had enough, brings a possessory action against Danny (May 5, 2006). Which of the following obstacles stand(s) in the way of Floyd’s success?

a Floyd’s action is prescribed, for it was not brought within one year of the initial disturbance (May 1, 2005)
b Floyd lost his right to possess prior to bringing suit: Danny evicted Floyd from Tract 1 back on May 1, 2005, and more than a year elapsed before Floyd finally brought suit (in fact, Danny now has the right to possess thanks to his 1 year + of possession – May 1, 2005 to May 5, 2006!)
c Floyd did not have effective possession of Tract 1 at the time of the most recent disturbance (February 5, 2006), for his possession (if any) had by them become discontinuous and, therefore, vitiated
d more than one of the above: ______________________ 4
e none of the above

II

(90 minutes)

In 1919 Art, representing himself to be the owner of the Left Tract (see diagram), a tract of land situated in Ascension Parish, sold it to Ben. The act of sale, which contained a detailed description of the boundaries of the Left Tract (in “metes and bounds”) and which both of them signed but which was

4 If more than one of the solutions provided above are correct, then circle in d on your scantron sheet and write the letters of the correct solutions in the space provided.
It is not at all uncommon for the successors to elect (as is their privilege) not to open the deceased’s succession. Thus, that a succession has not been opened does not mean that the deceased has no successors or that they don’t know who they are or that who they are cannot be determined. This is perhaps the most common motive for not opening a succession. Please note that Faith is the first person ever to set foot on either tract.

In 1921 Art, representing himself to be the owner of the Right Tract (see diagram), a tract of land situated in Ascension Parish, sold it to Candie. Unbeknownst to Art, Candie, and Ben, the Right Tract overlapped with the Left Tract by 30 feet (the Overlap) (see diagram). The act of sale, which contained a detailed description of the boundaries of the Right Tract (in “metes and bounds”) and which both Art and Candie signed and which was both notarized and witnessed, was promptly filed into the conveyance records of Ascension Parish. Like Art before her, Candie never set foot on the Right Tract.

In 1944 Candie, the apparent owner of the Right Tract, died. Her succession, however, was not “opened” (that is, no one claiming to be her “heir” came forward and demanded a “judgment of possession”).

In 1964 Ben, the apparent owner of the Left Tract, sold it (including the Overlap) to Dave. The act of sale, which contained a detailed description of the boundaries of the Left Tract (in “metes and bounds”) and which both of them signed and which was both notarized and witnessed, was promptly filed into the conveyance records of Ascension Parish. Like Ben before him, Dave never set foot on the Left Tract.

In 1977 Emma, representing herself to be the owner of the Right Tract, offered to sell it (including the Overlap) to Faith by “quitclaim” deed. When Faith’s title examiner notified Faith that he could find no evidence in the conveyance records of Ascension Parish that title to the Right Tract had ever been transferred to Emma, Faith asked Emma to explain. In reply, Emma sent her an “affidavit of heirship,” that is, a statement under oath regarding the successors of a deceased person, in which she (Emma) represented (i) that she was the only child and the sole successor of Candie and (ii) that she had chosen not to open Candie’s succession in order to spare herself the cost. Emma further represented that the reason she had offered to sell the land by quitclaim deed was that “my momma told me never to give no warranties to nobody.” Satisfied with that explanation, Faith accepted Emma’s offer. At the time of the closing, Emma, who had moments before taken some pain killers with a vodka chaser, was seriously intoxicated, though Faith did not know this or have reason to know it. The act of sale, which contained a detailed description of the boundaries of the Right Tract (in “metes and bounds”) and which both of them signed but which was neither notarized nor witnessed, was filed into the conveyance records of Ascension Parish. Unlike Emma before her, who had never set foot on the Right Tract, Faith set foot on it and, not only that, even built herself a house in the southeast corner of it (the Right House). Faith made her first appearance on the tract on April 26, 1977.

In 1978 Emma died. In the course of wrapping up Emma’s succession, Emma’s son, Gary, found it necessary to open the succession of Emma’s mother, Candie, as well. In due time, Gary obtained not only a judgment of possession in Emma’s succession recognizing him as Emma’s sole heir, but also a judgment of possession in Candie’s succession recognizing Emma as Candie’s sole heir. Though the supposed “property” of Candie listed in the former of these judgments of possession included the Right Tract, the supposed “property” of Emma listed in the latter did not include the Right Tract, for Gary was aware that Emma had purported to sell the Right Tract to Faith. Gary promptly filed both of these
judgments into the conveyance records of Ascension Parish.  

In 1979, Faith, the apparent owner of the Right Tract, died. By a valid testament she left (i) that tract (including the overlap) to her nieces, Helen and Ingrid (sisters of each other), in equal shares and (ii) the rest of her property (including stocks, bonds, and livestock) to her church. The part of the testament that set forth the legacy to Helen and Ingrid included a detailed description of the boundaries of the Right Tract (in “metes and bounds”). Helen and Ingrid then opened Faith’s succession, probated her testament, and received a “judgment of possession,” which, together with the testament, they promptly filed into the conveyance records of Ascension Parish. Helen, with Ingrid’s blessing, then moved into the Right House.

In 1980, Helen, the apparent owner of a ½ interest in the Right Tract, married Dave, the apparent owner of the Left Tract. They thereafter lived together, with Ingrid’s blessing, in the Right House.

In 1986, Ingrid, the apparent owner of a ½ interest in the Right Tract (and a “speculator” in oil and gas properties), received (as lessee) twenty-year “mineral leases” on much of the land in the area. One of her lessors was her brother-in-law Dave, the apparent owner of the Left Tract, who, according to the property description set forth in the act of lease, purported to lease to her the entirety of that tract, including the Overlap. The lease instrument was not filed into the conveyance records of Ascension Parish. Because the oil and gas market collapsed just as Ingrid took out these mineral leases, she never exploited any of them, that is, never went onto the leased land even to explore for minerals, much less to produce them. Throughout the duration of her lease from Dave, Ingrid continued to pay ½ of the annual property taxes assessed on the Right Tract, including the Overlap.

In 1998, Helen, the apparent owner of a ½ interest in the Right Tract, died intestate. She was survived by her husband, Dave, and her child (now a major) by a prior marriage, Jan. Jan, a lawyer, had long ago discovered that her step-father Dave held title to part of the Right Tract (i.e., the Overlap), but she had never disclosed this information to him or to her mother. Dave and Jan then opened Helen’s succession and received a “judgment of possession,” which they promptly filed into the conveyance records of Ascension Parish. Dave then moved out of the Right House and Jan, with Ingrid’s blessing, moved into it. Jan has remained there to this day.

In 1999, Dave, the apparent owner of the Left Tract, sold Karma Oil & Gas, Inc. (Karma) a pipeline servitude over that tract (including the Overlap) for $5,000. The act of sale, which contained a detailed description of the boundaries of the Left Tract (in “metes and bounds”) and which was signed by both parties and was both notarized and witnessed, was promptly filed into the conveyance records of Ascension Parish. Over the next few weeks Karma installed its pipeline, above ground, smack dab in the middle of the Left Tract (including the Overlap) (see diagram). From then until this day Karma has continued to use the pipeline to transport petroleum.

It is now May 2, 2006. Dave, on the one hand, and Ingrid and Jan, on the other, have just discovered each other’s competing claims to the Overlap. When settlement negotiations break down,

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8 There is nothing at all unusual or improper about what Gary did, that is, to open the as-yet unopened succession of an ancestor of the deceased in connection with the opening of the succession of the deceased herself. It happens all the time and is perfectly legal.

9 To “probate” a testament is to prove that it exists and that it is valid.

10 Because Helen acquired her interest in the Right Tract before her marriage, it was her separate property. See CC art. 2341 (“The separate property of a spouse . . . comprises property acquired by a spouse prior to the establishment of a community property regime . . . ”)

11 Don’t forget that Helen’s interest in the Right Tract was her “separate property.”
Dave brings a petitory action against Ingrid and Jan with respect to the Overlap.\textsuperscript{12}

9 (5 of the 90 minutes for Part II) What will be Dave’s burden of proof in this petitory action? Why? For purposes of this question 9 only, \textit{ignore} any complications that might be presented as a result of (i) Dave’s having granted Karma the pipeline servitude or (ii) Karma’s having installed its pipeline.

\begin{itemize}
\item a perfect title, because the defendants, Ingrid and Jan, have possession in fact of the Overlap
\item b perfect title, because the defendants, Ingrid and Jan, have the right to possess the Overlap
\item c better title, because the defendants, Ingrid and Jan, have possession in fact of the Overlap
\item d better title, because the defendants, Ingrid and Jan, have the right to possess the Overlap
\item e none of the above
\end{itemize}

10 (5 of the 90 minutes for Part II) \textbf{Assume}, for purposes of this question 10 only, that (i) the correct answer to the previous question (#9) is \textit{c} or \textit{d} (it matters not which), that is, that Dave’s burden of proof is “better title” and (ii) that Dave’s ancestor-in-title, Ben, acquired title to the Left Tract (back in 1919) not from \textit{Art}, but from someone named \textit{Louis}. Will Dave prevail, that is, is his title to the Overlap “better” than that / those of Ingrid and Jan? Why or why not?

In answering this question 10, you are to \textit{leave aside}, for the moment, the possibility that Dave and / or Ingrid and / or Jan might be able to prove his / her / their own “better title” or even “perfect title” through \textit{acquisitive prescription}. You’ll get to talk about \textit{that} in answering a subsequent question below. For the moment, simply assess the relative “strengths” of the parties’ “derivative” titles.

\begin{itemize}
\item a yes: among titles, “older” is always better: Dave’s title (dating from 1919) is two years older than that / those of Ingrid and Jan (dating from 1921)
\item b yes: among titles, “older” is generally better, though a “clearer” or “more precise” title is, in some instances, better than an older one; Dave’s title (dating from 1919) is two years older than and no less clear or precise than that / those of Ingrid and Jan (dating from 1921)
\item c yes: the rationale in \textit{b} is correct, except that Dave’s title (dating from 1964) is 15 years older than Ingrid’s title (dating from 1978) and 34 years older than Jan’s title (dating from 1997)
\item d no: Dave’s title is no better than that / those of Ingrid and Jan, for there’s no way to know whether Louis, Dave’s ultimate ancestor-in-title, or Art, Ingrid’s and Jan’s ultimate ancestor-in-title, was the true owner
\item e none of the above
\end{itemize}

\textsuperscript{12} Don’t forget that Helen’s interest in the Right Tract was her “separate property.”
SHORT ANSWER # 1
(10 of the 90 minutes for Part II)

Forget the previous question (#10) and everything in it, including, in particular, that business about Louis and, now, assume that the correct answer to the question before that one (#9) was a or b (it matters not which), that is, that Dave’s burden of proof is “perfect title.” Can Dave meet that burden as to the Overlap? If not, why not? If so, how and why?

In answering this question, you are to leave aside, for the moment, the possibility that Dave and / or Ingrid and / or Jan might be able to prove that he / she / they acquired his / her / their own “perfect title” through acquisitive prescription. You’ll get to talk about that in answering a subsequent question below. For the moment, simply assess the “strength” of Dave’s “derivative” title.

B
(70 of the 90 minutes for Part II)

Assume that the correct answer to the previous short-answer question is “yes,” that is, that Dave can prove that he acquired perfect derivative title to the Overlap. And suppose, now, that Ingrid and Jan raise the defense of acquisitive prescription. Some questions about this defense . . .

SHORT ANSWER # 2
(5 of the 70 minutes for sub-Part II-B)

Before you “dive in” to the essay question that follows, let’s consider up front an issue that will
be integral to your analysis, namely, the characterization of the various “juridical links” or “successions” that are presented in the narrative. Beside each juridical link / succession listed below, indicate (by circling the correct alternative answer) whether it is a “universal” succession or a “particular” succession:

\[\alpha\] That between Candie and Emma................................ universal  particular

\[\beta\] That between Emma and Faith........................................ universal  particular

\[\gamma\] That between Faith and Ingrid........................................ universal  particular

\[\delta\] That between Faith and Helen........................................ universal  particular

\[\epsilon\] That between Helen and Jan........................................ universal  particular

For the rest of this sub-Part II-B, assume that the correct answers to this short-answer question are the following: (\(\alpha\)) that between Candie and Emma: universal; (\(\beta\)) that between Emma and Faith: particular; (\(\gamma\)) that between Faith and Ingrid: particular; (\(\delta\)) that between Faith and Helen: particular; (\(\epsilon\)) that between Helen and Jan: universal.

ESSAY
(65 of the 70 minutes for sub-Part II-B)

Will the defense of acquisitive prescription be successful? Why or why not?\(^{13}\) (Note that I’m NOT asking about whether Dave might be able to claim acquisitive prescription in support of his case-in-chief).

_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

\(^{13}\) DON’T FORGET THAT Helen’S INTEREST IN THE RIGHT TRACT WAS HER “SEPARATE PROPERTY”!
On January 1, 2003, Andy, the owner of Tract 1, and Brie, the owner of Tracts 2 and 3 (see diagram), draw up an instrument that reads, in part, as follows:

I, Brie, on behalf of myself and all future owners of Tract 2 do hereby grant to Andy the right to graze his goats on Tract 2 for a term of seven years. To prevent his goats from wandering into the swamp on Tract 2, Andy may build any fences that he may deem appropriate.

The act, which is signed by both parties, is filed into the public records that same day.
During the following week (January 2-9, 2003), Andy builds fences around the swamp on Tract 2. The fences consist of 4 x 4 wooden posts, cemented firmly into the ground, between which extend 2 x 4 wooden planks, which are fastened to the posts by nails and glue. Andy thereafter begins to graze his goats on that tract (Tract 2).

On February 1, 2003, Cassie, falsely representing herself to be the owner of Tract 2 and Tract 3, offers to sell all or part of the tracts to Dina, whatever she may want. Though Dina neither knows nor has reason to know that Cassie is not the owner of Tract 3, she has heard rumors, which she considers credible, that Cassie is not the owner of Tract 2. Cassie and Dina then “walk the boundaries” of the land that Dina wants, which consists of (i) all of Tract 3 and (ii) a 20-foot wide "strip" of land on Tract 2 that lies adjacent to Tract 3. But when Cassie and Dina draw up the act of sale, they make a little mistake in the property description: the property described, in turns out, consists only of Tract 3, in other words, none of Tract 2 is included in the property description. The act of sale, which is signed by both parties, is filed into the public records that same day.

Dina's plan for her land, which she begins to put into effect the very next day (February 2, 2003), is to turn it into a "fig farm." To do that, she must first clear it of "the woods" that now stand on it and, having done that, must plant it with fig trees. She does this both on Tract 3 and on the Strip of Tract 2.

Seven years pass (in other words, it's now February 2, 2010). Brie then goes out to his land and discovers, to his chagrin, that Andy, with his goats and fences, is still on part of Tract 2 and that Dina, with her fig trees (which are now five feet high), is on all of Tract 3 and part of Tract 2.

NOTE: Unless you are told otherwise, you are to assume that all of the modifications that Andy and Dina made to Brie's land added value to that land.

11 Which of the following statements is true?

a to determine who owns the fig trees that Dina planted on Tract 3, it is necessary, first, to classify them as "improvements" or "constituents," for, if they're the former, they belong to one person, whereas if they're the latter, they belong to someone else
b to determine who owns the fig trees that Dina planted on Tract 3, it is not necessary, first, to classify them as "improvements" or "constituents"; either way, they belong to the same person

c

d

e

12 Assume, for the moment, that the answer to the previous question (#11) is a and, further, that the fig trees are "improvements" (specifically, "plantings") of Tract 3. Who owns them? Why?

a Brie: they were made without the consent of Brie (the landowner)
b Brie: improvements always belong to the owner of the ground
c Dina: Dina, who put them there, was a good faith possessor
d Dina: they were made without the consent of Brie (the landowner)
e Dina: improvements always belong to the person who made them or put them in
13 Assume for the moment, even if you think this is not so, that who owns the fences that Andy built on Tract 2 depends, at least in part, on whether they are classified as "improvements" or "constituents". Which way should they be classified? Why?

a definitely as improvements: they are without question other constructions permanently attached to the ground  
b definitely as constituents: they are without question integral parts of the ground  
c one can't say for sure: they might be either improvements (specifically, other constructions permanently attached to the ground) or constituents (specifically, integral parts of the ground), but it's too close to call  
d probably as improvements: though it wouldn't be altogether stupid to argue that they are constituents (specifically, integral parts of the ground), the better view is that they are improvements (other constructions permanently attached to the ground)  
e probably as constituents: though it wouldn't be altogether stupid to argue that they are improvements (specifically, other constructions permanently attached to the ground), the better view is that they are constituents

14 Assume, for purposes of this question 14 only, that the correct answer to the previous question (#13) is either b or e (it matters not which), that is, that the fences are "constituents" (specifically, integral parts) of Tract 2. To whom would the fences belong? Why?

a Brie: they were made with the consent of Brie (the landowner)  
b Brie: constituents always belong to the owner of the ground  
c Brie: Andy, who put them there, was a bad faith possessor  
d Andy: they were made with the consent of Brie (the landowner)  
e Andy: constituents always belong to the person who made them or put them in

15 Does Brie now have the right to demand that Andy remove the fences that he (Andy) built on Tract 2 at his (Andy's) expense? (Remember that, for purposes of this question 15, you're not to assume
anything about the classification of the fences.)

a  yes, provided they are improvements
b  yes, provided they are constituents
c  yes, regardless whether they are improvements or constituents
d  no, regardless whether they are improvements or constituents
e  due to uncertainty in the applicable law, it's impossible to say for sure

16 Assume that the answer to the previous question (#15) is "yes" and, for the moment, that the fences are *improvements*. Brie demands, in proper form, that Andy remove the fences from Tract 2, but that Andy fails to do so. Seven months pass. What are Brie's rights with respect to the fences?

a  Brie can remove them and send Andy the bill for the expenses of removal
b  Brie has the option of (i) removing them and sending Andy the bill for the expenses of removal or (ii) keeping them and paying Andy an indemnity, at Brie's option, of (a) the current value of Andy's labor and materials or (b) the enhanced value of Tract 2
c  Brie has the option of (i) removing them and sending Andy the bill for the expenses of removal or (ii) keeping them and paying Andy an indemnity, at Brie's option, of (a) the original value of Andy's labor and materials, (b) the current value of Andy's labor and materials, or (c) the enhanced value of Tract 2
d  Brie has the option of (i) removing them at his own expense and sending Andy the bill for the expenses of removal or (ii) keeping them, without having to pay Andy any indemnity (provided she first gives him an additional written notice by certified mail and then appropriates the fences herself)
e  Brie gets to keep them, without having to pay Andy any indemnity (provided she first gives him an additional written notice by certified mail and then appropriates the fences herself)

17 Assume, now, that the answer to the question before last (#15) is "yes" and that the fences that Andy built on Tract 2 are *constituents*. Brie demands, in proper form, that Andy remove the fences from Tract 2, but Andy fails to do so. Seven months pass. As things now stand at this very moment, what right, if any, does Brie have against Andy with respect to the fences?

a  Brie can remove them and send Andy the bill for the expenses of removal
b  Brie has the option of (i) removing them and sending Andy the bill for the expenses of removal or (ii) keeping them, without having to pay Andy any indemnity (provided she first gives him an additional written notice by certified mail and then appropriates the fences herself)
removal or (ii) keeping them and paying Andy an indemnity, at Brie's option, of (a) the current value of Andy's labor and materials or (b) the enhanced value of Tract 2

c Brie has the option of (i) removing them and sending Andy the bill for the expenses of removal or (ii) keeping them and paying Andy an indemnity, at Brie's option, of (a) the original value of Andy's labor and materials, (b) the current value of Andy's labor and materials, or (c) the enhanced value of Tract 2

d Brie has the option of (i) removing them and sending Andy the bill for the expenses of removal or (ii) just keeping them, without having to pay Andy any indemnity

e Brie gets to keep them, without having to pay Andy any indemnity

18 Assume that Dina was in possession of Tract 3 and of the “planted” part of Tract 2. Insofar as it might be relevant to determine the remedies that Dina and Brie may enjoy against each other, was Dina a good faith or a bad faith possessor of the tracts?

a good faith, as to both tracts
b Tract 2: bad faith; Tract 3: good faith
c Tract 2: good faith; Tract 3: bad faith
d bad faith, as to both tracts
e none of the above

Assume, for purposes of the rest of this Part I, that the correct answer to the previous question (#18) is b.

19 Does Dina now have the right to remove the fig trees that she planted on Tract 3 and / or those that she planted on Tract 2?

a yes, as to those on both tracts
b yes, as to those on Tract 3; no, as to those on Tract 2
c no, as to those on Tract 3; yes, as to those on Tract 2
d no, as to those on both tracts
e due to uncertainty in the applicable law, it's impossible to say for sure
20 Does Brie now have the right to demand that Dina, at her (Dina's) expense, remove the fig trees that she (Dina) planted on Tract 3 and/or those that she (Dina) planted on Tract 2?

a yes, as to those on both tracts
b yes, as to those on Tract 3; no, as to those on Tract 2
c no, as to those on Tract 3; yes, as to those on Tract 2
d no, as to those on both tracts
e due to uncertainty in the applicable law, it's impossible to say for sure

21 Assume that Brie must keep or, if he has a choice, elects to keep the fig trees that Dina planted on Tract 3 and that Brie must pay Dina an indemnity therefor. What would be the measure of that indemnity?

a Brie must pay, at his option, (i) the original value of Dina's labor and materials, (ii) the current value of Dina's labor and materials, or (iii) the enhanced value of Tract 3
b Brie must pay, at his option, (i) the current value of Dina's labor and materials or (ii) the enhanced value of Tract 3
c Brie must pay, at his option, (i) the original value of Dina's labor and materials or (ii) the enhanced value of Tract 3
d Brie must pay, at Dina's option, (i) the original value of Dina's labor and materials, (ii) the current value of Dina's labor and materials, or (iii) the enhanced value of Tract 3
e none of the above

22 Assume that Brie must keep or, if he has a choice, elects to keep the fig trees that Dina planted on Tract 2 and that Brie must pay Dina an indemnity therefor. What would be the measure of that indemnity?

a Brie must pay, at his option, (i) the original value of Dina's labor and materials, (ii) the current value of Dina's labor and materials, or (iii) the enhanced value of Tract 3
b Brie must pay, at his option, (i) the current value of Dina's labor and materials or (ii) the enhanced value of Tract 2
c Brie must pay, at his option, (i) the original value of Dina's labor and materials or (ii) the enhanced value of Tract 2
Brie must pay, at Dina's option, (i) the original value of Dina's labor and materials, (ii) the current value of Dina's labor and materials, or (iii) the enhanced value of Tract 2

none of the above

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IV

(45 minutes: approx. 5 minutes / question)

Abe acquired title to an eighty-acre tract of undeveloped land, located on the boundary between East Baton Rouge and Ascension Parishes, that fronts on LA Highway 73 and is transected by Bayou Manchac (see diagram). To get water to the "Front Tract" acres (see diagram), he built a small canal that ran from the bayou to the center of that part of the tract (see diagram). To facilitate his access to the "Back Tract" acres (see diagram), he built a shell road that ran between it and LA Highway 73.

A few years later, Abe sold the "Back Tract" acres (see diagram) to Beth for $100,000. The act of sale, which both of them signed but which was neither witnessed nor notarized, contained the following recitals (among others):

6. Seller, as owner of the Front Tract, grants Buyer, as owner of the Back Tract, a right of passage across the shell road on the land that he, Seller, has retained, i.e., the Front Tract, between the Back Tract and LA Highway 73. As a correlative of this right, it shall be the duty of Seller, as owner of the Front Tract, to keep the shell road in good working order. If Seller defaults on this duty of up-keep, Buyer may take all reasonable measures to maintain the road at Seller’s expense.

9. In view of the fact that the Back Tract, like the Front Tract, has long been used for hunting, Buyer, as owner of the Back Tract, grants Seller, as owner of the Front Tract, the right to hunt on the Back Tract.

11. Seller, as owner of the Front Tract, promises Buyer, as owner of the Back Tract, that no buildings shall be constructed on the Front Tract within one mile of the boundary between the two tracts.

The agreement was promptly filed into the conveyance records of both parishes.

For the next several years, the new neighbors got along just fine. Beth did nothing to interfere with the flow of water through the canal; she regularly used the shell road, which Abe kept up nicely, to drive to and from the Back Tract; Abe hunted on the Back Tract without incident; and Abe built no buildings within a mile of the boundary between the two tracts.

Then things changed. Abe sold the Front Tract to Calvin, who began running heavy farm equipment over the part of the shell road that lay on the Front Tract; as a result, the road soon became so filled with ruts, potholes, and cracks that one could not possibly cross it by automobile. At about the same time, Beth sold the Back Tract to Denise, who promptly closed off the canal, so that water stopped flowing to the Front Tract, and fenced off the Back Tract, so that Calvin (also an avid hunter) could not hunt on it.
A
SHORT ANSWER

Suppose that Calvin brings suit against Denise, seeking an injunction ordering her to reopen the canal. His theory? That the Front Tract has a “predial servitude” whereby its owner entitled to receive water through the canal across the Back Tract. Is his theory sound? Why or why not? Explain.

_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________
_________________________________________________________________________________

23  Suppose that Denise brings suit against Calvin, seeking an injunction ordering him (i) to repair the shell road himself or (ii) to reimburse Denise for the cost of repairing the shell road. Will she be successful? Why or why not?

a  no: paragraph 6 of the sale instrument between Beth and Abe created only personal (non-real) rights and duties, including a duty to permit passage across the shell road and a duty to maintain and repair the shell road; those duties are enforceable only against the person who created them – Abe – and only by the person in whose favor they were created – Beth

b  no: though paragraph 6 of the sale instrument between Beth and Abe created a predial servitude, that servitude did not entail a duty to maintain and repair the shell road; the burden of a predial servitude, as CC art. 651 puts it, can consist only of a duty on the part of the servient estate owner to “abstain from doing something on his estate or to permit something to be done on it”; the duty to maintain and repair the shell road – an affirmative duty – cannot be made part of a predial servitude; if that duty is enforceable at all, it is, then, enforceable only against the person who created it – Abe – and only by the person in whose favor it was created – Beth

c  yes: paragraph 6 of the sale instrument between Beth and Abe created a predial servitude, one that entailed not only a duty to permit passage across the shell road but also a duty to maintain and repair the shell road; when Abe sold the Front Tract to Calvin, these duties fell on him; when Beth sold the Back Tract to Denise, the rights correlative to those duties fell to her

d  none of the above
**24 Assume**, for purposes of this question 24 only, that the right of passage that Beth received from Abe was a real right and, beyond that, was a predial servitude and that the answer to the previous question (#23) is “yes, she would win the suit against Calvin.” But now suppose that despite the damage Calvin’ equipment had inflicted on the shell road, Denise could still drive across it, without much difficulty, by swerving first this way and then that way just a bit to avoid the ruts, potholes, and cracks. Would Denise be successful in her suit against Calvin under these circumstances? Why or why not? For purposes of this question 24 only, ignore the fact that Abe, as seller, undertook a duty to “keep the shell road in good working order.”

a yes, Denise would still prevail: the owner of the servient estate can’t do anything that even tends to diminish or make more inconvenient the use of the predial servitude; here, Calvin’s activities had precisely that effect

b no, now Denise would lose: though it is true that the owner of the servient estate can’t do anything that tends to diminish or make more inconvenient the use of the predial servitude, Calvin’s activities did not have that effect; here, there’s no indication that Denise in fact had any real trouble negotiating the shell road

c no, now Denise would lose: the owner of the servient estate can do anything he wants to do, provided that it does not actually interfere with the dominant estate owner’s exercise of the servitude right; here, there’s no indication that the ruts, potholes, and cracks actually interfered with Denise’s exercise of the right to pass

d the correct answer could be either a or b: though the pertinent doctrinal authority favors a, the pertinent jurisprudential authority appears to be divided; until the antinomy in the jurisprudence is resolved, one can’t answer questions like this with complete confidence

e none of the above

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**SHORT ANSWER**

Calvin has just brought suit against Denise, seeking an injunction ordering her to give him access to the Back Tract so that he can hunt on it. His theory? That the Front Tract has a “predial servitude” whereby its owner is entitled to hunt on the Back Tract. Is his theory sound? Why or why not? Explain. (In answering this question, please **assume** (i) that Abe and Beth intended to “predialize” the hunting right, even if you don’t believe they did, and (ii) that the language used in their agreement was sufficient to communicate this intention, even if you don’t believe it was.)
Twelve (12) years come and go. Then a certain Émile, having established that he is the true owner of the Front Tract, evicts Calvin from his tract. It turns out that anyone who’d bothered to check the public records related to the Back Tract, including Beth and Denise, would easily have discovered Émile’s adverse ownership claim to the Front Tract. But neither Beth nor Denise had conducted a title search prior to acquiring the Back Tract. In any event, Émile immediately begins building an apartment complex right on the boundary between the two tracts.

25 Denise brings suit against Émile, seeking an injunction ordering him to desist from constructing the apartment complex. Will she be successful? Why or why not?
   a yes: Denise acquired a predial servitude prohibiting building on the Front Tract (within a mile of the boundary) by destination of the owner – Abe
   b yes: Denise acquired a predial servitude prohibiting building on the Front Tract (within a mile of the boundary) by means of abridged acquisitive prescription, to be precise, by ten (10) years of quasi-possession, under just title, and in good faith
   c no: Denise did not acquire a predial servitude prohibiting building on the Front Tract (within a mile of the boundary) by title, by destination, or by acquisitive prescription: not by title, because the person who sold it to her – Abe – didn’t own the Front Tract; not by destination, for any number of reasons; and not by acquisitive prescription, because she lacked good faith
   d no: the same as c, except that the barrier to acquisitive prescription is not lack of good faith, but that the servitude was a nonapparent one
   e no: the same as c, except that the barrier to acquisitive prescription is not lack of good faith, but that the servitude was a negative one

C

Suppose that, just three months before Émile evicted Calvin, Denise had donated to Calvin a “predial servitude” of pasturage, one that was to permit “the owner of the Front Tract, whoever he may be” to graze cattle, sheep, etc. on the Back Tract. Assume that this donation was in proper form and that the instrument was duly recorded. Suppose further that Calvin, at the time of this donation, had been only seventeen (17) years old and had never been emancipated. Finally, suppose that after Calvin’
Émile, having learned of this servitude, sent his own cattle onto the Back Tract to graze, but that Denise, in retaliation for Émile’s having blocked off the shell road, drove Émile’s cattle away.

26 Émile promptly brings suit against Denise, seeking an injunction ordering her to desist from preventing his cattle to graze on the Back Tract. Will he be successful? Why or why not?

a yes: Calvin acquired the predial servitude of pasturage for the benefit of whomever might happen to own the Front Tract; that person is now (and, it would seem, always was) Émile
b no: a predial servitude can be acquired only by the owner of the dominant estate or by someone who acts on his behalf, such as his mandatory (agent) or precarious possessor; Calvin was not the owner of the Front Tract and, far from acting for the owner (Émile), was actually an “adverse possessor” of the Front Tract vis-à-vis the owner; if Calvin acted for anyone, it was for himself
c no: to acquire a predial servitude by contract (such as through a donation inter vivos), one must, of course, have contractual capacity; as an unemancipated minor, Calvin lacked that capacity
d b & c are both correct
e none of the above

D

Forget sub-Parts A, B, and C of Part IV. Assume, for purposes of this sub-Part D of Part IV, that Calvin has a predial servitude to drain water through the canal and Denise has a predial servitude to pass on the shell road. Further, assume now that the reason Calvin stops using the canal is not that Denise closed it off (assume, now, that she did not close it off), but rather that the bayou just ran dry due to natural causes.

Twelve (12) years come and go, after which time the bayou, again due to natural causes, starts running again. Then Denise closes off the canal. At the same time, Calvin closes off the shell road, which, due to its delapidated condition, has, of course, seen neither hide nor hair of Denise or her automobiles for the past twelve years.

27 Suppose that Calvin now brings suit against Denise, seeking an injunction ordering her to reopen the canal. Will he be successful?

a no: Calvin’s servitude through the canal was extinguished due to the destruction of the servient estate
b no: Calvin’s servitude through the canal was extinguished due to the prescription of non-use
c yes: the servitude has not been extinguished, either by destruction of the servient estate (the “destruction,” if any, was not permanent) or by non-use (because Calvin faced an obstacle to his use that he could neither prevent nor remove, prescription was permanently suspended)
d yes: c is basically correct, except that prescription was suspended for only ten (10) of the twelve (12) years of non-use (not all twelve (12) years, as c indicates), so that, to date, only two (2) years’ worth of prescription has accrued

e none of the above

28 Suppose that Denise now brings suit against Calvin, seeking an injunction ordering him to reopen the shell road. Will she be successful?

a no: Denise’s servitude over the road was extinguished due to the destruction of the servient estate

b no: Denise’s servitude over the road was extinguished due to the prescription of non-use

c yes: the servitude has not been extinguished, either by destruction of the servient estate (the “destruction,” if any, was not permanent) or by non-use (because Denise faced an obstacle to her use that she could neither prevent nor remove, prescription was permanently suspended)

d yes: c is basically correct, except that prescription was suspended for only ten (10) of the twelve (12) years of non-use (not all twelve (12) years, as c indicates), so that, to date, only two (2) years’ worth of prescription has accrued

e none of the above

V
(35 minutes: approx. 5 minutes / question)

Some years ago Apollo married Daphne. To this marriage, Apollo brought considerable property, including (i) a cow (Rhea), which he used to produce milk, and (ii) a tract of land (the Pecan Tract) on which stood a grove of pecan trees and a warehouse for storing pecans, etc., (iii) 100 shares of Electra, Inc. common stock (the Stock), and (iv) a tract of sulfur-rich land (the Sulfur Tract).14 (To develop and manage the Sulfur Tract for him, Apollo had hired Furies Minerals, Inc. (Furies), which had drilled ten sulfur wells on the land and thereupon had began production of sulfur.15) During the marriage, Apollo

14 This would have been Apollo’s separate property. See CC art. 2341 (“The separate property of a spouse . . . comprises property acquired by a spouse prior to the establishment of a community property regime . . . .”)

15 Note that Apollo did not grant Furies any sort of mineral servitude; to the contrary, Furies is just his “employee.” Furies, then, has no rights whatsoever, real or personal, in the sulfur that is produced; Furies’ only
and Daphne acquired certain property with income earned from their labor, including a farm (the Farm). 16 Meanwhile, Daphne bore Apollo three children, Castor, Gaia, and Hermes.

Decades passed. Then, on December 31, 2029, Apollo died. By testament, Apollo granted Daphne the right to “use and enjoy Rhea, the Pecan Tract, the Stock, and the Sulfur Tract during her lifetime” and granted Castor, Gaia, and Hermes “equal shares” of each of these things; the testament, however, made no provision for Apollo’s interests in the Farm.

29 Daphne, who is desperate to raise money to meet the needs of her family, wants to sell (i) Rhea to her brother-in-law Icarus (who wants to barbeque it) and (ii) the Stock on the open market. Can she do it? Why or why not?

a yes, as to both: both Rhea and the Stock are consumables; the usufructuary of such things has abusus over them
b yes, as to Rhea; no, as to the Stock: whereas Rhea is a consumable, the Stock is a non-consumable; whereas a usufructuary has abusus of consumables, he does not have abusus of nonconsumables
c no, as to Rhea; yes, as to the Stock: whereas Rhea is a non-consumable, the Stock is a consumable; whereas a usufructuary has abusus of consumables, he does not have abusus of nonconsumables
d no, as to both: both Rhea and the Stock are nonconsumables; the usufructuary of such things does not have abusus over them
e the correct answer could be either b or d; the applicable law (that which concerns the distinction between consumables and nonconsumables) is too uncertain to enable one to say for sure

For purposes of the rest of this Part V, assume that both Rhea and the Stock are nonconsumables.

30 Castor, Gaia, and Hermes, who don’t trust Daphne to take care of Rhea, the Pecan Tract, the Stock, etc., want to know if there’s anything they can do to get some “assurance” that she will. Is there? Explain.

a yes: they can force her to post “security” (e.g., put up a bond, grant a mortgage) to guarantee the performance of the duties she owes them with respect to all of her usufructs, i.e., those on Rhea, the Pecan Tract, the Stock, the Sulfur Tract, and the Farm; the naked owner can always force the usufructuary to post security

[16] This would have been Apollo and Daphne’s community property. See CC art. 2338 (“The community property comprises property acquired during the existence of the legal regime through the effort, skill, or industry of either spouse . . . .”)
b yes: they can force her to post “security” (e.g., put up a bond, grant a mortgage) to guarantee the performance of the duties she owes them with respect to all of her usufructs, i.e., those on Rhea, the Pecan Tract, the Stock, the Sulfur Tract, and the Farm; the naked owner can force the usufructuary to post security, provided that the object of the usufruct is a nonconsumable

c yes, in part, and no, in part: though they can force her to post “security” (e.g., put up a bond, grant a mortgage) to guarantee the performance of the duties she owes them with respect to her usufructs on Rhea, the Pecan Tract, the Stock, and the Sulfur Tract, they cannot force her to do so with respect to the Farm; though the naked owner can, as a general rule, force the usufructuary to post security, there’s an exception where the usufruct is legal

d yes, in part, and no, in part: though they cannot force her to post “security” (e.g., put up a bond, grant a mortgage) to guarantee the performance of the duties she owes them with respect to her usufructs on Rhea, the Pecan Tract, the Stock, and the Sulfur Tract, they can force her to do so with respect to the Farm; though the naked owner can, as a general rule, force the usufructuary to post security, there’s an exception where the usufruct is volitional

d no: the naked owner cannot force the usufructuary to post security unless the object of the usufruct is a consumable

The narrative continues:

In the next few months, there are some major developments with respect to Apollo’s former property. First, Olympia Bank, in whose favor Apollo had granted a “UCC Article 9 security interest” over the Stock, forecloses on that security interest. At the ensuing public sale, the Stock fetches a price of $10,000, which is more than enough to pay off what Olympia Bank is still owed – $8,000. Second, the trees on the Pecan Tract become infested with caterpillars, which reduce the pecan crop substantially and, worse still, threaten to kill the trees. Though Daphne is apprized of the situation, she takes no action. Third, after the warehouse on the Pecan Tract is struck by lightning, one wall and a small part of the roof are destroyed by fire. Though she learns of this, too, Daphne doesn’t do anything about it, either. Fourth, Daphne, without the permission of any of the children, sells the Farm on the open market. Fifth, Daphne, over the objection of the children and without consulting or asking anyone else, builds a huge sulfur-processing facility on the Sulfur Tract.

31 What must be done with the surplus $2,000 cash that’s “left over” from the public sale of the Stock ($10,000 [price paid] - $8,000 [amount owed] = $2,000)? Explain.

a it must be given to Olympia Bank; the creditor who provokes a foreclosure sale is entitled to receive the entirety of the proceeds of the sale of its collateral

b it must be given to Daphne: true, the sale of the Stock effectively extinguished Daphne’s usufruct thereon (a usufruct of a non-consumable); but, thanks to the principle of real subrogation, she now acquires a usufruct (a usufruct of a consumable) over that into which the Stock has been transformed, i.e., money
c it must be given to Castor, Gaia, and Hermes: the sale of the Stock, having produced the juridical destruction thereof, extinguished Daphne’s usufruct thereon
d none of the above

32 Can Castor, Gaia, and/or Hermes now demand that any of Daphne’s other usufructs be terminated? If so, on what basis can he, she, or they do so? (Note that this question 32 concerns only whether the children can ask for termination, not whether, if they can do so, they are entitled to get it “of right.”)
a yes, as to her usufruct over the Pecan Tract (or, at the very least, the pecan trees thereon), for “abuse of enjoyment” (to be more precise, by failing to address the caterpillar infestation, she’s committed “waste”)
b yes, as to her usufruct over the Pecan Tract (or, at the very least, the warehouse thereon), for “abuse of enjoyment” (to be more precise, by failing to rebuild the barn, she has neglected to make “ordinary repairs”)
c yes, as to her usufruct over Apollo’s half of the Farm, for “abuse of enjoyment” (to be more precise, by selling the Farm, she alienated a nonconsumable without authority)
d all of the above
e some, but not all, of the above: __________  17

33 Did Daphne overstep the bounds of her authority when she constructed the sulfur-processing facility on the Sulfur Tract? Why or why not? (Assume that the decision to construct the facility was more than reasonable, in particular, that the return on the investment was expected to be substantial and, further, that the addition of the facility was expected to enhance the value of the land greatly.)
a no: a usufructuary can make substantial alterations to the thing to which the usufruct attaches, even over the naked owner’s objection, provided that the changes are consistent with the destination of that thing; the thing here, the Sulfur Tract, had already been dedicated to sulfur production before the usufruct incepted
b no: a usufructuary can make substantial alterations to the thing to which the usufruct

17 If you think this is the correct answer, then specify, in the space provided here, which alternative responses you think are correct.
attaches, even over the naked owner’s objection, provided that the changes are those that a
“prudent administrator” would have made; here, a prudent administrator would have made
this change
c  yes: a usufructuary cannot make substantial alterations to the thing to which the usufruct
attaches without the naked owner’s consent; here, the naked owners objected
d  yes: though a usufructuary can make substantial alternations to the thing to which the
usufruct attaches, even over the naked owner’s objection, he must first obtain judicial
approval, which requires a showing, in court, that a prudent administrator would make the
proposed change; here, though the proposed change was almost certainly prudent and,
therefore, almost certainly would have been approved had Daphne sought judicial approval,
she did not, in fact, ever go to court
e  none of the above

The narrative continues:

Daphne dies on June 30, 2030. By testament, she leaves all of her property (debts included) to her
father, Jupiter.

34  Suppose that, during the last year of her life, Daphne (i) paid local ad valorem (property) taxes that
had been assessed against the Pecan Tract in the amount of $1,000, (ii) paid a special, one time
“sewer assessment,” charged by the parish for the installation of a new sewer system, in the
amount of $5,000 (the installation of the system enhanced the value of the Pecan Tract by $5,000),
and (iii) after Castor, Gaia, and Hermes refused to do it, finally got around to reconstructing, at
her own expense – $20,000 –, the parts of the warehouse on the Pecan Tract that had been
destroyed in the lightening-triggered fire. Is Jupiter now entitled to any sort of reimbursement for
any of these expenses?

a  yes, as to all three expenses
b  yes, as to the property taxes and the sewer assessment, but no, as to the reconstruction
expenses
c  yes, as to the property taxes and the reconstruction expenses, but no, as to the sewer
assessment
d  yes, as to the sewer assessment and the reconstruction expenses, but no, as to the property
taxes
e  no: he can’t recover any of the three expenses
The narrative continues:

After Daphne’s death, Castor mortgages (or tries to mortgage) his undivided “share” of the Pecan Tract to Titan Bank & Trust (“TB&T”), a foreign bank whose lawyers don’t know didly ‘bout what can and can’t be mortgaged in Louisiana. The mortgage agreement was promptly and duly filed into the public records. More recently, Hermes has demanded that the Pecan Tract be partitioned.

35 What will become of TB&T’s supposed mortgage on Castor’s undivided “share” of the land when it is finally partitioned? Why?

a nothing: the mortgage was invalid ab initio because a co-owner of land cannot mortgage his mere “share” of that land

b the mortgage will be extinguished: when the thing on which a mortgage is granted ceases to exist, the mortgage is extinguished; here Castor’s undivided “share” of the tract will cease to exist when the court partitions the tract

c (i) if the tract is partitioned in kind, the mortgage will attach to the part that is allocated to Castor; thanks to the principle of “real subrogation,” the part of the tract that will be allocated to Castor will take the place of his undivided share of the whole, insofar as the mortgage is concerned; (ii) but if the tract is partitioned by licitation, the mortgage will be extinguished; in this case, “real subrogation” cannot occur because the proceeds of the sale (unlike a part of a tract of land) are not immovable (money is movable), and a mortgage may attach only to an immovable

d if the tract is partitioned in kind, the mortgage will attach to the part of the tract that is allocated to Castor, but if the tract is partitioned by licitation, the mortgage will attach to the part of the proceeds of the sale that will be allocated to Castor; thanks to the principle of “real subrogation,” whatever ends up being allocated to Castor in the partition, be it a part of the tract if the tract is partitioned in kind or be it a part of the proceeds of the sale if the tract is partitioned by licitation, will take the place of his undivided share of the whole, insofar as the mortgage is concerned

e none of the above


\[ \text{Finis} \]