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, 9-10; 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 things)
                        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) [Yiannopoulos, Text, 12-17]; 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.
                        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 "possessory 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?


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.” The contract says ‘the land.’ So only the land is subject to the mortgage.” Who’s right? Why?

g) Principal & accessory

Skipped.

h) Fruits & (mere) products


1] Definitions

a] Fruits

What’s a fruit? See CC art. 551, ¶ 1.
The category of fruits can itself be subdivided. What are the subcategories? See CC art. 551, ¶¶ 2-4.

b] Mere products

What’s a mere product? See CC art. 448. Are products, like fruits, subdivided into “natural” and “civil”?

2] Illustrations

a] Fruits

Examples? See CC art. 551, ¶ 3.

2] Civil fruits

Examples? See CC art. 551, ¶ 4.

b] Products

3] Complications

a] Natural fruits v. natural products

1] Minerals

PH 8. By testament, Pascal, the owner of Belle Terre, left that estate to his daughter, Lil-Fille, subject to a usufruct in favor of his son, Ti-Boy. During the term of the usufruct, Ti-Boy granted a mineral lease over the land to Théophile. This act infuriated Lil-Fille, who wanted to execute her own mineral lease over the land. And so Lil-Fille brought suit against Ti-Boy and Théophile, seeking a judgment declaring that “Ti-Boy has no right or interest in the oil, gas or other minerals” under the land “and, therefore, was without authority to grant a mineral lease to Théophile.” Her theory? (i) MP: A usufructuary's right of fructus extends only to fruits properly so called, i.e., things that are produced from the burdened thing without diminishing its substance. (ii) mP: Minerals, such as oil and gas, are not the fruits of the land from which they are severed. That is so because they are part of the land and, thus, their removal brings about a diminution of the substance of the land. (iii) QED: A usufruct of land does not confer on the usufructuary the right to extract minerals from the land. Ti-Boy and Théophile opposed the suit. What was their theory? They relied on article 560, which confers on the usufructuary the right to "draw all the profits which are usually produced by the thing subject to the usufruct," including the right to "cut trees on the land . . . [or] take from it earth, stones, sand and other materials . . . for his use . . . provided he act . . . as a prudent administrator . . . ." What result would you predict? Why? See Gueno v. Medlenka (La. 1960) & LA. MIN CODE arts. 188-196 [Yiannopoulos, Text, 691-97] & Trahan, Supp, 30-34.

2] Timber

Read Trahan, Supp, 34-35.
PH 9. Pascal owns a tract of land on which stands some timber (tall pines and oaks, to be precise). Neither he nor any of the prior owners of the land has ever before cut any of that timber. One day Olide, falsely representing himself to be the owner of that land, sells it Jean Sot, who is none the wiser and, you may assume, is in "good faith." Jean Sot then heads out to the land, part of which (about 5%) he clears and then "re-sows" with pine and oak seedlings. His plan is to do the same thing every year thereafter, i.e., to make one cut of timber on 5% of the land and then re-sow that land. Things go on this way for several years. How should the timber that Jean Sot cut be classified? Why?

PH 10. The same as before (PH 9), except that, before Jean Sot buys the land from Olide, Pascal himself cuts and re-sows timber on the land pursuant to a schedule much like that which Jean Sot later adopts, i.e., he makes one annual cut on 5% of the land, which he then re-sows. How should the timber Jean Sot cut be classified? Why?

PH 11 (a modification of PHs 9 & 10). Pascal cuts and re-sows timber on his land pursuant to a certain schedule, namely, he makes one annual cut on 5% of the land, which he then re-sows. After buying the land from Olide, Jean Sot clear cuts the entire tract! How should the timber Jean Sot cut be classified? Why?

b) Civil fruits v. civil products

PH 12. Pascal owns a tract of “cleared” (i.e., treeless) land beneath which lie large deposits of oil. Neither he nor any of the prior owners of the land has ever before produced any of that oil. One day Olide, falsely representing himself to be the owner of that land, sells it Jean Sot, who is none the wiser and, you may assume, is in "good faith." Jean Sot then (i) executes a farming lease over part of the land to Ti-Boy and (ii) executes a mineral lease over another part of the land to Lil-Fille. Who is entitled to the “rents” Ti-Boy owes under the farming lease? How about the “royalties” Lil-Fille owes under the mineral lease? Finally, how about the “up front bonus payment” that Lil-Fille owes under the mineral lease, a fee that, according to industry usage and the intent of the parties, represents compensation not for minerals produced or even for the right to produce those minerals but rather for the mere right to enter upon the surface of the land to explore for minerals? Why? See CC arts. 483, 486, & 488.

4) Significance
Why does it matter whether a particular thing is a fruit or a product?

a) Property law
1) Modes of acquiring ownership: accession: ownership of unconsented-to-production
Read CC arts. 483-488.

2) Dismemberments of ownership: usufruct: rights of usufructuaries
Read CC arts. 550-552, 554.

b) Matrimonial regimes law: community property
Read CC art. 2339.

i) Immovable v. movable things
1) Definitions
Trahan, Supp, 14-20.

a) Immovables
What's an "immovable"? Is the “plain meaning” of this term the same as its “technical meaning? See P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

b) Movables
Read CC art. 475.

2) Classifications
a) Immovables
1) Corporeal immovables
a) Definition
Read CC arts. 462 & 470; Trahan, Supp, 14-17.

b) Varieties
1/ By nature
a/ Things whose immovability is independent of unity of ownership
Trahan, Supp, 14-16. What does “unity of ownership” mean? Hint: It’s the antonym of “separate
ownership.” See generally CC arts. 463 & 464.

1° All tracts of land

PH 13.1. Olide offers to sell his estate, Terre Puante, an undeveloped 100-acre tract of land, to Jean Sot for $100,000. Jean Sot accepts. Jean Sot then writes Olide a check for $100,000, Olide takes it, the two men shake hands and go their separate ways. A few weeks later, Olide brings a petitory action against Jean Sot, seeking to evict him from the land. At the trial, Olide adamantly denies ever having sold Terre Puante to Jean Sot. Who gets the land? Why? See CC arts. 2440, 1839, 462, & Yiannopoulos, Treatise § 114, in Yiannopoulos, Text, at 111.

PH 13.2. One day Olide draws aside his nephew and employee, Auguste, and says to him, “Mon cher. Please see if you can’t get somebody to haul away de top layer o’ dirt from dat part o’ my land over dere. I don’t need it an’ don’t want it.” “How much you axin’?” asks Auguste. “Not a ting; it’s free,” answers Olide. Before long, Auguste arranges for Jean Sot to come and get the dirt. After the deal (essentially a donation) is closed, Jean Sot heads on over to Olide’s land, excavates the top layer of dirt from the appropriate part of the land, loads it into his pick-up truck, and heads home. A few weeks later, Olide, who has since decided he needs the dirt after all, brings a petitory action against Jean Sot, seeking to recover the dirt. At the trial, Olide adamantly denies ever having authorized Auguste to give the dirt to anyone and/or that, even if he had given Auguste that authority, both the grant of authority and the donation itself were nonetheless invalid for want of proper form. Auguste is “out of the country” and so, is “unavailable” to testify. What result would you predict? Why? See CC arts. 1536, 1539, 462; Landry v. LeBlanc (La. App. 3d Cir. 1982) [Yiannopoulos, Text, 112-15]; Trahan, Supp, 35-37.

PH 14. Pascal has decided to put in a flower garden on Belle Terre. To do it he needs topsoil. So, he tells his his hired hand, Jean Sot, to buy some from the local hardware store. Per his instructions, Jean Sot goes to the store, picks up a few bags of pre-packaged topsoil, loads ‘em into his pickup, pays the cashier, and heads for home. Does Pascal own the topsoil? Why or why not?

2° All buildings

PH 15. Jean Sot, after some fast talking by Olide, sells Olide his house in the Bocage Subdivision here in Baton Rouge. Though the market value of the house is about $200,000, the sales price is $75,000. A few days after the sale, after Jean Sot's friends have upbraided him for his stupidity, he thinks better of the deal and files suit to have it set aside. His theory? It rests on Civ. Code art. 2589. What result? Why? See CC arts. 462-464; P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

3° Integral parts

a° Of tracts of land

PH 16. Pascal, the owner of Belle Terre, leases it to his friend, Jean Sot. With Pascal’s permission, Jean Sot spruces up the place a bit. First, he puts in some flower beds around the homestead. To do that, he digs up the soil in the selected spots, sets the plants in the appropriate places, and fills in around them with a mixture of topsoil and cow manure. Second, he puts in an outdoor fish pond in the middle of the flower beds. To do that, he digs up the soil in the selected spot, lines the walls of the pit with bricks and mortar, and puts in the water and the fish. Third, he puts in an underground automatic sprinkler system around the flower beds. To do that, he digs up the soil in the selected spots, places the water tanks and pipes into the pits and trenches, and covers them up with the original soil. Fourth, he builds a wooden fence, the posts of which are set into the ground with concrete, around the flower beds. One month later, Pascal mortgages Belle Terre to Jambalaya Bank & Trust. The mortgage clearly extends to the “tract of land” known as Belle Terre, but what does that tract of land now entail? Consider, in particular, whether it includes (i) the topsoil-manure mixture that lies in the flower beds, (ii) the bricks and mortar in the fish pond, (iii) the water tanks, pipes, etc. that compose the sprinkler system, and (iv) the fence. See CC arts. 469, 465, 463; In re Receivership of Augusta Sugar Co. (La. 1914) [Yiannopoulos, Text, 153-54]; Monroe Automobile v. Cole, 6 La. App. 337 (1932) [in Trahan, Supp, 37-38]; Guzetta v. Texas Pipeline Co., 485 So. 2d 508 (La. 1986) [Yiannopoulos, Text, 1019-1024]; Symeonides, Developments, §§ 3 & 4, in Yiannopoulos, Text, 1028-31.

NOTE: In dealing with this category of immovables (i.e., integral parts of tracts of land), one must be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

b° Of buildings or other immovable
Re-read CC art. 465. What kinds of things might qualify as “integral parts” of a building or other immovable construction?

NOTE: In dealing with this category of immovables, must one be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

4° Permanent attachments


NOTE: In dealing with this category of immovables, must one be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

5° Standing timber

a° Definition

1* Timber

PH 17. Pascal owns Belle Terre and all that grows on it, including a grove of pine trees, a stand of crape-myrtle trees, a row of azalea bushes, and a stretch of pachysandra. While the pine trees, the crape-myrtle trees, the azaleas, and the pachysandra are still in place, Pascal sells them to Long Leaf Lumber Co. The sale agreement is not reduced to writing. Is the sale in proper form? Why or why not? See CC art. 562 cmt. (c) & CC arts. 2440 & 1839.

2* Standing

a* Not cut down

PH 18. Pascal owns Belle Terre as well as the vast forest of pine trees that grows upon it. Are the pine trees "standing timber"? Sure. But then along comes Olide, who clear cuts the land. Are the pine trees still "standing timber"? Why or why not? See CC art. 463 cmt. (d), ¶ 2.

b* Rooted in the soil

PH 19. Olide’s latest business venture is a nursery, for plants not for children. At the nursery he grows several different types of trees, including pine trees and cypress trees. But he treats these plants a little differently: while the pine trees are set in clay pots filled with dirt inside the warehouse, the cypress trees are set in the ground out behind the warehouse. To raise a little cash, Olide mortgages the nursery lot and warehouse to Jambalaya Bank & Trust Co. Does the mortgage affect either or both the pine trees or/and the cypress trees? Explain. See CC art. 469 & Trahan, Supp, 47-48 (vegetation). But see CC art. 463 cmt. (c), ¶ 2, sent. 2.

b° Classification

Is standing timber anywhere and always immovable? Or is it movable or immovable depending on the circumstances, such as, for example, who owns it, in particular, whether it belongs to the owner of the ground?

PH 20. Olide, the owner of Terre Puante, leases it to his nephew, Auguste, for 30 years. The lease authorizes Auguste to plant trees on the land, but sets forth the following curious provisos: "Any cypress tress planted by Lessee shall belong to Lessor, but any pine vines planted by Lessee shall belong to Lessee." Pursuant to the lease, Auguste moves onto Terre Puante and proceeds to plant cypress and pine trees. Many years later, while the lease is still in effect, Olide sells the cypress and pine trees (which are then still uncut) to Long Leaf Lumber Co. Neither sale is reduced to writing. Is there a problem with either sale? Why or why not? See CC arts. 2440, 1839, 463, 464; Brown v. Hodge-Hunt Lumber Co. (La. 1926) [Yiannopoulos, Text, 137-39].

c° Segregation

---

2 Equibank is one of the most important cases we’ll study in this course. Know it well.
If standing timber can be segregated from the ground for purposes of ownership, that is, one person can own the standing timber, while another owns the ground, how can this state of affairs come about?

1* By juridical act
   a* Affirmative transfer
   b* Reservation

How did “separate ownership” of the timber come about in Brown v. Hodge-Hunt Lumber Co. (La. 1926) [Yiannopoulos, Text, 137-39]?

2* By acquisitive prescription

Can separate ownership of the standing timber come about through acquisitive prescription?

d° Removal

Is separate ownership of standing timber perpetual?

PH 21. Pascal sells Belle Terre to Jean Sot, reserving to himself the pine grove that stands thereon. The act of sale provides that Pascal may remove the pine trees at any time, but no later than five years after the date of the sale. Five years and one day later, the pine trees are still there. Who now owns the pine grove? Why? See Willetts Wood Products Co. v. Concordia Land & Timber Co. (La. 1929) [Yiannopoulos, Text, 139-41].

PH 22. The same as PH 21, except that the act of sale sets no date for the removal of the pine trees. What then? Is Jean Sot stuck? Must he endure this state of affairs until the Lord returns? If not, how long must he endure it? Why? See Willetts Wood Products Co. v. Concordia Land & Timber Co. (La. 1929) [Yiannopoulos, Text, 139-41].

b/ Things whose immovability is dependent on unity of ownership

Read Trahan, Supp 16-17.

1° Certain other constructions
   a° Definition of "other construction"

What's an "other construction"? See CC art. 463 & comments.

1* Other construction

What’s the significance of the word “construction” here? Read Industrial Outdoor Displays v. Reuter (La. App. 4th Cir. 1964) [in Trahan, Supp,48-51].

2* Other construction

What's the significance of the word "other" here? Other than what? See CC art. 463.

How is one to draw the line between a "building," on the one hand, and an "other construction," on the other? See (again) P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

b° Prerequisites for classification of a "construction" as an immovable

Is it enough, to justify classifying a thing as an immovable, to establish that it's an "other construction"? In other words, is every "other construction" an immovable?

1* Permanently attached to the ground

PH 23. Pascal grants Cajun Oil & Gas Co. a mineral lease over Belle Terre, one that authorizes Cajun to drill for oil and gas there. The lease provides that any derricks, wells, or other structures built by Cajun are to belong to Pascal. Pursuant to the lease, Cajun moves onto Belle Terre; builds a temporary derrick there, one that's not affixed to the ground by concrete, bolts, etc. and that can be disassembled and removed at a moment's notice without difficulty; and begins to produce oil. While production is still underway, Pascal sells the derrick to the Bayou Oilfield Equipment Co. The sale is not in writing. Is the sale invalid for want of proper form? Why or why not? See CC art. 463 cmt. (c) & Jones v. Conrad (La. 1924) [in Trahan, Supp, 51].

How does one determine whether a particular construction is "permanently attached" to the ground? See CC art. 465 cmt. (c) & CC art. 466, ¶ 2.

2* Belongs to the owner of the ground

PH 24. The same as PH 23, except that (i) the derrick is permanently attached to the ground; (ii) the lease provides that any derricks, wells, etc. built be Cajun are to belong to Cajun, not Pascal; and (iii) Cajun,
not Pascal, sells the derrick to Bayou. Assume, as is true under the rules of accession, that the derrick belongs to Cajun. What result now? Is the sale invalid for want of form? Why or why not? See CC art. 463 & CC art. 464 cmt. (c).

NOTE: In dealing with this category of immovables, one must be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

2° Certain unharvested fruits & ungathered crops
a° Definition

What's an "unharvested crop"?

What's a "crop"? The phrase "unharvested crop" is an English translation of the French expression *les récoltes pendantes par les racines*, which appeared in the French versions of the predecessors to article 463 in the Code of 1825, the Digest of 1808, and the Code Napoleon. Literally translated, the phrase means this: "Harvests hanging by the roots." Does that help?

2° Ungathered fruits
a° Ungathered
b° Fruits

What does "fruits" mean here? Does it have her the same meaning it has in CC art. 551? The phrase "ungathered fruits" is an English translation of the French expression *les fruits des arbres non cueillis*, which appeared in the French versions of the predecessors to article 463 in the Code of 1825, the Digest of 1808, and the Code Napoleon. The phrase, literally translated, means this: "the fruits of trees not picked." Does that help?

b° Classification

If unharvested crops or ungathered fruits can be segregated from the ground for purposes of ownership, that is, one person can own the them, while another owns the ground, how can this state of affairs come about? See Yiannopoulos, Treatise §§ 128-32 & Porche v. Bodin [Yiannopoulos, Text, 141-46].

c° Segregation

How should “other vegetation,” that is, vegetation that qualifies as neither (i) standing timber nor (ii) unharvested crops/ungathered fruits, be classified? Why? See (again) Trahan, Supp, 47-48 (vegetation) & CC art. 465 (1870) ("Standing crops and the fruits of trees not gathered, and trees [les arbres] before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached. As soon as the crop is cut, and the fruits gathered, or the trees cut down, although not yet carried off, they are movables.")

2/ By declaration

PH 26. Pascal, the owner of Belle Terre, decides to start growing cotton. He buys a new multi-purpose tractor, complete with attachments for tilling and manure-spread, and a new combine, drives them to Belle Terre, and puts them to work there. At planting time, he uses the tractor to till the soil and to spread manure; at harvest time, he uses the combine to pick the cotton; in the off seasons, he stores both on site in a shed.
Sometime later, Pascal mortgages Belle Terre to Jambalaya Bank & Trust Co. Does the mortgage attach to the tractor and/or the combine? See CC art. 467.

PH 27. Clodice decides to open a bakery in a building that she owns on Main Street in downtown Gueydan. She buys and installs the necessary equipment, which includes a 500-lb mechanical dough-mixer. Though large and heavy, the dough-mixer is a snap to install: one simply rolls it into place, then plugs it in to a standard electrical outlet. Once it’s in place, Clodice heads down to the Vermillion Parish courthouse, executes a document that declares the dough-mixer to be immovable, then gives it to the clerk of court for filing. The next day, she mortgages the bakery building, but not the land, to Jambalaya Bank & Trust Co. Does the mortgage attach to the dough-mixer? See CC arts. 466 & 467.

PH 28. The same as PH 27, except that Clodice is merely the lessee of the building; the owner-lessee of the building is Olide. (Clodice does, however, own the dough-mixer.) What result? Why?

PH 29. The same as PH 27, except that Clodice is merely the lessee of the dough-mixer; the owner-lessee of the dough-mixer is Pascal. (Clodice does, however, own the building.) What result? Why?

2] Incorporeal immovables

Read Trahan, Supp, 317.

a] Definition

Read CC art. 470.

b] Illustrations

Read CC art. 470, sent. 2. Is the list illustrative or exhaustive?

b] Movables

Read Trahan, Supp, 17-20.

1} Corporeal movables

a] Definition

Read CC art. 471.

b] Illustrations

Read CC arts. 472, ¶ 1, & 474; CC art. 463 cmts. (d) & (e); CC art. 464 cmt. (d)

* De-immobilized component parts

Read CC art. 468 & Trahan, Supp, 52.

2} Incorporeal movables

a] Definition

Read CC art. 473.

b] Illustrations

Read CC art. 473, ¶ 1, sent. 2, & ¶ 2. Is the list illustrative or exhaustive?

3] Significance

Read Trahan, Supp, 18-20.

a] Property law

1] Modes of acquiring ownership

a] Accession

Compare CC arts. 490-494 with CC arts. 507-516.

b] Acquisitive prescription

Compare CC arts. 3473-3488 with CC arts. 3489-3491.

2] Transfer of ownership: effectivity vis-à-vis third persons

Compare CC art. 518 with CC arts. 517 & 2442.

PH 30. Olide takes out an unsecured loan from his friend, Clodice. Before the loan is paid off, Olide sells his farm (i.e., the land together with its component parts, such as the barn and house) and his troupeau des cochons (pig herd) to Jean Sot. After the acts of sale have been inked and the act of sale for the farm has been recorded in the public records, but before Jean Sot has “taken delivery” (i.e., assumed control) of either the farm or the troupeau, Olide defaults on his loan to Clodice. Clodice promptly obtains a judgment against Olide and, armed with that judgment, proceeds to foreclose on all of “his” property (as is her right, see CC arts. 3182 & 3183), including the farm and the troupeau, both of which are still in Olide’s control. Jean Sot intervenes in the foreclosure action, contending that, by virtue of the sales, the farm and the troupeau belong to him, not Olide, and therefore are not subject to foreclosure (inasmuch as Clodice has no rights against his, i.e., Jean Sot’s, property). What result should the court reach? Why?
3) Servitudes: objects
See CC art. 698 & cmts. (b) & (c); art. 639 & cmt. (e); art. 630 & cmt. (b).

4) Accessory real rights: mortgage & pledge (pawn & antichresis)
Compare CC art. 3286 with CC arts. 3135, 3154, 3155, 3178, & 3179.

b) Other: obligations
  1) Formalities
     a) Sale

See CC arts. 2440 & 1839.

b) Donation inter vivos

Compare CC art. 1536 with CC art. 1539.

2) Sales: lesion

Skipped.

j) Improvements v. constituents


1) Definitions/illustrations
   a) Improvements
   b) Constituents

2) Nature of the criterion of distinction

3) Subclassifications
   a) “Consented to” improvements/constituents
   b) “Unconsented to” improvements/constituents

4) Significance: property law: accession with respect to immovables
   a) Ownership

Compare CC art. 493, ¶ 1, with CC art. 493.1.

PH 32. Olide leases his farm to Ti-Boy. As was his right under the terms of the lease agreement, Ti-Boy (i) constructs a huge water storage tank out of bricks and mortar below ground level and, after finishing construction, covers it over with concrete and (ii) builds a barn for his horses. Assume, as is probably true, that the tank is an “integral part” of the land for purposes of CC art. 465 and that the barn is a building for purposes of CC arts. 463 & 464. To whom do the tank and barn belong? Why?

   b) Remedies

1) Unconsented-to improvements and/or constituents

   Compare CC art. 493, ¶¶ 2 & 3, with CC art. 495.

   PH 33. The same as PH 32, except that the term of the lease has just ended and Ti-Boy has departed the farm without taking either the tank or the barn with him. (i) Can Olide now demand that Ti-Boy remove the tank and/or the barn at Ti-Boy’s expense? Why or why not? (ii) If Olide were to keep the tank and/or the barn, would he have to pay Ti-Boy for it? Why or why not? See (again) Guzetta v. Texas Pipeline Co., 485 So. 2d 508 (La. 1986) [Yiannopoulos, Text, 1019-24]; Symeonides, Developments, §§ 3 & 4, in Yiannopoulos, Text, 1028-31.

III. Possession

A. Introduction: possession & ownership

Read Planiol, Traité Élémentaire in Yennopoulos, Text, 197-88. Then read & brief Peloquin v. Calcasieu Parish Police Jury, 367 So. 2d 1246 (La. App. 3d Cir. 1979) [Yiannopoulos, Text, 188-91; then read Exposé des Motifs in Yiannopoulos, Text, 191-92].

PH 34. The same as Peloquin, except that George was not put to sleep after all and, after the trial is over, is returned to the Peloquins on the ground that they are his "possessors." A short while later, someone else--let's call him Pascal--shows up, claiming to be George's true "owner." To support his claim, he presents the following evidence: At the time when and near the place where the Peloquins found George, he, Pascal, had lost his pet cat Perot, who matched George's description to a tee. Testing of hair left behind by Pascal's lost cat and of hair left behind by George at the CPACC showed that they were genetically indistinguishable. There's no doubt in anyone's mind that Perot and George are one. It's virtually certain that Pascal will, at the
end of the day (i.e., at the end of the trial), recover George. But who gets to keep him in the meantime? Why?

PH 35. The same as PH 34, with the following variations. This time, Pascal has far less impressive evidence to support his ownership claim to Perot-George. Gone is the DNA evidence. In its place is this: Shortly after Perot disappeared, Father Louis, the local Catholic priest and a man of unimpeachable integrity, told him, Pascal, that he had seen Perot (whom he, the father, knew from his prior visits to Pascal's house) wander out of Pascal's house and then meander down to the bus stop, where Mrs. Peloquin picked him up. There's just one problem. A month after Father Louis related this story to Pascal, the Vatican reassigned him to the Australian outback, a post he still occupies. Father Louis is, therefore, unavailable to testify. And Pascal can't get on the stand to relate what the father told him. Anybody know why? It's inadmissible hearsay. So, the only admissible evidence Pascal has is his testimony that he lost a cat fitting George's description around the time when and the place where George was discovered. At the trial, the Peloquins put on evidence that (i) stray cats fitting George's description were very common at that time and (ii) several such cats were seen in the vicinity of the bus stop both before and after Mrs. Peloquin picked up George. Who's going to win? Why?

B. The concept of possession

Read Planiol, TRAITE ELEMENTAIRE no 2263-64, in Yiannopoulos, Text, 187-88; Expose des Motifs, in Yiannopoulos, Text, 191-92; Trahan, Supp, 62 (definitions).

1. Definitions

What is "possession"? Does the term have just one meaning? What's the difference, if any, between "true possession" and "precarious possession"? Isn't the expression "precarious possession" an oxymoron? Compare CC arts. 3421 & 3424 with 3437.

2. Nature of possession

Is possession a "fact" or a "right"? What's the "right to possess"? See CC art. 3422.

C. Things susceptible of possession

1. Public & private things

PH 36. Our hero Pascal, finding himself without a place to live, heads down to the Centroplex grounds and there, between the old State Capitol, the Centroplex, the Parish governmental building, and River Road, pitches his tent. This property, which is owned by the city-parish government, is used for public events, e.g., the Blues Festival. After Pascal's lived there day and night for about 15 months, the Mayor, Tom Ed McHugh, finally decides to throw him out. Pascal then files suit against the city-parish government, claiming the he had acquired the right to possess the area around his tent. His theory? That he had been in possession of that area for over a year. What result? Why? See Trahan, Supp, 3-4 ("significance" of the "public-private" dichotomy).

2. Corporeals & incorporeals

a. Corporeals

b. Incorporeals

PH 37. Suppose that Jean Sot, the village idiot, buys a piece of farm land. On the neighboring lot is a small stream, one that Jean Sot would like to use to water his horses. The next day, Jean Sot sees Olide out working on the neighboring lot. Believing that Olide is the owner of that lot, Jean Sot proposes to buy a servitude of watering for $1000. Olide, it turns out, is only a hired hand, but, seeing an opportunity to make a quick buck, plays along.Jean Sot turns over the $1000 to Olide, Olide executes an "act of servitude" in Jean Sot's favor, and Jean Sot then begins to use the servitude. Can we say that Jean Sot "possesses" the servitude? Why or why not? See CC art. 3421, ¶ 2.

D. Constitutive elements of possession

1. Corpus

a. Definition

What do we mean by corpus? See CC arts. 3424, 3425; Trahan, Supp, 64-66 (corpus or apprehension); Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07].

b. Illustrations

Read & brief Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07].

Read (though you don't yet need to brief) Liner v. Louisiana Land & Expl. Co., 319 So. 2d 766 (La.
1975 [Yiannopoulos, Text, 218-24], and Souther v. Domingue, 238 So. 2d 264 (La. App. 3d Cir. 1970) [Yiannopoulos, Text, 216-18]. In both cases, the court concluded that the would-be possessor had established corpus over the land in question. On what basis (i.e., on the basis of which acts on the land) did the court in each case reach that conclusion?

PH 38. Imagine an isolated piece of swampland, about 99% of which is covered with mud and/or shallow water. For some years now, our hero Pascal, who does not have title to the property, has been using it for hunting and trapping game. Because the hunting and trapping seasons are restricted to a few months out of the year, he is absent most of the time. Has he done enough to establish corporeal possession? Why or why not?

2. Animus
   a. Substantive matters
      Read CC arts. 3421, ¶ 1, & 3424; Trahan, Supp. 67-71.
      1) Definition
         What is the animus that is necessary for possession? See CC arts. CC arts. 3421, ¶ 1, & 3424; Harper v. Willis, 383 So. 2d 1299 (La. App. 3d Cir. 1980) [Yiannopoulos, Text, 190-94].
         Is this animus different from"good faith”? If so, how? Read Trahan, Supp, 71-73.
      2) Illustrations
         Read & brief Harper v. Willis, 383 So. 2d 1299 (La. App. 3d Cir. 1980) [Yiannopoulos, Text, 211-16].

      PH 39. The same as Harper v. Willis, except that Harper testified as follows: "Yeah, I knew I didn’t really own it, but I wanted to own it, treated it as if I did own it, and hoped someday to become owner by acquisitive prescription.” What result? Why?

      PH 40. The same Harper v. Willis, except as follows. Harper acquired a title to the disputed lots back in 1939 before he ever used them. The title, though valid on its face, turns out to be invalid. Harper testifies that he believed the title was valid. What result? Why?

      PH 41. The same as PH 40, except that Harper testifies that he knew the title was invalid all along. What result? Why?

      PH 42. The same as Harper v. Willis, except that Harper testified as follows: "I was just using the property provisionally. Had the true owners showed up, I would have moved off the property." What result? Why?

   b. Procedural matters: presumptions & burden of proof
      PH 43. In 1975, Olide moves onto a tract of land and begins to graze his cattle there. Olide knows that the tract belongs to someone else. Two years later, Pascal, the record title owner, discovers Olide's cattle on the tract and, to keep them out, erects a fence. Olide then brings a possessory action against Pascal. At the trial, Olide puts on evidence that he had corporeal possession of the tract, but no evidence regarding his animus or state of mind. Pascal puts on no evidence whatsoever. What result? Why? See CC art. 3427.

      PH 44. The same as PH 43, except that before Olide moves onto the tract, Jean Sot, Pascal's hired hand, tells him it's okay for him to graze his cattle there. What result? Why? See CC art. 3427, 3437, & 3438.

E. Extent of possession
   How much of the thing will the possessor be considered to possess? In the case of movables, the answer is simple: it's either all or nothing. But in the case of immovables, especially land, the answer is more complex. The answer, it turns out, depends on whether or not the possessor has title.

1. With title
   Read CC art. 3426 cmt. (b).
   a. Nature of constructive possession
      What if the possessor has title to the thing? How much does he possess? See CC art. 3426.
      Review Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07]. What did the court conclude regarding the spatial extent of the possession of the prevailing party? Why?

      Read (you don’t need to brief it yet) Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. What did the court conclude regarding the spatial extent of the possession of the prevailing party? Why?

   b. Requisites for constructive possession
1) Corporeal possession of a part
2) Title

Constructive possession requires a “title.” But what does that mean? And must the title be valid? Read CC art. 3426 cmt. (b).

3) Not good faith

Read CC art. 3426 cmt. (b).

2. Without title
   a. Substantive matters: definition of actual possession

Read CC art. 3426, sent. 2.

   b. Procedural matters: modes of proving actual possession

Read CC art. 3426 cmt. (d).

What does “inch-by-inch possession” mean? What about "possession within enclosures"? What might it mean to prove that? What’s an enclosure? What are some examples? See Souther v. Domingue, 238 So. 2d 264 (La. App. 3d Cir. 1970) [Yiannopoulos, Text, 216-18].

PH 45. Pascal and Olide have title to large adjacent tracts of land in rural Louisiana. Both have been cleared of trees. Over the years, Pascal has exercised various acts of dominion, e.g., hunting, trapping, grazing animals, and parking vehicles, over a slice of Olide’s tract. That section of Olide's tract, however, is unbounded, i.e., there's no artificial or natural barrier around it. One can't tell were it leaves off and where the rest of Olide's tract begins. Can Pascal establish his possession to the section of Olide's tract that he's used over the years? If so, how?

F. Acquisition, conservation & loss of possession

1. Acquisition of possession
   a. Original possession

   1) Vicarious corpus

Let's begin with corpus. Must the possessor detain the thing himself (i.e., do something on, to, or with the thing personally) or can he detain the thing through an intermediary?

Review Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07]. Neither Manson Realty Co. itself nor any of its officers or employees ever set foot on the property. Then on what basis did the court conclude that Manson Realty Co. had established possession (which presupposes a finding that the company had corpus)?

Review Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. Neither Sunset Realty (Texaco’s ancestor-in-title) nor any of its officers or employees ever set foot on the property. Then on what basis did the court conclude that Sunset Realty had established possession (which presupposes a finding that the company had corpus)?

   2) Vicarious animus

PH 46. After Cajun Rice, Inc., a farming corporation headed by Pascal (its president and sole employee), purchases a tract of land, Pascal, purporting to act on Cajun’s behalf, heads out to the tract, fences it off, ploughs it under, and sows it with rice. Is Cajun in possession of the tract? To be precise, does it (i.e., Cajun) have the required animus domini or animus sibi habendi with respect to Tract A? Why or why not? Art. 3430.

PH 47. After Mamère, Pascal’s aging and ailing mother (she no longer recognizes her children nor knows her name), is diagnosed with advanced Alzheimer’s Disease, Pascal obtains a court order interdicting her and appointing him as her curator. Before long Olide, falsely claiming to be the owner of a certain tract of land (Tract B) that lies next to a tract of land that Mamère owns (Tract A), sends her a letter in which he offers to sell Tract A to her at a certain price. Because Pascal considers the price to be favorable to his mother, he accepts the offer on her behalf (after first obtaining court approval, of course). Once Tract A is “hers,” Pascal leases it to Jean Sot, who immediately begins to farm it. Is Mamère in possession of Tract A? To be precise, does she have the required animus domini or animus sibi habendi with respect to Tract A? Why or why not?

PH 48. Pascal, about to depart for an extended trip to southern France, calls in Jean Sot, his hired hand, and tells him this: "While I'm away, I give you full authority over all of my affairs. You may, among other things, acquire property in my name using funds from my bank account." With that, Pascal walks out of the room and flies off to the Promised Land. The next day, Olide shows up at Pascal's estate and, finding Jean
Sot in charge, offers to sell him 40 acres of a the neighboring estate. The two close the deal, Jean Sot pays Olide out of Pascal's funds, and Jean Sot, acting for Pascal, goes into possession of the 40 acres. There's just one problem: Olide, a con artist, didn't own that property. Two years later, Pascal, his skin bronzed from long afternoons spent on the French Riviera, reluctantly returns to his estate in Louisiana. When he's informed of the deal Jean Sot struck with Olide, he approves of it and, of course, at that moment himself believes that he is possessing as owner. But a few days later the real owner shows up and orders Pascal and his men off the property. When did Pascal acquire possession of the property? When Jean Sot first moved onto it or when he, Pascal, was first apprized of the deal? Why? See François Terré & Philippe Simler, Droit Civil: Les Biens § 147, at 107 (4th ed. 1992) ("one can conceive of hypothetical situations of the acquisition of possession by borrowing the animus of another").

b. Derivative possession

1. Derivative corpus

Read CC arts. 3441 & 3442.

Review Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. There is no indication in the opinion that Whitley himself, as opposed to his "ancestor" (Coles), ever corporeally possessed the land described by his title. And yet the court concluded that Whitley had acquired possession? Yes. How is that possible?

2) Derivative animus

PH 49. For years, Pascal possessed part of a tract of land that belongs to Olide. Throughout that period, he had the requisite animus, i.e., he intended to possess the land as owner. But then he died. In his testament, he left "all of my property" to his son, Ti-Boy. Ti-Boy, however, wasn't aware that Pascal had possessed the land. And so, for years after Pascal's death, Ti-Boy, naturally enough, never gave any thought to that land. But one day, Jean Sot, Pascal's old hired hand, dropped by to visit Ti-Boy and, in the course of their conversation, informed Ti-Boy that Pascal had possessed the land. Ti-Boy immediately rushed out of the house and fenced off the land. Olide then brought suit against him, attempting to throw him off. When would you say that Ti-Boy first acquired the animus to possess the land as owner? Was it when Pascal died? Or was it not until he himself took physical control of the land? Why?

2. Conservation of possession

a. Substantive matters: what is required

1) Animus

Must one retain animus domini / animus sibi habendi to keep one’s possession alive?

2) Corpus

Review Souther v. Domingue [Yiannopoulos, Text, 216-18] again. There was a hiatus in the Prejeans’ detention of the land, was there not? When did the court conclude that the Prejeans' possession had begun—when the detention first began or when, after the hiatus, it was resumed? And what did the court conclude about the continuity of the Prejeans' possession? See CC art. 3431 & cmt. (b).

PH 50. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves. Jean Sot continues to pay taxes on the land. Five years pass. Is Jean Sot still in possession of the land? Why or why not? See CC art. 3433.

PH 51. The same as PH 50, except that Jean Sot, after closing up shop on the land, does not thereafter pay taxes on it and, further, tells his friend, Pascal, that he wants to having nothing else to do with the land and will never return to it. Is Jean Sot in possession of the land? More to the point, is he in civil possession? Why or why not? See CC art. 3431 cmt. (c). What's the difference between a case like this, when the possessor abandons the thing, from a case like PH 50? See CC art. 3433.

PH 52. The same as PH 50, except that Jean Sot does not leave of his own free will. It turns out that Olide did not the property in question, that it belonged to Clotile. Clotile, upon discovering Jean Sot's cutting operations, sends a team of armed security guards onto the property. They lead Jean Sot and his men off the property at gun point, put up an electric fence around the property, and thereafter patrol the fence line. Is Jean Sot still in possession? More to the point, is he in civil possession? Why or why not? See CC art. 3433.

b. Procedural matters: presumption & burden of proof

PH 53. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut
timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves and, the next day, drops dead. Do Jean Sot's heirs have civil possession of the land? Why or why not? See CC art. 3422.

3. Loss of possession

How might a possessor lose possession? See CC art. 3433.

Is it sufficient, to accomplish an “abandonment,” that one simply “manifest” one’s “intention” to abandon? Must one not, as well, actually relinquish corpus over the thing?

1. Loss of both corpus and animus: abandonment

PH 54. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves. He does not thereafter pay taxes on the land and, further, tells his friend, Pascal, that he wants to having nothing else to do with the land and will never return to it. We may assume that Jean Sot was once in possession of the land. But is that still true? Why or why not?

PH 55. Pascal, who plans to ride on the Krewe du Poule float in the Greater Gueydan Mardi Gras parade, runs to the store and buys doubloons and beads. While riding along on the float, he throws his treats to the spectators who've gather to watch the spectacle. He was once, we can assume, in possession of the trinkets. Is that still true? Why or why not?

2. Loss (involuntary) of corpus alone
   a. Eviction (usurpation)

   b. Destruction

PH 56. Olide, without Pascal's permission, moves onto Pascal's rural and puts up a brothel there. For the next several years, Olide uses the brothel and the land around it as if it were his own. Then one night, the Supreme Being, upon deciding he or she has had enough, takes action. A lightning bolt strikes the building, burning it to the ground. Has Olide lost possession of the building? Why or why not?
   c. Escape

Skipped.

3. Loss of animus alone

PH 58.1. Pascal and Clodice enter into a contract of sale, the object of which is Camille le cocodrie (alligator), which Clodice is selling and Pascal is buying. Under the terms of the sale, Clodice agrees to hold Camille for Pascal until he can complete construction of an alligator holding pen. Before the sale, Clodice, you may assume, had possession of Camille. Is that still true? Why or why not?

PH 58.2. Pascal builds moves onto a certain marsh, then hunts and fishes on it and burns it regularly for a few years. Then his health declines, forcing him to quit his outdoor activities. After that, he moves to a house in the big city, Gueydan, and never returns to the marsh. Though he from time to time grants mineral leases in the marsh to oil and gas companies, none of them ever begins drilling. A few years Pascal's departure, Olide takes up residence at Pascal's camp and, like Pascal before him, hunts and fishes on it and burns it. To the extent that Pascal might be able to claim to be in possession of the marsh, what kind of possession would he have? What kind of possession might Olide claim to have? Which prevails? In other words, which person–Pascal or Olide–is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.

PH 58.3. Pascal acquires title to a 40-acre estate known as Belle Terre, which consists of undeveloped woodland. He clears five acres, on which he builds a house, plants cotton, and grazes cattle. He never sets foot on the other 35 acres. Then Pascal, who's become sick and senile, leaves Belle Terre vacant and moves in with his daughter in Gueydan, though he continues to pay taxes on it. A few years later, Olide, unbeknownst to Pascal, fences off five of the undeveloped acres of Belle Terre, clears part of it, and begins raising sheep there. To the extent that Pascal might be able to claim to be in possession of the part of Belle Terre that Olide has invaded, what kind of possession would he have? What kind of possession might Olide claim to have? Which prevails? In other words, which person–Pascal or Olide–is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.
Re-read & now brief Souther v. Domingue, 238 So. 2d 264 (La. App. 3d Cir. 1970) [Yiannopoulos, Text, 216-18]; re-read & now brief Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]; then read Symeonides, in Yiannopoulos, Text, 204-05.

PH 58.4. The same as Whitley v. Texaco, except that (i) Texaco stopped leasing its tract out back in 1950 and, since that time, did nothing on, to, or with the land, except to pay taxes on it and (ii) Whitley stopped leasing or otherwise using his tract in 1960, ten years after Texaco stopped leasing or otherwise using its tract. To the extent that Whitley might be able to claim to be in possession of the wooded area, what kind of possession would he have? What about Texaco? Which prevails? In other words, who is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.

G. Vices of possession
To be effective possession must have certain qualities. What are they? See CC art. 3435.

1. Violence

a. Definition

What does it mean to say that a possession as "violent"? See CC art. 3436, ¶ 2; then read Trahan, Supp, 81-83.

b. Amplification

PH 59. Olide, who has long coveted the fine tract of marshland that Pascal hunts, traps, and burns, decides he must have it as his own. With his two shotgun-totin' buddies, Foster and Jenkins, at his side, Olide heads out in his marsh boat in search of Pascal. When Olide spotted Pascal's flat bottom boat out in the marsh, he headed straight for it and, pulling up alongside, shouted: "Foutes ton camp ou j'vais mettre un trou à ton tête," which, translated, is "Get the devil out of here or I'm going to put a hold in your head." Pascal, no fool he, leaves. Olide then hires Foster and Jenkins to patrol the marsh 24 hours a day to keep Pascal out, by force if necessary. Olide then begins to hunt, trap, and burn the marsh himself. Is Olide in possession of the marsh? No. Why not? Because his possession was infected with the vice of violence or, in other words, his possession was not peaceable.

PH 60. The same as PH 59, except that, three months later Olide, who has fallen under the spell of the teachings of Mohandas Gandhi (the Mahatma), especially his teachings on nonviolence, dismisses Foster and Jenkins and begins to plants water lilies in the marsh. Is Olide now in possession of the marsh? Why or why not? See CC art. 3436, sent. 2.


PH 61. The same as PH 59, except that Pascal, instead of leaving the scene when confronted by Olide et al., pulls an AKA 47 out from under the seat of his boat and starts firing at will, wounding Foster and scaring Jenkins so badly that he suffers a heart attack. Olide immediately comes about and heads for safety. Pascal, to make sure that he has no trouble, puts up an electric fence around the marsh and sows the marsh with alligators. Is Pascal's possession of the marsh efficacious (valid)? Why or why not? See Trahan, Supp, 83-86 (doctrine re maintenance of possession by violence).

PH 62. The same as PH 59, except that now there's another person who claims an interest in the marshland, Lil-Fille. Lil-Fille has title to the marshland, though how good it is is unclear. On the day after the encounter between Olide and Pascal, Lil-Fille heads out into the marsh to do a little surveying. Upon spotting Lil-Fille, Olide heads out to meet him unarmed and alone. When the two boats are pulled up alongside each other, the two exchange greetings. Eventually Olide gets around to asking her what she's up to. When Lil-Fille tells him that she's surveying "her" marsh, Olide interrupts her, tells her she's mistaken—that the marsh belongs to him—, and politely asks her to leave. She does so. Olide thereafter continues to hunt, trap, and burn the marsh and his henchman, Foster and Jenkins, continue to patrol the marsh looking for Pascal. Lil-Fille never returns to the marsh. Is Olide's possession of the marsh efficacious (valid)? Why or why not? See Trahan, Supp, 86-87 (re cessation of violence).

2. Clandestinity

Read Planiol, Elementary Civil Law Treatise, nn° 2281-2283, in Yiannopoulos, Text, 238.

a. Definition

What does it mean to say that a possession as clandestine? See CC art. 3436, ¶ 2.

b. Amplification
PH 63. One night while Pascal lies sleeping in his hunting camp, Olide sneaks inside, snatches Pascal's prized cane fishin' pole and heads for home. Once there, he squirrels the pole away in the attic of his mobile home where it remains for months. Is Olide's possession of the pole efficacious (valid)? Why or why not?

PH 64. The same as PH 63, except that Olide, after keeping the pole hidden for several months, takes it out and begins to use it. He's even so bold as to use it at fishing rodeos attended by Pascal. Is Olide's possession of the pole efficacious (valid)? Why or why not?

PH 65. The same as PH 63, with the following modifications. Pascal, it turns out, is just as much a thief as Olide: he got the fishing pole by stealing it out of the back of Jean Sot's pickup truck. A few days after Olide steals the pole from Pascal, Olide takes Jean Sot into his attic and shows him the fishing pole. Jean Sot, dimwit that he is, doesn't recognize the pole as his own. Time goes by, during which Olide keeps the pole hidden from Pascal. Is Olide's possession of the pole efficacious (valid)? Why or why not?

See Trahan, Supp, 87-88.

3. Discontinuity
Read Planiol, Elementary Civil Law Treatise, nn° 2277, in Yiannopoulos, Text, 236.

a. Definition
What does it mean to say that a possession as "discontinuous"? See CC art. 3436, ¶ 2.

b. Amplification
Does it strike you as odd that continuity, i.e., the exercise of corpus at regular intervals, is an essential quality of possession? Doesn't this requirement, at least at first blush, seem to contradict another fundamental principle of the law of possession, i.e., civil possession? How so? How can (and should) the apparent contradiction be resolved?

PH 66 (based on Romar v. Estate of Gay, 454 So. 2d 431, 435 (La. App. 3d Cir. 1984)). Olide, without Pascal's permission, goes onto a densely wooded tract of land to which Pascal holds the title. For three months, he carries out logging operations there. Then he leaves. He does the same thing the next year and the year after that. Then ten years pass. Is Olide still in possession of the land? If we take seriously the notion of civil possession, how do we answer this question? But what if we take seriously the requirement of continuity of possession? Which should we take seriously? Why?

4. Equivocation

a. Definition
What does it mean to say that a possession is "equivocal"? See CC art. 3436, ¶ 2.

b. Amplification
PH 67. Merelia, the mother of Ozon and Louis, owns a piece of land that's suitable for farming. Merelia dies intestate, i.e., without a will. After her death, Louis, without first communicating with Ozon, moves onto the property, builds himself a small barn and plants a soybean crop. Assuming that Louis is in possession of the property at all, would you say that that possession is efficacious (valid)? Why or why not?

See CC arts. 888, 797, & 802.

PH 68. Ti-Boy and Lil-Fille, husband and wife, decide to split up. Ti-Boy moves out to the camp; Lil-Fille stays in the house. They do not, however, immediately seek a judgment of separation or divorce or execute a separation of property agreement. When Ti-Boy left the house, he, of course, left behind many of his belongings, included his collection of fishing and hunting magazines, which his father had given him before his marriage. Lil-Fille, herself no stranger to activities like giggin' flounder and pumpin' shotguns, would look through the magazines from time to time and did her best to maintain the collection in good form. This state of affairs continues for some time. Assuming that Lil-Fille is now in possession of the magazines at all, would you say that that possession is efficacious (valid)? Why or why not?

H. Precarious detention (precarious possession)
Read Exposé des Motifs & Comment in Yiannopoulos, Text, 239-41.

1. Definition
What is precarious possession? See CC art. 3437.
Read Trahan, Supp, pp. 76-81 (notes on “collective” and “compound” possession).

2. Illustrations
a. Precarium

-19-
b. **Lease**

PH 75. Pascal leases his marsh to Olide for a period of 1 year for a price of $10/month. Olide moves onto the property, then begins hunting, fishing, etc. Is Olide a real possessor or a precarious possessor or both? Explain. See CC art. 3438.

c. **Deposit**

PH 76. Pascal, who's about to leave on a vacation in the south of France, gives his prized nutria coat to Jean Sot for safekeeping. Is Jean Sot a real possessor or a precarious possessor or both? Explain.

c. **Pledge**

PH 77. Olide asks Pascal to loan him $100. Pascal's willing to make the loan, but wants some security. So Olide pledges his collection of Dewey Balfa records to Pascal, that is, gives Pascal the records with the understanding that, should Olide default on the loan, Pascal can sell the records and use the proceeds to retire the debt. Is Pascal a real possessor or a precarious possessor or both? Explain.

d. **Co-ownership**

PH 78. Pascal and Olide pool their money (each contributes $50,000) to buy a stretch of land running along Bayou Teche. Olide, without Pascal's knowledge, then moves onto the land, builds a house there, and settles down. Is Olide a real possessor or a precarious possessor or both? Explain.

e. **Servitude**

PH 79. Pascal and Olide own adjacent estates, Belle Terre and Terre Puante, respectively. Pascal has never set foot on Belle Terre. For the price of $100, Pascal executes in Olide's favor a document that reads as follows: "On behalf of myself and all future owners of Belle Terre, I hereby grant to Olide and to all future owners of Terre Puante the right to cross Belle Terre to gain ingress to and egress from Terre Puante." Olide then begins to use the servitude, walking across Belle Terre everyday. Is Olide a real possessor or a precarious possessor or both? Explain.

3. **Procedural matters: presumptions**

PH 80. This should sound familiar. In 1975, Jean Sot, Pascal's hired hand, gives Olide permission to graze his (Olide's) cattle on Pascal's land. Two years later, Olide, who really likes the land, decides that he wants it for himself, that he would like to be the owner. From that point forward, he believes that he is possessing the land as owner. Pascal, meanwhile, decides to put up a shopping mall on the land. Pursuant to his development plan, he puts up a fence, effectively blocking Olide out. Olide then brings a possessory action against Pascal. At the trial, Olide puts on evidence that he had corporeal possession of the tract, but no evidence regarding his animus or state of mind. Pascal puts on no evidence whatsoever. Who will prevail? Why? See CC arts. 3427 & 3438.

4. **Termination (interversion of title)**

Can a precarious detainer terminate his precarious status (or, as the French put, “intervert” his title from one of lessee, servitude holder, depositary, co-owner, etc., into one of owner), thereby becoming a possessor? If so, how? See CC arts. 3438 & 3439; review Yiannopoulos, Text, 239-41; read Trahan, Supp, 89-90.

a. **Co-owners**

What must a co-owner do to terminate his precarious possession vis-a-vis his other co-owners and to begin possessing for himself? See CC art. 3439, ¶ 1.

PH 81. Remember Merelia and her sons, Ozon and Louis? Well, they're back. Merelia, who owns a piece of land on which she had for years grown soybeans, dies intestate. After Merelia’s death, Louis, without first communicating with Ozon, moves onto the land, puts up an electric fence around it, and posts signs along the fence that read as follows: “No trespassers. Ozon, this means you, too.” Then Louis starts using the land (e.g., planting soybeans). Does Louis possess the land? Why or why not?

PH 82a. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis, without Ozon's knowledge, goes to probate court, gets a judgment of possession recognizing him as Merelia's sole heir and putting him alone into possession of the land, and records it in the public records. Then Louis starts using the land (e.g., planting soybeans). Does Louis possess the land? Why or why not?

PH 82β. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis goes to see Olide. In exchange for $1000, Olide executes a bogus act of sale whereby he purports to sell the land in question to Louis for $50,000. Louis then records the act of sale in the public records. Then Louis starts using the land (e.g., planting soybeans). Does Louis
possess the land? Why or why not?

PH 83. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis, without first communicating with Ozon, moves onto the land and plants a new soybean crop, pays taxes on the land, and buys liability and casualty insurance for it. Does Louis possess the land? Why or why not?

b. Other detainers (lessees, servitude holders, borrowers for use, depositaries, pledges, holders of precaria)

What about other detainers, e.g., lessees, servitude holders, holders of precaria, etc.? What must such a precarious possessor do to terminate his precarious possession vis-a-vis his the real possessor and to begin possessing for himself? See CC art. 3439, ¶ 2. Is this standard the same as or different from that for co-owners? If the standards are different, how are they different?

PH 84. Pascal leases his marsh to Olide for a period of 1 year for a price of $10/month. Olide moves onto the property, then begins hunting, fishing, etc. Six months into the term of the lease, Olide, having decided that he wants the marsh for himself, sends Pascal a letter which reads as follows: "You are hereby notified that from this day forward I shall possess the marsh for myself." Pascal receives and reads the letter. Is Olide now a real possessor or a precarious possessor? Why?

PH 85a. The same as PH 84, except that Olide, instead of writing Pascal a letter, says to him during a telephone conversation: "From here on out I'm using the marsh as my own." What result now? Why?

PH 85b. The same as PH 84, except as follows. Olide neither writes nor says anything to Pascal. Instead, after deciding that he wants to possess the marsh for himself, Olide simply stops making the monthly rental payments. Four months have now come and gone. There has been no contact, written, verbal, or otherwise, between Olide and Pascal during that period. What result now? Why?

PH 86. The same as PH 85b, except as follows. In addition to withholding his rent, Olide goes to see Clodie. In exchange for $1000, Clodie executes a bogus act of sale whereby she purports to sell Pascal's marsh to Olide for $50,000. Olide then records the act of sale in the public records. Pascal, like most normal people, doesn't spend his time reading the public records and, so, has no idea what Olide has done. Is Olide now a real possessor or a precarious possessor? Why or why not?

I. Continuation & junction of possessions (tacking)

Read CC arts. 3441, 3442, 936, & 3506(28); Aubry & Rau, Droit Civil Français nn° 90-91, in Yiannopoulos, Text, 233-34; Trahan, Supp, 92-97 (re continuation & junction of possessions).

PH 87. On March 1, 2000 Olide, without any pretense of title, moves onto a tract of land that belongs to Pascal and, once there, sets up a ferme de cochon (pig farm) on it. Seven months later, on October 1, 2000, Olide dies intestate. Avarice, his only child, then picks up where Olide left off, raising pigs on the land. On April 1, 2001, Pascal, having discovered Olide’s pig farm on his land, runs Avarice and her pigs off the land at gunpoint. Avarice immediately files a possessory action against Pascal. To prevail, Avarice must establish, among other things, that she had acquired the “right to possess” prior to Pascal’s expulsion of her from the land. Can she do that? Why or why not?

PH 88. The same as PH 87, except that, this time, Olide doesn’t die on October 1, 2000; instead, he gives the ferme de cochon to Avarice by way of a valid donation inter vivos on that date. What result would you predict now? Can Avarice establish that she had acquired the “right to possess” the land prior to her expulsion from it? Why or why not?

PH 89. Forget PHs 87 & 88. On March 1, 2000 Olide, as Pascal’s lessee, moves onto a tract of land that belongs to Pascal and, once there, sets up a ferme de cochon on it. Before long (a month or so into the lease), Olide “changes his mind” with respect to the land, specifically, decides he’d like to have the land for himself. Nevertheless, Olide never gives Pascal actual notice of his change of heart. When Olide dies (again, on October 1, 2000, and, again, intestate), Avarice, relying on what Olide had (falsely) told her, believes that he owned the land and, consequently, that it now belongs to her. And so, she picks up where Olide left off, raising pigs on the land. On November 1, 2001, Pascal, having discovered Olide’s pig farm on his land, runs Avarice and her pigs off the land at gunpoint. Avarice immediately files a possessory action against Pascal. To prevail, Avarice must establish, among other things, that she had acquired the “right to possess” prior to Pascal’s expulsion of her from the land on November 1, 2001. Can she do that? Why or why not?

PH 90. The same as PH 89, except that, this time, Olide doesn’t die on October 1, 2000; instead, he
gives the ferme de cochon to Avarice by way of a valid donation inter vivos on that date. What result would you predict now? Can Avarice establish that she had acquired the “right to possess” the land prior to her expulsion from it on November 1, 2001? Why or why not?

J. Effects of possession

What are the "effects" of possession? In other words, why might someone be interested in establishing that he is a possessor? What would that get him?

1. Procedural rights: presumption of ownership


2. Substantive rights

a. Accession

See CC art. 482-483.

b. Rights with respect to fruits & products


c. Rights with respect to enhancements


d. Acquisitive prescription

See CC art. 3446.

e. Possessory protection

See Code Civ. Proc. art. 3655, in Yiannopoulos, Text, 244.

K. Judicial protection of possession

1. Introduction

2. Means of protection

a. Immovables

What if the thing is an immovable? How (by means of what kind of action) does one protect one's possessory interests in such a thing? See Code Civ. Proc. art. 3655, in Yiannopoulos, Text, 244; CC art. 476 comment (d), ¶ 2.

b. Movables

What if the thing is a movable? How (by means of what kind of action) does one protect one's possessory interests in such a thing? See Yiannopoulos, Treatise §§ 346-350, in Yiannopoulos, Text, 599-601.

3. Prerequisites to the possessory action

What are the prerequisites to a possessory action? See Code Civ. Proc. art. 3658, in Yiannopoulos, Text, 245.

a. Disturbance in fact or in law

1) Necessity

PH 91. Olide, knowing full well what he's doing, moves onto a tract of land to which Pascal holds the title, clears it, builds a golf course on it, and goes into business. One year and one day later, Olide, who knows enough about the law to know that he's now acquired the right to possess, wants to have that right judicially recognized. So he files a possessory action against Pascal, seeking, in the words of Code Civ. Proc. art. 3662(1), a "[j]udgment . . . [r]ecogniz[ing] his right to the possession of the immovable property." What result? Why?

2) Definition & varieties

What is a "disturbance"?

a) Disturbance in fact


(1) Eviction

What does "eviction" mean here? Does it mean the same thing that it means in Civil Code article 3433, entitled "Loss of possession," or something different?

(2) Mere disturbance

What is a mere disturbance?

PH 92. Olide moves onto Pascal's land, builds a house, dams up the stream, and plants crops. Years pass. Then one day, Jean Sot crosses part of the land, takes a drink of water from the stream, and then goes
on his merry way. Jean Sot repeats this behavior one or twice a month for several months. Has there been a disturbance of Olide's possession? Why or why not? If so, did the disturbance amount to an eviction or was it something less than that? Explain.

PH 93. One cold fall morning Olide goes deer hunting on a wooded section of a tract of land to which Pascal holds the title. Assume that Pascal has constructive possession of that part of the land. Has there been a disturbance of Pascal's possession? Why or why not? If so, did the disturbance amount to an eviction or was it something less than that? Explain.

PH 94. Olide holds title to a residential lot in the Bocage Subdivision of Baton Rouge. One winter morning, the neighborhood children gather on the lot next door and begin to play football. During the game, one of the children inadvertently steps over the boundary line and, for a fraction of a second, puts his foot down on Olide's land. Olide, hardass that he is, files a possessory action against the child's parents. That Olide has not been evicted is clear. But has he suffered a mere disturbance? Why or why not?

b) Disturbance in law


PH 95. Olide, after purchasing a residential lot from Pascal, builds a house on it and moves in. A few years later, Olide sells the same lot to Jean Sot, who promptly records the act of sale in the parish conveyance records. Has Clodice's possession been disturbed? Why or why not? If so, what kind of disturbance is it—factual or legal? Explain.

PH 96. The same as PH 95, except that Olide, instead of selling the lot to Jean Sot leases it to him. Jean Sot promptly records the act of lease in the parish conveyance records. Has Clodice's possession been disturbed in law? Explain. See CC art. 2681.

b. Possession at the time of the disturbance

Read & brief Antulovich v. Whitley [Yiannopoulos, Text, 250-52].

PH 97. The same as Antulovich, except that Antulovich stopped using the disputed land on January 1, 1969. Antulovich did, however, pay the tax assessments that the assessor levied on that land in 1969 and 1970 and had every intention of returning to it some day. Would Antulovich, under these facts, have been “in possession” of the land at the time of the disturbance (the 1970 survey) for purposes of CCP art. 3658(1)? Why or why not? Clues: Consider (i) whether, though Antulovich would not have had “corporeal” possession at the time of the disturbance, he might nevertheless have had some other sort of possession and (ii) whether that other sort of possession is sufficient for purposes of CCP art. 3658(1) (does that article say or even imply that only “corporeal” possession will do)?

c. Uninterrupted possession for one year prior to the disturbance

1) Elements of the requirement


PH 98-a. On March 15, 1994, Pascal, after acquiring title to a certain tract of farmland, moves onto it, builds himself a house, plants a few crops, etc. Three months later, on June 15, 1994, Pascal leaves for a one month vacation to Provençe, France. Later that same day, after Pascal has up and left, Olide, who has acquired title to the same tract of farmland, moves onto it, takes over the house, plows under the crops, etc. and begins to graze his sheep on the land. When Pascal returns (July 15, 1994), he confronts Olide, tells him to get off his land, threatens to have him jailed, etc. Olide, however, refuses to budge. Five days pass, during which Pascal and his lawyer get together the necessary paperwork for a possessory action. But before can they file it, Olide closes up his operation and leaves (July 20, 1994). Why? It's not clear, but it seems that his sheep had already exhausted the pastureland. At any rate, Pascal, delighted that Olide has left, moves back in and resumes his happy pastoral existence (July 20, 1994). Time goes by. Once again, Pascal leaves town on a vacation. While he's away, on April 1, 1995, Clodice moves in, takes over the house, etc. On April 7, 1995, Pascal, who has since returned, files a possessory action against Clodice. What result would you predict? Why?

PH 98-b. On March 15, 1994, Pascal, after acquiring title to a certain tract of farmland, moves onto it, builds himself a house on it, plants a few crops on it, etc. Time goes by. On April 15, 1995, Pascal leaves for an extended vacation in Provençe. Later that same day, after Pascal has up and left, Olide, who has acquired title to the same tract of farmland, moves onto it, takes over the house, plows under the crops, etc.
and begins to graze his sheep on the land. Time goes by. On May 1, 1996, Olide leaves on an overnight trip to Bunkie. Later that same day, after Olide has up and left, Pascal, who has just returned from Provençe, moves back onto the land and into the house. The next day, May 2, 1996, Olide returns to the land and, finding Pascal there, demands that Pascal leave. Pascal refuses to budge. Olide then brings a possessory action against Pascal, seeking to have him evicted. Pascal files a reconventional demand (the equivalent in Louisiana procedure of a “counterclaim” in federal procedure), asserting that he is the true possessor of the land and seeking appropriate possessory relief. Who will win? Why?

2) Exception to the requirement

a) Eviction by "force"


b) Eviction by "fraud"

PH 100. The same as PH 99, except that Olide employs a different method for getting Pascal off the marsh. On January 1, 1996, Olide offers to buy the marsh from Pascal for $50,000, but tells him he won't be able to get the money until February 1, 1996. As he explains it to Pascal, his money was invested in Swiss bank securities, which, under Swiss law, could not be liquidated without 30 days notice. In point of fact, however, Olide has no such Swiss securities and, more importantly, never intends to pay Pascal one penny. Taking Olide at his word, Pascal agrees to turn the marsh over to Olide immediately (January 1, 1996). But then time goes by and Olide never pays. Eventually it becomes clear to Pascal that Olide, once again, has taken him to the cleaners. On March 1, 1996, Pascal files a possessory action against Olide. What result would you predict? Why? See Code Civ. Proc. art. 3658(2), in Yiannopoulos, Text, 245.

d. Action within one year of the disturbance

Read Code Civ. Proc. art. 3658(4), in Yiannopoulos, Text, 245; Trahan, Supp, 98-100 (re prescription of possessory action based on disturbance in law).

PH 101. On May 1, 1990, Clodice moves onto a certain tract of land, fences it in, puts up a barn on it, and begins grazing cattle there. On March 1, 1992, Olide, while on his way home from a hunting trip, jumps over Clodice’s fence, crosses the land, takes a drink of water from the stream, and heads on his way. On April 1, 1993, Clodice files a possessory action against Olide, seeking damages for his having disturbed her possession. What result would you predict? Why?

PH 102. The same as PH 101, except that Olide returns to the land on June 1, 1994, this time with a bulldozer and a backhoe. After tearing down part of Clodice’s fence, then begins putting up his own fence around part of the land. Because the fence is made of stone, it takes several weeks, until July 1, 1994, to complete. Clodice files a possessory action against Olide on June 15, 1995. What result would you predict? Why?

PH 103. The same as PH 101, except that on April 1, 1994, Olide sells Clodice’s tract to Jean Sot, who promptly files the act of sale in the parish conveyance records. A year and a half later, Clodice decides to sell the tract to Pascal. Pascal’s attorney, looking through the abstract of title, then discovers Olide’s sale to Jean Sot. When Pascal brings this “cloud” on Clodice’s title to her attention, she promptly files a possessory action against Olide and Jean Sot. The date of her suit is February 1, 1996. What result would you predict? Why?

4. Proper parties plaintiff

a. Possessors

b. Precarious detainers

What about a precarious detainer? Can he, she, or it, as the case may be, bring a possessory action when his, her, or its detention is disturbed? See CC art. 3440.

IV. Modes of acquiring real rights based on possession


A. Occupancy

Read CC art. 3412 & cmt. (b); Trahan, Supp, 107-08.
B. Quasi-occupancy
   1. Of lost things
   Read CC art. 3419.
   2. Of treasure
   Read CC art. 3420.

C. Acquisitive prescription
   1. Definition
      a. By exposition
         What do we mean by acquisitive prescription? See CC art. 3446.

         1) Ownership
         PH 118. Jean Sot, who needs fresh water for the cattle that he runs on his estate, Terre Lourde, decides
         he’d like to acquire the strip of land on his neighbor’s estate, Belle Terre, that lies between Terre Lourde and
         a bayou that bisects Belle Terre. One day Jean Sot sees Olide, Pascal’s farm lessee, out on Belle Terre.
         Thinking that Olide is the owner of that estate, Jean Sot offers to pay him $50,000 for that strip of land.
         Olide, sensing the opportunity to make a quick buck, agrees. Jean Sot then begins to run his cattle on that
         strip of land and to water his cattle from the bayou. This goes on, without interruption, for 33 years. Has
         Jean Sot acquired any kind of interest in Belle Terre? If so, what kind would it be? And how, precisely, did
         he get it? See CC art. 3486.

         2) Other real rights
         PH 119. Jean Sot, who needs fresh water for the cattle that he runs on his estate, Terre Lourde, decides
         he’d like to divert some of the water from the bayou that runs through Pascal's estate, Belle Terre. One day
         Jean Sot sees Olide, Pascal’s farm lessee, out on Belle Terre. Thinking that Olide is the owner of that estate,
         Jean Sot offers to pay him $10,000 “for the right to divert water from the bayou onto my estate, for my
         benefit and that of all future owners of my estate.” Olide, sensing the opportunity to make a quick buck,
         agrees. Jean Sot then he goes onto Belle Terre, builds a stone aqueduct from the Belle Terre bayou to a pond
         on Terre Lourde, then begins running water through the aqueduct. This goes on, without interruption, for
         33 years. Has Jean Sot acquired any kind of interest in Belle Terre? If so, what kind would it be? And how,
         precisely, did he get it?
         Answer: See CC arts. 699 & 3486.

         b. By contrast
         Is acquisitive prescription the only kind of prescription? See CC art. 3445; Baudry-Lacantinerie,

         1) Other varieties
         a) Liberative prescription
         What is liberative prescription? See CC art. 3447.

         PH 120. On the morning of March 1, 1994, Clodice and Olide were boating on White Lake, Clodice
         in her party barge and Olide in his high speed bass boat. Before the day was up, Olide, who’d had a few too
         many, ploughed his boat into the party barge. As a result of the collision, the party barge sank. On March
         15, 1995, Clodice filed a tort action against Olide, seeking to recover damages for the loss of the boat. Does
         Clodice still have the right to bring such an action? Why or why not? See CC art. 3492.

         b) Prescription of nonuse
         What is the prescription of nonuse? See CC art. 3448.

         PH 121. Pascal, who's been diagnosed with terminal cancer, writes out a testament in which he
         provides, among other things, that his mother, Cecile, is to have the right to dwell in the guest house on Belle
         Terre until the time of her death. A few days later, Pascal dies. His testament is probated and, on May 1,
         1984, the probate court issues a judgment putting his heirs, including Cecile, into possession of his estate.
         Cecile, however, does not move into the guest house. Instead, she rents a room in La Vie Longue, a lavish,
         upscale retirement development. There she stays until May 15, 1994, when her funds run dry. During her
         stay in La Vie Longue, the guest house remained vacant and unused. Now she wants to move into the guest
         house. Pascal’s heirs refuse her request. She sues. What result would you predict? Why? See CC arts. 630,
         631, 621.

         2) Comparison
         a) Differences
(1) Necessity of possession
(2) Domain

See CC art. 3447 cmt. (b), ¶ 4.

b) Similarities
(1) Redistributive effects on patrimony
(2) Rules regarding delay

2. Purpose

a. To protect the real owner
b. To do justice as between the real owner and the possessor
c. To assure social order

3. General principles

a. Calculation of the lapse of time
1) Commencement
PH 122. By an act of sale dated August 10, 1994, Olide purports to sell to Jean Sot a certain house and lot. Jean Sot begins moving it at 8:00 am on August 15, 1994. Assume that Olide did not, in fact, own the house and lot. On what date did Jean Sot begin to prescribe against the true owner? Why? See CC art. 3454.

2) Accrual
PH 123. By an act of sale dated August 10, 1994, Olide purports to sell to Jean Sot a certain house and lot. Jean Sot begins moving it at 8:00 am on August 15, 1994. Assume that Olide did not, in fact, own the house and lot and, further, that the title, though invalid, was just and that Jean Sot was in good faith. On what date does Jean Sot's prescription "accrue," i.e., when does the right that he's acquired via acquisitive prescription vest? Why? See CC arts. 3454, 3456, 3473, 3475.


b. Interruption of prescription
1) Definition
What does "interruption" of prescription mean? François Terré & Philippe Simler, DROIT CIVIL: LES BIENS § 462, at 291 (4th ed. 1992) (interruption "definitively breaks the course of prescription, in such a fashion that the time which flowed before [the cause of the interruption] is deprived of effect").

2) Varieties
See 2 Aubry and Rau, Droit Civil Français n° 296, at 464 ("Interruption of prescription is natural or civil depending on whether it results from a simple material act or from a juridical act.")

a) Natural interruption
1] Eviction
Read & brief Board of Comm'rs v. S.D. Hunter Found. (La. 1977) (Tate, J.) [Trahan, Supp, 110-12]; CC art. 3465.

Can nature itself (as opposed to man) accomplish an eviction? See Trahan, Supp, 112-13.

2] Abandonment
PH 125. Jean Sot, after acquiring title to a certain tract of timberland from Olide, moves onto it and begins to cut timber. The tract, of course, belonged not to Olide but to Clodice. Two years later, Jean Sot, having exhausted the timber on the tract, packs up his stuff and leaves. When his friend, Pascal, asks him what he plans to do with the tract, Jean Sot answers, "Nothing. I want to have nothing else to do with that piece of miche." From that point forward he stops paying taxes on the tract. Has Jean Sot's prescription of the tract been interrupted? Why or why not? If so, by what means? See CC art. 3465 & cmt. (b).

PH 126. The same as PH 125, except that Jean Sot changes his mind. Nine months after he left the tract, he returns to it and begins planting and tending new trees. What result now? Why? See CC art. 3465, ¶ 2.

b) Civil interruption
1] By the owner (suit)
Read Johnston v. Nanney (La. App. 3d Cir. 1962) [Trahan, Supp, 113-14]; then read CC art. 3462.

PH 127. On September 1, 1990, Olide sells Jean Sot what Olide represents to be his bass boat. That very day Jean Sot hauls it to his home in Vermillion Parish and begins to use it. On August 31, 1993, Pascal,
claiming to be the true owner of the bass boat, files a revendicatory action against Jean Sot. Pascal files the action in his home parish of Lafayette. Three days later, on September 3, 1990, Jean Sot receives service of citation and the petition. Has Jean Sot acquired ownership of the boat through acquisitive prescription? Why or why not? Assume that Jean Sot's title was just and that he acquired that title in good faith. See CC arts. 3490 & 3462; La. Code Civ. Proc. art. 42(1) ("[A]n action against . . . [a]n individual who is domiciled in the state shall be brought in the parish of his domicile.")


2] By the possessor (acknowledgement)

Read Gayle & Sons, Inc. Deperrodil (La. App. 3d Cir. 1974) [Trahan, Supp, 115-17]; then read CC art. 3464 & cmts. (b) & (e).

3) Effect of interruption

What is the effect of the interruption of acquisitive prescription? See CC art. 3466.

PH 128. On February 1, 1990, Olide, without any pretense of title but with the intent to possess as owner, moves onto a certain tract of land and settles down there. Three years later, on February 1, 1993, his prescription is interrupted for some reason or another, e.g., a squatter usurps his possession. Two years later, on February 1, 1995, the squatter leaves and Olide goes back into possession. It's now February 1, 1996. How much time has Olide accumulated toward his goal of 30 years acquisitive prescription? Why?

c. Suspension of prescription

1) Definition

Can prescription be "suspended"? What does that mean? How is suspension different from interruption?

2) Causes for suspension

a) General rule

What’s the “general rule” with respect to the suspension of prescription? Read CC art. 3467.

b) Exceptions

What are the exceptions to that general rule?

(1) Familial relationships

PH 130.1. On January 1, 2000, Pascal (i) takes title to a remote tract of rural land that, unbeknownst to him, overlaps by ten feet with a tract of land to which a certain Genesis has title and (ii) takes corporeal possession of his (Pascal’s) entire tract, including the ten-foot overlap. Two years later, on January 1, 2002, Genesis, a widow, dies intestate; Alpha, Beta, and Kappa, her only children (all of whom are majors), promptly accept her succession. Two years later, on January 1, 2004, Pascal and Alpha enter into a “covenant marriage.” Two years later, on January 1, 2006, Alpha, who has since fallen in love with Olide, obtains a judgment of separation from Pascal. Two years later, on January 1, 2008, Alpha obtains a judgment of divorce from Pascal, whereupon she immediately “shacks up” with Olide. Three years later, on January 1, 2011, Kappa has Genesis’ tract surveyed. When, in the course of that survey, it is discovered that Pascal is in possession of the ten-foot strip, Kappa orders him off of it. Pascal, however, refuses to budge, arguing that he has acquired the strip by abridged (10-year) acquisitive prescription. Is he right? Why or why not? Assume that Pascal has been in corporeal possession of the strip since January 1, 2000 and that, when he began that possession, he was in “good faith” and had a “just title.” See Southern Natural Gas Co. v. Naquin, 167 So. 2d 434 (La. App. 1st Cir. 1964).

Now, read CC art. 3467 again . . . closely. Question: Does the “suspensive” effect that marriage has on acquisitive prescription depend on the classification of the property possessed, in particular, on whether it’s community property or separate property? Answer: NO! Do you recognize what that means? It means that even if the property possessed by Spouse A is his separate property or the separate property of

3 “Covenant marriage,” a form of marriage recognized by Louisiana law, is one in which the parties promise each other that they will never dissolve the marriage without a serious and just cause, in particular, absent a “complete and total breach of the marital covenant commitment.” The regime governing covenant marriage is set out in La. Rev. Stat. 9:272 et seq.
same time, restraining it so as to avoid the abuses to which it had given rise. ‘That is why,’ they wrote in
solution that is less clear. They declared that they wanted to keep the rule of the ancient law while, at the
was to reject the rule
suppress the discretionary power that the courts exercised in this matter . . . . The intention of the codifiers
the application of the maxim
P
contra non valentem, etc.

PH 130.2. The year is 2030. Professor Emeritus Symeonides, having been adjudged mentally
incompetent to care for his estate, is interdicted. The court appoints me as his curator. Two years later, in
2032, I, in good faith, acquire just title to a collection of rare books on the civil law. As it turns out, however,
the books belonged to Professor Symeonides. It seems that he had misplaced them during a psychotic
episode. At any rate, time goes by. In 2035, the good professor passes on. Two years after that, in 2037,
Sym's son, Christopher, drops by my office for a visit. When he sees the books on my shelf, he walks over
to them and says, "These look just like the books I used to play with as a boy." Then, looking closer, he says,
"These are the books I used to play with as a boy." Christopher then demands that I return the books. Do
I have to give them up? Why or why not? See CC art. 3469.

(3) Registered immovables of municipalities

PH 131. In 1990, the Iberville Parish Police Jury purchases a 20-acre tract of rural timberland located
inside the parish for the purpose of building a golf course. Shortly after the sale, the Police Jury partially
clears 10-acres of the tract and builds a nine-hole course in that area. On June 1, 1992, Jean Sot, in good
faith, acquires from Olide just title to a tract of land in the same general area. There's just one problem: the
stretch of land described in Jean Sot's title overlaps with one acre of the uncleared part of the land described
in the Police Jury's title. Jean Sot takes corporeal possession of the land described in his title--all of it--on
the day of the sale, June 1, 1992. Twelve years later, on June 1, 2004, a greenskeeper, while walking through
the wooded section of the Police Jury's tract, spots Jean Sot's improvements. When word of her discovery
reaches the Police Jury, the Police Jury brings a petitory action against Jean Sot. Jean Sot asserts the defense
of acquisitive prescription. What result would you predict? Why? See CC arts. 450 & 453; review Landry
v. Council of East Baton Rouge

Is there any means whereby the Police Jury could have avoided this result? See La. Rev. Stat. 9:5804
[Yiannopoulos, Text, 437].

(4) Immovables adjudicated to the state for nonpayment of taxes

PH 132. Olide, knowing full well what he's doing, goes into possession of a certain piece of rural land
that belongs to Pascal. The date is November 7, 1960. In 1969, Pascal fails to pay his taxes on the property.
On November 7, 1970, the state seizes the property and holds it, pending payment of the taxes. Years pass.
On November 7, 1990, Pascal's son, Ti-Boy, redeems the land from the state, i.e., pays off the back taxes.
The following day, November 8, 1990, Olide files a petitory action against Ti-Boy, claiming that he, Olide,
owns the land by virtue of 30-years' acquisitive prescription. What result would you predict? Why?
See CC arts. 3469.

Contra non valentem, etc.

What is the meaning of the Latin maxim contra non valentem agere nulla currit præscriptio? In what
circumstances can the maxim be invoked? Read Corsey v. State Dept. of Corrections, parts II & III only (La.
Supp. 1979) (Tate, J.) [Yiannopoulos, Text, 437-40].

Thus far, the Louisiana courts have had occasion to apply the maxim only in cases that involved
liberative prescription. When the courts are finally invited to apply it to cases that involve acquisitive
prescription, should they accept the invitation? See Patrice Jourdain, DROIT CIVIL après MARTY et RAYNAUD: LES BIENS n° 192, at 251 (1995) (“The [French] jurisprudence has likewise applied the rule contra valentem agere non currit præscriptio to acquisitive prescription.”); 2 Diego Espín Cánovas, MANUAL DE DERECHO CIVIL ESPAÑOL: DERECHOS REALES 170 (6th ed. 1981) (“The Spanish Civil Code is hostile to the suspension of usucapion in that it has abandoned the principle contra non valentem agere non currit præscriptio; to the contrary, it establishes, as we will see, that rights . . . are extinguished by prescription to the prejudice of every class of persons . . . .”); Pierre Martineau, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL [DU QUÉBEC]: LA PRESCRIPTION n° 214, at 216-17 (1977) (“In reaction against the excesses of the ancient jurisprudence [in the application of the maxim contra non valentem, etc.], the redactors of the French Civil Code wanted to suppress the discretionary power that the courts exercised in this matter . . . . The intention of the codifiers was to reject the rule contra non valentem non currit præscriptio . . . . Our [Quebec] codifiers adopted a solution that is less clear. They declared that they wanted to keep the rule of the ancient law while, at the same time, restraining it so as to avoid the abuses to which it had given rise. ‘That is why,’ they wrote in
their report, ‘we sill suggest that the impossibility [of acting] be absolute in fact or in law and excludes the means of acting by an intermediary. . . .’”

3) Effect of suspension

How does “suspension” affect the course of prescription? Read CC art. 3472; then recall PH 130.1.

d. Renunciation of prescription

...