Priority in Crops

In the course of explicating La. Rev. Stat. 9:10-334(i) today, I noted what appears to be a conceptual anomaly: this statute presupposes that one who, at once, owns both the crops that are growing on a certain tract of land and that tract of land itself (a “unitary owner” of the land and the crops) can grant an Article 9 movable security interest in those crops notwithstanding that, under general property law principles, the crops are, at that moment, immovable.\(^1\) I told you that I’d conduct some research into the anomaly to see if I could come up with an explanation for it. I’ve now performed that research.

It turns out that the anomaly, which is very real (that is to say, it’s not something we’ve imagined), was intended. Even before Louisiana enacted its version of Article 9, Louisiana’s security devices law permitted a unitary owner of land and the crops thereon to grant a “movable security interest” in the crops. That, in fact, was part of the point of CC art. 474, par. 2: “The landowner may, by act translative of ownership or by pledge, mobilize by anticipation unharvested crops and ungathered fruits of trees that belong to him.” Now, a “pledge” was a security interest in movables. Further, even before Louisiana enacted its version of Article 9, Louisiana’s property law, by way of exception to the general rule that unharvested crops owned by the landowner are immovable, provided that, when a unitary owner of land and the crops thereon makes such a pledge, the crops, though still affixed to the ground and still owned by the owner of the ground, become movable as to the pledgee.\(^2\) That, in fact, was part of the point of CC art. 474, part. 1, sent. 2: “When encumbered with security rights of third persons, they are movables by anticipation.” Neither of these two principles of Louisiana’s former security devices law – that a unitary owner of land and crops can grant a movable security interest in the crops and that, when he does so, the crops become movable as to the secured creditor – has been disturbed by Louisiana’s enactment of Article 9.

What, then, does §334(i) really mean, practically speaking? It means, first, that a unitary owner of land and crops, after he has mortgaged the land (and, therewith, the crops, as component parts thereof, per CC art. 469) to one creditor, can grant an Article 9 “fixture” security interest in the crops to another creditor and, second, that when he does so, the security interest of the second creditor (the Article 9 secured party) in the crops will prime the mortgage of the first creditor (the mortgagee) on the crops, notwithstanding that the mortgage was “first in time”.

\(^1\) They are immovable at that moment because, at that moment, they are unharvested crops that belong to the owner of the ground and, as such, are component parts of the land. See CC arts. 463 & 462.

\(^2\) Note that this exception was “relative”, that is, it affected only the pledgee. As to everyone else, including the unitary owner of the land and the crops, the general rule continued to apply, that is, the crops remained “immovable”.