# Key to the “Objective” Parts (I, II, IV)

<table>
<thead>
<tr>
<th>Part I</th>
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<th>Part II</th>
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</thead>
<tbody>
<tr>
<td>–I-A</td>
<td>1 a</td>
<td>31 b</td>
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<tr>
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<td>2 d</td>
<td>32 d</td>
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<td>3 e</td>
<td>33 a</td>
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<td>4 d</td>
<td>34 d</td>
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<tr>
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<td>5 b</td>
<td>35 c</td>
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<td>6 a</td>
<td>36 a</td>
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<td>7 d</td>
<td>37 e</td>
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<td>8 a</td>
<td>38 c</td>
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<td>9 b</td>
<td>39 e</td>
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<td>10 b</td>
<td>40 d</td>
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<td>11 e</td>
<td>41 e</td>
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<td></td>
<td>12 c</td>
<td>42 d</td>
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<td></td>
<td>13 e</td>
<td>43 d</td>
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<td>14</td>
<td>[defect in question: same as 11]</td>
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<tr>
<td>–I-B</td>
<td>16 a</td>
<td>44 b</td>
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<tr>
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<td>17 b</td>
<td>46 b</td>
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<td>18 b</td>
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<td>28 a</td>
<td>57 e</td>
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<td>29 a</td>
<td>58 c</td>
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<td></td>
<td>30 a</td>
<td>59 e</td>
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</table>

# Key to the “Subjective” Part (III)

<table>
<thead>
<tr>
<th>Part III ID</th>
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<tbody>
<tr>
<td>I Case-in-chief of McCrocklin: title is required for GF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A Grammatical arguments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Technical meaning</td>
<td></td>
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</tr>
<tr>
<td>a Explication</td>
<td></td>
<td></td>
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<tr>
<td>b Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) As used in the CC, the terms “good faith” and “bad faith” are and have always been legal terms of art</td>
<td>0.5 1 1.5 2</td>
<td></td>
</tr>
<tr>
<td>2) There's a technical definition that has no &quot;title&quot; element in it</td>
<td>0.5 1</td>
<td></td>
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<tr>
<td>2 Other?</td>
<td></td>
<td></td>
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<tr>
<td>B Logical arguments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 A pari</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a Explication</td>
<td></td>
<td></td>
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<tr>
<td>b Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1) a) The situation in which a possessor seeks reimbursement of expenses is analogous to that in which a possessor seeks reimbursement for expenses incurred to produce ungathered fruits</td>
<td>0.5 1</td>
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<tr>
<td>1) Both situations involve expenses incurred by possessors</td>
<td>0.5 1 1.5 2</td>
<td></td>
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<tr>
<td>2) In both situations, not allowing the possessor some sort of compensation would result in the unjust enrichment of the owner</td>
<td>0.5 1 1.5 2</td>
<td></td>
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</tbody>
</table>
2) a) The situation presented here is closely analogous to that presented in *Green* (possession of land other than that which the possessor had intended to acquire).  

b) In *Green*, the court concluded that a possessor, to be in good faith so as to be entitled to recover useful expenses, must have a title.

2) **In pari materia**

a) Explication

b) Application

1) CC arts on reimbursement for expenses are on same subject matter as CC arts on accession.

a) Explication of connection

1) Both concern remedies for possessors.

2) Intimate relationship between “acquisition” & “protection” of ownership.

b) Authority for connection

1) Direct authority: doctrine: Golemi.

2) Indirect authority:

a) Legis. hist.: Senators who approved CC art. 528.1 evidently assumed the 2 sets of articles were in pari materia.

b) Doctrine

1) Yiannopoulos: treats accession re fruits alongside reimbursement for expenses.

2) Pothier (source of both sets of articles): id.

3) Jurisprudence: in *Green* the SupCt & in *Wallace* an AppCt assumed the 2 sets of articles were in pari materia.

2) Definition of GF in CC arts on accession entails “title” (CC art. 487).

3) **Ab auctoritate**

a) Explication

b) Application

1) Doctrine: Yiannopoulos: implies that GF in CC arts on reimbursement requires title.

2) Jurisprudence: GF for purposes of reimbursement entails a title requirement.

a) *Green*: poss’r must have title to the very immovable.

b) *Wallace*: poss’r must have some sort of title.

C) **Historical arguments**

1) Analysis of legislative history/incorporation analysis

a) Explication

b) Application

1) When legislature enacted CC art. 528.1, it did so on basis of assumption that GF for purposes of reimbursement = GF for purposes of accession.

a) Statement by LLI attorney.

b) Heard by committee before vote.

2) Definition of GF in CC arts on accession entails “title” (CC art. 487).

2) Source analysis

a) Explication

b) Application

1) Predecessor article: incorporation of interpretation.

a) In *Green* the SupCt & in *Wallace* an AppCt defined GF as used in CC art. 2314, predecessor to CC art. 528, so that it entails a title.

b) New article preserves old definition.

1) Incorporation is presumed anyway.

2) Here there’s good evidence of incorporation

a) Comment (a) to CC art. 528: though article is new, it is based on CC art. 2314 (1870).

b) Comment (e) to CC art. 528: jurisprudence interpreting CC arts 508 & 2314 “continue to be relevant”.

1) Levasseur commentary implies the same.

2) Ultimate source: incorporation of part.

a) Pothier: same definition for GF in accession context and GF in reimbursement context.

b) No evidence of legislative intent (c. 1808) to change this aspect of
Pothier’s definition ......................................................... 0.5 1

D Teleological arguments ................................................ 0.5 1
1 Explication ................................................................. 0.5 1 1.5 2
2 Application
   a Restriction of reimbursement rights, like restriction of accession rights, to situations in which possessor has title would serve an important purpose, namely, to encourage vigilance among transferees of immovable property in (i) learning about legal requirements for valid transfers and (ii) verifying spatial extent of their titles ......................................................... 0.5 1 1.5 2
   b Objective would be furthered if restriction were extended to reimbursement rights ......................................................... 0.5 1

II Rebuttal (by Calvert) of McCrocklin
A To grammatical (technical meaning) argument: there are other technical meanings, some of which do not entail title ......................................................... 0.5 1

B To logical arguments
1 To a pari argument
   a First argument: none ................................................. 0.5 1
   b Second argument (see infra) ........................................... 0.5 1
2 To in pari materia argument
   a The two sets of articles are not on precisely the same subject matter: whereas CC art. 487 appears in the part of the CC on accession, CC art. 528 appears in the part of the CC on protection of ownership (pro subjecta materia) .... 0.5 1 1.5 2
   b The authorities can be questioned ..................................... 0.5 1
      1) Legislative history (see infra)
      2) Doctrine
         a) Golemi: mere student ............................................. 0.5 1
         b) Yiannopoulos (see infra)
      3) Jurisprudence (see infra)
3 To ab auctoritate argument
   a Doctrine: Yiannopoulos: that definition of GF for accession is suitable for definition of GF for reimbursement is not a considered opinion; it's just assumed ......................................................... 0.5 1 1.5 2
   b Jurisprudence: that definition of GF for accession is suitable for definition of GF for reimbursement is not a holding; it's just assumed ......................................................... 0.5 1 1.5 2

C To historical arguments
1 To legislative history argument
   a Theoretical problem: objective/subjective intent ................. 0.5 1 1.5 2
   b Factual problems:
      1) Information about supposed connection between accession and reimbursement of expenses was made in a committee hearing in one house; it's speculative to assume other members of that house and/or members of the other house shared the same subjective understanding ................................................. 0.5 1 1.5 2
      2) Speaker was not a member of legislature .......................... 0.5 1
      3) The information was presented in the form of an assumption, not a reasoned, well-researched opinion ......................................................... 0.5 1 1.5 2
2 To source analysis argument
   a Predecessor article
      1) Jurisprudential interpretation (see supra)
      2) Supposed absence of intent to change: comment (a) states that CC art. 528, though "based on" CC art. 2314, is "new"; not clear there was no intent to change jurisprudential interpretation ......................................................... 0.5 1 1.5 2
   b Ultimate source: Pothier's definition excludes "title" as an element! ......................................................... 0.5 1 1.5 2

D Teleological arguments: speculative (Who says legis. had this aim in mind?) ......................................................... 0.5 1 1.5 2

III Case-in-chief of Calvert: title is not required for GF
A Grammatical arguments .................................................. 0.5 1
1 Plain meaning: interpretatio cessat in claris .......................... 0.5 1 1.5 2
   a Explication ............................................................. 0.5 1 1.5 2
   b Application: what does GF have to do with "title"? ............. 0.5 1 1.5 2
      * OED: GF is a state of mind ..................................... 0.5 1
2 Technical meaning:
   a Explication ............................................................. 0.5 1 1.5 2
   b Application: even if term is used in a technical sense, there's a technical definition that has no "title" element in it ......................................................... 0.5 1
      1) In context of acquisitive prescription (CC art. 3480) ........ 0.5 1
      2) In context of transfers of annulable titles to movables (CC art. 523) .... 0.5 1
      3) In most legal contexts (Black’s Law Dictionary) ............. 0.5 1
B Logical arguments

1 In pari materia

a Explication

b Application

1) CC arts on reimbursement for expenses are on same subject matter as CC arts on acquisitive prescription

2) Definition of GF in CC arts on acquisitive prescription does not entail “title” (CC art. 3480)

2 Pro subjecta materia

a Explication

b Application

1) CC art. 528 appears in Chap. 4 of Book III (“Protection of Ownership”), Chapter that immediately follows Chap. 3 of Book III (“Transfer of Ownership”) 2) The subject matters of these two chapters are intimately related

3 Ad absurdem

a Explication

b Application

1) Requiring “title” as a prerequisite for GF can lead to absurd results

2) Denying the possessor the benefits of GF in such cases is absurd because–

a) The reason a "GF" possessor is allowed to recover his expenses is to avoid his unjust impoverishment vis-a-vis the owner

b) Though the "justness" of the impoverishment has everything to do with the "innocence" of the possessor's state of mind, it has no logical connection with the possessor's title

C Historical arguments

* Source analysis

1 Explication

2 Application

a Predecessor article

1) Prior article, CC art. 2314 (1870), was part of the Code dedicated to "payment of a thing not due"

2) In articles in that part of CC (which are in pari materia with CC art. 2314), the terms "good faith" and "bad faith" seem to have no necessary connection with "title"  a) The articles certainly say nothing about title

b) One can imagine instances of persons who might receive things without having title, but who one be in GF

b Intermediate source

1) CC art. 528 can be traced to FCC art. 1381, which appears in the part of the FCC dedicated to "payment of a thing not due"

2) In the articles in that part of the FCC (which are in pari materia with FCC art 1381, the terms "good faith" and "bad faith, as interpreted by French doctrine (ab auctoritate), have no title component

a) Beudant: bad faith means to run up the expenses without cause

b) Baudouin: good faith / bad faith are competing states of mind; which state one has depends solely on whether one "believes" that one is owner

c) LeClair: same as Baudouin

3) There's no evidence that redactors of any of earlier Louisiana codes intended to change FCC definition insofar as GF for recovery of expenses is concerned

3 Ultimate source

1) CC art. 528 ultimately derives from Pothier's treatise on ownership

2) According to his treatise on possession (which is in pari materia with treatise on ownership), title, though relevant to GF, is not essential for it

3) There's no evidence that the redactors of any of the intermediate sources of CC art. 528 intended to change Pothier's definition insofar as GF for recovery of expenses is concerned

D Teleological arguments

...
Exposition

The purpose of CC arts on reimbursement-of-expenses is to prevent the unjustified enrichment of the owner. * Authority: Golemi; Levasseur

No causal connection b/n realization of that purpose & whether poss’r has title

Requiring title may well frustrate that purpose

Application

A

The purpose of CC arts on reimbursement-of-expenses is to prevent the unjustified enrichment of the owner.

* Authority: Golemi; Levasseur

No causal connection b/n realization of that purpose & whether poss’r has title

Requiring title may well frustrate that purpose

IV

Rebuttal (by McCrocklin) of Calvert

A

To grammatical arguments

1 To plain meaning argument

a "Good faith" is now and has always been a special term of art

b It’s a joke to say the meaning of good faith is “clear”: too indeterminate

2 To technical meaning argument

a There are other technical meanings, some of which do entail title

b Black’s Law Dictionary, a dictionary of common law terminology, is hardly a reliable guide to the meaning of civil law terms of art

B

To logical arguments

1 To in pari materia argument:

a Tough the possessor’s reimbursement rights are not unrelated to a possessor’s acquisition of ownership through prescription, they are much more closely related to the possessor’s accession rights

b Pro subjecta materia: if the subject matters are so similar, why are the articles in different Books of the CC?

c Even for acquisitive prescription, "title" is required (though not as part of GF)

2 To pro subjecta materia

a Still, CC arts. 528 and 523 are not in the same chapter

b Structurally, Chapter in which CC art. 528 appears–Chap 4, Bk II–is no more closely related to Chapter in which CC art. 523 appears–Chap 3, Bk II–than is Chapter in which CC art. 487 appears–Chap 2, Bk II; all are part of same title, i.e., tit. 1

c Topically, the Chapter in which CC art. 528 appears–entitled “Protection of Ownership”–is no more closely related to the Chapter in which CC art. 523 appears–entitled “Transfer of Ownership”–than is the chapter in which CC art. 487 appears–which concerns the “extent” of ownership

3 To ad absurdem argument

a It’d be no more absurd to require title for recovery of useful expenses than to require title for the right to keep fruits

b And yet French Assembly, from 1804 to present, and LA legislature, from 1808 to present, have consistently required title for right to keep fruits

* Sym’s projet & Trahan’s commentary thereon clearly presuppose that present law of accession, properly interpreted, produces these supposedly “absurd consequences”

C

To historical arguments: source analysis

1 To argument based on predecessor article

a Radical relocation of article from Book III to Book II suggests a profoundly new understanding of function of article in ensemble of private law rules

b One can’t be sure, then, that the article, as relocated, continues to draw its meaning from the articles on “payment of a thing not due”; the new article is no longer in pari materia with those articles

2 To argument based on intermediate source

a Same as for rebuttal to previous argument (see supra)

b French interpretations arose only after LA had borrowed from the FCC; one can’t be sure, then, that even the original Digest article should be read as the French scholars contend the FCC source article should be read

3 To argument based on ultimate source

a The drafters of the FCC and, after then, those of the Digest of 1808, rejected Pothier’s proposed “title-less” definition of GF, at least in the context of accession

b Pothier gave his definition of GF possession in a separate treatise from that in which he described the right of the possessor to recover expenses; he never considered whether that definition might be appropriate in this particular context

c Pothier does suggest, however, that whatever the definition of GF possession may be, it should be the same for accession and for reimbursement of expenses

D

To teleological arguments
The legislature often devises rules that, properly interpreted, stop short of realizing their underlying purpose, broadly conceived, in certain contexts.

The rules on accession provide one example: though those rules are supposed to prevent unjust enrichment, they seemingly permit it where the poss’r has no title.

It is possible that the same is true of the rules on reimbursement of expenses.

Indeed, it may be that cutting off reimbursement rights (like cutting off accession rights) might serve some other legislative purpose, such as encouraging vigilance among transferees of immovable property in (i) learning about the legal requirements for valid transfers and (ii) verifying the spatial extent of their titles.