Renard, falsely representing himself to be the developer and owner of Le Grand Chenier, a new residential subdivision on the outskirts of Basile, sells Big Mama (who reasonably believes Renard is the developer-owner) one of the choicest lots. Not long thereafter Big Mama suffers a massive heart attack. Aware that the end of her life is nigh, Big Mama makes out a donation *inter vivos*, in authentic form, whereby she purports to give the lot . . . to her elder son, Calvert . . . . Calvert . . . , who knows nothing of Renard’s chicanery, accepts the donation by authentic act. After Big Mama’s death, Calvert heads out to Le Grand Chenier to locate his lot . . . . Calvert then hires Cajun Landscapers to “clean up” the lot, in particular, to remove trash, other debris, and underbrush from it and to “grade” it, that is, to smooth out the high and low spots, for an up-front flat fee of $10,000. As a result of this work, the value of the lot increased by $15,000. Not long after Cajun completes its work, McCrocklin, the true developer and owner of Le Grand Chenier, including the lot that Calvert believes is his, learns (for the first time) that Calvert claims to have an interest in one of her lots. Wasting no time, McCrocklin engages the firm of Becker & Frey to represent her. Acting on her behalf, the firm then files a petitory action (an action to try ownership) against Calvert, demanding that he be “evicted” him from the lot without further delay. Calvert’s counsel, the firm of Rundell & Zeringue, then advise Becker & Frey, by letter, that Calvert will voluntarily vacate the premises, provided that McCrocklin first reimburses him for the expenses he incurred to “clean up” the lot.

Kelly Frey (of Becker and Frey) is persuaded that whether Calvert has the right to retain control of the lot until he receives reimbursement for his expenses turns upon the proper interpretation to be given two articles of the Civil Code, namely, 528 and 529. Of this much Ms. Frey is sure: Calvert was a “possessor” for purposes of both articles and his expenses qualify as “useful expenses” for purposes of article 528 and “expenses” for purposes of article 529. What she’s not sure of, however, is whether Calvert was in “good faith” when he incurred the expenses (which, of course, must have been true if Calvert is to be entitled to claim those expenses). . . .

Ms. Frey has asked you, the firm’s summer associate, to help her resolve her uncertainty. . . . Good luck.

APPENDIX

*Interpretive Resources*

I  Domestic (Louisiana)

A  Legislation

1  Current Code

Articles 483 & 485-487; 523; 526-529; 2299-2305; 3475, 3480 & 3483.1

1 Helpful hint: In addition to reading these articles (and the comments thereto), be sure to note *where* in the current Civil Code they are situated.
2 Code of 1870

[from Book II (entitled “Of Things and of the Different Modifications of Ownership”), Title II (entitled “Of Ownership”), Chapter 2 (entitled “Of the Right of Accession to What is Produced by the Thing”)]

Art. 503. A possessor in good faith is he who possesses as owner by virtue of a title translative of ownership, the vices of which he is not aware of.

[__________]

[from Book III (entitled “Of the Different Modes of Acquiring the Ownership of Things”), Title V (entitled “Of Quasi-Contracts and of Offenses and Quasi-Offenses”), Chapter 1 (entitled “Of Quasi-Contracts”)]

Art. 2301. He who receives what is not due to him, whether he receives it through error or knowingly, obliges himself to restore it.

Art. 2310. He who, through mistake, has paid the debt of another to whom he believed himself indebted, has a claim to restitution from the creditor.

Art. 2311. If there be any bad faith on the part of him who has unduly received, he is bound to restore not only the capital but also the interest, or fruits, from the day of payment.

Art. 2312. If the thing unduly received is a corporeal immovable or corporeal movable, he who has received it is bound to restore it in kind. He is even guarantor for its loss by fortuitous event, if he has received it in bad faith.

Art. 2313. If he who has received in good faith has sold the thing, he must restore only the price of the sale. If he has received in bad faith, he must, in addition to this restitution, fully indemnify him who has paid.

Art. 2314. He to whom property is restored must refund to the person who possessed it, even in bad faith, the necessary and useful expenses that he may have incurred.

[__________]

[from Book III (entitled “Of the Different Modes of Acquiring the Ownership of Things”), Title (entitled “Of Occupancy, Possession & Prescription”), Chapter 2 (entitled “Of Possession”)]

Art. 3451. The possessor in good faith is he who has just cause to believe that he is the master of the thing that he possesses, even though he may not be.

[__________]
Art. 3483. To be able to acquire by abridged prescription, the possessor needs a title that is legal and translative of ownership, which is called in law a just title.

**Code of 1825**

The article numbered 495 in the Code of 1825 is identical to article 503 of the Code of 1870.

The articles numbered 2279 & 2288-2292 in the Code of 1825 are identical, save for insignificant variations in punctuation, to articles 2301 & 2310-2314 of the Code of 1870.

The articles numbered 3414 and 3449 in the Code of 1825 are identical to articles 3451 and 3483 of the Code of 1870.

**Digest of 1808**

The article numbered 7 in the Digest of 1808 is virtually identical to article 503 of the Code of 1870.

The articles numbered 10-15 in the Digest of 1808 are identical, save for insignificant variations in punctuation, to articles 2301 & 2310-2314 of the Code of 1870.

The article numbered 21 in the Digest of 1808 is virtually identical to article 3451 of the Code of 1870. There is no article in the Digest of 1808 that corresponds to article 3483 of the Code of 1870.

**B Doctrine**


271. *Recovery of Fruits.*—Following determination of the right of ownership in a petitory action, courts in civil law jurisdictions are frequently faced with the questions of apportionment of economic advantages derived from the property and of compensation of the possessor for expenses and improvements. In these matters, the rights and duties of the parties vary with the good or bad faith of the possessor.

272. *Recovery of Fruits—Good Faith Possessor.*—For purposes of accession, a possessor is in good faith when he possesses by virtue of an act translative of ownership and does not know of any defects in his ownership. A possessor is not in good faith for purposes of accession when he merely believes that his author was owner of the thing. It is otherwise in matters of prescription.

According to Article 3480 of the Louisiana Civil Code [on prescription], a possessor may be in good faith even if he possesses without any act translative of ownership. For purposes of prescription, good faith and just title are distinct requirements, whereas for purposes of accession...
good faith depends on the existence of an act translatable of ownership and ignorance of its defects.

275. Reimbursement for Expenses. – An evicted possessor in good faith is entitled to reimbursement for necessary and useful expenses. Recovery is based on the principle of unjust enrichment and is allowed to the full extent for necessary expenses and for useful expenses to the extent they have enhanced the value of the thing. Article 528 of the Louisiana Civil Code applies to good faith possessors only. A bad faith possessor may not recover useful expenses under this article.

---


[from Levasseur’s explication of the law applicable to “payment of a thing not due,” Civil Code arts. 2301-2314 (1870)]

In order to return the parties to the status quo ante, to the extent possible, some consideration should be given to the fact that the recipient may have incurred expenses to preserve the thing and maintain it in good condition while it was in his possession. Shouldn’t the recipient be entitled to the reimbursement of these expenses, which ultimately benefit the other party?

A provision in the French Civil Code addresses this issue and gives the following answer: One to whom the thing is returned must make compensation, even to a possessor in bad faith, for all the necessary and useful expenditures which have been made to preserve the thing.” An identical provision existed in Article 2314 of the Louisiana Civil Code of 1870 until it was repealed by Act 180 of 1979, because its subject matter was covered by Louisiana Civil Code Articles 527 and 528.

---


One matter that the current legislation leaves unresolved is the precise nature of the relationship between an evicted possessor’s rights with respect to “fruits” he has produced from the thing, on the one hand, and an evicted possessor’s rights with respect to “expenses” he has incurred on behalf of the thing, on the other. The articles addressed to these two questions, though they do not now and have never appeared in the same part of the Civil Code, have much in common, including (i) history (both were originally drawn from the same parts of Pothier’s treatises, in particular, his treatise on ownership), (ii) policy (both are rooted in the principle that no one ought to be unjustly enriched at another’s expense), and (iii) theme (both deal with the “remedies” of evicted possessors).

C Jurisprudence

...  

D Other

---

2 The inclusion of the term “comment” in the description of this piece signals that it was written by a law student rather than a law professor.
II Foreign

A France

1 Legislation: Code Civil

[from Book II (entitled “Of Things and of the Different Modifications of Ownership”), Title II (entitled “Of Ownership”, Chapter II (entitled “Of the Right of Accession on that which is United and Incorporate into the Thing”)]

Art. 550. A possessor is in good faith when he possesses as owner by virtue of a title translative of ownership, the vices of which he is unaware of.

[ from Book III (entitled “Of the Different Manners in which One Acquires Ownership”), Title IV (“Of Engagements Formed Without Convention”), Chapter I (entitled “Of Quasi-Contracts”)]

Art. 1376. He who receives through error or knowingly that which is not owed to him is obligated to restore it.

Art. 1377. When a person who, through error, believed himself to be a debtor has paid a debt, he has the right of restitution against the creditor.

Art. 1378. If there be any bad faith on the part of him who has unduly received, he is bound to restore not only the capital but also the interest, or fruits, from the day of payment.

Art. 1379. If the thing unduly received is a corporeal immovable or corporeal movable, he who has received it is bound to restore it in kind. He is even guarantor for its loss by fortuitous event, if he has received it in bad faith.

Art. 1380. If he who has received in good faith has sold the thing, he must restore only the price of the sale.

Art. 1381. He to whom property is restored must refund to the person who possessed it, even in bad faith, the necessary and useful expenses that he may have incurred.

Note: There are no articles in the Code Civil that correspond to articles 3451 and 3483 of the Louisiana Civil Code of 1870.
2 Doctrine

a Post-codification

3 Charles Beudant, LES CONTRATS ET LES OBLIGATIONS n° 1736, at 350-51, in 9bis COURS DE DROIT CIVIL FRANÇAIS (2d ed. 1952)

[from Beudant’ explication of the law applicable to “payment of a thing not due,”
Code Civil arts. 1376-1381]

[Under Code Civil art. 1381 and related legislation,] useful expenses must be reimbursed in the measure of the increased value that they bring to the thing. Even so, this bill for expenses on occasion experiences a limit: if there is bad faith, the judge can reduce the bill for expenses or even eliminate it altogether. But bad faith is not understood here as it is [in the law of accession]. It consists [in this context] of having multiplied the expenses with a view to paralyzing the true owner’s useful exercise of his right [i.e., running up the bill so high that the owner can’t afford to pay it off].

Jean-Louis Baudouin, LES OBLIGATIONS n° 607, at 331, & n° 610, at 332 (4th ed. 1993)³

[from Baudouin’s explication of the law applicable to “payment of a thing not due,”
Code Civil arts. 1376-1381]

607 - Effects of good faith - The recipient [of a thing or money] is in good faith when he does not know that what he receives is not owed to him, for example, when he truly believes himself to be the creditor of the one from whom he receives it.

610 - Effects of bad faith - The recipient who receives a sum or an object while knowing full well that it is not owed to him is in bad faith.

Pierre LeClair, LES SOURCES DES OBLIGATIONS n° 295, at 352 (1960)

[from LeClair’s explication of the law applicable to “payment of a thing not due,”
Code Civil arts. 1376-1381]

The terms “bad faith” and “good faith,” as used in the Code Civil articles 1378, 1379, 1380, and 1381, are not expressly defined in those articles or, for that matter, anywhere else in the Code Civil. Judging from the context, however, one must suppose that the meanings of these terms are intimately tied to the very notion of condicio indebiti [payment of a thing not due], as set forth in article 1376: “He who receives through error or knowingly that which is not owed to him is obligated to restore it . . . .” It would seem, then, that one is in “good faith” if one receives something under

³ This is actually a Québécois treatise. For purposes of this problem, however, we’ll treat it as if it’s French.
the “erroneous” belief that he has a right to receive it and in “bad faith” if one receives something “knowing” that he has no right to receive it. Good and bad faith, then, are nothing but states of mind.

b Pre-codification

Robert Pothier, Traité de la Propriété nn° 343-345, in Œuvres de Pothier 266-68 (Dupin ed., nouv. ed. 1825)

343. When, in the action for restitution, the plaintiff has demonstrated his right, the possessor is condemned to release to him the thing to be restored. But in certain cases, when the possessor has expended some sum or contracted some obligation for the conservation, amelioration, or redemption of the thing that he is condemned to release, the possessor who had incurred these expenses is condemned to release it only on the condition that the plaintiff reimburse him beforehand for that which he has expended and to indemnify him.

344. One case is that which Papinian points out to us in the last words of Law 65 [part of Justinian’s Digest]: sumptuum in prædium factorum [literally, the cost of making the estate].

345. There is a difference to be made between the possessor in good faith and the possessor in bad faith in regard to expenses that they have made that were not necessary but merely useful and that have improved the thing that is the object of the action in restitution. In regard to the possessor in good faith, the owner, in the action in restitution, cannot oblige this possessor to release the thing to be restored if he does not first reimburse him for the expenses that he had even, even if these expenses were not necessary and have only augmented the thing to be restored and rendered it of greater value. The same is not true when the possessor from whom the owner seeks restitution is in bad faith.

Robert Pothier, Traité de la Possession nn° 17-18, in Œuvres de Pothier 331 (Dupin ed., nouv. ed. 1825)

17. The most common vice of possession is bad faith. This bad faith is nothing other than the knowledge that the possessor has that the thing he possesses and as to which he comports himself as owner does not belong to him; it is scientia rei alienæ [literally, “knowledge of the thing of another”].

18. This vice is not presumed in a possession that proceeds from a just title. It is up to he who attacks the legitimacy of such a possession [i.e., one with just title] to prove the bad faith of the possessor, that is to say, the knowledge that he has had that he from whom he acquired the thing did not have the right to alienate it.

On the contrary, the vice of bad faith is presumed in a possession as to which the possessor bears no title. This presumption, however, is rebuttable.

Other


Good faith is an intangible and abstract quality with no technical meaning or statutory
definition. It encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage. It may mean honesty of intention or freedom from knowledge of circumstances that ought to put the holder of a thing upon inquiry. In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, being faithful to one’s duty or obligation.

1 Oxford English Dictionary, Faith 952 (compact ed. 1987)

    Good faith. Honesty, loyalty, especially honest intention in entering into engagements, sincerity of professions.