LOUISIANA STATE UNIVERSITY LAW CENTER
Final Examination

Louisiana Civil Law System (§§ 1 & 2)  Monday, December 4, 2000
Professor Trahan  1:35 to 5:50 pm

INSTRUCTIONS

1. This is something between a closed-book and an open-book exam. Aside from the test packet itself, you may consult one and only one book, i.e., your Civil Code. You may, of course, use “scratch” paper.

2. Before you begin reading the test packet, make sure you have all of the pages. Excluding the appendix (which itself has 6 pages), there are 21 pages in all.

3. Do not sign your paper. Identify your paper using only your exam number. If you have a pre-printed exam number tag, use it. If not, just write the number out on the first page of the test packet.

4. You have a total of 255 minutes (4 hours, 15 minutes) to complete the exam. To assist you in budgeting your time, I have indicated the amount of time that I think you should spend on each Part and Subpart of the exam. This time is also indicative of the weight I will assign to each Part for grading purposes.

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

5. As you work through the problem in Part III of the exam, be sure that you read the Interpretive Resources appendix thoroughly and carefully before you begin writing. Note that the “new material” in the problem and the appendix, that is, that which was omitted from the pre-exam packet, appears in “redline” (i.e., has a gray background). The rest of the material you’ve already seen.

6. Be sure to justify every proposition that you assert. One of the major objectives of this exam is to test your ability to identify the applicable provisions of law, to resolve conflicts between them, and to apply them to the facts.

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

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

   During the exam period, I will come down to the lobby outside the examination rooms every hour on the hour (i.e., at 1:00, 2:00, 3:00, etc.) and will remain there for fifteen minutes at a time. At all other times, I will be in my office (Room 328).

8. Record your answers to the Questions of Parts I, II & IV on your Scantron sheet and your answer to the problem in Parts I & II in the space provided in this test packet. DO NOT EXCEED THE SPACE PROVIDED.

9. Scattered throughout the exam are footnotes that contain helpful “hints” and “notes.” Be sure not to overlook them. Remember: ONLY AN IDIOT FAILS TO READ THE FOOTNOTES TO AN EXAM.
I
(45 minutes)

A
Multiple Choice
(30 of the 45 minutes for Part I)

1 Gaius' *Institutes* served as a model, at least in terms of structure and format, for several civil law digests and codes. They included:

a Digest of 1808
b German Civil Code (*BGB*)
c *Las Siete Partidas*
d Justinian's *Digest*
e a, c & d

2 Which of the following considerations prompted the preparation of the so-called "Barbaric codifications" of Roman civil law?

a to adopt a body of law more in tune with contemporary economic conditions
b to foster legal unification and integration
c to preserve classical Roman civil law for its own sake, as a treasured part of Roman civilization
d to facilitate access to civil law materials, which had theretofore been set out in innumerable books in scores of libraries scattered across the known world
e all of the above

3 Which of the following factors contributed to the "revival" of Roman law in Italy during the 12th century?

a the desire to unify the Italian city-states politically
b the conviction that Roman law was better suited to the needs of Italy's emerging mercantile economy
c the attitude of profound respect, if not reverence, among intellectuals for the works of ancient Greece and Rome
d the "rediscovery" of Justinian's *Digest* and *Institutes*
e all of the above

4 The works of these two influential Commentators were at one time accorded the status of law in parts of Spain and, later, in some of Spain's overseas possessions (including Louisiana). Who were they?

a Accursius and Vacarius
b Accursius and Bartolus
c Alphonsus the Wise and Bartolus
d Bartolus and Baldus
e none of the above

5 Which of the following contemporary civil law legal concepts, principles, and institutions can be traced to the canon law?

a forced heirship
b lesion (the notion that the seller of a thing can upset the sale if he fails to receive a "just price")
c divorce for cause of adultery
d community property
e all of the above
6 Which of the following was not among the principal objectives of the French codification movement, at least as it was originally conceived?

a to stem the growing influence of foreign legal systems, particularly that of Italy
b to render the law intelligible to the commoners
c to reduce the law to writing
d to reform the law, in particular, to strip it of its feudal elements
e none of the above (in other words, all of these were among the objectives)

7 Which of the following civil law compilations has the highest ratio of rules of Roman origin to rules of "barbaric" origin?

a Fuero Juzgo (Forum Judicum)
b Projet du Gouvernement
c Digest of 1808
d German Civil Code (BGB)
e Italian Civil Code

8 In an act passed in 1806, the newly-elected Territorial Legislature of Louisiana declared that the following were among the "civil laws which continue[d] to be in force":

a various Spanish civil law compilations, such as the Law of the Toro and Las Siete Partidas
b the Roman civil law, as reflected in the various barbaric codifications, including the Lex Romana Visigothorum and the Lex Romana Burgundionum
c the Coutume de Paris
d the writings of civil law scholars, such as Domat, Planiol, and Savigny
e all of the above

9 What, according to the "Manifesto" that the newly-elected Territorial Legislature of Louisiana issued in 1806, was the most significant justification for retaining the civil law in Louisiana?

a retaining the civil law would protect established commercial relations from disruption
b the civil law was an important cultural institution, one that helped to shape what was perceived to be a unique cultural identity
c retaining the civil law would protect the livelihoods of judges and attorneys who had been trained in the civil law rather than the common law
d retaining the civil law would discourage unwanted American immigration to Louisiana
e none of the above

10 In preparing the Digest of 1808, the drafters drew much of their inspiration and, in some instances, even their texts from the doctrinal writings of two celebrated French civil law scholars. Who were they?

a Domat and Planiol
b Domat and Pothier
c Portalis and Pothier
d Pothier and Toullier
e Pothier and Planiol

11 The roughly simultaneous occurrence of the following events caused some observers of Louisiana law, such as Justice Mack Barham, to proclaim that a "civil law renaissance" had begun:

a the state supreme court directed attorney's to begin briefing private law cases "in light of the civilian authorities"
b the state's judges, particularly those on the supreme court, began to employ civilian methods and to use civilian authorities in deciding private law cases
c the state's law schools revamped their curricula, placing a renewed emphasis upon civil law studies
d the state law institute began translating major French treatises into English
e all of the above

12 Pointing to the following evidence, some legal historians have charged that the drafters of the Digest of 1808 failed to execute their mandate faithfully:

a handwritten notes in the "de la Vergne manuscript" (believed to be Moreau-Lislet's personal copy of the Digest) reveal that the redactors relied heavily on various Spanish law sources
b handwritten notes in the "de la Vergne manuscript" (believed to be Moreau-Lislet's personal copy of the Digest) reveal that the redactors relied heavily on the French Code Civil and the Projet du Gouvernement
c many of the articles in the Digest have no counterpart in Spanish private law legislation, though they do have counterparts in French private law legislation and/or French customary law
d over 90% of the articles in the Digest are verbatim copies of articles found in the various French customs, e.g., the Coutume de Paris and the Coutume de Orléans
e all of the above

13 Which of the following persons participated in the drafting of only one of Louisiana's civil codes (including therein the Digest of 1808)?

a Yiannopoulos
b Derbigny
c Livingston
d Brown
e all of the above

14 The roughly simultaneous occurrence of the following events caused some observers of Louisiana law, such as Justice Mack Barham, to proclaim that a "civil law renaissance" had begun:

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e all of the above

15 Of the supposed distinctions between the civil law and the common law listed below, which is not true?

a the two systems recognize different sources of law and rank them differently
b the civil law exhibits a level of abstraction and systematization that the common law has never known
c whereas common law judges enjoy great prestige, power, and autonomy, civil law judges (in most jurisdictions) are "civil servants," part of a large bureaucracy
d the common law is much more congenial to free-market commercial development than the civil law
e none of the above (in other words, they are all true)
According to legend, the Twelve Tables, which formed the cornerstone of the *ius civile*, were based upon the laws of Greece.

The explosive development of the Roman civil law during the "formative period" was chiefly the work of the jurists and the iudices.

Once Julian, at the insistence of the Emperor Hadrian, "froze" the Praetorian Edict, the praetors' efforts at legal innovation came to an abrupt and complete halt.

The *ius commune* received its "warmest" (i.e., most complete) reception in what is now Italy.

Though the French Revolution provided much of the impetus for the French codification movement, the redactors of the French *Code Civil* had close ties to the pre-revolutionary *ancien régime*.

One of the many ironies of German civil law history is that the principal antagonists in the debate regarding codification were of French ancestry.

In all likelihood, the Louisiana Civil Code, in terms of its structure and its content, is more like the Brazilian Civil Code than the Chilean Civil Code.

The *Coutume de Paris* (Custom of Paris) was once the law in Louisiana.

He (or she) who thinks that the French *Code Civil* (also known as the *Code Napoléon*) was once in force in Louisiana is an ignoramus (i.e., profoundly ignorant).

For its structure and format the current Louisiana Civil Code is indebted, in large part, to Justinian's *Digest*.

Among the many authorities on which the drafters of the Code of 1825, in their preliminary report to the legislature, promised to keep a "reverent eye" was English jurisprudence.

The opponents in the debate regarding the "sources" of the Digest of 1808 agree that the form of that compilation was taken from various French sources, in particular, the *Code Civil* and the *Projet du Gouvernement*.

Professor Ireland based his conclusion that "Louisiana is today [1937] a common law state" in part on evidence that Louisiana courts cited common law authorities much more often than civil law authorities and more often than not relied on prior jurisprudence rather than legislation to justify their decisions.

Like the drafters of German Civil Code (*BGB*), but unlike the drafters of the French *Code Civil*, the revisers of the Louisiana Civil Code in the past two decades have not, for the most part, attempted to draft articles in a style that would make them intelligible to laypersons.

Some common lawyers look askance at the kind of abstract elaboration and systematization that characterize the civil law system, for they doubt whether highly abstract, scientifically ordered legal rules, developed *a priori*, will provide just and reasonable solutions in all cases that fall within their scope.
31 It has been proposed that the part of the Preliminary Title to the Civil Code that concerns "sources of law" (articles 1-4) be repealed and, further, not be replaced. What is the most likely (and logical) explanation for such a proposal?

a. ignorance of or hostility toward the civil law tradition
b. the conviction that articles 1-4 set forth propositions of legal theory, not propositions of law
c. the conviction that the task of identifying and ranking sources of law must, as a matter of logic, be assigned to some entity that ranks above those sources of law
d. the conviction that the propositions set forth in articles 1-4, insofar as they apply to all fields of law (not just the civil law), ought not to appear in a code devoted exclusively to the civil law
e. all of the above

32 To what does the expression "secondary source" of law, as used in civil law doctrine, refer?

a. any source of law that ranks below that of the state constitutional convention
b. a source of authority to which courts may turn when they find themselves in the face of a lacuna (gap) in legislation and custom
c. a source of authority to which courts may turn when they are required to "interpret" legislation or custom
d. sometimes b, sometimes c
e. none of the above

33 In the Digest of 1808, the Code of 1825, and the Code of 1870, the definition of “legislation” included this statement: “It orders and permits and forbids; it announces rewards and punishments.” That statement was dropped from the definition of “legislation” when the Preliminary Title to the Civil Code was revised in 1987. Why?

a. the conviction that this property, far from being unique to legislation, is true of all legal rules
b. the conviction that there’s some legislation, properly so called, that does none of these things (order, permit, forbid, reward, punish)
c. hostility among the revisers to natural law theory
d. oversight/inadvertence
e. none of the above

34 Which of the following propositions is/are true of the process whereby so-called administrative rules (rules created by executive branch agencies) are created?

a. it is a secondary, not a primary, source of law
b. administrative rules, though treated as law “in practice,” are not law “in theory”
c. though administrative rules created by agencies whom the legislature has by statute authorized to create such rules can (with the assistance of the so-called “delegation doctrine”) be classified as “legislation” for purposes of CC arts. 1 & 2, administrative rules created by agencies whose rule-making power comes from the constitution rather than the legislature cannot in any wise be so classified
d. because “legislative will,” liberally (but fairly) interpreted, is sufficiently broad to cover the exercise of any traditional “legislative power” by any (constitutionally-) authorized organ of government, all administrative rules (provided they be constitutional) qualify as “legislation” for purposes of CC arts. 1 & 2
e. none of the above

35 Which of the following propositions is/are true of the process whereby so-called “local court rules” and “rules of professional conduct for attorneys” (both of which are issued by the courts) are created?

a. it is a secondary, not a primary, source of law
b. these court-issued rules, though treated as law “in practice,” are not law “in theory”
because “legislative will,” liberally (but fairly) interpreted, is sufficiently broad to cover the exercise of any traditional “legislative power” by any (constitutionally-)authorized organ of government, court-issued rules of the kind in question (provided they be constitutional) qualify as “legislation” for purposes of CC arts. 1 & 2.

d) these court-issued rules form a part of “jurisprudence”

e) a & d

36 Which of the following propositions regarding the relationship between “legislation,” as used in CC arts. 1 & 2, and “custom,” as used in CC arts. 1 & 3, is false?

a) whereas legislation is the direct expression of popular will, custom is the indirect expression of popular will

b) whereas legislation is the deliberate expression of popular will, custom is the unconscious and spontaneous expression of popular will

c) though Louisiana’s official theory of sources of law (i.e., that reflected in CC arts. 1-4) leaves room for the existence and recognition of custom propter legem and custom secundum legem, it excludes custom contra legem

d) in practice custom seems to outrank legislation in a few rare instances

e) none of the above (in other words, all propositions are true)

37 How should one describe the relationship between “custom,” as used in CC arts. 1 & 3, and “usage,” as used in CC art. 4?

a) usage is a component of custom, to be more precise, a component of the “material element” of custom

b) whereas no practice can be qualified as a custom absent opinio necessitatis (the widespread conviction that is legally binding), a practice can be qualified as a usage regardless whether it’s believed to be legally binding

c) whereas no practice can be qualified as a custom absent it’s having been repeated for a “long time,” a practice can be qualified as a usage so long as it has been repeated for at least some time

d) whereas custom is a “primary” source of law, usage is a “secondary” source of law (as those terms are used in the comments to CC arts. 1-4)

e) all of the above

38 The term “jurisprudence,” as used in civil law literature, entails the following types of rules:

a) local court rules

b) the Rules of Professional Conduct (for attorneys)

c) judgments and other rulings issued at the conclusion or in the course of litigation

d) a & c

e) all of the above

39 How does the civilian theory of jurisprudence constante differ from the classic English (as opposed to the American) common law doctrine of stare decisis?

a) whereas stare decisis is triggered by a single decision, jurisprudence constante does not arise until several decisions have endorsed the same rule

b) whereas a judge in a jurisdiction that recognizes the doctrine of stare decisis is absolutely bound by the decisions of courts superior to his own, a judge in a jurisdiction that recognizes the theory of jurisprudence constante is not so bound, indeed, is free, if he’s convinced the superior court made a mistake, to adopt a different rule

c) whereas a court in a jurisdiction that recognizes the doctrine of stare decisis is absolutely bound by its own prior decisions, a court in a jurisdiction that recognizes the theory of jurisprudence constante is not so bound, indeed, is free, if it’s convinced it previously made a mistake, to adopt a different rule

d) a & b

e) all of the above
Which of the following statements accurately characterizes the "place" of jurisprudence constante within the theory of sources of law reflected in Civil Code articles 1-4 and/or the comments thereto?

a  jurisprudence constante is a primary source of law  
b  jurisprudence constante can give rise to the development of a custom (a primary source of law, according to the comments to CC arts. 1-4), provided that the jurisprudential rule is consistently followed and the community comes to regard it as legally binding  
c  jurisprudence constante can give rise to the development of a usage (a secondary source of law, according to the comments to CC arts. 1-4), provided that the jurisprudential rule is consistently followed  
d  b and c  
e  all of the above

In recent years some civilian scholars in a number of civil law strongholds, such as France, Belgium, and Argentina, have contended that jurisprudence should be counted among the primary sources of law. Why is that?

a  growing respect for the common law tradition  
b  the desire to bring the "theory" of sources of law more closely into line with "practice"  
c  the conviction that courts in fact "make law" whenever they decide cases for which neither legislation nor custom supplies the rule of decision (i.e., "gap" cases)  
d  the conviction that courts in fact "make law" even when they "merely interpret" legislation or custom, for interpretation is an inherently and ineluctably "creative" process (in other words, inevitably "adds something new" to the interpreted text)  
e  b, c, and d

Which of the following statements accurately characterizes the "role" of doctrine in Louisiana?

a  it was once recognized by legislation as a primary source of law  
b  presently it is treated, at least in practice (if not in theory), as a primary (binding) source of law  
c  it is recognized by legislation as a secondary source of law, in the sense that legislation authorizes the courts to use it to fill lacuna (gaps) in legislation and custom  
d  a & c  
e  all of the above

A certain law professor at LSU, who shall go nameless, has just proposed that CC art. 4 be repealed and replaced with the following: “In the absence of an applicable legal disposition, the judge shall pronounce judgment according to the rules that he would establish if he had to make a legislative act. He shall be inspired by doctrine and jurisprudence.” What might explain this proposal?

a  the professor is a big fan of François Gény and/or the Swiss Civil Code  
b  the professor wants to bring Louisiana’s official theory of sources of law (i.e., that reflected in CC arts. 1-4) into line with practice  
c  the professor is an enemy of the civil law tradition; nothing could be more antithetical to that tradition than to authorize the judge to act as a legislator or to direct him to conform himself to prior court decisions  
d  a or b  
e  any of the above

B
True or False
(4 of the 30 minutes for Part II)
So-called “joint resolutions” of the legislature, which are passed by both houses thereof, qualify as “legislation” for purposes of CC arts. 1 & 2.

a  true  
b  false

According to the legislation of the Preliminary Title to the Civil Code, jurisprudence is among the secondary sources of law.

a  true  
b  false

No contemporary civil law theorist worth his salt (i.e., who understands and values his legal culture) could possibly agree that jurisprudence ought to be recognized as a primary source of law.

a  true  
b  false

The term "doctrine," as used in civil law literature, refers to basic legal principles and concepts, such as "juridical acts," "real rights," "vices of consent," as developed by courts and legal scholars.

a  true  
b  false

III

(2 hours or 120 minutes)

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, first, to her elder son, Calvert, in full ownership, and then, upon his death, to her younger son, Jeremy, in full ownership. Calvert and Jeremy, who know nothing of Renard’s chicanery, accept the donation by authentic act. After Big Mama’s death, Calvert heads out to Le Grand Chenier to locate his lot. Unbeknownst to Calvert, however, several of the landmarks mentioned in the property description that Big Mama inserted into the act of donation have been relocated since the time of Renard’s sale to Big Mama. And so, Calvert ends up on the wrong 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). The reason Ms. Frey is unsure on this score is not that she believes Calvert in fact knew or even should have
suspected that Big Mama (or, before her, Renard) was not the owner; to the contrary, Ms. Frey takes it as a given that Calvert was innocent of any and all wrongdoing and, further, that his innocence was reasonable under the circumstances. Rather, the reason for Ms. Frey’s uncertainty is that Calvert, when he incurred the expenses, did not have an “act translative of ownership” for the lot, that is, was not named as the transferee in an instrument that purported, by its terms, to transfer ownership of that lot. And why not? For either or both of two reasons: (i) if he had any title at all, it was for a different lot than that on which he lavished his attention; (ii) because his title was part of a prohibited substitution (the double disposition in full ownership to Calvert and then Jeremy constitutes a clear violation of Civil Code art. 1520), that title was absolutely null and, as such, was no title at all!

Ms. Frey has asked you, the firm’s summer associate, to help her resolve her uncertainty. What she wants to know, to be more precise, is this: In order to be in “good faith” for purposes of article 527, is it sufficient that one reasonably believe that one is the owner of the thing or is it necessary, as well, that one have “title” to that thing? Your instructions are two-fold: (i) set forth all colorable arguments in support of the interpretation that favors McCrocklin, that is, that title is required; and (ii) identify, explain, and critique all counter-arguments that Rundell and Zeringue might make on Calvert’s behalf in reply. Good luck.

(see attached appendix for interpretive resources)
Boudreaux heads down to Creole Bank, Inc., hoping to obtain a $100,000 loan. The bank is willing to lend to him (at interest, of course), provided he puts up adequate collateral. And so Boudreaux mortgaged his farm (to which, by an act registered in the public records, he had previously "dedicated" certain equipment, including a tractor) to the bank. The act of mortgage, which is reduced to writing, is filed into the public records.

The tract of land next to Boudreaux's belongs to Thibodeaux. At Boudreaux's request, Thibodeaux (as owner of his estate) grants Boudreaux (as owner of his estate), a "right of passage" entitling him to pass back and forth to the swamp (part of the Mermentau River system) that lies on the far side of Thibodeaux's land. Thibodeaux charges Boudreaux nothing for this privilege. Though the act of servitude is reduced to writing, the writing is not recorded.

After receiving the servitude, Boudreaux crosses to the swamp and, once there, bottles some of the air above the swamp and some of the water in the swamp. Falsely representing that the bottled air and bottled water possess medicinal properties, Boudreaux later sells a few bottles of each to Ti-Boy, the 17 year-old legitimate son of Pascal (a widower of 10 years). When Ti-Boy uses the air (by inhaling it) and the water (by washing in it), he has a severe allergic reaction (thanks to some toxic contaminants in the gas and water, of which Boudreaux was not, but should have been, aware), the complications of which leave him with severe brain damage. To raise money to pay for Ti-Boy's medical expenses, Pascal sells off Ti-Boy's extensive compact disc and video game collections. Meanwhile Pascal, understandably bitter about what's happened, spreads unfounded rumors that Boudreaux "poisoned" the air and water. The truth is that Boudreaux was merely negligent.

When Ti-Boy turns 18, Pascal gets a court order appointing him Ti-Boy's “curator.”

One day, while Pascal is away from home, Ti-Boy (now 18) wanders out onto the roof of the house and, before long, falls off, breaking both his legs. Seeing what's happened, Thibodeaux rushes Ti-Boy to the hospital. When the hospital staff hesitates to admit Ti-Boy because he lacks proof of insurance, Thibodeaux plops down his credit card, saying, "Put the charges on here!" After Ti-Boy (who is still conscious) signs a "consent to surgery form," he's whisked off to the operating room. The charges, which the hospital bills to Thibodeaux's credit card account, come to $20,000.

Before long Boudreaux and Thibodeaux (independently) decide to sell out. Boudreaux sells his farm to Lentement; Thibodeaux, his land to Vitement. Both buyers file their written acts of sale into the public records. Then Boudreaux dies intestate.

Meanwhile Pascal dies. By testament, he leaves "all the property that I shall own at my death to my sister, Avarice, provided she takes care of my son, Ti-Boy." Avarice accepts Pascal’s estate.

Which of the following accurately characterizes the juridical relations that were created when Creole Bank and Boudreaux executed the loan and mortgage agreements?

a. whereas the juridical relation created by the loan agreement was an obligation, that created by the mortgage contract was a real relation
b. whereas the object of the juridical relation created by the loan agreement was a duty to do, the object of the juridical relation created by the mortgage agreement was a duty not to do
c. whereas the source of the juridical relation created by the loan agreement was a multilateral judicial act, the source of the juridical relation created by the mortgage was a licit juridical fact
49 How does the juridical relation that entails Creole Bank’s mortgage rights differ (or not differ) from the juridical relation that entails Boudreaux’s (or his successor’s) servitude rights on Thibodeaux’s land? (Assume, for purposes of this question only, that the act of servitude was filed into the public records.)

a whereas the active subject of the former relation is a juridical person, the active subject of the latter relation is a natural person
b the passive subject of each of the two relations is everyone other than the holder of the right
c whereas the rights in the former relation are accessory real rights, those in the latter relation are principal real rights
d whereas the source of the former relation was a multilateral, onerous juridical act, the source of the latter relation was a multilateral, gratuitous juridical act
e all of the above

50 Does Creole Bank now have any rights against Lentement (the buyer of Boudreaux’s land)? If so, what rights does it have and why?

a yes: it has the right to assume ownership of and control over the land in the event that Boudreaux’s successors fail to pay off the loan; mortgage rights “follow the thing” to which they are attached and are good against the world
b yes: it has the right to “foreclose” on the land, that is, to cause it to be seized and sold in the event that Boudreaux’s successors fail to pay off the loan; mortgage rights “follow the thing” to which they are attached and are good against the world
c yes: it has the right described in (a) plus the right to demand that Lentement himself pay off the loan; when Lentement bought Boudreaux’s land, he became the passive subject of the obligation to repay the loan, for Creole’s right to be repaid is a real right
d no: the loan and mortgage contracts, like all juridical acts, were effective only against the parties thereto; Lentement was not a party to either contract
e none of the above

51 Do Creole Bank’s mortgage rights attach to the tractor, too? Why or why not? (Hint: See CC art. 469.)

a no: a mortgage can attach only to an immovable; the tractor is a movable; if the bank had wanted a security interest in the tractor, it should have taken a “pawn”
b no: a mortgage placed on an immovable extends only to the burdened immovable and to its component parts; because the tractor is a corporeal movable, it could not possibly be a component part of the land
c yes: by virtue of the declaration of dedication, the tractor became a component part of the land itself; the mortgage attaches not only to the land but also to its component parts
d yes: a mortgage extends not only to the burdened immovable but also to all things, be they movable or immovable, that might be found on that immovable
e none of the above

52 Prior to the sales of Boudreaux’s and Thibodeaux’s estates, was Thibodeaux required to permit Boudreaux to cross his land to reach the swamp? (Assume, for purposes of this question only, that the writing reflecting the servitude agreement had not been witnessed.)

a no: because the act of servitude was not filed into the public records, it had no effect
b no: because the act of servitude was a unilateral juridical act and the right conveyed was an incorporeal immovable, the act was required to be in authentic form
c no: because the act of servitude was a gratuitous juridical act and the right conveyed was an incorporeal immovable, the act was required to be in authentic form
d yes: as between the parties, no particular form is required, not even for a gratuitous
53 Must Vitement permit Lentement to exercise a servitude of passage across his land to the swamp? Why or why not?

a yes: the “active” part of a predial servitude relation benefits whomever may happen to own the dominant estate (here, Boudreaux’s) while the “passive” part of such a relation burdens anyone and everyone else, including the owner of the servient estate (here, Thibodeaux’s)

b yes: even though, thanks to the “relativity” rule, a juridical act affects no one but parties thereto and their universal successors, Lentement (as buyer from Boudreaux) was Boudreaux’s universal successor and Vitement (as buyer from Thibodeaux) was Thibodeaux’s universal successor

c no: thanks to the “relativity” rule, a juridical act affects no one but the parties thereto and their universal successors; Vitement was neither a party to the act of servitude nor a universal successor to such a party

d no: the correct answer would be (a) but for the fact that the servitude instrument was never recorded; for that reason, it (and with it, the real rights it purported to create) never became effective against third parties, such as Vitement

e none of the above

54 On which of the following grounds might Ti-Boy (through some representative, of course) annul the sales of the bottled swamp gas and/or the bottled swamp water into which he and Boudreaux entered? Explain.

a by virtue of his age, Ti-Boy suffered from an incapacity of exercise; consequently, the acts of sale were relatively null

b Ti-Boy’s consent to the sale was vitiated by fraud; consequently, the acts of sale were absolutely null

c the sale of the swamp gas and the sale of the swamp water were absolutely null, for both the gas and the water were “common things” and, as such, not susceptible of ownership

d the sale of swamp gas, at least, was absolutely null for want of proper form; the sale of an incorporeal thing must be evidenced in writing

e none of the above

55 Aside from the obvious (that the active and passive subjects are different), what distinguishes the juridical relation that arose when Ti-Boy was injured by the swamp air and swamp water he had purchased from Boudreaux, on the one hand, and the juridical relation that arose when Boudreaux was injured by the false rumors that Pascal knowingly spread about him, on the other?

a whereas the source of the former relation was a juridical act (the sale), the source of the latter relation was an illicit juridical fact

b though both relations arose from illicit juridical facts, the source of the former relation was a quasi-delict while that of the latter relation was a delict

c though both relations arose from illicit juridical facts, the source of the former relation was a delict while that of the latter relation was a quasi-delict

d whereas the former relation, insofar as its creation involved things, entailed real rights, the latter relation entailed only credit rights

e b & d

56 Which of the following statements fairly characterize(s) the juridical relationship that existed between Ti-Boy and Pascal prior to Ti-Boy’s 18th birthday?

a the relationship entailed numerous juridical relations, some of them patrimonial and some of them extra-patrimonial

b one of the extra-patrimonial relations entailed Pascal’s right/power to administer Ti-
Boy’s estate
c the source of all the juridical relations between them was a natural (involuntary) juridical fact
d a & c
e all of the above

57 Which of the following statements fairly characterize(s) the sales of Ti-Boys’s CDs and tapes that Pascal made on Ti-Boy’s behalf?
a the sales were absolutely null, for Pascal, as the mere administrator of Ti-Boy’s estate, lacked authority to sell Ti-Boy’s corporeal property
b the sales were not null for want of authority to sell: Pascal, as administrator of Ti-Boy’s estate, had the authority to sell Ti-Boy’s corporeal movable property
c the sales were relatively null: the party to the sales whom one would describe as the “seller” was not Pascal, but Ti-Boy; Pascal served merely as Ti-Boy’s representative; by virtue of Ti-Boy’s young age, he lacked the necessary capacity of exercise to enter into such sales
d the sales were not relatively null for want of capacity: it is true that the party to the sales whom one would describe as the “seller” was not Pascal, but Ti-Boy, Pascal having served merely as Ti-Boy’s representative; but in that role, Pascal was entitled to enter into juridical acts for Ti-Boy
e b & d

58 Before Pascal died, could Thibodeaux have demanded that Pascal reimburse him for the expenses he incurred in securing medical care for Ti-Boy? Why or why not? (You may assume that Pascal, as Ti-Boy’s father and curator, had both the power and the duty to pay for medical care for Ti-Boy.)
a no: there was no valid contract between Thibodeaux and Pascal whereby the latter might owe the former a duty of reimbursement; even if there had been, the contract would have been null thanks to Ti-Boy’s incapacity of exercise
b no: the expenses had not been authorized by Ti-Boy’s legal representative, Pascal
c yes: Thibodeaux’s act of securing medical care for Ti-Boy amounted to a licit juridical fact, one that, by law, gives rise to an obligation whereby Pascal must reimburse Thibodeaux for his expenses
d yes: Pascal’s act of withholding reimbursement from Thibodeaux constituted an illicit juridical fact (to be precise, a delict), one that, by law, gives rise to an obligation whereby Pascal must pay Thibodeaux for his damages (expenses plus interest)
e none of the above

59 Forget, just for the moment, that Pascal is dead. Which of the following statements accurately characterizes the “consent to surgery” form signed by Ti-Boy?
a its validity can be challenged only by Pascal, as Ti-Boy’s curator, or Ti-Boy, if and when the interdiction order is lifted and he recovers his mental faculties
b it invalidity can by cured by confirmation, which can be accomplished either by Pascal, as Ti-Boy’s curator, or Ti-Boy, if and when the interdiction order is lifted and he recovers his mental faculties
c the right to challenge its invalidity, if not asserted within five years, will prescribe
d it is invalid right now and has been invalid from the beginning
e a, b, & c

60 Who now owes Boudreaux’s duty to repay the loan he took out from Creole Bank?
a no one: because the duty was extra-patrimonial, it could not be transmitted
b Lentement: he got the land on which the mortgage to secure repayment of the loan lies; therefore, he also got the duty to repay the loan
c Boudreaux’s heirs: by way of a special exception to the “relativity” rule, one’s debts
pass, upon one’s death, to one’s universal successors, but not to one’s particular successors; Lentement was a particular successor of Boudreaux.

d Lentement: though the rule stated in (c) is generally true, there’s an exception to it for the case in which the particular successor gets the benefit of the debt in question; here, that was true for Lentement.

e none of the above

61 Who is “first in line” to inherit Boudreaux’s “community property” rights?

a descendants
b surviving spouse
c descendants and surviving spouse together (the former get naked ownership; the latter gets a usufruct)
d parents and siblings together

e none of the above

62 Which of the following statements accurately characterizes Avarice’s rights and duties?

a by transmission, Avarice has acquired Pascal’s curatorship powers over Ti-Boy’s estate; insofar as those powers attach to things, they are real rights and, as such, patrimonial
b she has not acquired, by transmission or otherwise, Pascal’s debt to Thibodeaux for reimbursement of the medical expenses; if, indeed, such a debt ever existed, it extrapatrimonial and, as such, was insusceptible of transmission
c by transmission she has acquired Pascal’s debt to Boudreaux (or, now, his successors) for damages caused by Pascal’s slander; this debt was patrimonial and, as such, was susceptible of transmission

d the source of the juridical relations in which the rights and/or duties that she inherited from Pascal are entailed was two-fold: a natural (voluntary) juridical fact (i.e., death) and a unilateral gratuitous juridical act (i.e., the donation mortis causa in the testament)

e c & d
APPENDIX to PART III
Interpretive Resources

1 Domestic (Louisiana)

A Legislation

1 Current Code

Articles 483 & 485-487; 523; 526-529; 2299-2305; 3475, 3480 & 3483.

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 translatable of ownership, the vices of which he is not aware of.

[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 done 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.

[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.

[Book III (entitled “Of the Different Modes of Acquiring the Ownership of Things”)]

1 Helpful hint: Be sure to note where in the current Civil Code these various sets of articles are situated.
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 translative 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.

Alain Levasseur, LOUISIANA LAW OF UNJUST ENRICHMENT IN QUASI-CONTRACTS 231 (1991)

[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**

*Green v. Moore*, 11 So. 223 (La. Sup. Ct. 1892) **Facts:** Moore bought a tract of land at a tax auction. Unbeknownst to him, the land he ended up buying (property of J.W. Green) was not the land he had intended to buy (property of John Green). After the sale, Moore incurred useful expenses in connection with John Green's land. When John Green's heirs learned what was up, they brought a petitory action to recover the land. Moore demanded reimbursement of his expenses. **Result:** Demand for expenses under CC art. 2314 denied. **Rationale:** "[T]he lands of J.W. Green, and not those of John Green, were advertised and sold; and, it having been the intention of Moore to buy those of the latter, and not of the former, he failed to acquire even an apparent title thereto under the adjudication. We think it evident that the defendant was not a purchaser in good faith, for the Code [art. 503] provides that 'he is a *bona fide* possessor who possesses as owner by virtue of an act sufficient in terms to transfer the property'."

*Wallace v. Thompson*, 8 So. 2d 126 (La. App. Ct. Orleans 1942) **Facts:** During his wife's declining years, Thompson, using his separate funds, helped his wife pay off a mortgage she had placed on her separate property and, from time to time, incurred various useful expenses for the benefit of that property. At his wife's death, title to the property passed, by virtue of his wife's testament, to Wallace (the wife's niece). Thompson demanded reimbursement of his expenses from Wallace. **Result:** Demand for expenses under CC art. 2314 denied. **Rationale:** "Article 503 of the Civil Code defines as a possessor in good faith one 'who possesses as owner by virtue of an act sufficient in term to transfer property'. It is obvious that Thompson cannot qualify as a possessor in good faith since he does not pretend to have any title to the property, the possession of which he has."

**D Other**

1 **Legislative history**

In Act No. 51 of the First Extraordinary Session of 2000, the legislature amended the Civil Code by adding a new article, namely, article 528.1, which reads in part as follows:

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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.
Art. 528.1. Interest on expenses

A possessor who is entitled to recover his expenses from the owner under article 527 or 528 may demand as well interest on those expenses, at the legal rate of interest, reckoning from the date on which he offered to return the thing to the owner.

During the hearings on the bill that were conducted before the Senate Committee on the Civil Law, Senator Hymel, the chair of the committee, asked this question: “Not that this is crucial, but I’m curious: What does the expression ‘good faith,’ as used in articles 527 and 528?” The answer to the question, which came from Dan Frank, a staff attorney for the Louisiana Law Institute, was as follows: “Well, I suppose it means the same thing it does in the law of accession.” Moments later the committee approved the bill unanimously.

2 Proposed legislation (with commentary)


Definition of “good faith.” In the opening section of the avant-projet, Symeonides proposes that “good faith” be defined as follows:

For purposes of accession, a possessor is in good faith when he reasonably believes that he is the owner of the thing he possesses. If he possesses the thing without an act translative of ownership, he shall be presumed to be in bad faith.

The definition is, at once, new and old: it’s new in the sense that it changes the current definition of good faith (which appears in CC art. 48); it’s old in the sense that it restores what could fairly be described as the “original” definition, that is, the definition of good faith that Pothier, the scholar from whose work our Civil Code articles on accession were originally drawn, provided. Like Pothier’s definition, but unlike the current definition, the proposed definition makes of “title” not a necessary condition for good faith (so that, if the possessor doesn’t have it, he can’t be in good faith) but rather a fact that “shifts the burden of proof” on the issue of good faith from the owner to the possessor (so that, if the possessor doesn’t have it, he can still be in good faith).

The proposed change, in my judgment, is a salutary one. It’s good, first of all, for technical reasons. If adopted, the new definition would bring the definition of good faith for purposes of accession more closely into line with that definition of good faith for purposes of acquisitive prescription. Second, it’s good for policy reasons. Civil law scholars have long noted that the “title” requirement in the current definition of good faith, if taken seriously and rigorously applied, could lead to results that are shockingly unfair (one might even say “bizarre”). To take one example, one who possesses a thing under an absolutely null title (such as one that contained a prohibited substitution), though completely innocent of the defects in his title, would, thanks to the “title” requirement, be deemed to be in “bad faith.” Even Laurent, who seems to have liked the title requirement, described that rule (which the French courts had adopted) as “unjustly rigorous.” To take another example, one who has a valid title to a tract of land but, as a result of some innocent error in interpreting the scope or location of his title, ends up taking control of land that is not his would, thanks to the “title” requirement, be deemed to be in bad faith with respect to that land. Here, too, the result seems unjust. For cases such as these, Demante’s now century-old critique of the effects of the “title” requirement was and remains right on the mark:

It may be true that the possessor is in general reputed to be in good faith only when he possesses by virtue of a title. But there’s no reason to deny him the effect attached to his good faith when, in extraordinary circumstances, the absence of title does not, in fact, stop this good faith from existing. . . . One cannot deny the innocence of he who has a just cause for error.

II Foreign

A France

1 Legislation: Code Civil
This is actually a Québécois treatise. For purposes of this problem, however, we’ll treat it as if it’s French.

[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 translatif 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 dol 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

³ This is actually a Québécois treatise. For purposes of this problem, however, we’ll treat it as if it’s French.
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.

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 conductio 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 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° 344, in 8 Œuvres de Pothier (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.

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

BLACK’S LAW DICTIONARY, Good Faith 623-24 (5th ed. 1979)

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.