LOUISIANA STATE UNIVERSITY LAW CENTER

Final Examination

Louisiana Civil Law Property (5006)     Friday, April 26, 2001
Section 3                                1:35 to 6:05 pm
Professor Trahan                        Rooms: 110 (Non-Smoking) & 216 (Smoking)

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., the Appendix. You may, of course, use “scratch” paper.

2. Before you begin reading this portion of the exam, make sure you have all of the pages. There are __ pages in all.

3. Do not sign your test packet or your scantron sheet. Identify both using only your secret ID 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. And on the scantron, put your ID number in the space marked “student ID number” and circle in the appropriate blanks below it.

4. You have a total of 270 minutes (4 hours, 30 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 sub-Part of the exam. This time is also indicative of the weight I will assign to each Part and sub-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. In answering the “subjective” questions on the exam, 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.

6. 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 2:00, 3:00, 4:00, etc.) and will remain there for fifteen minutes at a time (e.g., from 2:00 to 2:15). At all other times, I will be in my office (Room 328).
On October 15, 2000, Alpha acquires Tract A (see diagram) through a written act of sale. The sale instrument is not recorded. Though she goes out to the tract every few months just to look it over for a few moments and pays ad valorem taxes on it at the start of the next year (January 1, 2001), Alpha does not actually use it.

On January 15, 2001, Omega, through a written act of sale, acquires Tract Z (see diagram), which, unbeknownst to him, overlaps with Tract A. The sale instrument is not recorded. That same day (January 15, 2001), Omega grants Lambda, a rice farmer, a one-year farming lease over the southeast quadrant (the SEQ) of Tract Z, part of which quadrant is also within the overlap between Tract A and Tract Z (“the Overlap”), for a rent of $12,000 payable in monthly installments of $1,000 that are due, in advance, on the 15th of each month. The lease instrument is not recorded. When Lambda heads out to begin farming that same day (January 15, 2001), he makes a little (honest) mistake: he tills not only the SEQ, but also a 50-foot wide strip (“the Strip”) of land that lies just to the south of the SEQ, outside of Tract Z, but within Tract A. Why does he do such a thing? Because he assumes that the Strip is included in the leased premises. And why does he make such an assumption? Because the prairie ends and the trees begin 50 feet to the south of the SEQ.


purposes of this question only, that Alpha established possession of Tract A on January 1, 2001.

a  Omega: he had corpus vicariously through Lambda; he had animus domini: he’s presumed to have had it by virtue of having corpus; far from rebutting that presumption, the evidence (in particular, that he got a title) tends to confirm it

b  Lambda: [a] would be correct, except that Omega had no animus domini: inasmuch as the Strip lies outside the SEQ and outside the leased premises, Omega had no idea that Lambda was detaining that land; as to that land, then, Lambda necessarily acted for himself

c  Alpha: [b] would be correct, except that Lambda had no animus domini: inasmuch as Lambda did not recognize that the Strip lay outside the leased premises, he thought he was detaining it for Lambda; Lambda, then, did not establish possession; and so, the last person to have established possession, i.e., Alpha (recall the assumption), remains in possession

d  no one: though Alpha once had possession (recall the assumption), she lost it when Lambda evicted her; and, for the reasons stated in [b] and [c], no one else thereafter established possession

e  none of the above

The narrative continues:

On February 15, 2001, Gamma, with no pretense of title, goes onto the southeastern corner (“the Corner”) of Tract A (see diagram). Once there he hunts for a few days and then sets out a few traps for small game, which he thereafter returns to check every few weeks. When a friend of his, who believes the land belongs to A, asks Gamma what he thinks he’s doing out there, Gamma gives this reply: “Yeah, I knows it belong to ol’ Alphy, and that I ain’t got no title to it. But I wants it fer meself and I gonna keep it.”


a  yes: he has corpus, in that he conducted hunting and trapping activities on the land; he also has animus domini: he’s presumed to have this animus by virtue of having corpus; far from rebutting that presumption, the evidence (in particular, his comments to his friend) tends to confirm it

b  no: though he has animus domini, in that he intends to comport herself as owner (recall his comments to his friend), he does not have corpus: his physical acts on the land were neither sufficiently intensive nor sufficiently extensive

c  no: though he has corpus, in that he conducted hunting and trapping activities on the land, he lacks animus domini: it’s clear from Gamma’s comments to his friend that he did not believe he was the owner

d  no: he has neither corpus nor animus domini: no corpus, because his physical acts on
the land were neither sufficiently intensive nor sufficiently extensive; no animus domini, because it’s clear from Gamma’s comments to his friend that he did not believe he was the owner

e none of the above

For purposes of the rest of this Part I, assume that the correct answer to question [3] is [a], that is, that Gamma did have possession of the Corner, and that he first acquired it on February 15, 2001.

The narrative continues:

On April 15, 2001, Alpha goes out to Tract A with his attack nutria (no less vicious or dangerous than pit bulls) at his side and, upon discovering Lambda there in the very act of farming, accosts her, curses her, sets her crops ablaze (with the help of a little kerosene), and sick the nutria on her. In fear for her life, Lambda runs off the property, the angry little rodents nipping at her heels.

[4] Suppose it’s now May 15, 2001. Lambda is considering bringing a possessory action against Alpha to obtain damages and appropriate injunctive relief. Which of the following obstacles might stand in her way? Why?

a the possessory action, as its name suggests, is designed to protect only those who are in possession, properly so called; Lambda, as a lessee, was a mere precarious detainer, not a possessor
b the person for whom Lambda possesses, Omega, was not in possession of the Overlap at the time of the disturbance
c the person for whom Lambda possesses, Omega, did not have peaceable and uninterrupted possession for a year prior to the disturbance, specifically, he had not acquired the right to possess prior thereto: there was no year-long period during which Omega (through Lambda or otherwise) had possessed the Overlap peaceably and without interruption
d a & c are both correct
e none of the above nor any others (in other words, Lambda would prevail in a possessory action against alpha)

[5] Suppose it’s now May 15, 2001. Alpha, not content to have merely driven Omega’s lessee off the Overlap, is considering bringing a possessory action against Omega. Does Alpha’s assault on Lambda present any problems for Alpha? Why or why not? Assume for purposes of this question only (i) that Alpha established possession of Tract A on January 1, 2001, and (ii) that violence directed against Lambda constitutes violence directed against Omega (as would, in fact, be true).

a yes: by virtue of her assault, Alpha’s possession was vitiated for “violence”; any violent act connected in any way with acquiring, maintaining, or recovering possession vitiates the actor’s possession
b no: possession can be vitiates for “violence” if and only if it was acquired by
violence; here, Alpha used violence to retain/recover her possession, not to acquire it

c no: though possession can be vitiated for “violence” not only if it was acquired by violence but also if it was maintained by violence, one isolated instance in which a possessor, by violence, recovers possession after he has lost it to a usurper does not amount to “maintenance of possession” by violence

d yes: the rationale stated in [c] would be correct were this a case in which the possessor had never lost his possession at all, but had merely repelled by an isolated act of violence someone who had tried to evict him; but the rule stated in [c] does not apply to instances in which the possessor, having already lost possession, gets it back by means of violence, which is the case here

e none of the above

For purposes of the rest of this Part I, forget questions [4] and [5] and the facts on which they are based, in particular, that Alpha burned Lambda’s crops and drove Lambda off the land with attack nutria. Thus, for the rest of this Part I, you are to assume that Alpha never did any such thing.

_The narrative continues:_

On April 15, 2001, Alpha grants Sigma, his neighbor to the south, the right to pass across Tract A during the Summer months to go back and forth between his land and the river (see diagram). The passageway, which is 10 feet wide, cuts across part of the Overlap, but not the SEQ. After recording the servitude instrument in the public records that same day, Sigma, as was his right, laid down gravel over the passageway area and began to use it.

[6] Suppose it’s now May 15, 2001. Who has possession of the part of the Overlap that lies outside the area that Lambda cultivated? Why? Assume for purposes of this question only Alpha did not establish possession of Tract A back on January 15, 2001 or, for that matter, at any other time prior to April 15, 2001. And ignore, for the moment, the complications that might be created were one to consider the “vice” of “discontinuity.”

a Omega: Omega has constructive possession of it: because Omega had possession of part of the land described in his title instrument (thanks to the physical acts of his precarious detainer, Lambda, which were imputed to him), he is deemed to have constructive possession of all of that land, including the uncultivated part of the Overlap; even though Alpha, too, may now have a claim to constructive possession of that same area (see [b]), as between conflicting constructive possessions, the first in time is first in right

b Alpha: Alpha has constructive possession of it: because Alpha had possession of part of the land described in his title instrument (thanks to the physical acts of his precarious detainer, Sigma, which were imputed to her), she is deemed to have constructive possession of all of that land, including the uncultivated part of the Overlap; even though Omega may have had constructive possession of that land at one time, Alpha (through Sigma) evicted him, thereby terminating his constructive
possessions

c Sigma: he has corpus of the land, inasmuch as he has engaged in intensive physical acts thereon (building a road), and animi domini: he’s presumed to have this animus by virtue of having corpus; far from rebutting that presumption, the evidence (in particular, that he got a title) tends to confirm it

d whereas Alpha possesses the land on which the road lies, Omega possesses all the rest: for the reasons stated in [a], Omega was the first to establish possession–constructive possession–of the uncultivated part of the Overlap; when Alpha’s precarious detainer, Sigma, built the road through that part, Sigma, at once, (i) evicted Omega from the roadbed, but not from any of the rest of the land, and (ii) established corporeal possession for Alpha over the roadbed, but not over the rest of the land; as to the rest of the land, therefore, Omega remains in constructive possession

e none of the above

The narrative continues:

On December 15, 2001, Lambda, having decided that he’d like to have the land that he had cultivated for himself, fails to send the rent for the December-January period to Omega. In addition, Lambda persuades Chi, his friend, to draw up a bogus act of sale, dated that same day (December 15, 2001) whereby Lambda purportedly buys that land from Chi for $25,000. The description of the land contained in the instrument is taken verbatim from the description of the land contained in the lease instrument. Thus, that land includes only the part of the SEQ that Lambda had leased from Omega (and not the Strip). Lambda files the sale instrument into the public records that same day (December 15, 2001).

On February 15, 2002, Omega, wondering where the rent for the December-January period is, gives Lambda a call. During their conversation, Lambda tells Omega, “I ain’t payin’ dat rent” and “I’m holding dat land for myself.”

[7] Suppose it’s now March 15, 2002. Who has possession of the part of the SEQ that lies within the Overlap and when did he or she first acquire it? Why? Assume for purposes of this question only that Alpha established possession of Tract A on January 1, 2001.

a Alpha: Alpha was the first to establish possession of the Overlap (recall the assumption), and nothing happened thereafter that might have caused her to lose it: her possession began on January 1, 2001

b Omega: though Alpha once had possession (recall the assumption), she lost it when Omega, acting through his precarious detainer, Lambda, evicted him on January 15, 2001; at that point, Omega had both corpus (vicariously through Lambda) and animus domini: he’s presumed to have this animus by virtue of having corpus; far from rebutting that presumption, the evidence (in particular, that he got a title) tends to confirm it

c Lambda: though Omega once had possession (for the reasons given in [b]), he lost it when Lambda evicted her on February 15, 2002; at that point Lambda had both
*corpus and animus domini*: though she was merely a precarious detainer for Omega when she first took control of the land, Lambda successfully “interverted” her title and began to possess for herself when, during her conversation with Omega on that day, she told Omega she was “holding” the land for herself.

d Lambda: [c] is correct, save for its identification of the moment of the “interversion” of Lambda’s title; that event occurred on December 15, 2001, the date on which Lambda withheld the rent from Omega and recorded the bogus sale instrument that she had obtained from Chi.

e none of the above

For purposes of the rest of this Part I, assume that the correct answer to question [7] is “c”.

*The narrative continues:*

On March 15, 2002, Alpha goes out to Tract A and, upon discovering Gamma’s traps, removes them and then posts “No Trespassing” signs every 5 feet along the southern and eastern boundaries of the Corner.

On April 15, 2002, Gamma returns to the Corner. Ignoring the “No Trespassing” signs, Gamma resumes hunting and trapping there.

On May 15, 2002, Alpha goes out to Tract A and, upon discovering Gamma’s new traps, decides to take stronger action. This time, Alpha erects a barbed wire fence along the southern and eastern boundaries of the Corner.

On June 15, 2002, Gamma returns to the Corner. After cutting down the strands of barbed wire from Alpha’s fence, Gamma resumes hunting and trapping there.

On July 15, 2002, Alpha goes out to Tract A and, upon discovering Gamma’s new traps, decides to take even stronger action. This time, Alpha erects a 6-foot high stone fence along the southern and eastern boundaries of the Corner.

On October 1, 2002, Omega goes out onto Tract Z and, upon discovering the gravel road that Sigma had constructed, appropriates it to his own purposes. To be precise, Omega uses the road to carry things back and forth between the Overlap and the river between October 1 and October 8, 2002 (one week). Omega’s use of the road does it no noticeable harm.

[8] Suppose it’s now October 15, 2002. Sigma is considering filing a possessory action against Omega to obtain recognition of his possessory (or, to be more precise, quasi-possessory) interest over the roadbed that runs through the Overlap. Can Sigma point to any “disturbances” of its quasi-possession of which it might complain? Why or why not?

a yes: the execution of the sale instrument whereby Omega acquired title to Tract Z, insofar as it asserted title to the Overlap in Omega, constituted a disturbance in law of Sigma’s quasi-possession

b yes: the execution of the lease instrument whereby Omega leased part of Tract Z to Lambda, insofar as it asserted title to the Overlap in Omega, constituted a disturbance in law of Sigma’s quasi-possession

c yes: Omega’s use of the road constituted a disturbance in fact of Sigma’s quasi-
d no: inasmuch as the execution of the sale instrument and the lease instrument occurred before Sigma’s quasi-possession even began, they could not have disturbed that quasi-possession; even if that were not true, prescription on the right to complain of those supposed “disturbances” would have long since run out; inasmuch as Sigma had the right to use the road only during the Summer, Omega’s use of it during the Fall could not have disturbed Sigma’s quasi-possession

e a, b, & c

The narrative continues:

On November 15, 2002, Lambda dies intestate. She is survived by Mu, her sister and only heir. Though Mu accepts Lambda’s succession without qualification later that same day (November 15, 2002), she is not aware, when she does so, that Lambda had any interest in the Overlap.

On March 15, 2003, Alpha, having found evidence of Lambda’s farming operations, puts up a fence along the northern border of Tract A. Not long thereafter Mu learns of Lambda’s interest in the Overlap.

[9] Suppose it’s now April 15, 2003. Mu, who has since learned of Alpha’s new fence, is considering filing a possessory action against Alpha to obtain recognition of Lambda’s/her possessory interest in the Overlap and an injunction ordering Alpha not to interfere with that interest. Which of the following obstacles stands in her way? In answering this question, (i) don’t forget the assumption you were told to make regarding the correct answer to question [7] and (ii) ignore the complications that might be presented by the rule that a “discontinuous” possession is vicious.

a Mu did not have possession at the time of the disturbance: she did not have corpus, inasmuch as she never set foot on the land; she did not have animus domini, inasmuch as she didn’t even know, at first, that the land even existed

b Mu did not have possession at the time of the disturbance: though she had corpus, she did not have animus domini: whereas corpus can be transmitted to one’s heirs, animus domini cannot be; rather, animus domini must be personal to the possessor; for the reason stated in [a], Mu did not have personal animus domini

c Mu did not have peaceable and uninterrupted possession for a year prior to the disturbance, specifically, she had not acquired the right to possess prior to the disturbance: by the time of the disturbance, her possession, which did not begin until Lambda’s death, was only five months old

d Lambda did not have peaceable and uninterrupted possession for a year prior to the disturbance of which Mu, as her successor, could claim the benefit: specifically, Lambda had not acquired the right to possess prior to the disturbance: before her death Lambda had not amassed a year’s worth of possession

e none of the above nor any others (that is, Mu would prevail in a possessory action against Alpha)
The narrative continues:

On June 15, 2003, nine months after Alpha had constructed his stone fence along the southern and eastern boundaries of the Corner, Gamma returns there. After knocking down most of the fence with a bulldozer, he resumes hunting and trapping on the corner.

On July 15, 2003, Alpha goes out to Tract A and, upon discovering Gamma’s new traps, decides to take yet stronger action. This time, Alpha digs a ten-foot deep, ten-foot wide moat along the southern and eastern boundaries of the Corner.

[10] Suppose it’s now August 15, 2003. Gamma is considering bringing a possessory action against Alpha to obtain recognition of his possessory interest in the Corner and to obtain an injunction prohibiting Alpha from interfering further with that interest. What obstacles might stand in Gamma’s way? Remember that you are to assume that Gamma did establish possession of the Corner back on February 15, 2001 (see the assumption set out at the end of question [3]) and, in accordance with that assumption, that his hunting and trapping activities were sufficient to establish possession.

a he did not have peaceable and uninterrupted possession for a year prior to the disturbance, specifically, he never acquired the right to possess prior thereto: there was no year-long period during which Gamma had possessed the Corner peaceably and without interruption

b he did not have peaceable and uninterrupted possession for a year prior to the disturbance, specifically, though he acquired the right to possess at one point (on February 15, 2002), he thereafter lost it by failing to recover possession through a timely possessory action (to be precise, by not filing such a possessory action by March 15, 2003, the anniversary of the date on which Alpha had first evicted him)

c prescription has run on his right to bring a possessory action: more than a year has elapsed since the series of events through which Alpha disturbed Gamma began (March 15, 2002)

d b & c

e none of the above nor any others (in other words, Gamma would prevail in a possessory action against Alpha)

II

(105 minutes [1 hour & 45 minutes])

On June 1, 2001, Olympius sells Tract A (see diagram), which is bounded on the west by a public road and on the east by a forest, to Angus. Though Angus promptly records the sale instrument in the public records, he never sets foot on the land.

On June 1, 2002, Magus donates Tract B (see diagram), which lies immediately to the south of Tract A and, like Tract A, is bounded on the west by a public road and on the east by a forest, to Bona by an authentic act. Magus could trace his title to Tract B all the way back (without gaps) to King Louis XIV of France. After Bona promptly records the donation instrument and her act of acceptance (which was also in authentic form) in the public records, she grants Tenius a farm lease
over the extreme southeastern corner of Tract B (see diagram). Tenius promptly undertakes cotton-farming activities on the leased premises.

On June 1, 2003, Olympius dies. By a valid testament, Olympius leaves Tract C (see diagram), which (unbeknownst to Olympius) overlaps with (indeed, is contained within) the southernmost part of Tract A, to his niece, Luna. Though Luna promptly records a copy of the testament in the public records, she never sets foot on the land. A few weeks after Olympius’ death, Luna suffers a nervous breakdown, as result of which she is interdicted “fully,” that is, as to both her person and her property.

On June 1, 2004, Luna, acting without her curator, sells Tract C to Conus by an act under private signature, according to which the sale is made “without warranty of title.” Conus has no idea that Luna is mentally ill, much less that she is interdicted. Though the price Conus pays is, in fact, very much on the “low” side, he does not know it (nor does he have reason to know it). Through an oversight Conus does not record the sale instrument, at least not right away. As soon as the sale is closed, Conus heads out to the tract. Once there he conducts a quick survey of the land. In so doing, he ends up making a mistake (albeit innocently and reasonably) regarding the location of his southern boundary. What he thinks marks that boundary—a shallow drainage ditch (see diagram)—is actually located 50 feet to the south of that boundary, well within Tract B. Conus then plants cotton from the (true) northern boundary of that tract down to the ditch. (This “extra” land in Tract B that Conus cultivates shall hereinafter be referred to as “the Lagniappe.”) In the course of tilling the ground and sowing the seeds and, later, in the course of harvesting the cotton, Conus uses a little extra land north of his northern boundary and south of the ditch as a “turnaround” zone (see diagram), that is, to turn his tractor or combine around as he passes out of the field and then back into the field to plough, sow, or pick the next row. Up until his death (see below), Conus uses the same land for the same purposes year after year.

On June 1, 2005, Conus, having discovered that he had inadvertently neglected to record his sale instrument (from Luna) in the public records, finally does so.

On June 1, 2006, Conus gets some disconcerting news. In connection with an application for a loan, which he had hoped to secure by means of a mortgage on Tract C, he had hired his daughter, Dona, an attorney, to conduct a title exam. In her report, which Conus receives that day, Dona informs him that she can find no record of any act whereby Olympius had acquired title to Tract C and, on that basis, opines that Luna’s title to the tract was “suspect.” Notwithstanding the report, Conus continues to use the same land for the same purposes as before.

On June 1, 2007, Angus sells Tract A to the City of Alexandria by an act under private signature. The City of Alexandria promptly records the sale instrument in the public records, together with a notice, drafted in accordance with La. Rev. Stat. 9:5804, that describes the tract and declares that the tract belongs to a municipality. No one associated with the City of Alexandria ever sets foot on the land, and the City of Alexandria never devotes the land to any public purpose.

On June 1, 2008, Conus dies intestate. Dona (see the paragraph before last), his only child, inherits his estate. One week after that (June 8, 2008), Dona, too, dies, survived by her husband, Hubris, and her two (major) children, Eola and Fonus. By testament, Dona leaves Tract C (which had been her separate property) “in usufruct” to Hubris and “in naked ownership” to Eola and
Fonus. Fonus, who sells real estate for a living and has always followed closely the real estate acquisitions of her relatives, has long known (i) that Conus had acquired Tract C by quitclaim deed and (ii) that the price Conus had paid for it was low (something that Conus, as was stated above, had not known). Neither Eola nor Hubris knows any of these things. Once Dona is laid to rest, Hubris properly obtains judgments of possession recognizing Dona as Conus’ sole successor and Hubris, Eola, and Fonus as Dona’s sole successors and files them, together with a copy of Dona’s testament, into the public records. Without delay Hubris then takes over Conus’ cotton-farming operations, working the same land that Conus had worked.

On June 1, 2009, the City of Alexandria sells Tract A to Azo by an act under private signature. Though Azo promptly records the sale instrument in the public records, he never sets foot on the land.

(A)
(60 of the 105 minutes for Part II)

(1)
(no time was allocated because the question was skipped)

The date is now July 1, 2018. Azo, on the one hand, and Eola and Fonus, on the other, discover that they have conflicting claims to the ownership (or, as the case might be, naked ownership) of Tract C.


(2)
(all 60 of the 60 minutes for Part II.A)

Suppose that Azo now (July 1, 2018) brings a petitory action against Eola and Fonus.

(a)
(15 minutes of the 60 minutes for Part II.A.2)

[12] What will be Azo’s burden of proof? Why? (For purposes of this question you should assume that if Eola and Fonus are in quasi-possession of their naked ownership rights, then they are in possession of the underlying corporeal immovable, and vice-versa.)

a perfect title: where, as here, the plaintiff is not in possession, his burden of proof is perfect title
b perfect title: where, as here, the defendant is in possession, the plaintiff’s burden of proof is perfect title
c better title: where, as here, the plaintiff is in possession, his burden of proof is better

1 Helpful hint: This is not a universal or a general legacy.
Assume, for purposes of the rest of this Part I(A), that the correct answer to question [12] is [a] or [b] (it matters not which), that is, that the burden of proof is perfect title.

[13] Considering only the parties’ respective “title documents” and ignoring, for the moment, the possibility of acquisitive prescription, would Azo be able to meet that burden of proof? Why or why not?

a  no: leaving aside the possibility of acquisitive prescription, there is one and only one way to establish perfect title: one must show an unbroken chain of title back to someone else whom one can prove was the owner (e.g., the sovereign); Azo’s chain of title can be traced only as far back as Olympius; whether he was an owner is not clear

b  yes: though the rationale stated in [a] is, in principle, correct, one need not necessarily prove that one’s author-in-title was, in fact, the owner; where the plaintiff and the defendant derive their titles from a “common author,” he is presumed to have been the owner, and the first as between the plaintiff and the defendant to have derived his title from that common author is presumed to be the owner now; here, Olympius was such a common author, and Azo’s chain of title, which began on June 1, 2001, is older than those of Eola and Fonus, whose chain of title began on June 1, 2003

c  no: the rationale stated in [c] would be correct but for one thing: the titles of Eola and Fonus (acquired on June 8, 2008) were older than that of Azo (acquired on June 1, 2009)

d  no: the rationale stated in [c] would be correct but for one thing–Olympius was not the common author of Azo, on the one hand, and Eola and Fonus, on the other: Azo’s author-in-title was the City of Alexandria; that of Eola and Fonus was Dona

e  none of the above

(b)
(45 of the 60 minutes for Part II.A(2))
[two essay questions]

(1)

In their answer to Azo’ petitory action, Eola and Fonus raise the affirmative defense of acquisitive prescription. Will the defense be successful? Why or why not?

(2)
Suppose, now, that Conus had known that Luna was mentally ill and interdicted at the time at which he had bought Tract C from her. Briefly explain how that fact might change your analysis of question II(A)(2)(b)(1) (the question you just finished answering).

(B)
(45 of the 105 minutes for Part II)

Forget Part II(A). On August 1, 2038, Hubris takes out a farm lease on Tract B—all of it, including the Lagniappe (the extra land that he and Conus before him had long farmed)—from Bona, the rent from which was to be paid out of the crops produced on the tract. In so doing, Hubris does not realize that Tract B includes the Lagniappe. Indeed, in the following year, he pays Bona no rent from the crops that he produces on the Lagniappe. When Bona asks Hubris why he paid no rent on those crops, Hubris informs her that he has a usufruct over the Lagniappe. Bona then brings a petitory action against him, seeking a judgment declaring that she owns the land and owns it free of any such usufruct. The date of her action is September 1, 2039.

(1)
(5 of the 45 minutes for Part II.B)

[14] What will be Bona’s burden of proof? Why?

a perfect title: where, as here, the plaintiff is not in possession, his burden of proof is perfect title
b perfect title: where, as here, the defendant is in possession (or quasi-possession, if the shoe fits), the plaintiff’s burden of proof is perfect title
c better title: where, as here, the plaintiff is in possession, his burden of proof is better title
d better title: where, as here, the defendant is not in possession (or quasi-possession, if the shoe fits), the plaintiff’s burden of proof is better title
e none of the above

(2)
(40 of the 40 minutes for Part II.B)
[essay question]

In his answer to Bona’s petitory action, Hubris raises the affirmative defense of acquisitive prescription (of his usufruct). Will the defense be successful? Why or why not?

III
(60 minutes [1 hour])
(Note: for the multiple choice questions in this Part III, you have only 4 minutes / question.)

In early year 1998 Antony, in search of solitude, leased the house and lot at 101 Scete Street, a street in a blighted area in inner-city New Orleans in which most of the buildings had long been
without occupants. The lease instrument, which the lessor, Kyria, had drafted, authorized Antony to "renovate the interior of the house in any fashion that he might find advantageous to make his living there more commodious." The lease instrument was not recorded.

Once he moved in, Antony made a few changes. First, finding that the sink in the kitchen was cracked, he hired a plumber to tear it out and to install a new one. Second, he attached a giant icon (stylized religious painting) of the Virgin Mary and the Infant Jesus on the wall of the living room, securing it there by means of a small nail. Third, he planted a small "prayer garden" in the back yard, bordered by tall spruce trees to ensure privacy and quiet.

Not long after Antony moved in, Macarius, another aspiring solitary, acquired title to the house and lot 103 Scete Street (immediately to the south of 101 Scete Street). The sale instrument, which the seller, Dola, had drafted, was executed before a notary, but no witnesses. It was filed into the public records.

Once he moved in, Macarius made himself at home. First, he planted several rose bushes in the front yard, the blossoms from which he planned to sell to raise money for alms. Second, he hired a local contractor to build him a small concrete patio next to the house in the back yard. Third, he hired a local painting crew to re-paint the interior of the house, not so much because the house needed it as that he couldn’t stand the Mardi Gras color motif.

Not long after Macarius moved in, Cyrus, another aspiring solitary, acquired title to the house and lot at 105 Scete Street (immediately to the south of 103 Scete Street). The sale instrument, which the seller, Dola, had drafted, was executed before a notary and two witnesses. It was filed into the public records.

Cyrus settled right in at 105 Scete Street. Using wood and other materials that he had bought at the hardware store, he built a new wall inside the house to separate the living room from the dining room. When he later received an assessment from the city for *ad valorem* (property) taxes on the house and lot, he paid it. Not long after that, he hired a local contractor to dig a drainage ditch along and next to the old fence that separated his lot from that at 103 Scete Street, which fence (thanks to Dola's having falsely told him so) he assumed formed the boundary between the two lots. Though there was no urgent need for the ditch, it did improve drainage from the back of the lot at 105 Scete Street. As it turned out, the fence stood five feet into the lot at 103 Scete Street. And so, the ditch ended up on that lot (103 Scete Street). As for the topsoil that the contractor dug up in digging the ditch, Cyrus donated it to the St. Vincent dePaul Society.

**Who, as between Antony and Kyria, owns the new kitchen sink in the house at 101 Scete Street? Why?**

a Antony: the sink is an improvement (to be precise, an other construction) to the house, and it was added thereto with the owner's consent

b Antony: he was a good faith possessor

d Antony: the sink is a constituent (to be precise, a permanently attached thing) of the house, and it was added thereto with the owner's consent

d Kyria: the sink is a constituent (to be precise, a permanently attached thing) of the
house and, as such, belongs to the owner thereof

e none of the above

[16] Who, as between Antony and Kyria, owns the icon that hangs on the wall in the house at 101 Scete Street? Why?

a Antony: the icon is an improvement (to be precise, an other construction) to the house, and it was added thereto with the owner's consent
b Antony: he was a good faith possessor
c Antony: the icon is neither an improvement to nor a constituent of the house
d Kyria: the icon is a constituent (to be precise, a permanently attached thing) of the house, and it was added thereto the house without the owner's consent
e none of the above

[17] Who, as between Antony and Kyria, owns the spruce trees in the prayer garden at 101 Scete Street? Why?

a Kyria: the trees are improvements (to be precise, plantings) to the lot, and they were added thereto without the owner's consent
b Kyria: the trees are constituents (to be precise, integral parts) of the lot and, as such, belong to the owner thereof
c Kyria: the trees are constituents (to be precise, integral parts) of the lot, and they were added thereto without the owner's consent
b Antony: he was a good faith possessor
e none of the above

In early 2001 Kyria, the true owner of the houses and lots at 103, discovered that Macarius was living on her property. Through a petitory action, she succeeded in having him evicted.

[18] Who, as between Macarius and Kyria, owned the flowers that Macarius collected from the rose bushes at 103 Scete Street during the past three years? Why?

a Kyria: the flowers were improvements (to be precise, plantings) to the lot, and they were added thereto without the owner's consent
b Kyria: the flowers were constituents (to be precise, integral parts) of the lot and, as such, belonged to the owner thereof
c Kyria: the flowers were natural fruits of the lot and, as such, belonged to the owner thereof
d Macarius: the flowers were natural fruits of the lot, Macarius was a good faith possessor, and he gathered them before his eviction
Who, as between Macarius and Kyria, owns the concrete patio at 103 Scete Street? Why?

a Kyria: the concrete patio was an improvement (to be precise, an other construction permanently attached to the ground) of the lot, and it was added thereto without the owner's consent
b Kyria: the concrete patio was a constituent (to be precise, an integral part) of the lot and, as such, belonged to the owner thereof
c Kyria: the concrete patio was a constituent (to be precise, an integral part), and it was added thereto without the owner's consent
d Macarius: he was a good faith possessor
e a or b, depending on whether the concrete patio should be classified as an improvement or a constituent (a question that, under current law, can't be resolved with confidence)

Who, as between Cyrus and Kyria, owns the ditch was built on the lot at 103 Scete Street? Why?

a Kyria: the ditch was an improvement (to be precise, an other construction permanently attached to the ground) of the lot, and it was added thereto without the owner's consent
b Kyria: the ditch was a constituent (to be precise, an integral part) of the lot and, as such, belonged to the owner thereof
c Kyria: the ditch was a constituent (to be precise, an integral part), and it was added thereto without the owner's consent
d Kyria: the ditch was not, truly speaking, either an improvement or a constituent; it was merely an unauthorized modification or alteration of something that theretofore had belonged to Kyria; such unauthorized modifications/alterations do not produce true "accession" problems and, in the end, don't change ownership
e none of the above

Who, as among Cyrus, the St. Vincent dePaul Society, and Kyria, owns the topsoil that was removed from the lot at 103 Scete Street? Why?

a Kyria: the topsoil was a natural fruit of the lot and, as such, belonged to the owner thereof
b Kyria: the topsoil was a natural product of the lot, and Cyrus was a bad faith possessor
c Kyria: the topsoil was a natural product of the lot and, as such, belonged to the owner thereof  

d the St. Vincent dePaul Society: the topsoil was a natural product of the lot, Cyrus was a good faith possessor, he produced the topsoil before his eviction, and he donated it to the St. Vincent dePaul Society  

e none of the above

(B)

[22] Assume that, as between Antony and Kyria, Kyria owns the new kitchen sink in the house at 101 Scete Street. As things now stand, what are her remedies with respect to the sink?  

a she must keep it and then pay Antony an indemnity of (i) the original value of the labor and materials he invested in the sink, (ii) their current value, or (iii) the enhanced value of the house  
b she can have it removed at Antony's expense  
c she can keep it and then pay Antony an indemnity of (i) the current value of the labor and materials he invested in the sink or (ii) the enhanced value of the house  
d she can demand that Antony remove it  
e b, c, or d

[23] The same as question [22]. Assume that Kyria demands, in writing, that Antony remove the new sink and that, nine months later, he still has not removed it. What, then, are Kyria's remedies?  

a she can have it removed at Antony's expense  
b she can keep it and then pay Antony an indemnity of (i) the original value of the labor and materials he invested in the sink, (ii) their current value, or (iii) the enhanced value of the house  
c she can keep it and then pay Antony an indemnity of (i) the current value of the labor and materials he invested in the sink or (ii) the enhanced value of the house  
d a or c  
e a or b

[24] Assume that, as between Antony and Kyria, Kyria owns the spruce trees in the house at 101 Scete Street. As things now stand, what are her remedies with respect to the spruce trees?  

a she must keep them and then pay Antony an indemnity of (i) the original value of the labor and materials he invested in the trees, (ii) the current value of the labor and materials he invested in the trees or (iii) the enhanced value of the lot  
b she can have them removed at Antony's expense  
c she can keep them and then pay Antony an indemnity of (i) the current value of the labor and materials he invested in the trees or (ii) the enhanced value of the lot  
d she can demand that Antony remove them
e none of the above

[25] Assume that, as between Macarius and Kyria, Kyria owns the new patio behind the house at 103 Scete Street. As things now stand, what are her remedies with respect to the patio?

a she must keep it and then pay Macarius an indemnity of (i) the original value of the labor and materials he invested in the patio, (ii) the current value of the labor and materials he invested in the patio or (iii) the enhanced value of the lot
b she can have it removed at Macarius’ expense
c she can keep it and then pay Macarius an indemnity of (i) the current value of the labor and materials he invested in the patio or (ii) the enhanced value of the lot
d a or b
e b or c

[26] Assume that, as between Cyrus and Kyria, Kyria owns the fence that Cyrus built on the lot at 103 Scete Street. As things now stand, what are her remedies with respect to the new wall?

a she must keep it and then pay Cyrus an indemnity of (i) the original value of the labor and materials he invested in the fence, (ii) the current value of the labor and materials he invested in the fence, or (ii) the enhanced value of the lot
b she can have it removed at Cyrus’ expense
c she can keep it and then pay Cyrus an indemnity of (i) the current value of the labor and materials he invested in the fence or (ii) the enhanced value of the lot
d a or b
e b or c

(C)

[27] Does Kyria owe Macarius any indemnity for the expenses he incurred in having the interior of the house at 103 Scete Street painted? If so, how much? Why? In answering this question, assume that the original “Mardi Gras” color motif was so “butt ugly” that it would have offended nearly anyone and everyone, even those who generally like garish purple, gold, and green.

a yes: upon evicting a good faith possessor, the owner must indemnify him for useful expenses he incurred on behalf of the property, to the extent that they enhanced the value of the property; painting was useful, in that it almost certainly enhanced the value of the house; Macarius was a good faith possessor
b yes: upon evicting a good faith possessor, the owner must indemnify him for all necessary expenses he incurred on behalf of the property; painting the house was necessary to protect it against the threat of deterioration; Macarius was a good faith possessor
c yes: upon evicting a bad faith possessor, the owner must indemnify him for all useful
expenses he incurred on behalf of the property, to the extent that the expenses enhanced the value of the property; painting the house was almost certainly a useful expense, in that it likely enhanced the value of the house; Macarius was a bad faith possessor.

d yes: upon evicting a bad faith possessor, the owner must indemnify him for all necessary expenses he incurred on behalf of the property; painting the house was a necessary expense, in that it was necessary to protect the house against the threat of deterioration; Macarius was a bad faith possessor.

e none of the above.

[28] Does Kyria owe Cyrus any indemnity for the expenses he incurred in digging the ditch on the lot at 103 Scete Street? Why or why not? If so, how much?

a yes: upon evicting a good faith possessor, the owner must indemnify him for useful expenses he incurred on behalf of the property, to the extent that they enhanced the value of the property; the digging of the ditch was almost certainly a useful expense, in that it likely enhanced the value of the land; Cyrus was a good faith possessor.

b no: upon evicting a good faith possessor, the owner must indemnify him for only necessary expenses he incurred on behalf of the property (excluding useful expenses); though the digging of the ditch may have been useful, it was not necessary; Cyrus was a good faith possessor.

c yes: upon evicting a bad faith possessor, the owner must indemnify him for all useful expenses he incurred on behalf of the property, to extent that the expenses enhanced the value of the property; the digging of the ditch was almost certainly a useful expense, in that it likely enhanced the value of the land; Cyrus was a bad faith possessor.

d no: upon evicting a bad faith possessor, the owner must indemnify him for only for necessary expenses he incurred on behalf of the property (excluding useful expenses); though the digging of the ditch may have been useful, it was not necessary; Cyrus was a bad faith possessor.

e none of the above.

Kyria has recently sold all three Scete Street lots (with their houses) to Dominic.

[D] Assume for purposes of this question only that the spruce trees on the lot at 101 Scete Street belonged to Antony before the sale. To whom do they now belong? Why?

a Antony: the trees were not Kyria’s to sell.

b Kyria: the sale was of the lots, not the trees.

c Kyria: the sale of an immovable entails its component parts; trees (at least according to the Laurent-Trahan theory) are component parts of a tract of land if and only if they are rooted in the ground and belong to the owner of the ground; here, the second
of these requirements was not satisfied, that is, the trees belonged to someone other than the owner of the ground, i.e., Antony

d Dominic: [c] would be correct, but for the fact that Antony’s separate ownership of the trees was not evidenced in the public records; as to Dominic, then, the trees belonged to the owner of the ground, i.e., Kyria, and, therefore, were component parts of the land

e none of the above

[30] Assume for purposes of this question only that the patio belonged to Kyria before the sale and to Dominic after the sale. Does Macarius have any sort of remedy? If so, what remedy and against whom does it lie? If not, why not?\(^2\)

a Macarius has no remedy at all: he has no claim for reimbursement against Dominic under the law of accession, because there’s no evidence in the public records that he ever had such a right against Kyria (though he did); nor does he have a claim for reimbursement against Kyria on the basis of unjust enrichment, because Kyria’s enrichment, under the circumstances, is not unjust

b Macarius has a claim for reimbursement against Dominic under the law of accession; he had such a claim against Kyria; when Kyria sold the house and lot at 103 Scete Street, that claim followed the land into Dominic’s hands

c Macarius has a claim for reimbursement against Kyria on the basis of unjust enrichment; Kyria was unjustly enriched, for the addition of the trees to the lot at 103 Scete Street undoubtedly increased the value of the lot and, so, enable Kyria to fetch a higher price for it

d Macarius can assert, at his option, either the claim described in [b] or the claim described in [c]

e none of the above

IV
(65 minutes)

By inheritance Primus acquires a small tract of land in the French Quarter. On one part of the land (the West side) stands a three-story building (the West building); on the other part of the land (the East side) stands a two-story building (the East building). Like his ancestors before him, Primus runs a small bed-&-board business out of the West building and resides in the East building. And he makes a few changes. First, he creates a carport in the space between the two buildings by constructing a horizontal roof from the top of the first floor of the East building to the top of the first floor of the West building. The roof has no supports except the walls of the buildings, to which it is attached by bolts and mortar. Second, he creates a water collection system (actually, just a network of gutters and drain pipes) to catch rain water at the top of the West building and carry it

\(^2\) As heretical as this may sound, you are to resolve this question on the basis of the jurisprudence as opposed to the doctrine that one finds in the comments to the pertinent CC articles.

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down to the public sewer drain that is located behind the East building. The gutters and pipes are attached by bolts to both buildings.

On May 1, 2000, Primus sells the West side (all the land from the western boundary of his land up to a boundary marked by the eastern face of the West building, together with that building) to his friend and business associate, Secundus, a married man, who buys it using “community” funds. One year later, on May 1, 2001, Secundus dies intestate, survived by his wife, Mulieris, and his two children by a prior marriage, Tertia and Quartus. Mulieris then takes up running the bed-&-board where Secundus left off.

On May 1, 2002, Primus dies. Sensing an opportunity to make a fast buck, Olidius, an acquaintance of Primus, then sells the East side (including the East building) to Amartolos, who knows full well that Olidius has no interest in that property. The sale instrument—an act under private signature—is filed into the public records the day on which Primus dies (May 1, 2002). After Amartolos moves in, he uses the East side as did Primus before him; he even parks his car in the carport.

Not long thereafter, Mulieris, who has decided to install a pool on the roof of the West building, persuades Amartolos (for free) to sign an instrument, dated May 1, 2003, that is worded, in part, as follows: “I, Amartolos, do hereby grant to Mulieris, as a neighbor, the right to drain water from the pool atop her building through the drainage system that runs from her building to my building and into the public sewer. The rights and duties created hereby shall run with my land.” The agreement, which the parties both sign before a notary and two witnesses, is filed into the public records that same day.

Before long, Amartolos tires of having the bed-&-board customers peer down at him from the windows on the eastern face of the West building. And so he goes to Mulieris and persuades her (by paying her $20,000!) to sign an instrument, dated May 1, 2005, that is worded, in part, as follows: “In consideration of $20,000, I, Mulieris, on behalf of the present and future owners of the West side, do hereby promise to Amartolos and all future owners of the East side that neither the present nor the future owners of the West side shall have any right of view over or right to light from the East side.” After Amartolos files the instrument into the public records that same day, Mulieris bricks up all the windows on the east face of the West building.

On May 1, 2010, Ultimus, Primus’ brother and sole heir, shows up and evicts Amartolos from the East side. Ultimus then leases out the East building to several residential tenants.

On May 1, 2016, the whole of the West building, including the walls, burns to the ground. Though the East building is saved, the carport collapses when the east wall of the West building falls. The part of the water collection system that was attached to the West building is also destroyed. Mulieris, lacking sufficient funds, does not rebuild.

On May 1, 2027, Mulieris dies intestate. Her sister and sole heir, Sororis, who remembers well what the original West building looked like, rebuilds it as it was, except that (i) she puts in windows on the eastern face and (ii) as her sister had once planned to do, installs a pool on the roof. To collect rainwater from the roof and to drain water from the pool, Sororis rebuilds the parts of the old water collection system that had been destroyed in the fire and reconnects them to the parts of that system that had survived the fire, most of which were on the East building. The construction is complete and the drain is in use by November 1, 2027. All this reconstruction is financed by a loan that Sororis obtains from St. Louis Bank, repayment of which Sororis purports to secure by granting St. Louis Bank a mortgage on the West side.
When Ultimus discovers that Sororis has reconstructed and reconnected the water collection system, he orders her to take it down. “Oh, no,” she says, “I have a servitude for it!” “Well see about that!” Ultimus retorts. “Not only that,” Ultimus continues, “but if you don’t disconnect the system, I’m going to insist that you honor my servitudes, namely, I’m gonna’ rebuild my brother’s carport and rest it on your wall and I’m gonna’ make you block up all those windows on the eastern face of your building.” With that Sororis storms off. Before long, she brings a petitory action against Ultimus, seeking recognition of her “servitude of drain.” Ultimus reconvenes, seeking recognition of his “servitude of support” and his “servitude of precluding view and light.” The date is now January 1, 2028.

(A)

[31] Sororis contends that she has a predial servitude that entitles her to drain rainwater from the roof of the East building, through the drainage system, down to the public sewer. Was such a servitude ever created to begin with? If so, how?

a no: non-apparent servitudes can be created only by title (or, in exceptional circumstances not present here, but destination); this servitude of drain was non-apparent; neither Sororis nor any of the prior owners of the West building ever got a title to such a servitude

b yes: apparent servitudes can be created by destination; this servitude of drain was apparent; it was created by the destination of Primus, the then owner, the moment at which he sold the West side to Secundus

c yes: even if the servitude had not been created by destination, it would have been created by abridged acquisitive prescription; apparent servitudes, such as this, can be created in this fashion; Secundus, who had title (together with Mulieris, his wife) to the West side, and after him, Mulieris, quasi-possessed the servitude, in good faith, for more than ten years

d no: [b] would be correct, but for the fact that the drainage system did not constitute an apparent sign of service between the Primus’ two estates, that is, a relationship that would have been a predial servitude if the estates had belonged to different owners

e a & c are both correct

[32] Assume that the correct answer to question [31] is [b] or [c] (it matters not which), that is, that a predial servitude to drain rainwater was created. Can Sororis still avail herself of that servitude? Why or why not?

a no: the servitude was extinguished when the West building burned down; that event constituted the “permanent and total” destruction of the dominant estate

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3 If you find it helpful, you may assume that Tertia and Quartus had the financial wherewithal to reconstruct the West building. For more potentially helpful information, see CC art. 583.
b no: even if the servitude was not extinguished by virtue of “destruction,” it was extinguished by virtue of the prescription of nonuse: between 2016 and 2027, a span of eleven years, the servitude was not used; only ten years of nonuse are required for prescription

c a & b are both correct

d yes: the servitude was extinguished neither by “destruction” nor by prescription of nonuse: when the West building burned down, all that happened was that things necessary for the exercise of the servitude underwent such a change that the servitude could no longer be used; under these circumstances, the successive owners of the dominant estate faced an obstacle that they could neither prevent nor remove; as a result, the prescription of nonuse was suspended for ten years

e none of the above

Sororis contends that she has a predial servitude that entitles her to drain water from the pool that’s located on the roof of the East building, through the drainage system, down to the public sewer. Was such a servitude ever created to begin with? If so, how?

a yes: it was created by title: a possessor, even one in bad faith, has the power to create a servitude on the servient estate: Amartolos was a possessor of the servient estate; the act whereby he purported to create the servitude qualified as a title (i.e., it was an act translatif of ownership)

b no: [a] overlooks the fact that the recipient of the servitude, Mulieris, was a mere co-owner (for ½) and usufructuary (for the other ½) of the dominant estate; neither one co-owner, acting without the consent of his co-owners, nor a usufructuary, acting without the consent of his naked owners, can create a predial servitude for the benefit of the dominant estate

c no: [a] overlooks the fact that the servitude was not a predial servitude at all, but rather a personal servitude, specifically, a right of use: by its terms, it was created for the benefit of one named individual, Mulieris, not for the benefit of any and every owner of the East building

d b & c are both correct

e none of the above

Ultimus contends that he has a predial servitude that entitles him to “support” his carport roof against the wall of the West building, through the drainage system, down to the public sewer. Was such a servitude ever created to begin with? If so, how?

a no: non-apparent servitudes can be created only by title (or, in exceptional circumstances not present here, but destination); this servitude of support drain was non-apparent; neither Primus nor Amartolos nor Ultimus ever got a title to such a servitude

b yes: apparent servitudes can be created by destination; this servitude of support was apparent; it was created by the destination of Primus, the then owner, the moment at which he sold the West side to Secundus
If you find it helpful, you may assume (as is true) that the successive owners of the East side did not have the right to reconstruct the whole West building or even just the east wall of the West building.

-24-

c yes: even if the servitude had not been created by destination, it would have been created by abridged acquisitive prescription; apparent servitudes, such as this, can be created in this fashion; Primus, who had title to the East side, and after him, Amartolos, quasi-possessed the servitude, in good faith, for more than ten years (though Amartolos knew that he did not have the right to the servitude, he apparently did believe that the true owner of the East side had such a right)

d no: [b] would be correct, but for the fact that the “support” did not constitute an apparent sign of service between the Primus’ two estates, that is, a relationship that would have been a predial servitude if the estates had belonged to different owners

e a & c are both correct

[35] Assume that the correct answer to question [34] is [b] or [c] (it matters not which), that is, that a predial servitude of support was created. Can Ultimus still avail himself of that servitude? Why or why not?

a no: the servitude was extinguished when the West building burned down; that event constituted the “permanent and total” destruction of the servient estate

b no: even if the servitude was not extinguished by virtue of “destruction,” it was extinguished by virtue of the prescription of nonuse: between 2016 and the 2028, a span of nearly twelve years, the servitude was not used; only ten years of nonuse are required for prescription

c a & b are both correct

d yes: the servitude was extinguished neither by “destruction” nor by prescription of nonuse: when the West building burned down, all that happened was that things necessary for the exercise of the servitude underwent such a change that the servitude could no longer be used; under these circumstances, the successive owners of the dominant estate faced an obstacle that they could neither prevent nor remove; as a result, the prescription of nonuse was suspended for ten years

e none of the above

[36] Ultimus contends that he has a predial servitude that entitles him to prevent the owner of the West building from having a view out of or obtaining light from the east face of that building. Was such a servitude ever created to begin with? If so, how?

a yes: it was created by title: a possessor, even one in bad faith, has the power to create a servitude for the benefit of the dominant estate: Amartolos was a possessor of the dominant estate; the act whereby he purported to create the servitude qualified as a title (i.e., it was an act translative of ownership)

b no: the recipient of the purported servitude, Mulieris, was a mere co-owner (for ½) and usufructuary (for the other ½) of the servient estate; neither one co-owner, acting

4 If you find it helpful, you may assume (as is true) that the successive owners of the East side did not have the right to reconstruct the whole West building or even just the east wall of the West building.
without the consent of his co-owners, nor a usufructuary, acting without the consent of his naked owners, can create a predial servitude on the dominant estate.

c. no: [b] is essentially correct, but for one thing: one co-owner of a servient estate, acting alone, can create a “suspended” predial servitude on that estate, one that will come into existence if any only if the other co-owners eventually consent or she somehow acquires the whole estate; here, neither of those events came to pass.

d. no: though the rationale stated in [a] is correct, the rationale stated in [b], which is also correct, still dictates a negative result.

e. no: though the rationale stated in [a] is correct, the rationale stated in [c], which is also correct, still dictates a negative result.

(B)

[37] Think back to the time before Mulieris died when she was still “running the show” at the bed-&-board. Which of the following statements accurately characterizes the “partition rights” of Mulieris and her step-children, Tertia and Quartus, with respect to the West building?5

a. any one of them could have demanded the partition of the West building itself
b. Mulieris could have demanded the partition of the West building itself; Tertia and/or Quartus could have demanded the partition of the naked ownership of the West building, including the naked ownership “component” of Mulieris’s ½ ownership interest

c. Mulieris could have demanded the partition of the West building itself; Tertia and/or Quartus could have demanded the partition of their ½ naked ownership interest in the West building, which they held together in indivision

d. Mulieris could have demanded the partition of the West building itself; neither Tertia nor Quartus could have demanded the partition of anything

e. none of the above

[38] Think back to the time at which Mulieris died. When Mulieris took over the bed-and-board from her husband, Secundus, following his death back on May 1, 2001, several tenants (3 altogether) were already residing there under annual leases (January 1 to December 31) the rent for which ($4000/tenant) was due at the end of the year (December 31). When December 31, 2001, rolled around, Mulieris collected the full rent from each of them (3 x $4000 = $12,000). Does Mulieris’ successor, Sororis, now owe Tertia and Quartus any of that rent? Why or why not? If so, how much? Why? Ignore the complications that might be presented by consideration of expenses Mulieris may have incurred in administering the leases.

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5 Note: The children do hold their naked ownership in indivision, in other words, they do “co-own” that naked ownership interest.
b $0: as ½ co-owner of the building, she was entitled to ½ of its civil fruits, or $6,000, off the top; as usufructuary of the other ½ share of the building, she was entitled to all civil fruits of that share that accrued during the usufruct; the rent was a civil fruit; that fruit accrued, in its entirety, when it came due, i.e., December 31, 2001, which was during Mulieris’ usufruct

d $6,000: [c] would be correct, except for the fact that Mulieris, as usufructuary of the $4,000 ($6,000 - $2,000) generated from May 1, 2001 to December 31, 2001 from Tertia and Quartus’ ½ share of the building, didn’t own that rent, but merely had a usufruct on it, to be precise, a quasi-usufruct, in that money is a consumable; at the end of such a usufruct, the successor of the usufructuary must account to the naked owners for that consumable, which, in the case of money, means she must repay it

e none of the above

[39] Prior to her death, Mulieris had control of yet another former community asset (other than the West side, that is) that Secundus had acquired and managed, namely, a tract of “natural gas” land located in north Louisiana. When Mulieris assumed control of the land, it already had several working wells on it, all of them established by the person from whom Secundus had acquired it. Mulieris, however, did make one small change: she boosted production from 10,000 cubic feet per month to 12,000 cubic feet per month. Why? Because natural gas prices were then at an all-time high. Since Mulieris died, her sister has continued production activities at the field. Does Mulieris’ successor, Sororis, now owe Tertia and Quartus any of that rent? Why or why not? If so, how much? Why? Ignore the complications that might be presented by consideration of expenses Mulieris may have incurred in producing the gas.

b yes: ½ of the gas generated during the usufruct and ½ of the gas generated since then: as a ½ co-owner of the land, Mulieris was entitled to ½ of its natural products; the other ½ belonged to the co-owners of the land, Tertia and Quartus; since Mulieris’ death, the land has been co-owned by Sororis (½), Tertia (¼), and Quartus (¼); the natural gas was and still is a natural product of the land

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natural gas is normally considered to be a natural product of the land, it is considered to be a natural fruit where, as here, it is produced from a mine or well that was already open at the beginning of the usufruct.

c yes: none of the gas generated during the usufruct and ½ of the gas generated since then: as a ½ co-owner of the land, Mulieris was entitled to ½ of its natural fruits; as usufructuary of the other ½ share of the land (the naked ownership of which belonged to Tertia and Quartus), she was entitled to the other ½ of the natural fruits as well; since Mulieris’ death, the land has been co-owned by Sororis (½), Tertia (¼), and Quartus (¼); though natural gas is normally considered to be a natural product of the land, it is considered to be a natural fruit where, as here, it is produced from a mine or well that was already open at the beginning of the usufruct.

d yes: [c] is essentially correct, but needs to be adjusted: to the extent that Mulieris boosted production without the permission of Tertia and Quartus or the court, the “excess” production that took place during the usufruct constituted natural product, not natural fruit; consequently, ½ of that excess production must be repaid to Tertia and Quartus, who, as naked owners of a ½ share of the land, were entitled to ½ of its natural products.

e no: [c] would be correct, except for the fact that Mulieris, as usufructuary of the gas generated during the usufruct, didn’t own that gas, but merely had a usufruct on it, to be precise, a quasi-usufruct, in that gas is a consumable; at the end of such a usufruct, the successor of the usufructuary must account to the naked owners for that consumable, which, in the case of gas, means that she must replace or pay value for it.

[40] Suppose that Mulieris had incurred the cost of reconstructing the West building after it was destroyed by fire. Could she have obtained reimbursement for this expense from Tertia and Quartus? Why or why not? If so, when? In answering this question, ignore the fact that Mulieris is a co-owner. In other words, answer the question solely on the basis of her rights as usufructuary.

a no: though the usufructuary is not under an obligation to reconstruct a thing that was once subject to her usufruct but has since been destroyed, if she choses to reconstruct it (which is her right), she must do so at her own expense.

b no: once the West building was destroyed, Mulieris’ usufruct over it was extinguished; thus, when she reconstructed the building, it was an improvement that, under the law of accession with respect to immovables for usufructuaries, belonged to her.

c yes, at death: though the usufructuary is not under an obligation to reconstruct a thing that was once subject to her usufruct but has since been destroyed, if she choses to reconstruct it (which is her right), the naked owner must, ultimately, indemnify her for it, for it constitutes a kind of extraordinary expense; this indemnity is not due, however, until the termination of the usufruct.

d yes, immediately upon reconstruction: though the usufructuary is not under an obligation to reconstruct a thing that was once subject to her usufruct but has since
been destroyed, if she chooses to reconstruct it (which is her right), the naked owner must indemnify her for it, for it constitutes a kind of extraordinary expense; as is true for all extraordinary expenses, the naked owner is bound to reimburse the usufructuary for them immediately.

e none of the above

[41] Suppose that Mulieris, during the usufruct, had paid the annual “bed-and-board business tax” assessed by the City and a one-time special sewer improvement assessment imposed by the Parish, which was used to underwrite the cost of upgrading the sewerage system beneath the street on which the West building was located. Could she have obtained reimbursement for this expense from Tertia and Quartus, at least at then end of the usufruct? Why or why not? In answering this question, ignore the fact that Mulieris is a co-owner. In other words, answer the question solely on the basis of her rights as usufructuary.

a no: the usufructuary is responsible for all annual charges imposed on the thing to which his usufruct attaches as well as all necessary expenses he incurs in connection therewith; here, the business tax was an annual charge and the sewer assessment was a necessary expense

b yes as to the sewer assessment, no as to the business tax: whereas the usufructuary is responsible for all annual charges imposed on the thing to which his usufruct attaches, the naked owner is responsible for all extraordinary charges imposed thereon; here, the business tax was an annual charge and the sewer assessment was an extraordinary charge

c probably as to the sewer assessment, no as to the business tax: the usufructuary is responsible for all annual charges imposed on the thing to which his usufruct attaches; he is also responsible, at least in the first instance, for extraordinary charges imposed thereon; but in the latter case, the usufructuary can get reimbursement at the end of the usufruct provided that the extraordinary charge enhances the value of the thing; here, the business tax was an annual charge and the sewer assessment was an extraordinary charge; furthermore, the installation of the new sewer system more than likely enhanced the value of the West side

d yes: though the usufructuary is, in the first instance, responsible for paying all charges, be they annual or extraordinary, imposed on the thing to which his usufruct attaches, he is entitled to reimbursement therefor at the end of the usufruct; here, the business tax was an annual charge and the sewer assessment was an extraordinary charge

e none of the above

[42] Skipped

[43] Suppose that when Mulieris took over the “bed-and-breakfast” she found a number of bottles of wine set out on the tables in the dining area, bottles that Secundus evidently had used only for decoration. Mulieris, however, drank them. Does her successor, Sororis, now owe any sort of reimbursement to Tertia and Quartus on account of that wine? Why or why not? If
so, what kind of reimbursement? Why? In answering this question, ignore the fact that Mulieris is a co-owner. In other words, answer the question solely on the basis of her rights as usufructuary.

a. yes, monetary reimbursement for the value the wine would have had at the end of the usufruct had it not been consumed: when a perfect usufructuary alienates a nonconsumable to which his usufruct attaches, he or his successors must, at the end of the usufruct, pay over to the naked owner the value that that thing would have had at the end of the usufruct; given its destination, this wine was a nonconsumable

b. yes, either (i) monetary reimbursement for the value the wine had when the usufruct began or (ii) replacement of wine of like quality and in the same quantity: at the end of a quasi-usufruct, the usufructuary or his successors must pay the naked owner one of two things—the monetary value of the consumable things as of the date on which the usufruct began or consumable things of like quality and in the same quantity; by nature, wine is a consumable

c. yes, either (i) monetary reimbursement for the value the wine would have had at the end of the usufruct had it not been consumed or (ii) replacement of wine of like quality and in the same quantity: at the end of a quasi-usufruct, the usufructuary or his successors must pay the naked owner one of two things—the monetary value of the consumable things as of the date on which the usufruct ends or consumable things of like quality and in the same quantity; by nature, wine is a consumable

d. maybe [a], maybe [b]: it’s not clear whether the wine is consumable or nonconsumable

e. maybe [a], maybe [c]: it’s not clear whether the wine is consumable or nonconsumable

(C)

[44] Skipped

[45] Tertia has just brought suit against Sororis for a partition of the West side. St. Louis Bank is concerned about the implications that such a partition might have for the mortgage on the West side that Sororis purportedly created in its favor. What exactly will happen to that mortgage if and when the West side is partitioned? Why?

a. nothing will happen because the mortgage is null: a co-owner cannot mortgage the co-owned thing without the consent of all of the co-owners; here, Tertia and Quartus did not consent

b. if the West side is partitioned in kind among Sororis, Tertia, and Quartus, then the mortgage will attach to the part of that property which is allotted to Sororis, but if the West side is partitioned by licitation, then the mortgage will be extinguished

c. if the West side is partitioned in kind among Sororis, Tertia, and Quartus, then the mortgage will be extinguished, but if the West side is partitioned by licitation, then the mortgage will attach to the share of the proceeds that is allotted to Sororis
d if the West side is partitioned in kind among Sororis, Tertia, and Quartus, then the mortgage will attach to the part of that property which is allotted to Sororis, but if the West side is partitioned by licitation, then the mortgage will attach to the share of the proceeds that is allotted to Sororis

e the mortgage will continue to burden the whole West side just as it does now
### Solutions

#### Objective questions

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<th>Answer</th>
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⁶ Partial credit given for “a”.

⁷ Partial credit given for “a” and for “b”.

⁸ Partial credit given for “d”.

⁹ Partial credit given for “a” and for “c”.

¹⁰ Partial credit given for “a”, “b”, and “c”.
II Subjective questions

II A(1)

1 Unabridged AP: no ................................................................. 0.5 1
* Insufficient time ............................................................... 0.5 1
# Not enough by themselves (2028-2018=10) .................. 0.5 1 1.5
# Not enough even with tacking all the way back to the first poss’n (that of Conus) were possible (2028-2003=25) ....................................................... 0.5 1 1.5

2 Abridged AP: no for Fonus, yes (in part) for Eola (score below)
  a Area within Tract C
    1) Fonus: no .................................................................. 0.5 1
    * GF: no ..................................................................... 0.5 1
       1] Personal GF determinative: because he was a successor by particular title, the can't "inherit" the state of mind of his ancestors-in-title .................... 0.5 1 1.5
       2] Nature: subjective & objective ..................................... 0.5 1
       3] a] GF presumed .......................................................... 0.5 1
          b] Presumption overcome ................................................. 0.5 1
             1} Knowledge of quitclaim alone is not enough .......... 0.5 1
             2} But he is in "real estate" & has knowledge of "problems" in title of ancestor (Conus): (i) quitclaim and (ii) low price .................. 0.5 1 1.5 2
    2) Eola: yes .................................................................... 0.5 1
       a) Poss’n: yes ............................................................. 0.5 1
          1] Elements
             a] Corpus: yes ............................................................ 0.5 1
                1} If at all, then vicariously through Hubris .......... 0.5 1 1.5
                2} Hubris' acts more than sufficient for corpus ............. 0.5 1 1.5
             1] Animus domini: yes ................................................. 0.5 1
                1} Presumed if there's corpus ................................. 0.5 1
                2} Evidence (in particular, that he has title) supports it ... 0.5 1 1.5
             2] Vices: none apparent .................................................. 0.5 1
             3] Extent: all of Tract C, thanks to constructive poss’n ... 0.5 1 1.5
          b) Thing susceptible of prescrip.: yes ............................ 0.5 1
             * Though once owed by municipality (Alex), it was never public ... 0.5 1 1.5 2
       c) GF: yes ................................................................. 0.5 1
          1] Personal GF determinative (same rationale as for Fonus supra: dds) ........ 0.5 1
          2] Nature: subjective & objective (see supra: dds) ............... 0.5 1
          3] a] GF presumed (same as for Fonus supra: dds) ................. 0.5 1
             b] Presumption not overcome ........................................ 0.5 1
                * No evidence that Eola know or should have known of either of the "problems" with Conus' title .............................................. 0.5 1 1.5 2
       d) JT: yes ..................................................................... 0.5 1
          1] Act translative of ownership ........................................ 0.5 1
             a] Right genre ............................................................ 0.5 1
                1} Particular legacy: yes: potentially translative ........ 0.5 1
                2} JOP: no: merely declaratory .................................... 0.5 1
             b] Not absolutely null ..................................................... 0.5 1
                * No problem here ................................................... 0.5
          2] Valid form ............................................................... 0.5 1
* No information given on form ................................................................. 0.5 1
3] In writing: yes ................................................................................. 0.5 1 1.5
4] Recorded: yes .................................................................................. 0.5 1 1.5
e) Delay: yes ......................................................................................... 0.5 1
1] Personally: not enough ........................................................................ 0.5 1
   a] Appears to be enough time: July 1, 2018, time of suit, - June 8, 2008, date personal poss’n began, = 10 years, 3 weeks ........................................... 0.5 1
   b] But she does not, in fact, have enough
      1} Prescrip. suspended from June 8, 2008, date personal poss’n began, until June 8, 2009, thanks to 9:5804 .................................................. 0.5 1
      a} Owned by municipality from 6/1/07 - 6/1/09 .................................. 0.5 1
      b} Proper documentation filed into public records ............... 0.5 1 1.5 2
      2} From 6/8/09 - 7/1/18 is only 9 years & 3 weeks ....................... 0.5 1
2] Tacking
   a] To Dona
      1} Possible? Yes. .............................................................................. 0.5 1
         a} Juridical link: yes ........................................................................ 0.5 1
            # Testamentary succession (particular legacy) ....................... 0.5 1
            # Eola got Dona's interest in the object of the legacy, i.e., Tract C: particular succession ........................................................ 0.5 1 1.5 2
         b} Poss’n: yes .................................................................................. 0.5 1
            1/ None personally ..................................................................... 0.5 1
            2/ But derivately from her father, Conus ......................... 0.5 1 1.5 2
               * Conus had poss’n (see infra) ........................................... 0.5
         c} GF: yes ...................................................................................... 0.5 1
            1/ Not personally ....................................................................... 0.5 1
               a/ Presumed (see supra: dds) ................................................. 0.5 1
               b/ But presumption overcome: knowledge of "suspect" character of Olympius' title .............................................................. 0.5 1 1.5 2
            2/ But derivatively ...................................................................... 0.5 1
               a/ Can (indeed, must) claim state of mind of ancestor-in-title (Conus): universal succession .................................................. 0.5 1 1.5 2
               b/ Conus was in GF (see below) ........................................... 0.5
         d} JT: yes .......................................................................................... 0.5 1
            1/ Not personally (no title at all) ............................................. 0.5 1
            2/ But derivatively ...................................................................... 0.5 1
               a/ Has same title as ancestor-in-title (Conus): universal succession (see supra: dds) ................................................................. 0.5 1 1.5 2
               b/ Conus has JT (see below) .................................................... 0.5
      2} Enough time? No. ........................................................................... 0.5 1
         * Time of poss’n uncountable due to suspension by virtue of 9:5804 (see supra) .......................................................... 0.5
   b] To Conus
      1} Possible? Yes. .............................................................................. 0.5 1
         a} Juridical link: yes ........................................................................ 0.5 1
            # Intestate succession .............................................................. 0.5 1
            # Dona got everything Conus had, including his interest in Tract C: univ. succ’n (see supra: dds) ........................................... 0.5 1 1.5 2
b) Poss’n: yes .................................................. 0.5 1

1/ Elements
   a/ Corpus: yes ........................................... 0.5 1
      * Conus' acts more than sufficient ........ 0.5 1 1.5 2
   b/ Animus domini: yes ................................... 0.5 1
      1° Presumed if there's corpus (see supra: dds) ... 0.5 1
      2° Evidence (in particular, that he has title) supports it
         ................................................... 0.5 1 1.5

2/ Vices: none evident ........................................ 0.5 1

3/ Extent: all of Tract C—constructive poss’n ........ 0.5 1 1.5

c) GF: yes ........................................................ 0.5 1

1/ Personal GF determinative: no evidence of poss’n by any prior
   title holder ............................................... 0.5 1 1.5

2/ Nature: subjective & objective (see supra: dds) ....... 0.5 1

3/ a/ GF presumed (see supra) ............................ 0.5 1
   b/ Presumption not overcome .......................... 0.5
      1° Knowledge of quitclaim deed not enough (see supra: 
         dds) .................................................. 0.5 1
      2° Though Conus knew or should have known that the 
         transfer was by quitclaim, he neither knew nor should
         have known of anything else suspicious, e.g., the low
         price ................................................... 0.5 1 1.5 2
         * That Conus later learned of "suspect" character of
            Olympius' title does not matter: for purposes of AP,
            state of mind is gauged as of commencement of
            poss’n ................................................ 0.5 1 1.5 2

      3° Conus neither knew nor should have known that title
         given by Luna was relatively null ................. 0.5 1 1.5 2

d) JT: yes ........................................................ 0.5 1

1] Act translative of ownership: yes ....................... 0.5 1
   a] Right genre (see supra: dds) ......................... 0.5 1
      * Act of sale: potentially translative ............. 0.5 1
   b] Not absolutely null (see supra: dds) ............... 0.5 1
      * Title only relatively null here ................... 0.5 1

2] Valid form (see supra: dds) ............................ 0.5 1
      * Form fine: priv. signature ......................... 0.5 1 1.5

3] In writing: yes (see supra: dds) ....................... 0.5 1 1.5

4] Recorded: yes (see supra: dds) ....................... 0.5 1 1.5
      * Not recorded until June 1, 2005 .................. 0.5 1
      # No abridged AP until recordation ............... 0.5 1

2} Enough time? Yes .......................................... 0.5 1
   a} Total countable time: 2 years (score below)
      1/ Last year of poss’n, from June 1, 2007 to June 1, 2008,
         uncountable due to 9:5804 (see supra) .......... 0.5 1
      2/ That leaves two years of effective poss’n: from June 1, 2005 to
         June 1, 2007 ......................................... 0.5 1

   b} That time, 2 years, plus that which Eola already has, 9 years, 3 weeks,
      is more than 10 years .................................. 0.5 1

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### A(2)

**1 Result:** now Eola, too, loses

**Rationale:** can't tack to Conus' (or to Dona's) time of poss'n

**a Conus was in bad faith**

- Knowledge that one's transferor is incapable (or that one's title is relatively null) is arguably incompatible with belief that there are no defects in one's title.
  - Conflicting French doctrinal authority

**b Dona was in bad faith**

- As Conus' universal successor, she was stuck with his bad faith

### B

**1 Abridged AP:** no

- No title at all, much less JT

  - Hubris' title to the usufruct extends only as far as Tract C

**2 Unabridged AP:** yes

**a Area up to ditch:** yes

**1) Acquisition of prescrip.:** yes

**a) Poss'n:** yes

**1] Elements**

- Quasi-corpus: yes
  - Hubris' acts more than sufficient for quasi-corpus

- Quasi-animus domini: yes
  - Presumed if there's quasi-corpus
  - Evidence (in particular, that he has title) supports it

**2] Vices:** none apparent

**3] Extent:** inch-by-inch, up to man-made boundary, i.e., ditch

**4] Termination:** by eviction

- Though Bona had claim of constructive poss'n, thanks to Tenius' corporeal acts, constructive poss'n does not terminate corp. poss'n

**b) Thing susceptible of prescrip.:** yes

- Never even publicly owned

**c) Delay:** yes

- Personally: from 6/8/08 - 9/1/39 is 31 years & 3 months

- By tacking (if it had been needed)

  **a) To Dona**

  - Possible? Yes

  **a) Poss'n:** yes
1/ None personally .......................... 0.5 1
2/ But derivately from her father, Conus (see supra: dds) ..........
   ........................................ 0.5 1 1.5 2
   * Conus had poss’n (see infra) .................... 0.5
b} Juridical link: yes .................................... 0.5 1
1/ Standing tacking between Hubris and Dona: no ........ 0.5 1
   * Juridical link (testamentary succession) ................ 0.5 1
   # Land not included in Hubris' "title," i.e., particular
     legacy ..................................... 0.5 1 1.5 2
2/ Boundary tacking between Hubris and Dona: yes ........ 0.5 1
   a/ Juridical link needed: title to adjacent land ........ 0.5 1
   * Usufruct covered adjacent land ..................... 0.5 1
   b/ Need poss’n up to visible bounds (see supra: dds)
      ................................................................ 0.5 1
   * Ditch a visible bound ............................... 0.5 1

2} Enough time? Irrelevant.
   
b] To Conus
1} Possible? Yes ........................................ 0.5 1
   a} Poss’n: yes ...................................... 0.5 1
   1/ Elements
      a/ Corpus: yes ..................................... 0.5 1
      * Conus' acts more than sufficient ........ 0.5 1 1.5 2
      b/ Animus domini: yes ............................. 0.5 1
         1° Presumed if there's corpus (see supra: dds) ... 0.5 1
         2° Evidence (in particular, that he has title) supports it
            ................................................................ 0.5 1
   2/ Vices: none evident ................................. 0.5 1
3/ Extent: inch-by-inch within man-made boundary, i.e., the ditch
   ................................................................ 0.5 1 1.5 2
   b} Juridical link: yes .................................... 0.5 1
   * Standard tacking between Dona & Conus: yes ...... 0.5 1
   # As his universal successor, Dona inherited all of Conus'
     rights, including those to Lagniappe (see supra: dds) ....
     ................................................................ 0.5 1 1.5 2

2} Enough time? Irrelevant.
   2) Renunciation of prescrip.: no ............................ 0.5 1
   a) Definition ........................................ 0.5 1
      * Difference from acknowledgment .................... 0.5 1
   b) Evaluation
      1] Not express ...................................... 0.5 1
      2] Not made en connaissance de cause ............... 0.5 1 1.5 2
         * No evidence he knew that the land he was leasing included that which was subject
           to his supposed usufruct .................................. 0.5 1
   b Area beyond ditch: no ................................ 0.5 1
   1) Problem with poss’n
      * Episodic use of land to "turnaround" with farm machines probably not sufficient for corpus;
        analogous to lawnmowing (see supra: dds) ............ 0.5 1 1.5 2
   2) Problem with tacking
a) Standing boundary tacking between Hubris and Dona: no .......................... 0.5 1
   * No tacking beyond title (see supra: dds) ........................................ 0.5 1
   # Land not included in Hubris' "title"(legacy) (see supra: dds) .. 0.5 1 1.5 2
b) Boundary tacking between Hubris and Dona: no .............................. 0.5 1
   * No "visible bounds" to which poss’n extended (see supra: dds) . . . 0.5 1 1.5 2