I. Introduction: the domain of property law
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      b. Rights related to things
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            2] Accessory real rights
B. Property law: definition & scope

II. Things

A. Definition (see above)

B. Classification

1) Analysis of CC art. 448

Is the typology of things set out in CC art. 448 complete? If not, what’s missing?

2) Varieties

a) Common, public & private things

1] Common & noncommon things

See Yiannopoulos, Treatise Excerpts, in Yiannopoulos, Text, 9-10; Trahan, Supp, 2-3.

a] Definitions & illustrations

What are "common" things? Examples? See CC art. 449.

b] Significance: susceptibility of ownership

What is the principal effect of classifying a particular thing as "common"?

2] Public v. private things


a] Explication

* Preliminary investigation: public v. private capacity

Read CC arts. 450 & 453. What’s the difference between “public capacity” and “private capacity”? How is one to determine in which of these capacities the state or one of its political subdivisions holds a particular thing? See CC art. 450; Landry v. Council of the Parish of East Baton Rouge, 220 So. 2d 795 (La. App. 1st Cir. 1969) [Yiannopoulos, Text, 12-17]; Town of Broussard v. Broussard Volunteer Fire Dept., 357 So.2d 25(La. App. 3d Cir. 1978) [handout]; City of New Iberia v. Romero, 391 So.2d 548 (La. App. 3 Cir. 1980) [handout].

1} Public things

a} Definitions

What are "public" things?

b} Illustrations

1/ Public things

a/ Of the state

Give some examples of public things owned by the state. See CC art. 450, par. 2, & cmt.(g), par. 2.

b/ Of political subdivisions

What are some examples of public things owned by political subdivisions of the state? See CC art. 450, par. 3, & cmt. (e), par. 2.

2} Private things

a} Definition

What are "private" things? See CC art. 453.

b} Illustrations

1/ Of private persons

What are some examples of private things of individuals or other private persons?

2/ Of the state and/or its political subdivisions

What things might qualify as the "private" things of the state or a political subdivision, that is, as things that the state or a political subdivision owns in its private capacity? See CC art. 453 cmt. (b).

b] Significance: susceptibility of private ownership

Why do we care whether something is public or private?

1} Ease of disposal

2} Vulnerability to acquisitive prescription
3) **Susceptibility of (adverse) possession**

PH 1. Olide pitches a tent on the riverwalk and, at same time, closes off an area on the inside of the Centroplex Arena. At both spots he posts signs that read "This here spot belongs to Olide. No trespassin'." No one disturbs him for a year. Then Mayor orders the police to throw Olide out. Olide, however, claims he's now acquired a "possessory interest," namely, right to possess, both the riverwalk and his corner of the Centroplex Arena. What result? Is the result the same for both pieces of property? Why or why not? See CC arts. 3421 & 3422 & *Landry, Broussard, Romero* (supra).
Necessarily & adventitiously public things

See Trahan, Supp, 4.

a) Definitions

1) Necessarily public things

What do we mean by things that are public “of necessity”? See CC art. 450 comment (c), ¶ 2.

2) Adventitiously public things

What do we mean by things that are “adventitiously” public?

b) Illustrations

1) Necessarily public things

What are some examples of things that are necessarily public?

2) Adventitiously public things

What are some examples of things that are adventitiously public?

c) Significance: duration of insusceptibility of private ownership

Why night it matter whether something is necessarily or just adventitiously public?

PH 2. By a strange coincidence, officials in the Department of Natural Resources, which oversees the state's interests in inland rivers, streams, & bayous, and officials in the Department of Transportation & Development, decide its time for the state to unload some of its property. And so the DNR folks decide to sell off a stretch of land under Bayou Manchac, just south of Baton Rouge, while the DOTD folks decide to sell off a stretch of land that lies beneath a small part of a State Highway 1 near Brusly that was recently abandoned. X, who's interested in buying both parcels, has come to you, her attorney, asking you if she should put out an offer on either or both. In particular, what she wants to know is whether DNR or DOTD, as the case might be, presently has the power to dispose of the thing that it has put up for sale. What will you tell her? Why?

b) Corporeal & incorporeal things

See Trahan, Supp, 12-14.

1) Definitions

a) Corporeals

What are "corporeal" things? See CC art. 461, par. 1.

b) Incorporeals

What are "incorporeal" things? See CC art. 461, par. 2.

2) Illustrations

a) Corporeals

Examples?

b) Incorporeals

Examples? See CC art. 461, ¶ 2.

* Complication

How should we classify things that, according to modern physics, have some sort of physical existence (i.e., exist in time and space and are susceptible of detection, measurement, etc.), but whose physical existence is not readily perceptible by the unaided human senses, e.g., energy (electrical, nuclear, etc.), power, radioactivity? See CC art. 461 cmt. (b).

3) Significance

Why do we care whether something is a corporeal or an incorporeal?

a) In property law

See CC arts. 630, 639, 646.

1) Objects of real rights

See CC art. 3421.
b] Outside property law

1} Donations: formalities

PH 3. Clodice had a favorite cousin named Théophile on whom she liked to bestow great favors. Once Clodice directed Théophile to withdraw some funds from her (Clodice’s) savings account and to “keep them.” Later Clodice bought some bearer bonds (bonds payable to “Bearer”) and then gave them to Théophile to keep. Then Clodice died. In due time, Clodice’s succession was opened. In the inventory of the assets of Clodice’s estate, the administrator included, among other things, the savings account funds and the bearer bonds. Théophile filed a motion to traverse the inventory, arguing that it ought not to include the account funds or the bonds. His argument? Clodice, before her death, had validly donated both of those assets to Théophile, as provided for in CC art. 1539. What result? Why? See CC arts. 1536, 1539, & 473; Succession of Miller, 405 So. 2d 812 (La. 1981) (rehearing) [Yiannopoulos, Text, 181-84 (omit the dissent)].

2} Sales: manner of delivery

See CC arts. 2477 & 2481.

c) Consumables & nonconsumables


1] Definitions
   a] Consumables
   What are consumables things? See CC art. 536.
   b] Nonconsumables
   What are nonconsumables? See CC art. 537.

2] Illustrations
   a] Consumables
   Examples? See CC art. 536.
   b] Nonconsumables
   Examples? See CC art. 537.

3] Nature of the criterion for distinction

Is the criterion for distinguishing consumable from non-consumable things objective or subjective? In other words, does the criterion take into account only the objective characteristics of the thing or, rather, only the uses to which the parties intend to put the thing or some combination of the two?

PH 4. Suppose that Papère puts together a collection of rare early US-minted coins, which he displays in a glass-covered display case. When Papère dies, the coin collection passes to his son, Pascal, subject to a usufruct in favor of Papère’s surviving spouse, Mamère. Now, what kind of thing is this collection? Can’t you make good arguments both ways? Which is right? Why?

4] Significance
   a] In property law: nature & effects of usufruct
   See CC arts. 538 and 539.
   b] In obligations: contracts: loans
   See CC arts. 2891, 2893, 2910.

d) Fungibles & nonfungibles

Skipped.

e) Divisible & indivisible

Skipped.

f] Single & composite


1] Definitions
   a] Single things
   What's a single thing?
   b] Composite (complex) things
What's a composite thing? What's a "component part"? How are the two related?

2] Illustrations
   a] Single things
      Examples?
   b] Composite things
      Examples?


3] Significance: property & obligations law: ownership, sales & mortgage: transfer & encumbrance

Why would anyone care whether a particular thing is single or composite? See CC art. 469.

PH 6. After buying a parcel of ground, Olide builds a house on it. And in that house, he puts a chandelier. Later, finding himself in need of cash, he goes to Cajun Bank, where he borrows $100,000. As collateral, he gives the bank a mortgage on "the land." Time passes and Olide defaults. Fearful that the bank will soon foreclose on the land, Olide begins to take stuff out of the house, including the chandelier. When the bank learns of this, it brings an action against Olide for an injunction, directing him to restore the chandelier. Their theory, of course, is that the chandelier is subject to the mortgage. In reply, Olide says, "Ils ont pas raison." The contract says ‘the land.’ So only the land is subject to the mortgage.” Who’s right? Why?

   g) Principal & accessory
      Skipped.
   h) Fruits & (mere) products
      See Trahan, Supp, 6-7 & 19-21.
      1] Definitions
         a] Fruits
            What’s a fruit? See CC art. 551, ¶ 1.
            The category of fruits can itself be subdivided. What are the subcategories? See CC art. 551, ¶¶ 2-4.
         b] Mere products
            What’s a mere product? See CC art. 448. Are products, like fruits, subdivided into “natural” and “civil”?

      2] Illustrations
         a] Fruits
            1} Natural fruits
               Examples? See CC art. 551, ¶ 3.
            2} Civil fruits
               Examples? See CC art. 551, ¶ 4.
         b] Products
      3] Complications
         a] Natural fruits v. natural products
            1} Minerals

PH 8. By testament, Pascal, the owner of Belle Terre, left that estate to his daughter, Lil-Fille, subject to a usufruct in favor of his son, Ti-Boy. During the term of the usufruct, Ti-Boy granted a mineral lease over the land to Théophile. This act infuriated Lil-Fille, who wanted to execute her own mineral lease over the land. And so Lil-Fille brought suit against Ti-Boy and Théophile, seeking a judgment declaring that “Ti-Boy has no right or interest in the oil, gas or other minerals” under the land "and, therefore, was without

1 Cajun for “dey ah wrong.”
authority to grant a mineral lease to Théophile." Her theory? (i) MP: A usufructuary's right of fructus extends only to fruits properly so called, i.e., things that are produced from the burdened thing without diminishing its substance. It does not extend to things that, when severed from the burdened thing, diminish its substance. (ii) mP: Minerals, such as oil and gas, are not the fruits of the land from which they are severed. That is so because they are part of the land and, thus, their removal brings about a diminution of the substance of the land. (iii) QED: A usufruct of land does not confer on the usufructuary the right to extract minerals from the land. Ti-Boy and Théophile opposed the suit. What was their theory? They relied on article 560, which confers on the usufructuary the right to "draw all the profits which are usually produced by the thing subject to the usufruct," including the right to "cut trees on the land . . . [or] take from it earth, stones, sand and other materials . . . for his use . . . provided he act . . . as a prudent administrator . . . ." What result would you predict? Why? See Gueno v. Medlenka (La. 1960) & LA. MIN CODE arts. 188-196 [Yiannopoulos, Text, 691-97] & Trahan, Supp, 7-11.

2) Timber

Read the following doctrinal materials:


[Some] goods generate fruits or products depending on the fashion in which their owner exploits them. It is so with the timber of forests . . . . Timber, that is to say, trees that are allowed to attain their complete development, are in principle . . . products, for once they are cut, other trees do not spring up after them . . . . However, trees, even timber, are themselves considered to be fruits when they are subjected to regulated cuts. A usufructuary, then, can claim the right to exploit them, but only on the condition that he conform himself to the management or usage that the owners have constantly maintained.


When it's a question of timber, a distinction must be made according to whether or not there is a management system in the form of a regulated cut. When, before the beginning of the usufruct, the owner had organized a system of partial and successive cuts that permitted . . . . the trees to be replaced and to grow in such a fashion that the timber was maintained, the cuts so managed have the character of fruits and revenues. The usufructuary can continue the cuts and benefit from them, provided he respects the management system. If, on the contrary, no regulated cut had been put in place, the usufructuary cannot, in principle, touch the timber, which is considered to be a capital asset [synonym for "product"] . . . .

PH 9. Pascal owns a tract of land on which stands some timber (tall pines and oaks, to be precise). Neither he nor any of the prior owners of the land has ever before cut any of that timber. One day Olide, falsely representing himself to be the owner of that land, sells it Jean Sot, who is none the wiser and, you may assume, is in "good faith." Jean Sot then heads out to the land, part of which (about 5%) he clear cuts and then "re-sows" with pine and oak seedlings. His plan is to do the same thing every year thereafter, i.e., to make one cut of timber on 5% of the land and then re-sow that land. Things go on this way for several years. How should the timber that Jean Sot cut be classified? Why?

PH 10. The same as before (PH 9), except that, before Jean Sot buys the land from Olide, Pascal himself cuts and re-sows timber on the land pursuant to a schedule much like that which Jean Sot later adopts, i.e., he makes one annual cut on 5% of the land, which he then re-sows. How should the timber Jean Sot cut be classified? Why?

PH 11 (a modification of PHs 9 & 10). Pascal cuts and re-sows timber on his land pursuant to a certain schedule, namely, he makes one annual cut on 5% of the land, which he then re-sows. After buying the land from Olide, Jean Sot clear cuts the entire tract! How should the timber Jean Sot cut be classified? Why?

b) Civil fruits v. civil products

PH 12. Pascal owns a tract of "cleared" (i.e., treeless) land beneath which lie large deposits of oil.
Neither he nor any of the prior owners of the land has ever before produced any of that oil. One day Olide, falsely representing himself to be the owner of that land, sells it Jean Sot, who is none the wiser and, you may assume, is in "good faith." Jean Sot then (i) executes a farming lease over part of the land to Ti-Boy and (ii) executes a mineral lease over another part of the land to Lil-Fille. Who is entitled to the “rents” Ti-Boy owes under the farming lease? How about the “royalties” Lil-Fille owes under the mineral lease? Finally, how about the “up front bonus payment” that Lil-Fille owes under the mineral lease, a fee that, according to industry usage and the intent of the parties, represents compensation not for minerals produced or even for the right to produce those minerals but rather for the mere right to enter upon the surface of the land to explore for minerals? Why? See CC arts. 483, 486, & 488.

4] Significance

Why does it matter whether a particular thing is a fruit or a product?

a] Property law

1} Modes of acquiring ownership: accession: ownership of unconsented-to production

Read CC arts. 483-488.

2} Dismemberments of ownership: usufruct: rights of usufructuaries

Read CC arts. 550-552, 554.

b] Matrimonial regimes law: community property

Read CC art. 2339.

i) Immovable v. movable things

1] Definitions


a] Immovables

What's an "immovable"? Is the "plain meaning" of this term the same as its “technical meaning? See P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

b] Movables

Read CC art. 475.

2] Classifications

a] Immovables

1] Corporeal immovables

a} Definition

Read CC arts. 462 & 470; Trahan, Supp, 28.

b} Varieties

1/ By nature

a/ Things whose immovability is independent of unity of ownership


1° All tracts of land

PH 13.1. Olide offers to sell his estate, Terre Puante, an undeveloped 100-acre tract of land, to Jean Sot for $100,000. Jean Sot accepts. Jean Sot then writes Olide a check for $100,000, Olide takes it, the two men shake hands and go their separate ways. A few weeks later, Olide brings a petitory action against Jean Sot, seeking to evict him from the land. At the trial, Olide adamantly denies ever having sold Terre Puante to Jean Sot. Who gets the land? Why? See CC arts. 2440, 1839, 462, & Yiannopoulos, Treatise § 114, in Yiannopoulos, Text, at 111.

PH 13.2. One day Olide draws aside his nephew and employee, Auguste, and says to him, “Mon cher. Please see if you can’t get somebody to haul away de top layer o’ dirt from dat part o’ my land over dere.
I don’t need it an’ don’t want it.” “How much you axin’?” asks Auguste. “Not a ting; it’s free,” answers Olide. Before long, Auguste arranges for Jean Sot to come and get the dirt. After the deal (essentially a donation) is closed, Jean Sot heads on over to Olide’s land, excavates the top layer of dirt from the appropriate part of the land, loads it into his pick-up truck, and heads home. A few weeks later, Olide, who has since decided he needs the dirt after all, brings a petitory action against Jean Sot, seeking to recover the dirt. At the trial, Olide adamantly denies ever having authorized Auguste to give the dirt to anyone and/or that, even if he had given Auguste that authority, both the grant of authority and the donation itself were nonetheless invalid for want of proper form. Auguste is “out of the country” and so, is “unavailable” to testify. What result would you predict? Why? See CC arts. 1536, 1539, 462; Landry v. LeBlanc (La. App. 3d Cir. 1982) [Yiannopoulos, Text, 112-15]; Trahan, Supp, 35-36.

PH 14. Pascal has decided to put in a flower garden on Belle Terre. To do it he needs topsoil. So, he tells his his hired hand, Jean Sot, to buy some from the local hardware store. Per his instructions, Jean Sot goes to the store, picks up a few bags of pre-packaged topsoil, loads ‘em into his pickup, pays the cashier, and heads for home. Does Pascal own the topsoil? Why or why not?

2° All buildings

PH 15. Jean Sot, after some fast talking by Olide, sells Olide his house in the Bocage Subdivision here in Baton Rouge. Though the market value of the house is about $200,000, the sales price is $75,000. A few days after the sale, after Jean Sot's friends have upbraided him for his stupidity, he thinks better of the deal and files suit to have it set aside. His theory? It rests on Civ. Code art. 2589. What result? Why? See CC arts. 462-464; P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

3° Integral parts

a° Of tracts of land

PH 16. Pascal, the owner of Belle Terre, leases it to his friend, Jean Sot. With Pascal’s permission, Jean Sot spruces up the place a bit. First, he puts in some flower beds around the homestead. To do that, he digs up the soil in the selected spots, sets the plants in the appropriate places, and fills in around them with a mixture of topsoil and cow manure. Second, he puts in an outdoor fish pond in the middle of the flower beds. To do that, he digs up the soil in the selected spot, lines the walls of the pit with bricks and mortar, and puts in the water and the fish. Third, he puts in an underground automatic sprinkler system around the flower beds. To do that, he digs up the soil in the selected spots, places the water tanks and pipes into the pits and trenches, and covers them up with the original soil. Fourth, he builds a wooden fence, the posts of which are set into the ground with concrete, around the flower beds. One month later, Pascal mortgages Belle Terre to Jambalaya Bank & Trust. The mortgage clearly extends to the "tract of land" known as Belle Terre, but what does that tract of land now entail? Consider, in particular, whether it includes (i) the topsoil-manure mixture that lies in the flower beds, (ii) the bricks and mortar in the fish pond, (iii) the water tanks, pipes, etc. that compose the sprinkler system, and (iv) the fence. See CC arts. 469, 465, 463; In re Receivership of Augusta Sugar Co. (La. 1914) [Yiannopoulos, Text, 153-54]; Monroe Automobile v. Cole, 6 La. App. 337 (1932) [Trahan, Supp, 37a]; Guzetta v. Texas Pipeline Co., 485 So. 2d 508 (La. 1986) [Yiannopoulos, Text, 1019-1024]; Symeonides, Developments, §§ 3 & 4, in Yiannopoulos, Text, 1028-31.

NOTE: In dealing with this category of immovables (i.e., integral parts of tracts of land), one must be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

b° Of buildings or other immovable constructions

Re-read CC art. 465. What kinds of things might qualify as “integral parts” of a building or other immovable construction?

NOTE: In dealing with this category of immovables, must one be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid
fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

4° Permanent attachments


NOTE: In dealing with this category of immovables, one must be concerned with possible statutory bars to immobilization, e.g., La. R.S. 9:1106, which declares storage tanks for liquified gases or liquid fertilizers permanently movable, or La. R.S. 10:9-313(2), which provides that fixtures remain movable as to the secured party.

5° Standing timber

a° Definition

1* Timber

PH 17. Pascal owns Belle Terre and all that grows on it, including a grove of pine trees, a stand of crape-myrtle trees, a row of azalea bushes, and a stretch of pachysandra. While the pine trees, the crape-myrtle trees, the azaleas, and the pachysandra are still in place, Pascal sells them to Long Leaf Lumber Co. The sale agreement is not reduced to writing. Is the sale in proper form? Why or why not? See CC art. 562 cmt. (c) & CC arts. 2440 & 1839.

2* Standing

a* Not cut down

PH 18. Pascal owns Belle Terre as well as the vast forest of pine trees that grows upon it. Are the pine trees "standing timber"? Sure. But then along comes Olide, who clear cuts the land. Are the pine trees still "standing timber"? Why or why not? See CC art. 463 cmt. (d), ¶ 2.

b* Rooted in the soil

PH 19. Olide's latest business venture is a nursery, for plants not for children. At the nursery he grows several different types of trees, including pine trees and cypress trees. But he treats these plants a little differently: while the pine trees are set in clay pots filled with dirt inside the warehouse, the cypress trees are set in the ground out behind the warehouse. To raise a little cash, Olide mortgages the nursery lot and warehouse to Jambalaya Bank & Trust Co. Does the mortgage affect either or both the pine trees or/and the cypress trees? Explain. See CC art. 469 & Trahan, Supp, 37i-37j (vegetation). But see CC art. 463 cmt. (c), ¶ 2, sent. 2.

b° Classification

Is standing timber anywhere and always immovable? Or is it movable or immovable depending on the circumstances, such as, for example, who owns it, in particular, whether it belongs to the owner of the ground?

PH 20. Olide, the owner of Terre Puante, leases it to his nephew, Auguste, for 30 years. The lease authorizes Auguste to plant trees on the land, but sets forth the following curious provisos: "Any cypress tress planted by Lessee shall belong to Lessor, but any pine vines planted by Lessee shall belong to Lessee." Pursuant to the lease, Auguste moves onto Terre Puante and proceeds to plant cypress and pine trees. Many years later, while the lease is still in effect, Olide sells the cypress and pine trees (which are then still uncut) to Long Leaf Lumber Co. Neither sale is reduced to writing. Is there a problem with either sale? Why or why not? See CC arts. 2440, 1839, 463, 464; Brown v. Hodge-Hunt Lumber Co. (La. 1926) [Yiannopoulos, Text, 137-39].

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2 Equibank is one of the most important cases we’ll study in this course. Know it well.
c° Segregation

If standing timber can be segregated from the ground for purposes of ownership, that is, one person can own the standing timber, while another owns the ground, how can this state of affairs come about?

1° By juridical act
   a° Affirmative transfer
   b° Reservation

How did “separate ownership” of the timber come about in Brown v. Hodge-Hunt Lumber Co. (La. 1926) [Yiannopoulos, Text, 137-39]?  

2° By acquisitive prescription

Can separate ownership of the standing timber come about through acquisitive prescription?

Is separate ownership of standing timber perpetual?

PH 21. Pascal sells Belle Terre to Jean Sot, reserving to himself the pine grove that stands thereon. The act of sale provides that Pascal may remove the pine trees at any time, but no later than five years after the date of the sale. Five years and one day later, the pine trees are still there. Who now owns the pine grove? Why? See Willetts Wood Products Co. v. Concordia Land & Timber Co. (La. 1929) [Yiannopoulos, Text, 139-41].

PH 22. The same as PH 21, except that the act of sale sets no date for the removal of the pine trees. What then? Is Jean Sot stuck? Must he endure this state of affairs until the Lord returns? If not, how long must he endure it? Why? See Willetts Wood Products Co. v. Concordia Land & Timber Co. (La. 1929) [Yiannopoulos, Text, 139-41].

b/ Things whose immovability is dependent on unity of ownership

Read Trahan, Supp 29-30.

1° Certain other constructions
   a° Definition of "other construction"

What's an "other construction"? See CC art. 463 & comments.

What’s the significance of the word “construction” here? Read Industrial Outdoor Displays v. Reuter (La. App. 4th Cir. 1964) [Trahan, Supp.,37]-37l].

2° Other construction

What's the significance of the word "other" here? Other than what? See CC art. 463.

How is one to draw the line between a "building," on the one hand, and an "other construction," on the other? See (again) P.H.A.C. Servs. v. Seaways Int'l, Inc. (La. 1981) [Yiannopoulos, Text, 115-18].

b° Prerequisites for classification of a "construction" as an immovable

Is it enough, to justify classifying a thing as an immovable, to establish that it's an "other construction"? In other words, is every "other construction" an immovable?

1° Permanently attached to the ground

PH 23. Pascal grants Cajun Oil & Gas Co. a mineral lease over Belle Terre, one that authorizes Cajun to drill for oil and gas there. The lease provides that any derricks, wells, or other structures built by Cajun
are to belong to Pascal. Pursuant to the lease, Cajun moves onto Belle Terre; builds a temporary derrick there, one that's not affixed to the ground by concrete, bolts, etc. and that can be disassembled and removed at a moment's notice without difficulty; and begins to produce oil. While production is still underway, Pascal sells the derrick to the Bayou Oilfield Equipment Co. The sale is not in writing. Is the sale invalid for want of proper form? Why or why not? See CC art. 463 cmt. (c) & Jones v. Conrad (La. 1924) [Trahan, Supp, 38].

How does one determine whether a particular construction is "permanently attached" to the ground? See CC art. 465 cmt. (c) & CC art. 466, ¶ 2.

**Belongs to the owner of the ground**

PH 24. The same as PH 23, except that (i) the derrick is permanently attached to the ground; (ii) the lease provides that any derricks, wells, etc. built be Cajun are to belong to Cajun, not Pascal; and (iii) Cajun, not Pascal, sells the derrick to Bayou. Assume, as is true under the rules of accession, that the derrick belongs to Cajun. What result now? Is the sale invalid for want of form? Why or why not? See CC art. 463 & CC art. 464 cmt. (c).

**Certain unharvested fruits & ungathered crops**

- **Definition**
  - **Unharvested crops**
    - **Unharvested**
    - **Crops**
  - **Ungathered fruits**
    - **Ungathered**
    - **Fruits**

**Classification**

PH 25. Olide, the owner of Terre Puante, leases it to his nephew, Auguste. The lease authorizes Auguste to plant fruit-bearing plants on the land, but sets forth the following curious provisos: "Any pears produced from any pear trees planted by Lessee shall belong to Lessor, but any grapes produced from any Muscadine vines planted by Lessee shall belong to Lessee." Pursuant to the lease, Auguste moves onto Terre Puante and proceeds to plant an orchard of pear trees and a vineyard of Muscadine vines. A few months later, while the lease is still in effect, Olide sells the pears (which are still on the trees) to the Dole Fruit Company and Auguste sells the grades (which are still on the vines) to the Alexander Wine Company.
Neither sale is reduced to writing. Is there a problem with either sale? Explain. See CC arts. 463 & cmt. (e) & 474.

**Segregation**

If unharvested crops or ungathered fruits can be segregated from the ground for purposes of ownership, that is, one person can own the them, while another owns the ground, how can this state of affairs come about? See Yiannopoulos, Treatise §§ 128-32 & Porche v. Bodin [Yiannopoulos, Text, 141-46].

**Other vegetation**

How should “other vegetation,” that is, vegetation that qualifies as neither (i) standing timber nor (ii) unharvested crops/ungathered fruits, be classified? Why? See (again) Trahan, Supp, 37i-37j (vegetation) & CC art. 465 (1870) (“Standing crops and the fruits of trees not gathered, and trees [les arbres] before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached. As soon as the crop is cut, and the fruits gathered, or the trees cut down, although not yet carried off, they are movables.”)

**By declaration**

PH 26. Pascal, the owner of Belle Terre, decides to start growing cotton. He buys a new multi-purpose tractor, complete with attachments for tilling and manure-spreading, and a new combine, drives them to Belle Terre, and puts them to work there. At planting time, he uses the tractor to till the soil and to spread manure; at harvest time, he uses the combine to pick the cotton; in the off seasons, he stores both on site in a shed. Sometime later, Pascal mortgages Belle Terre to Jambalaya Bank & Trust Co. Does the mortgage attach to the tractor and/or the combine? See CC art. 467.

PH 27. Clodice decides to open a bakery in a building that she owns on Main Street in downtown Gueydan. She buys and installs the necessary equipment, which includes a 500-lb mechanical dough-mixer. Though large and heavy, the dough-mixer is a snap to install: one simply rolls it into place, then plugs it in to a standard electrical outlet. Once it's in place, Clodice heads down to the Vermillion Parish courthouse, executes a document that declares the dough-mixer to be immovable, then gives it to the clerk of court for filing. The next day, she mortgages the bakery building, but not the land, to Jambalaya Bank & Trust Co. Does the mortgage attach to the dough-mixer? See CC arts. 466 & 467.

PH 28. The same as PH 27, except that Clodice is merely the lessee of the building; the owner-lessee of the building is Olide. (Clodice does, however, own the dough-mixer.) What result? Why?

PH 29. The same as PH 27, except that Clodice is merely the lessee of the dough-mixer; the owner-lessee of the dough-mixer is Pascal. (Clodice does, however, own the building.) What result? Why?

**Incorporeal immovables**

Read Trahan, Supp, 30.

a] Definition

Read CC art. 470.

b] Illustrations

Read CC art. 470, sent. 2. Is the list illustrative or exhaustive?

b] Movables

Read Trahan, Supp, 30-31.

1] Corporeal movables

a] Definition

Read CC art. 471.

b] Illustrations

Read CC arts. 472, ¶ 1, & 474; CC art. 463 cmts. (d) & (e); CC art. 464 cmt. (d)

* De-immobilized component parts

Read CC art. 468 & Trahan, Supp, 42.

c] Complication: security interests in corporeal
movables

Read Trahan, Supp, 39-40.

2) Incorporeal movables
   a} Definition

Read CC art. 473.

b} Illustrations

Read CC art. 473, ¶ 1, sent. 2, & ¶ 2. Is the list Illustrative or exhaustive?

3} Significance

Read Trahan, Supp, 31-33.

   a] Property law
      1} Modes of acquiring ownership
         a} Accession

Compare CC arts. 490-494 with CC arts. 507-516.

b} Acquisitive prescription

Compare CC arts. 3473-3488 with CC arts. 3489-3491.

   2} Transfer of ownership: effectivity vis-à-vis third persons

Compare CC art. 518 with CC arts. 517 & 2442.

PH 30. Olide takes out an unsecured loan from his friend, Clodice. Before the loan is paid off, Olide sells his farm (i.e., the land together with its component parts, such as the barn and house) and his troupeau des cochons (pig herd) to Jean Sot. After the acts of sale have been inked and the act of sale for the farm has been recorded in the public records, but before Jean Sot has “taken delivery” (i.e., assumed control) of either the farm or the troupeau, Olide defaults on his loan to Clodice. Clodice promptly obtains a judgment against Olide and, armed with that judgment, proceeds to foreclose on all of “his” property (as is her right, see CC arts. 3182 & 3183), including the farm and the troupeau, both of which are still in Olide’s control. Jean Sot intervenes in the foreclosure action, contending that, by virtue of the sales, the farm and the troupeau belong to him, not Olide, and therefore are not subject to foreclosure (inasmuch as Clodice has no rights against his, i.e., Jean Sot’s, property). What result should the court reach? Why?

3} Servitudes: objects

See CC art. 698 & cmts. (b) & (c); art. 639 & cmt. (c); art. 630 & cmt. (b).

4} Accessory real rights: mortgage & pledge (pawn & antichresis)

Compare CC art. 3286 with CC arts. 3135, 3154, 3155, 3178, & 3179.

b] Other: obligations

   1} Formalities
      a} Sale

See CC arts. 2440 & 1839.

b} Donation inter vivos

Compare CC art. 1536 with CC art. 1539.

   2} Sales: lesion

Skipped.

j) Improvements v. constituents

Read Trahan, Supp, 33-34.

   1] Definitions/illustrations
      a] Improvements
      b] Constituents

   2] Nature of the criterion of distinction

   3] Subclassifications
a] “Consented to” improvements/constituents

b] “Unconsented to” improvements/constituents

4] Significance: property law: accession with respect to immovables

a] Ownership

Compare CC art. 493, ¶ 1, with CC art. 493.1.

PH 32. Olide leases his farm to Ti-Boy. As was his right under the terms of the lease agreement, Ti-Boy (i) constructs a huge water storage tank out of bricks and mortar below ground level and, after finishing construction, covers it over with concrete and (ii) builds a barn for his horses. Assume, as is probably true, that the tank is an “integral part” of the land for purposes of CC art. 465 and that the barn is a building for purposes of CC arts. 463 & 464. To whom do the tank and barn belong? Why?

b] Remedies

1) Unconsented-to improvements and/or constituents

Read CC arts. 496 and 497.

2) Consented-to improvements and/or constituents

Compare CC art. 493, ¶¶ 2 & 3, with CC art. 495.

PH 33. The same as PH 32, except that the term of the lease has just ended and Ti-Boy has departed the farm without taking either the tank or the barn with him. (i) Can Olide now demand that Ti-Boy remove the tank and/or the barn at Ti-Boy’s expense? Why or why not? (ii) If Olide were to keep the tank and/or the barn, would he have to pay Ti-Boy for it? Why or why not? See (again) Guzetta v. Texas Pipeline Co., 485 So. 2d 508 (La. 1986) [Yiannopoulos, Text, 1019-24]; Symeonides, Developments, §§ 3 & 4, in Yiannopoulos, Text, 1028-31.
II. Possession

A. Introduction: possession & ownership

Read Planiol, TRAITÉ ÉLÉMENTAIRE n° 2285-2286, in Yiannopoulos, Text, 197-88. Then read & brief Pelouquin v. Calcasieu Parish Police Jury, 367 So. 2d 1246 (La. App. 3d Cir. 1979) [Yiannopoulos, Text, 188-91; then read Exposé des Motifs in Yiannopoulos, Text, 191-92].

PH 34. The same as Pelouquin, except that George was not put to sleep after all and, after the trial is over, is returned to the Pelouquins on the ground that they are his "possessors." A short while later, someone else--let's call him Pascal--shows up, claiming to be George's true "owner." To support his claim, he presents the following evidence: At the time when and near the place where the Pelouquins found George, he, Pascal, had lost his pet cat Perot, who matched George's description to a tee. Testing of hair left behind by Pascal's lost cat and of hair left behind by George at the CPACC showed that they were genetically indistinguishable. There's no doubt in anyone's mind that Perot and George are one. It's virtually certain that Pascal will, at the end of the trial (i.e., at the end of the trial), recover George. But who gets to keep him in the meantime? Why?

PH 35. The same as PH 34, with the following variations. This time, Pascal has far less impressive evidence to support his ownership claim to Perot-George. Gone is the DNA evidence. In its place is this: Shortly after Perot disappeared, Father Louis, the local Catholic priest and a man of unimpeachable integrity, told him, Pascal, that he had seen Perot (whom he, the father, knew from his prior visits to Pascal's house) wander out of Pascal's house and then meander down to the bus stop, where Mrs. Pelouquin picked him up. There's just one problem. A month after Father Louis related this story to Pascal, the Vatican reassigned him to the Australian outback, a post he still occupies. Father Louis is, therefore, unavailable to testify. And Pascal can't get on the stand to relate what the father told him. Anybody know why? It's inadmissible hearsay. So, the only admissible evidence Pascal has is his testimony that he lost a cat fitting George's description around the time when and the place where George was discovered. At the trial, the Pelouquins put on evidence that (i) stray cats fitting George's description were very common at that time and (ii) several such cats were seen in the vicinity of the bus stop both before and after Mrs. Pelouquin picked up George. Who's going to win? Why?

B. The concept of possession

Read Planiol, TRAITÉ ÉLÉMENTAIRE n° 2263-64, in Yiannopoulos, Text, 187-88; Exposé des Motifs, in Yiannopoulos, Text, 191-92; Trahan, Supp, 52 (definitions).

1. Definitions

What is "possession"? Does the term have just one meaning? What's the difference, if any, between “true possession” and “precarious possession”? Isn't the expression “precarious possession” an oxymoron? Compare CC arts. 3421 & 3424 with 3437.

2. Nature of possession

Is possession a "fact" or a "right"? What's the “right to possess”? See CC art. 3422.

C. Things susceptible of possession

1. Public & private things

PH 36. Our hero Pascal, finding himself without a place to live, heads down to the Centroplex grounds and there, between the old State Capitol, the Centroplex, the Parish governmental building, and River Road, pitches his tent. This property, which is owned by the city-parish government, is used for public events, e.g., the Blues Festival. After Pascal's lived there day and night for about 15 months, the Mayor, Tom Ed McHugh, finally decides to throw him out. Pascal then files suit against the city-parish government, claiming the he had acquired the right to possess the area around his tent. His theory? That he had been in possession of that area for over a year. What result? Why? See Trahan, Supp, 19-20 (“significance” of the “public-private” dichotomy).

2. Corporeals & incorporeals
a. Corporeals

b. Incorporeals

PH 37. Suppose that Jean Sot, the village idiot, buys a piece of farm land. On the neighboring lot is a small stream, one that Jean Sot would like to use to water his horses. The next day, Jean Sot sees Olide out working on the neighboring lot. Believing that Olide is the owner of that lot, Jean Sot proposes to buy a servitude of watering for $1000. Olide, it turns out, is only a hired hand, but, seeing an opportunity to make a quick buck, plays along. Jean Sot turns over the $1000 to Olide, Olide executes an "act of servitude" in Jean Sot's favor, and Jean Sot then begins to use the servitude. Can we say that Jean Sot "possesses" the servitude? Why or why not? See CC art. 3421, ¶ 2.

D. Constitutive elements of possession

What are the constitutive elements of or, if you prefer, the requisites to possession? See CC art. 3424; Trahan, Supp, 52-54 ("possession" v. "detention"). What are their Latin names?

1. Corpus

a. Definition

What do we mean by corpus? See CC arts. 3424, 3425; Trahan, Supp, 55a-55b (corpus or apprehension); Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07].

b. Illustrations

Read & brief Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07].

PH 38. Imagine an isolated piece of swampland, about 99% of which is covered with mud and/or shallow water. For some years now, our hero Pascal, who does not have title to the property, has been using it for hunting and trapping game. Because the hunting and trapping seasons are restricted to a few months out of the year, he is absent most of the time. Has he done enough to establish corporal possession? Why or why not?

2. Animus

a. Substantive matters

Read CC arts. 3421, ¶ 1, & 3424; Trahan, Supp, 55c-59.

1) Definition

What is the animus that is necessary for possession? See CC arts. CC arts. 3421, ¶ 1, & 3424; Harper v. Willis, 383 So. 2d 1299 (La. App. 3d Cir. 1980) [Yiannopoulos, Text, 190-94].

Is this animus different from "good faith"? If so, how? Read Trahan, Supp, 59-63.

2) Illustrations

Read & brief Harper v. Willis, 383 So. 2d 1299 (La. App. 3d Cir. 1980) [Yiannopoulos, Text, 211-16].

PH 39. The same as Harper v. Willis, except that Harper testified as follows: "Yeah, I knew I didn't really own it, but I wanted to own it, treated it as if I did own it, and hoped someday to become owner by acquisitive prescription." What result? Why?

PH 40. The same Harper v. Willis, except as follows. Harper acquired a title to the disputed lots back in 1939 before he ever used them. The title, though valid on its face, turns out to be invalid. Harper testifies that he believed the title was valid. What result? Why?

PH 41. The same as PH 40, except that Harper testifies that he knew the title was invalid all along.
What result? Why?

PH 42. The same as *Harper v. Willis*, except that Harper testified as follows: "I was just using the property provisionally. Had the true owners showed up, I would have moved off the property." What result? Why?

b. Procedural matters: presumptions & burden of proof

PH 43. In 1975, Olide moves onto a tract of land and begins to graze his cattle there. Olide knows that the tract belongs to someone else. Two years later, Pascal, the record title owner, discovers Olide's cattle on the tract and, to keep them out, erects a fence. Olide then brings a possessory action against Pascal. At the trial, Olide puts on evidence that he had corporeal possession of the tract, but no evidence regarding his *animus* or state of mind. Pascal puts on no evidence whatsoever. What result? Why? *See* CC art. 3427.

PH 44. The same as PH 43, except that before Olide moves onto the tract, Jean Sot, Pascal's hired hand, tells him it's okay for him to graze his cattle there. What result? Why? *See* CC art. 3427, 3437, & 3438.

E. Extent of possession

How much of the thing will the possessor be considered to possess? In the case of movables, the answer is simple: it's either all or nothing. But in the case of immovables, especially land, the answer is more complex. The answer, it turns out, depends on whether or not the possessor has title.

1. With title

Read CC art. 3426 cmt. (b).

a. Nature of constructive possession

What if the possessor has title to the thing? How much does he possess? *See* CC art. 3426.

Review *Manson Realty Co. v. Plaisance*, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07]. What did the court conclude regarding the *spatial extent* of the possession of the prevailing party? Why?

Read (you don’t need to brief it yet) *Whitley v. Texaco, Inc.*, 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. What did the court conclude regarding the *spatial extent* of the possession of the prevailing party? Why?

b. Requisites for constructive possession

1) Corporeal possession of a part

2) Title

Constructive possession requires a “title.” But what does that mean? And must the title be valid? Read CC art. 3426 cmt. (b).

3) *Not good faith*

Read CC art. 3426 cmt. (b).

2. Without title

a. Substantive matters: definition of actual possession

Read CC art. 3426, sent. 2.

b. Procedural matters: modes of proving actual possession

Read CC art. 3426 cmt. (d).

What does “inch-by-inch possession” mean? What about "possession within enclosures"? What might it mean to prove that? What’s an enclosure? What are some examples? *See* *Souther v. Domingue*, 238 So. 2d 264 (La. App. 3d Cir. 1970) [Yiannopoulos, Text, 216-18].

PH 45. Pascal and Olide have title to large adjacent tracts of land in rural Louisiana. Both have been cleared of trees. Over the years, Pascal has exercised various acts of dominion, e.g., hunting, trapping, grazing animals, and parking vehicles, over a slice of Olide’s tract. That section of Olide's tract, however, is unbounded, i.e., there's no artificial or natural barrier around it. One can't tell were it leaves off and where the rest of Olide's tract begins. Can Pascal establish his possession to the section of Olide's tract that he's
used over the years? If so, how?

F. Acquisition, conservation & loss of possession

1. Acquisition of possession

a. Original possession

1) Vicarious corpus

Let's begin with corpus. Must the possessor detain the thing himself (i.e., do something on, to, or with the thing personally) or can he detain the thing through an intermediary?

Review Manson Realty Co. v. Plaisance, 196 So. 2d 555 (La. App. 4th Cir. 1967) [Yiannopoulos, Text, 205-07]. Neither Manson Realty Co. itself nor any of its officers or employees ever set foot on the property. Then on what basis did the court conclude that Manson Realty Co. had established possession (which presupposes a finding that the company had corpus)?

Review Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. Neither Sunset Realty (Texaco’s ancestor-in-title) nor any of its officers or employees ever set foot on the property. Then on what basis did the court conclude that Sunset Realty had established possession (which presupposes a finding that the company had corpus)?

2) Vicarious animus

PH 46. After Cajun Rice, Inc., a farming corporation headed by Pascal (its president and sole employee), purchases a tract of land, Pascal, purporting to act on Cajun’s behalf, heads out to the tract, fences it off, ploughs it under, and sows it with rice. Is Cajun in possession of the tract? To be precise, does it (i.e., Cajun) have the required animus domini or animus sibi habendi with respect to Tract A? Why or why not? Art. 3430.

PH 47. After Mamère, Pascal’s aging and ailing mother (she no longer recognizes her children nor knows her name), is diagnosed with advanced Alzheimer’s Disease, Pascal obtains a court order interdicting her and appointing him as her curator. Before long Olide, falsely claiming to be the owner of a certain tract of land (Tract B) that lies next to a tract of land that Mamère owns (Tract A), sends her a letter in which he offers to sell Tract A to her at a certain price. Because Pascal considers the price to be favorable to his mother, he accepts the offer on her behalf (after first obtaining court approval, of course). Once Tract A is “hers,” Pascal leases it to Jean Sot, who immediately begins to farm it. Is Mamère in possession of Tract A? To be precise, does she have the required animus domini or animus sibi habendi with respect to Tract A? Why or why not?

PH 48. Pascal, about to depart for an extended trip to southern France, calls in Jean Sot, his hired hand, and tells him this: “While I'm away, I give you full authority over all of my affairs. You may, among other things, acquire property in my name using funds from my bank account.” With that, Pascal walks out of the room and flies off to the Promised Land. The next day, Olide shows up at Pascal's estate and, finding Jean Sot in charge, offers to sell him 40 acres of a the neighboring estate. The two close the deal, Jean Sot pays Olide out of Pascal's funds, and Jean Sot, acting for Pascal, goes into possession of the 40 acres. There's just one problem: Olide, a con artist, didn't own that property. Two years later, Pascal, his skin bronzed from long afternoons spent on the French riviera, reluctantly returns to his estate in Louisiana. When he's informed of the deal Jean Sot struck with Olide, he approves of it and, of course, at that moment himself believes that he is possessing as owner. But a few days later the real owner shows up and orders Pascal and his men off the property. When did Pascal acquire possession of the property? When Jean Sot first moved onto it or when he, Pascal, was first apprized of the deal? Why? See François Terré & Philippe Simler, DROIT CIVIL: LES BIENS § 147, at 107 (4th ed. 1992) (“one can conceive of hypothetical situations of the acquisition of possession by borrowing the animus of another”).

b. Derivative possession

1. Derivative corpus

Read CC arts. 3441 & 3442.
Review Whitley v. Texaco, Inc., 434 So. 2d 96 (La. App. 5th Cir. 1983) [Yiannopoulos, Text, 199-204]. There is no indication in the opinion that Whitley himself, as opposed to his "ancestor" (Coles), ever corporeally possessed the land described by his title. And yet the court concluded that Whitley had acquired possession? Yes. How is that possible?

2) Derivative animus

PH 49. For years, Pascal possessed part of a tract of land that belongs to Olide. Throughout that period, he had the requisite animus, i.e., he intended to possess the land as owner. But then he died. In his testament, he left "all of my property" to his son, Ti-Boy. Ti-Boy, however, wasn't aware that Pascal had possessed the land. And so, for years after Pascal’s death, Ti-Boy, naturally enough, never gave any thought to that land. But one day, Jean Sot, Pascal's old hired hand, dropped by to visit Ti-Boy and, in the course of their conversation, informed Ti-Boy that Pascal had possessed the land. Ti-Boy immediately rushed out of the house and fenced off the land. Olide then brought suit against him, attempting to throw him off. When would you say that Ti-Boy first acquired the animus to possess the land as owner? Was it when Pascal died? Or was it not until he himself took physical control of the land? Why?

2. Conservation of possession

a. Substantive matters: what is required

1) Animus

Must one retain animus domini / animus sibi habendi to keep one’s possession alive?

2) Corpus

Review Souther v. Domingue [Yiannopoulos, Text, 216-18] again. There was a hiatus in the Prejeans’ detention of the land, was there not? When did the court conclude that the Prejeans’ possession had begun—when the detention first began or when, after the hiatus, it was resumed? And what did the court conclude about the continuity of the Prejeans’ possession? See CC art. 3431 & cmt. (b).

PH 50. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves. Jean Sot continues to pay taxes on the land. Five years pass. Is Jean Sot still in possession of the land? Why or why not? See CC art. 3433.

PH 51. The same as PH 50, except that Jean Sot, after closing up shop on the land, does not thereafter pay taxes on it and, further, tells his friend, Pascal, that he wants to having nothing else to do with the land and will never return to it. Is Jean Sot in possession of the land? More to the point, is he in civil possession? Why or why not? See CC art. 3431 cmt. (c). What's the difference between a case like this, when the possessor abandons the thing, from a case like PH 50? See CC art. 3433.

PH 52. The same as PH 50, except that Jean Sot does not leave of his own free will. It turns out that Olide did not the property in question, that it belonged to Clotile. Clotile, upon discovering Jean Sot's cutting operations, sends a team of armed security guards onto the property. They lead Jean Sot and his men off the property at gun point, put up an electric fence around the property, and thereafter patrol the fence line. Is Jean Sot still in possession? More to the point, is he in civil possession? Why or why not? See CC art. 3433.

b. Procedural matters: presumption & burden of proof

PH 53. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves and, the next day, drops dead. Do Jean Sot's heirs have civil possession of the land? Why or why not? See CC art. 3422.

3. Loss of possession

How might a possessor lose possession? See CC art. 3433.

Is it sufficient, to accomplish an “abandonment,” that one simply “manifest” one’s “intention” to abandon? Must one not, as well, actually relinquish corpus over the thing?
1. **Loss of both corpus and animus: abandonment**

PH 54. Jean Sot buys a certain tract of forest land from Olide, then moves onto and begins to cut timber. After conducting lumbering activities there for two years, the timber is exhausted and so, Jean Sot closes up shop and leaves. He does not thereafter pay taxes on the land and, further, tells his friend, Pascal, that he wants to having nothing else to do with the land and will never return to it. We may assume that Jean Sot was once in possession of the land. But is that still true? Why or why not?

PH 55. Pascal, who plans to ride on the Krewe du Poule float in the Greater Gueydan Mardi Gras parade, runs to the store and buys doubloons and beads. While riding along on the float, he throws his treats to the spectators who've gather to watch the spectacle. He was once, we can assume, in possession of the trinkets. Is that still true? Why or why not?

2. **Loss (involuntary) of corpus alone**

a. Eviction (usurpation)


b. Destruction

PH 56. Olide, without Pascal's permission, moves onto Pascal's rural and puts up a brothel there. For the next several years, Olide uses the brothel and the land around it as if it were his own. Then one night, the Supreme Being, upon deciding he or she has had enough, takes action. A lightning bolt strikes the building, burning it to the ground. Has Olide lost possession of the building? Why or why not?

c. Escape

Skipped.

3. **Loss of animus alone**

PH 58.1. Pascal and Clodice enter into a contract of sale, the object of which is Camille *le cocodrie* (alligator), which Clodice is selling and Pascal is buying. Under the terms of the sale, Clodice agrees to hold Camille for Pascal until he can complete construction of an alligator holding pen. Before the sale, Clodice, you may assume, had possession of Camille. Is that still true? Why or why not?

PH 58.2. Pascal builds moves onto a certain marsh, then hunts and fishes on it and burns it regularly for a few years. Then his health declines, forcing him to quit his outdoor activities. After that, he moves to a house in the big city, Gueydan, and never returns to the marsh. Though he from time to time grants mineral leases in the marsh to oil and gas companies, none of them ever begins drilling. A few years Pascal's departure, Olide takes up residence at Pascal's camp and, like Pascal before him, hunts and fishes on it and burns it. To the extent that Pascal might be able to claim to be in possession of the marsh, what kind of possession would he have? What kind of possession might Olide claim to have? Which prevails? In other words, which person—Pascal or Olide—is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.

PH 58.3. Pascal acquires title to a 40-acre estate known as Belle Terre, which consists of undeveloped woodland. He clears five acres, on which he builds a house, plants cotton, and grazes cattle. He never sets foot on the other 35 acres. Then Pascal, who's become sick and senile, leaves Belle Terre vacant and moves in with his daughter in Gueydan, though he continues to pay taxes on it. A few years later, Olide, unbeknownst to Pascal, fences off five of the undeveloped acres of Belle Terre, clears part of it, and begins raising sheep there. To the extent that Pascal might be able to claim to be in possession of the part of Belle Terre that Olide has invaded, what kind of possession would he have? What kind of possession might Olide claim to have? Which prevails? In other words, which person—Pascal or Olide—is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.

Re-read & now brief *Souther v. Domingue*, 238 So. 2d 264 (La. App. 3d Cir. 1970) [Yiannopoulos,
PH 58.4. The same as Whitley v. Texaco, except that (i) Texaco stopped leasing its tract out back in 1950 and, since that time, did nothing on, to, or with the land, except to pay taxes on it and (ii) Whitley stopped leasing or otherwise using his tract in 1960, ten years after Texaco stopped leasing or otherwise using its tract. To the extent that Whitley might be able to claim to be in possession of the wooded area, what kind of possession would he have? What about Texaco? Which prevails? In other words, who is truly “in possession”? Why? Ignore, for the moment, the complications that might be created by the presence of “vices” of possession.

G. Vices of possession
To be effective possession must have certain qualities. What are they? See CC art. 3435.

1. Violence
   a. Definition
   What does it mean to say that a possession as "violent"? See CC art. 3436, ¶ 2; then read Trahan, Supp, 69a-69c.
   b. Amplification
   PH 59. Olide, who has long coveted the fine tract of marshland that Pascal hunts, traps, and burns, decides he must have it as his own. With his two shotgun-totin' buddies, Foster and Jenkins, at his side, Olide heads out in his marsh boat in search of Pascal. When Olide spotted Pascal's flat bottom boat out in the marsh, he headed straight for it and, pulling up alongside, shouted: "Foutes ton camp ou j'avais mettre un trou à ton tête," which, translated, is "Get the devil out of here or I'm going to put a hold in your head." Pascal, no fool he, leaves. Olide then hires Foster and Jenkins to patrol the marsh 24 hours a day to keep Pascal out, by force if necessary. Olide then begins to hunt, trap, and burn the marsh himself. Is Olide in possession of the marsh? No. Why not? Because his possession was infected with the vice of violence or, in other words, his possession was not peaceable.

   PH 60. The same as PH 59, except that, three months later Olide, who has fallen under the spell of the teachings of Mohandas Gandhi (the Mahatma), especially his teachings on nonviolence, dismisses Foster and Jenkins and begins to plants water lilies in the marsh. Is Olide now in possession of the marsh? Why or why not? See CC art. 3436, sent. 2.
   PH 61. The same as PH 59, except that Pascal, instead of leaving the scene when confronted by Olide et al., pulls an AKA 47 out from under the seat of his boat and starts firing at will, wounding Foster and scaring Jenkins so badly that he suffers a heart attack. Olide immediately comes about and heads for safety. Pascal, to make sure that he has no trouble, puts up an electric fence around the marsh and sows the marsh with alligators. Is Pascal's possession of the marsh efficacious (valid)? Why or why not? See Trahan, Supp, 69c-69d (doctrine re maintenance of possession by violence).

   PH 62. The same as PH 59, except that now there's another person who claims an interest in the marshland, Lil-Fille. Lil-Fille has title to the marshland, though how good it is is unclear. On the day after the encounter between Olide and Pascal, Lil-Fille heads out into the marsh to do a little surveying. Upon spotting Lil-Fille, Olide heads out to meet him unarmed and alone. When the two boats are pulled up alongside each other, the two exchange greetings. Eventually Olide gets around to asking her what she's up to. When Lil-Fille tells him that she's surveying "her" marsh, Olide interrupts her, tells her she's mistaken--that the marsh belongs to him--, and politely asks her to leave. She does so. Olide thereafter continues to hunt, trap, and burn the marsh and his henchman, Foster and Jenkins, continue to patrol the marsh looking for Pascal. Lil-Fille never returns to the marsh. Is Olide's possession of the marsh efficacious (valid)? Why or why not? See Trahan, Supp, 69d-69e (re cessation of violence).
2. Clandestinity
Read Planiol, Elementary Civil Law Treatise, nn° 2281-2283, in Yiannopoulos, Text, 238.

a. Definition
What does it mean to say that a possession as clandestine? *See* CC art. 3436, ¶ 2.

b. Amplification
PH 63. One night while Pascal lies sleeping in his hunting camp, Olide sneaks inside, snatches Pascal's prized cane fishin' pole and heads for home. Once there, he squirrels the pole away in the attic of his mobile home where it remains for months. Is Olide's possession of the pole efficacious (valid)? Why or why not?

PH 64. The same as PH 63, except that Olide, after keeping the pole hidden for several months, takes it out and begins to use it. He's even so bold as to use it at fishing rodeos attended by Pascal. Is Olide's possession of the pole efficacious (valid)? Why or why not?

PH 65. The same as PH 63, with the following modifications. Pascal, it turns out, is just as much a thief as Olide: he got the fishing pole by stealing it out of the back of Jean Sot's pickup truck. A few days after Olide steals the pole from Pascal, Olide takes Jean Sot into his attic and shows him the fishing pole. Jean Sot, dimwit that he is, doesn't recognize the pole as his own. Time goes by, during which Olide keeps the pole hidden from Pascal. Is Olide's possession of the pole efficacious (valid)? Why or why not? *See* Trahan, Supp, 73-74.

3. Discontinuity
Read Planiol, Elementary Civil Law Treatise, nn° 2277, in Yiannopoulos, Text, 236.

a. Definition
What does it mean to say that a possession as "discontinuous"? *See* CC art. 3436, ¶ 2.

b. Amplification
Does it strike you as odd that continuity, i.e., the exercise of corpus at regular intervals, is an essential quality of possession? Doesn't this requirement, at least at first blush, seem to contradict another fundamental principle of the law of possession, i.e., civil possession? How so? How can (and should) the apparent contradiction be resolved?

PH 66 (based on *Romar v. Estate of Gay*, 454 So. 2d 431, 435 (La. App. 3d Cir. 1984)). Olide, without Pascal's permission, goes onto a densely wooded tract of land to which Pascal holds the title. For three months, he carries out logging operations there. Then he leaves. He does the same thing the next year and the year after that. Then ten years pass. Is Olide still in possession of the land? If we take seriously the notion of civil possession, how do we answer this question? But what if we take seriously the requirement of continuity of possession? Which should we take seriously? Why?

4. Equivocation

a. Definition
What does it mean to say that a possession is "equivocal"? *See* CC art. 3436, ¶ 2.

b. Amplification
PH 67. Merelia, the mother of Ozon and Louis, owns a piece of land that's suitable for farming. Merelia dies intestate, i.e., without a will. After her death, Louis, without first communicating with Ozon, moves onto the property, builds himself a small barn and plants a soybean crop. Assuming that Louis is in possession of the property at all, would you say that that possession is efficacious (valid)? Why or why not? *See* CC arts. 888, 797, & 802.

PH 68. Ti-Boy and Lil-Fille, husband and wife, decide to split up. Ti-Boy moves out to the camp; Lil-Fille stays in the house. They do not, however, immediately seek a judgment of separation or divorce or execute a separation of property agreement. When Ti-Boy left the house, he, of course, left behind many of his belongings, included his collection of fishing and hunting magazines, which his father had given him before his marriage. Lil-Fille, herself no stranger to activities like giggin' flounder and pumpin' shotguns,
would look through the magazines from time to time and did her best to maintain the collection in good form. This state of affairs continues for some time. Assuming that Lil-Fille is now in possession of the magazines at all, would you say that that possession is efficacious (valid)? Why or why not?

**H. Precarious detention (precarious possession)**
Read *Exposé des Motifs & Comment* in Yiannopoulos, Text, 239-41.

1. Definition
What is precarious possession? See CC art. 3437.
Read Trahan, Supp, pp. 64-69a (notes on “collective” and “compound” possession).

2. Illustrations
   a. **Precarium**
   b. **Lease**
      PH 75. Pascal leases his marsh to Olide for a period of 1 year for a price of $10/month. Olide moves onto the property, then begins hunting, fishing, etc. Is Olide a real possessor or a precarious possessor or both? Explain. See CC art. 3438.
   b. **Deposit**
      PH 76. Pascal, who's about to leave on a vacation in the south of France, gives his prized nutria coat to Jean Sot for safekeeping. Is Jean Sot a real possessor or a precarious possessor or both? Explain.
   c. **Pledge**
      PH 77. Olide asks Pascal to loan him $100. Pascal's willing to make the loan, but wants some security. So Olide pledges his collection of Dewey Balfa records to Pascal, that is, gives Pascal the records with the understanding that, should Olide default on the loan, Pascal can sell the records and use the proceeds to retire the debt. Is Pascal a real possessor or a precarious possessor or both? Explain.
   d. **Co-ownership**
      PH 78. Pascal and Olide pool their money (each contributes $50,000) to buy a stretch of land running along Bayou Teche. Olide, without Pascal's knowledge, then moves onto the land, builds a house there, and settles down. Is Olide a real possessor or a precarious possessor or both? Explain.
   e. **Servitude**
      PH 79. Pascal and Olide own adjacent estates, Belle Terre and Terre Puante, respectively. Pascal has never set foot on Belle Terre. For the price of $100, Pascal executes in Olide's favor a document that reads as follows: "On behalf of myself and all future owners of Belle Terre, I hereby grant to Olide and to all future owners of Terre Puante the right to cross Belle Terre to gain ingress to and egress from Terre Puante." Olide then begins to use the servitude, walking across Belle Terre everyday. Is Olide a real possessor or a precarious possessor or both? Explain.

3. Procedural matters: presumptions
PH 80. This should sound familiar. In 1975, Jean Sot, Pascal's hired hand, gives Olide permission to graze his (Olide's) cattle on Pascal's land. Two years later, Olide, who really likes the land, decides that he wants it for himself, that he would like to be the owner. From that point forward, he believes that he is possessing the land as owner. Pascal, meanwhile, decides to put up a shopping mall on the land. Pursuant to his development plan, he puts up a fence, effectively blocking Olide out. Olide then brings a possessory action against Pascal. At the trial, Olide puts on evidence that he had corporeal possession of the tract, but no evidence regarding his *animus* or state of mind. Pascal puts on no evidence whatsoever. Who will prevail? Why? See CC arts. 3427 & 3438.

4. Termination (interversion of title)
Can a precarious detainer terminate his precarious status (or, as the French put, “intervert” his title from one of lessee, servitude holder, depositary, co-owner, etc., into one of owner), thereby becoming a possessor? If so, how? See CC arts. 3438 & 3439; review Yiannopoulos, Text, 239-41; read Trahan, Supp,
a. Co-owners

What must a co-owner do to terminate his precarious possession vis-a-vis his other co-owners and to begin possessing for himself? See CC art. 3439, ¶ 1.

PH 81. Remember Merelia and her sons, Ozon and Louis? Well, they're back. Merelia, who owns a piece of land on which she had for years grown soybeans, dies intestate. After Merelia’s death, Louis, without first communicating with Ozon, moves onto the land, puts up an electric fence around it, and posts signs along the fence that read as follows: “No trespassers. Ozon, this means you, too.” Then Louis starts using the land (e.g., planting soybeans). Does Louis possess the land? Why or why not?

PH 82a. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis, without Ozon's knowledge, goes to probate court, gets a judgment of possession recognizing him as Merelia's sole heir and putting him alone into possession of the land, and records it in the public records. Then Louis starts using the land (e.g., planting soybeans). Does Louis possess the land? Why or why not?

PH 82b. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis goes to see Olide. In exchange for $1000, Olide executes a bogus act of sale whereby he purports to sell the land in question to Louis for $50,000. Louis then records the act of sale in the public records. Then Louis starts using the land (e.g., planting soybeans). Does Louis possess the land? Why or why not?

PH 83. The same as PH 81, except that Louis does something entirely different after Merelia's death. Instead of putting up a fence and signs, Louis, without first communicating with Ozon, moves onto the land and plants a new soybean crop, pays taxes on the land, and buys liability and casualty insurance for it. Does Louis possess the land? Why or why not?

b. Other detainers (lessees, servitude holders, borrowers for use, depositaries, pledgees, holders of precaria)

What about other detainers, e.g., lessees, servitude holders, holders of precaria, etc.? What must such a precarious possessor do to terminate his precarious possession vis-a-vis his the real possessor and to begin possessing for himself? See CC art. 3439, ¶ 2. Is this standard the same as or different from that for co-owners? If the standards are different, how are they different?

PH 84. Pascal leases his marsh to Olide for a period of 1 year for a price of $10/month. Olide moves onto the property, then begins hunting, fishing, etc. Six months into the term of the lease, Olide, having decided that he wants the marsh for himself, sends Pascal a letter which reads as follows: "You are hereby notified that from this day forward I shall possess the marsh for myself." Pascal receives and reads the letter. Is Olide now a real possessor or a precarious possessor? Why?

PH 85a. The same as PH 84, except that Olide, instead of writing Pascal a letter, says to him during a telephone conversation: "From here on out I'm using the marsh as my own." What result now? Why?

PH 85b. The same as PH 84, except as follows. Olide neither writes nor says anything to Pascal. Instead, after deciding that he wants to possess the marsh for himself, Olide simply stops making the monthly rental payments. Four months have now come and gone. There has been no contact, written, verbal, or otherwise, between Olide and Pascal during that period. What result now? Why?

PH 86. The same as PH 85b, except as follows. In addition to withholding his rent, Olide goes to see Clodice. In exchange for $1000, Clodice executes a bogus act of sale whereby she purports to sell Pascal's marsh to Olide for $50,000. Olide then records the act of sale in the public records. Pascal, like most normal people, doesn't spend his time reading the public records and, so, has no idea what Olide has done. Is Olide now a real possessor or a precarious possessor? Why or why not?

I. Continuation & junction of possessions (tacking)

Read CC arts. 3441, 3442, 936, & 3506(28); Aubry & Rau, Droit Civil Français nn° 90-91, in
Yiannopoulos, Text, 233-34; Trahan, Supp, 75a-75e (re continuation & junction of possessions).

PH 87. On March 1, 2000 Olide, without any pretense of title, moves onto a tract of land that belongs to Pascal and, once there, sets up a ferme de cochon (pig farm) on it. Seven months later, on October 1, 2000, Olide dies intestate. Avarice, his only child, then picks up where Olide left off, raising pigs on the land. On April 1, 2001, Pascal, having discovered Olide’s pig farm on his land, runs Avarice and her pigs off the land at gunpoint. Avarice immediately files a possessory action against Pascal. To prevail, Avarice must establish, among other things, that she had acquired the “right to possess” prior to Pascal’s expulsion of her from the land. Can she do that? Why or why not?

PH 88. The same as PH 87, except that, this time, Olide doesn’t die on October 1, 2000; instead, he gives the ferme de cochon to Avarice by way of a valid donation inter vivos on that date. What result would you predict now? Can Avarice establish that she had acquired the “right to possess” the land prior to her expulsion from it? Why or why not?

PH 89. Forget PHs 87 & 88. On March 1, 2000 Olide, as Pascal’s lessee, moves onto a tract of land that belongs to Pascal and, once there, sets up a ferme de cochon on it. Before long (a month or so into the lease), Olide “changes his mind” with respect to the land, specifically, decides he’d like to have the land for himself. Nevertheless, Olide never gives Pascal actual notice of his change of heart. When Olide dies (again, on October 1, 2000, and, again, intestate), Avarice, relying on what Olide had (falsely) told her, believes that he owned the land and, consequently, that it now belongs to her. And so, she picks up where Olide left off, raising pigs on the land. On November 1, 2001, Pascal, having discovered Olide’s pig farm on his land, runs Avarice and her pigs off the land at gunpoint. Avarice immediately files a possessory action against Pascal. To prevail, Avarice must establish, among other things, that she had acquired the “right to possess” prior to Pascal’s expulsion of her from the land on November 1, 2001. Can she do that? Why or why not?

PH 90. The same as PH 89, except that, this time, Olide doesn’t die on October 1, 2000; instead, he gives the ferme de cochon to Avarice by way of a valid donation inter vivos on that date. What result would you predict now? Can Avarice establish that she had acquired the “right to possess” the land prior to her expulsion from it on November 1, 2001? Why or why not?

J. Effects of possession

What are the "effects" of possession? In other words, why might someone be interested in establishing that he is a possessor? What would that get him?

1. Procedural rights: presumption of ownership


2. Substantive rights

a. Accession

See CC art. 482-483.

1) Rights with respect to fruits & products

2) Rights with respect to enhancements


b. Acquisitive prescription

See CC art. 3446.

c. Possessory protection

See Code Civ. Proc. art. 3655, in Yiannopoulos, Text, 244.

K. Judicial protection of possession

1. Introduction

2. Means of protection
a. Immovables
What if the thing is an immovable? How (by means of what kind of action) does one protect one’s possessory interests in such a thing? See Code Civ. Proc. art. 3655, in Yiannopoulos, Text, 244; CC art. 476 comment (d), ¶ 2.

b. Movable
What if the thing is a movable? How (by means of what kind of action) does one protect one’s possessory interests in such a thing? See Yiannopoulos, Treatise §§ 346-350, in Yiannopoulos, Text, 599-601.

3. Prerequisites to the possessory action
What are the prerequisites to a possessory action? See Code Civ. Proc. art. 3658, in Yiannopoulos, Text, 245.

a. Disturbance in fact or in law
1) Necessity
PH 91. Olide, knowing full well what he's doing, moves onto a tract of land to which Pascal holds the title, clears it, builds a golf course on it, and goes into business. One year and one day later, Olide, who knows enough about the law to know that he's now acquired the right to possess, wants to have that right judicially recognized. So he files a possessory action against Pascal, seeking, in the words of Code Civ. Proc. art. 3662(1), a "[j]udgment . . . [r]ecogniz[ing] his right to the possession of the immovable property." What result? Why?

2) Definition & varieties
What is a "disturbance"?

a) Disturbance in fact

(1) Eviction
What does "eviction" mean here? Does it mean the same thing that it means in Civil Code article 3433, entitled "Loss of possession," or something different?

(2) Mere disturbance
What is a mere disturbance?
PH 92. Olide moves onto Pascal's land, builds a house, dams up the stream, and plants crops. Years pass. Then one day, Jean Sot crosses part of the land, takes a drink of water from the stream, and then goes on his merry way. Jean Sot repeats this behavior one or twice a month for several months. Has there been a disturbance of Olide's possession? Why or why not? If so, did the disturbance amount to an eviction or was it something less than that? Explain.

PH 93. One cold fall morning Olide goes deer hunting on a wooded section of a tract of land to which Pascal holds the title. Assume that Pascal has constructive possession of that part of the land. Has there been a disturbance of Pascal's possession? Why or why not? If so, did the disturbance amount to an eviction or was it something less than that? Explain.

PH 94. Olide holds title to a residential lot in the Bocage Subdivision of Baton Rouge. One winter morning, the neighborhood children gather on the lot next door and begin to play football. During the game, one of the children inadvertently steps over the boundary line and, for a fraction of a second, puts his foot down on Olide's land. Olide, hardass that he is, files a possessory action against the child's parents. That Olide has not been evicted is clear. But has he suffered a mere disturbance? Why or why not?

b) Disturbance in law

PH 95. Clodie, after buying a residential lot from Pascal, builds a house on it and moves in. A few years later, Olide sells the same lot to Jean Sot, who promptly records the act of sale in the parish conveyance
records. Has Clodice's possession been disturbed? Why or why not? If so, what kind of disturbance is it—factual or legal? Explain.

PH 96. The same as PH 95, except that Olide, instead of selling the lot to Jean Sot leases it to him. Jean Sot promptly records the act of lease in the parish conveyance records. Has Clodice's possession been disturbed in law? Explain. See CC art. 2681.

b. Possession at the time of the disturbance

PH 97. The same as Antulovich, except that Antulovich stopped using the disputed land on January 1, 1969. Antulovich did, however, pay the tax assessments that the assessor levied on that land in 1969 and 1970 and had every intention of returning to it some day. Would Antulovich, under these facts, have been “in possession” of the land at the time of the disturbance (the 1970 survey) for purposes of CCP art. 3658(1)? Why or why not? Clues: Consider (i) whether, though Antulovich would not have had “corporeal” possession at the time of the disturbance, he might nevertheless have had some other sort of possession and (ii) whether that other sort of possession is sufficient for purposes of CCP art. 3658(1) (does that article say or even imply that only “corporeal” possession will do)?

c. Uninterrupted possession for one year prior to the disturbance

1) Elements of the requirement

PH 98-a. On March 15, 1994, Pascal, after acquiring title to a certain tract of farmland, moves onto it, builds himself a house, plants a few crops, etc. Three months later, on June 15, 1994, Pascal leaves for a one month vacation to Provençe, France. Later that same day, after Pascal has up and left, Olide, who has acquired title to the same tract of farmland, moves onto it, takes over the house, plows under the crops, etc. and begins to graze his sheep on the land. When Pascal returns (July 15, 1994), he confronts Olide, tells him to get off his land, threatens to have him jailed, etc. Olide, however, refuses to budge. Five days pass, during which Pascal and his lawyer get together the necessary paperwork for a possessory action. But before can they file it, Olide closes up his operation and leaves (July 20, 1994). Why? It's not clear, but it seems that his sheep had already exhausted the pastureland. At any rate, Pascal, delighted that Olide has left, moves back in and resumes his happy pastoral existence (July 20, 1994). Time goes by. Once again, Pascal leaves town on a vacation. While he's away, on April 1, 1995, Clodice moves in, takes over the house, etc. On April 7, 1995, Pascal, who has since returned, files a possessory action against Clodice. What result would you predict? Why?

PH 98-b. On March 15, 1994, Pascal, after acquiring title to a certain tract of farmland, moves onto it, builds himself a house on it, plants a few crops on it, etc. Time goes by. On April 15, 1995, Pascal leaves for an extended vacation in Provençe. Later that same day, after Pascal has up and left, Olide, who has acquired title to the same tract of farmland, moves onto it, takes over the house, plows under the crops, etc. and begins to graze his sheep on the land. Time goes by. On May 1, 1996, Olide leaves on a overnight trip to Bunkie. Later that same day, after Olide has up and left, Pascal, who has just returned from Provençe, moves back onto the land and into the house. The next day, May 2, 1996, Olide returns to the land and, finding Pascal there, demands that Pascal leave. Pascal refuses to budge. Olide then brings a possessory action against Pascal, seeking to have him evicted. Pascal files a reconventional demand (the equivalent in Louisiana procedure of a “counterclaim” in federal procedure), asserting that he is the true possessor of the land and seeking appropriate possessory relief. Who will win? Why?

2) Exception to the requirement

a) Eviction by "force"

PH 99. On October 1, 1995, Pascal goes into possession of a certain tract of marshland. On February 1, 1996, Olide sneaks on to the marsh, finds Pascal, and then, while pointing a shotgun at him, orders him

b) Eviction by "fraud"

PH 100. The same as PH 99, except that Olide employs a different method for getting Pascal off the marsh. On January 1, 1996, Olide offers to buy the marsh from Pascal for $50,000, but tells him he won't be able to get the money until February 1, 1996. As he explains it to Pascal, his money was invested in Swiss bank securities, which, under Swiss law, could not be liquidated without 30 days notice. In point of fact, however, Olide has no such Swiss securities and, more importantly, never intends to pay Pascal one penny. Taking Olide at his word, Pascal agrees to turn the marsh over to Olide immediately (January 1, 1996). But then time goes by and Olide never pays. Eventually it becomes clear to Pascal that Olide, once again, has taken him to the cleaners. On March 1, 1996, Pascal files a possessory action against Olide. What result would you predict? Why? See Code Civ. Proc. art. 3658(2), in Yiannopoulos, Text, 245.

d. Action within one year of the disturbance


PH 101. On May 1, 1990, Clodice moves onto a certain tract of land, fences it in, puts up a barn on it, and begins grazing cattle there. On March 1, 1992, Olide, while on his way home from a hunting trip, jumps over Clodice' fence, crosses the land, takes a drink of water from the stream, and heads on his way. On April 1, 1993, Clodice files a possessory action against Olide, seeking damages for his having disturbed her possession. What result would you predict? Why?

PH 102. The same as PH 101, except that Olide returns to the land on June 1, 1994, this time with a bulldozer and a backhoe. After tearing down part of Clodice's fence, then begins putting up his own fence around part of the land. Because the fence is made of stone, it takes several weeks, until July 1, 1994, to complete. Clodice files a possessory action against Olide on June 15, 1995. What result would you predict? Why?

PH 103. The same as PH 101, except that on April 1, 1994, Olide sells Clodice's tract to Jean Sot, who promptly files the act of sale in the parish conveyance records. A year and a half later, Clodice decides to sell the tract to Pascal. Pascal's attorney, looking through the abstract of title, then discovers Olide's sale to Jean Sot. When Pascal brings this "cloud" on Clodice's title to her attention, she promptly files a possessory action against Olide and Jean Sot. The date of her suit is February 1, 1996. What result would you predict? Why?

4. Proper parties plaintiff
   a. Possessors
   b. Precarious detainers

What about a precarious detainer? Can he, she, or it, as the case may be, bring a possessory action when his, her, or its detention is disturbed? See CC art. 3440.
III. Modes of acquiring real rights based on possession


A. Occupancy
Read CC art. 3412 & cmt. (b); Trahan, Supp, 87-88.

B. Quasi-occupancy

1. Of lost things
Read CC art. 3419.

2. Of treasure
Read CC art. 3420.

C. Acquisitive prescription

1. Definition

a. By exposition
What do we mean by acquisitive prescription? See CC art. 3446.

1) Ownership

PH 118. Jean Sot, who needs fresh water for the cattle that he runs on his estate, Terre Lourde, decides he’d like to acquire the strip of land on his neighbor’s estate, Belle Terre, that lies between Terre Lourde and a bayou that bisects Belle Terre. One day Jean Sot sees Olide, Pascal’s farm lessee, out on Belle Terre. Thinking that Olide is the owner of that estate, Jean Sot offers to pay him $50,000 for that strip of land. Olide, sensing the opportunity to make a quick buck, agrees. Jean Sot then begins to run his cattle on that strip of land and to water his cattle from the bayou. This goes on, without interruption, for 33 years. Has Jean Sot acquired any kind of interest in Belle Terre? If so, what kind would it be? And how, precisely, did he get it? See CC art. 3486.

b. By contrast
Is acquisitive prescription the only kind of prescription? See CC art. 3445; Baudry-Lacantinerie, Treatise n° 25 & 34-35, in Yiannopoulos, Text, 347 & 377-82.

1) Other varieties

a) Liberative prescription
What is liberative prescription? See CC art. 3447.

PH 120. On the morning of March 1, 1994, Clodice and Olide were boating on White Lake, Clodice in her party barge and Olide in his high speed bass boat. Before the day was up, Olide, who'd had a few too many, ploughed his boat into the party barge. As a result of the collision, the party barge sank. On March 15, 1995, Clodice filed a tort action against Olide, seeking to recover damages for the loss of the boat. Does Clodice still have the right to bring such an action? Why or why not? See CC art. 3492.

b) Prescription of nonuse
What is the prescription of nonuse? See CC art. 3448.
PH 121. Pascal, who's been diagnosed with terminal cancer, writes out a testament in which he provides, among other things, that his mother, Cecile, is to have the right to dwell in the guest house on Belle Terre until the time of her death. A few days later, Pascal dies. His testament is probated and, on May 1, 1984, the probate court issues a judgment putting his heirs, including Cecile, into possession of his estate. Cecile, however, does not move into the guest house. Instead, she rents a room in La Vie Longue, a lavish, upscale retirement development. There she stays until May 15, 1994, when her funds run dry. During her stay in La Vie Longue, the guest house remained vacant and unused. Now she wants to move into the guest house. Pascal’s heirs refuse her request. She sues. What result would you predict? Why? See CC arts. 630, 631, 621.

2) Comparison
   a) Differences
      (1) Necessity of possession
      (2) Domain
      
      See CC art. 3447 cmt. (b), ¶ 4.
   b) Similarities
      (1) Redistributive effects on patrimony
      (2) Rules regarding delay

2. Purpose
   a. To protect the real owner
   b. To do justice as between the real owner and the possessor
   c. To assure social order

3. General principles
   a. Calculation of the lapse of time
      1) Commencement

PH 122. By an act of sale dated August 10, 1994, Olide purports to sell to Jean Sot a certain house and lot. Jean Sot begins moving it at 8:00 am on August 15, 1994. Assume that Olide did not, in fact, own the house and lot. On what date did Jean Sot begin to prescribe against the true owner? Why? See CC art. 3454.

2) Accrual

PH 123. By an act of sale dated August 10, 1994, Olide purports to sell to Jean Sot a certain house and lot. Jean Sot begins moving it at 8:00 am on August 15, 1994. Assume that Olide did not, in fact, own the house and lot and, further, that the title, though invalid, was just and that Jean Sot was in good faith. On what date does Jean Sot's prescription "accrue," i.e., when does the right that he has acquired via acquisitive prescription vest? Why? See CC arts. 3454, 3456, 3473, 3475.


b. Interruption of prescription
   1) Definition

   What does "interruption" of prescription mean? François Terré & Philippe Simler, Droit Civil: Les Biens § 462, at 291 (4th ed. 1992) (interruption "definitively breaks the course of prescription, in such a fashion that the time which flowed before [the cause of the interruption] is deprived of effect").

   2) Varieties

   See 2 Aubry and Rau, Droit Civil Français n° 296, at 464 ("Interuption of prescription is natural or civil depending on whether it results from a simple material act or from a juridical act.")
   a) Natural interruption
      1] Eviction
Read & brief Board of Comm’rs v. S.D. Hunter Found. (La. 1977) (Tate, J.) [Trahan, Supp, 90a-90b]; CC art. 3465.

Can nature itself (as opposed to man) accomplish an eviction? See Trahan, Supp, 92-93.

2] Abandonment

PH 125. Jean Sot, after acquiring title to a certain tract of timberland from Olide, moves onto it and begins to cut timber. The tract, of course, belonged not to Olide but to Clodice. Two years later, Jean Sot, having exhausted the timber on the tract, packs up his stuff and leaves. When his friend, Pascal, asks him what he plans to do with the tract, Jean Sot answers, "Nothing. I want to have nothing else to do with that piece of miche." From that point forward he stops paying taxes on the tract. Has Jean Sot's prescription of the tract been interrupted? Why or why not? If so, by what means? See CC art. 3465 & cmt. (b).

PH 126. The same as PH 125, except that Jean Sot changes his mind. Nine months after he left the tract, he returns to it and begins planting and tending new trees. What result now? Why? See CC art. 3465, ¶ 2.

b) Civil interruption

1] By the owner (suit)

Read Johnston v. Nanney (La. App. 3d Cir. 1962) [Trahan, Supp, 90b-90c]; then read CC art. 3462.

PH 127. On September 1, 1990, Olide sells Jean Sot what Olide represents to be his bass boat. That very day Jean Sot hauls it to his home in Vermillion Parish and begins to use it. On August 31, 1993, Pascal, claiming to be the true owner of the bass boat, files a revendicatory action against Jean Sot. Pascal files the action in his home parish of Lafayette. Three days later, on September 3, 1990, Jean Sot receives service of citation and the petition. Has Jean Sot acquired ownership of the boat through acquisitive prescription? Why or why not? Assume that Jean Sot's title was just and that he acquired that title in good faith. See CC arts. 3490 & 3462; La. Code Civ. Proc. art. 42(1) ("[A]n action against . . . [a]n individual who is domiciled in the state shall be brought in the parish of his domicile.")


2] By the possessor (acknowledgement)

Read Gayle & Sons, Inc. Deperrodi (La. App. 3d Cir. 1974) [Trahan, Supp, 90d-90g]; then read CC art. 3464 & cmts. (b) & (e).

3) Effect of interruption

What is the effect of the interruption of acquisitive prescription? See CC art. 3466.

PH 128. On February 1, 1990, Olide, without any pretense of title but with the intent to possess as owner, moves onto a certain tract of land and settles down there. Three years later, on February 1, 1993, his prescription is interrupted for some reason or another, e.g., a squatter usurps his possession. Two years later, on February 1, 1995, the squatter leaves and Olide goes back into possession. It's now February 1, 1996. How much time has Olide accumulated toward his goal of 30 years acquisitive prescription? Why?

c. Suspension of prescription

1) Definition

Can prescription be "suspended"? What does that mean? How is suspension different from interruption?

2) Causes for suspension

a) General rule

What’s the “general rule” with respect to the suspension of prescription? Read CC art. 3467.

b) Exceptions

What are the exceptions to that general rule?

(1) Familial relationships

PH 130.1. On January 1, 2000, Pascal (i) takes title to a remote tract of rural land that, unbeknownst
to him, overlaps by ten feet with a tract of land to which a certain Genesis has title and (ii) takes corporeal possession of his (Pascal's) entire tract, including the ten-foot overlap. Two years later, on January 1, 2002, Genesis, a widow, dies intestate; Alpha, Beta, and Kappa, her only children (all of whom are majors), promptly accept her succession. Two years later, on January 1, 2004, Pascal and Alpha enter into a "covenant marriage(144,569),(985,637). Two years later, on January 1, 2006, Alpha, who has since fallen in love with Olide, obtains a judgment of separation from Pascal. Two years later, on January 1, 2008, Alpha obtains a judgment of divorce from Pascal, whereupon she immediately "shacks up" with Olide. Three years later, on January 1, 2011, Kappa has Genesis' tract surveyed. When, in the course of that survey, it is discovered that Pascal is in possession of the ten-foot strip, Kappa orders him off of it. Pascal, however, refuses to budge, arguing that he has acquired the strip by abridged (10-year) acquisitive prescription. Is he right? Why or why not? Assume that Pascal has been in corporeal possession of the strip since January 1, 2000 and that, when he began that possession, he was in "good faith" and had a "just title." Read Southern Natural Gas Co. v. Naquin, 167 So. 2d 434 (La. App. 1st Cir. 1964) [Trahan, Supp, 90g-90h].

(2) Fiduciary relationships

PH 130.2. The year is 2030. Professor Emeritus Symeonides, having been adjudged mentally incompetent to care for his estate, is interdicted. The court appoints me as his curator. Two years later, in 2032, I, in good faith, acquire just title to a collection of rare books on the civil law. As it turns out, however, the books belonged to Professor Symeonides. It seems that he had misplaced them during a psychotic episode. At any rate, time goes by. In 2035, the good professor passes on. Two years after that, in 2037, Sym's son, Christopher, drops by my office for a visit. When he sees the books on my shelf, he walks over to them and says, "These look just like the books I used to play with as a boy." Then, looking closer, he says, "These are the books I used to play with as a boy." Christopher then demands that I return the books. Do I have to give them up? Why or why not? See CC art. 3469.

(3) Registered immovables of municipalities

PH 131. In 1990, the Iberville Parish Police Jury purchases a 20-acre tract of rural timberland located inside the parish for the purpose of building a golf course. Shortly after the sale, the Police Jury partially clears 10-acres of the tract and builds a nine-hole course in that area. On June 1, 1992, Jean Sot, in good faith, acquires from Olide just title to a tract of land in the same general area. There's just one problem: the stretch of land described in Jean Sot's title overlaps with one acre of the uncleared part of the land described in the Police Jury's title. Jean Sot takes corporeal possession of the land described in his title--all of it--on the day of the sale, June 1, 1992. Twelve years later, on June 1, 2004, a greenskeeper, while walking through the wooded section of the Police Jury's tract, spots Jean Sot's improvements. When word of her discovery reaches the Police Jury, the Police Jury brings a petitory action against Jean Sot. Jean Sot asserts the defense of acquisitive prescription. What result would you predict? Why? See CC arts. 450 & 453; review Landry v. Council of East Baton Rouge [Yiannopoulos, Text, 12-17].

Is there any means whereby the Police Jury could have avoided this result? See La. Rev. Stat. 9:5804 [Yiannopoulos, Text, 437].

(4) Immovables adjudicated to the state for nonpayment of taxes

PH 132. Olide, knowing full well what he's doing, goes into possession of a certain piece of rural land that belongs to Pascal. The date is November 7, 1960. In 1969, Pascal fails to pay his taxes on the property. On November 7, 1970, the state seizes the property and holds it, pending payment of the taxes. Years pass.

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"Covenant marriage," a form of marriage recognized by Louisiana law, is one in which the parties promise each other that they will never dissolve the marriage without a serious and just cause, in particular, absent a "complete and total breach of the marital covenant commitment." The regime governing covenant marriage is set out in La. Rev. Stat. 9:272 et seq.

(5) Contra non valentem, etc.

What is the meaning of the Latin maxim contra non valentem agere nulla currit præscriptio? In what circumstances can the maxim be invoked? Read Corsey v. State Dept. of Corrections, parts II & III only (La. Supp. 1979) (Tate, J.) [Yiannopoulos, Text, 437-40].

Thus far, the Louisiana courts have had occasion to apply the maxim only in cases that involved liberative prescription. When the courts are finally invited to apply it to cases that involve acquisitive prescription, should they accept the invitation? See Patrice Jourdain, DROIT CIVIL après MARTY et RAYNAUD: LES BIENS n° 192, at 251 (1995) (“The [French] jurisprudence has likewise applied the rule contra valentem agere non currit præscriptio to acquisitive prescription.”); 2 Diego Espín Cánovas, MANUAL DE DERECHO CIVIL ESPAÑOL: DERECHOS REALES 170 (6th ed. 1981) (“The Spanish Civil Code is hostile to the suspension of usucapion in that it has abandoned the principle contra non valentem agere non currit praecriptio; to the contrary, it establishes, as we will see, that rights . . . are extinguished by prescription to the prejudice of every class of persons . . . .”); Pierre Martineau, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL [DU QUÉBEC]: LA PRESCRIPTION n° 214, at 216-17 (1977) (“In reaction against the excesses of the ancient jurisprudence [in the application of the maxim contra non valentem, etc.], the redactors of the French Civil Code wanted to suppress the discretionary power that the courts exercised in this matter . . . . The intention of the codifiers was to reject the rule contra non valentem non currit præscriptio. . . . Our [Quebec] codifiers adopted a solution that is less clear. They declared that they wanted to keep the rule of the ancient law while, at the same time, restraining it so as to avoid the abuses to which it had given rise. ‘That is why,’ they wrote in their report, ‘we will suggest that the impossibility [of acting] be absolute in fact or in law and excludes the means of acting by an intermediary. . . .’”)

3) Effect of suspension

How does “suspension” affect the course of prescription? Read CC art. 3472; then recall PH 130.1.

d. Renunciation of prescription

1) Definition

Can prescription be "renounced"? If so, what does renunciation mean in this context? See CC art. 3449.

2) Attributes

What are the essential characteristics of a renunciation? Read McPherson v. Roy (La. App. 3d Cir. 1980) [Trahan, Supp, 90h-90i]; Bonnecaze v. Laplace, 1862 D. 1, at 279-80 (Apr. 9, 1862) [Trahan, Supp, 90j]; then read Trahan, Supp, 90k (French doctrine).

3) Form

Is a renunciation of prescription subject to any requirements of form?

a) Immovables

What if the thing is an immovable? Read Harmon v. Harmon, 617 So. 2d 1323 (La. App. 3d Cir. 1993) [Trahan, Supp, 90l-90m].

b) Movable

Is the renunciation of acquisitive prescription in movables likewise subject to any special requirements of form? See CC art. 3450, ¶ 1. What’s a “tacit” renunciation?

3) Time of renunciation

At what point in time may one renounce prescription? Read CC art. 3449. Does that mean that a premature renunciation has no effect at all?
PH 133. Olide, knowing full well what he's doing, takes possession of a tract of land to which Pascal holds title. Twenty-five years later, he experiences a religious conversion and repents of his sins. In an effort to set things right with Pascal, he moves off the land, goes to Pascal, tells him what he's done, and then says, "I hereby renounce any of the benefits of acquisitive prescription that I have to this point accrued." What result would you predict? Why?

4) Effect of renunciation

What is the effect of a renunciation? "When the possessor renounces the benefit of a completed acquisitive prescription, he is considered as never having been the owner: the renunciation of acquisitive prescription is retroactive . . . . Everything is treated as if the original owner had [always] remained the owner." 2 Henri Mazeaud et al., LEÇONS DE DROIT CIVIL: BIENS § 1514, at 242 (François Chabas ed., 7th ed. 1989).

4. Effects of acquisitive prescription

What are the effects of acquisitive prescription? See Planiol, Treatise, n° 2706-2711, in Yiannopoulos, Text, 466-69; Trahan, Supp, 94 (doctrine re the retroactive effects of acquisitive prescription).

PH 134. Without pretense of title, Olide assumes possession of Belle Terre, an estate that belongs to Pascal. Twelve years later Pascal, still unaware that Olide is in possession, grants Cajun Bank & Trust a mortgage on Belle Terre to secure a loan. Twelve years after that (24 years into Olide’s possession), Pascal, still unaware that Olide is in possession, grants Bayou Oil & Gas Co. a “mineral servitude” on Belle Terre. Bayou, however, does not actively avail itself of its servitude rights (i.e., never goes onto the property to search for minerals), for the oil market is then “in the toilet.” Seven years later (31 years into Olide’s possession), Pascal defaults on his loan and the oil and gas market rebounds. Now Cajun wants to foreclose on its mortgage and Bayou, to exercise its servitude rights. Can Olide stop them? Why or why not?

PH 135. The same as PH 134, but with these additional facts: in the 5th year of his possession of Belle Terre, Olide married Clodice, and in the 31st year of that possession, she died. The administrator of Clodice’s estate wants to know whether she had any sort of interest in Belle Terre, in particular, whether it formed part of Olide and Clodice’s “community property.” What would you say? See CC arts. 2338 & 2341.

PH 136. The same as PH 134, but with these additional facts: in the 27th year of his possession, Olide (i) mortgaged Belle Terre to Creole Bank and (ii) granted his neighbor, Jean Sot, a predial servitude of passage across the northwest corner of Belle Terre. When Creole’s mortgage and Jean Sot’s servitude were first created, they were invalid. Why? Because the grantor, Olide, didn’t own Belle Terre! But what about now (at the 31st year of possession)? Are they valid today? Why or why not?

PH 137. The same as PH 134, but with these additional facts: throughout his 31-year possession of Belle Terre, Olide (i) regularly grew rice on the land and (ii) occasionally (a) cut the timber on the land and (b) produced sulfur (a mineral) from the land. Does Olide now owe Pascal anything for the rice, timber, or sulfur? Why or why not? Assume that there was no “tree farm” or “open mine” on Belle Terre. See CC arts. 483; 486, ¶ 2; 488; 487.

For additional (and considerably more complicated) illustrations of the retroactivity principle, read Trahan, Supp, 95-98.

5. Constitutive elements of acquisitive prescription

a. Elements common to all modes of acquisitive prescription

1) Thing susceptible of acquisition by prescription

Read CC arts. 3475, 3488.

a) Not common things

Are common things susceptible of acquisitive prescription? See CC art. 449; art. 3485 & cmt. (b).

b) Not public things

Are public things susceptible of acquisitive prescription? See CC art. 450 cmt. (b); art. 3485 & cmt. (b).
c) Most private things

1) General rule

Are private things susceptible of acquisitive prescription? See CC art. 3485.

2) Exception

Read LA CONST. art. 12, § 13 (1974), in Yiannopoulos, Text, 384; then read CC art. 453 cmt. (c); then review, first, New Iberia v. Romero (La. App. 3d Cir. 1980) [in handout for 1st day of class], and, second, Landry v. Council of East Baton Rouge [Yiannopoulos, Text, 12-17].

PH 138. Suppose that New Iberia had applied Wana Alley--all of it--to some public purpose for a number of years, say, until 1951. Would the result have been any different? Why or why not? In answering these questions, you should recall that Romero first took possession of the disputed area in 1940 and that New Iberia filed suit against him in 1980. So, our time line looks like this: (i) 1903: New Iberia acquires title; (ii) 1940: Romero goes into possession; (iii) 1951: New Iberia diverts Wana Alley from public use; (iv) 1980: New Iberia files suit.

2) Possession

Read CC art. 3446; art. 3476, ¶ 1; Planiol, in Yiannopoulos, Text, 520.

a) Acquisition of possession; constitutive elements

(1) Corpus

(2) Animus

Read CC arts. 3477 & 3438.

b) Varieties

What kind or kinds of possession can provide the predicate for a claim of acquisitive prescription? Is corporeal possession alone sufficient? Or may possession be civil or constructive? See CC art. 3476, ¶ 1; art. 3476 cmt. (f); art. 3488 cmt. (b).

c) Attributes

What virtues must the possession possess or, to put the point negatively, what vices must it avoid? See CC art. 3476, ¶ 2.

3) Delay

a) General principles

b) Tacking

It is necessary that the possessor himself possess the thing for the entire duration of the specified period? Why or why not? See Planiol, in Yiannopoulos, Text, 527-29.

(1) Prerequisite to tacking: a "juridical link"

PH 141. In 1960 Olide, without pretense of title but with the intent to possess as owner, moves onto a tract of rural timberland, fences it in, clears off part of it, builds a house in the clearing, and settles down. Then, in 1970, Bill (known as Willy to his friends), a pot-smoking (but not inhaling) anti-establishment, draftcard-burnin', family-values-hatin' leftist from Arkansas, hoping to escape the evils of modern technocratic-bourgeois-capitalist society, heads south. While wandering through the woods looking for wild pansies with which to make a peace sign, he stumbles upon the clearing and strikes up a conversation with Olide. The two become fast friends, especially after Olide tells Willy he's got a Mary Jane patch out back. At any rate, Willy, impressed with Olide's simple way of life, asks if he can move in with Olide for a while. Olide agrees. Time passes. In 1980, Olide dies under mysterious circumstances: he's found lying out in the woods with a bullet in his head, a pistol a few inches from his hand, and some empty manila folders labeled "Whitewater" tucked into his coat pocket. From that point forward, Willy continues living in Olide's house all alone, though he often entertains young female guests. It's now 1996. Can Willy claim to own all or part of the land or the house? Why or why not? See CC arts. 3441-3442; art. 3442 cmt. (d); art. 3506(28); art. 876; arts. 1585-1587; art. 1523.

(2) Spatial extent of tacked possession
What is the difference between universal and particular successors in terms of what they get from their transferors?

NOTES: (i) A “judgment of possession” in an intestate succession, that is, the judgment that officially recognizes the heirs' interest in the estate of the deceased, will typically contain language like this: "IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that: . . . petitioners, X, Y, and Z, be recognized as the children and sole heirs of the deceased, and, as such, entitled to ownership and sent in to possession of all of the property belonging to [the deceased], including but not limited to the property described below: . . . ." (ii) A typical “act of sale” of an immovable reads something like this: "I, Seller, do hereby sell, transfer, give, grant, cede, and quitclaim to Buyer all of my right, title, and interest in and to the property described below: . . . ." There then follows a detailed description of the particular thing that is the object of the sale.

(I) Universal successors: spatially unrestricted tacking

PH 142. In 1960, Olide, falsely representing himself to be the owner of Tract $A$, purports to sell it to Codice. Codice knows that Olide doesn't own it. When Codice goes out to take possession of the tract, she gets even greedier. Noting that no one is using the tract adjacent to hers, Tract $B$, she takes possession of it, too. Years pass, during which Codice puts both tracts to a variety of uses. Then, in 1985, she dies intestate, succeeded by her daughter, Lil-Fille, who picks up where Mom left off. Then, in 1991, Pascal shows up claiming to be the owner of both tracts and ordering Lil-Fille to get out. Lil-Fille says, "Nyet." Pascal then brings a petitory action against her. In her defense, she argues that she has acquired ownership of both tracts via ordinary acquisitive prescription. What result would you predict? Why?

(b) Particular successors

[1] General rule: there's no tacking beyond title

PH 143.1. The same as before, except that Codice doesn't die in 1985. Instead, she purports to sell "her land" to Jean Sot. Before the sale, they walk "her land" together, i.e., both Tract $A$ and Tract $B$. But the act of sale reads as follows: "I, Codice, do hereby sell, transfer, give, grant, cede, and quitclaim to Jean Sot all of my right, title, and interest in and to the property described below: Tract $A$." Jean Sot then goes out and takes possession of "the land," i.e., both tracts. Then, in 1991, Pascal shows up claiming to be the owner of both tracts and ordering Jean Sot to get out. Jean Sot says, "Nyet." Pascal then brings a petitory action against him. In his defense, he argues that he has acquired ownership of both tracts via ordinary acquisitive prescription. What result would you predict? Why?

PH 143.2. On January 17, 1920, Jean Sot, then a widower with three children, Meau, Beau, & Seau, acquired title to a certain tract of land known as Dalmatian Plantation. This tract was located in Section 1 of Township 1 South, Range 1 East. When Jean Sot went out and took possession of his new estate, he took possession of something else, too: an irregularly-shaped, 40-acre stretch of land that lay adjacent to it, but over in Section 2 of the same township and range. In November of 1937, Jean Sot died. One month later, on December 16, 1937, the probate court issued a judgment of possession in Jean Sot's succession proceedings. The judgment put Jean Sot’s heirs into possession of "his property" in the following proportions: 1/3 to Meau, 1/3 to Beau, and 1/3 to Seau. Jean Sot's eldest child, Meau, then took possession of the property, including the extra 40 acres, on his behalf and that of his co-heirs. From that point in time forward, Meau continuously used the 40 acres in the same manner as had his father before him. On August 27, 1945, Beau and Seau both sold to Meau their interests in what the acts of sale described as “land in Section 1 of Township 1 South, Range 1 East.” Those acts said nothing about any land in Section 2. At some point before or during 1963, Red Neck Lumber Co., which then held record title to the extra 40 acres, and Meau each discovered that the other claimed to own that land. In the ensuing legal battle Red Neck fired the first volley, filing a petitory action against Meau. Meau retorted with a jactitory action, alleging that "he and his authors-in-title were the true and lawful possessors of the land involved since 1920, more than 30 years." What result? Why? See Noel v. Jumonville (La. 1963) [Yiannopoulos, Text, 554-63]; then read the
You need to know Brown v. Wood better than the back of your hand!

The concept of possession which is essential for acquisitive prescription is a difficult one and often tricky. When the situation is further complicated by a question of tacking, the problem is even more difficult. However, the Civil Code and the French commentators, together with the Louisiana jurisprudence, have established a goodly number of rules and guidelines. One of these is the basic code provision which limits the tacking of possession only to that of one’s author in title. In the case of Noel v. Jumonville Pipe & Machinery Co., the Supreme Court reached a decision which might have reflected what some of the parties believed to be the situation but which did great injustice to the established rules of Louisiana law. As to this property, the case is res judicata; it is to be hoped however, that the decision will be limited to its own facts and that no other applications or extensions will be made in the future.

The facts of the Noel case are not unduly complicated. A man actually possessed thirty-eight acres in excess of the plantation which he owned. At his death, the plantation was inherited by his wife and children, one son continuing the physical possession of the entire tract. This son then acquired by donation and purchase the other heirs’ shares of the plantation. In all these transactions, the property description is of the original plantation with no indication of the extra thirty-eight acres. To hold, as the Supreme Court did, that there can be tacking of possession without the juridical link of an author in title is stepping out of bounds, and the decision of the majority has already been subjected to careful and well-directed criticism. The majority may have been moved by what appeared to be the understandings (or misunderstandings) of the parties, but the decision was not in accordance with the law and should not be repeated.

Exception (‘boundary tacking’): tacking beyond title up to visible boundaries may be permitted

Read CC arts. 784, 792-794; then read & brief Brown v. Wood (La. App. 2d Cir. 1984) [Yiannopoulos, Text, 567-73]; then read ‘Note’ in Yiannopoulos, Text, 564.

b. Elements peculiar to specific modes of acquisitive prescription

1) Immovables
   a) Unabridged acquisitive prescription
      What, if any, unique or distinctive elements does unabridged acquisitive prescription of immovables have? See CC art. 3486.
   b) Abridged acquisitive prescription
      What about abridged acquisitive prescription of immovables? Does it have any unique or distinctive elements? What are they? See CC arts. 3473 & 3475. Is the list of distinctive elements found in these articles complete?

(1) Just title
   a) Juridical act
      What is a juridical act? [Ouch: System flashback!]

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4 You need to know Brown v. Wood better than the back of your hand!
Definition by exposition

Read CC art. 3483 cmt. (b) & Vocabulaire Juridique: ("Juridical act": "A juridical operation consisting of a manifestation of the will (public or private, unilateral, multilateral, or collective), having for its object and its effect to produce a juridical consequence (the establishment of a rule, the modification of a juridical situation, the creation of a right, etc.))"

Definition by example

Read CC art. 3483, sent. 1.

(b) A real title

PH 144. Pascal agrees to sell and Clodice agrees to buy a certain tract of swampland. Before they close the deal, the two "walk the boundaries" of the tract that both believe to be the object of the sale. Part of that land lies in Section 1 and part in Section 2 of a certain range and township. The property description set forth in act of sale, however, includes only the land that lies in Section 1. The deal is closed and Clodice takes possession of "the land" on February 18, 1986. Today, February 23, 1996, Théophile, claiming to be the true owner of the land in Section 2, files a petitory action against her. Can Clodice, in her defense, contend that she has acquired ownership of that land through abridged acquisitive prescription? Why or why not? See CC art. 3483 cmt. (e) (re "putative title"); Gabriel Marty & Pierre Raynaud, Droit Civil: Les Biens n° 200, at 257 (Patrice Jourdain rev., 3d ed., 1995) ("a putative title, that is to say, one that exists only in the mind of the possessor").

(c) A translative title

Definition

Read CC art. cmt. (b). What does "translative" mean in this context?

Distinctions

[a] Declarative acts

PH 145. Pascal, who acquired title to Belle Terre from Clodice, dies intestate, survived by two children, Ti-Boy and Tite-Fille. The children promptly initiate succession proceedings, at the conclusion of which the probate court issues a "judgment of possession," recognizing them as the co-owners of Belle Terre. Does that judgment give the children a just title to Belle Terre? Why or why not? If not, does that necessarily mean that Ti-Boy and Tite-Fille don't have just title to Belle Terre? Explain. See CC art. 3483 cmt. (b).

PH 146. The same as PH 145, except that Ti-Boy and Tite-Fille, after getting their judgment of possession, initiate partition proceedings to split Belle Terre between them. At the conclusion of the proceedings, the court issues a judgment awarding the western half to Ti-Boy and the eastern half to Tite-Fille. Does the partition judgment give each child a just title to his half of the estate? Why or why not? See CC art. 3483 cmt. (b).

[b] Acts involving personal rights

PH 147. Pascal leases to Jean Sot the "back forty" acres of Belle Terre for 30 years. Ten years and one day later, Jean Sot, while sipping vodka at the local tavern, brags to those within earshot that he's just acquired ownership of 40 acres of Pascal's land through acquisitive prescription. What do you think of his claim? Why? See CC art. 3483 cmt. (b). Isn't there an even more fundamental problem here than that signaled by cmt. (b)? What is it?

[c] Acts subject to suspensive conditions

Read CC art. 1767; then read Trahan, Supp, 93a-93b (re conditional titles).

PH 148 (based on Jeanneney v. Devecey, Bull. Civ. III n° 417, at 317-18 (French cour de cassation). Let me take you back in time to the nadir of the Great Depression. The little town of Longleaf, Louisiana, desperate to provide housing for its now sizeable homeless population, decides to make a deal with the devil. Whose the devil? The Jeanneney Lumber Company, which operates a nearby sawmill and employs many of the town's homeless. What's the object of the deal? A pine-covered 40-acre tract of land that Longleaf
owns and that Jeanneney has long coveted. What's the deal? That Longleaf will sell the tract to the company, provided that the company builds a multi-family housing unit for its workers and their families on part of the tract. The act of sale, which is dated September 3, 1933, contains the following provision: "Title in the Property shall not vest in Buyer unless Buyer constructs and opens a 50-family housing unit on the Property within one year of the date of this agreement." The company promptly takes possession of the land and, within a few days, starts clear-cutting it. But the company never manages to complete the multi-family housing unit. Twenty-nine years later, in 1963, A.J. "Smiley" Carruth shows up, claiming to be the true owner of the 40-acre tract. When the company refuses his demand to vacate the property, he files a petitory action against it. In its defense, the company argues, among other things, that it has acquired ownership of the land via abridged acquisitive prescription. What result would you predict? Why?

PH 149. The same as PH 148, except that the act of sale also contains the following clause: "Title to the land shall immediately revert to Seller in the event that Buyer closes, demolishes, or destroys the 50-family housing unit." This time, the company immediately builds the housing unit. Further, the housing unit is still open and operating when Smiley files his petitory action in 1963. What result would you predict now? Why?

[d] Acts invalid in form

PH 149. Olide, motivated by his deep love and affection for Clodice, decides to give her 10 acres of his estate, Terre Puante. Toward that end, he summons Clodice to a private meeting at his home. In her presence, he drafts and signs a document entitled "Act of Donation," then hands it to her. The act, you may assume, contains an adequate description of the affected property. Does Clodice have just title to the 10-acre tract? Why or why not? See CC arts. 1536 & 1539.

PH 150. The same as PH 149, except that Clodice, after leaving Olide's shack, heads over to Jean Sot's home on Terre Lourde. Representing that Olide has just donated to her a 10-acre stretch of Terre Puante, she offers to sell it to him for $100/acre, for a total of $1000. Jean Sot agrees. He then draws up a written act of sale, one that adequately describes the affected property, etc., and promptly files it in the public records. Does Jean Sot have a just title? Why or why not? See Clayton v. Rickerson (La. 1926) & Note [Yiannopoulos, Text, 472-75].

[e] Other absolutely null acts

Read Trahan, Supp, 93b-93e (re null titles).

PH 151. Olide and Clodice, who've been hot for each for years, decide to give in to their feelings and shack up together. Because both have had disastrous experiences with cohabitation in the past, they decide to protect themselves by spelling out their rights vis-a-vis each other in a written pre-shack agreement. By the terms of that agreement, they promise, in the words of the comments to the Civil Code article 98, to "submit to each other's reasonable and normal sexual desires." Further, each gives to the other certain gifts, specifically, Olide grants Clodice the part of his estate, Terre Puante, that borders on a certain stream, while Clodice grants Olide 5 acres of timber-covered land within her estate, Terre Facile. Twelve years later, Pascal, claiming to own all of Terre Punate, including the part that Olide had transferred to Clodice, orders her off the property. She refuses, claiming abridged acquisitive prescription. What result would you predict? Why? See CC art. 3483 cmt. (c), ¶ 3; CC art. 2030.

PH 152. Willy, the leftist from Arkansas who took over Olide's homestead out in the Louisiana backwoods, harvests Olide's marijuana crop. After it dries, he smokes it--all of it--in a single afternoon--and this time he even inhales. Along about 6:00 pm, while Willy's still flying high as a kite, a Russian exchange student named Boris, himself notorious for getting blasted on cheap vodka, happens by and offers to buy the property. After settling on a price, the two men draw up an act of sale, one that adequately describes the property. Boris writes Willy a check, Willy leaves, and Boris moves in. Twelve years later, Pascal shows up and, claiming to be the true owner, orders Boris off the place. Can Boris claim abridged acquisitive prescription? Why or why not? See CC arts. 1918, 1919, 2031.
PH 153. Clodice dies, survived by her daughter, Lil-Fille. The court appoints Olide to serve as the administrator of Clodice’s estate. In that capacity, he sells Clodice’s estate, Terre Facile, to himself in his personal capacity for fair market value, but without court approval. Ten years come and go. Can Olide claim that he is now the owner of Terre Facile thanks to abridged acquisitive prescription? Why or why not? See CCivProc art. 3194 (“A succession representative cannot in his personal capacity . . . make any contracts with the succession of which he is a representative. He cannot acquire any property of the succession . . . . All contracts prohibited by this article are voidable . . . .”) & comment (b) thereto (“The contracts prohibited by Art. 3194 do not preclude ratification . . . .”).

PH 154. Same as PH 151, i.e., that in which Clodice and Olide exchanged parts of their respective estates pursuant to their pre-shack agreement. Suppose that Clodice, the day after she and Olide sign the agreement, sells her new stake in Terre Puante to Jean Sot. Twelve years later, Pascal, claiming to be the true owner of Terre Puante, orders Jean Sot off the property. Does Jean Sot have just title? Why or why not?

(e) A written title

PH 155. Jean Sot, while out walking in the bayou country, comes across Olide, who is busy trying to set a marsh on fire. Assuming that Olide is the owner, Jean Sot asks him whether he’d be willing to sell the marsh and, if so, for how much. Olide says, “Sure, for $1000.” Whereupon Jean Sot pulls $1000 cash from his wallet and hands it to Olide. Olide takes the money, the two shake hands, Olide leaves for Bolivia, and Jean Sot moves in. Twelve years later, Pascal, claiming to be the true owner of the marsh, orders Jean Sot to leave. Does Jean Sot have just title? Why or why not? See CC art. 3483 & cmt. (c).

(f) A recorded title

PH 156. The same as PH 155, except as follows. Olide, upon taking Jean Sot's money, writes out a document entitled "Act of Sale," one that adequately describes the marsh. Jean Sot then takes the act and, to make sure nothing happens to it, squirrels it away in his safety deposit box at Jambalaya Bank & Trust. What result would you predict now? Why? See CC art. 3483 & cmt. (d).

PH 157. The same as PH 156. On April 1, 1987, three years to the day after the date of the sale, Jean Sot learns from a slick local attorney, Edward Edwins, that acts affecting immovable property do not affect third persons unless and until they are filed in the public records. Jean Sot, no fool he, immediately retrieves his act of sale from the bank, takes it down to the courthouse, and files the act in the conveyance records. As before, Pascal shows up twelve years after the date of the sale, i.e., on April 1, 1996, claiming to be the owner and demanding that Jean Sot get out. What result would you predict now? Why?

(2) Good faith

Read Planiol, nn° 2667-2669, in Yiannopoulos, Text, at 480-81.

(a) Substantive matters

[1] Definition

PH 158. While driving through the bayou country one day, Clodice comes upon Olide, who’s out in a marsh trying to set it on fire. She stops and hales him. When he steps up to her car, she asks, "Do you own this marsh?" He replies, "No. It belongs to my boss, Pascal." She then asks, "Will you sell it to me?" "Well," he stammers, "I don't have that authority." She persists: "I'll make it worth your while." Finally, he relents and, for a handsome price, sells her the marsh. Is Clodice in good faith? Why or why not?

PH 159. Pascal, the record title owner of Belle Terre, dies intestate, survived only by Ti-Boy, his 13-year old son. A few months later, Olide, sensing a rare business opportunity, approaches Ti-Boy and offers to buy Belle Terre from him for $10,000, a bargain-basement price. Ti-Boy, not knowing any better, agrees. Is Olide in good faith? Why or why not? See CC arts. 1918 & 1919; Planiol n° 2667, in Yiannopoulos, Text, at 480; Trahan, Supp, 93b-93e (supra); CC art. 3452 (1870) (“The possessor in bad faith is he who possesses as master, but who assumes this quality, when he well knows that he has no title to the thing, or that his title is vicious and defective.”)
Is good faith "subjective" or "objective"? See CC arts. 3475, 3480 & 3481; CC art. 3480 cmt. (c). What do those terms mean in this context, anyway?

PH 160. Jean Sot, passing by Belle Terre, stops to watch several men at work. As he watches, one man, Pascal, barks out orders to another, Olide, e.g., tote that barge, bale that hay, burn that marsh, after each of which Olide responds, "Right away, boss." As short while later, after Pascal has left, Jean Sot walks up to Olide and ask, "Do you own this land?" With a smile Olide responds, "Why sure I do." Any other person would have inferred from the circumstances that Olide was lying or, at the very least, that Olide's claim was highly suspicious. But not Jean Sot, who has an IQ of about 75. Is Jean Sot in good faith? Why or why not? Subjectively? Yes. Objectively? No. See the difference?

PH 161. Jean Sot approaches Olide about the possibility of buying from him a certain tract of land. As Jean Sot is well aware, the tract at one time belonged to the community of acquist and gains between Olide and Clodice, his former wife. Jean Sot also knows that Olide and Clodice were recently been divorced and, further, that the court allocated the tract to Olide. But Jean Sot, a lapsed Catholic, believes that the marriage cannot be considered legally undone and, consequently, ownership of the land will not vest in Olide unless and until the church annuls the marriage. As Jean Sot knows, that hasn't happened. At any rate, Jean Sot and Olide strike a deal and Jean Sot, with title in hand, takes possession of the tract. Is Jean Sot in good faith? Why or why not? See CC art. 3480; Board of Commr's v. S.D. Hunter Found. (La. 1978) [Yiannopoulos, Text, 481-94].

PH 162. After Clodice, the owner and possessor of Terre Facile, offers to sell Pascal a few acres out of her estate, Pascal hires a seasoned property attorney, Edward Edwins, to perform a title search, with a view to determining whether Clodice has merchantable title. The title search reveals nothing out of order. Satisfied that Clodice is the true owner, Pascal accepts her offer and the two close the deal. The date is March 1, 1985. One month later, on April 1, 1985, Pascal takes control of the tract, which he devotes to cattle grazing. One month after that, on May 1, 1985, Pascal receives some disturbing news: Clodice, it seems, had sold the same tract of land to Olide just a few months before she had sold it to him. When Pascal investigates the matter, he learns that the sale from Clodice to Olide had, in fact, taken place and that Olide had promptly submitted his act of sale to the clerk of court for filing, but that the clerk had misfiled it. That's why it hadn't turned up in the title search. Years pass. On April 2, 1995, Olide files a petitory action against Pascal, seeking to have him expelled from the property. In his defense, Pascal claims abridged acquisitive prescription. What result? Why? See CC art. 3482.

PH 163. The same as PH 162, except that, this time, Olide, unbeknownst to Pascal, immediately takes physical control of the tract on February 1, 1985, and that Pascal gets word of the prior deal between Clodice and Olide on March 15, 1985. Here, then, is the new time line: (i) date of sale by Clodice to Olide: February 1, 1985; (ii) date Olide takes control: February 1, 1985; (iii) date of sale by Clodice to Pascal: March 1, 1985; (iv) date Pascal loses good faith: March 15, 1985; (ii) date Pascal usurps physical control from Olide: April 1, 1985; (v) date Olide sues Pascal: April 2, 1995. What result now? Why? See CC art. 3482 cmt. (b).

PH 164. The same as PH 162, except as follows. Pascal hears rumors of a prior sale of the tract by Clodice to Olide, rumors he considers to be credible, before he buys the tract from Clodice. Meanwhile, unbeknownst to Pascal or Clodice, Théophile takes possession of the tract with the intent to possess it as owner. Pascal and Clodice then close the deal, as before, on March 1, 1985. A few days later, Pascal, who has still not taken control of the tract, launches an investigation into the rumors he'd heard about a prior sale by Clodice to Olide. On March 15, 1985, he concludes, correctly as it turns out, that those rumors were unfounded: there was no such prior sale. Then, on April 1, 1985, Pascal takes control of the tract, usurping
Théophile's possession. What result now? Why?

(b) Procedural matters

[1] The presumption of good faith

Who bears the burden of proof on the issue of good faith—the person who claims abridged acquisitive prescription or the person who opposes that claim? See CC art. 3481, sent.1, & cmt. (b).

[2] Evidence of bad faith

How does the opponent of the putative possessor carry that burden or, in other words, rebut the presumption? See CC art. 3481, sent. 3.

[a] Errors of fact

1° In general

Does proof of an "error of fact," i.e., a mistake about the pertinent facts, defeat good faith? See CC art. 3481, sent. 2, & cmt. (c). Is the comment correct?

2° Special problems

a° Quitclaim deeds


2° Clouds on title reflected in the public records

Read & brief Phillips v. Parker (La. 1986) [Yiannopoulos, Text, 498-505].

[2] Errors of law

Read & brief Lacour v. Sanders (La. App. 1983) [Yiannopoulos, Text, 508-13]; read Symeonides, Error of Law & Error of Fact [Yiannopoulos, Text, 513-20].

(3) Delay

(a) Length

What’s the length of the delay? See CC arts. 3473 & 3475.

(b) Tacking

Review Planiol, ELEMENTARY TREATISE, nn° 2673-2678, in Yiannopoulos, Text, 527-29.

NOTE: The English translation of Planiol’s work that’s reproduced for you in Yiannopoulos’ text (the Louisiana State Law Institute translation) is, at least at one point, misleading, if not down right wrong. The fifth paragraph in the excerpt from Planiol’s treatise should be translated as follows:

Assuming that the preceding possessor was himself in the process of prescribing, several combinations may arise. If both of the possessors were entitled to prescribe within from ten to twenty years, the new possessor would certainly have a right to join the two possessions [so as to satisfy the delay requirement of ten to twenty years]. The same result [i.e., permissibility of junction] would obtain if neither of the possessors was entitled to prescribe within these terms [i.e., by ten to twenty years]. For one possessor [the preceding possessor] as for the other [the new possessor], thirty-year prescription alone is possible. In these two cases [i.e., (i) where both possessors can claim the prescription of ten to twenty years and (ii) where both possessors can claim only the prescription of thirty years], the two successive possessions of the successor and his author may be added together. They are of the same nature and of the same quality.

Read & brief Bartlett v. Calhoun (La. 1982) [Yiannopoulos, Text, 532-38]. Note that the Bartlett court, which justified its conclusion, in part, on the authority of Planiol’s work, reproduced the Louisiana State Law Institution’s translation of that work without modification, specifically, without correcting the defect in the English translation of that work. Though this “oversight” by the court was of no moment in Bartlett (given the facts of the case, the court had no occasion to apply the principle that seems to be stated

5 You MUST know this case better than the back of your hand!
in the mistranslation), it could be of consequence in other cases. So, watch out!

CAVEAT: The French authors whom the Bartlett court quotes state that a particular successor (unlike a universal successor) “commences a new possession,” one that is “separate and distinct” from the possession of his ancestor in title. Great care must be taken in interpreting this proposition, lest it be misunderstood. Whatever else it means, it does not mean that the particular successor must himself exercise corpus. To the contrary, by virtue of the principle of “derivative corpus,” which we learned sometime earlier, the effects of any acts of corpus performed by the ancestor-in-title are always and in every case passed on to the successor, regardless whether the succession between them is universal or particular. The real—and the only—significance of the “new possession” proposition, then, is that a particular successor, if he wants to tack his ancestor’s time onto his own, must at a minimum and in all cases himself have animus domini and, if he wants to claim the benefits of abridged acquisitive prescription, must also himself be in good faith and have just title.

2) Movables

Skipped.

IV. Ownership

A. In general

Skipped.

B. Extent of ownership: accession

1. Explication

a. Definition

What is "accession"? See CC art. 482; Trahan, Supp, 107.

b. Nature

What is the nature of accession? See Digest of 1808, bk. 2, tit. 2, art. 3 (Trahan, Supp, 99); Trahan, Supp, 108. How does the first article describe accession? How does the second article describe accession? Well, which is it?

c. Varieties

What’s the difference between “natural” and “artificial” accession? See Vocabularie Juridique (natural accession is "[a]ccession due to the act of nature alone," e.g., accession with respect to naturally-occurring plants and their fruits, the offspring of animals, alluvian, and abandoned river beds, whereas artificial accession is "[a]ccession proceeding from the industry of man applied to a thing," e.g., accession with respect to constructions and plants planted by man and their fruits); Trahan, Supp, 108.

2. Regimes of accession

a. Accession with respect to immovables

1 ) Preliminary matters

a ) Prerequisites to accession with respect to immovables

Read Trahan, Supp, 111-12.

There are five essential prerequisites to accession with respect to immovables. The first three are fairly obvious. First, there must be at least two distinct things. Second, one of these things must be produced from or united with the other by either an act of nature (natural accession) or an act of man (artificial accession). For convenience, we may call the thing that is produced from or united with the other thing the "new thing" and the thing that produces the new thing or to which the new thing is united the "original thing." Third, the original thing must be an immovable.

Less obvious are the fourth and fifth prerequisites. (1) There must be at least two subjects. One, whom we’ll call the “1st person,” is the owner of the original immovable. The other, whom we’ll call the “2nd person,” is either the owner of the capital or the supplier of the labor or both. (2) Either (a) the new thing itself or the things from which the new thing is produced or created must not belong to the owner of the original immovable or (b) the maker/producer of that thing must be someone other than the owner of that
immovable. In other words, for accession to take place, either the capital or the labor that gets put into the original immovable must belong to someone other than the owner of that immovable.

PH 166. Pascal, the owner of Belle Terre, decides to fix up the place a bit. First, he puts in a flower bed. To do that, he digs up the native soil in the selected areas; replaces it with topsoil and fertilizer, which he bought at the hardware store; and then sows the beds with seeds, which he also bought at the hardware store. Second, he puts up a picket fence around his house and yard. The fence he constructs out of wood, nails, wire, and paint, all of which he bought at the hardware store. Who owns the flowers and the picket fence? Can there be any question? See CC arts. 482, 483, 490, 491.

b) Types of rules w/n the law of accession re immovables

Within the law of accession with respect to immovables, one encounters two very different kinds of rules. It's essential that you not confuse them. First, there are "rules of ownership," that is, those that determine who owns the new thing. Second, there are "remedial rules," that is, those that determine whether and, if so, on what conditions the person who created or supplied the new thing or from whom the new thing was taken can remove the new thing or, if he can't do that, is at least entitled to some sort of indemnity for it.

c) Relativity of ownership & reimbursement rights

In many instances, the ownership rights and the reimbursement rights established the laws on accession are "relative." Who "owns" the thing that's produced from or united with the original immovable and whether the person who produced the new thing from or united the new thing with the original immovable can demand reimbursement depends, in many cases, on with respect to whom we're talking about. As it turns out, in many instances who owns the thing from the point of view of the 1st and 2d parties, i.e., the owner of the original immovable and the person who produced the new thing from it or united the new thing with it, is not who owns the thing from the point of view of third parties, i.e., anybody else. Similarly, it turns out that, in many instances, the person who produced the new thing from or united the new thing with the original immovable can get (or could have gotten) reimbursement from the original owner of the original immovable, i.e., the person who owned the original immovable at the time of the production or union, but not from a third party who, since that time, has acquired an interest in the original immovable. See CC arts. 491 & 498.

d) Suppletive nature of the rules

Read CC art. 493 cmt. (c); Trahan’s Retrojet comme fait on “accession” (hereinafter “RCF”) art. 490 (“Unless otherwise provided by law or by will . . . .”) [Trahan, Supp, 132].

e) Evidence of accession: the presumption of unity of ownership

Read CC arts. 491, 490, & 482; RCF arts. 490 & 493.1 [Trahan, Supp, 132 & 134].

2) The rules

a) Artificial accession

1) Union or production by someone other than the owner of the original immovable using things that did not belong to the owner of the original immovable

a) Ownership rules

What is the difference between "improvements," on the one hand, and "constituents," on the other? See CC arts. 493, 493.1, 462-466; RCF footnote 1 (#417) [Trahan, Supp, 132].

1) Accession of "improvements" to land

Who owns “improvements”? Read Trahan, Supp, 111-12.

a) Buildings

1° As to the 1st & 2d parties

Read & brief Marcellous v. David (La. App. 3d Cir. 1971) [Yiannopoulos, Text, 330-32]. Marcellous was decided under the old law, i.e., the Code of 1870. Would the result or at least the rationale for the result be any different under the new law? Consider the issues presented therein: (i) Can
a building be owned separately from the ground on which it stands? See CC arts. 463, 464, 491; RCF arts. 490, 491, 493 [Trahan, Supp, 132-33 & 133-34]. (ii) If so, who bears the burden of proof on the issue of who owns the building? See CC art. 491; RCF art. 493.1 [Trahan, Supp, 134]. (iii) Did Coralie carry her burden of proof, i.e., prove that she owned the building separately from the ground?

To answer this third question, one must first identify the elements of Coralie's case, i.e., just what she must prove in order to establish separate ownership. And that is what? (i) Under current law, must one who claims separate ownership of a building, in order to carry her burden of proof, show that "an instrument has been filed for registry in the conveyance records of the parish in which the immovable is located" which instrument provides evidence of her separate ownership? See CC art. 491, sent. 2; RCF art. 491 & cmt. (b). Does the rule announced therein apply in this context, i.e., a suit between the “first party” (owner of the immovable) and the “second party” (i.e., maker of the improvement)? What does CC art. 491 cmt. (c). say? See also RCF art. 491 & cmt. (b) [Trahan, Supp, 132-33]. (ii) Under current law, must one who claims separate ownership of a building must, in order to carry her burden of proof, show that he put the building "on the land of another with his consent"? See CC art. 493, ¶ 1; RCF art. 493 [Trahan, Supp, 133-34].

To what does the word “made” as used in CC art. 493, ¶ 1, refer? No doubt it includes the act of “constructing” a new improvement from the ground up. But does it include the act of “placing” a pre-fabricated improvement on the immovable? What does Marcellous presuppose?

2° As to 3d parties

Read & brief Graffagnino v. Lifestyle, Inc. (La. App. 4th Cir. 1981) [Yiannopoulos, Text, 332-35]. What do you think of the Graffagnino court's rationale for classifying the O'Dome as an immovable? Note, in particular, its use of the "social expectations" criterion. If the interpretation of “permanently attached” proposed in Graffagnino is still good (the case was decided under the Code of 1870), what does that interpretation tell us about how we ought to define "permanently attached" for purposes of article 463, as in "other constructions permanently attached to the ground"?

What if Lifestyle, instead of filing its lease, had filed a unilateral declaration to the effect that it, not Leean, owned the O'Dome at such and such a location? Would that have done the trick, i.e., have satisfied the demand of CC art. 491, sent. 2 for “an instrument filed for registry” that “evidenc[es]” “separate ownership”? Why or why not? See RCF art. 491 cmt. (d) [Trahan, Supp, 133].

b) Other constructions permanently attached

1° As between the 1st & 2d parties

PH 166. Clodice executes a "grazing" lease over Terre Facile in favor of Olide. Under the lease, Olide is entitled to build cowstalls on the land for his cattle, sheep, and goats. A cowstall is a structure used to set out feed for farm animals. It is made of wood (fastened together with nails), is cemented into the ground, has a wooden trough for holding hay, and has a small roof, just big enough to protect the hay from rain. The lease is not recorded. Olide immediately begins work on the cowstall. After he builds it, Clodice evicts him for failure to pay the rent. She then begins to dismantle the cowstall, the materials from which she intends to sell as scrap. Olide files suit against her, seeking to stop her from dismantling the cowstall. His theory? That he owns it. Who wins? Why? See CC art. 493, ¶ 1; RCF art. 493 [Trahan, Supp, 133-34].

2° As to 3d parties

PH 167. The same as before (PH 166), except that this time Clodice, after evicting Olide, mortgages Terre Facile to Jambalaya Bank & Trust Co. Does the mortgage attach to the cowstall? Why or why not? See CC arts. 493, ¶ 1, 469, 462, 463; RCF arts. 493 & 491 [Trahan, Supp, 133-34 & 132]. Would it matter if Jambalaya, at the time of taking the mortgage, had in fact known about the unrecorded lease? Why or why not?

c) Plantings

1° As between the 1st & 2d parties
PH 168.1. Olide executes a long-term lease his estate, Terre Puante, to his nephew Auguste. The purpose of the lease, according to the written lease agreement, is to permit Auguste to raise rice for profit. The lease is never recorded. Auguste, upon taking control of the land, plants not only rice, but also plants a stand of pine trees. Each year, Auguste harvests the rice sells it to the Farmers Market Cooperative. Years later, after the pine trees have reached a decent height, Auguste chops them down and sells them to the Long Leaf Lumber Co. When Olide learns of the sales of the rice and the pine trees, he demands that Auguste turn over the proceeds of those sales to him. Who wins? Why? See CC arts. 493; ¶ 1; RCF art. 493 [Trahan, Supp, 133-34].

2° As to 3d parties

PH 168.2. The same as before (PH 168.1), except as follows. This time Olide, while the lease is still in effect, sells Terre Puante to Jean Sot. At the time of the sale, Auguste is poised to harvest the annual rice crop and to cut down the trees. When Jean Sot learns of Auguste’s plans, Jean Sot orders him to stop, contending that both the rice and the trees belong to him. Is Jean Sot correct? Why or why not? See CC arts. 493, ¶ 1, 469, 462, 463; RCF arts. 493 & 491 [Trahan, Supp, 133-34 & 132]. Would it matter if Jean Sot, at the time of the sale, had in fact known about the unrecorded lease? Why or why not?

2} Accession of constituents

Who owns "constituents"?

a} As between the 1st & 2d parties

PH 169. Pascal and Olide, respectively, own two houses—mansions, in fact—right next door to each other down along Bayou Teche. Pascal, wanting to spruce up his place, hires Qu'y Aie Lumière, a local lighting company, to install several chandeliers there. The company appoints Jean Sot, its new employee, to do the job. But Jean Sot, who is not too bright, confuses the two mansions. And, you guessed it, he installs the chandeliers in Olide's place rather than Pascal's place. Who owns the chandeliers? The company, Pascal, or Olide? Why? See CC arts. 493.1 & 466, ¶ 1; Equibank v. IRS [Yiannopoulos, Text, 122-26]; RCF art. 493.2 [Trahan, Supp, 134].

PH 170. Clodice executes a farming lease of Terre Facile in favor of Olide. Shortly after the lease takes effect, Olide buys a few tons of rich topsoil from the hardware store and spreads them over the area that he plans to farm. The first rental payment, in the amount of $100, is due immediately. A few weeks later, just as Olide's preparing to plant, Clodice evicts Olide for nonpayment of the rent. Olide then attempts to return to Terre Facile to scoop up the and carry of the topsoil. Clodice brings suit for an injunction to stop him. Who wins? Why? See CC arts. 465 & 493.1; RCF art. 493.2 [Trahan, Supp, 134].

b} As to 3d parties

Is there a different ownership rule as to third parties? In other words, does the problem of "relativity of ownership" ever rear its ugly head in the realm of the accession of constituents? Why or why not? See CC arts. 493.1, 465, 466; RCF arts. 491 & 493.2 [Trahan, Supp, 132 & 134]; Trahan, Supp, 112.

Divertissement (digression). Since we don't allow separate ownership of component parts of buildings, what do you suppose we do with attempts to separate the ownership of different floors of buildings or of different rooms on those floors? Read CC art. 492 & RCF art. 491 cmt. (c) [Trahan, Supp, 133]; then take a peek at (don’t read, don’t even skim) LA. REV. STAT. 9:1121.101 - 1124.115.

b ] Remedial rules

Read Trahan, Supp, 112 (re domain).

1} As between the 1st & 2d parties

a} Where the owner of the original immovable consented to the production or union of the new thing

Read Trahan, Supp, 113-15.
PH 171. Pascal and Olide enter into a contract for the lease of Belle Terre, which lease expressly authorizes Olide to put up a cowstall. Olide, after taking possession of the land, puts up a cowstall, which is secured to the ground with concrete. After the term of the lease is up, Olide disassembles the cowstall and removes it, then levels out the ground to which it was attached. Was he within his rights? Why or why not? See CC art. 493, ¶ 2; RCF 494 [Trahan, Supp, 134-35].

PH 172. The same as before (PH 171), except that Olide removes the cowstall before the term of the lease is up. What result now? Why?

PH 173. The same as before (PH 172), except as follows: The lease ends on Jan. 1, 1996. That same day, Pascal sends Olide a note that says "Foutes ton camp!" which, roughly translated, means "Get your crap out of here." Olide does nothing. The days turns into weeks, the weeks into months. Finally, on April 15, 1996, Olide goes onto Belle Terre, tears down the cowstall, and hauls it away. Pascal then sues him for an injunction, compelling him to return it. Who wins? Why? CC art. 493, ¶ 2, s. 2; RCF 494.1 [Trahan, Supp, 135].

PH 174. The same as before (PH 173), except that Pascal tells Olide to get out during a telephone conversation rather than in a note. Same result now? Why or why not? See CC art. 493, ¶ 2; RCF 494 & 494.1 [Trahan, Supp, 134-35].

2° Constituents

PH 175. Olide persuades Pascal to sell him his mansion on Bayou Teche. In anticipation of the closing, Pascal permits Olide to begin fixing up the place to his liking. And so Olide, an aficionado of chandeliers, buys several chandeliers, then installs them in Pascal's mansion. Just before the sale goes through, however, Olide's bank declines to approve Olide's loan application. The deal collapses. Olide then returns to Pascal's mansion, removes the chandeliers, and reinstalls the original light fixtures. Was Olide within his rights? Why or why not? See CC arts. 495, ¶ 1, & 466, ¶ 1; recall Equibank; RCF 494.2 [Trahan, Supp, 135-36].

PH 176. The same as before (PH 175), except as follows: (i) Olide doesn't immediately remove the chandeliers; (ii) that Pascal, who hates chandeliers, orders Olide to remove them; (iii) Olide still does nothing; (iv) six months later, Pascal, tired of waiting, hires Jean Sot to rip the chandeliers out of the ceiling and to reinstall the original light fixtures; and (v) Pascal puts the chandeliers out on the side of the road, where they are carted off by the happy sanitation engineers. Olide then sues Pascal for conversion, seeking to recover damages for the loss of the chandeliers. Pascal reconvenes, seeking to recover the cost of removing the chandeliers and restoring the original light fixtures. Who wins? Why? See CC arts. 493 & 495; RCF 494.3 [Trahan, Supp, 136].

PH 177. The same as PH 176, except that Pascal, instead of having the chandeliers removed, keeps them, then offers to pay Olide the cost of the chandeliers and the original value of his labor. C'est OK ou non? Why? See CC art. 495; RCF 494.2 [Trahan, Supp, 135-36].

b) Where the owner of the original immovable did not consent to the production or union of the new thing

Read Trahan, Supp, 115-20.

1° Domain

a° Possessors

Read CC arts. 496 and 497. How do these articles differ? What's a "possessor", as that term is used in these articles? Read Trahan, Supp, pp 110 fn. 250, p 115 fn. 288; & RCF art. 496 cmt.(c) [Trahan, Supp, 137].

PH 178. Belle Terre belongs to Pascal. Olide, pretending to be the owner of Belle Terre, executes an act of sale whereby he purports to sell it to Jean Sot. Jean Sot then moves onto the property, puts up a house, plants some pine trees, and raises crops. Is he the kind of person to whom article 496 or 496 might apply?
Why or why not?

PH 179. Pascal, the owner of Belle Terre, leases it to Jean Sot for the sole purpose of grazing cattle. Jean Sot then moves onto the property, puts up a house, plants some pine trees, and raises crops. Is he the kind of person to whom article 496 or 497 might apply? Why or why not? See CC art. 2726; RCF art. 495 [Trahan, Supp, 136-37].

b° Unjustified enrichment

The domain of article 496 and 497 may be still further restricted. Read & brief *Britt Builders, Inc. v. Brister* (La. App. 1st Cir. 1993) [Yiannopoulos, Text, 335-41]; Trahan, Supp, 104-05 (Pothier), 112 text at fn. 270 (“domain of rules”); RCF art. 496.1 cmt. (a), ¶ 2 [Trahan, Supp, 137].

2° Content

a° Preliminary matter: good faith v. bad faith

What is "good faith" for purposes of CC arts. 496 & 497? Should one look to CC art. 487 or to CC art. 3480 for the definition? See Trahan, Supp, 110 fn. 249 & RCF art. 496.1 cmt. (b) [Trahan, Supp, 138]. How does “good faith” for purposes of accession differ from “good faith” for purposes of acquisitive prescription? See CC art. 487 cmts. (b) & (c); CC art. 3480 cmt. (b).

Recall *Britt Builders, Inc. v. Brister* (La. App. 1st Cir. 1993) [Yiannopoulos, Text, 335-41]; then read *Sanders v. Jackson* (La. App. 3d Cir. 1966) [Yiannopoulos, Text, 345-48]. Did the courts in these cases resolve the “good faith” issue correctly? Why or why not?

b° The rules

1/ Good faith

PH 180. Pascal owns Belle Terre. Olide, pretending to own it, executes an act of sale to Jean Sot. Jean Sot, believing that the title he has received from Olide is valid, takes possession of Belle Terre. Once there, he puts up a cowstall on the land, set in concrete, and installs a new central cooling unit in the house. Both improvements "add value" to the affected property. When Pascal finds out about it, he hires Auguste to tear the cowstall down, but keeps the air conditioner. Pascal then sues Jean Sot to recover (i) the cost of demolishing and removing the cowstall and (ii) damages stemming from the erection of the cowstall. Jean Sot reconvenes, seeking to recover the original cost of installing the air conditioner. What result? Why? See CC arts. 487, 496, 463, 466, & *Sanders v. Jackson* (La. App. 3d Cir. 1966) [Yiannopoulos, Text, 345-48]; Trahan, Supp, 118 (“by good faith possessors”); RCF arts. 496.1 & 496.2 [Trahan, Supp, 137-38].

2/ Bad faith

PH 181. Same as before (PH 180), except that Olide doesn't give Jean Sot a written title to Belle Terre. What result now? Why? See CC arts. 487, 496, 463, 466; Trahan, Supp, 118-20; RCF arts. 496.3 & 496.4 [Trahan, Supp, 138-340].

NOTE: Reimbursement of expenses

PH 182. Pascal owns Belle Terre. Olide, pretending to be the owner, executes an act of sale whereby he purports to sell it to Jean Sot. Jean Sot, who is none the wiser, then takes possession of Belle Terre. Shortly after his arrival, he makes some changes, in particular, clears part of the land of timber, with a view to using it for cotton farming; mends several delapidated fences; and, to prevent flooding due to unusually heavy rains, widens the drainage ditch. The first two enhancements--clearing of the timber and mending of the fences add value to Belle Terre; the third--widening the drainage ditch--does not. Just as Jean Sot finishes up work on the fences, Pascal shows up, satisfies Jean Sot that he's the true owner, and orders Jean Sot to leave. Jean Sot says, "OK, but first pay me for my trouble, i.e., reimburse me for the expenses I incurred in widening the ditch, clearing the land, and mending the fences." When Pascal refuses to pay, Jean Sot refuses to leave. Pascal then brings a petitory action against Jean Sot. Jean Sot reconvenes for expenses. Who wins? Why? See CC arts. 497, 527-529, & *Voiers v. Atkins Bros.* (La. 1903) [Yiannopoulos, Text, 342-45]; Trahan, Supp, 119 fn. 317 & 120 fn. 320; RCF art. 496.3 cmt. (b) [Trahan, Supp, 138-39].

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2° As to 3d parties

PH 183. Clodice leases her estate, Terre Facile, to Ti-Boy, for the purpose of raising cattle. The lease is not recorded. Ti-Boy goes onto Terre Facile and there builds a cowstall, which he fixes in place with concrete. Several years later, when the term of the lease is up, Ti-Boy vacates Terre Facile, leaving behind the cowstall. Still later, Clodice, who has decided to sell Terre Facile to Pascal, writes Ti-Boy a letter, demanding that he remove the cowstall. Ti-Boy does nothing. One month later, Clodice and Pascal close the sale. Ti-Boy then shows up, demanding that Pascal permit him to enter the land and to remove the cowstall. Can Pascal refuse? Why or why not? See CC arts. 469, 493, 491, 498; CC art. 498 cmt. (e); Trahan, Supp, 120 (“2° As to 3rd persons”); RCF art. 492 [Trahan, Supp, 133].

PH 184. Olide, the owner of a nursery, decides to build a greenhouse. To keep in warm during the bitterly cold Louisiana winters, he needs a heavy duty heating system. Unable to buy one outright, he leases one from the Cajun Supply Company. The lease is not recorded. The installation of the heating system proves to be an ordeal: it takes a team of three electricians working around the clock two days straight to hook it up. The lease ends. Before Cajun can come out and recover the heating system, Olide, strapped for cash, mortgages "the nursery" to Jambalaya Bank & Trust Co. Olide, as you'd expect, defaults on the loan. Jambalaya then forecloses on the nursery, seeking to have it sold at public auction. Cajun intervenes in the proceedings, seeking to exempt the heating system from the sale. What result? Why? See CC arts. 466, 469, 493.1, 495, 491, 498; CC art. 498 cmt. (e); Trahan, Supp, 120; RCF 492 [Trahan, Supp, 133].

PH 185. Olide persuades Pascal to sell him his mansion on Bayou Teche. In anticipation of the closing, Pascal permits Olide to begin fixing up the place to his liking. And so Olide, an aficionado of chandeliers, buys several chandeliers, then installs them in Pascal's mansion. Just before the sale goes through, however, Olide's bank declines to approve Olide's loan application. The deal collapses. Before Olide can return to Pascal's mansion to remove the chandeliers, Pascal mortgages the mansion to Jambalaya Bank. Can Olide now insist that he be permitted to remove the chandeliers? Why or why not? See CC arts. 466, 469, 493.1, 495, 491, 498; CC art. 498 cmt. (e); Trahan, Supp, 120; RCF 492 [Trahan, Supp, 133].

2] Union or production by the owner of the original immovable with things that belonged to another

Skipped.

b) Natural accession

Skim CC arts. 499-500, 503-505; skim Trahan, Supp, 121-25.

b. Accession with respect to movables

Skipped.

c. Accession with respect to fruits & products

Read CC arts. 483, 486, 488, & 489.

PH 190. Pascal owns Belle Terre. On January 1, 1996, Olide, pretending to be the owner, executes an act of sale whereby he purports to sell it to Jean Sot. Jean Sot, who is none the wiser, immediately takes possession of Belle Terre. While there, he plants corn, leases the back 40 acres to Clodice for $50/month, and extracts sulfur from huge underground sulfur deposits. Pascal, upon discovering Jean Sot's activities on the land, files a petitory action, seeking to throw him out. Jean Sot is evicted on October 1, 1996, right in the middle of his corn harvest & right in the middle of the lease. Who owns what? What are the parties' respective remedies?

PH 191. The same as before (PH 190), except that Olide did not give Jean Sot a written act of sale for Belle Terre. How, if at all, would the parties' ownership and remedial rights be different? Why?

D. Protection of ownership

Read CC art. 526.

1. Immovables

a. The petitory action
How does one vindicate an ownership interest in an immovable? See CCivProc art. 3651 [Yiannopoulos, Text, 581].

1) Burden of proof


What do you suppose "possession" means here? The same thing it means in Book III or something different? See CC art. 531 cmt. (a), last sentence. Surprise, surprise!

a) Where the defendant is in possession

What is the plaintiff's burden of proof where the defendant is in possession? See CC art. 531, s. 1; CCivProc art. 3653(1) [Yiannopoulos, Text, 581].

1) Acquisition by acquisitive prescription
2) Acquisition "from a previous owner"

a) General rule: title "good against the world"

Read, brief, and burn into your mind Pure Oil Co. v. Skinner (La. 1974) [Yiannopoulos, Text, 587-92]. This case is to protection-of-ownership law what Miranda is to Fifth Amendment law.

b) Exception: the "common author" rule

Is it always this tough for the plaintiff to carry his burden of proof where he's in possession? Isn't there a potential shortcut?

PH 192. In 1970 Olide sells a certain tract of land to Jean Sot. In 1971 Olide sells the same tract of land to Codice. In 1980 Codice dies, whereupon her interest in the tract passes to Lil-Fille, her daughter. In 1985 Jean Sot sells the tract to Théophile. When Théophile discovers that Lil-Fille claims ownership of the tract, he brings a petitory action against her. What result? Why? See CC art. 532.

b) Where the defendant is out of possession

What is the plaintiff's burden of proof where the defendant is not “in possession”? See CC art. 531, s. 2; CCivProc art. 3653(2) [Yiannopoulos, Text, 582].

What is “better” title? Is “older” always better? Or, to determine which is better, must one consider, in addition to the ages of the titles, various of their other characteristics, such as their “clarity” or “precision”?

In Tassin v. Rhynes, 366 So. 2d 580 (La. App. 3d Cir. 1978), the court of appeal, when faced with precisely this issue, declared "[a]s a general rule, the more ancient title prevails."

"In so ruling," one commentator has said of the Tassin court," it "has indulged in an over-generalization. It is not hard to imagine a dispute in which both parties offer less than perfect titles, but the better title is of more recent origin. While the court's [rule] may prove correct in many situations, it should not automatically ensue before even examining the titles offered by the parties. . . . In Tinney [v. Lauve, 280 So. 2d 588 (La. App. 4th Cir. 1973)], . . . the court found that the plaintiff had sustained his burden [i.e., “better title”] because the property description in his title set out enough established landmarks and monuments to trace the land boundaries [with certainty]. . . . The defendant’s title, on the other hand, proved insufficient because it did not describe the property sufficiently to identify it [with certainty] as the disputed property. The court therefore held that the plaintiff had established better title to the land [without regard to the comparative ages of the titles]." Camille B. Poché, Better Title: An Examination of the Burden of Proof in Louisiana Petitory Actions, 67 Tul. L. Rev. 511, 538-39 (1992).

PH 193. Pascal and Olide both claim the ownership of the same tract of land. Unable to come to terms

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6 There’s a typo in the Yiannopoulos text. The second statute numbered “art. 3652” should, in fact, be numbered “art. 3653.” That’s the one you want to read.
with Olide, Pascal brings a petitory action against him. At the trial, the parties prove up their respective chains of title as follows: (i) Pascal: USGov't → Abshire (1875); Abshire → Babin (1900); Babin → Comeau (1935); Comeau → Pascal (1960); (ii) Olide: Smith → Jones (1930); Jones → Olide (1955). Neither party can prove that he or any of his ancestors was ever in possession of the land. Who wins? Why?

PH 194. The same as before (PH 193), except that Pascal's chain of title is as follows: Abshire → Babin (1900); Babin → Comeau (1935); Comeau → Pascal (1960). Thus, he cannot show title emanating from the sovereign. Who wins now? Why?

PH 195. The same as PH 194, except as follows. Pascal's title, though older than Olide's, consists of acts of sale that contain rather loose property descriptions, devoid of any references to lot, township, section, or range. So loose are the descriptions, in fact, that one can't be entirely sure whether the tract in question is or is not included. Olide's title, though newer than Pascal's, consists of acts of sale that describe the affected property with great specificity, the details of which make it clear that the tract in question is included. Who has the better title now? Why?

2) Relationship to the possessory action

PH 196. Jean Sot, who claims to be the owner and the possessor of Terre Puante, files suit against Olide, who also claims to be the owner and the possessor of Terre Puante. In his petition, Olide asserts both a possessory action and a petitory action. Olide then moves to dismiss the possessory action. What result? Why? See CCivProc art. 3657, ¶ 1 [Yiannopoulos, Text, 245].

PH 197. The same as before (PH 196), except as follows. Jean Sot brings only a possessory action against Olide. In his answer, Olide, after denying Jean Sot's allegations, alleges in the alternative that he is the true owner. Jean Sot then files a motion with the court asking that he be immediately recognized as the possessor and, further, that the trial of his suit, which he describes as a petitory action, be set on the earliest possible date. What result? Why? See CCivProc art. 3661 [Yiannopoulos, Text, 246].

b. The boundary action

1) Definitions
   a) Boundaries
   b) Boundary markers

2) Scope
   a) Fixing markers
   b) Fixing boundaries
      (1) Vague title boundary descriptions
      (2) Overlapping title boundaries
      (3) Shifting boundaries: possession beyond title

Still another kind of case in which a boundary action lies is that in which one of the neighbors allegedly has possessed land beyond the boundaries described in his title long enough to claim the benefits of acquisitive prescription, thereby producing a "shift" in the original boundary. Read & brief Sutton v. Rougeau, 514 So. 2d 472 (La. App. 3d Cir. 1987) [Yiannopoulos, Text, 628-31]; then read the “note” on Opdenwyer v. Brown [Yiannopoulos, Text, 632].

(4) New boundaries: possession without title

3) Prerequisites
   a) Prerequisites relative to the thing
   b) Prerequisites relative to the person

4) Rules of determination
   a) In general
   b) For particular situations
      (1) Where both parties rely on title
      (2) Where one party relies on acquisitive prescription

2. **Movables**

Skipped.

E. **Modified forms of ownership**

1. **Ownership in indivision**
   a. **Definition**

   Read CC art. 797, sent. 1.
   
   1) **Ownership**
   2) **The same thing**
      a) **Unlocalized interests**

   PH 200. Pascal owns Belle Terre, a 99-acre tract of land on which stand, among other things, a three-story house and a grove of 30 pecan trees. In the course of time, Pascal, a widower, dies. He is survived by three children, Ti-Boy, Lil-Fille, and Gros-Boy. The children, of course, now own Belle Terre and its improvements. Why? See CC arts. 880 & 888. What kind of interest does each have? Can one say, e.g., that Gros-Boy owns this or that 33-acre stretch of land, or this or that floor of the three-story house, or this or that set of 10 pecan trees? Or should his interest be described in some other fashion? Explain. See Marcel Planiol, *Traité élémentaire de droit civil* § 2497, in Yiannopoulos, Text, 282.

   b) **Parallel interests**

   3) **Two or more persons**
   
   b. **Domain**

   What is the domain of co-ownership, i.e., what kinds of "things" may be co-owned?
   
   1) **Book II "things"**
   2) **Other things**

   Read CC art. 818.

   c. **Creation**

   How can co-ownership arise?
   
   1) **By operation of law**
      a) **Intestate succession**

   As we saw in PH 200, intestate succession can give rise to co-ownership.

      b) **Commingling of materials**

   PH 201. One day Olide, finding himself in a creative mood, decides to do a little sculpting. His subject? What else? The mythical Cajun ancestors, Evangeline and Gabriel. His medium? Scrap metal. Olide hauls out his blow torch, gathers up what scraps of metal he can find, and begins a-weldin'. Mid-way through, he runs out of metal. Just as he's about to head to the hardware store to by more, he remembers that there's some scrap metal inside the tool shed over on Belle Terre, Pascal's place. As you'd expect, he helps himself to Pascal's tin scraps, which he then uses to complete the sculpture. Who owns Evangeline and Gabriel? Why? See CC art. 513.

   c) **Termination of community: divorce & separation**

   PH 202. Olide and Clodice, after several years of marriage, decide to call it quits. They file for both a divorce and a partition of their community property, which includes Terre Puante. As often occurs in such cases, the divorce judgment is granted before the partition judgment. During the time between the rendition of the divorce judgment and the rendition of the partition judgment, who owns Terre Puante? Olide and Clodice. And what is the nature of their interests? Do they own it as if it were still community property, in other words, as spouses? Or are their interests now somehow different? Explain. See 2369.1, ¶ 1.

   d) **Acquisitive prescription**

   PH 203. After Pascal's death, Ti-Boy, Tite-Fille, and Gros-Boy, Pascal's sole surviving heirs, take
possession of what they think is Belle Terre, Pascal's estate. But they make a mistake. The land of which they take possession includes not only Belle Terre, but also a 100-foot strip of Terre Lourde, Jean Sot's estate. Thirty years and one day later, who owns the strip? Why?

e) Occupancy & quasi-occupancy

2) By act of will

a) Bilateral acts: sales & exchanges

PH 204. Randy and Stuart, freshman law professors out to impress their colleagues with the range of their cultural interests, desperately want to buy the latest CD put out by Polish avant-garde composer, Henryk Gorecki. But since neither can muster the cash necessary to buy it on his own--their salaries are too low--they decide to pool what they've got and buy it together. Who owns the CD? Randy and Stuart. And what is the nature of their interests? Explain.

b) Unilateral acts: donations

PH 205. Before his death, Pascal executes a testament that provides as follows: "I leave to Jean Sot 2/3 and Olide 1/3 of my prized collection of Dewey Balfa records." Who owns Pascal's Dewey Balfa records? Olide and Jean Sot. And what is the nature of their interests? Explain.

d. Division of shares

1) General & residual rule

How, as a general rule, does each co-owner's share compare with those of the others? See CC art. 797, sent. 2.

2) Exceptions

a) Division mandated by law

b) Division mandated by juridical act

PH 206. Recall PH 205. Are Jean Sot's and Olide's shares equal? Why or why not?

e. Rights of co-owners

1) In the co-owned thing itself

a) Fruits

PH 207. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Ti-Boy then takes possession of the land. During his first year there, he plants and harvests a crop of corn and extracts sulfur from underground deposits. In addition, without effort on his part, grapes grow on the Muscadine vines in the old vineyard that Pascal planted there years ago. While the grapes are still on the vine, but after the corn has been harvested and the sulfur has been collected, Tite-Fille and Gros-Boy demand that Ti-Boy (i) permit them to gather their "shares" of the grapes and (ii) remit to them their "shares" of the corn and sulfur. When he refuses, they sue him. He reconvenes for his expenses. What result? Why? See CC art. 798 & cmt. (b); CC art. 551.

b) Use

(1) General rule: equal use

Read & brief LeBlanc v. Scurto (La. App. 1st Cir. 1965); then read CC arts. 802, s. 1, & 801.

Would the result have been any different if Santa's share had been, say, 0.5% instead of 33%? Why or why not?

(2) Exception: use defined by agreement

c) Conservatory acts

PH 208. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Ti-Boy then takes possession of the land. The first summer that he's there, a hurricane bears down on the Louisiana coast, causing torrential rains. Seeing that Bayou Egout, which forms the southern border of the land, is rising fast, he buys sand and burlap sacks from the hardware store, makes sandbags out of them, and builds a wall with them along the bayou. As a result of his efforts, Belle Terre is saved from flooding. Ti-Boy then demands that his co-owners reimburse him for their respective
shares of the costs he incurred in constructing the seawall. They refuse, arguing that he had no right to build the seawall without their prior consent. What result? Why? See CC arts. 800, 527-529.

d) Ordinary maintenance & repair

PH 209. The same as before (PH 208), with the following modifications. Belle Terre's bank along Bayou Egout is covered with a stone and mortar facade, on that Pascal installed before his death. Shortly after moving onto Belle Terre, Ti-Boy notices that many of the stones have come lose and some have even washed away. So, he replaces the missing stones, then re-mortars all of the stones. Ti-Boy then demands that his co-owners reimburse him for their respective shares of the costs he incurred in refurbishing the erosion wall. They refuse, arguing that he had no right to build the seawall without their prior consent. What result? Why? See CC arts. 806 & 800.

e) Necessary management expenses paid to a third person

f) Improvements & alterations

PH 210. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Ti-Boy takes possession of the land. While there, he makes a few improvements on his own initiative, without first consulting Tite-Fille and Groos-Boy, e.g., (i) removes and then replaces several of the vines that had ceased to be productive, (ii) puts in three new trellaces and associated vines, bringing the total number of trellaces on Belle Terre to 9, and (iii) builds a dairy barn. Gros-Boy, who is not happy with these improvements, sues Ti-Boy, seeking a judgment declaring that Ti-Boy had exceeded his authority by making them. What result? Why? See CC art. 804.

2) In the co-owner's share of the co-owned thing

a) Disposition

(1) General rule

(a) Alienation

PH 211. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Gros-Boy wants to sell 1/2 of his 1/3 share to Clodice and the other 1/2 of his 1/3 share to Olide. Can he do it? Why or why not? Why or why not? See CC art. 805, sent. 1.

(b) Creation of real rights

[1] Security interests

PH 212. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Gros-Boy, who's in desperate need of cash, goes to Jambalaya Bank & Trust to take out a loan. As security for the loan, he wants to execute a mortgage in favor of the bank on his 1/3 share of Belle Terre. Can he do it? Even if Ti-Boy and Lil-Fille object? Why or why not? See CC art. 805, sent. 1.

[2] Servitudes

PH 213. The same as before (PH 212), except that this time, Gros-Boy's objective is different. He now wants to grant his favorite nephew, Auguste, a usufruct over his 1/3 share of Belle Terre, reserving the naked ownership of that share for himself. Can he do it? Even if Ti-Boy and Lil-Fille object? Why or why not? See CC art. 805, sent. 1.

PH 214. The same as before, except that Gros-Boy wants to grant Auguste not a usufruct but a right of passage over his share. Can he do it? Even if Ti-Boy and Lil-Fille object? Why or why not? See CC arts. 646 & cmt. (b); 716; & 813.

[3] Creation of personal rights

(c) Abandonment

(2) Exception

f. Management

g. Improvements & alterations: accession

1) Ownership

PH 215. Recall the earlier hypothetical (PH 210) in which Ti-Boy, after Pascal's death, took possession of Belle Terre, then replaced several unproductive vines, added new trellaces, and built a dairy.
Who owns each of these improvements? Why? See CC arts. 804, 496, 497, 493, 493.1.

2) Remedies

PH 216. The same as before (PH 215). We've determined who owns the things that Ti-Boy added. Now let's consider to what remedies the respective parties are entitled. Can the nonconsenting co-owners demand the removal of the thing or must they keep them? And do they owe the improving co-owner any indemnity? Explain. See CC arts. 804, 496, 497.

h. Termination of co-ownership

1) Loss of the thing
2) Juridical act
3) Partition
   (1) Availability
      (a) General rule
      (b) Exceptions
         [1] Contrary provision in a juridical act
            [a] Act creating indissolubility

PH 217. The widower Pascal, the owner of Belle Terre, executes a testament in which he leaves Belle Terre to his children, Ti-Boy, Tite-Fille, and Gros-Boy, with the following proviso that Belle Terre not be partitioned for seven years. In the course of time, Pascal dies. Two years later, Gros-Boy, desperate for cash, petitions the court to partition the Belle Terre by licitation. What result? Why? See CC arts. 807, ¶ 2, sent. 2, & 1300.

[2] Convention among co-owners

PH 218. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his three children, Ti-Boy, Tite-Fille, and Gros-Boy. Ti-Boy, Tite-Fille, and Gros-Boy, who want to keep the land together for the sake of its profitable Muscadine vineyards, execute a non-partition agreement. That purports to prevent them from partitioning the land for a period of 30 years. Twenty years later, Gros-Boy, whose grown weary of the wine business, wants out. So, he brings suit for a partition. What result? Why? See CC art. 807, ¶ 2, sent. 2.

[3] Contrary provision of law

PH 219. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his three children, Ti-Boy, Tite-Fille, and Gros-Boy. Belle Terre consists of 99 acres of undifferentiated timberland. It is completely landlocked, i.e., no road runs by or through it. There are no clearings, no developments, no underground minerals. A few months after the succession is closed, Gros-Boy sues for a partition. What's the court likely to do? Be specific. Why? See CC art. 810.

PH 220. The widower Kilborn, the owner of a residential lot in Riverbend, dies intestate, survived by his ten children. The lot is 100 ft wide and 100 feet deep. A few months after the succession is closed, one of the ten children sues for partition. What's the court likely to do? Why? See CC art. 811.

4) Effects
   (a) Interests of co-owners: localization
      [1] In kind

Read CC art. 810.
By licitation

Read CC art. 811.

(b) Interests of third parties

[1] Third parties who had real rights in the formerly co-owned thing

PH 221. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. The children mortgage Bell Terre to Bayou Bank. A few years later, the court, at Gros-Boy's insistence, partitions Belle Terre in kind. What happens to Bayou Bank's mortgage? Why? See CC art. 812.

PH 222. The same as before, except that the partition is by licitation. What happens to the mortgage now? Why? See CC art. 812.

[2] Third parties who had real rights in a former co-owner's share

PH 223. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his children, Ti-Boy, Tite-Fille, and Gros-Boy. Ti-Boy mortgages his share of Bell Terre to Bayou Bank. A few years later, the court, at Gros-Boy's insistence, partitions Belle Terre in kind. What happens to Bayou Bank's mortgage? Why? See CC art. 813.

PH 224. The same as before, except that the partition is by licitation. What happens to the mortgage now? Why? See CC art. 815.

2. Trusts
Skipped.

F. Dismemberments of ownership

1. Servitudes
a. Predial servitudes

Read CC art. 654. What, according to this article, are the different kinds of predial servitudes? Are all of these supposed “kinds” of predial servitudes really predial servitudes? See CC art. 654 cmts. (c) & (d); Yiannopoulos, Treatise § 12, in Yiannopoulos, Text, 801-03.

1) Definition

What's a predial servitude? Read CC art. 646; Yiannopoulos, Treatise, § 3, in Yiannopoulos, Text, 789-90.

a) Charge on a servient estate

(1) Estate

PH 225. Just inside the Belle Terre's boundary with Terre Puante stands an old barn, one that Pascal, the owner of Belle Terre, never uses anymore. Olide, however, would like to use it. So, he persuades Pascal to sell him a "right of shelter," which the act of sale describes as follows: "As against Pascal and any future owner of Belle Terre, Olide and any future owner of Terre Puante shall have the right to shelter up to ten farm animals at a time in the old barn that stands near Belle Terre's border with Terre Puante." Is this thing--the barn--the kind of thing to which a predial servitude might attach? Explain. See CC art. 646 & cmt. (b); Yiannopoulos, Treatise § 7, in Yiannopoulos, Text, 795-96.

(2) Servient

What is meant by the expression "servient estate"? See CC art. 646.

Is it true that a predial servitude burdens the servient estate? See 3 Marcel Planiol & Georges Ripert, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS § 37, at 42 (Maurice Picard, ed., 2d ed. 1952) (“A relation of a juridical order cannot exist between a person and a thing: that would be nonsensical. By definition, every right is a relation between persons. This is the elementary truism on which the entire science of the law is founded . . . .”); 1 A.N. Yiannopoulos, PROPERTY § 204, at 373, in LOUISIANA CIVIL LAW TREATISE (3d ed. 1991) ("According to a broadly accepted definition, a real right is the judicially recognized authority to draw from a thing directly all or part of its economic advantages. The thing appears subjected to the authority of a person--one speaks of a right in the thing--and figures as an essential feature
in the legal relationship. This, however, is a metaphor, because, by definition, things cannot participate in a legal relationship.”

(3) Charge
What is meant by the expression "charge"? See CC art. 651; Yiannopoulos, Treatise §§ 4-5, in Yiannopoulos, Text, 790-93.

PH 226. Pascal, the owner of Belle Terre, enters into a contract with Olide, the owner of Terre Puante. In that contract, Pascal, acting on behalf of himself and all future owners of Belle Terre, (i) grants Olide and all future owners of Terre Puante the right to draw water from any of several water wells on Belle Terre, (ii) promises to keep the water wells in good repair for the benefit of Olide and all future owners of Terre Puante, and (iii) promises to carry water from the wells to Terre Puante at the request of Olide or any other future owner of Belle Terre. The contract is entitled "Act of Predial Servitude." Which, if any, of these duties may properly constitute the charge of a predial servitude? Why? See CC art. 651 & cmt. (b).

b) Benefit of a dominant estate
(1) Estate
PH 227. Pascal, the owner of Belle Terre, sells the timber standing thereon to Olide. Because the shortest way from the stand of timber to the nearest public road lies through Terre Facile, Clodice's estate, Olide buys a right of passage from Clodice. The act of sale provides that the right of passage shall enure to the benefit of Olide and all future owners of the Belle Terre timber estate. Is this thing—a timber estate—the kind of thing to which a predial servitude might attach? Explain. See CC art. 646 & cmt. (b).

(2) Dominant estate
What is meant by the term "dominant estate"? See CC art. 646 & cmt. (c).

PH 228. A certain Kilborn owns a residential lot in the Riverbend subdivision on which stands a swimming pool. For a price, he executes in favor of his neighbor, a certain Loup, an act that reads as follows: "I, Kilborn, on behalf of myself and all future owners of my lot do hereby grant to Loup the right to swim in the swimming pool on my lot subject to the following conditions . . . ." Is this right a predial servitude? Why or why not? See CC art. 647 & cmt. (c).

PH 229. Same as before, except that the act reads as follows: "I, Kilborn, on behalf of myself and all future owners of my lot do hereby grant to Loup and any future owner of his lot the right to swim in the swimming pool on my lot subject to the following conditions . . . ." What result now? Why? See CC art. 647 & cmt. (c).

(3) Benefit
What is meant by the term "benefit"? See CC art. 651, 646, 647.

PH 230.1. Clodice, on behalf of herself and all future owners of Terre Facile, grants to "Olide and any future owner of Terre Puante the right to enter onto Terre Facile and, once there, to amuse himself by hacking up the shrubbery at will." Does this act create a predial servitude? Why or why not? See CC art. 647 & cmt. (b); Yiannopoulos, Treatise § 9, in Yiannopoulos, Text, 798-99.

PH 230.1. Clodice, on behalf of herself and all future owners of Terre Facile, grants to "Olide and any future owner of Terre Puante the right to enter onto Terre Facile and, once there, to hunt, trap, and fish." The act, which is entitled "Act of Predial Servitude," further provides that "the rights conferred hereby shall ‘run with the land,’ that is, shall belong to whosoever may happen to own Terre Puante.” Does this act create a predial servitude? Why or why not? See CC art. 647 & cmt. (c); Yiannopoulos, Treatise § 9, in Yiannopoulos, Text, 798-99; Trahan, Supp, 141a-141f.

c) Separate ownership of estates
PH 231. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his three children, Ti-Boy, Lil-Fille, and Gros-Boy. Lil-Fille later buys Terre Lourde, a neighboring estate, from Moncle Jean Sot. Acting on her own behalf and on behalf of all future owners of Terre Lourde, she grants Ti-Boy, Gros-Boy, herself and all future owners of Belle-Terre a right of passage across Terre Lourde. Is this right a predial servitude? Explain. See CC art. 646 & cmt. (f); Yiannopoulos, Treatise § 9, in Yiannopoulos, Text, 798-99 (down to "Third, . . . .")
2) Nature


3) Characteristics

a) Inseparability

Read Yiannopoulos, Treatise § 6, in Yiannopoulos, Text, 794-95 (the part after ** **).

(1) From the servient estate

PH 232. Pascal, the owner of Belle Terre, enters into a contract with Olide, the owner of Terre Puante. In that contract, Pascal, acting on behalf of himself and all future owners of Belle Terre, (i) grants Olide and all future owners of Terre Puante the right to draw water from any of several water wells on Belle Terre and (ii) promises to carry water from the wells to Terre Puante at the request of Olide or any other future owner of Belle Terre. The contract, entitled "Act of Predial Servitude," is recorded in the public records. Later Pascal sells Belle Terre to Clodice. Upon moving in, she starts walling off Belle Terre from Terre Puante, thereby preventing Olide from drawing his water. When Olide asks that she carry him some water, she refuses. At about the same time, Pascal dies, survived by his children, Ti-Boy, Lil-Fille, and Gros-Boy. Olide then calls you, his attorney, for advice. He wants to know, if at all, he can reestablish his right to draw water from Belle Terre's wells and his right to have water carried from those wells to his doorstep or, in lieu thereof, get damages. What do you say? Why? See CC art. 651 & comment (c).

(2) From the dominant estate

PH 233. The same as before, but with the following modifications. After the suit is resolved in Olide's favor, Olide sells his right of passage to Jean Sot, the owner of Terre Lourde, which also borders on Belle Terre. Olide retains the ownership of Terre Puante. The next day, when Jean Sot goes skipping across Belle Terre pretty as you please, Clodice drives him off the place with a shotgun. Jean Sot then repairs to court, seeking an injunction restraining Clodice from interfering with his right of passage over Belle Terre. Who wins? Why? See CC art. 650 & cmt. (b).

b) Indivisibility

PH 234. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his three children, Ti-Boy, Lil-Fille, and Gros-Boy. At Lil-Fille's request, Jean Sot, the owner of Terre Lourde, grants to Lil-Fille, as 1/3 co-owner of Belle Terre, and to all future owners of her 1/3 share, a right of passage across Terre Lourde. Is this right a predial servitude? Why or why not? See CC art. 652, ¶ 1, sent. 1, & cmt. (b).

PH 235. Acting on behalf of himself and all future owners of Terre Puante, Olide grants Pascal and all future owners of Belle Terre the right to draw water from any of the water wells on Terre Puante. A few years later, Pascal and Olide die together in a freak boating accident. Pascal is survived by his three children, Ti-Boy, Lil-Fille, and Gros-Boy; Olide, by his two children, Avarice and Désirée. In connection with the succession proceedings, each set of children obtains a partition in kind of the respective estates. After that, Ti-Boy, Lil-Fille, and Gros-Boy begin using the wells on Terre Puante, some of which were located on Avarice's half, the rest of which were located on Désirée's half. The daily aggregate of the volumes of water withdrawn by Pascal's three children was equal to or less than the daily volume withdrawn by Pascal. Avarice and Désirée, displeased with this development, sue Ti-Boy, Lil-Fille, and Gros-Boy, seeking an injunction to stop them. Avarice and Désirée each argues (i) that, at most, only one of the three children should be allowed to draw water from the wells and (ii) that that child should be able to draw water only from the wells on half of Terre Puante that is closer to his or her share of Belle Terre. What result? Why? See CC art. 652 & cmt. (c); art. 653.

4) Limitations

PH 236. Pascal, acting on behalf of himself and all future owners of Belle Terre, executes two acts. The first grants to Olide and all future owners of Terre Puante a right of passage over Belle Terre, exercisable between midnight and noon. The second grants to Clodice and all future owners of Terre Facile a right of passage over Belle Terre, exercisable between noon and midnight. Is there anything wrong with these
servitudes? In particular, has Pascal improperly divided up the servitude or its advantages? Why or why not? See CC arts. 652, ¶ 2; 653 & cmt. (c).

5) Varieties
   a) Classification based on nature of charge on servient estate: affirmative v. negative

PH 237. On behalf of himself and all future owners of Belle Terre, Pascal executes an act in favor of Olide and all future owners of Terre Puante in which he (i) grants a right of passage across a certain gravel path on Belle Terre and (ii) promises not to erect any buildings or other constructions on Belle Terre within 100 yards of its boundary with Terre Puante. The rights that Olide acquires through this act both predial servitudes. Classify each of them according to its natures, that is, determine whether it is affirmative or negative. Explain. See CC arts. 706, ¶¶ 2 & 3.

   b) Classification based on evidence of charge on servient estate: apparent v. nonapparent

PH 238. The same as before. Now, classify each of the servitudes according to the public evidence of its existence, that is, classify it as apparent or non-apparent. Explain. See CC art. 707, ¶ 1.

6) Acquisition
   a) By title
      (1) Domain

What kinds of predial servitudes can be acquired by title? See CC arts. 739 and 740.

      (2) Requirements
          (a) Substantive requirements

[1] Re the act

What do we mean when we say that predial servitudes may be established "by title"? See CC art. 708.

PH 239. The widower Pascal, the owner of Belle Terre, dies, survived by his three children, Ti-Boy, Lil-Fille, and Gros-Boy. Gros-Boy then demands a partition. The court orders a partition in kind and, to make sure the owner of each of the three resulting lots will have access to the nearest public road, orders that there shall be a right of passage over each of those lots in favor of the owners of the other lots. It's clear that Gros-Boy now has a servitude over Ti-Boy's and Lil-Fille's lots, but can we say it was created by "title"? Why or why not? See CC art. 722 cmt. (b).

[2] Re the grantor

[a] Who can grant

1° Owner of the servient estate

Who, in principle, is the only person who's supposed to be able to subject an estate to a predial servitude? See CC art. 697 & art. 708 cmt. (b).

2° Co-owner of a servient estate

PH 240.1. The widower Pascal, the owner of Belle Terre, dies intestate, survived by his three children, Ti-Boy, Lil-Fille, and Gros-Boy. Belle Terre is not partitioned. Lil-Fille then executes an act in which she purports to grants to Clodice and to all future owners of Terre Facile a servitude of grazing over Belle Terre, i.e., the right to graze her cattle on Belle Terre's pastures. The next day Clodice drives her cattle onto Belle Terre for grazing. Ti-Boy then files suit to stop her. Is Clodice's servitude effective against Ti-Boy? Explain. See CC art. 714.

PH 240.2. Same as before, except as follows. After Ti-Boy's successful suit against Clodice, Lil-Fille demands a partition, the court orders partition by licitation, and Lil-Fille is the high bidder at the sale. Shortly thereafter Clodice again drives her cattle onto Belle Terre for grazing. This time, Lil-Fille brings suit to stop her, arguing that the grazing servitude was subject to a condition--consent of her co-owners--that was never fulfilled. Who wins? Why? See CC art. 715, ¶ 2.

3° Adverse possessor of the servient estate (servitude on after-acquired immovable)
Usufructuary of the servient estate

PH 241. Pascal, presently the owner of Belle Terre, marries Julie, his sweetheart from the time that they studied the catechism together. During the marriage, they produce three children: Ti-Boy, Lil-Fille, and Gros-Boy. Years later Pascal dies in a freak nutria-hunting accident. By testament, he grants to Julie a usufruct over and to his children the naked ownership of Belle Terre, his separate property. A short time later Julie, without consulting the children, executes an act purporting to grant Olide and all future owners of Terre Puante a right of passage over Belle Terre. Is the act effective? Why or why not? See CC art. 711.

[b] Capacity to grant

Do you suppose that the grantor of a servitude has to have any particular capacities? See CC art. 708 cmt. (c).

[c] Power to grant

PH 242. Clodice, the owner of Terre Facile, mortgages it to Jambalaya Bank & Trust Co. Acting on behalf of herself and all future owners of Terre Facile, Clodice then grants Jean Sot and all future owners of Terre Lourde a right of pasturage over Terre Facile. Is the servitude valid? Why or why not? If it is valid, does that mean that Clodice's act has no consequences, that is, Jambalaya must suffer the servitude to exist? What, precisely, are Jambalaya’s remedies? See CC art. 721.

PH 243. Acting on behalf of herself and all future owners of Terre Facile, Clodice then grants Jean Sot and all future owners of Terre Lourde a right of pasturage over Terre Facile. A few days later, she does the same thing, but this time in favor of Olide and all future owners of Terre Puante. Is the second servitude valid? Why or why not? See CC art. 720 & cmt. (c).

[3] Re the grantee

[1] Who can receive

Who can receive a predial servitude? See CC art. 735.

Does that mean that the owner is going to be stuck with any and all servitudes that these do-gooders might receive for his benefit or on his behalf? Suppose, e.g., that the servitude comes with a price tag attached. Must the owner pay it? See CC art. 737.

[2] Capacity

Must the owner of the dominant estate have any particular capacity in order to receive a predial servitude? See CC art. 736.

[3] Power

Is the power of the owner of the dominant estate to acquire servitudes subject to any particular restrictions?

(b) Formal requirements

[1] General rule

As a general rule, is any particular form required for a sale, exchange, or other contract that purports to convey an interest in immovable property, such as a predial servitude? See CC arts. 2440 & 1839, ¶ 1, sent. 1.

[2] Exception

Is this "form" rule an absolute rule, applicable to all conceivable situations, or just a generalization, one that admits exceptions? See CC art. 1839, ¶ 1, s. 2.

PH 243α (based on Guillot v. Wells (La. App. 2d Cir. 1986)). In the course of time a large natural gas reservoir was discovered under the neighboring estates of Terre Puante (owned by Olide) and Belle Terre (owned by Pascal). In return for the right to develop the gas, Cajun Oil & Gas Co. authorized both Olide and Pascal to run natural gas service lines from Cajun’s well to their houses and, further, gave them the right to take “as much gas as you might need.” Pascal put in his service line first. Then Olide, whose house was much farther away from the well than Pascal’s, asked Pascal for permission to “tie in” his service to to Pascal’s service line. Pascal said, “Sure. Why not? You’ve always been a good neighbor.” And so, Olide “tied in.” A few years later, after Ti-Boy, with Pascal’s permission, built himself a little house at the far end of Belle Terre, Pascal and Ti-Boy asked Olide if Ti-Boy, who also needed gas, could “tie in” his service line
to Olide’s service line. Ingrate that he was, Olide said, “No!” Pascal then retaliated by disconnecting Olide’s service line from his (Pascal’s) service line. At that point, Olide sued Pascal, alleging that Pascal had violated their “servitude agreement.” At the trial though Olide admitted that he and Pascal “hadn’t signed anything,” Pascal admitted that he had, in fact, granted Olide a “tie in” right “as a neighbor.” What result would you predict? Why?

b) By acquisitive prescription

(1) Domain

PH 244. Olide, masquerading as the owner of Belle Terre (it really belongs to Pascal), and Jean Sot, the owner of Terre Lourde, execute an act in which Olide, purporting to act on behalf of himself and all future owners of Belle Terre and for the benefit of Jean Sot and all future owners of Terre Lourde, promises not to build any buildings on Belle Terre above 40 feet in height. Twelve years later, Pascal constructs a multi-story mansion on Belle Terre, one whose roof reaches 60 feet high. Jean Sot then sues Pascal, seeking an injunction to order him to tear the mansion down or, at the very least, reduce its height to 40 feet. What result? Why? See CC arts. 739, 740, 742, 707, ¶ 2.

(2) Modes

Through which mode or modes of acquisitive prescription can a predial servitude be acquired? Just ordinary acquisitive prescription? Just extraordinary acquisitive prescription? See CC art. 742.

(3) Requirements

(a) Common requirements

[1] Possession

PH 245. While returning from a hunting trip one day in 1965, Jean Sot walks along a path that cuts across the corner of Belle Terre, Pascal's estate, on his way home. Over the next thirty-one years, Jean Sot repeats this conduct two or three times a year. It's now 1996. Assume that Jean Sot had the necessary animus, i.e., believed that he was exercising a servitude of passage. Does he now have such a servitude? Why or why not?

PH 246. Olide, masquerading as the owner of Belle Terre (it really belongs to Pascal), grants Jean Sot, the owner of Terre Lourde, a predial servitude of passage over Belle Terre. If Jean Sot uses the servitude "sufficiently," two things will take place simultaneously: (i) Jean Sot will be quasi-possessing the rights of the servitude and (ii) Olide, through his precarious possessor Jean Sot, will be vicariously possessing the part of Belle Terre over which the servitude lies. Why? Remember Manson Realty? Isn't that precisely what happened there? Now, here's my question: will the level or intensity of activity required for Jean Sot to quasi-possess his servitude rights necessarily and invariably be the same as the level or intensity of activity required for him to possess the strip of Belle Terre for Olide? Explain.

PH 247. Olide, masquerading as the owner of Belle Terre (it really belongs to Pascal), grants Jean Sot, the owner of Terre Lourde, a predial servitude of passage over Belle Terre. But the predial servitude is subject to a severe limitation: it may be exercised only in connection with Jean Sot's annual deer hunt, which takes place one week a year. Since Jean Sot doesn't come and go every day during the hunt, he is expected to use the servitude for only one round trip per year—once as he goes out to the hunting grounds and once as he returns. Through the passing years, Jean Sot consistently uses the servitude in the manner and with the intensity that he and Olide originally contemplated, i.e., one round trip per year during the hunt. At the end of ten years and a day, we can safely say, Jean Sot will have acquired his servitude by acquisitive prescription. But can we say that at the end of thirty years and a day, Olide, through Jean Sot, will have acquired ownership of the strip of Belle Terre itself through acquisitive prescription? Why or why not?

2° Animus
What *animus* is required for quasi-possession of a servitude? *See* CC art. 3421, ¶ 2.

Summary of *Levet v. Lapeyrollerie* (La. 1887). Levet & Lapeyrollerie ("L&L"), a partnership, acquired Tract A in 1866 and Tract C in 1867. Later in 1867 Lapeyrollerie himself acquired Tract B, which lay between Tracts A and C. In 1872 L&L, "with the consent of Lapeyrollerie," dug a drainage canal from one of its tracts, Tract C, to the other, Tract A, through Lapeyrollerie's tract, Tract B. Water ran through the canal from Tract C, through Tract B, to an existing canal on Tract A. The drainage canal was essential to the exploitation of Tract C: without it, Tract C could not be cultivated. In 1905 Lapeyrollerie died. The partnership property, including Tracts A & C, were then partitioned between Levet and Lapeyrollerie's children. By judgment Tracts A & C, "with all the rights, ways, privileges, improvements and appurtenances thereunto belonging," were awarded to Levet. In 1906 Lapeyrollerie's children closed off the canal at the point where it crossed from Tract C into Tract B. Levet then sued Lapeyrollerie's children, seeking an injunction to restrain them from stopping up the canal. His theory? That "Tract C" had acquired a servitude of drain over Tract B by acquisitive prescription. What result would you predict? Why?

(b) Qualities (absence of vices)

(1) Ordinary acquisitive prescription

Read CC art. 742, sent. 2, cl. 2.

(2) Extraordinary acquisitive prescription

Read & brief *Alexander v. Boghel* (La. 1832) [Yiannopoulos, Text, 967].

3) By destination

(a) Definition

Read & brief *Alexander v. Boghel* (La. 1832) [Yiannopoulos, Text, 967].

(b) Manner of creation

(1) Apparent servitudes

PH 248 (based loosely on 730 Bienville Partners Ltd. v. First Nat'l Bank., 596 So. 2d 836 (La. App. 4th Cir. 1992) [Yiannopoulos, Text, 972-77], which opinion you do NOT have to read). In downtown Nulle Part Pascal owns two large buildings that are situated just a few feet from each other on a lot that’s bounded on the west by Canard Street (north-south), on the south by Cochon Street (east-west), on the east by Poule Street (north-south), and on the north by Mouton Street (east-west). One building (the Westy) faces Canard Street; the other (the Easty) faces Poule Street. In the Easty, Pascal runs a small nutria-processing factory; the Westy Pascal uses for various purposes, including storage. The two buildings are joined by a short, covered concrete walkway that runs east-west from the back door of one building to the back door of the other. Inside the Westy there’s an enclosed corridor (with windows to the outside) that runs from the back door, westward through the building, to a door that opens onto Canard Street. Pascal and his employees use the concrete walkway between the buildings and the enclosed corridor within the Westy to pass back and forth between the Easty and Canard Street, where they park their cars. (Parking is not permitted on Conchon Street, Poule Street, or Mouton Street.) Pascal sells the Easty and the land beneath it (together with his business) to Jean Sot. Once Jean Sot begins operations in the Easty, he and his employees, as had Pascal and his employees before them, use the concrete walkway between the buildings and the enclosed corridor within the Westy to pass back and forth between the Easty and Canard Street, where they park their cars. Pascal has come to you, asking whether he can close off the corridor. What will you tell him? Why? *See* CC arts. 739 & 741, ¶ 2.

(2) Nonapparent servitudes

PH 249. The same as *Alexander*, except that this time Alexander sells the undeveloped lot, keeping the developed lot for himself, and Alexander claims a servitude servitude of view over Boghel's lot, in...

4) By expropriation

7) Rights & duties of the owners of the servient & dominant estates


8) Extinction

a) Destruction

Read & brief Vincent v. Meaux (La. App. 3d Cir. 1975) [Yiannopoulos, Text, 991-94]. Consider, first, the argument that the servitude had been lost through the “destruction” of the servient estate. How did the court resolve that question? How would the Vincent case be resolved under current law? See CC art. 752. Suppose that Ovey hadn't deepened and refurbished the well until 1972? What result then? Walter loses. Why? See CC art. 755; Trahan, Supp, 146-47 (re extinction of predial servitudes via destruction of the servient estate).

b) Nonuse

a) Substantive elements

Recall Vincent v. Meaux (La. App. 3d Cir. 1975). Consider, now, the argument that the servitude had been lost through prescription. How did the court resolve that question? Did the court resolve it correctly? Consider the following opinion of the Roman jurisconsult, Paulus: “A party is not held to use a servitude except when he believes that he is exercising a right which belongs to him; and therefore where anyone makes use of it as a highway or as a servitude belonging to another, he will not be entitled to an interdict or to any other legal proceeding.” Paulus, Sentences bk. 4, in 3 Corpus Juris Civilis: The Civil Law bk. 8, tit. 6, l. 25, at 320 (S.P. Scott tr. 1973).

Read & brief Tilley v. Lowery (La. App. 2d Cir. 1987) [Yiannopoulos, Text, 994-97]. Did the court of appeal correctly resolve the "failure of condition" issue? Consider (i) this opinion of the Roman jurisconsult Pomponius: “[W]hen selling a portion of my land, I provide in the contract that I shall have a right to conduct water over that portion to the remainder of my premises, and the time prescribed by law elapses before I excavate a ditch. . . . [D]o I lose my right? I do not lose any right, as there is no place for the water to flow.” Pomponius, On Sabinus bk. 32, in 3 Corpus Juris Civilis: The Civil Law bk. 8, tit. 6, l. 19, at 320 (S.P. Scott tr. 1973); (ii) this excerpt from an early Louisiana Supreme Court opinion:

The owners of adjacent tracts of land enter into an agreement whereby one grants to the other a present servitude of passage. The act of transfer says nothing about who is to designate or ask for the designation of the location of the servitude. Time rolls by, yet nothing happens. What happens at ten years and one day? Is the servitude prescribed? . . . . [H]is right to this servitude cannot be lost by non-usage . . . because the road had never been delivered to him; . . . no prescription can run on account of the non-usage of a thing which has never been used, the road never having been located or fixed on any particular place . . . . As the proprietor of the estate owing the servitude is bound to fix the place where he wishes it to be exercised, so long as he does not so, prescription does not begin to run for non-usage. De La Croix v. Nolan, 1 Rob. 321, 323 (La. 1842); (iii) CC arts. 1772 & 1773.

Read & brief Ashland Oil Co. v. Palo Alto, Inc. (La. App. 1st Cir. 1993) [Yiannopoulos, Text, 998-1002]. Did the court resolve the aba prescription question correctly? Consider what Toullier, the author of the sources from which our CC arts. 753 et seq. were ultimately drawn, had to say: “The extinction of servitudes by non-use is founded on the presumed abandonment of his right by him to whom it is due.” Can we fairly infer that someone who is clearly attempting to preserve a servitude wants to "abandon" his rights?

Read & brief Thompson v. Meyers (La. 1882) [Yiannopoulos, Text, 1016-18].

b) Procedural incidents

Who bears the burden of proof with respect to the prescription of nonuse? See CC art. 764.

c) Confusion
PH 249. Pascal, as owner of Belle Terre, grants Olide, as owner of Terre Puante, a nonapparent right of passage across Belle Terre. One day Pascal sells Belle Terre to Clodice. The next day Olide sells Terre Puante to Clodice. The day after that Clodice sells Belle Terre to Ti-Boy and Terre Puante to Lil-Fille. Lil-Fille now demands that Ti-Boy allow her to cross Belle Terre. Must Ti-Boy honor the demand? Why or why not? See CC arts. 765, 769.

d) Resolutory condition
e) Abandonment

9) Protection

a. The petitory action

1) Substantive matters: lack of quasi-possession

PH 250. Pascal, as owner of Belle Terre, grants to Olide, as owner of Terre Puante, a right of passage between Terre Puante and Bayou Egout across a gravel road that lies on Bell Terre. Olide uses the servitude. Pascal later dies, survived by his daughter, Lil-Fille. Lil-Fille informs Olide that she will not respect his supposed servitude and, further, plans to block off the gravel road at the earliest opportunity. Can Olide file a petitory action against Lil-Fille at this time? Why or why not? See C. Civ. Proc. art. 3651, in Yiannopoulos, Text, 581.

2) Procedural matters: burden of proof

PH 251. Pascal, as owner of Belle Terre, grants to Olide, as owner of Terre Puante, a right of passage between Terre Puante and Bayou Egout across a gravel road that lies on Bell Terre. Olide uses the servitude off and on for 15 months. Some months later, Jean Sot, claiming that Pascal has given him an exclusive right to use the gravel road to pass between his estate, Terre Lourde, and Bayou Egout, bars Olide from entering onto the road. Olide then brings a petitory action against Jean Sot. Is the defendant in possession or out of possession? If he's in possession, of what is he in possession? Explain.

PH 252. Pascal, as owner of Belle Terre, grants to Olide, as owner of Terre Puante, a right of passage between Terre Puante and Bayou Egout across a gravel road that lies on Bell Terre. Olide uses the servitude. Pascal later dies, survived by his daughter, Lil-Fille. Lil-Fille then blocks off the gravel road, preventing Olide from using it. Olide then brings a petitory action against Lil-Fille. Is the defendant in possession or out of possession? If she's in possession, of what is she in possession? Explain.

a) Defendant in possession

What's the BOP where the defendant is in possession? The plaintiff must prove title "good against the world." What does that mean in the case of a servitude?

b) Defendant out of possession

What's the BOP where the defendant is not in possession? The plaintiff must prove "better title." What does that mean in the case of a servitude?

b. The possessory action

1) Requirements

a) Possession at the time of the disturbance

Read & brief Kizer v. Lilly (La. 1985) [Yiannopoulos, Text, 1037-43].

b) Disturbance in fact or in law

(1) In fact


PH 253. Pascal, as owner of Belle Terre, grants Olide, as owner of Terre Puante, a right of passage between Terre Puante and Bayou Egout over a certain gravel road that runs through Belle Terre. The servitude is subject to the restriction that it be used only on weekends and holidays. Olide uses the servitude. Then one Jean Sot, without pretense of title, begins to use the gravel road to pass back and forth between his estate, Terre Lourde, and Bayou Egout on isolated weekdays. Can Olide bring a possessory action against Jean Sot? Why or why not?

PH 254. The same as before, except that there's no restriction on Olide's servitude, in other words, he
can use it on weekdays as well as weekends. What result now? Why?

(2) In law


PH 255. Pascal, as owner of Belle Terre, grants Olide, as owner of Terre Puante, a right of passage between Terre Puante and Bayou Egout over a certain gravel road that runs through Belle Terre. Olide uses the servitude. A few months later, Jean Sot records an act whereby Pascal purportedly granted to him a servitude of passage between his estate, Terre Lourde, and Bayou Egout over the same road. Can Olide bring a possessory action against Jean Sot? Has there been a disturbance? Explain.

c) Possession quietly & without interruption for more than a year immediately prior to the disturbance

Read & brief *Louisiana Irrigation & Mill Co. v. Pousson* (La. 1972) [Yiannopoulos, Text, 1032-37].

2) Reaction: the negatory action

b. Personal servitudes

1) Right of use

a) Definition

What's a "right of use"? See CC art. art. 639.

b) Distinctions

(1) Usufruct

How's right of use different from the other major personal servitude, usufruct? See CC art. 639 cmt. (b); CC art. 640.

(2) Predial servitude

How's right of use different from predial servitude? How do you tell one from the other? To be more precise, how do you tell whether a certain right of limited use that burdens an estate benefits another estate or benefits a person? The answer to that question is found in the articles on interpretation of predial servitudes, Civ. Code arts. 731-34. Read those articles carefully; then read Trahan, Supp., 142-144 & 149.

PH 272. Pascal, the owner of Belle Terre, and Olide, the owner of Terre Puante, execute an act entitled "Act of Predial Servitude." In it Pascal, purporting to act on behalf of himself and all future owners of Belle Terre, grants to Olide and all future owners of Terre Puante the "right to stroll through the beautiful vineyards of Belle Terre on Sunday afternoons." The act further provides that the right shall "run with the land"; that the right may be enjoyed only by whomever happens to own Terre Puante; and that the right shall be enjoyed by Olide only so long as he owns Terre Puante. What kind of right has Olide acquired? Why?

PH 273. Pascal, the owner of Belle Terre, and Olide, the owner of Terre Puante, execute an act entitled "Act of Right of Use." In it Pascal, purporting to act on behalf of himself and all future owners of Belle Terre, grants Olide the "right to use" a certain driveway on Belle Terre to gain access to and ingress from Bayou Egout. The act further provides that the right shall not "run with the land" and that Olide shall enjoy the right no matter whether he owns Terre Puante or not. What kind of right has Olide acquired? Why?

PH 274. Pascal, the owner of Belle Terre, and Olide, the owner of Terre Puante, execute an act entitled "Act of Servitude." In it Pascal, purporting to act on behalf of himself and all future owners of Belle Terre, grants to Olide a "servitude of passage" across a certain driveway on Belle Terre for access to and ingress from Bayou Egout. What kind of right has Olide acquired? Why?

PH 276. Pascal, the owner of Belle Terre, and Olide, the owner of Terre Puante, execute an act entitled "Act of Servitude." In it Pascal, purporting to act on behalf of himself and all future owners of Belle Terre, grants "to Olide as owner of Terre Puante for himself, his heirs, and assigns" a "servitude of passage" across a certain driveway on Belle Terre for access to and ingress from Bayou Egout. What kind of right has Olide acquired? Why?

PH 277. Pascal, the owner of Belle Terre, and the Union Pacific Railroad execute an act entitled "Right of Way." In it Pascal, purporting to act on behalf of himself and all future owners of Belle Terre, grants "to Union Pacific a railroad right of way," which, among other things, entitles Union Pacific to lay
a railroad track over a certain strip of Belle Terre and to operate trains on it. What kind of right has Union Pacific acquired? Why?

2) **Usufruct**
   a) **Definition**
   What's a "usufruct"? See CC art. 535; CC art. 476 cmt. (b); CC arts. 607 & 608.

   b) **Varieties**
   Read *Leury v. Mayer* (La. 1908) [Yiannopoulos, Text, 656-58].

   c) **Acquisition**
   Through what means can a usufruct be acquired? See CC art. 544 & cmt. (c).

      (1) **By juridical act**

         a) **Contractual & testamentary freedom**

         What are the limits on the ability of private persons to create usufructs that deviate from the "usual" rules of usufruct? See CC art. 545 & cmt. (b).

            PH 256.1. By testament, Pascal, the owner of Belle Terre, leaves to "Jean Sot and, upon his death, his heirs then in being" a "usufruct" over Belle Terre. Is the usufruct valid? Why or why not? See CC art. 545 cmt. (b).

            PH 256.2 (based on *Michel v. Knox* (La. 1882) [Yiannopoulos, Text, 660-63]). John died in 1854, survived by his wife, Josephine and various collateral heirs, but no descendants. In a testament, he bequeathed to Josephine his entire share of the community movables as well as the usufruct of his share of the community immovables. The testament provided that Josephine, as usufructuary of the immovables, could, at her option, keep the immovables or sell them at public auction and then exercise her rights on the proceeds of the sale. In August 1855 Josephine caused the community immovables to be sold at public auction. Most of the immovables were sold to Josephine herself. After the sale, she retained possession of the immovables that she had purchased, treating them as outright owner, and exercised her usufruct over the proceeds of the sales of those immovables that had been sold to other purchasers. In October 1871 she donated to Adele, a friend of hers, one of the immovables that she had acquired at the auction--a certain tract of land located in Baton Rouge. After Josephine's death, several of John's collateral heirs, later joined by Josephine's heirs as intervenors, brought suit against Adele, seeking to obtain a judgment declaring the donation by Josephine to Adele to null and, in connection therewith, an injunction ordering Adele to return the immovable to them. What result? Why? See CC arts. 539; 568 & cmt. (a).

            Read *In re Courtin* (La. 1919) [Yiannopoulos, Text, 663-68]; then read CC art. 1520 & CC art. 545 cmt. (b).

            PH 257. By testament, Pascal, the owner of Belle Terre, leaves a usufruct over Belle Terre to "Jean Sot and, upon his death, to Jean Sot's son, Tête-Noeud." Is the usufruct valid? Why or why not? See CC art. 546; 3 Marcel Planiol & Georges Ripert, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS § 767, at 763 (2d ed. 1952) ( "This constitution [of successive usufructuaries] ought not to be regarded as a prohibited substitution; a usufruct can never be the object of a substitution, for, being extinguished upon the death of the usufructuary, it escapes by its nature from every burden of restitution; there are, in reality, as many distinct usufructs as there are persons, each of them taking his right directly from the grantor and not from the previous usufructuary.").

            PH 258. Ti-Boy, Pascal's son, marries Cecile. In the course of time, Cecile conceives a child. Pascal, who is dying of lung cancer, then executes a testament in which he leaves to "Ti-Boy and, upon his death, Ti-Boy's child" a usufruct over his Dewey Balfa record collection. A few weeks later, before Cecile has delivered, Pascal dies. At the appointed time, Cecile gives birth to a daughter, Denise. Shortly thereafter, Ti-Boy is killed in a freak cock-fighting accident. Does Denise now have a usufruct over Pascal's Dewey Balfa collection? Why or why not? See CC art. 548, sent. 2.

   (b) **Contractual & testamentary interpretation**

   How can you tell whether the right that's created in a certain juridical act is a usufruct or some other
similar, yet different, real or personal right? Answering this question can be frustrating, for grantees often--"seldom" might be more accurate--take care to designate properly the types of rights that they intend to create.

PH 259. Olide, the purported owner of Terre Puante, executes a quitclaim deed in favor of Jean Sot, authorizing Jean Sot "to use, without cost, the surface of the south 1000 feet of Terre Puante." What kind of right did Jean Sot get? Was it a usufruct? A simple precarium? Something else? Explain.

PH 260. By testament Pascal, the owner of Belle Terre and various other immovable and movable property, leaves to his daughter, Lil-Fille, the right to "receive all the rents, benefits, and emoluments of all of the property that I own at the time of my death." What kind of right did Lil-Fille get? Was it a usufruct? A "legacy of revenues"? Are those two things different? Explain. See CC art. 609 & cmt. (c).

PH 261. Blackstone, a native of London, immigrates to Louisiana. Once here he buys Belle Terre from Pascal, then, like any decent Anglo, promptly renames it Good Land. Fearing that he will soon be killed by radical members of Action Acadienne, he makes out a testament in which he leaves a "life estate" in Good Land to his wife, Elizabeth, with the "remainder" to his son, Hampton. What kind of right did Elizabeth get? Why?

Re-read CC art. 1520; art. 609 & cmt. (c). Then read CC art. 546.

(2) By operation of law
   (a) Spousal usufruct

PH 262. Pascal marries Julie, his sweetheart from their days in catechism class. During their marriage, they spawn three children, Ti-Boy, Lil-Fille, and Gros-Boy, and amass considerable community property. In the course of time Pascal dies intestate, survived by his wife and three children. Who has what interests in the community and separate property that Pascal left behind? Explain. See CC arts. 888, 890.

   (b) Marital portion usufruct

Read CC arts. 2432 & 2434.

   (c) Parental usufruct

Read CC arts. 223 & 226.

(3) By acquisitive prescription

PH 263. In 1990 Olide, masquerading as the owner of Belle Terre (it really belongs to Pascal), executes an "act of usufruct" in favor of Jean Sot, whereby he purportedly conveys to Jean Sot the right to "use and take the fruits of Belle Terre for life." Jean Sot has no reason to be suspicious. After recording the act, Jean Sot moves onto Belle Terre, where he, among other things, tends and harvests its vast vineyards. In 2001, some 11 years later, Pascal discovers what's happened and orders Jean Sot off Belle Terre. When Jean Sot refuses to go, Pascal brings a petitory action against him. Who wins? Why? See CC art. 544 cmt. (c).

   d) Partition
      1) Relative: partition of usufruct or naked ownership
         a) Partition of usufruct

Can a usufruct be conferred by juridical act or by law on more than one person in undivided shares? See CC art. 541. Is there any way in which co-usufructuaries in indision can escape that condition? See id. cmt. (c).

b) Partition of naked ownership

What about the naked ownership? Can it, too, be conferred on more than one person by juridical act or by law? See CC art. 542 cmt. (b). Is there any way in which co-naked owners in indision can escape that condition? See id.

   2) Absolute: partition of the burdened thing

Can a thing burdened with a usufruct where either the usufruct or the naked ownership is held by several persons in indision itself be partitioned? Read CC art. 543, ¶ 2; then read Smith v. Nelson (La. 1908) [Yiannopoulos, Text, 677-80].

PH α (based on Campbell v. Pasternack Holding Co. (La. 1993) [Yiannopoulos, Text, 680-87]). By
act of sale dated March 13, 1946, Joe, the owner of a certain tract of land, conveyed an undivided 1/2 interest in the land to Abe, his brother. In the course of time, Joe and Abe died. As a result, their interests in the land were passed on, in various forms, to their heirs and legatees. Joe's share passed in full ownership to his daughter, Alma. Abe’s interest, by contrast, got dismembered along the way, with his wife, Sarah, receiving a usufruct and his nephew, Lot, the naked ownership. At some point Alma, as co-owner, filed suit against the Sarah and Lot, demanding a partition. The defendants filed exceptions of no cause of action. Their theory? That the interest owned by one of the defendants (Lot) was burdened by a usufruct, thereby destroying any commonality of interest between the plaintiff (Alma) and at least one defendant (Lot). What result? Why? See CC art. 543, ¶ 1.

e) Rights & obligations of the usufructuary

1) Rights

What are a usufructuary's rights? See CC arts. 550 & 557.

a) Fruits

(1) Definition

(2) Allocation

(a) Natural fruits

PH 264. Pascal, a widower and father of three children, acquire Belle Terre with community funds. Pascal then plants a vineyard on it, which he tends and harvests each year. Then on May 15, 1996, after Pascal has lavished his attention (i.e., time and money) on the vineyards but before the grapes have come in, he dies. By testament he leaves the usufruct of Belle Terre to his daughter, Lil-Fille, with the proviso that the usufruct shall expire upon her marriage, and the naked ownership to his sons, Ti-Boy and Gros-Boy. Lil-Fille, picking up where Pascal left off, harvests the grapes, which, by now have come in, and sells them. The following year, she does what Pascal would have done, i.e., prunes the vines, fertilizes them, sprays them with pesticide, and waters them. On May 15, 1997, after her "tending" work is done, but before the new crop has come in, she marries Olide. The next month, after the grapes come in, she harvests and sells them. Ti-Boy and Gros-Boy then sue Lil-Fille, demanding that she account to them for their "share" of the proceeds of the grape sales. Who wins? Why? See CC art. 555.

(b) Civil fruits

Read CC arts. 556 & ; then read Gaspard v. Coco (La. 1906) [Yiannopoulos, Text, 689-91].

b) Use

Read CC art. 539.

(1) Limitations on use

(a) Duty to act as prudent administrator

(b) Restriction on improvements

PH 265. By testament Pascal, the owner of Belle Terre, leaves the usufruct of Belle Terre to his wife, Julie. On Belle Terre, next to Bayou Egout, stands a hotel, which Pascal had operated for several years prior to his death. A few years after Pascal's death, several Las Vegas concerns begin running gaming--not gambling--riverboats along the bayou. Julie, hoping to cash in on this development, decides to renovate and improve the hotel. Among other things, she adds on a new wing, thereby doubling the number of rooms; installs a restaurant and several lounges inside the hotel; and builds a new dock along the bayou, one large enough to accommodate river boats. When Gros-Boy, a hardshell Baptist and bitter opponent of gambling, gaming, or whatever you want to call it, learns what Julie has done, he's furious. So, he goes to court to get an injunction to stop her. What result? Why? See CC art. 558.

(c) Restriction on changes in destination

PH 266. By testament Pascal, the owner of Belle Terre, leaves the usufruct of the family residence, an antebellum mansion, to his wife, Julie. Hoping to cash in on the southern bourgeoisie's fascination with such homes, she decides that, instead of continuing to use it as her residence, she will convert it into a bed-and-breakfast establishment, charging up to $120/room per night. The naked owners, Pascal's children Ti-Boy, Lil-Fille, and Gros-Boy, are appalled and, consequently, bring suit to stop her. What result? Why?
See Robert Pothier, Traité du douaire §§ 219-20, reprinted in 6 Œuvres de Pothier 407 (1830) ("Not only are usufructuaries not permitted to change the form of the estates that they enjoy by usufruct; they are also not permitted to make them serve uses other than those to which they are destined."); 2 Charles Aubry & Charles Rau, Droit civil français § 431, at 673 (Paul Esmein ed., 7th ed. 1961) ("The usufructuary must enjoy the thing as a prudent administrator and as the owner himself would to it, having regard to the use to which the thing burdened with the usufruct found itself previously devoted. * * * When these objects have received a special affectation, he ought to respect them. Thus, he cannot transform workable farmland into vineyards or pastures or vice-versa. He cannot give to a hotel a new destination, nor convert a residence into a hotel."); BGB art. 1036 ("The usufructuary has the right to possess the thing. In the exercise of his right of enjoyment he must maintain the previous economic destination of the immovable and conform himself to the rules of orderly exploitation."); Swiss CC art. 769, ¶ 1 ("The usufructuary must not bring about any change in the destination to the immovable that can cause a notable prejudice to the naked owner."); Greek CC art. 1148 ("In exercising his right of usufruct a usufructuary shall be bound to preserve the economic purpose of the thing as hitherto existing and to make use thereof with care and according to the rules of an orderly exploitation."); LaCC art. 558 & cmts.

1) Uses of special interest
   (a) Lease

   Can the usufructuary lease the burdened thing? If he can’t do that, what can he lease? What, precisely, does the lessee get? When does such a lease end? See CC art. 567.

   (b) Encumbrance

   Can the usufructuary mortgage the burdened thing? If he can’t do that, what can he mortgage? What, precisely, does the mortgagee get? When does such a mortgage end? See CC art. 567 & cmt. (b).

2) Duties
   a) Security

   PH 267. Pascal, husband of Julie and father of Ti-Boy, Lil-Fille, and Gros-Boy, dies. At his death he owned considerable property, including Belle Terre, which formed part of his community with Julie, and the Pas De Veine, a shrimping boat. By testament he leaves the usufruct of the Pas De Veine to his daughter, Lil-Fille, reserving to his sons, Ti-Boy and Gros-Boy, the naked ownership. Once the ensuing succession proceedings get underway, the boys demand (i) that Julie, as usufructuary of the children's half of Belle Terre, put up a security bond or a special mortgage in their favor in the amount of the value of that 1/2 interest, and (ii) that Lil-Fille, as usufructuary of the Pas de Veine, put up a security bond or a special mortgage in their favor in the amount of the value of the Pas de Veine. Are they entitled to such security? Why or why not? See CC arts. 571 & 572.

   b) Repairs

   PH 268. By testament Clodie, the owner of a certain developed residential lot, leaves the usufruct of the lot to her niece, Lil-Fille, reserving the naked ownership for her nephew, Ti-Boy. Shortly after moving into the house on January 1, 1996, Lil-Fille receives two pieces of mail. The first, from the local tax assessor's office, is a bill for property taxes for the fiscal year 1996, in the amount of $100.00. The second, from the city's department of public works, is a paving assessment in the amount of $2500.00. The city, it seems, recently decided to pave the previously unpaved streets of the subdivision. She promptly passes both assessments on to Ti-Boy, telling him that he, as the real owner, must pay them. Is she right? Why or why not? See CC arts. 584 & 585.

   c) Charges

   PH 268. By testament Clodie, the owner of a certain developed residential lot, leaves the usufruct of the lot to her niece, Lil-Fille, reserving the naked ownership for her nephew, Ti-Boy. Shortly after moving into the house on January 1, 1996, Lil-Fille receives two pieces of mail. The first, from the local tax assessor's office, is a bill for property taxes for the fiscal year 1996, in the amount of $100.00. The second, from the city's department of public works, is a paving assessment in the amount of $2500.00. The city, it seems, recently decided to pave the previously unpaved streets of the subdivision. She promptly passes both assessments on to Ti-Boy, telling him that he, as the real owner, must pay them. Is she right? Why or why not? See CC arts. 584 & 585.

   d) Prudent administrator

   The usufructuary of a perfect usufruct, we have seen, has the duty to use the thing as a "prudent administrator." What, exactly, does that mean? See CC arts. 576, 597, 598.

   f) Rights & obligations of the naked owner
Can the naked owner dispose of the burdened thing *juridically*, i.e., by sale, exchange, or donation, or encumber it, e.g., by mortgage? *See* CC art. 603. What happens to the usufruct? *See* id.

Can the naked owner, like the usufructuary, make improvements or alterations to the burdened thing? Why or why not? *See* CC art. 606.

Can the naked owner make extraordinary repairs? Why or why not? *See* CC art. 606 & cmt. (b).

Can the naked owner grant servitudes over the burdened thing? Why or why not? *See* CC arts. 604 & 710; Trahan, Supp, 148.

Can the naked owner of a tract of land grant a mineral servitude and/or lease over the land, notwithstanding that it may infringe on the usufructuary's rights? Why or why not? *See* Mineral Code arts. 195 & 196 [Yiannopoulos, Text, 697].

**g) Termination**

1) Causes of termination

(a) Death of the usufructuary

Read CC arts. 607 & 608.

(b) Destruction of the burdened thing

Read CC arts. 613-615, 617; then read *Barry v. United State Fidelity & Guaranty Co.* (La. App. 3d Cir. 1970) [Yiannopoulos, Text, 722-26].

(b) Waste or abuse

Read CC arts. 623-624; then read *Bond v. Green* (La. App. 3d Cir. 1981) [Yiannopoulos, Text, 726-31].

PH 269. By testament, Pascal grants his wife, Julie, a usufruct over a hunting camp that he had inherited from his *Grandpère Pierre*. After Pascal dies, Julie leases the camp to *Les Fils d’Enfer*, a Cajun rock band known for its wild antics both on and off stage. In no time, *Les Fils* succeed in reducing the once nice camp to something resembling a New Orleans crackhouse. Ti-Boy and Lil-Fille, Pascal’s children, have come to you seeking advice with regard to their rights vis-à-vis Julie. What will you tell them and why? *See* CC arts. 623-624.

(c) Forced sale of the burdened thing

Read CC arts. 615-616; then read *Watson v. Federal Land Bank of Jackson* (La. App. 3d Cir. 1992) [Yiannopoulos, Text, 734-38].

(2) Consequences of termination

(a) Usufruct of nonconsumables

PH 270. The widow Julie, the owner of Belle Terre, leaves by testament the usufruct over Belle Terre and several of its improvements, specifically, the hotel, the vineyards, and the mansion, to Lil-Fille, reserving the naked ownership of these things to Ti-Boy and Gros-Boy. During Lil-Fille's tenure as usufructuary, things go badly. Lil-Fille neglects to look after the hotel, as a result of which it falls into ruin, and the mansion is destroyed when lightning strikes it, setting it ablaze. Among the victims of the fire is Lil-Fille. She is survived by her daughter, Tite-Lil-Fille, who stays on the place after her mother's death. While still there, she harvests the Muscadine crop. Ti-Boy and Gros-Boy now come to you, their attorney, and ask you what, if anything, they're entitled to. What do you say? Why? *See* CC art. 628.

PH 271. In 1970 Olide dies without spouse and without children. By testament he leaves a usufruct to Jean Sot over the following things: (i) the 100 bottles of home brew he's put away in his microbrewery, then worth $1/bottle or $100 total, and (ii) all of the cash of which he dies possessed, which comes to $100. The testament provides that Olide's nephew, Auguste, shall have the naked ownership of these things. In the course of time Jean Sot drinks the beer and spends the cash to build his pet rock collection, often at the same time. Then one day he dies of sclerosis of the liver, survived by his son Noeud-Tête. By that time the value of home brews like Olide's had declined to $.50/bottle and the CPI had risen to such an extent that it now takes $200 to buy what $100 would buy back in 1970. Auguste comes to you, his attorney, and asks you what, if anything, he's entitled to. What do you tell him? Why? *See* CC art. 629.

**3) Habitation**