



The Truth Behind Ownership

Acquiring Ownership, Disposal of Ownership, &
Distribution of Ownership

title stream

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Immovables vs. Movable

- Immovables
 - Tracts of Land
 - Buildings
 - Timber
 - Component Parts of Land
- Movable
 - All other items

Acquiring Ownership

Methods of Gaining Ownership Rights

Acquiring Ownership: Act of Sale

- Act of Sale
 - Transfer ownership (title) from one person/entity to another
 - Must be authentic act or act under private signature
 - Authentic Act = notary + 2 witnesses; the most valid form
 - Oral transfer is valid if property is delivered and old owner recognizes the transfer under oath
 - Not effective against 3rd parties unless recorded in parish where property is located

Acquiring Ownership: Quitclaims and Donations

- Quitclaims

- A method of releasing any interest one may have in a property and granting that interest to someone else.
- Does not guarantee clear title
- Owner of quitclaim deed only gets interest of the grantor—grantor may not have full interest

- Donations

- Two Types
 - InterVivos = effective during lifetime
 - Mortis Causa = effective at death
- If immovable, must be authentic act—oral not recognized
- Donor must be of
 - Proper age = > 16; 16-18 can make inter vivos donation to spouse
 - Capacity = person must be able to generally understand what they are doing

Acquiring Ownership:

Bond for Deed

- Type of private financing in which an agreement is made between the buyer and the seller that buyer will make timely payments of an agreed upon amount each month for an agreed upon number of months.
- In return, after all payments have been made in a timely manner, the seller will execute the documents necessary to transfer title over to the buyer.
- If buyer defaults, seller keeps property

Acquiring Ownership:

Judgment of Possession

- Transfers title of property over to heir(s) of a succession
- Succession should be filed in parish where decedent was domiciled
- Even if succession is filed, Judgment of Possession must be filed in conveyance records to transfer title
 - Must be done in every parish where the decedent owned immovable property

Acquiring Ownership:

Acquisitive Prescription

- Mode of acquiring ownership through possession for a period of time.
- Time determined by intention to own:
 - Good Faith of immovable = 10 years
 - Bad Faith of immovable = 30 years



Acquiring Ownership:

Acquisitive Prescription

- Possession= physical control over a corporeal (real, physical) thing with the intent to have it as one's own.
- 2 Elements of Possession
 - *Corpus* – physical detention
 - *Animus* - intention to possess
- Connected to Ownership
- **BUT ONLY** as a means of gaining Ownership

Acquisitive Prescription through Good Faith

- Good Faith Requirements:
 - Just Title
 - Good Faith
 - 10 Years of Possession
 - Thing possessed must be susceptible to acquisitive prescription—all private things are unless stated otherwise by law.

Acquisitive Prescription through Good Faith

- Just Title:
 - A juridical act transferring ownership
 - A document that comports to transfer ownership by sale, donation, exchange, etc.
 - MUST be in writing and signed
 - MUST describe the property in the sale and be notarized

Acquisitive Prescription through Good Faith

- ***EXAMPLE 1***

- *Jim and Diane each own 50% of a property. Jim sells the entire property to Tara. The Act of Sale recorded with the parish only includes Jim as a seller. Does Tara have just title?*
- YES.
- Important to note that just title must be recorded in order to give notice to the rest of the world.

Acquisitive Prescription through Good Faith

- ***EXAMPLE 2***

- *Jim and Diane each own 50% of a property. Jim sells the entire property to Tara. Diane heard about the sale from his cousin who lives down the street from the property. Diane calls Tara and tells her that she also owns the property and faxes Tara over documents to prove it. The Act of Sale recorded with the parish only includes Jim as a seller. Does Tara have good faith?*
- Maybe. Depends on when she got that phone call—before or after the sale.

Acquisitive Prescription through

Good Faith

- Good Faith:
 - One must reasonably believe, in light of objective considerations, that he is the owner of the thing he possesses.
 - 2 Part Test
 - Subjective = Would the buyer pass a lie detector test?
 - Objective = Would 99/100 people have also thought the seller was the true owner?
 - Good Faith is presumed
 - Good Faith is only necessary at the time of purchase

Acquisitive Prescription through

Bad Faith

- ***EXAMPLE 3***

- *Jennifer finds a nice abandoned house in January of 1973 and starts living in it. She knows he does not own the house. From 1973 to today, she has lived in the house on the property, cut the grass, and paid taxes on the property. Can Jennifer assert ownership of the property?*
- YES, through a possessory action.

Acquisitive Prescription through

Bad Faith

- Bad Faith Requirements:
 - No just title or good faith requirement
 - ONLY required that one possess continuously for at least 30 years.

Acquisitive Prescription through

Bad Faith

- **EXAMPLE 4**

- *Jim and Diane live next door to each other. Jim puts a fence between their properties in June of 1982. When Jim put up this fence, he erected it 1' over Diane's property line. Since, Jim has maintained the 1' section as part of his own yard—adding a garden, cutting and watering the grass, etc. Last year, Jim sold his property to Tara. The legal description in the Act of Sale did not include this 1' portion. Can Tara assert ownership over this 1' section of Diane's property?*
- Yes, through boundary tacking

Acquisitive Prescription through

Bad Faith

- Boundary Tacking
 - Scenario arises out of possessing more than is in title.
 - Requirements:
 - Land must be adjacent
 - Physical boundaries must be present

Disposal of Ownership

Voluntary and Involuntary

Disposal of Ownership: Voluntary

- Act of Sale
- Quitclaim
- Donation
- Bond for Deed
- Dation en Paiement
 - When instead of paying a sum of money due on a pre-existing debt, the debtor gives and the creditor agrees to receive property as payoff of the debt

Disposal of Ownership: Involuntary

- Death
 - Succession must be filed and recorded in conveyance to complete transfer
- Foreclosure
 - Occurs when one defaults on debt owned
 - Process (using Mortgage as example):
 - Mortgage company files lawsuit in parish where property is located (Suit on a Note or Petition for Executory Process)
 - Mortgage company gets a Writ of Seizure and Sale—judge's order to sell property at public auction
 - Mortgage company only required to post a notice in local paper
 - Once sold, ownership is transferred to the buyer at auction
 - Sheriff will ask you to remove yourself from the property after the sale

Disposal of Ownership: Involuntary

- Tax Sale
 - Occurs when one fails to pay parish taxes
 - Sheriff's sale sells property for amount of taxes due on property and costs of advertisement required to put up for tax sale
 - Tax certificate is filed in the parish conveyance office
 - Owner has 3 years he can redeem the property back
 - Includes money spent on the property's taxes, tax sale fees, plus some
 - You have to possess the property—cut the grass, removing debris, etc.
 - Must file Suit to Quiet Tax Title to officially transfer ownership
 - Old owners have 2 years (should wait 5 to be safe) to try an annul the sale

Distributing Ownership

Rights to....



Rights to Fruits

- Fruits = Things that are produced by or derived by another thing without diminution of its substance.
- 2 Types of Fruits:
 - Natural Fruits = products of the earth or animals
 - *EXAMPLE: Baby cows, crops, etc.*
 - Civil Fruits = Revenue from law
 - *EXAMPLE: Money from a lease*

Rights to Fruits

- Renewability does not mean that a thing must reproduce on its own
 - *EXAMPLE: Crops involve a careful process to reproduce but are still considered fruits*
- A fruit that can no longer reproduce due to some extrinsic cause does not make it's previous productions non-fruits
 - *EXAMPLE: A cow can no longer have babies but the babies she had previously are still fruits*
- Rule of Assession
 - In the absence of others' rights, the owner of the thing which produces the fruits is awarded ownership of the fruits
 - *EXAMPLE: The owner of the mother cow owns all of her babies*

Rights to Products

- Products include
 - Oil
 - Gas
 - Mud
 - Timber
- Products are NOT treated as fruits under the law.
- There is an entire Mineral Code governing Mineral Rights in Louisiana
- These rights are often completely separate from ownership of the land, especially in Louisiana.

Rights to Component Parts of Land

- Is it a Component Part? 2-Part Test:
 - Permanently attached/integrated with the immovable?
 - *EXAMPLE: Buildings or possibly fixtures*
 - Unity of ownership?
- Presumed that the owner of the land owns the component parts
- Transfer of the property includes all of its component parts
- If thing does not pass the 2- Part Test, it is a movable
 - EXCEPTIONS: Buildings and Timber
 - Beat the presumption of Unity of Ownership by recorded title

EXTRA: Navigable Waterways

- The following belong to the State and are public property up to the high water mark on the bank:
 - Lakeshores
 - Seashores
 - Any other type of shore besides a river
- Riverbanks are completely public up to the low water mark.
 - From the low water mark, they are private things
- NOTE: Water levels are always changing and, as such, can sometimes create issues for owners.

Uses of Property

Personal and Predial Servitudes and
Other Property Uses/Requirements
(A.K.A. rights outside of ownership)



Personal Servitudes

- Definition: Charge on a thing for the benefit of a person
- 3 Types:
 - Usufruct
 - Habitation
 - Right of Use

Personal Servitudes: Usufruct

- Definition: A real right of limited duration on the property of another
- 3 Elements in Ownership
 - Usus- right of use
 - Fructus- right of fruits and revenues
 - Abusus- right to destroy or alienate
- Generally involves splitting ownership so that one person takes right to destroy/alienate and another takes right of use and fruits (usufructuary and naked owner)
 - Most common way ownership is dismembered
- Can be established on ALL kinds of things
- Can be in favor of a natural person, a legal entity, or multiple persons/entities

Personal Servitudes: Usufruct

- How is it established?
 - Legal
 - MOST COMMON
 - Created by operation of law
 - *EXAMPLE 1: Husband dies without a will and with wife and two children still living. Children split naked ownership and wife gets usufruct until her death or remarriage*
 - *EXAMPLE 2: 13 year old child inherits property from father who has died. Mom has usufruct over that property until child reaches majority.*
 - Conventional
 - Created by Juridical Act
 - Ends at death of usufructuary

Personal Servitudes: Usufruct

- Usufructuary's Rights to Fruits:
 - Has all rights to fruits produced/derived from the thing
 - ONLY for fruits that accrue during the usufruct
 - Right to fruits begins on the effective day of the usufruct
- Usufructuary's Improvements and Alterations:
 - The usufructuary can make improvements and alterations on the property **at his or her cost** but must **first obtain written consent of the naked owner**.
 - If the naked owner refuses to consent, the usufructuary may, with court approval, make those improvements and alterations that a **prudent administrator would make**.

Personal Servitudes: Usufruct

- Usufructuary's Right to Trees and Mineral Rights:
 - Trees-
 - May cut trees growing on land only for his use or for improvement of the land
 - If timberlands, he is entitled to proceeds from timber operations BUT must act as prudent administrator
 - Mineral Rights-
 - NOT included in usufruct UNLESS the landowner was actually working mines/quarries/pipelines at the time the usufruct was created
 - If surviving spouse, entitled to any mineral rights
 - BUT must have naked owner's consent to execute a mineral lease

Personal Servitudes: Usufruct

- **EXAMPLE:** *Diane has usufruct over her son, Tyler's property—a cute little house on Magazine Street. Diane rents the house to a young, single law student named Jessica who seems nice and responsible. Over the next year, the police are called to Magazine Street on several occasions for domestic disturbances without Diane's knowledge. When Jessica moves out, Diane discovers the Magazine property has been severely damaged—there are holes in most of the walls and the original, unique woodwork has been destroyed throughout the home. Who is liable for this damage?*

Personal Servitudes: Usufruct

- Legal Powers:
 - Can lease, alienate, or encumber right to immovable BUT all such contracts cease at termination of the usufruct
 - If usufructuary executes such a contract, he is responsible for the abuse of the property by the person with whom he contracted.
- Obligations:
 - Must act as a prudent administer—she is liable for all losses resulting from his fraud, default, or neglect.
- Liabilities:
 - Ordinary repairs = Usufructuary
 - Extraordinary repairs = Naked Owner
 - Annual Charges = Usufructuary
 - Expenses for Preservation and Use = Usufructuary

Personal Servitudes: Habitation

- Definition: the nontransferable real right of a natural person to dwell in the house of another
 - Is not heritable or transferable
 - Cannot be alienated, leased or encumbered

Personal Servitudes: Right of Use

- Definition: confers to a person a specified use of estate LESS than full enjoyment
- Can be established in favor of a natural or juridical person
- Transferable
- Heritable—not extinguished at the death of the natural person unless otherwise provided by law or contract
- Includes those rights contemplated/necessary at the time of its creation and those that may become necessary later

Personal Servitudes: Right of Use

- *EXAMPLE: Jim owns property in a rural area of Louisiana. He and his wife live in one house on the property and his parents live in another house on the property. The local power company sues Jim because he wanted and tried to build a shed under a power line on his property. Jim had consented to the power line when he originally bought the property so that his parents could have electricity at their home. Can Jim build his shed?*
- Court of Appeals said no, Jim was not allowed to build his shed.

Predial Servitudes

- Definition: Charge on a servient estate for the benefit of a dominant estate
 - Dominant = estate deriving the benefit from the charge
 - Servient = estate burdened by the charge
- Estate can be tracts of land, buildings, or standing timber
- Each estate must belong to different owners
- Do not attach to a particular person but to anyone who happens to be the owner of a particular dominant estate
- 3 Types:
 - Natural Servitudes
 - Conventional Servitudes
 - Legal Servitudes

Predial Servitudes: Natural

- **EXAMPLE:** *Two estates are situated on hill. One at the top of the hill and one at the bottom of the hill. The estate situated at the bottom of the hill is bound to receive the surface waters that flow naturally from an estate situated above unless an act of man has created the flow.*

Predial Servitudes: Natural

- Natural Servitudes arise out of the natural situation of estates
- In this example, the estate at the bottom of the hill would be the dominant estate and the one at the top would be the servient estate
 - The owner of the servient estate (top) cannot do anything to prevent flow of water
 - The owner of the dominant estate (bottom) cannot do anything to make the servitude more burdensome—*i.e. damming it and it backing up or widening it to make more water flow*
 - The owner of an estate that water runs through can make use of the water but cannot stop it or change its direction and must return it to its ordinary channel where it leaves his estate

Predial Servitudes: Conventional

- Owners of estates can establish servitudes on their estates or acquire servitudes for the benefit of their estates
 - *EXAMPLES: Rights of drip, drain, view, light, passage, pasturage, etc.*
- Two Types:
 - Apparent- *i.e. roadway, window in common wall*
 - Nonapparent- *i.e. prohibition of building on an estate*
- Can be established in 3 ways:
 - Juridical Act
 - Acquisitive Prescription
 - Destination of the Owner

Predial Servitudes: Conventional

- **EXAMPLE:** *Is a right of passage apparent or nonapparent?*
- Depends.
 - Could be apparent if there are exterior signs or construction work signifying it
 - Could be nonapparent if a periodic foot trail through undeveloped land
- Rule: If there is anything to alert you to the existence of the servitude, it is apparent.

Predial Servitudes: Conventional

- Juridical Act:
 - Established by title– so must be in writing
 - Must be recorded to bind 3rd parties
- Who can create?
 - Owner of land
 - Mandatary (agent) with express permission
 - Naked Owner and Usufructuary in unison or
 - Naked Owner solely if does not infringe on usufructuary's rights or does not begin until after the usufruct is over
- What if there is a conflict or title is unclear?
 - Resolved in favor of the servient estate
- Nearly all manner of estates can create a servitude
- Can be altered by agreement of the parties if the new agreement does not adversely affect public interest.

Predial Servitudes: Conventional

- Acquisitive Prescription:
 - ONLY can apparent servitudes can be created this way
- Destination of Owner
 - *EXAMPLE: Right of passage that is consistently used by the dominant estate and maintained by the servient estate*
- Accessory Rights and Necessary Works
 - When a servitude is established all rights necessary for the use are also acquired and are to be used in a manner least inconvenient to the servient estate
 - Owner of dominant estate can make all works necessary for use/preservation of the servitude at his own expense.

Predial Servitudes: Legal

- Definition: limitations on ownership established by law for the benefit of the general public or of a particular person
- Types:
 - Encroaching Buildings
 - Enclosed Estates

Predial Servitudes: Legal

- *EXAMPLE: Jim and Jessica own property next door to each other. Jessica adds an addition on to her house while Jim is out of town that encroaches on Jim's property by 1'. Construction is nearly complete when Jim gets home, discovers the construction, and files a petition to stop the addition because it is encroaching on his property.*
- What are Jim's rights?
 - Jim is entitled to compensation for the value of the servitude taken by Jessica and for any other damage that he has suffered
 - However, he cannot remove the servitude
- What if Jim had been home when work started and he filed the complaint right at the beginning of the new construction?
 - Jim could have stopped the servitude from occurring

Predial Servitudes: Legal

- Encroaching Buildings
 - Requirements:
 - Good Faith
 - A building
 - Owner must fit one of the three-
 - Does not complain within a reasonable time after he knows
 - Does not complain within a reasonable time after he should have known
 - He complains only after construction is almost complete

Predial Servitudes: Legal

- *EXAMPLE: Jim and Jessica each own a tract of land next to each other. The only public road that their land has access to is a public road running along the Northern Boundary of Jessica's land. Can Jim demand passage over Jessica's land to access his property?*
- Yes.

Predial Servitudes: Legal

- Enclosed Estates
 - An owner of an estate without access to a public road may demand passage over neighboring property to the nearest public road
 - Right of passage must be suitable for the kind of traffic that is reasonably necessary for its use.
 - Contemplates the use of the property– residence vs. dry ice factory

Predial Servitudes: Legal

- Cannot be exercised just anywhere. Must satisfy one of the following:
 - Passage should be located along the shortest route from the enclosed estate to the public road
 - Passage should be located at the location least injurious to the intervening land
 - Must indemnify the estate owner for the damage suffered
- Relocation
 - Once a servitude's location is fixed, the owner has no right to relocate the servitude.
 - BUT the owner of the servient estate can demand relocation if
 - The relocation would be more convenient
 - The servient estate would pay the costs AND
 - The new location has the same amenities to the owner of the enclosed estate.

Predial Servitudes: Legal

- *EXAMPLE: Jim owns a tract of land. The only public road allowing access to the land along the northern border. Jim sells the north half of his land to Jessica and retains the southern portion. Jim does not reserve a right of passage in the deed to Jessica. There is no road leading from Jim's property, through Jessica's, to the public road. Does Jessica have to give Jim a right of passage?*
- No.
- EXCEPTION = If you enclose yourself, the law does not care!... May even apply to successors

Other Uses/Restrictions on Ownership

- Lease
 - Most common way a property is used
- Imminent Domain
 - Government has right to take land for public interest
- Ill-gotten Gains
 - Government has right to seize assets acquired through illegal actions
- Zoning
- Boards and Commissions
- Condo/Homeowner's Associations