Of Immovables, Component Parts, Societal Expectations, and the Forehead of Zeus

A. N. Yiannopoulos
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I. INTRODUCTION

Things are the objects of property law. However, the word “things” has not been defined by legislation, and the elaboration on the notion of things has been a task undertaken by jurisprudence and doctrine. In general, a thing may be an object consisting of one substance, such as a bar of gold, or of a mixture of substances, such as a chemical compound or an organic product. Things of this kind are termed “single.” However, a thing may also be an object consisting of an assembly of individual things, termed “component parts,” that have been united to form a whole, such as a computer or an automobile. Things of this kind are termed “composite.”

In all legal systems, a thing may lose its identity and become a component part of another thing. For example, certain movables may be merged into or become component parts of an immovable. When this happens, the component parts of the immovable cease to be distinct things; they become parts of a composite thing. This carries significant legal consequences in various fields of law, including seizure, security rights in

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* According to Greek mythology, the Goddess Athena was born fully grown and armed when Hephaestus hit with a hatchet the top of the head of Zeus (rather than his forehead). See Pindar, The Odes of Pindar 75 (Sir John Sandys, trans., Putnam’s Sons 2d ed. 1919) (1915) (“[B]y the cunning art of Hephaestus, at the stroke of the brazen hatchet, Athene leapt from the crest of her father’s head, and cried aloud with a mighty shout, while Heaven and Mother Earth trembled before her.”). For the mythology of “Societal Expectations” and birth from the forehead of mere mortals, see infra notes 127-138 and accompanying text.

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3. The division of things into single and composite is important in the light of the legal consequences attached to the classification of a thing as a component part. See 2 Yiannopoulos, Property § 31, at 55, in Louisiana Civil Law Treatise (3d ed. 1991).
4. See Straus v. City of New Orleans, 166 La. 1035, 118 So. 125 (1928); Fallin v. J.J. Stovall
movables; real actions; succession; community property; lesion; leases; insurance; venue; expropriation; and actions for damages.

The question of whether a thing is a component part of an immovable or a distinct movable may, therefore, arise in a variety of cases and contexts. This question may be resolved by governing provisions of law, unilateral declarations, and contractual agreements. Detailed provisions of the Louisiana Civil Code deal with the definition and ownership of component parts as well as the effect of the classification of a thing as a component part of another thing. Article 469 of the Civil Code declares generally that "[t]he transfer or encumbrance of an immovable includes its component parts." This provision is permissive (suppletive), namely, it is applicable in the absence of other party agreement.

Unfortunately, parties do not always take care to determine by agreement the status of the things that are attached to a building and frequently face the need for recourse to justice. Courts are then called upon to interpret contracts in the light of obscure language but, almost unavoidably,
the question of whether a particular thing is a component part of a building is determined in light of the provisions of the Civil Code rather than the party agreement.

After the 1978 Revision, Louisiana courts interpreting the provisions of the Civil Code governing component parts of buildings have not encountered serious conceptual difficulties and have generally reached plausible results. However, a decision of the United States Court of Appeals for the Fifth Circuit has contradicted established precepts, deviated from well settled jurisprudence, and has given rise to uncertainty. The following discussion is an effort to reexamine the Louisiana law governing the classification of a thing as a component part of a building in the absence of contractual provisions determining that matter and to restore confidence.

II. THE LAW THAT IS

Book II, Title 1, of the Louisiana Civil Code of 1870. “Of Things,” was revised and reenacted in 1978. A movable may become a component part of an immovable and, therefore, be subject to the laws governing immovable property by application of Articles 465, 466, and 467. Article 465 contemplates things that are fully incorporated into a tract of land, a building, or other construction so as to become an integral part of it, such as building materials. Article 466 governs things that, though not incorporated into a building or other construction, become component parts by virtue of their permanent attachment to the building or other construction. Article 467 governs things that may become component parts of an immovable by a recorded declaration of the owner. Articles 465 and 467 have not given rise to difficult questions of interpretation and will not be discussed here. Instead, attention will be focused on Article 466, the interpretation and application of which has spawned a gloss of jurisprudence and a body of legal literature. Article 466 declares:

22. See Prytania Park Hotel, Ltd. v. General Star Indem. Co., 179 F.3d 169 (5th Cir. 1999); see also infra notes 118-138 and accompanying text.
24. See La. Civ. Code art. 465. Revision Comment (c) indicates that incorporation is a question of fact to be determined by the trier of facts. It may be regarded as established when movables lose their identity or become an integral part of the immovable. Everything incorporated into a tract of land, a building, or other construction, becomes immovable without regard to ownership. Comment (d) indicates that immobilization under this article is inoperative when the law provides otherwise. See La. R.S. 9:5357 (1991), 9:1106 (2000). But see Lakeside Nat'l Bank of Lake Charles v. Moreaux, 576 So. 2d 1094 (La. App. 3d Cir. 1991).
Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts. Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached.\(^2\)

III. THE LAW THAT WAS

The 1978 Revision of the laws governing movables and immovables was not made on a clean slate, and much of the pre-existing law was preserved in a new form. Articles 467-469 of the Louisiana Civil Code of 1870 governed the classification of things that had been placed upon or attached to an immovable and, indirectly, the status of those things as component parts of tracts of lands and buildings. These articles were studied thoroughly and then revised. For a better understanding of the scope and effect of the Revision, pertinent 1870 texts are reproduced below.

Article 467. Wire screens, water pipes, sewerage pipes, heating pipes, radiators, electric wires, electric and gas lighting fixtures, bathtubs, lavatories, closets, gasplants, meters and electric light plants, heating plants and furnaces, when actually connected with or attached to the building by the owner for the use or convenience of the building are immovable by their nature.

Article 468 [last paragraph]. All such movables as the owner has attached permanently to the tenement or to the building, are likewise immovables by destination.

Article 469. The owner is supposed to have attached to the tenement or to the building forever such movables as are affixed to the same with plaster or mortar, or such as can not be taken off without being broken or injured, or without breaking or injuring the part of the building to which they are attached.

A. Interpretation and Application of Article 467: Things "Connected with or Attached to a Building"

Originally, Article 467 of the Louisiana Civil Code of 1870 provided that "the pipes made use of for the purpose of bringing water to a house or other estate, are immovable, and are part of the tenement to which they are attached." To resolve a controversy as to whether that article could be applied by analogy to non-enumerated things, an amendment was passed by the Louisiana Legislature in 1912 that produced the lengthy list.\(^2\) Subsequently, it was correctly held that the enumeration was


indicative rather than exclusive. Accordingly, Louisiana courts classified as parts of a building a steam heating system, a hot water heater, a safe, doors, and a butane gas system.

Under Article 467, the test for the classification of a thing as a part of a building was connection with or attachment to the building by the owner for the use or convenience of the building. This test of use or convenience was sufficiently broad to include almost anything imaginable and in part overlapped with the last paragraph of Article 468. However, under Article 467, the enumerated things were immovables if they were merely "connected with or attached" to the building; permanent attachment was not a requisite. In contrast, according to Article 468, permanent attachment was required for the classification of a thing as a part of an immovable. Article 469 established a presumption of permanent attachment when things were attached with plaster or mortar or when they could not be separated from the immovable without injury.

In Lafleur v. Foret, a landmark decision, the court faced, inter alia, the question of whether certain air conditioning units were movables or immovables. If movables, the air conditioning units should belong to plaintiff, seller of a house; if immovables, in the absence of contrary stipulation in the contract of sale, they should pass to the purchaser. In a well documented opinion, Judge Tate reexamined the legislative basis of immobilization and its relevance in the light of contemporary practices and demands. The window air conditioners, the court decided, were and remained movables. There was no "permanent attachment" under the last paragraph of Article 468 or under Article 469 of the 1870 Code, and, therefore, attention was focused on possible immobilization under Article 467.

Turning to Article 467, the court held that the enumeration of immovables was merely illustrative and that the list could be expanded to include things not enumerated. Since air conditioners were not enumerated, and the parties did not take care to specify their subjective intent, the court focused on the tests of immobilization furnished by Article 467 in light of "societal expectations," an objective standard. In accord with house construction practices, and taking into account the air conditioners' degree of connection with the building, the court decided in favor of the seller of the house.

32. See Scott v. Brennan, 161 La. 1017, 1019-20, 109 So. 822, 823, 48 A.L.R. 1143 (1926). The court also declared that "bathtubs, lavatories, closets, and sinks, connected with the water pipes in a building, are unquestionably immovable by nature..." Id.
34. See W.M. Bailey & Sons v. W. Geophysical Co., 66 So. 2d 424 (La. App. 2d Cir. 1953).
35. See Cottonport Bank v. Dunn, 21 So. 2d 525 (La. App. 1st Cir. 1945). See also Holicer Gas Co. v. Wilson, 45 So. 2d 96 (La. App. 2d Cir. 1950).
37. 213 So. 2d 141 (La. App. 3d Cir. 1968).
38. Id. at 147-48.
B. Interpretation and Application of Articles 468 and 469: “Permanent Attachment”

It was not entirely clear in the pre-1978 jurisprudence what constituted “permanent attachment” under Articles 468 and 469 of the Civil Code. The owner’s intent to make a movable a component part of an immovable seemed to be material, but it did not suffice; an overt act by the owner or on his behalf was necessary. In most instances, intention to immobilize was gathered from a factual finding of sturdy physical attachment. Permanent attachment did not mean for “perpetuity or eternity,” and was distinguishable from the incorporation of a movable into an immovable.

Louisiana courts were not always consistent in their interpretation and application of Articles 468 and 469 of the 1870 Code. In some cases, Article 469 was thought to furnish the only possible method of permanent attachment. In other cases, the same article was regarded as merely illustrative of the methods that could be used. Accordingly, it was held that the provisions of Article 469 did not limit the general rule of Article 468, and that “when none of the presumptions established by Article 468 exist, the fact may be shown by any competent evidence.” The preferable view was that Articles 468 and 469 contemplated distinguishable situations and that permanent attachment could be effected in several ways and by different methods. When the methods of attachment conformed to the tests of Article 469, the intention of the owner was immaterial, and immobilization was considered proven. When immobilization was claimed apart from the methods of Article 469, permanent attachment could still be proved by reference to the intent of the owner and overt acts manifesting that intent.

Quite frequently, the question of permanent attachment was resolved in light of two considerations: the identification of a thing as movable and the facility of its removal. Things that were identifiable and easily removable, like

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39. But see Bon Air Planting Co. v. Barringer, 142 La. 60, 76 So. 234 (1917).
42. But see Monroe Auto & Supply Co. v. Cole, 6 La. App. 337, 340 (2d Cir. 1927). In that case the court found that a gas tank and other articles were “merged into the immovable” and had “become so far a part of it as to lose entirely the character of moveables.”
44. Scovel, 137 La. at 922, 69 So. at 746.
46. See Saunders, Lectures on the Civil Code of Louisiana 159 (1925): There have been a great many controversies as to what connection may be deemed permanent. One thing is certain, that what the Code says on the subject (469) is by way of explanation only. When the Code says whatever is connected by plaster or by mortar is a part of it, [sic]. Is only an illustration of the permanent union between the thing and the house, and it admits of other methods of union which will be deemed to be permanent.
refrigeration equipment in a building,\(^1\) machinery in a sugar factory,\(^2\) an ice crusher,\(^3\) an oil burner,\(^4\) a soda fountain in a drug store;\(^5\) and chandeliers\(^6\) in a residence were not component parts of an immovable. However, things that were identifiable but not easily removable were considered to be parts of an immovable. It was so held in cases involving a gas tank,\(^7\) valuable mirrors,\(^8\) a safe,\(^9\) and chandeliers in a residence forming part of an electrical and gas installation.\(^10\)

IV. ARTICLE 466 AND GHOSTS OF THE PAST

In the 1978 Revision, the statement of sources under Article 466 reads: “New; cf. C.C. art. 469; but see C.C. arts. 467, 468.”\(^11\) This cryptic statement may be deciphered with the help of the Revision Comments that accompany Article 466. Comment (a) states that this provision is new, that it is based in part on Article 469 of the Louisiana Civil Code of 1870, and that it changes the law.\(^12\) Comment (c) explains that the second paragraph of Article 468 of the Louisiana Civil Code of 1870, things that the owner of a tract of land or a building had permanently attached to it became immovables by destination. In the revision, however, the category of immovable by destination was suppressed and the requirement of unity of ownership ceased to be material. Accordingly, under the 1978 Revision, “things permanently attached to a building or other construction are immovables even if they belong to a predial lessee or other person.”\(^13\)

Further, Comment (d) explains that according to Article 467 of the Louisiana Civil Code of 1870, things that the owner of a building had “attached to or actually connected with” the building for its “use or convenience” were “immovables by nature.” In the Revision, unity of ownership of the building and of the movables is no longer required; “moreover, the test of use or convenience of the building is abrogated. Immobilization takes place under [a]rticle 466 when movables are permanently attached to a building or other construction.”\(^14\)


\(^{49.}\) See Cristina Inv. Corp. v. Gulf Ice Co., 55 So. 2d 685 (La. App. 1st Cir. 1951).

\(^{50.}\) See Succession of Sussman, 168 La. 349, 122 So. 62 (1929).

\(^{51.}\) See Liquid Carbonic Corp. v. Crow, 177 La. 379, 148 So. 442 (1933).


\(^{53.}\) See Holicer Gas Co. v. Wilson, 45 So. 2d 96 (La. App. 2d Cir. 1950).


\(^{58.}\) See La. Civ. Code art. 466, Revision Comment (a).

\(^{59.}\) La. Civ. Code art. 466, Revision Comment (c).

\(^{60.}\) La. Civ. Code art. 466, Revision Comment (d).
Still further, comment (e) under new Article 466 points out that, in contrast with the provisions of Articles 467 and 468 that were abrogated, the substance of Article 469 of the Louisiana Civil Code of 1870 "has been reproduced" and that "Louisiana jurisprudence interpreting Article 469, therefore, continues to be relevant."

As under the 1870 Code, things such as "plumbing, heating, cooling, electrical or other installations" that are permanently attached to a building are its component parts. However, in contrast with the prior law, those things may become component parts of a building without regard to the test of use or convenience of the building, even if they are attached by a non-owner. The category of component parts of a building has been narrowed by the suppression of the detailed list of immovables of prior Article 467, but at the same time it has been expanded by the elimination of the requirements of use or convenience of the building and unity of ownership. To supplement that give and take, the easily satisfied requirement of attachment to or connection with the building has been replaced by the much more onerous requirement of permanent attachment. As under the prior law, the things that are illustratively enumerated in the first paragraph of Article 466 are considered to be permanently attached as a matter of law, that is, without regard to the test of the second paragraph of Article 466. As to such things, facility of removal is immaterial.

Article 466, second paragraph, determines what constitutes permanent attachment with respect to things that are not covered by the first paragraph. Like Article 469 of the 1870 Code from which has been derived, it declares that things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the thing to which they are attached. This is an objective test; the intent of the owner of the building or other construction is immaterial. The degree of connection or attachment of things to a building raises a factual issue.

61. See La. Civ. Code art. 466, Revision Comment (e). For exceptional legislation that prevents immobilization under Article 469, see Comments (f) and (g).

62. See La.Civ. Code art. 466; American Bank & Trust Co. v. Shel-Boze, Inc., 527 So. 2d 1052 (La. App. 1st Cir. 1988) (light fixtures and carpeting held to be component parts of a building under Article 466); Berot v. Norcondo Partnership, 544 So. 2d 508 (La. App. 5th Cir. 1989) (carpet, tile, flooring, wall paper, ceiling fans and burglar alarm held to be component parts of condominium unit); see Wallfisch, supra note 27. For things which, under special legislation, may not become component parts of an immovable, see Yiannopoulos, supra note 1, § 124, at 280.

63. See U.S. E.P.A. v. New Orleans Pub. Serv., Inc., 826 F.2d 361, 368 (5th Cir. 1987) ("[A]s a matter of law, certain things are deemed to be permanently attached if they are so classified in the first paragraph [of Article 466].").

64. For things that did not become component parts of a building, see Simmons v. Board of Comm’rs for Port of New Orleans, 442 So. 2d 836 (La. App. 4th Cir. 1983) (gate and fence attached to wharf); Heater v. Texas Gas & Exploration Corp., 466 So. 2d 504 (La. App. 3d Cir. 1985) (scaffold in a drilling platform); Steele v. Helmerich & Payne Intern. Drilling Co., 738 F.2d 703 (5th Cir. 1984) ("stabbing board"); White v. Gulf States Utilis. Co., 525 So. 2d 145 (La. App. 3d Cir. 1988) (elevator tower attached to exterior of building under construction). In U.S. E.P.A. v. New Orleans Pub. Serv., Inc., 826 F.2d 361 (5th Cir. 1987), the court held that certain electrical transformers, originally belonging to New Orleans Public Service, became component parts of a building and ownership passed to the owner of the building. Hence, the utility could not be held liable for contamination of the environment by the transformers under the Toxic Substances Control Act.

65. Thus, a window air-conditioning unit may or may not be permanently attached to the
building or other construction is a legal conclusion that is necessarily drawn from pertinent facts. As under the prior law, permanent attachment does not mean attachment "perpetuity or eternity." Permanent attachment may be effected in a variety of ways; the use of plaster or cement is neither required nor determinative of permanent attachment.

V. ARTICLE 466 IN THE COURTS

A. A Cause Célèbre: Equibank v. United States

In Equibank v. United States, the owner of a mansion on St. Charles Avenue in New Orleans defaulted on his mortgage and also failed to pay his income taxes. The mortgage was foreclosed and the mansion, with its contents, was advertised for sale. However, the IRS obtained possession of the mansion and removed furniture and certain valuable antique chandeliers over which it claimed a tax lien. The mortgage holders sought injunctive relief against the IRS, and the United States District Court for the Eastern District of Louisiana was faced with the question of whether the chandeliers were movable property subject to the tax lien or component parts of the mansion subject to the mortgage.

Judge Frederick Heebe asked Professor A.N. Yiannopoulos in his capacity as Reporter of the Civil Law Property Revision Committee of the Louisiana State Law Institute to explain the process of revision and the changes made in the law. At the trial, the Reporter explained that the first paragraph of Article 466 derived from Article 467 of the 1870 Code, that the second paragraph of Article 466 derived from Article 469 of the 1870 Code, and that the legislative intent was to preserve the Louisiana jurisprudence interpreting the source provisions. Further, the Reporter explained that, in accordance with the prior jurisprudence, things enumerated in the first paragraph of Article 466 are as a matter of law component parts of a building, that is, without regard to the test of permanent attachment of the second paragraph of the same article. In contrast, under the second paragraph of Article 466, things are classified as component parts of a building on the basis of facts establishing permanent physical attachment, that is, a finding that the things in question cannot

66. See Lafleur v. Foret, 213 So. 2d 141 (La. App. 3d Cir. 1968).
69. 749 F.2d 1176 (5th Cir. 1985).
70. See id. at 1177.
72. See Testimony of A.N. Yiannopoulos, Equibank v. U.S. I.R.S., 749 F.2d 1176 (5th Cir. 1985) (No. 83-4122); Record at 63, Equibank (No. 83-4122). Of course, the determination of "permanent attachment" under the second paragraph of Article 466 is a legal conclusion drawn from pertinent facts. Louisiana courts have held that these words do not contemplate attachment in perpetuity. But see
be removed without substantial damage to themselves or to the building. When asked to express an opinion as to the status of the chandeliers that had been removed from the mansion by the IRS, the Reporter stated that the chandeliers were movable property under Louisiana jurisprudence. They were neither "electrical installations" under the first paragraph of Article 466 nor "permanently attached" under the second paragraph of the same article. Judge Heebe accepted these conclusions as his own and rendered judgment dismissing the injunction.

On appeal, the United States Court of Appeals for the Fifth Circuit reversed. In determining whether the chandeliers were component parts of the house, the court interpreted Article 466 as explained by the Reporter and applied the first paragraph of Article 466 independently of the second paragraph. However, contrary to the Reporter's conclusion and prior Louisiana jurisprudence, the court concluded that the chandeliers were "electrical installations" under the first paragraph of Article 466. Once this conclusion was reached, the court correctly did not dwell on the question of whether the removal of the chandeliers would result in substantial damage either to the chandeliers or to the mansion.

At the district court trial, the Reporter had explained that the Civil Code provisions governing the classification of things as movables and immovables strive


74. See L'Hote v. Fulham, 51 La. Ann. 780, 784, 787, 25 So. 655, 657-58 (La. 1899) stating: The chandeliers and brackets placed in the houses of W.F. Fulham are also movables . . . . Neither the chandeliers themselves, the pipes with which they are connected, nor the walls through which the pipes are passed, are in the slightest degree injured by their removal . . . . We think that jurisprudence generally recognizes that chandeliers placed in a dwelling house by the owner thereof are movables, though, in order to be made use of, they have to be connected with pipes which are themselves considered immovable by destination.

But see McGuigin v. Boyle, 1 Orl. App. 164 (La. App. 1904); Scovel v. Shadyside Co., 137 La. 918, 924, 69 So. 745, 747 (1915) (on rehearing). Scovel involved the question of whether chandeliers were included in the sale of a house. Fulham was distinguished on the ground that the chandeliers were easily removable. In Scovel, the court held that:

the chandeliers and brackets were component parts of a gas and electricity installation that was indisputably immovable property . . . . [T]hose things, in so far as they were intended for the illumination of the house by the use of gas, were component parts of a plant established in the cellar of the house for the manufacture of gas, and in so far as they were for the use of electricity, were accessories of the electric light plant established by the same owner in the nearby sugar house. . . . The question here is, whether the vendor of immovable property, or those claiming under him, can recover from his vendee an essential part or accessory of that property on the ground that it was not included in the sale. Our conclusion is that he cannot.

137 La. at 931, 69 So. at 750-51.

75. See Equibank, 749 F.2d at 1177-80. See also Holl v. Brown & Root, Inc., No. 97-2671, 1999 WL 155948, at *3 (E.D. La. Mar. 18, 1999) ("By concluding that the chandeliers were 'permanently attached' even though they could be removed without substantial damage, the Equibank Court necessarily accepted the interpretation of Article 466 given by Professor Yiannopoulos.").

76. See Equibank, 749 F.2d at 1179-80.

77. See id. at 1176. This was an innovation. For the meaning of "electrical installations," see Scovel v. Shadyside Co., 137 La. 918, 69 So. 745 (1915).
for maximum certainty and predictability but uncertainties may exist in the fringes, and that in certain circumstances classification is made according to ideas and conceptions prevailing in society. For example, the societal viewpoint may be relevant when determining the classification of things that are not clearly enumerated in the first paragraph of Article 466 and are not permanently attached under the second paragraph.

The Court of Appeals took a broad view and declared that "societal expectations" must be considered when determining which things the legislature meant to be included in the listed categories of the first paragraph of Article 466. The court determined as a matter of law that chandeliers and other electrical appliances and fixtures may be "electrical installations" and then focused on the circumstances in which such things become component parts of a building. A workable test was devised: according to prevailing notions in society, things are "electrical installations" if they are connected to the interior wiring of the building and if some skill or additional knowledge is required in order to connect them to, or disconnect them from, a power source. In contrast, simple plug-in units are not electrical installations. The court also reasoned that the legislature intended light fixtures to be included in the category of electrical installations because the average, prudent homebuyer expects the lights to go with the house. Therefore, the court concluded that an installed light fixture, whether an antique chandelier or an everyday fixture,
is a component part of a building under the first paragraph of Article 466. The Equibank court interpreted and applied the first paragraph of Article 466 of the Louisiana Civil Code without due regard to prior jurisprudence and the 1978 Revision Comments. However, this is not necessarily a fault, and the solution reached by the court is plausible. Indeed, the Revision Comments are not law, and according to civilian theory judicial decisions are neither binding precedents nor sources of law. Undeterred by legislative history, the court attributed to the words of the law a contemporary meaning in conformity with the method of free scientific research. Francois Gény and Justice Tate would have approved.

B. The Equibank Legacy

Equibank gave birth to a Louisiana jurisprudence constante: every Louisiana court that dealt with the question of classification of things as component parts of buildings relied on the Equibank reasoning and proceeded to the interpretation of Article 466 in full accord with the seminal decision. In In re Appeal of Chase Manhattan Leasing Corp., the question before the court was the classification of the scoreboard and signage system of the Louisiana Superdome as movable property subject to ad valorem taxation or tax-exempt as a component part of the building. The court applied the Equibank analysis and test and held that these were component parts of the Superdome under both the first and the second paragraph of Article

86. See id.
87. See supra notes 29-56 and accompanying text.
88. See supra notes 57-67 and accompanying text.
90. See, e.g., American Bank & Trust Co. v. Shel-Boze, Inc., 527 So. 2d 1052, 1055 (La. App. 1st Cir. 1988). It decided that light fixtures "and related electrical paraphernalia" were component parts under paragraph one of Article 466 because they were wired in rather than plugged in. In finding carpeting to be a component part, the court echoed Equibank in stating that the reasonable buyer would expect to have finished flooring upon taking possession. In Lakeside Nat'l Bank of Lake Charles v. Moreaux, 576 So. 2d 1094 (La. App. 3d Cir. 1991), following Equibank, the court held that a septic tank system and an air conditioning system were permanently attached under Article 466, and went on to state that, "[m]oreover, we think that the question of whether . . . [they] should be considered an integral component of the building . . . should be based on societal expectations, notions and needs of the times." Id. at 1096 (citing American Bank & Trust Co. v. Shel-Boze, Inc., 527 So. 2d 1052 (La. App. 1st Cir. 1988)). In Berot v. Norcondo Partnership, 544 So. 2d 508, 511 (La. App. 5th Cir. 1989), following Equibank, the court acknowledged that "our jurisprudence . . . has demonstrated that the test is [societal expectations]." It then found it self-evident that a burglar alarm system, flooring, ceiling fans, and wallpaper were component parts of a condominium based on Article 466 and the jurisprudence.
91. 626 So. 2d 433, 434 (La. App. 4th Cir. 1993).
92. See id. at 434. "Following the Equibank rationale," the court declared, "the first paragraph of the article is satisfied because the system qualifies as an 'electrical or other installation' which is permanently attached to the Superdome. The system accesses the Superdome's electrical energy source through the interior wiring of the building. Furthermore, the system is connected to the Superdome structure by welds, concrete, and steel attachments."
93. See id. "The second paragraph of La. Civ. Code art. 466 is also satisfied. Removing the
466. In Hyman v. Ross,94 unpaid vendors of heating and air-conditioning units installed in a previously mortgaged motel claimed a vendor's privilege on the units adversely to the holders of the mortgage. The classification of the units as component parts of the building would negate the vendor's privilege and would enhance the security of the mortgage. In a well reasoned opinion, the court, quoting from scholarly commentary95 and following Equibank, declared that "the two paragraphs of Article 466 are separate and distinct, and should be applied independently to determine whether a particular object is a component part."96 The court dwelled on Professor Symeonides's explanation that while the two paragraphs of Article 466 seem to be closely interdependent—the second paragraph giving the impression that it merely qualifies the way in which the things listed in the first paragraph must be attached—a literal application would be "historically and functionally incorrect"97 and quoted:

[T]he word "permanent" in that paragraph [paragraph one] is intended to have a temporal rather than a physical connotation, i.e., permanent as opposed to temporary, not permanent as opposed to loose attachment. While a physically close attachment to, or incorporation into, the immovable usually connotes a certain degree of permanency in the temporal sense, a loose attachment does not necessarily connote lack of permanency. A loosely attached item of the kind enumerated in the first paragraph of current article 466 or sufficiently analogous thereto, may well be viewed by the community as permanently serving the immovable. If so, the item would qualify as a component part of the building, even when the item is easily removable and thus does not meet the rest of the second paragraph of current article 466.98

The Hyman court determined that heating and air conditioning units in rooms were as a matter of law component parts of a motel building under the first paragraph of Article 466. Echoing the analysis of Professor Symeonides, the court reasoned that the units in question were attached "indefinitely," and, therefore, they were permanently attached in a temporal sense.99 Further, following Equibank, the court reasoned that according to societal expectations the units were component parts in light of their indefinite attachment, their connection to the interior wiring of the motel, and their installation that required skill and expertise.100 The court also echoed Equibank as it considered what the average buyer would expect to see upon

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94. 643 So. 2d 256 (La. App. 2d Cir. 1994).
95. See id. at 258-59 (citing 2 Yiannopoulos, Property § 142, at 312, in Louisiana Civil Law Treatise (3d ed. 1991) and Symeonides, supra note 27, at 687-90.
96. Hyman, 643 So. 2d at 258.
97. Symeonides, supra note 27, 687.
98. Hyman, 643 So. 2d at 258 (quoting Symeonides, supra note 27, at 688).
99. See Hyman, 643 So. 2d at 261.
100. See id.
the premises and concluded that he would not expect to see the large hole that would be left if the units were removed.101

Until 1999, federal courts in Louisiana interpreted and applied Article 466 substantially in accord with Equibank.102 In Moll v. Brown & Root Inc.,103 an injured worker and his spouse claimed damages from an engineering firm on a products liability theory. They claimed that the worker was injured by a defective muffler that was attached to a piping line of a furnace on a seven story structure built on a concrete foundation. The defendants argued that the muffler in question was a component part of an immovable and that plaintiffs' claims were perempted under Louisiana Revised Statutes 9:2772. In a scholarly opinion, the court reexamined Equibank as well as pertinent jurisprudence and doctrine and determined that the muffler was a component part of an immovable. The court relied on Professor Symeonides's elaboration on the meaning of "permanent attachment,"104 accepted the view that the each paragraph of Article 466 should be interpreted independently of the other, and following the Equibank analysis and test declared that the muffler had been "permanently attached" to the immovable.105

The United States Court of Appeals for the Fifth Circuit revisited Article 466 in United States Environmental Protection Agency v. New Orleans Public Service.106 The court faced the question of the classification of three electrical transformers in a brewery. The Administrator of the Environmental Protection Agency had imposed a civil penalty on NOPSI, an electric utility, under the Toxic Substances Control Act for contamination from the transformers, and NOPSI petitioned for review claiming that the transformers were not its property but were component parts of another person's building.

In a well documented and incisive opinion, the court applied the Equibank reasoning step by step107 and concluded that, although the transformers did not meet the permanent attachment test under the second paragraph of Article 466, they could still be component parts as a matter of law under the first paragraph. The test of permanent attachment under the second paragraph of Article 466 was thus

101. See id.
102. It might be argued that in Boggs v. Atlantic Richfield Co., 720 F. Supp. 72 (E.D. La. 1989), the court did not follow the Equibank analysis of "other installations." That case involved a tort claim by an injured worker on an oil rig located on a fixed platform resting on the outer continental shelf. Plaintiff sought to recover damages from the owner of the platform on the theory that the oil rig was a component part of the platform. The court declared: "Because it is undisputed that the H & P rig at issue here could be and was removed without substantial damage to itself or to the platform to which it was attached, it cannot be deemed part of the building owned by Arco for purposes of Article 2322 liability." Id. at 75.
104. Id. at *3.
105. See id at *3-5. Accord Miller v. Slam Offshore, 49 F. Supp. 2d 507 (E.D. La. 1999). In this tort action, an offshore platform worker claimed that he was injured by a defective lease automatic custody transfer unit. On designer's motion for summary judgment, the court, following Equibank, Moll, and similar cases, held that the question of the classification of the unit as a component part of an immovable involved a genuine dispute as to facts and dismissed the motion.
106. 826 F.2d 361 (5th Cir. 1987).
107. See id. at 463-65 (citing Wallfisch, supra note 27).
immaterial. The court then determined that according to societal expectations the transformers were, indeed, electrical installations. Noting that "no specific evidence was presented as to how society would view these electrical transformers" and that "[i]t would be absurd to require such testimony. Rather such a determination can, and should be made by the trier of fact on a case by case basis."

In Coulter v. Texaco, the claim was a frequently recurring one. An injured worker on an oil drilling rig in a fixed platform in the outer continental shelf filed an action for damages against the owner of the platform on the theory that the oil drilling rig was a component part of the platform. In deciding this matter under the governing law of Louisiana, Judge Wiener relied on the works of two Louisiana "law scholars" and emphasized that the two paragraphs of Article 467 contemplate different categories of things and different tests. The court acknowledged that "[t]he ordinary societal expectations' test in a number of cases."

After finding that the oil rig did not meet the substantial damage test of the second paragraph of Article 466, the court turned to the first paragraph and concluded that the societal expectations of the offshore oil and gas industry is that a rig is not a component part of the platform. In the determination of societal expectations, however, the court applied factors that were rejected in Equibank and reasoned that the average person would expect the oil rig not to be a component part because of its high cost and sophistication. In contrast, the Equibank court disregarded the chandeliers' cost and artistic value, and treated them like any other light fixture that the average person expects to go with the house. Had the Equibank court accepted the view that the value and artistic significance of the chandeliers were pertinent considerations for resolution of the question of permanent attachment, it should have concluded that, like the oil drilling rig in Coulter, the chandeliers were not component parts of the building.

109. See id. at 368 ("The relevant inquiry . . . is . . . whether society views them as electrical installations.").
110. Id.
111. 117 F.3d 909 (5th Cir. 1997). But see Boggs v. Atlantic Richfield Co., 720 F. Supp. 72 (E.D. La. 1989). The court declared: "Because it is undisputed that the H & P rig at issue here could be and was removed without substantial damage to itself or to the platform to which it was attached, it cannot be deemed part of the building owned by Arco for purposes of Article 2322 liability." Id. at 75.
112. Coulter v. Texaco, Inc., 117 F.3d 909, 916 (5th Cir. 1997). These are the same scholars and the same works that Judge Wiener sought to discredit two years later in Prytania Park Hotel v. General Star Indem. Co., 179 F.3d 169 (5th Cir. 1999); see infra note 118 and accompanying text.
113. Coulter, 117 F.3d at 917.
114. It is noteworthy that the court considered substantial damage not as an absolute, but as relative to that which is incurred in the offshore drilling industry. See id.
115. See id. at 918.
116. See id.
117. See Equibank v. I.R.S., 749 F.2d 1176, 1180 (5th Cir. 1985) ("an installed light fixture, be it an expensive, antique chandelier or a garden-variety fixture, becomes a component part of the building").
VI. PAROXYSMAL JURISPRUDENCE:118
RULING FROM THE TOP OF MOUNT OLYMPUS

Prytania Park Hotel v. General Star Indemnity Co.119 would have been an unremarkable case if it were not for Judge Wiener’s opinion that turned it into the antipode of Equibank. According to a typical standard form insurance policy, damaged personal property, including “furniture and fixtures,”120 should be replaced at actual cash value and “permanently installed [f]ixtures” in the building should be replaced at full replacement cost. Furniture attached to the walls of the hotel by screws and bolts, consisting of armoires, night desks, entertainment centers, chests of drawers, desks, wall mirrors, and hanging luggage racks were damaged in a fire and policy holders, relying on the permanently installed fixtures coverage, sought replacement at full replacement cost. However, the insurance company relied on the furniture and fixture coverage and proposed replacement at actual cash value.

In various proceedings, three federal district court judges interpreted the insurance policy to mean that the furniture in question was, according to the intent of the parties, permanently installed fixtures that should be replaced at full replacement cost.121 The United States Court of Appeals for the Fifth Circuit disagreed with that interpretation of the policy and reversed on the grounds that the furniture in question was not “fixtures”122 under the building coverage, and, in the alternative, if the furniture was “fixtures,” it was not “permanently attached.”


119. 179 F.3d 169 (5th Cir. 1999).

120. The word “fixtures” is not found in the Louisiana Civil Code. For the nebulous meaning of this word in common law jurisdictions, see 2 Yiannopoulos, Property § 111, at 225, in Louisiana Civil Law Treatise (3d ed. 1991). In Louisiana, component parts of buildings or other constructions may be “fixtures” under Chapter 9 of the commercial laws (La. R.S. 10:9-101 to 10:9-605 (1993)). The rules relating to fixtures determine when and under which circumstances a security interest continues to exist on the goods after they become component parts of an immovable and what priority the security interest may have with regard to interests in or over the immovable. For the right to remove fixtures, see La. R.S. 10:9-313(8) (1993).


122. The word “fixtures” is used at least 69 times in the court’s opinion. The court thought that this word is neither a technical term nor a term of art but proceeded to enumerate kinds of fixtures in commercial establishments. See Prytania Park Hotel, 179 F.3d at 175. Amazingly, the court did not search for the meaning of the word at common law nor in standard insurance policies. But see Equibank, 749 F.2d at 1176.
Accordingly, the replacement value should be the depreciated actual cash value rather than full replacement cost.

That might have been all, but Judge Wiener chose to write a confusing diatribe on Article 466 of the Louisiana Civil Code and besmear the integrity of two Louisiana scholars in an unprovoked, unprecedented and unnecessary ad hominem attack. As a matter of contractual interpretation, *Prytania*, like any other fact based decision, has little precedential value and commentary is unnecessary.123 However, the alternative ground of decision, the *arguendo* diatribe on Article 466 of the Louisiana Civil Code, calls for a critique because of its potential precedential value. Louisiana courts, deeply influenced by civilian methodology, quite often fail to distinguish between obiter dicta and holding, and there is danger that erroneous or uncritical pronouncements in *Prytania* might be taken as true statements of Louisiana law.

Once the question of contractual interpretation was turned into a question of statutory interpretation, that is, whether the furniture in question was permanently attached to the building under Article 466 of the Civil Code, the court proceeded to an examination of the derivation and structure of that article. The court thought that furniture, unless regarded as “electrical or other installations,” was not of the kind of things that qualify as permanently attached under the first paragraph of that article.124 The question, therefore, was whether the furniture was a component part of the building under the first paragraph as an installation or whether it was a component part under the test of the second paragraph of Article 466.

Contrary to well settled Louisiana jurisprudence and doctrine, including federal court decisions, Judge Wiener asserted that the first and the second paragraphs of Article 466 must be read together, and installations, in order to be component parts, must also meet the requirements of the second paragraph of Article 466.125 In the

123. While belaboring the obvious, the scheme of contractual interpretation established by La. Civ. Code arts. 2047-2057, the court sought to teach the three lower court judges a lesson in contractual interpretation and in the proper use of the “methodology of the Civil Code.” *See Prytania Park Hotel*, 179 F.3d at 175. However, the court did not realize the difference between the rules of interpretation of the Civil Code and civilian “methods of interpretation.” *See Yiannopoulos, Civil Law System, Louisiana and Comparative Law §§135, 140-143 (2d ed. 1999).*

124. The court seemed to be unaware that La. Civ. Code art. 466 is susceptible of application by analogy. It appeared to be influenced by the common law rule of *ejusdem generis*. For Louisiana law, *see* Tangipahoa Bank & Trust Co. v. Kent, 70 F.2d 139-41 (5th Cir. 1934) which states:

A sprinkler system . . . is not included in the enumeration of specified appliances of either article [467 and 468], but, as the maxim ‘*inclusio unius est exclusio alterius*’ has very little application in construing the articles of the Civil Code, it may be conceded that either article is broad enough to include the sprinkling system by necessary implication. *(citing Scott v. Brennan, 161 La. 1017, 109 So. 822, 48 A.L.R. 1143 (1926)); see also, American Bank & Trust Co. v. Shel-Boze, Inc., 527 So. 2d 1052, 1055 (La. App. 1st Cir. 1988) (“The Equibank case may also be applied by analogy, to include the carpeting which was installed, and subsequently removed. . . .”).*

125. *See Prytania Park Hotel*, 179 F.3d at 178 stating:

A straightforward reading of Article 466 requires that the permanence of any movable’s installation in ‘a building or other construction’ meet the definition of ‘permanently attached’ in the article’s second paragraph. Under that definition, the Furniture can only qualify as ‘[p]ermanently installed [f]ixtures’ if its removal would cause ‘substantial
absence of a genuine dispute as to facts, the court concluded that, as a matter of law, the furniture was not permanently attached to the building.  

A. The Mythology of "Societal Expectations"

When by the craft of Hephaestus
And his axe of beaten bronze
From the top of her father's head
Athene jumped out, and yelled with a monstrous shout
And the sky shuddered at her, and Mother Earth.

Since Equibank, both state and federal courts in Louisiana resolved disputes as to the status of diverse objects attached to buildings and other structures with reference to "societal expectations." In Coulter v. Texaco, Judge Wiener claimed ownership and perhaps paternity of the notion of "societal expectations" on behalf of the Fifth Circuit, declaring proudly that "intermediate appellate courts in Louisiana have applied our Equibank 'ordinary societal expectations' test in a number of cases." Two years later, however, Judge Wiener in Prytania disavowed paternity, disclaimed ownership, and overruling himself sought to attach paternity of societal expectations to others. He asserted that "[w]e are aware from Equibank that the societal expectations canon sprang—or more accurately, was launched—full-grown from the forehead of an expert witness who testified for the I.R.S. during the trial of that case." He considers that...
"canon" to be a spurious invention of a professor bent on distorting the law in order to serve the interests of his client, reinforced by a second professor who, for reasons not specified, sought to support the unsupportable views of the first. Apparently, neither Judge Wiener nor his clerks carried a thorough search to determine "the pedigree" of societal expectations. Had they done so, they would have found that the phrase "societal expectations" was first coined by Judge Tate in *Lafleur v. Foret* and was picked up by Judge Politz in *Equibank* from that opinion.

*Prytania* to the contrary notwithstanding, the "societal expectations" analysis is now part of Louisiana *jurisprudence constante*, and a most useful tool carefully applied by state and federal courts. This jurisprudence is a part of Louisiana law that federal courts are *Erie* bound to follow and apply in diversity cases for the determination of the question of whether an object is a component part of a building or other structure.

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error. However, the court is plainly wrong concerning the genealogy of the societal expectations. These words are not found in the transcript of the Reporter's testimony at the *Equibank* trial. In the *Exposé des Motifs* of the 1978 Revision, in the Property Treatise, and at the *Equibank* trial, the Reporter spoke of "prevailing notions in society" for the classification of things as movables and immovable at the fringes. This terminology has been borrowed from doctrinal works elaborating on the legal systems of Greece and Germany, on which the 1978 Revision relied heavily. *See Exposé des Motifs*, Title I, Things; 2 Yiannopoulos, Property §32, at 56-57 in *Louisiana Civil Law Treatise* (3d ed. 1991).

132. *Prytania Park Hotel*, 179 F.3d at 180. It is not clear whether "canon" means in context rule or gun (artillery).

133. See id. at 181 stating:

From our opinion in *Equibank*, we get the impression that the Professor had opted to disregard the concept of permanent attachment as embodied in the plain wording of article 466 (a concept that presumably favored his client, given the apparent dearth of trial evidence of 'substantial damage' to the chandelier or the mansion during removal) and to ground his advocacy instead on "societal expectations." He did so by an imaginative parsing of this article to visualize an otherwise invisible disjunctive between the article's first and second paragraphs.

Id.

134. "In fact only the post-hoc effort of the Professor's fellow academician, Professor Symeon Symeonides of the L.S.U. Law faculty purports to support the proposition that in 1978 Louisiana had adopted the societal expectations theory, and even that writing fails to withstand careful scrutiny." *Id.* at 181, n.34.

135. *But see* id. "The pedigree of the Professor's 'societal expectations' canon is murky at best."

136. *See* *Lafleur v. Foret*, 213 So. 2d 141 (La. App. 3d Cir. 1968). *See also U.S. E.P.A. v. New Orleans Pub. Serv., Inc.*, 826 F.2d 361, 366 n.8 (5th Cir. 1987) ("Lafleur was the only case cited by the court in *Equibank*, and undoubtedly served as the basis for the reference to societal expectations in the classification of the things as movable or immovable.").

137. *But see* Hargrave, supra note 27, at 362 (Shel-Boze and *Equibank* "reflect Judge Tate's opinion in *Lafleur v. Foret*, in which he referred to 'contemporary views' as to conceptions of components in light of current building technology with respect to components of residences, and moved away from old cases that allowed virtual denuding of houses upon sale.") (citations omitted)

VII. CONCLUSIONS

1. The question of the classification of things attached to a building or other structure as component parts or movables is an ever-recurring problem that involves significant consequences in many fields of law. Articles 465 through 467 of the Louisiana Civil Code, as revised in 1978, are sufficiently broad to provide certainty in the law and resolve most disputes in and out of court. However, as all other civil codes, the Louisiana Civil Code cannot literally cover all possible fact situations and circumstances. At the fringes of the law, the classification of things as movables and immovables, that is, distinct things or component parts of another thing, will be made in accordance with rules of interpretation, civilian methodology, doctrine, and notions prevailing in society.

2. Article 466 of the Louisiana Civil Code did not spring fully grown from the forehead of anyone. Its first paragraph is based on Article 467 of the 1870 Civil Code and the second paragraph reproduces the substance of Article 469 of the same Code. It is a "historical accident" that in the late stages of the 1978 Revision two distinct draft articles were combined to form Article 466.139

3. The legislative intent was that Article 466 be interpreted in light of the pre-existing jurisprudence. Accordingly, the determination of the status of things under the first paragraph is made by the court "as a matter of law," as it was made under Article 467 of the 1870 Code. There is no need of proof, lay or expert testimony, concerning the mode, scope, and purpose of attachment of a movable to a building or other structure.142 If the thing belongs to one of the enumerated categories, it is a component part. However, the enumeration is not exclusive and it may well be expanded by analogy.143 In case of doubt, the court almost unavoidably will rely on prevailing notions in society. Therefore, many kinds of "installations," not only similar to those enumerated and not only electrical, may qualify as component parts of a building or other structure without regard to the test of permanent attachment under the second paragraph of Article 466.

4. The determination of the status of things under the second paragraph of Article 466 is a legal conclusion grounded on facts, as it was under Article 469 of the 1870 Code. Therefore, a thing is a component part of a building or other structure when its removal will likely cause damage to itself or to the building. In case of doubt, reliance on prevailing notions in society may be unavoidable for determination of whether the attachment is permanent.144

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139. See supra note 27, at 687.
140. See Louisiana State Law Institute, Council Meeting, Nov. 5 and 6, 1971 (Draft Articles 17 and 18); id. Council Meeting, Oct. 9 and 30, 1976 (Draft Articles 17 and 18).
142. Id. ("It would be absurd to require such testimony.").
143. See supra text accompanying note 79.
144. "[S]uch a determination can, and should be made by the trier of fact, on a case by case basis."
5. For nearly twenty years, Louisiana courts have generally reached plausible results in the interpretation and application of the two paragraphs Article 466 of the Civil Code, guided in doubtful cases by an objective test of societal expectations. That notion, the brainchild of one of Louisiana's greatest jurists, Justice Albert Tate, Jr., has been thoughtfully and consistently applied by state and federal courts in Louisiana. The well settled jurisprudence may be regarded as jurisprudence constante, indisputably a part of Louisiana property law that all courts must respect. The aspersions of one judge do not herald a decline in judicial ethos and an era of chaos and uncertainty.

6. Law professors may be frustrated because they have no authority to decide cases. Judges decide cases, and, whether frustrated or not, may also write treatises, dissertations and diatribes. It may be a good idea for judges to keep the functions separate. Judicial decisions command respect and deference even if they are erroneous. A diatribe, however, even if dressed as a judicial decision, is an academic exercise and it may provoke the kind of critique that normally is encountered in doctrinal controversies. This may detract from the high respect that is due to courts and their judgments under our system of government and prevailing notions in society.
