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Ghosts of the Past and Hopes for the Future: Article 466 and Societal Expectations

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Ghosts of the Past and Hopes for the Future: Article 466 and Societal Expectations

Elizabeth Ruth Carter*

This Comment will trace the history of the law governing component parts in Louisiana Civil Code article 466 and its predecessor articles. It notes that civilian methods of interpretation do little to solve the ambiguity inherent in component parts and that stare decisis and jurisprudence constante only confuse the situation. The societal expectations test has been designed to account for these problems and has successfully resolved the ambiguities when it is correctly applied.

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I. INTRODUCTION

Contradiction is inherent in the law. The moment that a statute is posited, it begins to age and becomes inadequate for unanticipated future circumstances. Life never stops. And perhaps some of the characteristics of the Civil Law system, such as the belief that reason can do too much, have helped to accentuate the contradiction between law and reality.¹

Such is the case of the Louisiana Civil Code and in particular the law governing component parts. Louisiana Civil Code article 466 and its predecessor articles under the Code of 1870 have continuously suffered from ambiguity, unforeseen changes, and a perpetual failure to see reality because of the debate over the law. This Comment will trace the history of component parts from the Code of 1870 through the 2007 legislation, critique the traditional methods of civilian interpretation in relation to the issues posed by component parts, examine the distinction between *stare decisis* and *jurisprudence constante*, examine the unique problems faced by federal courts in applying Louisiana substantive law, and propose practical solutions for applying the newly amended component parts code article.

II. HISTORICAL OVERVIEW

Louisiana Civil Code article 466 governs what constitutes a component part of immovable property.² The implications of article 466 reach far beyond property law.³ For example, classification of a thing as a component part of an immovable may affect seizure, real actions, successions, community property, lesion, leases, insurance, venue, expropriation, security rights in movables, and actions for

1. Roberto G. MacLean, *Judicial Discretion in the Civil Law*, 43 LA. L. REV. 45, 49 (1982).

2. See LA. CIV. CODE ANN. art. 466 (Supp. 2007).

3. See 2 A.N. YIANNPOULOS, LOUISIANA CIVIL LAW TREATISE: PROPERTY § 120 (4th ed. 2001).

damages.⁴ In 2005 and 2006, the Louisiana legislature amended article 466 in an attempt to finally put to rest a debate that has plagued the article since its enactment.⁵

A. *Prerevision Articles and Jurisprudence*

Under the Civil Code of 1870, immobilization of movables could occur through one of several processes:

[Article 467.] 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.

[Article 468.] Things which the owner of a tract of land has placed upon it for its service and improvement, are immovable by destination.

Thus the following things are immovable by destination when they have been placed by the owner for the service and improvement of a tract of land, to wit:

....

All such movables as the owner has attached permanently to the tenement or to the building, are likewise immovable by destination.

[Article 469.] The owner is supposed to have attached to his tenement or 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.⁶

Article 467 soon proved insufficient in light of changing building technologies and was amended in 1912 to include a rather lengthy list of items considered to be immovable by their nature, including:

Wire screens, water pipes, gas pipes, sewerage pipes, heating pipes, radiators, electric wires, electric and gas lighting fixtures, bathtubs, lavatories, closets, sinks, gasplants, meters and electric light plants, heating plants and furnaces, when actually connected with or attached

4. *Id.*

5. See Act No. 301 of June 29, 2005, 2005 La. Acts 1772 (explaining that the motivation for amending article 466 was to clarify the meaning of “permanently attached”); Act No. 765 of June 30, 2006, 2006 La. Act 1269, § 1; see also, e.g., John A. Lovett, *Another Great Debate?: The Ambiguous Relationship Between the Revised Civil Code and Pre-Revision Jurisprudence as Seen Through the Prytania Park Controversy*, 48 LOY. L. REV. 615, 711-14 (2002) (observing that reading the two paragraphs of former article 466 conjunctively and not including a societal expectations test adheres more closely to treating the Louisiana Civil Code as a true civil code); A.N. Yiannopoulos, *Of Immovables, Component Parts, Societal Expectations, and the Forehead of Zeus*, 60 LA. L. REV. 1379, 1396-99 (2000) (taking the opposite position that former article 466 should be read disjunctively and should include a societal expectations test).

6. LA. CIV. CODE ANN. arts. 467-469 (1870).

to the building by the owner for the use of convenience of the building

....⁷

The courts soon recognized that even the lengthy 1912 amendment was insufficient to cover all things that ought to be considered immobilized.⁸ Accordingly, judges interpreted the enumerated list in article 467 as illustrative rather than exhaustive.⁹ Notably, article 467 required attachment of the movable to the immovable, but permanent attachment was not required.¹⁰ Article 467 stood in contrast to article 468, where permanent attachment was required, and article 469, where permanent attachment was presumed.¹¹

The birth of the societal expectations test, which shaped (or plagued, depending on which academic is asked) the postrevision jurisprudence, is generally traced to *Lafleur v. Foret*.¹² The issue in *Lafleur* was whether window air-conditioning units were immovables and therefore passed with the sale of the house.¹³ The window air conditioners clearly did not fall under articles 468 or 469 because they were neither permanently attached nor were they attached with mortar or plaster.¹⁴ Though window air-conditioning units were not one of the items specifically enumerated in article 467, the court determined that the article's list was illustrative and further analysis was required.¹⁵ The court reasoned that the underlying purpose of article 467 was to include in the definition of immovables those items that society expected to be included in the definition, but that might not have been invented or thought of at the time of drafting.¹⁶ Accordingly, the court reasoned that "the proper standard to apply . . . is a determination of whether the non-enumerated item, is, according to contemporary objective standards, a component of the immovable."¹⁷ Ultimately, the court held that window air-conditioning units did not satisfy this test.¹⁸ The standard set forth in this case came to be called the societal

7. Act No. 51 of July 2, 1912, 1912 La. Acts 60; see Yiannopoulos, *supra* note 5, at 1382-83.

8. See Yiannopoulos, *supra* note 5, at 1383.

9. *Id.*

10. *Id.*

11. *Id.*

12. 213 So. 2d 141, 148 (La. App. 3 Cir. 1968); see Yiannopoulos, *supra* note 5, at 1397.

13. *Lafleur*, 213 So. 2d at 142.

14. *Id.* at 143-44.

15. *Id.* at 146-47.

16. *Id.* at 147.

17. *Id.* at 148.

18. *Id.* at 149.

expectations test, and courts applied this test in postrevision jurisprudence.¹⁹

B. Postrevision Articles

The 1978 revision eliminated the distinction between immovables by destination and immovables by nature; however, some of the concepts underlying those classifications remained.²⁰ Notably, doctrine on, and comments to, article 466 posit that the new article suppressed old article 467 and the test for use or convenience of the immovable.²¹ After the 1978 revision, the test of “permanent attachment” replaced the requirement of attachment and the test of use or convenience.²² The revised articles read as follows:

[Article 465.] Things incorporated into a tract of land, a building, or other construction, so as to become an integral part of it, such as building materials, are its component parts.

....

[Article 466.] 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.

....

[Article 467.] The owner of an immovable may declare that machinery, appliances, and equipment owned by him and placed on the immovable, other than his private residence, for its service and improvement are deemed to be its component parts. The declaration shall be filed for registry in the conveyance records of the parish in which the immovable is located.²³

Articles 465 and 467 caused little controversy.²⁴ However, several controversies emerged concerning article 466.²⁵ Academics and judges argued over whether the two paragraphs of the article should be read in the conjunctive or the disjunctive.²⁶ According to those involved in the revision, the drafters originally intended the two paragraphs to

19. See, e.g., Yiannopoulos, *supra* note 5, at 1382-89 (discussing *Lafleur* and subsequent application of the societal expectations test).

20. Act No. 728, 1978 La. Acts 1900; see Yiannopoulos, *supra* note 5, at 1381-82.

21. See Lovett, *supra* note 5, at 673; Yiannopoulos, *supra* note 5, at 1386.

22. Yiannopoulos, *supra* note 5, at 1386.

23. LA. CIV. CODE ANN. arts. 465-467 (1980).

24. 2 YIANNOPOULOS, *supra* note 3, § 142.5.

25. *Id.*

26. See, e.g., Lovett, *supra* note 5, at 623; Yiannopoulos, *supra* note 5, at 1395.

constitute two separate code articles, but a clerical issue with renumbering caused them to be included in the same code article.²⁷ Accordingly, this camp of pragmatists argued that the Legislature intended for the two paragraphs to constitute two separate and distinct tests for immobilization.²⁸ Likewise, the pragmatists contended that the Legislature intended prereservation jurisprudence to continue to apply to the extent that it was not incompatible with the new law.²⁹ Specifically, the pragmatist camp argued that the *Lafleur* societal expectations test should be included in the application of the first paragraph.³⁰ In contrast, the purist camp argued that a literal reading of article 466 left the meaning unambiguous.³¹ Where a code provision is unambiguous, it must be applied as written without looking to legislative intent.³² The second paragraph defined the first so that an item enumerated in the first paragraph was only a component part if it also met the test for permanent attachment in the second paragraph.³³ Accordingly, the purists rejected any inclusion of the societal expectations test in the application of article 466.³⁴ Courts showed near universal adherence to the approach of the pragmatist camp.³⁵

27. See Symeon Symeonides, *Property: Possessory Actions Against the State*, 46 LA. L. REV. 655, 687 (1986) ("It seems that the two paragraphs were placed together under a single article as a result of historical accident rather than deliberate planning. A cursory look at the sources of article 466 reveals that its two paragraphs were derived from two separate articles of the Civil Code of 1870 . . .").

28. See, e.g., Yiannopoulos, *supra* note 5, at 1385-87.

29. See *id.* at 1386.

30. See Lovett, *supra* note 5, at 622, 704-05.

31. See, e.g., *id.* at 704-05.

32. LA. CIV. CODE ANN. art. 9 (1999).

33. See Taylor S. Carroll, Note, *Prytania Park Hotel Limited v. General Star Indemnity Company: A Misapplication of Civil Code Article 466*, 60 LA. L. REV. 947, 947 (2000).

34. See *id.*

35. E.g., *Equibank v. IRS*, 749 F.2d 1176, 1179 (5th Cir. 1985); see Yiannopoulos, *supra* note 5, at 1389-90; see also, e.g., *Coulter v. Texaco, Inc.*, 117 F.3d 909, 918 (5th Cir. 1997) (holding that a drilling rig was not a component part of an oil platform on the basis of the societal expectations test); *EPA v. New Orleans Pub. Serv., Inc.*, 826 F.2d 361, 368-69 (5th Cir. 1987) (applying the societal expectations test in holding that transformers in a brewery building were component parts); *Hyman v. Ross*, 26,096, p. 9 (La. App. 2 Cir. 9/21/94); 643 So. 2d 256, 261 (applying the societal expectations test to hold that heating and air-conditioning units were component parts of a hotel); *In re Chase Manhattan Leasing Corp.*, 626 So. 2d 433, 434 (La. App. 4 Cir. 1993) (adhering to the *Equibank* rationale to hold that a scoreboard system is a component part of the Superdome); *Am. Bank & Trust Co. v. Shel-Boze, Inc.*, 527 So. 2d 1052, 1054-55 (La. App. 1 Cir. 1988) (holding that wired-in light fixtures and wall-to-wall carpeting were component parts of residences under *Equibank* and the societal expectations test).

C. *Postrevision Jurisprudence*

The postrevision application of societal expectations began in the United States Court of Appeals for the Fifth Circuit in the case *Equibank v. IRS*.³⁶ The issue in *Equibank* was whether chandeliers in a St. Charles Avenue mansion were considered component parts of the immovable.³⁷ Looking to *Lafleur* and the *Exposé des Motifs*, the court reasoned that “the views of the public on which items are ordinarily regarded as part of a building must be considered in defining those items which the legislature meant to include within the term electrical installation.”³⁸ The court drew a dividing line between those electrical installations that anyone could install by just plugging them into an outlet and those installations that require some amount of electrical expertise to install.³⁹ Accordingly, the court held that the chandeliers were component parts of the building because they were wired-in appliances, rather than plugged-in appliances.⁴⁰ In the aftermath of *Equibank*, both the state and federal courts showed widespread acceptance of the *Equibank* approach to article 466, arguably leading to a line of cases constituting *jurisprudence constante*.⁴¹

However, in 1999, the Fifth Circuit seemingly had a change of heart concerning the societal expectations test.⁴² In *Prytania Park Hotel, Ltd. v. General Star Indemnity Co.*, the Fifth Circuit, in dicta, advocated a different application of article 466.⁴³ First, the court argued that a thing does not become a component part under the first paragraph of article 466 unless it also meets the test for permanent attachment under the second paragraph.⁴⁴ This conjunctive reading of the two paragraphs departed dramatically from the disjunctive reading employed by earlier courts.⁴⁵ Second, the court completely rejected the societal expectations test, stating: “We 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

36. See 749 F.2d at 1180.

37. *Id.* at 1177.

38. *Id.* at 1179.

39. *Id.*

40. See *id.* at 1180.

41. See Yiannopoulos, *supra* note 5, at 1390; see also sources cited *supra* note 35. But see Lovett, *supra* note 5, at 701-02 (pointing out that *jurisprudence constante* is only persuasive authority and is not binding).

42. See *Prytania Park Hotel, Ltd. v. Gen. Star Indem. Co.*, 179 F.3d 169, 180-83 (5th Cir. 1999).

43. *Id.*

44. *Id.* at 179.

45. See, e.g., sources cited *supra* note 35.

testified for the I.R.S. during the trial of that case.”⁴⁶ Apparently, the court took issue with the expert testimony Professor A.N. Yiannopoulos gave to the *Equibank* trial court concerning article 466 and whether chandeliers were component parts.⁴⁷ The court went on to criticize the professor’s explanation of the origin of societal expectations, calling the origins “murky at best.”⁴⁸ The court’s scathing criticism of Professor Yiannopoulos sparked a flurry of academic controversy.⁴⁹

The Louisiana Supreme Court touched on this controversy in 2001.⁵⁰ The issue in *Showboat Star Partnership v. Slaughter* was whether gaming equipment was a component part of a vessel for purposes of a tax exemption.⁵¹ The court held that such equipment did not qualify under the test for permanent attachment or under a societal expectations theory.⁵² However, the court did not take the opportunity to “officially” settle the Fifth Circuit debate until 2005.⁵³

In *Willis-Knighton Medical Center v. Caddo-Shreveport Sales & Use Tax Commission*, the Louisiana Supreme Court considered whether nuclear cameras constituted component parts of a hospital building for purposes of a tax exemption.⁵⁴ The court “officially” adopted the *Prytania Park* approach, holding that the two paragraphs of article 466 must be read in conjunction and without any societal expectations test.⁵⁵

46. *Prytania Park*, 179 F.3d at 180.

47. *Id.* at 180-82.

48. *Id.* at 180-81 & n.34.

49. See, e.g., Lovett, *supra* note 5, at 701 (“[A]cademic commentators . . . have been quick to challenge the court’s [*Prytania Park*] analysis in law reviews and treatises.”); Yiannopoulos, *supra* note 5, at 1395 (calling Judge Wiener’s reference to his testimony in *Prytania Park* an “unprovoked, unprecedented and unnecessary *ad hominem* attack”); Carroll, *supra* note 33, at 959 (stating that Judge Wiener’s criticism was without merit and offering structural statutory support for Yiannopoulos’s testimony).

50. See *Showboat Star P’ship v. Slaughter*, 00-1227, p. 7 n.4 (La. 4/3/01); 789 So. 2d 554, 558 n.4.

51. *Id.*

52. *Id.* at pp. 8-9; 789 So. 2d at 559-61.

53. *Willis-Knighton Med. Ctr. v. Caddo-Shreveport Sales & Use Tax Comm’n*, 04-0473, p. 21 (La. 4/1/05); 903 So. 2d 1071, 1085, *superseded by statute*, Act No. 301 of June 29, 2005, 2005 La. Acts 1772, LA. CIV. CODE ANN. art. 466 (Supp. 2007).

54. *Id.* at p. 10; 903 So. 2d at 1078.

55. *Id.* at pp. 32-33; 903 So. 2d at 1091-92.

D. Aftermath of Willis-Knighton

Three months after the *Willis-Knighton* decision, the Louisiana State Legislature effectively overruled the decision.⁵⁶ The Legislature amended article 466 to read:

Things permanently attached to an immovable are its component parts.

Things, such as plumbing, heating, cooling, electrical or other installations, are component parts of an immovable as a matter of law.

Other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable.⁵⁷

Following the legislative reaction to the initial decision in *Willis-Knighton*, the court held a rehearing to determine the issue of the retroactivity of its decision.⁵⁸ The court held that its opinion interpreting article 466 and the definition of component parts would be given prospective effect only.⁵⁹ This “prospective” application limited the court’s decision to the *Willis-Knighton* case itself and any cases decided in the brief period between the initial decision and the legislative response. In 2006, the Legislature proved unsatisfied with its 2005 response to *Willis-Knighton*. Accordingly, the Legislature amended article 466 to apply only to “building[s] or other construction[s].”⁶⁰ This stands in contrast to the prior article, which applied to immovables generally.⁶¹ The same legislative act stated that the amendment is retroactive.⁶² Clearly, the court’s prospective application of *Willis-Knighton* coupled with the Legislature’s retroactive application of the 2006 amendment to article 466 is an invitation for confusion.⁶³ Moreover, any retroactive application of the amendment

56. See LA. CIV. CODE ANN. art. 466.

57. *Id.*

58. *Willis-Knighton*, 04-0473 at p. 1; 903 So. 2d at 1107.

59. *Id.*

60. Act No. 765 of June 30, 2006, § 1, 2006 La. Acts 1269 (“Component parts of a building or other construction . . . Things such as plumbing, heating, cooling, electrical, or other installations are component parts of a building or other construction as a matter of law. Other things are considered to be permanently attached to a building or other construction if they cannot be removed without substantial damage to themselves or to the building or other construction or if, according to prevailing notions in society, they are considered to be its component parts.”).

61. LA. CIV. CODE ANN. art. 466.

62. Act No. 765 of June 30, 2006, § 2, 2006 La. Acts 1269.

63. At least one court has grappled with the issue. *Cajun Constructors, Inc. v. Strain*, No. 2006 CA 0443, 2006 WL 3813718 (La. App. 1 Cir. Dec. 28, 2006).

is arguably unconstitutional.⁶⁴ Despite the issues with regard to retroactivity and the application of article 466 only to buildings and other constructions, the Legislature seems to have settled the issue of societal expectations. The societal expectations test has been an explicit mode of immobilization under article 466 since 2005.⁶⁵ Although the Legislature is considering further amendments to article 466, it appears that the societal expectations test will remain a part of the article in some form or another. Now that the long debate of whether societal expectations is a part of Louisiana law is settled, a new issue emerges. The issue now is *how* to apply article 466 and its societal expectations test as a practical matter.

III. CIVILIAN METHODS OF STATUTORY INTERPRETATION

Despite the best efforts of its drafters, no civil code is without gaps and ambiguities.⁶⁶ Often, the civil law judge is called upon to fill these gaps in legislation or to decide how broad code provisions will apply to specific fact situations.⁶⁷ The societal expectations test is a perfect example of this situation. Aside from the rather rhetorical rule that decisions should be made in accordance with prevailing notions of society, how exactly should a court decide the prevailing notions of society? The civilian interpretive method chosen by the judge plays an important part in determining what role the judge will play in reaching a decision.⁶⁸ This choice is an exercise of judicial discretion that is necessary for the proper functioning of any civil law system.⁶⁹

The four classic methods of civilian statutory interpretation are: logical, exegesis, free scientific research, and teleological.⁷⁰ While there are numerous modern variations on these techniques, this Comment will limit discussion to these four classic methodologies. As outlined below, each of these methods proves problematic in finding any realistic approach to the application of article 466.

64. LA. CIV. CODE ANN. art. 466 editor's note 1.

65. *Id.* art. 466.

66. *See* MacLean, *supra* note 1, at 51.

67. *See id.* at 50-56.

68. *See id.*

69. *Id.* at 51.

70. A.N. YIANNPOULOS, CIVIL LAW SYSTEM: LOUISIANA AND COMPARATIVE LAW §§ 140-143, at 283-88 (2d ed. 1999).

A. *Logical Method*

The logical method of statutory interpretation has its roots in Roman law.⁷¹ This method of interpretation views the judge as a mechanical enforcer of the legislature's will.⁷² Consequently, the logical method of interpretation "treats legal questions as if they were problems of geometry or mathematics."⁷³ In modern civil law systems, the logical method of interpretation is useful where a code provision clearly applies to the facts at hand.⁷⁴ For example, the rules governing the writing requirement for transfers of immovable property are clear.⁷⁵ Without the required writing, a transfer of immovable property does not affect third parties.⁷⁶ In a situation such as that one, the logical method is appropriate.⁷⁷

However, other than the situation where application of a code article is obvious, the logical method is disfavored.⁷⁸ "[T]he image of the judge, bound by the strictness and rigor of formal logic, is not compatible with many of the doctrines of modern times."⁷⁹ Modern doctrine admits the inherent flaws and gaps of a civil code and the necessity of judicial discretion in light of these shortcomings.⁸⁰

The problem with applying the logical method of statutory interpretation to societal expectations is obvious. Societal expectations is a rule of flexibility and discretion, not a rule of geometry. That is, the text of article 466 quite literally proscribes a test requiring judicial discretion.⁸¹ What constitutes a prevailing notion of society in a particular fact situation is a question that cannot be answered by the strict rules of logic.⁸² The answer will necessarily depend on judicial discretion, which is not allowed under the pure version of the logical

71. MacLean, *supra* note 1, at 46.

72. *See id.* at 45-46.

73. YIANNOPOULOS, *supra* note 70, § 140, at 284.

74. *See* Albert Tate, Jr., *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727, 729-30 (1962).

75. *See* LA. CIV. CODE ANN. art. 1839 (1987); Tate, *supra* note 74, at 729 (referring to the requirement that transfers of immovable property be in writing on pain of nullity as a clear provision).

76. *See* LA. CIV. CODE ANN. art. 1839; Tate, *supra* note 74, at 729.

77. *See* MacLean, *supra* note 1, at 45-46 (citing JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* 37-39 (1969)).

78. *See id.* at 50-51.

79. *Id.* at 48.

80. *See id.* at 49-50.

81. *See* LA. CIV. CODE ANN. art. 466 (Supp. 2007); *see also, e.g.*, MacLean, *supra* note 1, at 48 (noting that the conflicting interests in society are often different from the apparent conflicts solved by law).

82. *See* MacLean, *supra* note 1, at 48.

method.⁸³ Consequently, this method should not be used in relation to article 466.

B. *Exegesis*

Exegesis is a method of interpretation borne from a generation of judges who showed great respect for the French Civil Code in the wake of the French Revolution.⁸⁴ Exegesis is premised on three assumptions.⁸⁵ First, legislation is the primary source of law.⁸⁶ Second, the code is a complete statement of the law, so the answers to all legal questions are found either within the code or within the statutes.⁸⁷ Third, the code is internally consistent.⁸⁸ These underlying premises are not universally accepted today.⁸⁹ Most scholars believe that codes are internally inconsistent and contain gaps.⁹⁰

In its application, exegesis “focus[es] attention on textual analysis and on a search for the legislative intent.”⁹¹ Where the law is clear, it is applied as written.⁹² In the case of ambiguity, a judge must first try to “discover [the law’s] true meaning by a profound examination of the provision itself . . . [and then] consider the provision in context.”⁹³ Put otherwise, “[t]he first step consist[s] of extracting an unstated legal principle or distinction, called a ‘construct,’ from the legislative text.”⁹⁴ Consequently, “[t]he second step [is] to deduce legal consequences from the construct.”⁹⁵

1. Problem with Constructs

Choosing a construct is a highly subjective process lacking consistency.⁹⁶ Judges form constructs in a manner that suits their purposes by characterizing facts a particular way and by drawing lines

83. *Id.*

84. YIANNOPOULOS, *supra* note 70, § 141, at 285-86.

85. See Mitchel de S.-O.-l’E. Lasser, *Judicial (Self-)Portraits: Judicial Discourse in the French Legal System*, 104 YALE L.J. 1325, 1331 (1995).

86. *See id.*

87. *See id.*

88. *See id.*

89. *Id.*

90. *See* MacLean, *supra* note 1, at 49.

91. YIANNOPOULOS, *supra* note 70, § 141, at 285.

92. *Id.*

93. *Id.*

94. Marie-Claire Belleau, *The “Juristes Inquiets”: Legal Classicism and Criticism in Early Twentieth-Century France*, 1997 UTAH L. REV. 379, 391.

95. *Id.*

96. *See id.*

of division where they best see fit.⁹⁷ The end result is the creation of arbitrary and contradictory constructs that are not necessarily consistent or applicable from case to case.⁹⁸ In this respect, constructs can be strikingly similar to the common law approach.

For example, consider the *Equibank* case, where the court drew a line between two types of electrical appliances: those installed by inserting a plug into a wall outlet and those requiring some amount of electrical expertise to install.⁹⁹ Under the method of exegesis, this line of distinction would be the construct.¹⁰⁰ In other words, the court's construct is that the Legislature intended to draw this line of distinction between plugged-in appliances and wired-in appliances.¹⁰¹ From that construct necessarily followed the outcome that chandeliers are component parts because they are wired-in appliances.¹⁰²

The problem with exegesis constructs becomes apparent when the hypothetical *Equibank* construct is applied to another fact situation. For example, suppose a home has a wireless doorbell system. A wireless doorbell system consists of an outdoor transmitter and an indoor receiver. The outdoor transmitter contains a button that sends a message via radio waves, rather than electrical wiring, to the indoor receiver when someone pushes the button. Upon receiving the radio message, the indoor receiver makes noise. The outside unit has been permanently attached to the outside of the home. The receiver is installed by simply plugging a small unit into a wall outlet. When the home is sold, the outside unit will be included in the sale of the home because it is a component part via permanent attachment. But, what about the receiver inside? Under the construct of *Equibank*, the inside receiver is not a component part because it is a plugged-in appliance.¹⁰³ Presumably, a court faced with these facts might draw a different construct so as to include the receiver. The end result is that different and conflicting constructs are drawn in various fact situations to achieve the result desired by the court.¹⁰⁴

97. See YIANNOPOULOS, *supra* note 70, § 141, at 285-86.

98. See Belleau, *supra* note 94, at 391-92.

99. *Equibank v. IRS*, 749 F.2d 1176, 1179 (5th Cir. 1985).

100. See, e.g., Belleau, *supra* note 94, at 391 (describing the method of exegesis).

101. See *id.*

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

103. See *id.* For the purposes of this hypothetical, omit the possibility that the indoor receiver is a component part under the societal expectations test.

104. See Belleau, *supra* note 94, at 391-92.

2. Problem with Focus on Legislative Intent

One of the cornerstones of exegesis is the search for legislative intent.¹⁰⁵ Adherence to original legislative intent, however, runs contrary to the express language of the societal expectations test.¹⁰⁶ Article 466 specifies: “Other things are considered to be permanently attached to a building or other construction . . . if, according to *prevailing notions in society*, they are considered to be its component parts.”¹⁰⁷ Clearly, the foundational premise behind this test is that as society changes, what constitutes a component part will change. Thus, a movable that was not a component part in 2005 or 2006, when the legislation was enacted, might be considered a component part a decade later.¹⁰⁸ To be sure, the apparent legislative intent of the societal expectations test could be characterized as the intent that the article adapt to situations the legislature could not foresee. By admitting that they could not foresee all future problems, the Legislature essentially instructed judges not to look to original legislative intent by including the language “according to prevailing notions in society.”¹⁰⁹ Thus, the Legislature’s language does not support the use of exegesis as an interpretive method.

C. *Free Scientific Research*

The realization that exegesis, alone, was not a sufficient interpretive technique led to the development of free scientific research.¹¹⁰ The free scientific research method is not designed to operate in isolation, but rather where other interpretive methods fail.¹¹¹ In contrast to exegesis, the foundational theory of free scientific research is that all civil codes are incomplete; that is, codes have gaps because the legislature cannot possibly foresee all problems that will arise in the future.¹¹² The free scientific research method applies traditional methods of interpretation when they produce a satisfactory solution.¹¹³ However, “[f]or those matters on which the legislator had no discernible intent, the interpreter must function like a legislator and

105. See Lasser, *supra* note 85, at 1331.

106. See LA. CIV. CODE ANN. art. 466 (Supp. 2007).

107. *Id.* (emphasis added).

108. See *id.*

109. *Id.*

110. Edward A. Tomlinson, *Tort Liability in France for the Act of Things: A Study of Judicial Lawmaking*, 48 LA. L. REV. 1299, 1307-08 (1988).

111. *Id.*

112. *Id.* at 1307.

113. See *id.*

formulate a legal rule to cover the situation.”¹¹⁴ Unlike the legislator, the judge who acts as legislator using the method of free scientific research must endeavor to free himself of personal bias.¹¹⁵ This is perhaps the most important and the most difficult aspect of free scientific research.¹¹⁶ In reaching a decision, a judge should look to “the social sciences, especially sociology, psychology, political economics, and history (including the history of ideas).”¹¹⁷

1. Upside of Free Scientific Research

Free scientific research is a residual method that is only employed when traditional methods fail.¹¹⁸ The traditional methods of logic and exegesis fail to provide answers to the societal expectations question.¹¹⁹ Under the method of free scientific research, a judge faced with the question of what constitutes prevailing notions of society should act as an independent legislator.¹²⁰ For example, when faced with the question of whether a wireless doorbell system constitutes a component part of a home, the judge would be called upon to remove all personal bias and look to the social sciences to find the answer.¹²¹ On a superficial level, this method complements the societal expectations test because both ask the same question. That is, according to history, sociology, economics, and psychology, what are the prevailing notions of society in this particular instance?¹²²

2. Downside of Free Scientific Research

The upside of free scientific research—that it asks the same question as the societal expectations test—is also its downside. When applied in the context of article 466, free scientific research becomes rhetorical and self-defining. By asking essentially the same question that the societal expectations test itself asks, free scientific research does little to clarify how to apply article 466 to a given fact situation.

Additionally, the method has the potential for a great deal of arbitrariness and inconsistency.¹²³ This fact is particularly true when

114. *Id.* at 1308.

115. Lasser, *supra* note 85, at 1347.

116. Tomlinson, *supra* note 110, at 1308.

117. Lasser, *supra* note 85, at 1347.

118. Tomlinson, *supra* note 110, at 1308.

119. *See* discussion *supra* Parts III.A-B.

120. YIANNOPOULOS, *supra* note 70, § 142, at 286-87.

121. *See* Lasser, *supra* note 85, at 1347.

122. *See* LA. CIV. CODE ANN. art. 466 (Supp. 2007); Lasser, *supra* note 85, at 1347.

123. *See* Tomlinson, *supra* note 110, at 1308.

the judge is unable to remove his personal bias from the decision-making process.¹²⁴ While personal bias may be easy to remove in some situations, societal expectations is especially susceptible to personal influence. Many fact patterns involve situations that one would encounter in everyday life, and it may be difficult for a judge to separate personal experiences from the decision-making process.¹²⁵

D. Teleological Method

The teleological method of interpretation sprung from the method of free scientific research coupled with the idea that “to remain just, [the law] must ‘yield’ before transformed economic and social conditions.”¹²⁶ Under this method, original legislative intent is irrelevant.¹²⁷ Rather, “the relevant question is what the current legislative body would do if it were confronted by the problem before the court.”¹²⁸ The distinction between free scientific research and the teleological method can be difficult to grasp at first glance and, to some extent, the two methods overlap.¹²⁹ Under free scientific research, judges are not free to simply disregard legislative intent.¹³⁰ Judges are only free to act as a legislator after a thorough examination of the traditional interpretive techniques fails to reveal a discernible legislative intent.¹³¹ However, once the judge is free to employ free scientific research, there is little if any difference between that method and the teleological method, as a practical matter.¹³² Therefore, in the case of article 466 and the societal expectations test, the outcome of either method is likely to be the same. The traditional methods of interpretation fail in the case of societal expectations, and a judge employing free scientific research would be free to act as a legislator.¹³³

124. *See id.*

125. *See, e.g.,* Prytania Park Hotel, Ltd. v. Gen. Star Indem. Co., 179 F.3d 169, 171 (5th Cir. 1999) (involving furniture in a hotel); Equibank v. IRS, 749 F.2d 1176, 1177 (5th Cir. 1985) (involving chandeliers in a mansion); Lakeside Nat'l Bank of Lake Charles v. Moreaux, 576 So. 2d 1094, 1094 (La. App. 3 Cir. 1991) (involving a septic tank and air-conditioning pipes connected to a home); Am. Bank & Trust Co. v. Shel-Boze, Inc., 527 So. 2d 1052, 1053 (La. App. 1 Cir. 1988) (involving wall-to-wall carpeting and light fixtures in a home); Lafleur v. Foret, 213 So. 2d 141, 142 (La. App. 3 Cir. 1968) (involving window air-conditioning units).

126. *See* Tomlinson, *supra* note 110, at 1309.

127. *Id.* at 1310.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *See id.*

133. *See id.* at 1308; discussion *supra* Parts III.A-B.

His analysis at this point would be essentially the same as that of a judge using the teleological method.¹³⁴ Accordingly, the upside and downside of the teleological method in the specific context of the societal expectations test are the same as those discussed in the preceding Subpart.¹³⁵

IV. JURISPRUDENCE CONSTANTE AND STARE DECISIS IN THE CONTEXT OF SOCIETAL EXPECTATIONS

Application of the societal expectations test is likely to render inconsistent results regardless of interpretive technique utilized.¹³⁶ However, the need for a predictable and uniform application of property law is manifest. The insufficiency of interpretive techniques in resolving this problem may turn judges towards a reliance on case law. Because of this tendency, the distinction between *jurisprudence constante* and *stare decisis* is particularly relevant for this discussion.

A. Jurisprudence Constante versus Stare Decisis

Many consider the contrast between *jurisprudence constante* and *stare decisis* a fundamental distinction between common law and civil law systems.¹³⁷ Others contend that in a mixed jurisdiction such as Louisiana, the practical difference between the two concepts is essentially nonexistent.¹³⁸ In the strict sense, the doctrine of *stare decisis* means that a single decision by the jurisdiction's highest court is binding on both that court and all lower courts.¹³⁹ In the absence of action by the legislature, this decision remains the law of the land.¹⁴⁰ This strict application of *stare decisis* is admittedly tempered in the United States.¹⁴¹

In contrast, case law is merely persuasive authority in civil law jurisdictions.¹⁴² For example, when a common law court interprets a

134. See Tomlinson, *supra* note 110, at 1310.

135. See *id.*

136. See discussion *supra* Part III.

137. See YIANNOPOULOS, *supra* note 70, § 76, at 94.

138. *Id.* § 74, at 92; see Lovett, *supra* note 5, at 616 (citing Pierre Crabites, *Louisiana Not a Civil Law State*, 9 LOY. L.J. 51, 51-52 (1928) (arguing that following the Civil War, English law had influenced law practice in Louisiana so as to make the civil law tradition nearly obsolete)).

139. YIANNOPOULOS, *supra* note 70, §§ 74, 76, at 92, 94; see Tate, *supra* note 74, at 743.

140. See Tate, *supra* note 74, at 743.

141. YIANNOPOULOS, *supra* note 70, § 76, at 94.

142. Tate, *supra* note 74, at 743.

statute, the law is the statute as interpreted by the court, rather than the statute itself.¹⁴³ This is not the case in civil law jurisdictions where the statute is the supreme source of law, regardless of judicial interpretations.¹⁴⁴

However, case law gains more significance in civil law jurisdictions under the doctrine of *jurisprudence constante*.¹⁴⁵ Under this doctrine, a long line of well-reasoned cases applying the same rule of law is afforded great persuasive weight in later decisions.¹⁴⁶ The difference between *stare decisis* and *jurisprudence constante* is summarized as follows:

“The two most important differences, then, between the doctrine of *jurisprudence constante* and the rule of *stare decisis*, are: (1) a single case affords a sufficient foundation for the latter, while a series of adjudicated cases all in accord forms the predicate of the former; and (2) case law in civilian jurisdictions is merely law *de facto*, while under the common law technique it is law *de jure*. A third characteristic difference between the two doctrines of judicial precedent is that under the common law technique an inferior court must follow the case law announced by a superior court; under the civilian technique, in strict theory, they are not obliged to and occasionally do not, although for practical reasons, such as fear of reversal, inferior courts ordinarily follow the jurisprudence of superior courts.”¹⁴⁷

B. *Jurisprudence Constante and Societal Expectations*

Despite the flexibility of *jurisprudence constante*, Louisiana courts, nevertheless, hesitate to depart from lines of precedent.¹⁴⁸ This should not be the case with respect to societal expectations, because the underlying premise of the test is that expectations will change. For example, take the case of *Lafleur*, where the court held that window air-conditioning units were not component parts of a building.¹⁴⁹ Would that case be in accordance with prevailing notions of society today? *Hyman v. Ross* indicated that the societal expectations had

143. *See id.* at 744.

144. *See id.*

145. *Id.*

146. Mary Garvey Algero, *The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation*, 65 LA. L. REV. 775, 799 (2005).

147. Tate, *supra* note 74, at 744-45 (quoting Harriet Spiller Daggett et al., *A Reappraisal Appraised: A Brief for the Civil Law of Louisiana*, 12 TUL. L. REV. 12, 17 (1937)).

148. *See id.* at 746-47.

149. *Lafleur v. Foret*, 213 So. 2d 141, 149 (La. App. 3 Cir. 1968).

changed by 1994.¹⁵⁰ In *Hyman*, the court ruled that air-conditioning units were component parts of a motel, noting the testimony of a real estate expert that “an average prudent buyer of commercial property would expect that the heating and air conditioning units at issue would remain with the building.”¹⁵¹ The court wisely did not rely on the societal expectations as determined by the *Lafleur* case. Accordingly, in applying the societal expectations test, courts must feel free to embrace their civilian heritage and not needlessly bind themselves to prior case law. In the particular cases of *Lafleur* and *Hyman*, by the time the societal expectations test could even be considered *jurisprudence constante*, the application of that rule to a particular fact situation will be already outdated.

V. THE FIFTH CIRCUIT PROBLEM

Federal courts are often called upon to apply state substantive law in diversity actions.¹⁵² Additionally, federal courts are frequently called upon to apply state property law in cases, such as those concerning federal estate tax, supplemental jurisdiction, federal condemnation actions, and in federal bankruptcy actions.¹⁵³ Discussion of the difficulties faced with respect to the application of *jurisprudence constante* and *stare decisis* in the federal courts is particularly pertinent in the context of article 466 because there are many instances when this property code article might be interpreted by the federal courts, particularly the Fifth Circuit.

A. *The Erie Doctrine and Stare Decisis*

Under the *Erie* doctrine, a federal court called upon to apply state law “should seek the correct statement of law in the same fashion that the highest court of the state (in which the federal court sits) would search, evaluate, and pronounce it.”¹⁵⁴ When the state’s highest court has not spoken on the issue, federal courts sitting in common law states look to “relevant state precedent, analogous decisions, considered dicta, scholarly works and any other reliable data.”¹⁵⁵

150. 26,096, p. 9 (La. App. 2 Cir. 9/21/94); 643 So. 2d 256, 261.

151. *Id.*

152. James L. Dennis, *Capitant Lecture*, 63 LA. L. REV. 1003, 1008 (2003).

153. *Id.*

154. William E. Crawford, *Life on a Federal Island in the Civilian Sea*, 15 MISS. C. L. REV. 1, 3 (1994).

155. See, e.g., Dennis, *supra* note 152, at 1009 (quoting *Hollis v. Hill*, 232 F.3d 460, 465 (5th Cir. 2000)).

However, in Louisiana, legislation is the *primary* source of law.¹⁵⁶ Looking to precedent, dicta, and scholarly works is not necessarily appropriate in a civil law jurisdiction.¹⁵⁷ That is, under ideal circumstances, these are not the sources to which the Louisiana Supreme Court would look. The difficulty of having the federal courts interpret and apply Louisiana state law is augmented by the fact that many federal appeals panels have no Louisiana-trained judges, and few have more than one.¹⁵⁸ Thus, as a federal court, the Fifth Circuit has a tendency to place greater emphasis on case law than is perhaps desirable in a civil law system.¹⁵⁹

Even assuming that a federal court of appeals understands how the Louisiana Supreme Court would appropriately arrive at a decision, federal courts are faced with an additional hurdle. Although Louisiana does not subscribe to *stare decisis*, federal courts are bound by the doctrine.¹⁶⁰ When a federal appeals court makes a decision on Louisiana substantive law, it will generally follow that decision in subsequent cases unless the state supreme court rules to the contrary.¹⁶¹ Therefore, the possibility arises that a federal court will erroneously interpret and apply a code provision and then continue to do so in subsequent cases until and unless the state supreme court is confronted with the same issue and decides differently.¹⁶²

The pitfall of *stare decisis* for federal courts, particularly the Fifth Circuit, with respect to article 466 and the societal expectations test is manifest. Blindly adhering to the doctrine of *stare decisis* will undermine the purpose underlying the societal expectations test. Such adherence may prevent the Fifth Circuit from interpreting article 466 in accordance with prevailing notions of society.

B. Possible Solutions

Suppose that both *Lafleur*¹⁶³ and *Hyman*¹⁶⁴ had been heard before the Fifth Circuit rather than in state court. The Fifth Circuit, as a

156. *Id.* at 1006.

157. *See id.* at 1009.

158. *Id.*

159. *See id.*

160. *Id.* at 1013.

161. *Id.*

162. *Id.*

163. *Lafleur v. Foret*, 213 So. 2d 141 (La. App. 3 Cir. 1968).

164. *Hyman v. Ross*, 26,096 (La. App. 2 Cir. 9/21/94); 643 So. 2d 256.

federal court, is bound by its prior decision under the doctrine of *stare decisis*. Yet, several outcomes are possible.¹⁶⁵

First, the Fifth Circuit may decide that the facts of *Hyman* are sufficiently similar to the facts of *Lafleur* and, therefore, the decision in the *Lafleur* case is binding. If this were the case, the court would decide that as late as 1994, society does not expect air conditioners to be component parts of buildings. Assuming that the outcome in the actual case was correct, it is clear that this application of *stare decisis* leads the court to an erroneous decision.

Second, the Fifth Circuit might distinguish the facts of *Hyman* from the facts of *Lafleur* on any one of several grounds. The court could point to differences in the manner of installation, differences in the types of units used, or to the fact that one case involved a residence and the other involved commercial property.¹⁶⁶ In the civil law context, drawing distinctions in this manner looks very similar to exegesis.¹⁶⁷ Any distinction drawn by the court is essentially the same idea as developing an exegesis construct. As discussed above, drawing constructs will ultimately create an arbitrary body of case law.¹⁶⁸ While an arbitrary body of case law is undesirable in a civil law jurisdiction, it is even more problematic in a federal court bound by *stare decisis*.

Third, the Fifth Circuit could recognize that the societal expectations concept is not entirely at odds with *stare decisis* when the rule of law is properly framed. That is, the Fifth Circuit could recognize that the proper rule from *Lafleur* is that whether air-conditioning units constitute a component part of an immovable depends on the prevailing notions of society and not on prior decisions of a court.¹⁶⁹ In other words, the law that must be followed under *Lafleur* and *stare decisis* is that each fact situation must be examined under the context of *current* societal expectations, so that the factors controlling the decision in a previous case are not necessarily present in subsequent cases. Therefore, in each case the court must examine the facts anew and use its discretion to reach the appropriate decision. Other cases with similar fact patterns may be relevant but are not controlling. The Fifth Circuit, as well as the state courts, should adopt this approach.

165. Dennis, *supra* note 152, at 1013.

166. See, e.g., *Hyman*, 26,096 at p. 9; 643 So. 2d at 261 (involving commercial property); *Lafleur*, 213 So. 2d at 142 (involving residential property).

167. See discussion *supra* Part III.B.

168. See *supra* Part III.B.

169. See LA. CIV. CODE ANN. art. 466 (Supp. 2007); *Lafleur*, 213 So. 2d at 148.

VI. PRACTICAL APPROACH

Despite all the controversy over societal expectations, little is written concerning how to properly apply the test. Civilian methods of interpretation and the doctrines of *stare decisis* and *jurisprudence constante* do not provide a workable solution.¹⁷⁰ When courts are called upon to apply article 466, this Comment proposes a common sense approach, which will, to some extent, require the use of judicial discretion. As this Comment illustrated, the use of judicial discretion is both the strength and the weakness of article 466. Judicial discretion allows the flexibility needed, but also places a great deal of responsibility in the hands of judges.

A. *Permanent Attachment*

The first paragraph of article 466 provides: “Things permanently attached to a building or other construction are its component parts.”¹⁷¹ This paragraph did not exist independently under the previous version of article 466, which read: “Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts.”¹⁷² When the current first paragraph is considered in conjunction with the rest of the code article, it is clear that this paragraph does not spell out any test, but rather states the general rule of law.¹⁷³ In contrast, the second two paragraphs enunciate which situations lead to permanent attachment.¹⁷⁴ Accordingly, judges must not view this paragraph as a test or requirement that must be met. Rather, the first paragraph is a broad rule of law, which the second two paragraphs explain with more specificity.

B. *Immovables as a Matter of Law*

The second paragraph of article 466 provides: “Things such as plumbing, heating, cooling, electrical, or other installations are component parts of a building or other construction as a matter of law.”¹⁷⁵ This paragraph sets out an illustrative, rather than an

170. See discussion *supra* Parts III-IV.

171. LA. CIV. CODE ANN. art. 466.

172. *Id.* (1980).

173. See *id.* (Supp. 2007).

174. See *id.*

175. *Id.*

exhaustive, list of items for a judge to consider.¹⁷⁶ Things falling within the contemplation of the second paragraph are component parts as a matter of law, meaning that actual permanent attachment is irrelevant.¹⁷⁷ When faced with a component parts case, the judge should look to this paragraph and decide whether the movables in question clearly fall under this paragraph. When a movable clearly falls within the contemplation of the second paragraph, the inquiry ends. However, where a movable falls under the gambit of “other installation” or does not otherwise clearly fall under one of the listed types of installations, this Comment suggests that the judge should proceed onto the societal expectations test and use it as a tie breaker.

C. Substantial Damage

The first portion of the last paragraph of article 466 provides that “[o]ther things are considered to be permanently attached to a building or other construction if they cannot be removed without substantial damage to themselves or to the building or other construction.”¹⁷⁸ Substantial damage is an objective test.¹⁷⁹ Therefore, a judge does not consider the subjective intent of the owner of the building or other construction in deciding whether removal will cause substantial damage.¹⁸⁰ The degree of attachment of the movable is a question of fact from which the court draws legal conclusions.¹⁸¹ Therefore, when faced with the question of substantial damage, the judge must evaluate the evidence presented and use his discretion to draw the appropriate legal conclusion.

D. Prevailing Notions in Society

The second half of the final paragraph of article 466 provides that things are considered permanently attached if, “according to prevailing notions in society, they are considered to be its component parts.”¹⁸² If a movable fails to meet any of the previous tests for immobilization,

176. See Yiannopoulos, *supra* note 5, at 1386.

177. See *id.*

178. LA. CIV. CODE ANN. art. 466 (Supp. 2007).

179. See Yiannopoulos, *supra* note 5, at 1386.

180. See *id.*

181. *Id.* at 1386-87.

182. LA. CIV. CODE ANN. art. 466 (Supp. 2007).

then the judge may look to the societal expectations test. There are two steps to this test.¹⁸³

First, the judge must characterize the nature of the building or other construction in question.¹⁸⁴ Although this step has not been readily discussed in doctrinal materials, examination of prerevision cases applying societal expectations reveals that this is a necessary consideration.¹⁸⁵ As one judge has stated:

While the classification of the [movable in question] as a component part pursuant to 'societal expectations' in article 466 can be rationalized, it is opined that this standard fails to consider an equally paramount consideration. An assessment of the *premises* and the relationship of the movable to the *function* of the immovable is implicit in the existence *vel non* of a component part of [those] premises.¹⁸⁶

Either implicitly or explicitly, this approach was the one taken by most courts applying the societal expectations test before the revision.¹⁸⁷ However, this methodology conflicts with the comments to article 466.¹⁸⁸

Both the comments and doctrine agree that article 466, as enacted in 1978, represented a change in the law in that article 467, which articulated the use or convenience test, was suppressed.¹⁸⁹ In other

183. See *Exxon Corp. v. Foster Wheeler Corp.*, 00-2093, pp. 2-3 (La. App. 1 Cir. 12/28/01); 805 So. 2d 432, 438 (Fitzsimmons, J., concurring).

184. See *id.*

185. See, e.g., *Coulter v. Texaco, Inc.*, 117 F.3d 909, 918 (5th Cir. 1997) (“[W]e are convinced that in light of the relevant ‘societal expectations’—those of the offshore oil and gas drilling and production industry—[the drilling rig] cannot be considered permanently attached to Texaco’s platform.”); *Equibank v. IRS*, 749 F.2d 1176, 1178 (5th Cir. 1985) (“We are talking about [what] an ordinary man who purchases a house with ordinary prudence ought to know and ought to expect.”) (quoting the trial court testimony of Professor Yiannopoulos); *Exxon Corp.*, 00-2093 at p. 7; 805 So. 2d at 436 (majority opinion) (“Undoubtedly, a purchaser of a coker facility would expect it to be functional, with all required pipes, when possession was taken.”); *Am. Bank & Trust Co. v. Shel-Boze, Inc.*, 527 So. 2d 1052, 1055 (La. App. 1 Cir. 1988) (“Undoubtedly, a reasonable person buying a residence expects finished flooring to be there when he or she takes possession. The societal expectation is to have finished flooring, such as carpeting.”).

186. *Exxon Corp.*, 00-2093 at pp. 2-3; 805 So. 2d at 438 (Fitzsimmons, J., concurring).

187. See, e.g., *Coulter*, 117 F.3d at 918; *Equibank*, 749 F.2d at 1178; *Exxon Corp.*, 00-2093 at p. 7; 805 So. 2d at 436 (majority opinion); *Shel-Boze*, 527 So. 2d at 1055.

188. See LA. CIV. CODE ANN. art. 466 (1987); see also, e.g., Lovett, *supra* note 5, at 673 (noting that comment (a) to article 466 states that it is a new provision, comment (d) states that article 467 is “suppressed,” and comment (e) states that article 469 is still relevant); Yiannopoulos, *supra* note 5, at 1386 (noting that comment (e) provides that article 469 is reproduced and still relevant and that there are no like references to articles 467 and 468).

189. See LA. CIV. CODE ANN. art. 466; Lovett, *supra* note 5, at 673; Yiannopoulos, *supra* note 5, at 1386.

words, article 466 supposedly eliminated the practice of considering the use or convenience of a movable with relation to the immovable in deciding whether immobilization had occurred.¹⁹⁰ Yet, prerevision cases applying the societal expectations test considered this relationship.¹⁹¹ The question becomes, then, should this practice continue?

This Comment posits that not only should this practice continue, but it should be an essential and explicit step in the societal expectations analysis. Fortunately, the comments to article 466 are not the law and therefore are not binding on the courts. There is little practical reason to apply the societal expectations test without considering the use or convenience of the movable in question. What society expects to constitute a component part of an immovable necessarily depends, to some degree, on the nature of the immovable and the relationship of the movable to that immovable.

Accordingly, the societal expectations analysis should proceed as follows. First, the judge should determine the nature of the immovable in question. Second, the judge should consider the movable and its relationship to the immovable. In both of these steps the judge should bear in mind the prevailing notions of society.

VII. CONCLUSION

What constitutes a component part? Academics, practitioners, and the state legislature have struggled with this question since the drafting of the Civil Code of 1870. Yet, well over a century later, the question remains largely unanswered. Civilian methods of interpretation do little to illuminate a solution. *Stare decisis* and *jurisprudence constante* pose the problem of ignoring modern prevailing notions of society in favor of relying on decisions of the past. This is particularly problematic in the federal courts, but it poses a problem in the state courts as well. What solutions remain?

The lessons from the past and the hopes for the future are two fold. First, the legislature cannot possibly draft a code article that anticipates all future unforeseen events. Attempts to do so have failed,

190. See LA. CIV. CODE ANN. art. 466; Lovett, *supra* note 5, at 673; Yiannopoulos, *supra* note 5, at 1386.

191. See, e.g., *Coulter*, 117 F.3d at 918 (noting that an oil rig's removal from a platform does not functionally impair either); *Equibank*, 749 F.2d at 1178 (noting that chandeliers take special expertise to install or uninstall and are component parts); *Exxon Corp.*, 00-2093 at pp. 7-8; 805 So. 2d at 436 (noting that the purchaser of the facility would expect the plumbing to be functional and therefore the parts were immovable); *Shel-Boze*, 527 So. 2d at 1055 (noting that carpeting installed in a residence was a factor proving its readiness for occupancy).

and thus Code articles became quickly outdated. There can be no hard-and-fast rules regarding what constitutes prevailing notions of society because modern notions are inherently subject to change. Recognizing this problem, the Legislature provided a rule of flexibility and judicial discretion that, if properly utilized, will not become outdated: the societal expectations test. Second, judges must utilize the wide discretion inherent in the societal expectations test but utilize it wisely. Judges must evaluate each fact situation anew, in light of current considerations, rather than complacently relying on case law. Blindly adhering to the past will undermine the beauty and purpose of societal expectations, which will, in turn, undermine the beauty and purpose of article 466.