

Louisiana Law Review

Volume 8 | Number 1
November 1947

Ownership of Airspace in Louisiana

Robert E. Eatman

Repository Citation

Robert E. Eatman, *Ownership of Airspace in Louisiana*, 8 La. L. Rev. (1947)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol8/iss1/18>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

statutory revision, passed by a single act of the legislature. The Criminal Code of 1942³⁴ was passed by a single act, and its validity upheld by the supreme court.³⁵ Decisions of other states have similarly upheld the passage of codes, dealing with particular fields of substantive law, under one title.³⁶

Despite that fact and although the Supreme Court has recognized that "object" refers to the aim or purpose of the statute, and has adopted the liberal approach to the application of the constitutional prohibition, a revision of statutes necessarily covers a multitude of various and diverse subjects; whether or not a single statute would be sufficient to take all such diverse fields into its fold is very doubtful. In any event, the passage of the Revised Statutes as a single statute with one title would raise immediately the question of validity. Special steps will probably be taken to safeguard against this contingency. In this regard, several possibilities present themselves: (1) to adopt a constitutional amendment, and pass the revision as an enabling act or a provision in the proposed new constitution which would specifically provide for the adoption of a general statutory revision, or (2) to pass the revision piece-meal, title by title—a long and cumbersome process.

Whatever steps are taken, it appears that to place the passage of the revision beyond grave legal uncertainties, such action may well be necessary. It would seem that for the first time the "title-body" clause presents a stumbling block of a sort not easily brushed aside by judicial determinations and distinctions.

GORDON KEAN

OWNERSHIP OF AIRSPACE IN LOUISIANA

"Article 505.¹ The ownership of the soil carries with it the ownership of all that is directly above and under it.

"The owner may make upon it all the plantations and erect all the buildings which he thinks proper, under the exceptions established in the title: OF SERVITUDES.

34. La. Act 43 of 1942.

35. *State v. Pete*, 206 La. 1078, 20 So. (2d) 368 (1944).

36. *State v. Tieman*, 32 Wash. 294, 73 Pac. 375 (1903), upholding the validity of the Washington State Penal Code; *Central of Georgia Railway Co. v. State*, 104 Ga. 831, 81 S. E. 531 (1898), declaring valid a code of substantive law, similar to the Revised Civil Code of 1870; *Johnson v. Harrison*, 47 Minn. 575, 50 N. W. 923 (1891), upholding validity of the Minnesota Probate Code.

1. La. Civil Code of 1870.

"He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police."

This property right in the space above land is a general principle with many corollaries.² The cases leave little doubt that the doctrine will be applied to give to the surface owner the ownership of that space near the surface which he actually uses.³ A more difficult problem, which has not yet arisen in Louisiana, but which has been frequently presented in other jurisdictions, appeared with the advent of aviation.⁴ Literal application of the principle of infinite upward extent of ownership would give the surface owner a cause of action against all who might enter the space above his land. Obviously no modern authority advocates unqualified application of such a rule, because this would practically prohibit all flight and stop the development of aviation, which has become an indispensable part of modern civilization.⁵

POSSIBLE THEORIES UNDER PRESENT LOUISIANA LAW

Under the present law in Louisiana, a number of possible solutions would be available. Discussion and evaluation of some of these

2. For example, the presumption that the owner of the soil owns all structures thereon (Art. 506); the right of the owner of the soil to retain buildings which he built with the materials of another (Art. 507); the right of the owner of the soil to keep improvements placed thereon by third persons (Art. 508); the right to demand removal of overhanging branches (Art. 691); and the prohibition against building structures which project over boundaries (Arts. 678, 697). For a discussion of accession see Symposium, *The Work of the Louisiana Supreme Court for the 1939-1940 Term* (1941) 3 *LOUISIANA LAW REVIEW* 280.

3. *Miller v. Michaud*, 11 Rob. 225, 228-229 (La. 1845) (lessee may not alienate or mortgage buildings built by him on land of lessor); *Mullen v. Follain*, 12 La. Ann. 838 (1857) (grantee of land has title to buildings thereon whether described in the conveyance or not); *Whiteman v. LeBlanc*, 28 La. Ann. 430, 432 (1876) (creditor of community between spouses may not have seized and sold buildings erected by the community on land owned separately by one spouse); *New Orleans National Bank v. Raymond*, 29 La. Ann. 355 (1877) (a mortgage of land extends to undescribed structures thereon); *Johnson v. Weinstock*, 31 La. Ann. 698, 701 (1879) (the owner of land owns buildings erected thereon by another) [Accord: *Atkins v. Smith*, 207 La. 560, 568, 21 So. (2d) 728, 730 (1945)]; *Goodwin v. Alexander*, 105 La. 658, 660, 30 So. 102, 103 (1901) (a servitude of prohibition to build can be established only by title) [Accord: *Ribet v. Howard*, 109 La. 113, 116, 33 So. 103, 104 (1902); *Bernos v. Canepa*, 114 La. 517, 520, 38 So. 438, 440 (1905)]; *Cascio v. Depaula*, 27 So. (2d) 453, 455 (La. App. 1946) (title to buildings placed on land by a grantee reverts to the grantor with the land on the happening of a resolutive condition).

4. See Tiffany, *A Treatise on the Modern Law of Real Property and Other Interests in Land* (Zollman ed. 1940) 394 et seq., § 400.

5. Prosser, *A Handbook of the Law of Torts* (1941) 86.

is the aim of this comment. Under existing legislation at least three theories may be considered.

Literal construction of Article 505⁶

If the first paragraph of Article 505 were applied literally, the ownership of space at any height would vest in the owner of the soil directly below it. This ownership would embrace all the customary rights and privileges of ownership, including the right to prevent invasion by others;⁷ thus, entry by any aircraft at any height would be trespass, unless permitted in the exercise of a conventional servitude,⁸ or of an "easement" (in immediate vicinity of airports) established by eminent domain proceedings under a special statute.⁹

The unqualified application of this "ad coelum" theory seems hardly justified by its history.¹⁰ The principle that the ownership of land embraces the ownership of the space above it is of doubtful origin. Although analogous to the Roman principles of accession, it is not expressly stated in *Corpus Juris Civilis*, and it has been attributed to a gloss of Accursius in the Thirteenth Century.¹¹ The principle became settled in the Common Law of England;¹² and, after its incorporation in the French Civil Code of 1804,¹³ it came to be expressed in the codes of many civil law jurisdictions, including Louisiana.¹⁴ Its root, therefore, is not Roman but medieval law,

6. La. Civil Code of 1870.

7. Art. 63, La. Crim. Code of 1942, denounces ". . . (2) the unauthorized and intentional entry upon any: (a) Enclosed and posted plot of ground; or (b) Posted lands belonging to public institutions. . . ." If Article 505 is to be strictly construed, one who deliberately flew over posted lands would be criminally liable. Cf. *Commonwealth v. Nevin and Smith*, Court of Quarter Sessions of Jefferson County, Pennsylvania (unreported, 1922) noted in (1922) 71 U. of Pa. L. Rev. 88, in which the court refused to impose criminal liability for flight over posted lands, and *dicta* in *Pickering v. Rudd*, 4 Campb. 219, 171 Eng. Rep. 70 (1815), indicating that a flight over private land in a balloon was not civil trespass.

8. Arts. 709, 722, La. Civil Code of 1870.

9. La. Act 118 of 1944, § 10.

10. See Zollman, *Law of the Air* (1927) 6-11, §§ 10-13.

11. Bouvé, *Private Ownership of Airspace* (1930) 1 Air L. Rev. 232, 243 et seq., gives a detailed discussion of possible sources of the *ad coelum* doctrine, giving the most plausible source as the Accursian gloss (*Dig. viii.2.1pr.*) in the form of *cujus colum ejus esse debet usque ad coelum*. The adoption of the principle as a maxim of English common law is attributed to the fact that Franciscus (d. 1298), son of Accursius (1182-1260), was a lecturer at Oxford and an advisor to Edward I.

12. ". . . and lastly, the earth hath in law a great extent upwards, not only of water, as hath been said, but of ayre and all other things even up to heaven, for *cujus est solum ejus est usque ad coelum*, as is holden in 14 H. 8. fo. 12. 22 Hen. 6.59. 10 E. 4.14. *Registrum origin.* and in other books." Coke on Littleton 4a.

13. Art. 552, French Civil Code.

14. Compare Art. 552, French Civil Code, with Art. 505, La. Civil Code of 1870; Art. 2518, *Código Civil de la República Argentina* (J. Lajouane y Cia,

which applied the *ad coelum* maxim to implement decisions involving things near the surface of the earth. In an age when the ownership of great heights was of no concern, this generalization was incorporated into our law for use in the solution of problems altogether different from that presented by modern conflicts between landowner and aeronaut.¹⁵

One purpose which would be accomplished by the "ad coelum" theory is expressed by the German writer, Theodor Kipp.¹⁶ He states that its principal value would be in making it a civil wrong to cross private land, thereby providing the "fault" element upon which to predicate tort recovery in case of damage to the property below. Thus the landowner might recover irrespective of actual negligence on the part of the aeronaut. But Kipp considers this unnecessary since liability without fault may readily be imposed under a German theory similar to the ultra-hazardous activity doctrine of the American courts. In this manner, the landowner would be fully protected against actual injury without prohibiting aerial navigation.

Even if the literal construction of Article 505 were justifiable from a theoretical viewpoint, there are such strong reasons of public policy to oppose its use that no one could seriously advocate its adoption. It is clear that a balance or adjustment of interests must be reached, that is, a doctrine which will permit reasonable use of the air while protecting the legitimate interests of the landowner.

Interpretation of Article 450 to mean that airspace is a "common thing"

This article, found in the section of the code dealing with general principles of the division of things, provides:

"Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has in-

1939); Art. 297, Código Civil Boliviano (Castillo, 1939); Art. 440, Codice Civile del Regno d'Italia (Barbera, 1913); Art. 892, Código Civil de la República de Guatemala (1937); Art. 457, Code Civil d'Haïti (Leger, 1931); Art. 414, Petit Code Civil Annoté de la Province de Québec (Durantaye, 1937); Art. 748, Código Civil de la República Oriental del Uruguay (1914); 1 Villafafia, Loreto y Zacarés, Compilación Legislativa de Venezuela, Código Civil, Art. 527.

15. See *Thrasher v. Atlanta*, 178 Ga. 514, 173 S. E. 817 (1934), in which the court reasoned that, since early cases actually involved only that space susceptible of possession, all statements as to ownership beyond the limits of potential possession were necessarily obiter dicta and could be freely disregarded by the courts.

16. Kipp, *Luftschiffahrt und Grundeigentum*, Sonderabdruck aus der Juristischen Wochenschrift, 1908 Nr. 19.

tended them; such as air, running water, the sea and its shores."¹⁷ As a common thing, air would be insusceptible of private ownership. It could not, therefore, be embraced within the terms of Article 505, which includes only those things "directly above" the soil which are susceptible of private ownership. Accordingly, the space would be free to all for aerial navigation.

The conclusion reached by the Spanish commentator Valverde,¹⁸ that airspace is common, was based upon the following reasons: (1) all private rights are subordinate to public interest, (2) airspace is not susceptible of possession, and (3) airspace is not a "thing" within the sense of the law.

Though public policy might justify classification of airspace as a common thing, this theory does not find support in the Roman law from which Article 450 was derived.¹⁹ The Roman law did not confuse "air" with the space which it occupied, and the word "air" in the enumeration of common things has reference to the mixture of gases which surrounds the earth, that is, "air for breathing." When space is referred to in Roman law other words are used, and nowhere is "space" classified as a common thing.²⁰

Classification of airspace as a common thing would effect a result similar to that reached in a number of common law jurisdictions by means of the "actual use" and "nuisance" theories. The former limits ownership of airspace to that space actually in use;²¹ the latter denies all recovery for trespass but permits recovery for nuisance or negligence in cases of actual interference with the right of the owner to enjoy his land.²² In like manner, if the provisions of Article 450 were interpreted to include airspace, the owner could have no remedy for a technical invasion of space above his land, but

17. La. Civil Code of 1870.

18. 2 Valverde, *Tratado de derecho civil español*, 79-81.

19. Compare Art. 450, La. Civil Code of 1870, with Inst. I.2.1.1: "Things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea. . . ."

20. "When airspace is discussed in the Sources the word 'air' is not used, but other expressions such as *Aëris spatium* (airspace), *spatium* (space), *coelum* (sky). The word 'air' in the sense of 'airspace' has been found but once. . . . Also, another thing is certain: when the sources speak of 'airspace' they never say that airspace is 'a thing common to all.' So it is concluded that the Sources do not say that airspace at any altitude is subject to public control, or that it is left to the free use of everybody." Lardone, *Airspace Rights in Roman Law* (1931) 2 *Air L. Rev.* 455, 461, 462.

21. *Hinman v. Pacific Air Transport*, 84 F. (2d) 755 (C. C. A. 9th, 1936).

22. *Swetland v. Curtiss Airports Corp.*, 55 F. (2d) 201, 83 A. L. R. 819 (C. C. A. 6th, 1932).

would retain his remedies of tort, including nuisance, in case of actual damage or interference with his right of enjoyment.

Limitation of Article 505 to space utilizable for planting and building

Article 505 of the Louisiana Civil Code is almost identical with Article 552 of the French Civil Code.²³ In 1912, a French landowner brought an action against a school of aviation whose planes had caused damage in flying over his land. The court permitted recovery of actual damage suffered, but refused to consider possible future damage or to prohibit flight over the land.²⁴ Less than a year later, ownership of upper space was considered in a unique situation. The activities of an airdrome from which dirigibles frequently crossed his land so annoyed a landowner that he purchased additional land near the hangar and erected a wooden tower on which he mounted iron rods, sharp-pointed and long, for the purpose of damaging low flying dirigibles. He was held liable.²⁵

In a note to the latter decision, Louis Josserand made a careful analysis of the limitations of private ownership of airspace.²⁶ The limitations, said Josserand, were of two kinds—quantitative and qualitative. The *quantitative* limitation was analogous to national sovereignty over territorial waters, which at that time had been extended to a distance based on the range of control by shore batteries of artillery, whereas beyond that range there was freedom of the sea.

23. Art. 552, French Civil Code: "*La propriété du sol emporte la propriété du dessus et du dessous.*"

"*La propriétaire peut faire au-dessus toutes les plantations et constructions qu'il juge à propos, sauf les exceptions établies au titre 'Des servitudes ou services fonciers.'*"

"*Il peut faire au dessous toutes les constructions et fouilles qu'il jugera à propos, et tirer de ces fouilles tous les produits qu'elles peuvent fournir, sauf les modifications résultant des lois et règlements relatifs aux mines, et des lois et règlements de police.*"

(Translation) Ownership of the land carries with it ownership of what is above and below it.

An owner can make upon it all the plantations and constructions which he deems proper, with the exceptions specified in the title "*Of Servitudes or Land Burdens.*"

He can make below all constructions and excavations which he deems proper and draw from these excavations all the products which they may give, subject to the restrictions resulting from the laws or the regulations relating to mines, or from police laws and regulations.

24. Bertrand, Brinquant et Mauge c. Société Farman, Trib. civ. de la Seine, 6 juill. 1912, D.1913.2.117. For a criticism see Demogue, *Obligations et contrats spéciaux* (France, 1912) 11 *Revue trimestrielle de droit civil* 735, no 1.

25. Clément-Bayard c. Coquerel, Trib. civ. de Compiègne, 19 févr. 1913, D.1913.2.181. Discussed in Demogue, *Obligations et contrats spéciaux* (France, 1913) 12 *Revue trimestrielle de droit civil* 804, no 9.

26. Note by Josserand, D.1918.2.177, at 178. Compare 3 Planiol et Ripert, *Traité pratique de droit civil français* (1926) 246, no 252; 1 Colin et Capitant, *Cours élémentaire de droit civil français* (8 ed. 1934) 741, no 698.

In like manner, he reasoned, there must be a limitation of the private domain over airspace. In reaching that limitation, the intent of the legislature must be considered. It was apparent that the principle of upward ownership had been included in the code with a view to the landowner's rights as defined in the second paragraph of the article—to make upon the land all the plantations and constructions which he thought proper. Therefore the legislature only intended to guarantee the right to plant and to build, and had no intention of extending private ownership to the heavens. Josserand's *qualitative* limitation would prohibit the malicious use of the land by the landowner with intent to damage aircraft, as was done in the case which he discusses. What Josserand would call a "qualitative limitation" is also expressed in the writings of Baudry-Lacantinerie,²⁷ who would prohibit any abuse by the landowner of his rights—"any measure tending only to hinder, without usefulness to himself, the aerial circulation over his estate." In this connection it is well to note a provision of the Louisiana Civil Code which is based on Spanish law:²⁸ "Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him."²⁹

Josserand's reasoning was paralleled in another French case in 1914 which involved injury to a landowner by flights from a flying school. The court limited recovery to actual damages sustained, declaring that ownership of upward space was limited to the height susceptible of utilization for constructions or plantations, and that beyond this height there was complete freedom of the air.³⁰ An almost identical result has been reached by some American courts under what the text writers call the "zone theory," which limits ownership to possible effective possession.³¹

Ownership of upward space has been expressly limited in a number of foreign civil codes to produce the same result. Among these are the Swiss Civil Code,³² which extends ownership "into the air and the earth so far as the exercise of ownership requires"; the

27. Baudry-Lacantinerie, *Precis de droit civil* (14 ed. 1926) 622, n° 1.

28. Part. 8.28.42.

29. Art. 667, La. Civil Code of 1870.

30. *Heurtebise c. Farman freres, Esnault-Pelterie et Société Borel*, Trib. civ. de la Seine, 10 juin 1914, D.1914.2.193. Discussed in Demogue, *Obligations et contrats spéciaux* (France, 1914) 14 *Revue trimestrielle de droit civil* 166, n° 1.

31. *Smith v. New England Aircraft Co.*, 270 Mass. 511, 170 N. E. 885, 69 A. L. R. 300 (1930).

32. Art. 667, Swiss Civil Code (Shick, 1907).

Civil Code of Honduras,³³ which extends it to the altitude required by the landowner's interest in relation to his use of the land; and the Civil Code of Peru,³⁴ which places the limit "where the exercise of his right may be useful to the proprietor." Also worthy of consideration at this point are the Civil Codes of Spain³⁵ and jurisdictions closely following Spanish law, such as Cuba,³⁶ Puerto Rico,³⁷ Nicaragua,³⁸ Panama³⁹ and the Philippine Islands.⁴⁰ The text of the pertinent article of the Civil Code of Puerto Rico is typical of all these:

"Section 284. The owner of a parcel of ground is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to the servitudes legally established thereon."

The omission of the usual statement regarding ownership of upward space is significant. Under such an article, it would seem that the interpretation worked out in the French cases previously discussed—that the air was free above the height utilizable for planting and building—would be a logical development.

SPECIAL STATUTES IN OTHER JURISDICTIONS

A number of jurisdictions, realizing the inadequacy of their existing legislation and legal principles, have met the problem with special statutes. In the United States the most common is the Uniform Aeronautics Law⁴¹ which declares that the ownership of space is vested in the owners of the surface below, but subject to a right of flight in the manner prescribed by the statute. The result reached

33. Art. 614, República de Honduras, Código Civil (1906).

34. I Perú, Código Civil (1940) Art. 854.

35. Art. 350, Código Civil Español (Manresa, 1934). Manresa takes the view that this article could logically be interpreted to give the limited ownership effect of the Swiss Code (see note 32, supra).

36. Art. 350, Código Civil Vigente en Cuba (Roca, 1941).

37. Art. 284, Civil Code of Puerto Rico (official ed. 1930).

38. Art. 618, Código Civil de la República de Nicaragua (3d official ed., 1931).

39. Art. 339, República de Panamá, Código Civil (official ed. 1917).

40. Art. 350, Civil Code, Philippine Islands (Sinco and Capistrano, 1932).

41. 11 Uniform Laws Annotated (1938 ed.) 159 et seq. This statute has been adopted in twenty-one states and Hawaii. Section 3 provides: "The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in Section 4."

is very similar to the result under the Restatement of Torts theory of privileged invasion of privately owned space.⁴²

Similarly a number of modern civil codes in foreign jurisdictions incorporate the general principle of upward ownership of space but add a statement of qualification. For example, in Germany "the owner may not, however, forbid interference which takes place at such a height or depth that he has no interest in its prevention."⁴³ In China "interference by others cannot be excluded if it does not obstruct the exercise of the ownership."⁴⁴ In Brazil "the owner cannot, however, prevent works which may be undertaken, at such a height or depth that he has no interest in preventing them."⁴⁵

Other statutes have been adopted in various parts of the world. For example, in 1924 the French adopted a statute which is predicated on the principle of freedom of flight, but provides that the right of flight may not be exercised so as to hinder the exercise of the rights of the landowner.⁴⁶ The effect of this statute has been said to create on all land in France a legal servitude in the public interest.⁴⁷ In Brazil "the right to fly over private property must not interfere with the owner's enjoyment of his land; but on the other hand, the owner of land cannot detain a plane that has been forced down on his property except in exercising the right of arrest, whereby the plane is retained as security for some property right."⁴⁸ The English Air Navigation Act⁴⁹ provides that "no action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property."

CONCLUSION

It is apparent that the law cannot recognize private ownership of airspace in such a manner that its exercise might prevent reasonable aerial navigation. For this reason there are but two alternatives: either a denial of private ownership of navigable airspace subject to

42. Section 158 provides that an actionable trespass may occur above the surface of the earth, but Section 194 gives a privilege of entry to persons traveling in air craft in the manner authorized.

43. German Civil Code (Chung Hui Wang, 1907) § 905.

44. Art. 773, Civil Code of the Republic of China (English transl. 1981).

45. Art. 526, Civil Code of Brazil (Wheless, 1920).

46. Loi du 31 mai 1924, Sirey, Lois annotées, 1924-1925, p. 1559; Dalloz, Bulletin législatif, année 1924, p. 378.

47. 3 Planiol et Ripert, Traité pratique de droit civil français (1926) 246, no 252.

48. Marchant, Aviation in Brazil (1939) 10 Air L. Rev. 44, 59, citing decree-law 483 of June 8, 1938, Arts. 3, 61-66.

49. 10 & 11 Geo. 5, c. 80, s. 9(1) (1920), as amended by 26 Geo. 5 & 1 Edw. 8, c. 44, s. 28, scheds. V., VII (1936).

the landowner's primary and exclusive right to use by occupying all he needs, or a declaration that though privately owned, the airspace is subject to a right of flight in a reasonable manner. The latter solution would give the flier a right partaking of the nature of a servitude. In the absence of specific legislation to that effect, this seems inconsistent with the general provision of law that discontinuous non-apparent servitudes can be established only by title.⁵⁰ Therefore, the former seems to be the preferable basis for solution, namely, that navigable airspace is unsusceptible of private ownership.

In order to reach this conclusion, Article 505 would have to provide that the surface owner does not have title to the upper regions, but may yet control that part of the space above his land which is necessary for the enjoyment of his rights of ownership. This result is reached by the French interpretation of its corresponding article; and the same might be followed without difficulty in Louisiana. An even more direct approach, which would clarify the issue more completely, would be the revision of the first paragraph of Article 505 so as to limit the extent of ownership into upward space, as do the codes of Switzerland, Honduras and Peru, all previously discussed.⁵¹

Once the limits of private ownership have been defined, it remains to determine the classification of the remaining space, in which there is freedom of the air, subject to appropriate regulatory restrictions by the sovereign but free from interference by the surface owner. The logical classification of these airways would seem to be with the other two great media of transportation available for general use—highways and waterways, which are "public things" specifically provided for in Article 453.⁵² Since the language of that article indicates that its enumeration of public things is illustrative rather than exclusive, navigable airspace would seem to come logically within the classification of "things . . . the use of which is allowed to all the members of the nation."

The absence of any legislative or judicial consideration of this question in Louisiana makes any conclusion essentially speculative.

50. Art. 766, La. Civil Code of 1870.

51. See notes 32-34, *supra*.

52. La. Civil Code of 1870. This article provides: "Public things are those, the property of which is vested in a whole nation, and the use of which is allowed to all the members of the nation: of this kind are navigable rivers, seaports, roadsteads and harbors, highways and the beds of rivers, as long as the same are covered with water.

"Hence it follows that every man has a right freely to fish in the rivers, ports, roadsteads, and harbors."

With this reservation it is concluded:

1. That present day conditions require freedom of aerial navigation from interference by landowners who have suffered no real injury;

2. That the provision of Article 505 must be interpreted or amended so as to restrict private ownership of airspace to limits consistent with the requirements of a full enjoyment of the property in a reasonable manner;

3. That ownership of the airspace beyond this limit is vested in the public, and its use for aerial navigation is free to all, subject only to a requirement of reasonableness and conformance with statutory regulations.

ROBERT E. EATMAN