The Ten-Year Acquisitive Prescription of Immovables

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THE TEN-YEAR ACQUISITIVE PRESCRIPTION OF IMMOVABLES

One method of acquiring ownership of immovables in Louisiana is acquisitive prescription, whereby property is acquired through continued possession over a determined period of time fixed by law.¹ Allowing such a method of acquiring property promotes stability in ownership of immovables by obviating the necessity of looking indefinitely into the past to prove ownership.² In Louisiana, the acquisitive prescription of ten years requires the existence of the following concurrent elements:³

1. Good faith on the part of the possessor;⁴
2. A title translative of ownership;⁵
3. Possession during the requisite period of time accompanied by the incidents required by law;⁶
4. An object that may be acquired by prescription.⁷

The purpose of this comment is to give an encyclopedic overview of each of these elements of the ten-year acquisitive prescription.

² AUBRY & RAU § 210 at 320; PLANIOL no. 2645 at 571.
³ As a result of All-State Credit Plan Natchitoches, Inc. v. Ratcliff, 279 So. 2d 660 (La. 1973), which overruled Trahan v. Broussard, 251 La. 714, 206 So. 2d 82 (1968), these elements of acquisitive prescription are pertinent to the prescription of LA. R.S. 9:5682 (1950). This statute prescribes claims by unrecognized heirs in favor of third persons who have acquired property through an heir or legatee recognized in the judgment of possession when the third person or his ancestor in title have been in possession for ten years. All-State found the statute ambiguous and read it in pari materia with the Louisiana Civil Code articles on the ten-year acquisitive prescription, concluding that good faith is necessary and that the sole effect of LA. R.S. 9:5682 is to give the judgment of possession the effect of just title for the purpose of tacking.
⁴ LA. CIV. CODE arts. 3474, 3479-80, 3451; Johnson, Good Faith as a Condition of Ten Year Acquisitive Prescription, 34 TUL. L. REV. 671 (1960).
⁵ LA. CIV. CODE arts. 3474, 3479, 3483, 3486; Comment, Just Title in the Prescription of Immovables, 15 TUL. L. REV. 436 (1941).
⁶ LA. CIV. CODE arts. 3474, 3479, 3487; Comment, Elementary Considerations in the Commencement of Prescription of Immovable Property, 12 TUL. L. REV. 608 (1938).
⁷ LA. CIV. CODE arts. 3479, 3497.
Good Faith

Since the Louisiana Civil Code articles dealing with the ten-year acquisitive prescription do not define good faith, reference must be made to the chapter on possession. A possessor in good faith is defined in Louisiana Civil Code Article 3451 as one who has "just reason to believe himself the master of the thing which he possesses, although he may not be in fact. . . ." Bad faith, on the other hand, is possession as owner, but with the possessor having knowledge that he has no title or that his title is defective. Thus, with regard to acquisitive prescription, good faith results from the mistake of the acquirer regarding the alienator's ownership, but while the acquirer is under an honest belief based on just reason that the person selling the property is the owner.

The Louisiana Civil Code provides that a presumption of good faith operates in favor of a possessor, thus placing the burden of proof on the party alleging bad faith. Due to this presumption the jurisprudence has established that a possessor is not required to inquire into the title of his vendor by examining the public records; the "purchaser will not be charged with bad faith because a title examination, if made, would have disclosed defects in the seller's title." The reasoning behind this rule is:

8. Id. art. 3480.
9. Id. art. 3451 (emphasis added).
10. Id. art. 3452.
12. LA. CIV. CODE art. 3481; Boyet v. Perryman, 240 La. 339, 123 So. 2d 79 (1960); Harrill v. Pitts, 194 La. 123, 193 So. 562 (1940); Thibodeaux v. Quebodeaux, 282 So. 2d 845 (La. App. 3d Cir. 1973); Turner v. Denkman Lumber Co., 244 So. 2d 868 (La. App. 1st Cir. 1971); Hines v. Berlin, 28 So. 2d 613 (La. App. 2d Cir. 1946); Franz v. Mohr, 4 So. 2d 584 (La. App. Orl. Cir. 1941); AUBRY & RAU § 218 at 364; PLANIOL no. 2668 at 581.
If no one could invoke successfully the prescription of 10 years who could have discovered by an examination of the public records before buying the property that the seller had no title, the plea would never be available, because no one could invoke it except one having a valid title and having therefore no need for the prescription.\textsuperscript{15}

The presumption is not rebutted by a mere showing that the vendee has the means of obtaining knowledge of the defect in his title.\textsuperscript{16} However, if a title examination is instituted, the purchaser will be "bound by what the record reveals and cannot claim to be in good faith if the record discloses a defect in the title of his vendor"\textsuperscript{17} or raises doubt as to the vendor's title.\textsuperscript{18}

The determination of good faith is a factual inquiry, and thus no particular set of facts will always be sufficient to satisfy or rebut the good faith requirement.\textsuperscript{19} Article 3451, however, requires that the facts in each situation must communicate to the purchaser just reason or reasonable grounds upon which to base his good faith, thereby creating a reasonable man standard of evaluating good faith and weakening the presumption of good faith.\textsuperscript{20} The inquiry, therefore, goes beyond a possessor's moral or subjective good faith into a determination of what is termed "legal" good faith.\textsuperscript{21} The test

\begin{itemize}
\item 143 La. 581, 586, 78 So. 970, 972 (1918); Franz v. Mohr, 4 So. 2d 584 (La. App. Orl. Cir. 1941).
\item 15. Land Dev. Co. v. Schulz, 169 La. 1, 6, 124 So. 125, 127 (1929), \emph{quoted approvingly in} Bruce v. Cheramie, 231 La. 881, 902, 93 So. 2d 202, 209 (1957); Keller v. Summers, 192 La. 103, 111, 187 So. 69, 71 (1939); Franz v. Mohr, 4 So. 2d 584, 587 (La. App. Orl. Cir. 1941).
\item 17. Martin v. Schwing Lumber & Shingle Co., 228 La. 175, 182, 81 So. 2d 852, 854 (1955). \emph{See also} Knight v. Berwick Lumber Co., 130 La. 232, 57 So. 900 (1912); Holley v. Lockett, 126 So. 2d 814 (La. App. 2d Cir. 1961); Dinwiddie v. Cox, 9 So. 2d 68 (La. App. 2d Cir. 1942).
\item 18. See text beginning at note 21, \textit{infra}.
\item 19. Franz v. Mohr, 4 So. 2d 584, 587 (La. App. Orl. Cir. 1941): "The question of good faith on the part of the person pleading the prescription of ten years is always a question of fact to be determined by the circumstances of the particular case." \emph{See also} Harrill v. Pitts, 194 La. 123, 193 So. 562 (1940); Thibodeaux v. Quebodeaux, 282 So. 2d 845 (La. App. 3d Cir. 1973); Turner v. Denkman Lumber Co., 244 So. 2d 868 (La. App. 1st Cir. 1971).
\item 21. \emph{See, e.g.,} Bel v. Manuel, 234 La. 135, 99 So. 2d 58 (1958); Thibodeaux v. Quebodeaux, 282 So. 2d 845 (La. App. 3d Cir. 1973). \emph{See generally} Comment,
for determining a possessor's "legal" good faith is whether a man of ordinary business experience would conclude that the vendor was the owner under the facts of a particular case. Consequently, although the purchaser honestly believes he is purchasing from the owner, knowledge of facts sufficient to raise a doubt in a reasonably prudent person as to his vendor's title would negate his good faith. The jurisprudence provides that knowledge or notice of facts sufficient to raise doubt in a reasonably prudent person as to the vendor's title creates a duty to investigate. Two jurisprudential rules are operative in determining what knowledge will be attributed to the purchaser relative to whether he is put on notice of inquiry. First, any knowledge obtained by a possessor's attorney for the benefit of the possessor is imputed to him. Secondly, as stated earlier, notice of the complete public records is also imputed to a possessor who undertakes a title search.

When a possessor has notice of facts sufficient to put him on inquiry and he fails to inform himself through an investigation, he will be held "chargeable with all the facts which by a proper inquiry he might have ascertained." The investigation required in such cases must be quite extensive, in that it

Good Faith as a Condition of Ten Year Acquisitive Prescription, 34 Tul. L. Rev. 671, 673 (1960).

24. "If a purchaser is aware of any fact which should raise doubt about his vendor's title, he will be held under a duty to resolve that doubt. . . ." Malone v. Fowler, 228 So. 2d 500, 503 (La. App. 3d Cir. 1969). Boyet v. Perryman, 240 La. 339, 123 So. 2d 79 (1960); Bel v. Manuel, 234 La. 135, 99 So. 2d 58 (1958); Richardson & Bass v. Board of Levee Comm'r's, 226 La. 761, 77 So. 2d 32 (1954); Juneau v. Laborde, 219 La. 921, 54 So. 2d 325 (1951); Arnold v. Sun Oil Co., 218 La. 50, 48 So. 2d 369 (1949); Thibodeaux v. Quebodeaux, 282 So. 2d 845 (La. App. 3d Cir. 1973); Lafleur v. Fontenot, 93 So. 2d 285 (La. App. 1st Cir. 1957).
26. See cases in note 17, supra.
necessitates that he “pursue every lead and ferret out all the facts to the end that he may not purchase until he has complete information before him.” Notice of facts necessitating an investigation may be “suggested by the purchaser’s deed, the records if they were searched, or the purchaser’s private knowledge.” but the sufficiency of the facts in rebutting the possessor’s good faith must be determined on a situational basis.

Another aspect of legal good faith is the jurisprudential rule that, regardless of his moral good faith, one who purchases under an error of law is a possessor in bad faith. This rule is based on an interpretation of Louisiana Civil Code Article 1846(3), which provides:

Error in law can never be alleged as the means of acquiring, though it may be invoked as the means of preventing loss or of recovering what has been given or paid under such error. The error, under which a possessor

30. See, e.g., Boyet v. Perryman, 240 La. 339, 123 So. 2d 79 (1960) (reference in deed to judgment of possession deemed sufficient to place possessor on inquiry); Bel v. Manuel, 234 La. 135, 99 So. 2d 58 (1958) (doubt was suggested by the language of the title conveying “all our undivided interests . . . ”); Martin v. Schwingle Lumber & Shingle Co., 228 La. 175, 81 So. 2d 852 (1955) (title examination by attorney disclosed facts destroying good faith of purchaser); Juneau v. Laborde, 219 La. 921, 54 So. 2d 325 (1951) (vendor's personal knowledge of vendor's family history sufficient to raise doubt as to the validity of vendor's title); Board of Comm’rs v. Delacroix Corp., 274 So. 2d 745 (La. App. 4th Cir. 1973) (transfer of one tract with warranty while transfer of another tract was without warranty in same deed held sufficient to raise doubt); Malone v. Fowler, 228 So. 2d 500 (La. App. 3d Cir. 1969) (title used “quitclaim” type language in conveyance and purchase price was substantially below market value, possessor held not to be in good faith).
31. Thibodeaux v. Quebodeaux, 282 So. 2d 845, 851 (La. App. 3d Cir. 1973) (purchaser was well acquainted with the vendor's family, including the fact that the vendor acquired the property while married and sold it after his wife's death; court found purchaser in legal bad faith because his “belief that he acquired a good title was an error of law”); Dinwiddie v. Cox, 9 So. 2d 68 (La. App. 2d Cir. 1942) (Purchaser held in legal bad faith because he knew that his vendor, who was selling inherited property, was not an only child. Though the purchaser knew his vendor had no living brother or sister, he was held to the legal conclusion that there might be issue of the deceased heirs, entitled to ownership by law.). See also Arnold v. Sun Oil Co., 218 La. 50, 48 So. 2d 369 (1949); Holley v. Lockett, 126 So. 2d 814 (La. App. 2d Cir. 1961); Lafleur v. Fontenot, 93 So. 2d 285 (La. App. 1st Cir. 1957).
may be as to the legality [illegality] of his title, shall not give him a right to prescribe under it.

Because Article 1846 is contained in Title IV of the Louisiana Civil Code, dealing with conventional obligations, its application to the articles of the Code dealing with good faith as a requirement for the ten-year acquisitive prescription has been criticized as an extension of Article 1846 beyond its proper sphere. Critics argue that Article 1846 relates only to the contractual relations between the parties to prevent a purchaser from acquiring prescriptive title from his vendor by error of law and does not apply as to third persons.

The good faith of a possessor must exist only at the moment his possession is commenced; his subsequent bad faith arising during his possession will not defeat or interrupt prescription. Because a claim based on the ten-year acquisitive prescription arises long after possession is commenced, it is necessary not to overlook the fact that the question of good faith is appraised in relation to whether the purchaser should have doubted his vendor's title from the facts he knew at the time the possession was commenced.

*Just Title*

The Louisiana Civil Code defines "just title" as "a legal and transferable title of ownership." Just title does not mean only that which is derived from the true owner, "for then no true prescription would be necessary, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the prop-

33. See law review articles cited in note 32, supra.
34. La. Civ. Code art. 3482; Aubry & Rau § 218 at 365; Baudry-Lacantinerie no. 685 at 343; Planiol no. 2669 at 581. If prescription commences in good faith, the right to prescriptive title will not be affected by the fact that the property is afterwards held in subjective bad faith resulting from knowledge obtained by a subsequent title search or otherwise. Ryan v. Ribbeck, 228 La. 624, 83 So. 2d 650 (1955); Goree v. Sanders, 203 La. 859, 14 So. 2d 744 (1943); Smith v. Southern Kraft Corp., 202 La. 1019, 13 So. 2d 335 (1943); Davis v. Bradford, 113 So. 2d 76 (La. App. 2d Cir. 1959); Hines v. Berlin, 28 So. 2d 613 (La. App. 2d Cir. 1946).
The phrase "transfer the ownership of the property" does not refer to a title which in fact transfers the ownership, but to one "which by its nature would have been sufficient to transfer the ownership of the property, provided it had been derived from the real owners." The Civil Code further requires that the title be valid in point of form, certain, so as to fix exactly the origin of the possession, and proved, that is, founded on a written instrument. Thus, the requirement of just title refers to the presence of certain legal conditions and not to the legitimacy of the transfer of ownership, because the very purpose of acquisitive prescription is to cure the defects resulting from the transferor's lack of ownership.

Because the Louisiana Civil Code demands that a "just title" be one transitive of ownership, the following are excluded: putative titles, that is, those existing only in the mind of the possessor; titles contingent on a suspensive condition not yet met; contracts, the purpose of which are not to transfer ownership, such as leases, loans, or simulated sales; and acts that are declarative, thus not transitive of ownership, such as settlements, judgments and partitions.

37. Id. art. 3484.
38. Id. art. 3485.
39. Id. art. 3486.
40. Aubry & Rau § 218 at 359 n.2; Baudry-Lacantinerie no. 655-56 at 328-29; see also Callahan v. Authement, 99 So. 2d 531, 539 (La. App. 1st Cir. 1957): “Under the explanation or definition of a just title . . . the possessor, that is, the vendee, must have acquired by a title purporting to convey ownership and this title should be transitive of property, which is explained as referring to the form of the instrument such as a sale or donation. The title on its face must be apparently valid so as to induce the possessor-vendee to believe that it was a perfect one. Any defect in the title must be shown, so to speak, within the four corners of the act of sale or transfer, on its face.”
41. Planiol no. 2664 at 579; see also Comment, Just Title in the Prescription of Immovables, 15 Tul. L. Rev. 436, 437 (1941).
42. However, the title will be a sufficient basis for prescription when the condition is met. Aubry & Rau § 218 at 362; Baudry-Lacantinerie no. 673 at 337.
43. La. Civ. Code art. 3485(2); Aubry & Rau § 218 at 260; Baudry-Lacantinerie no. 667 at 330. Menefee v. Pipes, 159 So. 2d 439 (La. App. 2d Cir. 1963), cert. denied, 245 La. 798, 161 So. 2d 276 (1964) (Defendant based his claim for acquisitive prescription on a warranty deed; however, defendant's vendor continued in possession. Court held that the presumption of a simulation was not overcome and that a simulation cannot constitute just title).
44. Aubry & Rau § 218 at 360; Baudry-Lacantinerie no. 664 at 333; Planiol no. 2660 at 578. See, e.g., Tyson v. Spearman, 190 La. 871, 183 So. 201
In addition, acts of transfer which upon their face are absolutely null cannot serve as just title. For example, a judicial sale ordered by a clerk without jurisdiction is an absolute nullity, and cannot give a just title for the purpose of the ten-year acquisitive prescription. Although an absolutely null deed cannot be considered a just title, a person holding under such a deed may nevertheless transfer the property to one who could acquire a valid prescriptive title if the title under which the subsequent vendee possesses is one genuine on its face and translative of ownership. Furthermore, to the extent that no defect is apparent on the face of acts of

(1938); Dupuis v. Broadhurst, 213 So. 2d 528 (La. App. 3d Cir. 1968); Martin v. Carroll, 59 So. 2d 158 (La. App. 2d Cir. 1952). “But if one party ceded to the other an immovable as a condition for the settlement, the settlement agreement could represent for the second party a just title.” AUBREY & RAU § 218 at 360 n.6.

45. Jacobs v. Southern Advance Bag & Paper Co., 228 La. 462, 470, 82 So. 2d 765, 767 (1955); Wilkie v. Cox, 222 So. 2d 85 (La. App. 3d Cir. 1969), cert. denied, 254 La. 470, 471, 223 So. 2d 873 (1969) (even though tax sale was invalid, deed acquired may serve as just title if it appears valid on its face and translative of title); Callahan v. Authement, 99 So. 2d 531, 544 (La. App. 1st Cir. 1957): “[A]n absolute nullity affecting a transfer of immovable property, but not appearing on the face of the title itself, does not prevent the running of ten years prescription . . . .” Some confusion exists as to whether the defect evidencing the nullity must appear on the face of the deed. Although the defect was apparent on the face of the deed in Hicks v. Hughes, 223 La. 290, 65 So. 2d 603 (1953), the court did not state whether the defect must be patent on the face of the deed to affect just title. See cases in note 45, infra. See also Buillard v. Davis, 185 La. 255, 169 So. 78 (1936); Wilkie v. Cox, 222 So. 2d 85, 92 (La. App. 3d Cir. 1969) (dissenting opinion).

46. LA. CIV. CODE art. 3486(1); Boudreaux v. Olin Indus., 232 La. 405, 94 So. 2d 417 (1957); Hicks v. Hughes, 223 La. 290, 65 So. 2d 603 (1953); Buillard v. Davis, 185 La. 255, 169 So. 78 (1936); Callahan v. Authement, 99 So. 2d 531 (La. App. 1st Cir. 1957); AUBREY & RAU § 218 at 361.

47. Hicks v. Hughes, 223 La. 290, 65 So. 2d 603 (1953); see also Buillard v. Davis, 185 La. 255, 169 So. 78 (1936); Callahan v. Authement, 99 So. 2d 531 (La. App. 1st Cir. 1957) (Sheriff received order for seizure and sale of property of judgment debtor, but seized and sold property of descendant of debtor instead; court held sheriff was without authority to sell when on the face of the title he was ordered to sell only the property of the debtor. Thus the transfer was an absolute nullity and could not serve as just title.).

48. Boudreaux v. Olin Indus., 232 La. 405, 414, 94 So. 2d 417, 419 (1957) (Plaintiffs claimed property on basis that their mother’s signature was forged on the deed and as such could not form the basis of prescription. The court held that Hicks v. Hughes, 223 La. 290, 65 So. 2d 603 (1953), was inapplicable because the defendant was not relying on the null deed but on a subsequent one). See also Clayton v. Rickerson, 160 La. 771, 107 So. 569 (1926).
judicial sales, tax and sheriff's deeds, such deeds will serve as a basis for just title.\textsuperscript{49}

A deed cannot be considered translatie of ownership unless it describes with sufficient clarity the immovable sought to be acquired so that it may be identified,\textsuperscript{50} because the Civil Code requires that the title be "valid in point of form" and that it be "certain."\textsuperscript{51} Judicial rules must be developed to determine the adequacy of the title description, because no codal provisions set forth the requisites. Apparently, the same rules that are applied to determine the sufficiency of a title description between vendor and vendee apply to determine whether the description is sufficient to satisfy the just title requirement.\textsuperscript{52} Because the deed must identify the property with clarity, it is not enough that the description could be construed to include the property.\textsuperscript{53} The description generally must be in terms of legal subdivisions.\textsuperscript{54} Yet the deed need not contain a description sufficient to identify the land without reference to other admissible extrinsic evidence to aid in the description clarification.\textsuperscript{55} The fact that property is


\textsuperscript{50} Richardson & Bass v. Board of Levee Comm'rs, 226 La. 761, 775, 77 So. 2d 32, 37 (1954); Waterman v. Tidewater Assoc. Oil Co., 213 La. 588, 619, 35 So. 2d 225, 226 (1947); Hunter v. Forrest, 195 La. 973, 197 So. 649 (1940); Bendernagle v. Foret, 145 La. 115, 119, 81 So. 869, 870 (1919); Albert Hanson Lumber Co. v. Angelloz, 118 La. 861, 43 So. 529 (1907); Authement v. Theriot, 292 So. 2d 319, 326 (La. App. 1st Cir. 1974).

\textsuperscript{51} LA. CIV. CODE art. 3486(1), (2).

\textsuperscript{52} Snelling v. Adair, 196 La. 624, 199 So. 782 (1940); Harrill v. Pitts, 194 La. 123, 136, 193 So. 562, 566 (1940).

\textsuperscript{53} Richardson & Bass v. Board of Levee Comm'rs, 226 La. 761, 775, 77 So. 2d 32, 37 (1954); Waterman v. Tidewater Assoc. Oil Co., 213 La. 588, 619, 35 So. 2d 225, 226 (1947) (where the conveyance referred to all the land in two townships without reference to sections or subdivisions, this type of omnibus description was deemed inadequate).

\textsuperscript{54} Baldwin v. Arkansas-Louisiana Pipe Line Co., 185 La. 1051, 171 So. 442 (1936) (Where description was merely "[A]ll right, title and interest in and to any and all land in Caddo and Bossier Parishes . . . ," court held that description was insufficient for purposes of just title.); J. H. Jenkins Contractors, Inc. v. Fairriel, 246 So. 2d 340 (La. App. 1st Cir.), aff'd, 261 La. 374, 259 So. 2d 882 (1971).

\textsuperscript{55} "It is a settled rule of law in this state that if a portion of the description of property in a deed is either erroneous or misleading, it is nevertheless susceptible of conveyance if the property intended to be con-
described as being bounded by the estate of another will suffice to identify the property by reference to the deeds of the bounding estates. The language of some cases seems to indicate that the reference must be to other documents in the records, such as any map, deed, plot, patent, survey, or boundary. However, parol evidence has been allowed to aid in clarifying an erroneous or ambiguous description, but “only in cases where there is a sufficient body in the description to leave the title substantially resting on writing, and not essentially on the parol.” However, in cases in which a judgment to correct an erroneous or defective title is necessary, prescription does not commence under the deed until the judgment is rendered.

The Code requires a just title without reference to recor- dation of the deed. Lack of recordation does not affect the sufficiency of the title as a basis for a plea of the ten-year acquisitive prescription by the purchaser-possessor, because the deed is not relied upon to convey the property.

veyed by the parties can be ascertained with certainty by the aid of such extrinsic evidence as is admissible under the rules of evidence.” Snelling v. Adair, 196 La. 624, 641-42, 199 So. 782, 787 (1940); Leader Realty Co. v. Taylor, 147 La. 256, 84 So. 648 (1920). Symposium: Writing Requirements and the Parol Evidence Rule, 35 La. L. Rev. 745, 769-71, 796-97 (1975).


57. Baldwin v. Arkansas-Louisiana Pipe Line Co., 185 La. 1051, 171 So. 442 (1936); Leader Realty Co. v. Taylor, 147 La. 256, 264, 84 So. 648, 650 (1920). Pure Oil Co. v. Skinner, 284 So. 2d 608, 610-11 (La. App. 2d Cir. 1973), rev’d on other grounds, 294 So. 2d 797 (La. 1974): “[T]he other ‘admissible evidence’ to be referred to must be another recorded instrument such as any deed, map, plat, patent, survey, or boundary by which the description may be ascer- tained. [O]ne must be able to identify and locate the property from the description in the deed itself or from other evidence which appears in the public records.”


59. Smith v. King, 192 La. 346, 188 So. 25 (1939); Bagby v. Clause, 251 So. 2d 172 (La. App. 1st Cir. 1971) (where there was a suit to correct an erroneous description, court held that prescription commences from the date of judgment reforming the description).

60. LA. CIV. CODE arts. 3478-79, 3484; BAUDRY-LACANTINERIE no. 674 at 337.

61. Bernstein v. Leeper, 118 La. 1098, 43 So. 889 (1907). “[T]he right of a purchaser to rely on the public records is qualified by the right of an adverse
Good Faith and Just Title Distinguished

In Roman law just title evolved as an element evidencing good faith, and was not clearly a distinct element. However, under French law, and subsequently in Louisiana, just title and good faith were enunciated as distinct elements. When these elements are applied to a particular factual situation, however, some confusion of the elements occurs, because the same set of facts may be pertinent to both legal considerations, and the Civil Code articles on just title appear to impose both objective and subjective criteria. The subjective element of just title is arguably required by Louisiana Civil Code Article 3484, which provides that a just title is one which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property.

However, because the requirement of just title arose originally under Roman and old French law as a condition of good faith, only later becoming a distinct element, arguably Article 3484 merely serves to emphasize that just title is distinct from and additional to the subjective element of good faith. This alternative reading of Article 3484, in context, does not require a subjective belief as an incident to just title. It merely explains that just title can be gained from one not the owner, but goes on to restate the good faith requirement that claimant to assert ownership acquired by prescription." Arkansas Fuel Oil Corp. v. Weber, 149 So. 2d 101, 106 (La. App. 2d Cir. 1963), cert. denied, 244 La. 205, 151 So. 2d 493 (1963). Baudry-Lacantinerie no. 674 at 337; Planiol no. 2665 at 580. This result has been considered regrettable because, it is argued, all interested parties should have the advantage of reference to the public records. Planiol no. 2665 at 580; Comment, Just Title in the Prescription of Immovables, 15 Tul. L. Rev. 436 (1941).

62. Baudry-Lacantinerie nos. 3, 4, 5 at 4-5; Planiol no. 2664 at 579.
63. French Civ. Code art. 2265; Aubry & Rau § 216 at 354-55; Baudry-Lacantinerie no. 650 at 327; Planiol § 2659 at 578, § 2664 at 579.
64. LA. CIV. CODE art. 3474; Bel v. Manuel, 234 La. 135, 99 So. 2d 58 (1958).
65. See The Work of the Louisiana Appellate Courts for the 1970-1971 Term—Prescription, 32 LA. L. REV. 250, 251 (1972), wherein it it suggested that Louisiana Civil Code Articles 3483-86 provide two elements of just title: (1) objective, that the deed must appear to be good; and (2) subjective, that the transferee honestly believes the transferor is the real owner.
66. Emphasis added.
the purchaser must believe that he is acquiring good title. To require subjective intent to satisfy the just title requirement is to require the same inquiry that will necessarily accompany a good faith determination and seems to be a redundancy in analysis.

**Quitclaim Deeds, Good Faith and Just Title**

The problems arising in connection with quitclaim deeds serve to highlight good faith and just title as distinct elements of acquisitive prescription.\(^{68}\) Use of a quitclaim or non-warranty deed as a basis for the ten-year acquisitive prescription is arguably relevant to both the good faith and just title requirements. Early cases held that a non-warranty sale of the vendor's right, title and interest in his property disclosed a defect in the title, thus defeating the just title requirement.\(^{69}\) Later cases, however, repudiated this jurisprudence and concluded that with regard to just title there was no material difference in form between a sale of particular property and a sale of all the vendor's right, title and interest therein.\(^{70}\) While a non-warranty deed may satisfy the just title requirement, the failure of the vendor to warrant his title may raise doubt in the vendee as to the title's validity. As discussed previously,\(^{71}\) notice of facts sufficient to raise this doubt may rebut the purchaser's good faith. Because of the quitclaim's extensive use, from a practical viewpoint the courts have held that the quitclaim deed *alone* is not sufficient notice to place the purchaser on inquiry.\(^{72}\) Yet when other factors would tend to create doubt as to the validity of the vendor's title, quitclaim deeds should be considered with other evidence in resolving the issue of good faith.\(^{73}\)


\(^{69}\) *E.g.*, Eastman v. Beiller, 3 Rob. 220 (1842); Reeves v. Towles, 10 La. 276 (1836).


\(^{71}\) See text beginning at note 21, supra.

\(^{72}\) Smith v. Southern Kraft Corp., 202 La. 1019, 13 So. 2d 335 (1943).

\(^{73}\) Board of Comm'rs v. Delacroix Corp., 274 So. 2d 745 (La. App. 4th Cir. 1973) (conveyance of part of tract with warranty and part without warranty sufficient to raise doubt to defeat good faith); Board of Comm'rs v. Elmer, 268 So. 2d 274 (La. App. 4th Cir. 1972), *cert. denied*, 263 La. 613, 268 So. 2d 675
Possession

"Possession is the detention or enjoyment of a thing, which we hold or exercise by ourselves, or by another who keeps or exercises it in our name." Acquisitive prescription is dependent upon possession over a prolonged period of time as a positive basis of establishing one's relationship to the property as owner. Articulating the incidents of possession necessary to commence and support the ten-year acquisitive prescription has been a "difficulty in practical application." The Louisiana Civil Code provides two basic requirements for possession: "[t]he intention of possessing as owner," and "[t]he corporeal possession of the thing." Thus, precarious possession, that is, possession for another, will not suffice, since there is no intent to possess as owner. However, concerning specifically the prescription of ten years, the Code provides additional explanation of the requisites. For example, while the thing must be held "in fact and in right as owner," a person is presumed to have possessed as owner, unless it is apparent that his possession began for the benefit of another. Also, the prescription of ten years must be commenced by corporeal possession, but if possession is begun corporeally, it may be continued by civil possession. Finally,

74. LA. CIV. CODE art. 3426.
75. See generally PLANIOL no. 2644 at 571, no. 2649 at 573; The Work of the Louisiana Supreme Court for the 1938-1939 Term—Prescription, 2 LA. L. REV. 84, 86 (1939).
76. The Work of the Louisiana Supreme Court for the 1951-1952 Term—Prescription, 13 LA. L. REV. 262, 264 (1953); Comment, Elementary Considerations in the Commencement of Prescription on Immovable Property, 12 TUL. L. REV. 608 (1938).
77. LA. CIV. CODE art. 3436; AUBRY & RAU § 217 at 355-57; PLANIOL no. 2649 at 573.
78. LA. CIV. CODE arts. 3490, 3510; AUBRY & RAU § 217 at 355; PLANIOL no. 2649 at 573.
79. LA. CIV. CODE art. 3487(1).
80 Id. art. 3488.
81. Id. art. 3487(1); Bunn v. A. J. Hodges Indus. Inc., 279 So. 2d 268, 272 (La. App. 2d Cir. 1973); McCluskey v. Meraux & Nunez, 186 So. 117, 119 (La. App. Orl. Cir. 1939). Corporeal or natural possession involves the physical detention of the thing, as by occupying a house, or cultivating the land. LA. CIV. CODE arts. 3428, 3430. Civil possession, on the other hand, results from a
the possession must be "continuous and uninterrupted, peaceable, public and unequivocal." Prescription is interrupted whenever the possessor acknowledges the right of another to the title of the property.\(^{83}\)

The acquisitive prescription of ten years must be commenced by corporeal possession,\(^{84}\) the sufficiency of which is essentially determined by a factual inquiry.\(^{85}\) The sufficiency of the acts of possession depends on the character of the land. For example, the jurisprudence recognizes that a possessor can possess only in a manner practicable under the circumstances depending upon the nature of the land, its soil and surroundings, and its chief value,\(^{86}\) whether it be, for example, timber\(^{87}\) or marsh land.\(^{88}\) However, possession

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\(^{82}\) LA. CIV. CODE art. 3487(2); Blanchard v. Norman-Breaux Lumber Co., 220 La. 635, 57 So. 2d 211 (1952). In Board of Comm'r's v. Elmer, 268 So. 2d 274, 280 (La. App. 4th Cir. 1972), the court discussed these elements saying that (1) "continuity of possession relates to the activities of the possessor, and interruption of possession relates to the activities of third parties"; (2) public possession "indicates that which is open and not clandestine. The purpose of this requirement... is to inform interested persons of the possession in order to allow them to oppose it"; (3) the question of equivocation refers to the manner and purpose of possession, whether they appear to be as owner or otherwise. See also Aubry & Rau § 217 at 355-57.

\(^{83}\) LA. CIV. CODE art. 3520; W. J. Gayle & Sons, Inc. v. Deperrodil, 300 So. 2d 599, 607 (La. App. 3d Cir. 1974) (the exclusion of a disputed portion of the deed by those claiming ownership by prescription served as an acknowledgment).


\(^{85}\) Jacobs v. Southern Advance Bag & Paper Co., 228 La. 462, 82 So. 2d 765 (1955); Hill v. Richey, 221 La. 402, 59 So. 2d 434 (1952); Snelling v. Adair, 196 La. 624, 199 So. 782 (1940); McHugh v. Albert Hanson Lumber Co., 129 La. 680, 56 So. 636 (1911); Bagby v. Clause, 251 So. 2d 172 (La. App. 1st Cir. 1971).

\(^{86}\) Boudreaux v. Olin Indus., 232 La. 405, 94 So. 2d 417 (1957) (where land is "upland timber land" primarily used for growing timber and no other use was ever attempted, general cutting of timber was sufficient corporeal possession); see Bolding v. Eason Oil Co., 248 La. 269, 178 So. 2d 246 (1965); Smith v. Southern Kraft Corp., 202 La. 1019, 13 So. 2d 335 (1943); Turner v. Denkmann Lumber Co., 244 So. 2d 868 (La. App. 1st Cir. 1971).

\(^{87}\) Acosta v. Nunez, 5 So. 2d 574 (La. App. Orl. Cir. 1942) (Where property was "low, wet marsh land," chiefly valued for trapping, such activity was
sufficient to support a prescriptive plea must indicate clearly, commensurate with the character of the land, that the possessor exerts control as owner over the property. For example, occasional cutting of grass, payment of taxes, or sporadic use for trapping, standing alone, have been deemed insufficient evidence of corporeal possession.

As a general rule, an owner in indivision cannot prescribe against his co-owners, because possession by one co-owner is presumed to be exercised on behalf of all co-owners. However, if a co-owner in physical possession gives notice of his intention to possess adversely and such possession is obviously hostile, one co-owner may prescribe against the other co-owners. When one co-owner goes into physical possession as sole owner by means of a recorded instrument, even if invalid, his possession is regarded as sufficiently hostile to constitute notice to other co-owners and to rebut any presumption that he possesses for all the co-owners.

Based on the applicability of Louisiana Civil Code Arti-
cles 3437, 3498, and the inapplicability of Article 3503 to the ten-year acquisitive prescription, possession of a part of a tract or of a part of contiguous tracts is equivalent to possession of all the land within the boundaries set forth in the title. This rule is inapplicable to situations when another has adverse, corporeal possession of the land claimed by constructive possession, because such counter possession would amount to a dispossession of the constructive possessor.

96. LA. CIV. CODE art. 3437: “It is not necessary, however, that a person wishing to take possession of an estate should pass over every part of it; it is sufficient if he enters on and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries.” The term “boundaries” means enclosures for those possessing without title and the limits stated in the deed for those possessing under title. Leader Realty Co. v. Taylor, 147 La. 256, 265, 84 So. 648, 650 (1920).

97. LA. CIV. CODE art. 3498: “When a person has a title and possession conformably to it, he is presumed to possess according to the title and to the full extent of its limits.”

98. Leader Realty Co. v. Taylor, 147 La. 256, 84 So. 648 (1920); Zeringue v. Blouin, 192 So. 2d 838, 843 (La. App. 1st Cir. 1966). LA. CIV. CODE art. 3503 provides: “How favorable soever prescription may be, it shall be restricted within just limits. Thus, in the prescription of thirty years, which is acquired without title, it extends only to that which has been actually possessed by the person pleading it.”

99. This type of possession is termed “constructive” possession. Ernest Realty Co. v. Hunter Co., 189 La. 379, 179 So. 460 (1938). See Haas v. Dezauche, 214 La. 259, 37 So. 2d 441 (1948) (contiguous but individually described parcels held to form a single estate); Eiver’s Heirs v. Rankin’s Heirs, 150 La. 4, 90 So. 419 (1922); Leader Realty Co. v. Taylor, 147 La. 256, 84 So. 648 (1920); Zeringue v. Blouin, 192 So. 2d 838 (La. App. 1st Cir. 1967) (possession of part rule held applicable to situation when there were three contiguous tracts, each separately described in a single deed); Barrios v. Legendre, 127 So. 2d 790 (La. App. 4th Cir. 1961). See also McCluskey v. Meraux & Nunez, 186 So. 117 (La. App. Orl. Cir. 1939) (possession of part did not constitute possession of whole when tracts were divided by navigable stream owned by the state, thus making the tracts non-contiguous). But see Sessions v. Tensas River Planting Co., 142 La. 339, 76 So. 816 (1917) (Holding that for one to invoke the principle that possession of part with title is possession of the whole, the part possessed must be a part of the land sought to be acquired by prescription; based on the concept that it is necessary that the possession be such as to put the owner on notice that another asserts ownership of his land.).

100. See LA. CIV. CODE art. 3449; Ernest Realty Co. v. Hunter Co., 189 La. 379, 179 So. 460 (1938); W. J. Gayle & Sons, Inc. v. Deperrodil, 300 So. 2d 599 (La. App. 3d Cir. 1974) (where there was an actual adverse corporeal possession by the tenant farmers, i.e., precarious possessors of the adverse claim-
An additional doctrine pertinent to the possession requirement of the ten-year acquisitive prescription is the doctrine of tacking, whereby a possessor may add the possession of his author in title to his own to fulfill the time required to prescribe. In order for a successor to tack his possession to that of his author and have it applied to satisfy the ten-year requirement, the author in title must have been in good faith. If the author is in bad faith and the possessor in good faith, the possessor can prescribe only in ten years in his own right or in thirty years with the addition of his author's possession. However, if the author is in good faith, the possessor's good or bad faith is irrelevant; and if he has all the other requirements, by tacking his possession to his author's, he can prescribe acquisitively in ten years. This result has been criticized, because a successor by particular title commences a new possession, and the commencement of possession for purposes of acquisitive prescription should be in good faith.

Object of Prescription

In order for an object to be a proper subject for acquisitive prescription, it must by its nature be susceptible of alienation. In Board of Commissioners v. Elmer, it was contended that because title to the land was in the state, the land was not an object subject to acquisitive prescription. However, the court pointed out that the land, as immovable

104. See comment cited in note 105, infra.
106. LA. CIV. CODE art. 3497.
107. 268 So. 2d 274 (La. App. 4th Cir. 1972).
property, was by its nature susceptible of alienation within
the meaning of Article 3497.108

Conclusion

In order for the plea of the ten-year acquisitive prescrip-
tion to be sustained, the codal requisites of good faith, just
title, possession, and a prescriptive object must be satisfied.
The determination of whether these requisites are satisfied
necessarily depends on a factual inquiry by the courts in each
case.109 However, underlying the decisions of the courts in
these cases is a policy which favors those who purchase and
possess in good faith, and disfavors those who belatedly as-
sert their rights.110

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108. The real issue, as the court noted, was whether prescription runs
against the Levee Board. LA. CIV. CODE art. 3521 provides that prescription
runs against all persons except as otherwise provided by law. The issue in
Elmer was whether the exception established in favor of the State under La.
Const. art. XIX, § 16 (1921), was applicable to the Levee Board. See Board of
Comm’rs v. Pure Oil Co., 167 La. 801, 120 So. 373 (1929).

109. Two recent cases affecting the procedure for pleading the ten-year
acquisitive prescription are Montgomery v. Breaux, 297 So. 2d 185 (La. 1974),
and Ledoux v. Waterbury, 292 So. 2d 485 (La. 1974). In Montgomery, the
Louisiana Supreme Court held that acquisitive prescription can be pleaded
as a peremptory exception under LA. CODE CIV. P. art. 927, in which case all
that will be considered is whether the sufficient period of time under the
applicable codal provision has run. The court in Ledoux held that the ten-
year acquisitive prescription could be pleaded in boundary actions, because
as the official revision comment to Louisiana Code of Civil Procedure article
explains, questions of title can be determined in actions on boundary, includ-
ing prescriptive title.

110. Smith v. Southern Kraft Corp., 202 La. 1019, 13 So. 2d 335 (1943);
Allen v. Paggi Bros. Oil Co., 244 So. 2d 116 (La. App. 3d Cir.), cert. denied 258
La. 247, 245 So. 2d 176 (1921); Jackson v. Norred, 55 So. 2d 282 (La. App. 2d
Cir. 1951); Hines v. Berlin, 28 So. 2d 613 (La. App. 2d Cir. 1946); cf. Lafitte,