In the Courthouse or the Courtroom: The ABC’s and Nuances of Acquisitive Prescription and Possession

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I. INTRODUCTION

As lawyers, landmen and landowners, Louisiana law of acquisitive prescription influences many aspects of our daily practice, duties and concerns. For lawyers it arises in the context of examining title and litigation of title issues. For landmen it guides leasing activities, building of abstracts and drafting of possession statements, sometimes subtly and sometimes directly. For landowners, especially owners of large tracts of land in rural areas, its application arises in the context of establishing, maintaining and protecting ones ownership interest in such immovable property.

The law of acquisitive prescription entails many different subcategories and requirements such as just title, good faith, possession, tacking of possession, sufficiency of property descriptions and many others. While this paper discusses the basic framework and requirements for acquisitive prescription, the primary focus is possession of immovable property. While the other aspects of acquisitive prescription mentioned are obviously important, the subject of possession, and how that issue is dealt with by our courts in litigation, serves as the foundation of one’s claim to possession and/or ownership by acquisitive prescription.

II. OVERVIEW OF ACQUISITIVE PRESCRIPTION

A. The Basics

Under current Article 3473 of the Louisiana Civil Code, and the predecessor articles in the 1870 Code, the ownership of immovable property may be acquired by ten (10) years acquisitive prescription.
provided the appropriate requirements can be met. These requirements are: (a) possession for ten (10) years, (b) good faith, (c) just title, and (d) a thing susceptible of acquisition by prescription. Good faith is always presumed, and the burden is on he who alleges bad faith to prove same. Civil Code Article 3483 defines “just title” as a juridical act such as a sale, exchange or donation, sufficient to transfer ownership of a real right. The possession necessary for ten (10) year acquisitive prescription must be continuous, uninterrupted, public, unequivocal and with the intent to possess as owner.¹

The ownership of immovable property may also be acquired by the prescription of thirty (30) years, even in the absence of just title or good faith.² In order for a possessor to claim successfully the ownership of immovable property under a plea of ten (10) or thirty (30) year acquisitive prescription, he must establish that there has been corporeal possession of the property for a period of time, as well as a positive intention to take and commence possession of the property as owner.³ When commenced corporeally, that possession, if not interrupted, may be preserved by external signs, which manifest the possessor’s intent to preserve its possession. Also, one may possess a thing not only by himself, but through other persons.⁴ Civil Code Article 3437 defines the “exercise of possession over a thing with the permission of or on behalf of the owner or possessor” as “precarious possession.” Thus, the proprietor of a house or other tenement possesses by his tenant.⁵

The prescriptive title of thirty (30) years extends only to the property actually possessed by the person pleading it, and what is sufficient possession is determined by the nature of the property.⁶

⁵ Seven Water Holes Corp. v. Spires, 393 So.2d 811, 814 (La.App. 2d Cir. 1981).
However, once actual possession is established, that possession can extend to visible bounds of the property.\(^7\) The notion of possession within “visible bounds” derives from Civil Code Article 794, which article is contained in Title VI of the current Louisiana Civil Code addressing “Boundaries.” Article 794 provides, in pertinent part, “[i]f a party and his ancestors in title possessed for thirty (30) years without interruptions, within visible bounds, more land than their title called for, the boundary shall be fixed along these bounds.” Thus, Article 794 envisions an uninterrupted, thirty (30) year possession within a visible boundary and provides the means for determining the boundary in accordance with that possession. Courts have held that the possession required when one has no title contemplates actual possession within enclosures sufficient to establish the limits of possession with certainty, by either natural or artificial marks, giving notice to the world of the extent of the possession exercised.\(^8\)

**B. Good Faith**

The first essential requirement for a person to acquire ownership via ten years acquisitive prescription is that he be in good faith. The principle is set forth in Civil Code Article 3480: “For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective considerations, that he is owner of the thing he possesses.” The possessor must have a subjective belief that he is the owner of the land he’s possessing, and that belief must be a reasonable one under the circumstances. Reasonableness should be gauged based on societal perceptions on how people should ordinarily behave under a particular set of external circumstances.\(^9\) In Louisiana, a person’s good faith is presumed. Civil Code Article 3481 establishes this presumption: “Good faith is presumed. Neither error of fact nor error of law defeats this presumption. This presumption is rebutted on proof that the possessor knows, or should know, that he is not owner of the thing he possesses.” As long as a person begins his possession in good faith, his good faith

\(^7\) Sattler v. Pellichino, 71 So.2d 689, 694 (La. App. 1 Cir. 1954).
\(^8\) Mire v Crowe, 439 So.2d 517, 521 (La. App. 1 Cir. 1983).
will continue even if he later loses it. Civil Code Article 3482 states that it “is sufficient that possession has commenced in good faith; subsequent bad faith does not prevent the accrual of prescription of ten years.”

Courts are relatively liberal in determining a buyer’s good faith, even when he acquires through a deed without full warranty. Such a limited transfer no longer gives rise to a presumption of bad faith on the part of the transferee, and is a just title for the purposes of acquisitive prescription.10 The fact that a deed excludes all warranty does not, by itself, prevent the acquisition of ownership by ten (10) years prescription. Exclusion of a warranty is not sufficient to put the vendee on notice (excite his attention) that his vendor’s title is limited.11

In order for a party to rebut the presumption of good faith he must establish either that a) vendee didn’t truly consider himself owner of the disputed land, or that his belief was unreasonable under the circumstances. Since it is practically impossible to prove that the vendee did not subjectively believe he was the true owner of a disputed tract, good faith is typically evaluated by determining whether the vendee’s belief that he was owner of the disputed tract was reasonable under particular circumstances of the case. Louisiana courts have consistently made the following inquiries when evaluating a vendee’s good faith:

- What was the vendee’s education level? Was he familiar with Louisiana community property law?12
- How well was the adverse possessor acquainted with the vendor from whom he purchased the property, and the vendor’s family?13
- What did the vendor tell or communicate to the vendee before or at time of transfer?14

11 Dupuy v. Joly, 200 So. 806, 810 (La. 1941).
12 Thibodeaux v. Quebodeaux, 282 So.2d 845, 850 (La.App. 3 Cir. 1973); Lacour v. Sanders, 442 So.2d 1280, 1283 (La.App. 3d Cir. 1983).
13 Thibodeaux, 282 So.2d at 851; Lacour, 442 So.2d at 1281; Juneau v. Laborde, 54 So.2d 325, 328 (La. 1951).
• What was the extent of the vendee’s knowledge of defects or potential defects in her title?\textsuperscript{15}

C. Just Title

A second essential requirement to acquiring ownership through ten years acquisitive prescription is that the person must have a just title. The term is defined by Civil Code Article 3483 of the Civil Code: “A just title is a juridical act, such as a sale, exchange, or donation, sufficient to transfer ownership or another real right. The act must be written, valid in form, and filed for registry in the conveyance records of the parish in which the immovable is situated.”

“Just title” is a juridical act sufficient to transfer ownership of another real right; it must be written, valid in form, and filed for registry in conveyance records of parish in which immovable is situated.\textsuperscript{16} When there is a good reason for the vendee to believe that the sale through which he acquired the land was legal, this belief equates to just title, even if in fact the sale was illegal.\textsuperscript{17}

A paper title relied upon by possessor seeking to establish 10 years’ acquisitive prescription must sufficiently describe property in such a way as to transfer its ownership; one must be able to identify and locate property based on the description in the deed itself or from other evidence that appears in the public records.\textsuperscript{18}

\textsuperscript{14} Phillips v. Donaldson, 494 So.2d 1379, 1382 (La.App. 3d Cir. 1986); Lacour, 442 So.2d at 1283.
\textsuperscript{15} Thibodeaux, 282 So.2d at 851; Lacour, 442 So.2d at 1283; Phillips, 494 So.2d at 1384; Juneau, 54 So.2d at 328; Melancon v. Wood, 357 So.2d 75 (La.App. 4th Cir. 1978); City of Shreveport v. Noel Estate, Inc., 941 So.2d 66, 81 (La.App. 2d Cir. 2006); Board of Com’rs for Lafourche Parish Basin Levee Dist. v. Elmer, 268 So.2d 274, 282 (La.App. 4th Cir. 1972).
\textsuperscript{16} Palomeque v. Prudhomme, 664 So.2d 88, 93 (La. 1995); Harry Bourg Corp. v. Punch, 653 So.2d 1322, 1325 (La.App. 1st Cir. 1995).
\textsuperscript{17} Train v. Cronan, 15 So. 368, 368 (La. 1894).
\textsuperscript{18} Ryan v. Lee, 870 So.2d 1137, 1140 (La.App. 2d Cir. 2004).
III. THE IMPORTANCE OF POSSESSION IN POSSESSORY AND PETITORY ACTIONS

“The concept of possession is neither simple nor precise. Louisiana legislation and well settled jurisprudence distinguish between possession, which is the exercise of factual authority over a thing, and the right to possess, which one may acquire by exercising such authority for over a year.” Civil Code Article 3421 defines possession as “the detention or enjoyment of a corporeal thing, movable or immovable, that one holds or exercises by himself or by another who keeps or exercises it in his name.” Whether or not one is in possession “is a matter of fact; nevertheless, one who has possessed a thing for over a year acquires the right to possess it.”

Possession is lost “when the possessor manifests his intention to abandon it or when he is evicted by another by force or usurpation.” The right to possession is lost upon abandonment of possession” and “[i]n case of eviction, the right to possess is lost if the possessor does not recover possession within a year of the eviction. When the right to possess is lost, possession is interrupted.” These issues are resolved in the context of a possessory action which is defined as an action “brought by the possessor of immovable property or of a real right therein to be maintained in his possession of the property or enjoyment of the right when he has been disturbed, or to be restored to the possession or enjoyment of the right when he has been evicted.”

Although Code of Civil Procedure Article 3658 establishes four requirements for the bringing of a possessory action, “the battle lines are often drawn over the question posed by paragraph (2): Who has the right to possess? This question, in turn is often decided by a determination of whether any acts of the defendant [in a possessory action] have sufficiently interrupted the plaintiffs possession so as to strip the plaintiff of his right to possess.” The

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19 Comment (b) to La. Civ. Code art. 3422.
24 See Mire v. Crowe, 439 So.3d 517, 520 (La.App. 1st Cir. 1983), and Pitre v.
determination in a possessory action is essentially who has the right to possess, and whether the right to possess has been lost prior to the filing of the possessory action.

Procedurally, our law envisions the next step to be the filing of a petitory action by the unsuccessful litigant of the possessory action. A petitory action is defined as an action “brought by a person who claims the ownership, but who is not in possession, of immovable property or of a real right therein, against another who is in possession or who claims the ownership thereof adversely, to obtain judgment recognizing the plaintiff’s ownership.”

The successful litigant in a possessory action, by establishing the right to possess, is then considered to be the owner of the property unless the unsuccessful litigant files a petitory action within a period of time “not to exceed sixty days after the date the judgment [in the possessory action] becomes executory.” If the adverse party fails to file the petitory action within the required period of time he is precluded from asserting ownership of the property at issue thereafter. If such person does file the petitory action within the required period of time, he will have the onerous burden of proving that he has valid record title or has acquired the property by acquisitive prescription.

Accordingly, the right to possess is a valuable real right that recognizes its owner as the provisional owner of the property at issue and also serves as the “arbiter of burden of proof” in the context of a petitory action. One can see that the establishment

Tenneco Oil Co., 385 So.2d 840, 845 (La.App. 1st Cir. 1980).

27 La. Civ. Code art. 3423 (“A processor is considered provisionally as owner of the thing he possesses until the right of the true owner is established.”); La. Code Civ. Proc. art. 3654 stating that a petitory action is to be decided in favor of the owner of the right to possess, “unless the adverse party proves that he has acquired ownership from a previous owner or by acquisitive prescription.”; see Comment E to La. Code Civ. Proc. art. 3654, (“The possession required of a plaintiff in a possessory action was adopted here as the arbiter of burden of proof to prevent one of the parties from taking possession of the immovable property briefly prior to rendition of judgment, or from dispossessing the rightful possessor, so as to obtain the benefit of the rules as to burden of proof.”)

of the right to possess is of great importance in a possessory action (obviously) and is also the starting point for a petitory action and any determination of ownership involving the operation of acquisitive prescription therein. For this reason it is not surprising that the “possession required to bring a possessory action has been treated as being the same required to commence the running of [acquisitive] prescription.” Thus, although much of the remainder of this paper addresses the establishment and loss of the right to possess in the context of a possessory action, such discussion is relevant and necessary to determinations arising in a petitory action for ownership based on acquisitive prescription.

IV. ESTABLISHMENT OF POSSESSION AND ACQUIRING THE RIGHT TO POSSESS

A. Establishing Corporeal Possession

As noted above, in order to acquire the right to possess, one must exercise possession over the thing for over a year. Accordingly, the initial question that must be asked is how does one go about establishing possession, and how does one go about retaining that possession so as to possess the thing for over a year thereby acquiring the right to possess it?

In order to acquire possession of immovable property, “one must intend to possess as owner and must take corporeal possession of the” immovable property. Corporeal possession is defined as “the exercise of physical acts of use, detention, or enjoyment over a thing.” One’s intent to possess as owner is presumed, “unless he began to possess in the name of and for another.” This presumption can be rebutted by proof of objective factual manifestations of an intent not to possess the immovable property as owner. The type of corporeal possession of the immovable property depends greatly on the type of land that is in dispute:

29 Liner v. Louisiana Land & Exploration, 319 So.2d at 773.
The elements and characteristics of the possession necessary to maintain a possessory action vary with the nature of the property and other attending relevant circumstances. What constitutes possession in any case is a question of fact and each case must rest upon its own peculiar circumstances. *Certainly the landowner can only exercise over his land such possession as is practical and is reasonably contemplated from the nature of the property.* Thus, the acts which must be shown to establish possession are governed to a large extent by the use to which the land is destined or for which it is suitable.\(^{34}\)

Further, “the possession requisite in the case of farm land is more than in the case of wood land; and, more possession is required in the case of wood land than in the case of swamp or marsh land.”\(^{35}\) Section VI below offers an in depth discussion of the particular types of corporeal possession found sufficient by our courts in relation to the type of immovable property involved.

As noted above, since one has to exercise possession over a piece of immovable property for over a year to acquire the right to possess it, that would be a difficult and almost impossible task if one had to exercise constant corporeal possession over the entire extent of the property for that entire period of time. This is especially difficult, and almost impossible, with respect to large tracts of rural land such as marsh and timber land. Luckily, as these types of land comprise the majority of immovable property in Louisiana, the Civil Code has implemented rules governing the extent and retention of possession that have eased this burden and transformed an impossible task into something more reasonably attainable. These rules apply to both the possession required to establish a right to possess and to possession required to support a claim of ownership based on acquisitive prescription.

\(^{34}\) Mire v. Crowe, 439 So.2d 517, 521. *quoting from* Plaisance v. Collins, 365 So.2d 608, 611 (La. App. 1\(^{st}\) Cir. 1978).

\(^{35}\) Liner v. Louisiana Land & Exploration Co., 319 So.2d at 774.
B. The Extent and Retention of Possession

Once one establishes some type of corporeal possession over a piece of immovable property, the next question is to what extent does that corporeal possession extend? This question hinges on whether the possessor possesses the immovable property by virtue of a title. If one has “title” to the immovable, then his corporeal possession of a portion of that immovable will be deemed to be “constructive possession” of the entirety of the immovable “within the limits” described in his title.\(^\text{36}\) If the individual does not corporeally possess the immovable by virtue of a “title,” then he “has possession only of the area he actually possesses” and within the visible bounds of the property as discussed in Section II(A) above.\(^\text{37}\) The court in *Plaisance v. Collins*\(^\text{38}\) summarized the rule of constructive possession as follows:

> It is a well settled and established principle of law that where the legal and rightful owner of a tract of land has actual possession of a part thereof, he is in legal and constructive possession of the whole, except such portion thereof that may be in the actual possession and occupancy, by inclosure or otherwise, of a party claiming either by title under article 3478 or thirty years’ adverse possession, article 3499. *The reason for the rule is that both cannot have constructive possession.*

The term “title,” for purposes of gaining the benefit of constructive possession, is equivalent to that of “just title” used in the determination of good or bad faith possession in support of a claim of ownership based on acquisitive prescription, which is defined as “a juridical act, such as a sale, exchange, or donation, sufficient to


\(^{37}\) *Id.* See also *Hill v. Richey*, 59 So.2d 434, 440 (1952) (“What the court means by ‘enclosures’, as that term is used in the numerous cases found in the jurisprudence, is that the land actually, physically, and corporeally possessed by one as owner must be established with certainty, whether by natural or by artificial marks; that is, *that they must be sufficient to give definite notice to the public and all the world of the character and extent of the possession, to identify fully the property possessed, and to fix with certainty the boundaries or limits thereof.*”

\(^{38}\) 365 So.2d 608, 615, *quoting from* Ernest Realty Co. V. Hunter Co., 179 So. 460 (1938).
transfer ownership or another real right. The act must be written, valid in form, and filed for registry in the conveyance records of the parish in which the immovable is situated.” 39 Also like the determination of acquisitive prescription, “one may have constructive possession by virtue of a defective title.” 40 However, unlike in the determination of acquisitive prescription, “one may have constructive possession regardless” of whether the possessor is possessing pursuant to the title in good or bad faith. 41 In other words, the possessor does not have to have the subjective belief that the title, pursuant to which he is possessing, is valid. The question of good or bad faith does not arise in the context of a possessory action. 42 Additionally, it should be noted that what “is relevant to show extent of possession in a case in which both parties possess in good faith under just title are the individual deeds under which the parties claim to possess.” 43 In the case from which this quotation was taken, one of the possessors attempted to limit the other’s constructive possession by introducing into evidence prior deeds of the other possessor’s ancestor in title, which did not include the disputed property in the case. The Court said such evidence was irrelevant to the determination because you look only to the deed under which the possessor took possession.

Once one has established corporeal possession over an immovable, whether by strict corporeal or by constructive possession preceded by corporeal possession, that “possession is retained by the intent

39 La. Civ. Code art. 3483; see also Comment (b) of La. Civ. Code art. 3426, “One who possesses by virtue of a title, that is, an act sufficient to transfer ownership, possesses within the limits of his title.”

40 Comment (b) of La. Civ. Code art. 3426, citing Marks v. Collier, 43 So.2d 16 (1949).

41 Comment (b) of La. Civ. Code art. 3426.

42 However, there are cases such as Mire v. Crowe, 439 So.2d 517, 521, which incorrectly states that “Louisiana law of possession and the jurisprudence interpreting it also provide that a person who possesses property in good faith under a deed translative of ownership is considered to possess to the extent of his title, provided that he has corporeally possessed part of the property described in the deed.” This proposition was corrected by professor Yiannopoulous in his comment (b) to La. Civ. Code art. 3426.

43 Pitre v. Tenneco, 385 So.2d 840, 847 (La.App. 1 Cir. 1980).
to possess as owner even if the possessor ceases to possess corporeally.\textsuperscript{44} This kind of possession is defined as “civil possession.” Once corporeal possession is established, “even if the possessor no longer exercises physical acts over the thing, he nevertheless may be considered to be in possession.”\textsuperscript{45} However, as was stated by the court in \textit{Hill v. Richey}\textsuperscript{46}, although active acts of possession are not required, the possessor must leave some physical remnants evidencing his intention to possess:

If A has been in physical possession of a tract of land and then leaves the land, but leaves evidence of intention to keep it as his own, he will be deemed to be still in possession until somebody else takes actual possession but his attributed [meaning civil] possession ceases in the face of actual possession.

The intent to retain possession as owner established by civil possession “is presumed unless there is clear proof of a contrary intention.”\textsuperscript{47} “Thus, one who ceases to cultivate a tract of land nevertheless is presumed to have the intention to retain possession and retains it in fact.”\textsuperscript{48} Code of Civil Procedure Article 3660 states that “[a] person is in possession of immovable property or of a real right therein, within the intendment of the articles of this Chapter, when he has the corporeal possession thereof, or civil possession thereof preceded by corporeal possession by him or his ancestors in title, and possessed for himself, whether in good or bad faith, or even as a usurper.”

Based on the above discussion, once one exercises the proper corporeal possession over a portion of the immovable property pursuant to a ‘title’, constructive possession allows the extent of that possession to extend to the limits of the property described in the title.\textsuperscript{49} Thereafter, civil possession works so as to allow that

\textsuperscript{44} La. Civ. Code art. 3431.
\textsuperscript{45} Comment (b) to La. Civ. Code art. 3431.
\textsuperscript{46} 59 So.2d 434, 439 (La. 1952).
\textsuperscript{47} La. Civ. Code art. 3432.
\textsuperscript{48} Comment (b) to La. Civ. Code art. 3432.
\textsuperscript{49} Also, remember that even without title one’s possession will extend to within visible boundaries.
possessor to continue possessing the property without the exercise of any further act of possession—as long as there remain some physical remnants of his possession. However, constructive and civil possession do not have these effects if the possessor is disturbed by a third person’s corporeal possession. Based on these rules there are three different ways a possessor can acquire and maintain his possession of immovable property for the length of time required to acquire the right to possess or for application of acquisition prescription: 1) Strict corporeal possession over the entire tract at issue—or whatever portion of the tract that is claimed; 2) Corporeal possession over a portion and constructive possession of the whole—maintaining that constructive possession by continuing to exercise corporeal possession over certain portions thereof; or 3) Corporeal possession over a portion of the immovable, extend that possession to the limits of his title through the application of constructive possession, and thereafter fail to actively exercise corporeal possession, yet retain the possession of the whole through the application of civil possession. These rules lessen the burden substantially on individuals exercising possession over large rural tracts of land and allow them to more reasonably acquire the right to possess or to support a claim of ownership by application of acquisitive prescription.

C. Acquiring the Right to Possess.

With the above rules in place, the next question is whether the right to possess has been established by exercising possession “quietly and without interruption for more than a year immediately prior to the disturbance, unless evicted by force or fraud.”\textsuperscript{50} This requirement has two different questions that must be answered. The first is whether the possessor established the right to possess at some time prior to that possession being disturbed; and the second is whether that right to possess has been lost. For the sake of clarity, I will discuss in this section only the issues and requirements for establishing and acquiring the right to possess. The following section will discuss how that right can be lost, which is the most interesting discussion in this paper.

“A person acquires the right to possess immovable property by possessing the property quietly and without interruption for more than a year.”51 This jurisprudential restatement of the rule for establishing the right to possess is more effective than the rule set forth in Code Civil Procedure Article 3658(2) which states that the possessor must have exercised possession of the immovable property “quietly and without interruption for more than a year immediately prior to the disturbance.” Article 3658(2)’s wording makes one trying to win a possessory action focus on the “year immediately prior to the disturbance.” However, the rule would be better stated if it stated that “a person acquires the right to possess immovable property by possessing the property quietly and without interruption for more than a year at some point in time prior to the disturbance and that he has not lost that right prior to the institution of the possessory action.” The year immediately preceding the disturbance is usually not the focus of the court’s determination in a battle over possession.

Additionally, one should not focus solely on the acts of possession for the year preceding the filing of the possessory action. The Court in Mire v. Crowe discussed this issue:

Once it is established that a person has possessed property, as required by law, quietly and without interruption for more than a year, he has proven his right to possess. There is no need to show he acquired this right in the year immediately preceding suit, but only that he obtained the right at one time and that he has not lost it prior to the disturbance.52

The only relevance that the year preceding the filing of the possessory action has is that the suit must be filed “within a year of the disturbance”53 The year preceding the filing of the suit is not even mentioned—the phrase only means that one will lose the right to bring a possessory action if it is not brought within a year after the disturbance in possession has occurred.54

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51 Mire v. Crowe, 439 So.2d 517, 520-21.
52 Id. at 522.
54 The term “disturbance” is being used loosely at this point in the discussion for the sake of simplicity. The particular meaning of the term, and the implication
were reviewed), the “more than a year” period usually occurs long before the occurrence of the disturbance for which the possessory action is being brought. In fact, as will be explained below, the earlier one establishes the more than one year period of possession the better.

Accordingly, the question one must ask to determine if the right to possess has been acquired is whether or not the possessor, or his ancestors in title, have acquired the right to possess by exercising the right kind of corporeal possession, combined with constructive and/or civil possession, for more than a year at some point in time prior to the occurrence of the disturbance.

V. LOSING THE RIGHT TO POSSESS

There are many questions and issues that arise in the context of determining whether the right to possess has been lost. Initially, the use of certain terminology in the codes and the cases must be explained because the terms themselves take on special meaning and are not mere descriptions of certain occurrences. Second, as was similar for acquiring the right to possess, losing the right to possess is different from losing possession, and the loss of possession is different from a mere disturbance of possession. Sound confusing? Well it’s really not. Hopefully the explanations below will supply some clarity.

A. Explanation of the terms “Disturbance”, “Eviction” and “Interruption”.

Once one has established the right to possess, there are a number of things that could occur on the property that may or may not give rise to the need to file a possessory action; and that may or may not give rise to the possibility of losing one’s right to possess, all of which depend on the severity and the duration of the disturbance in possession. The first thing that could occur is that one’s possession could be disturbed by a ‘disturbance’. Code of Civil Procedure Article 3659 states the following with respect to disturbances:

of the different levels of the disturbances, will be discussed in detail in Section V(A) below.
Disturbances of possession which give rise to the possessory action are of two kinds: disturbance in fact and disturbance in law. A disturbance in fact is an eviction, or any other physical act which prevents the possessor of immovable property or of a real right therein from enjoying his possession quietly, or which throws any obstacle in the way of that enjoyment. A disturbance in law is the execution, recordation, registry, or continuing existence of record of any instrument which asserts or implies a right of ownership or to the possession of immovable property or of a real right therein, or any claim or pretension of ownership or right to the possession thereof except in an action or proceeding, adversely to the possessor of such property or right.

For the purposes of this paper the focus will be on disturbances in fact rather than disturbances in law, because one cannot lose one’s right to possession due to the existence of a disturbance in law. There must be some kind of disturbance in fact on the property being possessed in order to lose the right to possess. From this point on the use of the term ‘disturbance’ will apply and refer to ‘disturbances in fact’.

As stated above in Article 3659, a disturbance can either be an eviction or it can be “any other physical act which prevents the possessor ... from enjoying his possession quietly, or which throws any obstacle in the way of that enjoyment.” The definition of a possessory action is an action “brought by the possessor of immovable property or of a real right therein to be maintained in his possession of the property or enjoyment of the right when he has been disturbed, or to be restored to the possession or enjoyment thereof when he has been evicted.”\footnote{La. Code Civ. Proc. art. 3655.}

\footnote{See La. Civ. Code art. 3432 and Comment C to La. Civ. Code 3433 (Abandonment must be demonstrated by ‘clear proof’ and is ‘predicated on a manifestation of intent to abandon, which may be established in the light of objective criteria).} Civil Code Article 3434 states that the right to possession is lost “upon abandonment”\footnote{La. Code Civ. Proc. art. 3655.} of possession,” or “[i]n the case of eviction, the right to possess is lost if the possessor does not recover possession within a year of the eviction.” In order for a possessor to lose his possession, the disturbances of his possession must amount to an
eviction, and in order for him to lose his right to possess, that eviction must have extended for more than a year without the possessor exercising any acts of possession of his own. Whether a disturbance is a mere disturbance or whether that disturbance is strong and long enough to amount to an eviction is usually not very clear and is difficult to answer. The amount of disturbances required to amount to an eviction will be discussed in the following section.

However, even when a disturbance does not amount to an eviction and possession is not lost, a possessory action can be asserted to recognize that one has been disturbed, that the possessor wishes to retain his possession and that he is entitled to damages caused by the disturbance. In cases such as this, these minor disturbances many times are insufficient to support a claim by the disturber that his disturbances have amounted to an eviction and that he has usurped the possessor’s right to possess. The minor disturbances looked at collectively, could however, amount to an eviction which could support a claim that the possessor’s right to possess has been lost if the eviction was allowed to continue for more than a year without either filing a possessory action or conducting acts of possession himself.

When minor disturbances (as opposed to an eviction) occur in one’s possession, the possessor continues to possess the immovable. The minor disturbances create only an hindrance to that possession usually in the form of a transitory trespass of some sort. In such a case, the individual inflicting the minor disturbances will not gain the right to possess within the year following the disturbance because he is not exercising the requisite amount of corporeal possession to amount to an eviction. In such situations, the possessor will not lose his right to possess if he fails to file a possessory action in reaction to the minor disturbance.

There is a consequence, however, to failing to bring a possessory action within a year following the disturbance. If he has suffered damages as a result of the disturbance, then a possessory action to claim such damages will be lost. Otherwise, the possessor who has been disturbed may just choose to let his right to bring a possessory action lapse following the one year period after the
disturbance.\textsuperscript{57} These issues are explained by the Court in \textit{Mire v. Crowe}:\textsuperscript{58}

Crowe may also have conducted several disturbances, each of which would have entitled Mire to bring a possessory action, as Crowe hunted and fished on the disputed tract through the years. These isolated acts were insufficient to dispossess Mire.

Accordingly, if the minor trespasses of Crowe (hunting and fishing) were committed prior to the year preceding the filing of the possessory action, Mire’s right to collect any money for any damages caused by those trespasses were lost. Mire did not bring his possessory action until Crowe confronted him and told him he did not have the right to construct something on the disputed piece of land. The Court held that prior to that time Mire was not aware of Crowe’s challenge to his possession because Crowe’s trespasses were too weak and transitory in nature to amount to an eviction of Mire. So even though Crowe had been conducting acts of possession (hunting and fishing) on the disputed land for over a year, he had not attained the right to possess because they were too transitory to cause an eviction of Mire.

A possessory action can also consist of an action to recognize that one has been evicted from his possession and that the possessor wishes to be restored to his possession or enjoyment of his immovable. In this kind of possessory action the possessor’s right to possess is squarely at issue and if the possessor fails to bring this kind of possessory action within a year after the occurrence of the disturbances (amounting to an eviction), his right to possess the property will be lost. The differences between possessory actions brought because of mere disturbances and those brought because

\textsuperscript{57} Additionally, the injunctive remedy offered to a possessor in La. Code Civ. Proc. art. 3663 demonstrates the difference between a possessory action based on a disturbance and one based on an eviction. When one has been evicted rather than disturbed, meaning that his possession has been terminated by another taking possession of his immovable, La. Code Civ. Proc. art. 3663 allows “a plaintiff in a possessory action, during the pendency thereof,” to get an injunction against the evictor so as to “protect or restore possession of immovable property or of a real right therein.”

\textsuperscript{58} 439 So.2d 517, 523.
of an eviction were further explained by the Court in *Mire v. Crowe*:

A question often arises as to what type of activity by an adverse party will sufficiently *interrupt* a person’s right to possess so as to usurp his possession and strip him of his right upon passage of more than a year’s time. Not every disturbance is strong or long enough to interrupt another’s right to possess. Disturbances which do not interrupt another person’s right to possess may be challenged in court and the disturber cast for appropriate damages and other appropriate relief. But such minor disturbances will be insufficient, even if unchallenged within a year’s time, to strip the right to possess from the person who presently has that right.  

As there are particular meanings and definitions ascribed to the words ‘disturbance’ and ‘eviction’, so is the case for the word ‘interruption’. Civil Code Article 3434(2) states that “[w]hen the right to possess is lost, possession is interrupted.” The Code of Civil Procedure also utilizes this term in article 3658(2), stating that in order for a possessor to bring a possessor action the possessor must demonstrate that “[h]e and his ancestors in title had such possession quietly and without interruption for more than a year.”  

The term *interruption* is another way of stating that one has lost the right to possess, which in turn means that the possessor

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59 *Id.* at 522.

60 The La. Supreme Court in *Liner*, in part, dealt with the issue of what “quietly and without interruption for more than a year” meant. At the time of the case, the term interruption had not been defined by La. CIV. CODE art. 3434 (codified in 1982) as meaning the loss of one’s right to possess. Because of this, the defendant in the case was able to argue that the plaintiff did not meet the requirements to bring a possessory action in article 3658(2) due to the fact that the defendant had been conducting acts of possession, or disturbances, on the property at issue. Based on these contentions the defendant argued that the plaintiff’s possession had not been “quietly and without interruption.” The defendant was reading the term ‘interruption’ as meaning the occurrence of any mere disturbance (as discussed above), no matter the duration of such disturbance and that the plaintiff could not bring a possessor action because his possession was not without interruption. The Court read into the article that the “interruption” of possession must have extended over a year in order for the possessor to lose his right to possession. The Court would not have to do this today because the term ‘interruption’ has been defined by La. CIV. CODE art. 3434, and this definition can now be read into Code of Civil Procedure art. 3658(2).
suffered disturbances sufficient to be evicted from his possession and that such eviction lasted for more than a year.

The next question that should be asked is how long and strong do the disturbances have to be in order to amount to an eviction. As usual, this is not the only question. Even if the disturbances amount to an eviction, the possessor does not lose his right to possess unless the eviction is allowed to continue for over a year without the possessor bringing a possessory action or without the possessor continuing to exercise acts of possession.

B. Losing the Right to Possess.

1. Possession Required to Cause One to Lose His Right to Possession.

The right to possess is lost “if the possessor does not recover possession within a year of the eviction.”61 Stated another way, “a person loses the right to possess immovable property either voluntarily, by transferring or abandoning the property; or involuntarily, by being evicted or expelled for more than a year or by acquiescing in a third party’s usurpation of the property for more than a year.”62

In interpreting the type and duration of disturbances required to amount to an eviction “Louisiana courts have indicated that for a disturbance to be sufficient to interrupt another’s right to possess, the disturbance must bring home to the actual possessor the realization that his dominion is being seriously challenged. In addition, the person with the right to possess must acquiesce in the interruption for more than a year without conducting any act of possession or without interfering with the usurper’s possession.”63 Based on this statement, there must be enough possession exercised by the usurper to bring home to the actual possessor the notion that his possession is being challenged, and the actual possessor must acquiesce in the usurper’s possession without

63 See id. see also Mire, 439 So.2d at 522, and Boneno v. Lasseigne, 534 So.2d 968, 972 (La.App. 5th Cir. 1988).
interfering in the usurper’s possession and without exercising any possession of his own for a period of more than a year.

The 5th Circuit in *Boneno v. Lasseigne* further expanded on the type of disturbances that must take place in order to amount to an eviction that could, if left unchallenged for more than a year, result in the loss of one’s possession:

We find that the interruption of possession sufficient to apprise a possessor of the challenge to his claim must encompass more than a brief, and thereafter invisible, act to bring the action into the realm of a ‘public’ possession. .. There must be something to evidence the eviction in order to ‘bring home’ this realization to the actual possessor. Actual knowledge by the possessor may not be necessary, but some substantial and readily observable physical signs that such action of eviction has taken place or is being conducted must be present in order to make the action public; there must be some easily visible evidence which could place a possessor ‘on notice’.

Based on this statement, it is clear the party who demonstrates that it was the first to acquire the right to possess is far more likely to attain a positive result from the possessory action. If one can prove to the court that he was the first party to begin possession and the first to acquire the right to possess, then the case will turn on whether the party without the right to possess has sufficiently interrupted (or evicted) the possessor from his possession.

Instead of the non-possessor’s possession being categorized as acts of possession—which brings a positive connotation—they will be viewed by the court as interruptions or disturbances—which brings a negative. In addition to the inherent difficulty one has in proving his own right to possess as a usurper when his acts of possession are labeled as interruptions or disturbances, is the fact that courts have set in place a more difficult standard for proving your disturbances amounted to an eviction. When one is trying to prove that he originally established possession, and thereafter the right to possess, there is no requirement that those acts of possession be sufficient enough to “bring home to the actual

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64 534 So.2d 968, 972-73.
possessor the realization that his dominion is being seriously challenged.”

To establish corporeal possession one must only conduct acts of use and enjoyment on the property, and if he has a title, constructive and civil possession take care of the rest. A usurper of possession does not get the benefit of the lesser standard or the application of constructive and civil possession. If the other party has established his possession by use of constructive and civil possession, that possession can only be usurped by acts of corporeal possession. If one can demonstrate to the court that he took possession at a point in time when the other party was not in the possession picture, there are no competing acts of possession. The original possessor is only competing with himself in trying to establish his possession rather than trying to show that his acts of possession were more substantial than the other so as to bring home the realization to the other party that his possession is being challenged. So, when you are deciding at what point in time you are going to begin telling your story of possession to the Court, if possible you should go back far enough in time to be the first to establish the right to possess, but you also should choose a period of time during which the acts of possession were sufficient enough to clearly establish that right. If you can tell the possession story in this fashion, it greatly increases your chances of getting a positive result from the possessory action. Additionally, for landmen and title lawyers, the ability to view past acts of possession in this context should allow them to be more effective in their respective roles.


However, as was noted above, there is yet another requirement that makes it difficult for a usurper of possession to establish and prove that the actual possessor has lost his right to possess. This requirement necessitates that the usurper establish that the person with the right to possess “acquiesce[d] in the interruption for more than a year without conducting any act of possession or without interfering with the usurper’s possession.” The Supreme Court in Liner v. LL&E stated the acquiescence requirement as follows: “If

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65 Pitre, 385 So.2d at 846.
the former possessor lets this period elapse without any act of enjoyment or any claim for return of possession, he is considered as having lost it.\textsuperscript{66} Accordingly, there are two different aspects to the acquiescence requirement.

The first is that the actual possessor has to acquiesce in the usurper’s acts of adverse possession—meaning that the actual possessor must allow the usurper to perform his disturbances without interference or obstruction. The second is that the actual possessor, for a period of more than a year during which the usurper’s disturbances are being conducted, must fail to perform “any act of enjoyment” on the immovable property. With respect to determining the right to possess large tracts of rural land, the acquiescence requirement, especially the second aspect of it, is very difficult for a usurper of possession to prove. This is so because an actual possessor of a large tract of land can continue to conduct acts of possession or enjoyment over the immovable property even while the usurper is conducting acts of his own. Due to the large area of land, the actual possessor could be conducting acts of enjoyment, such as granting seismic permits and conducting seismic operations or granting hunting leases and having the lessees hunt or trap on the property, all while the usurper is doing the same. But even if the usurper continues to perform his own disturbances, and the actual possessor continues to conduct his own as well, the actual possessor should not lose his right to possess even if these dueling acts of possession continue for more than a year. This leads to a big advantage for the first person (in time) to establish himself as the possessor and is clearly illustrated by the below case discussions.

3. Jurisprudence Discussing the Acquiescence Requirement and Demonstrating the Importance of being the First to Establish the Right to Possess.

In \textit{Liner}, the issue was possession of a certain track of marsh land in Terrebonne Parish. The plaintiff, Liner, was the first to exercise acts of possession on the disputed area. He and his ancestors trapped, grazed cattle on the property, built a camp on the property and occupied it during the trapping season, put stakes marking the

\textsuperscript{66} Liner v. Louisiana Land & Exploration Co., 319 So.2d at 774.
boundary of their perceived property line and burned the marsh land every year (replacing the boundary stakes). The property was the only source of income for Liner. These acts of possession began in 1909.

In 1952, LL & E had a survey performed and discovered Liner was possessing the disputed property which lied within its title to the property (Liner was not possessing pursuant to title, Liner’s possession was within natural enclosures). As a result, LL & E set two concrete markers and two iron pipes with LL & E signs along the 3000 feet of the disputed boundary. In 1958, LL & E marked its boundaries with a ditch, monuments and signs. Between 1958 and 1965 several seismograph crews crossed the disputed area with permission only from LL & E. In 1965, LL & E cleaned out the boundary ditch and in the process had removed some of the Liners’ boundary stakes that were placed there previously. Liner replaced these stakes.

In response to this evidence, Liner testified that when he found the ditch on his land he did not know who had dug it, saw no other activity, and that he “appropriated the ditch to himself, constructing bulkheads with planks at two points in the ditch.” These bulkheads were removed by LL & E in 1971 and were later replaced by the Liners. On August 2, 1971, LL & E again cleaned out the boundary ditch and removed Liner’s boundary stakes. By August 17, 1971, Liner had replaced the stakes. On September 24, 1971, LL & E removed the stakes once again. The stakes were replaced and once again removed on October 25, 1971, during which there was a confrontation with a member of Liner’s family. Finally, on February 3, 1972 an LL & E crew went out and removed Liner’s boundary markers once again. Liner then filed the possessory action on February 9, 1972.

Based on these facts, the Court held that Liner had established corporeal possession and also the right to possess the immovable property in question:

Oliver Liner’s possession of the disputed property satisfies all requirements for bringing the possessory action. The nature of the possession changed as the character of the marsh changed. From 1909, when the land was fenced and subject to some cultivation,
the land deteriorated until the north boundary fence was abandoned after 1920. But the fence lines were continually marked. The camp was occupied each year. Trapping continued over the entire claim. Other trappers recognized Liner’s boundaries. Hunters and fisherman used Liner’s property only with his permission. He burned the prairie marsh every year. He ran his heard of cattle on the land. Liner’s claim continued to have visible boundaries until Louisiana Land and Exploration Company destroyed them. His possession had been preserved by ‘external and public signs’ recognized by neighbors.67

Despite the many acts of possession exercised by LL & E, the Court still found that LL & E had not performed enough acts of possession to usurp Liner’s right to possess the immovable property in question. The reason for this is both the application of the higher standard to a usurper’s acts of possession and also due to the failure of LL & E to prove that Liner had acquiesced in LL & E’s acts of possession. Even though LL&E committed acts that would ordinarily lead to an eviction, Liner always responded by reasserting his possession well before a year passed. In holding that Liner did not lose his right to possession, the Court stated the following:

Nor did Louisiana Land and Exploration Company’s acts of possession dispossess Liner. The 1952 survey did not. The boundary ditch was appropriated by him to his own use. The water control structure on Bayou Dufrene extended only to the east bank of that stream, which Liner claimed as his westerly boundary. The seismic explorations, although an act of possession, did not serve to end the possession of Liner nor to evict him. The Tennessee Gas Transmission Company’s pipeline Ditch was dug with Liner’s consent—not against it . . . The acts of Louisiana Land and Exploration Company for the year preceding February 30, 1972 [preceding the filing of the possessory action] did constitute a disturbance of Liner’s possession. However, he was not evicted. He and his son continued to trap on the disputed property. He continued to replace the boundary stakes removed by Louisiana

67 Id. at 773.
Land and Exploration Company employees. *Liner was not expelled, nor did he acquiesce in a usurpation.*

It seems evident from the above discussion that the many acts of possession exercised by LL & E on the disputed property would have been enough to establish its possession and thereafter, its right to possession, had it been the first to establish its possession rather than being the usurper of Liner’s right to possess. Liner was the first to establish his right to possession and thus LL & E had to demonstrate its disturbances were sufficient to bring home to Liner the realization that his possession was being challenged. Also, LL & E had to show that Liner acquiesced in its disturbances and did not exercise any more acts of enjoyment or possession during the time in which LL & E was conducting its disturbances. Based on the substantial acts of possession exercised by LL & E, those acts of possession would likely have been enough to interrupt Liner’s right to possession had Liner acquiesced in those acts of possession. What saved Liner was that he did not acquiesce because he kept replacing the boundary stakes, he appropriated the boundary ditch for his own and continued to exercise acts of enjoyment/possession such as trapping on the property. Because of the nature of marsh land possession, Liner was able to continue to exercise acts of possession even though LL & E was also exercising its possession at the same time. The same can be true for large woodland tracts.

The importance of being the first to establish the right to possess is magnified when at a later period of time the two possessors are both exercising competing acts of possession. In *Liner*, essentially from 1952 to 1972, the acts of possession exercised by each party were equal, if not tipped in the favor of LL & E. However, because Liner was the first to establish his right to possess, Liner only had to continue exercising acts of possession during this time in order to continue in his possession.

When dealing with possession of large rural tracts of land, it is not uncommon for two parties to simultaneously conduct their own acts of possession, neither to the exclusion of the other. When this occurs, as it did in Liner, it is very important to be the first to...

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68 *Id.* at 776.
establish your right to possess. If Liner had not done this—and he had put on proof of his possession beginning at a point in time in which LL & E was also conducting its acts of possession—the acts of possession of the parties would have been on equal footing and the substantial acts of LL & E may have been enough to win the possessory action. At the very least, the acts of possession by the parties would have been looked at as competing acts of possession and the Court may have found that neither had established exclusive possession of the property and thus that neither had established a right to possess.\(^69\) This was the result in *Voisin v. Luke*\(^70\) where neither party established their right to possess prior to the other. Because of this the Court held the following:

Since the disputed property is all wet marsh and suited only for possession by trapping and hunting—these acts would ordinarily be sufficient to prove up a prescriptive title in the defendants ... Taken as a whole, the record reflects that both sides in this controversy have exercised acts of possession on the subject property for many years. We think it evident that neither party has ever exercised exclusive possession thereof for an extended period of time.\(^71\)

In *Pitre*, the Pitres constructed and lived in a house at the front of the property since 1904. From that time, the Pitre family hunted, trapped, crawfished on the property, occasionally swam across the drainage canal and walked the area of the disputed property. In the late 1940’s Pitre granted the Police Jury a right-of-way to dig a drainage ditch to the rear of the property, that they believed to be dug through their property. Tenneco attempted to prove that the drainage ditch was dug under a right-of-way granted by their ancestor in title. The Court did not take this into consideration because the Pitres “were never told that the drainage ditch had been dug under any right-of-way but theirs, and they always believed that they owned a certain amount of property to the rear

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\(^69\) If neither party establishes the right to possess, Louisiana Code of Civil Procedure Article 3654(2) states that each party in a petitory action has an equal burden of proving “better title” than the other.

\(^70\) 341 So.2d 6, 10 (La. App. 1 Cir. 1976).

\(^71\) *Id.*
of the drainage canal.”72 Following the digging of the drainage canal the Pitres conducted few if any activities on the disputed land except for occasionally trapping or swimming on the land.

Tenneco and its ancestors in title began trapping lease activity on the disputed property in 1925. In 1952 Tenneco’s ancestor in title granted a right-of-way for a natural gas pipeline across the disputed land. The Court surmised from the evidence in the record that the Pitres did not discover the pipeline until 1975. Tenneco conducted a survey in the late 1960’s of a large tract of land including the disputed tract and began putting up “No Trespassing” signs along the surveyed boundary. Pitre testified that the first signs he saw on his property were in 1973 and that he chopped them down and that they “were excellent tomato stakes.”

Beginning around 1951 Tenneco’s employees began patrolling the disputed property through the drainage canal and checking for trespassers and maintaining the boundary by erecting and replacing the “No Trespassing” signs. Tenneco and its ancestors in title began granting mineral leases in 1906 and grazing leases in 1952, however, there “was no showing at trial that any corporeal activity was conducted in connection with the mineral or grazing leases.”73 Based on these facts the trial court found that Tenneco had acquired the right to possess the property. The trial court based its decision on the fact that it believed the Pitres’ title did not include the disputed property and in any case, the trial court stated that even if the Pitres had constructive possession, that “their possession was lost by Tenneco’s exercise of ‘complete dominion’ over the disputed land.”74

The First Circuit disagreed and found that the Pitres acquire the right to possess prior to the disturbances conducted by Tenneco.75

In holding that the Pitres did not lose the right to possess, the court stated the following and addressed why each of the many substantial acts of Tenneco were not enough to dispossess the Pitres (keep in mind when reading the fact that these same acts would have been sufficient to establish the right to possess had the

72 Pitre v. Tenneco Oil Co., 385 So.2d 840, 843 (La. App. 1 Cir. 1980).
73 Id at 844.
74 Id. at 845.
75 Id. at 847.
Court not found that the Pitres had established their right to possess before Tenneco or its ancestor in title):

Unquestionably, Tenneco committed a number of disturbances on the Pitres’ property, each of which would have entitled the Pitres to bring a possessory action. Tenneco’s surveying of the property in the late 1960’s and its patrols across the property through the drainage ditch amounted to disturbances in fact. But the surveying of boundaries and the marking of the boundary line were insufficient to interrupt the Pitres’ possession and usurp their right to possess. Our courts have held fairly consistently that surveying, and acts preparatory to it, are insufficient to interrupt another person’s possession. Tenneco’s patrol activities were “isolated acts of a transitory nature” which were insufficient to dispossess the Pitres. .. The erection of the “No Trespassing” signs beginning in 1973 was insufficient to dispossess the Pitres, since Loulan Pitre tore them down, indicating that he was not acquiescing in this interference ... By removing the “No Trespassing” signs and appropriating them to his own use, Pitre expressed his possession of the disputed property [citing to Liner v. LL & E]. The mere act of walking on the property and removing the signs was an act of corporeal possession.76

With respect to the construction of the pipeline, the Court stated that it was insufficient to interrupt the Pitres’ possession because “[t]he Pitres were not aware the pipeline had been constructed until the time this suit was filed, and they were only able to locate it by poking in the ground beyond the drainage ditch. The pipeline did not put the Pitres on notice that their possession was being seriously challenged because the pipeline was invisible.”77

Even more so than the Liner v. LL & E decision, one can see in the Pitre v. Tenneco decision the extremely beneficial result that comes with proving you acquired your right to possess prior to the period of time in which the other possessor began exercising its acts of possession, or rather its disturbances. The Pitres did so and thus the court looked at the many acts of possession of Tenneco as disturbances of the Pitres’ possession, rather than just acts of

76 Id. at 848.
77 Id. at 848.
possession exercised by Tenneco. Because of this, Tenneco’s acts of possession, while entirely enough to establish the right to possess, were not enough to bring home to the Pitres the fact that their possession was being challenged. The “isolated acts of a transitory nature” such as the surveying, patrolling, marking of boundaries, granting of leases, the construction of a natural gas pipeline, and the granting of the right-of-way for the digging of the drainage ditch would likely be held by any Louisiana court to be sufficient acts of possession to establish a right to possess. But since Tenneco was cast as a usurper, rather than an actual possessor, and because the acts of possession were looked at as disturbances, the acts of possession were not looked at in a vacuum, but rather they had to be sufficient to bring home the possession challenge to the Pitres. And when looked at in that light, the court found the acts of possession by Tenneco were insufficient.

Finally, with respect to the construction of the pipeline, that act of possession would normally be enough to contribute or establish one’s right to possess as an actual possessor, but it was not enough to usurp Pitres’ possession because they did not have notice or knowledge of its existence. When a possessor is not competing with another possessor who has already established his right to possess, his acts of possession do not have to give notice to anyone in particular. And even though they have to be public, as noted above, Louisiana courts apply a very low standard of public possession with respect to the possession of large tracts of rural land. Pitre v. Tenneco demonstrates the difficulty of meeting the usurper’s standard of possession and shows how difficult it is for a usurper to conduct acts of possession on large tracts of rural land so as to bring home to the actual possessor the realization that his possession is being challenged.

VI. ACTS OF COPOREAL POSSESSION FOR DIFFERENT TYPES OF LAND

A. Marsh Land

Liner v. Louisiana Land and Exploration Company and Pitre v. Tenneco, discussed at length above, demonstrate many of the kinds
of particular acts of possession that a court will look to in determining whether marsh land has been possessed.

Additionally, *Theriot v. La Terre* was also a case involving disputed marsh land, but in this case the Theriots (who brought the possessory action) did not have a deed transitive of title. As a result, they had to establish their inch-by-inch possession through acts of corporeal possession and within natural or artificial enclosures. The only proof the Theriots offered at trial as demonstrations of their physical possession were the vestiges of an old fence, occasional trapping, and farming a small area of the entire disputed tract. Although there were remnants of the once-existing fence, the Theriots offered nothing to establish exactly where these posts were, when they were erected, whether they were ever maintained, what they enclosed, or any pertinent indications of possession.

With respect to the Theriots’ claims of trapping on the disputed property, they failed to establish with any certainty where these trapping activities took place, or whether any trapping leases they granted even covered the disputed tract. Also, farming two corner acres of the entire twenty-acre disputed tract, and then abandoning it for over ten years can hardly be argued to “bring home” to La Terre that their possession of the subject property was being seriously challenged.

La Terre, on the other hand, had just title which covered the disputed tracts. This eliminated the need to demonstrate inch-by-inch possession through enclosures. Additionally, they traversed the entirety of the land in a marsh buggy when conducting a 1958 survey, and set concrete corner monuments along with “No Trespassing” signs every 330 feet along the La Terre boundaries, with double-signs at the corners. The fact that La Terre used a marsh buggy is significant because it left tracks, making its presence known to anyone who was on the property. On top of that, they dug ditches inside their property line, granted various

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78 Theriot v. La-Terre Co., 256 So.2d 710, 714 (La.App. 1 Cir. 1971).

79 Id. at 713.

80 Id at 714.
geological permits and mineral leases over the disputed tract. Mineral lessees detonated explosives on the property, and La Terre paid taxes on it. 81

The court concluded that through La Terre’s numerous acts of physical detention of the disputed property for many years, it had acquired the right to possess. Also, through Theriots’ failure to sufficiently establish their corporeal detention of the subject property through visible boundaries, they had failed to usurp La Terre’s right to possess. 82

Acts of Possession for Marsh Land

Pursuant to the reasoning and explanations set forth by the Louisiana courts in the preceding cases, we can draw a few conclusions with respect to possession of marsh land.

- Evidence of exclusive trapping by one party (or trapping conducted with that party’s permission) is a good start to establishing corporeal possession, since trapping is one of the few suitable uses for marsh land.
- Digging of drainage ditches may not necessarily operate as a visible artificial enclosure. Make sure it was done with a clear hostile notice to adverse possessors of the digger’s intent to possess as owner. Be certain that the ditch has not been appropriated for the adverse possessor’s own use.
- A good idea would be to post “No Trespassing” signs along the ditches or other artificial visible enclosures, to be certain the ditch isn’t misunderstood or appropriated by an adverse possessor.
- Conducting seismic explosions may not be sufficient by itself to put adverse possessors on notice that their possession and control of the land is being seriously challenged. Make sure the seismic explorations are made public (to whatever extent that is possible – post notices in newspapers, etc.).
- In order for vestiges of a fence to operate as strong evidence of corporeal possession, the possessor or a witness must be able to

81 Id at 714 - 715.
82 Id at 716.
establish when it was erected, who erected it, what area it initially enclosed, and if it was maintained after erected.

- Construction and use of a camp.
- Regular patrolling, with use of a marsh buggy being the most effective.
- Posting of signs along the boundaries with possessor’s name.
- Construction of a pipeline under the clear authority of one possessor to the exclusion of another.
- Placing of boundary stakes or monuments.
- Swimming and walking the area regularly.

B. Woodland

Woodland is typically suitable for more uses than marsh land, and as such the courts have consistently required relatively higher levels of physical detention to corporeally possess it.

*Hill v. Richey* was a Louisiana Supreme Court case that dealt with adverse possession of a certain strip of woodland between adjacent landowners.\(^83\) Both the Hills and the Richeys traced their title to a common ancestor. The Hills’ ancestors in title acquired their deed from a Mrs. Brian in 1898, while the Richeys’ ancestors in title obtained their deed from Brian in 1910.\(^84\)

The disturbance resulted when the Richeys sold timber to the Kellogg Lumber Group. Initially, the Richeys sold only the timber up to the Hill line. However, Kellogg Lumber subsequently had the land surveyed, which revealed that the Richeys’ property line was much further west than originally thought. So Kellogg went back in and cut all the standing timber up to the new line (Richey line). The Hills filed a possessory action immediately after timber within their property line was cut.\(^85\) Had the Hills corporeally possessed the subject property such that they had acquired the right to possess before Kellogg Lumber

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\(^{84}\) *Id.* at 408.

\(^{85}\) *Id* at 410.
removed the standing timber? The court examined the following facts to answer this question.

Plaintiff Hill testified at trial that there had been a fence along their alleged property line (Hill line) for over 60 years, and that he’d erected the fence now standing in the 1930s, and had maintained it over the years. In addition, they had surveyors emblazon marks on trees, and posted ‘no trespassing’ signs along the Hill property line. Since 1913, the Hills had cultivated crops, and grazed farm animals on the disputed tract up to the Hill line. They had also sold timber on the disputed tract several times over the years, once resulting in extensive operations lasting eight months. Further, they had been enjoying the land many years before the Richeys ever exercised any physical enjoyment over the disputed tract, or even considered it to be theirs.86

Not only did the Hills believe the original fence line to be their property boundary, but various other members of the community also corroborated their belief by testifying that they too considered it to be the Hills’ property line.

On the other hand, the Richeys never offered any evidence of physical corporeal possession on the disputed tract. In fact, up until Kellogg Lumber had the land surveyed immediately before the disturbance, the Richeys conceded they thought their property extended only up to the old Hill fence line.87

The court reasoned that the Hills’ construction of the fence, the marks they had emblazoned on the trees, and the ‘no trespassing’ signs along what they considered their property line was sufficient to operate as an artificial enclosure. These demonstrations gave clear and public notice that they possessed the property with an intent to own, and their artificial enclosures fixed the boundaries with certainty. If that weren’t enough, they had cultivated and raised livestock on the land in dispute for decades before the disturbance, and even their adverse possessors considered their property line to be the correct property line up until the disturbance. The Supreme Court found that the Hills had clearly

86 Id at 424.
87 Id at 410.
established their corporeal possession and had acquired the right to possess the subject property. Finally, since they filed their possessory action within a year of the removal of their timber by the Kelloggs, they had not lost the right to possess.88

Griffin v. Lago Espanol L.L.C. was a case also involving adverse possession of woodland, and dealt more with the possessor’s animus – or intent to possess the disputed property as owner.89 Mr. Griffin was lessee of a tract adjacent to the land in dispute. He lacked title to the adjacent or disputed tract, and never paid any taxes on either. The extent of his physical detention over the disputed tract was limited and consisted of riding three wheelers and keeping a few cows, horses and goats on the property. Although he maintained a fence around part of the disputed tract, there was no evidence as to who built it.

Defendant – Lago Espanol – leased the entirety of the disputed tract to a hunting club, and paid the property taxes every year. On numerous occasions club members confronted Griffin and advised him of the hunting lease, and Griffin never told any member (or other interested party) that he was owner of the disputed property (he admitted this at trial).90 Additionally, all surrounding neighbors testified that they never thought Griffin was the owner, and were aware that there was a hunting lease over the subject property.

If Griffin did intend to possess the disputed tract as owner, he never manifested this intention to anyone, which tainted his possession as clandestine. One who acknowledges he is not the owner of the thing cannot acquire it through acquisitive prescription. At best, Griffin was a precarious possessor. His possession was never sufficiently hostile or notorious to bring home to Lago Espanol that he was seriously challenging their possession as owner. Therefore Griffin never established corporeal possession nor the right to possess.91

88 Id at 414.
89 Griffin v. Lago Espanol, L.L.C., 808 So.2d 833, 838 (La.App. 1 Cir. 2002).
90 Id at 839.
91 Id at 841.
Norton v. Addie was a 1976 Supreme Court case involving a dispute over a common boundary, the subject of which was forty acres lying between the two competing property lines.\textsuperscript{92} The disturbance arose in 1974, when Addie filed a boundary action seeking judicial determination of the property line, and Norton responded by filing a possessory action.

Plaintiff Norton’s father purchased property in 1904 and erected a fence enclosing the disputed forty acres that same year. Norton replaced the fence in 1923 and constructed terraces up to the fence line to prevent soil erosion. A Mr. Larue leased the property including the disputed tract in 1968 and testified that at the time the fence was old but still functioned properly. More importantly, he testified that it was visible to the public. Additionally he, along with Norton’s brother, testified that they regularly checked and maintained the fence line up until 1974 when it was inexplicably destroyed. That same year, Norton replaced the fence.\textsuperscript{93}

On the other hand, Addie had superior title and the disputed land fell within its limits. Although he argued that he corporeally possessed the disputed tract through constructive possession, the court found that Addie had lost the right to possess as a result of the construction and maintenance of the fence by the Nortons since 1904. In one instance, Addie refused to remove timber from beyond Norton’s fenced in boundary, stating, “I don’t want nothin’ that ain’t mine.”\textsuperscript{94}

The court explained that the Nortons had exclusively grazed their cattle on the disputed tract since 1904, and also erected and maintained a fence along what they considered their property line (Norton line). By undertaking these actions the Nortons had manifested their physical detention and intent to possess the property as owners, which established their corporeal possession, and the right to possess after one year had lapsed.

\textsuperscript{92} Norton v. Addie, 337 So.2d 432, 434 (La. 1976).
\textsuperscript{93} \textit{Id} at 435.
\textsuperscript{94} \textit{Id} at 435.
Although Addie occasionally hunted on disputed property, he refused to cut timber from it and wouldn’t allow others to remove timber therefrom. The court interpreted this refusal as a demonstration of uncertainty as to whether the disputed land was his. The occasional hunting on the subject property was insufficient to usurp Norton’s right to possess. The court concluded that prior to the 1974 request for judicial boundary determination; Addie took no steps to evict or usurp possession from Norton, and ultimately found that Norton had acquired the right to possess. 95

**Acts of Possession for Woodland**

- Erecting and maintaining fences or “No Trespassing” signs along a possessor’s alleged boundary lines seems to be the safest way to give clear and public notice of a party’s intent to possess as owner.
- It’s vital that the possessor or a disinterest party can establish a date as to when the fence or signs were erected, and who erected them. Often times a fence or other artificial enclosure is present, but without evidence as to who constructed it, what it initially enclosed, or when it was built, courts are reluctant to attribute it to the possessor.
- If all that remains of the fence (or other artificial enclosure) is vestiges, it is important to have third parties testify that although the fences were in disrepair, they were still sufficiently visible to the public.
- If the fences are no longer functional, proof that the possessor maintained the land or grazed cattle up to the old fence line is solid evidence of corporeal possession.
- Even if the fence is presently not functional, proof that a possessor (or someone possessing in his name) used to regularly maintain it is solid evidence of corporeal possession.
- Hunting can be evidence of corporeal possession, but it should be done regularly by the possessor or by people hunting with his permission – like friends or lessees.
- If the hunting is only occasional, it won’t be sufficient to interrupt or establish possession.

95 Id. at 437.
It would also help if there are permanent constructions such as deer stands.
Construction of soil erosion terraces.
Grazing of livestock.
Timber operations.
Regular patrolling of the boundaries.
Farming.
Blazing the trees along the boundaries.

C. Farmland

Historically, Louisiana courts have not delineated a significant difference in requirements to establishing corporeal possession over farmland as opposed to woodland. This makes sense, as the two types of land aren’t substantially different, and many times the property in dispute contains wooded and farmland.

The courts seem to look for evidence of regular farming and grazing livestock as a starting point for establishing corporeal possession, but just like woodland, erecting fences or other enclosures around the disputed tract is still the most compelling evidence.

The plaintiff in Kilchrist v. Conrad brought a possessory action after Conrad built a fence enclosing the 4-acre disputed tract. Since Kilchrist lacked title to the land, he needed to establish his corporeal possession inch-by-inch by corporeal possession within natural or artificial enclosures. The property in dispute was a small 4-acre strip that is enclosed on the east by a drainage canal that had been in existence for many years. Plaintiff claimed he owned the land and that the canal had always operated as his eastern property boundary. Conrad maintained that his title covers the disputed tract and that he and his ancestors in title had established corporeal possession and subsequently maintained it through civil possession.

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96 Kilchrist v. Conrad, 191 So.2d 705 (La. App. 3 Cir. 1966).
97 Id at 708.
The court began its analysis by explaining that the requisite possession necessary to prevail on a possessory action needs to be ‘actual, physical, open, public, unequivocal, continuous, uninterrupted and showing an intent to possess as owner.’ With respect to typical farmland, according to principles set forth in *Robertson v. Morgan* and *Johnson v. Merrit*, maintenance of cattle, or hay pasture, on a tract enclosed by a fence constitutes corporeal possession.

The Conrads held title to and farmed the disputed tract until 1935, when the bridge used to cross the drainage canal deteriorated. They did, however, maintain possession through civil possession. The court found that Conrad initially acquired the right to possess. However, after Kilchrist purchased his property in 1949, the 4-acre tract was planted with sugar cane, which Kilchrist immediately plowed and began using as part of his dairy pasture. He grazed between 60 and 70 cattle on the disputed tract for 6 years until 1955. Additionally, since 1949 Kilchrist maintained a pre-existing fence along the drainage canal enclosing the disputed tract, and subsequently planted and farmed it up until 1964. These activities, the fence in particular, gave notice to the public and Conrad that Kilchrist was possessing as owner.

Because Conrad never sufficiently re-exerted his physical dominion over the property between 1935 and 1964, the court found that he had lost the right to possess. Kilchrist had successfully usurped Conrad’s possession, and therefore the court maintained the possessory action.

In *Mire v. Crowe*, Mire purchased land from Crowe in 1968, and his title was limited to Lot 6. However, he subsequently began possessing a portion of Lot 7 – the disputed tract – which lay east of Lot 6. This eventually led to the disturbance, after which Mire filed his possessory action. Mire moved onto Lot 6 and began conducting various activities on the disputed tract for 14 years.

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98 116 So.2d 141 (La.App. 1 Cir 1959).
99 131 So.2d 562 (La.App. 2d. Cir. 1961).
100 *Id* at 565.
101 *Id* at 566.
102 439 So.2d 517 (La.App. 1 Cir. 1983).
had the property surveyed and erected two new fences, each along
the northern and southern boundaries of Lot 7. The eastern
boundary of the disputed tract was Langston Bayou. After
essentially enclosing the disputed tract through artificial and
natural enclosures, he cleared the land and built a barn.
Additionally, he farmed the land, grazed cattle and raised hogs on
the disputed tract. In the more wooded areas he walked and hunted
regularly.103

Crowe had previously possessed the disputed property but ceased
all physical detention of it from 1968 until 1981. Between that time
period the court found that Mire had in fact acquired the right to
possess. 104 The next issue the court examined was whether Crowe
had regained corporeal possession of the disputed tract by usurping
Mire’s possession. Crowe consistently crossed the disputed tract to
get to his camp, but without Mire’s consent. He hunted and fished
on the disputed tract for years, but the court found these acts to be
occasional and transitory – insufficient in severity to bring home to
Mire that his dominion and control of the subject property was
being seriously challenged.105

Finally, in 1981 Crowe told Mire’s lessee to stop constructing an
improvement on the disputed tract, and Mire filed his possessory
action shortly thereafter. The First Circuit concluded that Mire had
established his corporeal possession and acquired the right to
possess after one year, and that Crowe failed to usurp his
possession. Id.

In the *Chevron v. Landry* case, the disputed tract was an island
situated between two branches of Bayou Boidore. 106 The
procedural posture of the case was that Chevron filed a concursus
proceeding to determine to which party it owed mineral royalties.
With respect to the dispute as to whom the land belonged, it was
the Landrys and the Chuzts who both claimed ownership.

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103 *Id.* at 523.
104 *Id.*
105 *Id.*
Neither party had clear title to the island in dispute, so the court began its analysis under La. C.C.P. Art. 3654 by examining who would be entitled to the possession of the immovable property in a possessory action.

Landry’s Acts of Possession

Landry moved onto the property in 1940, cleared the land, and immediately began farming and grazing cattle. Being uniquely situated between two bayou branches, the disputed tract was suitable only for farming and grazing cattle, which is exactly how Landry utilized it for over 40 years. Additionally, he regularly maintained earthen dikes that provided access to the island, harvested pecans as a cash crop, removed the existing gate and erected a fence along what he believed to be his property line (Landry line). These fences prevented access to the island without his permission. His family hunted on the island, his son used it as a construction dumpsite, and he occasionally cut and sold firewood from the island.  

Chustz’ Acts of Possession

The Chustz have never alleged they exerted corporeal possession over the island. They relied solely on the limits of their title to maintain an interest in the disputed tract.

Landry restricted access to the island without Chutz’s permission, and utilized the tract for its only suitable purposes for over thirty years. The court found that Landry had unquestionably established corporeal possession over the island, and since the Chustz never exercised any physical dominion over the land, they never interrupted Landry’s possession. Ultimately the court concluded that Landry had acquired ownership of the island through thirty years acquisitive prescription.

In Richardson v. Hesser, the land in dispute was known as Louie’s Break, and was ordinarily covered with water for parts of

\[107\text{ Id. at 863.}\
\[108\text{ Id.}\

- 107 -
In 1979, the Hessers granted coal leases covering the disputed tract, which resulted in not only a disturbance in law, but also destroyed fences that the Richardsons had erected and maintained for years up until trial. This disturbance is what led Richardson to file his possessory action.\textsuperscript{110}

No discussion of either party acquiring any interest in the subject property through title is present in the case – the court jumped directly into its analysis of the possessory action.

For years the Richardsons lived in and maintained their home, raised cows, farmed the property and enclosed it within a fence. Again, the disputed property is a “break” that was covered by 3 – 4 feet of water during the majority of each year. When it was dry, however, Richardson grazed his cattle, regularly maintained and repaired the fences to prevent the cattle from escaping, and cut firewood on the land for many years. The court found these acts sufficient to establish corporeal possession, and after one year, to acquire the right to possess the break.\textsuperscript{111}

The Hessers never claimed to have established corporeal possession over the disputed land, and their execution of a coal lease over the break is simply a disturbance in law, insufficient to evict or interrupt Richardson’s possession. Since Richardson filed his possessory action within a year of the disturbance, the Second Circuit ultimately ruled in favor of the Richardsons and maintained their possessory action.\textsuperscript{112}

The First Circuit addressed the issue of whether a party had acted sufficiently to establish corporeal possession over rural land suitable for farming in \textit{Porrier v. Dale’s Dozer Service, Inc.}\textsuperscript{113}, Ms. Porrier claimed she had been in possession of the disputed tract since she acquired the land through a partition with Norman and Herman Porrier in 1961.

\textsuperscript{109} Richardson v. Hesser, (La.App. 2d Cir. 1987) 516 So.2d 1288, 1289.

\textsuperscript{110} Id.

\textsuperscript{111} Id. at 1292.

\textsuperscript{112} Id. at 1293.

\textsuperscript{113} 770 So.2d 531 (La.App. 1 Cir. 2000).
Her ancestor in title had enclosed the disputed tract with a fence, which remained until she granted the parish permission to widen Kramer Road. The court noted that the granting of permission was itself an act of possession. Even though the fence was replaced by Kramer Road, it also functioned as an enclosure which fixed the limits of her boundary with certainty. She grazed cattle over the strip, and her tenants made hay and continued to maintain corporeal detention of the disputed tract by cutting the grass and bush hogging it at least once a year. After that, she gave permission for the erection of commercial and campaign signs without any complaints from Mr. Aucoin – the adverse possessor who allegedly transferred the property to Dale’s Dozer Service in 1995.\textsuperscript{114}

Mr. Aucoin argued that by allowing part of her property to become overgrown, Ms. Porrier had abandoned her intent to possess as owner. The court found this isolated act insufficient to establish abandonment in this case. The only act of possession Aucoin exercised was in 1971 when he ordered construction of a house on the disputed tract to stop, but the court found this lone act was insufficient to interrupt Porrier’s corporeal possession – not severe enough to bring home that her possession and control of the land was being seriously challenged. As such, the First Circuit upheld Ms. Porrier’s possessory action.\textsuperscript{115}

Corporeal Possession of Farmland

Obviously, farming farmland will be a good starting point as evidence of corporeal possession. But just like woodland, Louisiana courts have held that enclosing the disputed land within natural or artificial boundaries, restricting access without the possessor’s permission, is the strongest evidence of corporeal possession. Courts have consistently set out the formula for successfully establishing corporeal possession over farmland as:

- Maintenance of cattle OR regular farming the majority of the tract + enclosure by a fence = corporeal possession

\begin{footnotes}
\item[114] Id. at 534.
\item[115] Id. at 538.
\end{footnotes}
If the sole act of corporeal possession is a fence, it needs to be maintained and functional to operate as strong evidence of corporeal possession.

The Louisiana courts’ findings with respect to corporeal possession of farmland can be summarized as follows:

- Farming farmland (obviously) is a good start to establishing corporeal possession, however:
  - At least a majority of the disputed tract should have been farmed regularly and consistently for a few seasons.
  - Farming only a small portion of the land, or farming inconsistently on isolated occasions will typically not be enough to establish corporeal possession without stronger evidence like enclosing the tract within a fence.
  - Allowing the land to overgrow, by itself, may not be enough for an adverse party to establish an intent to abandon.
  - Vestiges, or fences in disrepair can be strong evidence of corporeal possession only if accompanied by other acts that recognize the existence of the old line.
  - Cutting grass and conducting farming operations all the way up to the vestiges is good evidence
  - Recognition by adjacent landowners or adverse possessors of the vestiges as the correct property line is good evidence

- If the particular land in dispute is only suitable for grazing cattle or farming certain crops, and that’s what the possessor utilized it for whenever possible (the land could be submerged for parts of the year, for example), then he will almost undoubtedly establish corporeal possession.
- Granting permission for widening of a road.
- Erection of commercial signs.
- Cutting grass and bush-hogging.
- Erection of a barn or other permanent structure.

D. Rural Residential

In the case of *Hongo v. Carlton*, the disputed property was a six foot strip of land adjacent to defendant’s property to the
north. Carlton began to construct a new fence six feet north of where the recognized property line was for over thirty years, and Hongo immediately filed his possessory action.\textsuperscript{116}

The Hongos had lived on property adjacent to the Carltons for many years. Neighbors testified that a fence existed that divided the property for over thirty years, until in 1968 the Hongos gave the city a right of way to install a sewage line across their property. The line was installed 6 feet north of where the original fence line was, and the installation required the contractors to remove substantial parts of the original fence.\textsuperscript{117}

The court found that the Hongos had clearly established the right to possess the property up to the old fence line. The question then became had the Carltons usurped the Hongos possession of the disputed 6-foot strip?

One of the Carlton boys mowed and raked the disputed strip each summer after 1964, and another cleaned bottles and trash from there during the same time period. The Third Circuit simply stated that cleaning and mowing the grass a few feet beyond the long-recognized property line was insufficient to usurp the Hongos corporeal possession of the 6-foot strip. Erecting the fence would have been enough to interrupt their possession, but the Hongos filed their possessory action four months after this disturbance. Accordingly, the Court ruled in favor of the Hongos, and their possessory action was maintained.\textsuperscript{118}

\textit{Sterling v. Berthelot} was an interesting Fifth Circuit case which involved the restriction of access to a strip of land on one property that had habitually been used by the neighbor to reach the entrance to his home from the street.\textsuperscript{119} Two neighbors, Sterling and Berthelot, owned houses on adjacent property. Sterling’s house faced Jack Street, while Berthelot’s house faced Nutmeg Street. However, the only entrance to Sterling’s house faced Nutmeg

\textsuperscript{116} Hongo v. Carlton, 241 So.2d 34 (La.App. 3d Cir. 1970).
\textsuperscript{117} Id. at 35.
\textsuperscript{118} Id. at 37.
\textsuperscript{119} Sterling v. Berthelot, 839 So.2d 153, 156 (La.App. 5th Cir. 2003).
Street, and the car port could only be accessed via Nutmeg Street. Sterling’s sole access to Nutmeg Street was through a small strip of land (disputed tract) on Berthelot’s property.\(^{120}\)

The disputed strip was never enclosed by natural or artificial boundaries, and Sterling habitually crossed it to get to Nutmeg Street for 5 years without complaint from Berthelot. However, in 2000 Berthelot suddenly erected a fence preventing access to Nutmeg Street, and Sterling responded by timely filing his possessory action.

In evaluating Sterling’s possession, the court gave considerable weight to the fact that Sterling’s home was designed to be accessed through Nutmeg Street – there was no entrance to the house from Jack Street, plus Sterling had added a carport on the Nutmeg Street side. The court further relied on the fact that Sterling had habitually crossed Berthelot’s land for decades without disturbance to find that Sterling had acquired not only the right to possess the disputed strip, but ownership through thirty years acquisitive prescription.\(^{121}\)

**Corporeal Possession of Rural Residential Land**

Cases of possessory actions on residential property are typically rarer than those on more rural property, because when people are living in an area, recognizable boundaries are more readily established by maintenance and use of properties that are more or less “on top of each other.” However, the cases still give us a few valuable insights on what will or will not suffice to establish corporeal possession.

- Cutting grass and cleaning the yard a few feet past the recognized property line will not bring home to a neighbor that his possession of that small strip is being seriously challenged.
  - Notifying the neighbor through a medium that will excite his attention is a much better indicator of seriously challenging his possession.
- Write a letter, email him, text him, etc.
- Build a fence or post a “No Trespassing” sign

\(^{120}\) *Id.*

\(^{121}\) *Id.*
These serve as much stronger evidence of interruption of possession

Habitually crossing a neighbor’s land to access the nearest road for over a year could be sufficient to establish corporeal possession of the disputed tract, however:

- In the *Sterling* case the court gave great weight to the fact that Sterling’s house was designed to be accessed from a certain street, and she had also added a car port to access a certain street.
- If there was an alternate, reasonable means of accessing Jack Street, Sterling may not have prevailed on her possessory action.
- Crossing a neighbor’s property occasionally to reach a hunting or fishing camp will likely not be sufficient to establish corporeal possession.

**E. Land Surface covered with Waters of a Non-navigable River**

In *Chaney v. State Min. Board*, the disputed property was a land surface covered with waters of a non-navigable river.\(^{122}\) Two parties joined as plaintiffs and argued that each owned one side of the tract up to the mid-stream point (when it was covered with water). The disputed land was suitable for mining, fishing, recreational activities, swimming, clam-digging, and fishing. The plaintiffs did not have title to the subject property, but contended that they had acquired the right to possess it because when it was covered with water, they fished, swam, dug for clams, and even held a baptism in its shallow waters. Further, they posted “No Trespassing” signs along the bank and granted various leases over the land throughout the years.\(^{123}\)

The court explained that plaintiffs’ main problem was that their activities failed to give sufficient notice to the world that the center of the river was the dividing property line. Even if a third party saw the “No Trespassing” signs, it gave no indication that the

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\(^{122}\) *Chaney v. State Mineral Board*, 444 So.2d 105 (La. 1983).

\(^{123}\) *Id.* at 110.
property line was mid-stream. Essentially plaintiffs failed to prove with certainty the geographic extent of their use of the riverbed.  

Since the plaintiffs didn’t have title to the subject property, and because the disputed land was the bed of a non-navigable river (for most of the year), the plaintiffs failed to demonstrate publicly to the world their inch-by-inch possession through artificial or natural enclosures. The court concluded that they failed to acquire the right to possess the subject property.  

**Possession of land covered by waters of a non-navigable river**

Ascertaining which acts will be sufficient to establish corporeal possession over this type of land is a bit more complicated. What’s tricky about it is that most water bottoms are not susceptible of private ownership, but the bottom of a non-navigable river is. This is a relatively rare occurrence. Second, the types of activities for which these water bottoms are suited are simply not the kinds of activities that typically challenge an adverse party’s possession.

For strong evidence of corporeal possession:

- If the party doesn’t have title, he must demonstrate the extent of his corporeal detention through inch-by-inch possession
  - This can be more difficult in a water bottom, as most people wouldn’t erect a fence into the water.
  - If the person’s property line runs along the water bottom:
    - Erecting a fence around the dry portions and posting “No Trespassing” or “Private Property” signs in the water along the property line would seem to be strong evidence of corporeal possession
    - If the person’s property line does not run along the water bottom, then simply enclosing the property within a fence, or posting “No Trespassing” signs along the bank would be solid evidence of corporeal possession

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124 Id. at 111.
125 Id. at 112.
• If the party has title to the water bottom, constructive possession will be enough to establish corporeal possession
  o Neighbors’ testimony as to the long-recognized property line is also valuable when the possessor has title to the disputed tract, as it eliminates the need for enclosures

F. Alluvial Formations on Riparian Land

The disputed property in Hollenshead v. Dominick was comprised of alluvial formations that resulted when the Red River shifted from 1929 to 1945. The court conceded that title to the disputed tract lied with Hollenshead. In 2001 when Hollenshead posted his alleged property line according to a recent survey, Dominick filed his possessory action.

Dominick and his father moved onto Manilla Plantation, a large estate which included the area where the alluvion has formed, in 1929. Dominick grazed cattle, planted rye grass, hunted, and fished the property up to the river for years, and continued to farm and monitor access to it up until trial. More importantly, in 1950 he had the land fenced in up to where the river lied after it changed course, to keep the cattle from grazing in the nearby cotton fields. In the ten years preceding the Hollenshead disturbance, Andrew Dominick testified that he planted cotton, corn and soybeans on the disputed alluvial tract.

The court relied on all the acts by Dominick and his family to conclude that they had clearly established the right to possess the disputed alluvial tract.

Other than the 2001 posting of his alleged property line, Hollenshead undertook no acts of corporeal detention over the disputed tract. His main argument was that the river’s sudden shift was an avulsive act, rather than one of alluvion or accretion, and that under C.C. Art. 502 his ownership pursuant to his title was properly maintained. The court called this argument completely

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126 Hollenshead v. Dominick, 9 So.3d 1051, 1052 (La.App. 2d Cir. 2009).
127 Id. at 1054.
128 Id. at 1057.
misplaced, and pointed out that the only principles relevant to a possessory action were whether a party established corporeal possession at some point, and maintained it for at least one year prior to the disturbance.\textsuperscript{129}

Unfortunately for Hollenshead, after he posted his property line, Dominick immediately timely filed his possessory action. The court ultimately maintained Dominick’s possessory action and recognized his right to possess the disputed tract. \textit{Id}.

\textbf{Possession of Alluvion or Accretion}

As the court pointed out, alluvion or accretion should be treated the same as any other type of property. Whether a party has established corporeal possession doesn’t depend on its alluvial nature, but on whatever the resulting alluvial formation is suitable for. If its marsh land, the necessary characteristics for corporeally possessing marsh land should be taken into consideration, and so forth.

\textsuperscript{129} \textit{Id}.