

Instructor's Notes

For

Louisiana Civil Law

Certified by the Louisiana Real Estate Commission R.L. Ponthier, Ph.D., Ed.D., CDEI, DREI Director ©2017

Louisiana Civil Law – I

PROPERTY

- I. Classifications of Property (**Things**); In Louisiana, property means *things*. The term is also used in reference to the relationship that exists between people and property. Property, or things, can fall into several classifications that are not mutually exclusive. That is, a thing can simultaneously fall into one or more of the following classifications
 - A. Corporeal Things things with a body
 - can be touched or felt (Example: a table, a dog)
 - animate or inanimate
 - B. Incorporeal Things things without a body
 - rights on things are incorporeal (Example: inheritance rights, servitudes, obligations)
 - C. Private Things owned by individuals or corporations
 - D. **Common** Things may not be owned by anyone (Example: air, the high seas)
 - E. **Public** Things things owned by the state (Example: running water, the territorial seas, the seashore)
 - F. Movable Things personal property, not real estate
 - G. Immovable Things real estate
- II. **Immovables** (Real Property); "real estate" is defined as including condominiums and leasehold interests, as well as any other interest in land with the exception of oil, gas, and other mineral rights, and whether the real estate is situated in Louisiana or elsewhere
 - A. Tracts of land when their component parts are immovables
 - B. **Component parts** Objects that are considered to be real estate such as buildings, other construction permanently attached to the ground, standing timber, unharvested crops or ungathered fruits of trees are component parts when they belong to the owner of the ground. Buildings and standing timber are separate immovables when they belong to a person other than the landowner
 - 1. Improvements things such as buildings on the land are considered immovables
 - 2. **Component by incorporation** (as in building materials) things which are personal property (bricks) once converted into a building are considered immovable
 - 3. Component by attachment things attached to land or an immovable are considered immovable
 - 4. **Component by declaration and registry** things such as mobile homes or farm equipment by declaring them so, and registry in the conveyance office
 - 5. **Incorporeal immovables** rights and actions that apply to immovables (Example: predial servitudes and mineral servitudes)

III. Movables (Personal Property)

- A. Corporeal movables
 - 1. Things that normally move from place to place
 - 2. Building materials for construction
- B. **Incorporeal movables** rights obligations and actions that apply to a movable such as stocks, bonds and annuities
- C. Movables by anticipation unharvested crops and ungathered fruits that don't belong to the landowner

IV. Forms of Legal Descriptions

- A. Rectangular Survey System
 - 1. Louisiana Meridian west side of the state
 - 2. St. Helena Meridian east side of the state
 - 3. One baseline- along the toe of the "boot"
- B. Metes and bounds
- C. Lot and block (plat system)
- V. Measurements
 - A. Acre 43,560 square feet
 - B. Arpent 5/6 acre or .85 acre (0.84625 to be exact): also 192.24 feet as a linear measurement
 - C. Vara 33.33 inches
 - D. Toise 6.39 feet (Note: the exact equivalent for arpent, vara, and toise varies by locality)

RIGHTS IN IMMOVABLES

- I. **Full or Perfect Ownership** this is "fee simple" under common law. It is the "highest" form of ownership; that is, it has the maximum number of rights
 - A. Usus the right to the use of land
 - B. Fructus the right to derive income from the land; rent, royalties, etc.
 - C. **Abusus** the ownership of the land; the right to sell or dispose of the property. If a person has only the right of abusus they are referred to as the "naked owner"

II. Servitudes

- A. **Personal** a burden in the form of a person
 - 1. **Usufruct** right to use and fruits. Similar to a "life estate" in common law. May be created by law (usufruct of the surviving spouse) or by will or contract. Usufructs may be leased or encumbered but terminate according to the provisions of the usufruct
 - 2. **Habitation** right to inhabit; non-transferable (i.e. may not be encumbered, alienated, or let. May be terminated by the owner or per the agreement, and at death)
 - 3. Use right similar to "license;" utility easements, right of passage, hunting rights; transferable and inheritable unless prohibited
- B. **Predial** This servitude involves two pieces of land, and the right is granted to one by the other (the servient estate). The right passes with the estate; that is, it "runs with the land"
 - 1. Natural Created by the natural contour of the land. For example, the natural flow of water can't be blocked
 - 2. **Legal** Laws that require a property owner to keep his property in good repair so as not to harm the public; also, the right of party walls to extend over the property line
 - 3. Conventional Any servitude created by contract or agreement. For example, a shared driveway
 - 4. Prescriptive (acquisitive prescription)
 - a. Good faith 10 years with color of title
 - b. Bad faith 30 years without color of title
- III. Encroachments Unauthorized extensions over the property line
 - A. Trees
 - B. Fences
 - C. Driveways

IV. Building Restrictions

- A. Establishment of building restrictions By seller at the time of sale, as in subdivision regulations prohibiting or requiring property owners to comply with certain restrictions
- B. Enforcement of building restrictions
 - 1. Mandatory injunctions
 - 2. Prohibitory injunctions
- C. Exemption from building restrictions If property owner is in violation for 2 years without obligation, he is exempt from compliance
- D. Termination or amendment of building restrictions
 - 1. Agreement of all owners at any time
 - 2. Agreement of owners of 2/3 of land and 2/3 of owners after 10 years
 - 3. Agreement of owners of over 1/2 of land after 15 years
- V. **Homestead Right**: Protects the homestead from some creditors. Do not confuse with the homestead exemption from property taxes
 - A. \$25,000 exemption
 - B. Usually waived in the mortgage

Louisiana Civil Law – II

HOW OWNERSHIP IS HELD

- I. Sole Ownership title is vested in one person or entity. Called "ownership in severalty" under common law
 - A. Individual person one person owns the property outright. This could be a single (unmarried) person or a married person who owns property separately from their spouse
 - B. Corporations are essentially "artificial" people who may own property

II. Co-Ownership

- A. **Ownership in indivision** this is similar to "tenancy in common" under common law
 - 1. Each owner has an undivided interest or share
 - 2. The shares (percentages) may be equal or unequal
 - 3. Upon death of a co-owner, the interest passes to their heirs
 - 4. Each owner has a separate title to his percentage
 - 5. Each owner may exercise all rights of ownership over his share without the consent of the other owners
 - 6. **Partition**: When co-owners are unable to resolve a dispute, it may result in a court ordered dissolution of an ownership in indivision
 - a. **Partition in kind** the court orders the physical division of land according to each owner's share. They are then each sole owners
 - b. **Partition by licitation** the court orders the sale of property and divides the proceeds according to each owner's share of the ownership

B. Partnerships

- 1. **General partnerships-** if created in writing and filed with the Secretary of State, property is owned by the partnership; if not in writing, property is owned by the individual partners
- 2. Partnership in commendam (limited partnership)
 - a. General partners responsible for management; extensive liability
 - b. Limited partners can't be involved in management; limited liability
- C. **Community property regime** each party owns an undivided one half interest in the property, and may not encumber or alienate the property without the consent of the other party
 - 1. **Separate property** acquired before marriage or during marriage by gift or inheritance. Property belongs to one spouse exclusively, as long as it is not commingled with community property
 - Community property acquired during marriage through effort of either party. Things are presumed to be community property until one spouse can prove otherwise. Earnings from separate property are community property unless otherwise understood
 - 3. Marriage contracts can be used to modify the community/separate property relationship
 - a. **Pre-nuptial** executed prior to marriage; no court approval needed
 - b. **Post-nuptial** executed after marriage; court approval needed if Louisiana resident; no court approval needed for new resident if done within one year of establishing residency

HOW OWNERSHIP IS TRANSFERRED WITHOUT AID OF THE REAL ESTATE BROKER

I. Donations Inter Vivos - divestment while living

- A. Types of donations inter vivos
 - 1. **Gratuitous** a gift made without conditions being placed on the recipient. The donee is free to use the gift in any way he or she sees fit
 - 2. Remunerative a donation to repay for services; the donation must exceed value of the services
 - 3. **Onerous** a donation that is made with conditions that must be met. Failure to meet the conditions may result in return of the property
- II. Succession transmission of an estate to one's heirs
 - A. Successors those who inherit
 - B. Legatees testate successors
 - C. Heirs intestate successors
 - D. Testate succession (donation mortis causa)
 - 1. Kinds of wills
 - a. Notarial will typed, signed, notarized, witnessed, and dated
 - b. Olographic will handwritten by testator, dated, and signed

2. Forced heirship

- a. Forced heirs children or their descendants (legatees)
- b. Amount of decedent's estate that is forced (**legitime**) depends on the number of children or their descendants (legatees): One child 1/4 forced, Two or more children 1/2 forced
- c. Disposable portion portion not forced
- d. Usufruct of surviving spouse
- e. Qualification for forced heirship
 - (1) Under 24
 - (2) Physical or mental impairment no age limit if not independent
 - (3) Children may represent deceased parent as forced heir

E. Intestate succession - no will or testament

Order of Succession					
Community Property	Separate Property				
 To children or children's descendants, with usufruct to spouse 	 To children or children's descendants 				
2. To spouse, if there are no children or descendants of children	 To brothers and sisters with usufruct to parents, if parents are alive 				
 To brothers and sisters with usufruct to parents, if parents are alive 	 To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive 				
 To nieces and nephews, or their descendants, with usufruct to parents, if parents are alive 	 To parents if there are no brothers or sisters, nieces or nephews, or other descendants 				
5. To parents if there are no brothers or sisters, nieces or nephews, or other descendants	5. To spouse				
 To grandparents or other ascendants 	 To grandparents or other descendants 				
7. To nearest collateral relative	7. To nearest collateral relative				
8. To state of Louisiana	8. To state of Louisiana				

12 Reasons for Disinheritance		
1.	If the child has raised his or her hand to strike the parent, or if he or she has actually struck the parent, but a mere threat is not sufficient	
2.	If the child has been guilty of cruelty, a crime, or grievous injury towards a parent	
3.	If the child has attempted to take the life of either parent	
4.	If the child has accused the parent of any capital crime, except, however, that of high treason	
5.	If the child has refused sustenance to a parent, having means to afford it	
6.	If the child has neglected to take care of a parent who has become insane	
7.	If the child refused to ransom them, when detained in captivity	
3.	If the child used any act of violence or coercion to hinder a parent from making a will	
9.	If the child has refused to become security for a parent, having the means, in order to take him out of prison	
10.	If the son or daughter, being a minor, marries without the consent of his or her parents	
11.	If the child has been convicted of a felony for which the law provides that the punishment could be life imprisonment or death	
12.	If the child has known how to contact the parent, but has failed without just cause to communicate with the parent for a period of two years after attaining the age of majority, except when the child is on	

active duty in any of the military forces of the United

States.

III. Transfer of Land by Natural Causes

- A. Alluvion accretion formed on the bank of a river or stream
 - 1. For both navigable and non-navigable waterways
 - 2. Belongs to the owner of the bank
- B. Dereliction formed by water receding from a river or stream
 - 1. Owner of land at the edge of the bank left dry owns the dereliction
 - 2. This right does not extend to the shore of seas or lakes
- C. Sudden action of water ("avulsion" in common law)
 - 1. Land is suddenly carried away
 - 2. After one year, owner may claim if owner of the other bank has not taken possession

IV. Public Power Over Property

- A. Eminent domain
 - 1. Use of power
 - a. Expropriation authorized taking; highways
 - b. Appropriation utility servitudes
 - 2. Compensation all losses including actual damages and severance damages
- Quick taking
- B. Escheat property reverts to the state if no heirs can be found
- C. Taxation
- D. Police powers public health, zoning, construction codes, etc.

Louisiana Civil Law – III

OBLIGATIONS AND CONTRACTS

- I. Types of Contracts
 - A. Unilateral one party obligated
 - B. Bilateral both parties obligated
 - C. Onerous each party obtains an advantage in exchange for his obligation
 - D. Gratuitous one party obligated for the benefit of the other, but receives no return advantage
 - E. Commutative the performance of the obligation of each party is correlative to the performance of the other
 - F. Aleatory performance of either party depends on an uncertain event
 - G. Null no legal force
 - H. Relatively null can be rescinded by one party (minor, interdicts, etc.)
- II. Essential Elements Necessary to Form a Contract
 - A. Legal capacity no minors, unless emancipated or for necessaries of life
 - B. Mutual consent
 - 1. Offer
 - a. Must be reasonably certain
 - b. Must be given freely and voluntarily
 - c. Must be communicated by offeror to offeree
 - d. Types of offers
 - (1) Irrevocable any offer which specifies a time limit for acceptance is irrevocable during that time
 - (2) **Revocable** any offer not stated to be irrevocable may be withdrawn at any time prior to its acceptance
 - (3) Any offer expires by the death or incapacity of either party
 - 2. Acceptance
 - a. Defined as: agreement to the terms of the offer and a freely given expression of an intent to be bound by the exact terms of the resulting contract
 - b. Adding to, or altering the terms of the offer, constitutes a counteroffer
 - c. Effective acceptance of offer:
 - (1) Irrevocable offer when received by offeror
 - (2) Revocable offer when acceptance is transmitted by offeree, unless specified otherwise
 - d. Revocation of offer is effective when received by the offeree prior to acceptance
 - e. Acceptance of offer is vitiated (voided) by error, fraud, or duress
 - f. Counteroffer negates the original offer
 - C. Cause
 - 1. The reason why a party obligates himself
 - 2. This is not the same as consideration in common law states
- III. Remedies for Breach of Contract
 - A. Parties to contract can elect in their contract the remedies available to the aggrieved party in the event of a breach of contract
 - B. The available legal remedies include
 - 1. Specific performance
 - 2. Suit for damages
 - 3. Earnest money
 - a. If a deposit accompanies an offer, the contract must specify if it is to be considered earnest money
 - b. If the deposit is stated as not earnest money, or if the offer does not contain a deposit, then either party can demand specific performance or damages

I. Conveyance (Deed) - must be written

A. Authentic act

- 1. Executed and signed by each party and two witnesses before a notary as full proof
- 2. Party may affix his mark if he does not know how to sign
- 3. If a party is blind, there must be three witnesses

B. Act under private signature

- 1. Must be signed by the parties
- 2. Must be acknowledged to be full proof

II. Transfer of Title Effective

- A. Between parties upon proper execution
- B. Third parties from time of registry in conveyance records of parish in which property is located

III. Lesion Beyond Moiety

- A. Less than 50% of property value on date of sale
- B. One year to reclaim property

IV. Types of Sales (Conveyances)

A. Sale with warranty

- 1. Seller warrants buyer's peaceable possession
- 2. Seller warrants against any undeclared, non-apparent servitudes
- 3. Seller warrants that there are no latent or undisclosed vices (defects) in the thing sold redhibitory vices
- 4. Purchaser has the right to sue under redhibition to avoid the sale entirely, or to be compensated for the cost to correct the vice
- 5. Purchaser must prove that the defect pre-existed the sale, that the defect is substantial, was unknown, and was not apparent to him
- 6. Time limits for redhibition
 - a. If the seller did not know of the defect within 4 years from the date of delivery, or within one year of the date of his discovery, whichever occurs first
 - b. If the seller knew of the defect within one year from the date of discovery of the defect

B. Sale without warranty (quitclaim)

Louisiana Civil Law – IV

PRIVILEGES AND MORTGAGES

I. Liens (also called "privileges")

- A. Mechanic's lien, workman's lien, and materialman's lien
 - 1. Eligibility must provide material or services to property
 - 2. Time limit for filing 60 days after last work
- B. Vendor's lien the same as a "purchase money mortgage"
- C. Mortgage
 - 1. Conventional contracted mortgage, as in a home purchase
 - 2. Legal such as the tacit (implied) lien on property of a tutor to protect the interdicts he oversees
 - 3. Judicial results from a recorded monetary judgment (after acquired doctrine). Judgments will affect immovables they later acquire
 - 4. Transferring mortgages
 - a. Assumption buyer becomes liable if a specific release is obtained
 - b. "Subject to" buyer is not liable
 - 5. Foreclosure
 - a. Ordinary process lengthy process.
 - Briefly: a) Mortgagee (lender) files suit against mortgagor (borrower)
 - b) A trial is held and judgment issued
 - c) Judgment executed by the sheriff by seizing and selling the property
 - Executory process direct court order; short process. Mortgagor signs "confession of judgment" waving various rights and agreeing to executory process and property sold quickly. Generally not permitted in first mortgages.
 - c. Deficiency judgment results from insufficient proceeds from sale at foreclosure
 - (1) Sale with appraisement 2/3 of value required to get deficiency judgment
 - (2) Sale without appraisement no deficiency judgment allowed
 - d. Dation en paiement "giving in payment" to avoid foreclosure
 - 6. Usury charge a rate of interest in excess of that allowed by law
 - a. Owner financing
 - b. Penalty is forfeiture of the entire interest

II. Property Tax

- A. Types of property tax
 - 1. Ad valorem tax on immovable property based on the value of the real estate being taxed
 - 2. **Special assessment** tax levied according to the cost of an improvement, rather than the value of the property being taxed
- B. Calculations of property tax
 - 1. Assessed value all property taxes are based on a percentage of the actual value of the property
 - 2. Assessment rate:

Class % of Fair Market Value Used to Calculate	
1. Land	10%
2. Residential Improvements	10%
3. Electrical Co-ops	15%
4. Public Service Property	25%
5. All Other Property	15%

- 3. Millage rate taxes are calculated in mills; 1 mill = \$.001 10 mills = \$.010
- 4. **Homestead exemption** created in 1934 to encourage home ownership. It has increased steadily to present level of \$7,500. This means \$7,500 of assessed value of owner occupied property is exempt from parish taxes

NOTE: Except for Orleans parish, the homestead exemption does not apply to municipal taxes

Sample Tax Calculation

Given: Property with fair market value of \$250,000, residential property with homestead exemption, millage = 115 mills parish, 47 mills municipal

	Parish		Municipal
Market Value	\$250,000		\$250,000
Assessment Rate	X 10%	Х	10%
Assessed Value	\$25,000		\$25,000
Homestead Exemption Applied	(\$7,500)		\$ 0
Assessed Value for Taxes	\$17,500		\$25,000
Millage	X .115	Х	.047
Tax	\$2,012.50		\$1,175

TOTAL \$2,012.50 + \$1,175 = \$3,187.50

- C. Assessors- Each Parish has one assessor, except Orleans, which has seven.
- D. Tax Collection- In advance except for Orleans Parish, which is in arrears
- E. Tax Sale
 - 1. If property tax is not paid, property will be seized and sold for taxes
 - 2. There is a 3 year redemption period during which time the property can be redeemed for taxes
 - 3. Property tax lien primes (supersedes) all other liens

LEASES

I. Parties

- A. Lessor the one who gives the lease to the tenant, usually the property owner
- B. Lessee the tenant or recipient of the lease
- C. The lease
 - 1. Should be written, but not required in Louisiana
 - 2. Leases of any length can be oral, but oral leases require the burden of proof
 - 3. Leases are either "farm" or "non-farm"
 - a. Farm lease on a farm or agricultural property. In the absence of a lease, usually for one year
 - b. Non-farm lease on non-farm property. In the absence of a lease, usually month-to-month
 - 4. If a lease does not specify otherwise, the notice required to terminate the lease is as follows:
 - a. Month-to-month: 10 days
 - b. Year-to-year: 30 days

II. Lessor's Privilege

- A. Lessor has the right to seize certain items from the premises if rent is not paid can't take cooking utensils, bed linens, tools of the trade, clothing, musical instruments
- B. Property can be seized and sold even if it belongs to a third party
- C. Third party can recover his property through proper legal action before the judicial sale
- D. Lessor can seize property, even if removed from the premises, if he does so within 15 days of removal

III. Eviction

- A. Lessee can be expelled for non-payment of rent or violation of the terms of the lease
 - 1. If lessee did not waive his right of notice and lease does not provide otherwise, the notice to vacate is 5 days
 - 2. Special laws apply to eviction proceedings
- B. Lessor has a duty to minimize his losses if tenant leaves during term of lease by finding a new tenant as quickly as possible

- IV. Security Deposits
 - A. Lessor can require a security deposit to ensure against losses
 - B. Lessor is required to return security deposit within 30 days of lease termination
 - 1. Lessor can deduct for wear and tear to the property
 - 2. Lessor must give tenant itemized statement of any money not returned
 - 3. If tenant abandons the property without notice, the lessor may retain the deposit without itemizing expenses to the tenant
 - 4. Willful violation by not returning deposit allows tenant to recover the greater of actual damages, or \$200 plus attorney fees and court costs
 - 5. If property is sold, the deposit must be given to the new purchaser to hold for the tenant