

# Louisiana Law Review



A CIVIL LAW TO COMMON LAW DICTIONARY

*N. Stephan Kinsella*

Volume 54  
May 1994  
Number 5

# A Civil Law to Common Law Dictionary

N. Stephan Kinsella\*

Alone in the common-law ocean of these United States, Louisiana is an island of civil law. Louisiana's civil law is embodied in the Louisiana Civil Code, much of the text of which was derived from the Code of Napoleon of 1804.<sup>1</sup> American common-law lawyers often encounter Louisiana's civilian terms and concepts when dealing with lawsuits or transactions in Louisiana. No doubt they (and even Louisiana lawyers) are sometimes confused. How many common-law lawyers know of naked owners, usufructs, virile portions, vulgar substitutions, synallagmatic contracts, mystic testaments, antichresis, whimsical conditions, or lesion beyond moiety? Even many Louisiana-trained attorneys are unfamiliar with terms such as amicable compounder, jactitation, mutuum, and commodatum. Thus, a dictionary of these and other civil-law terms might come in handy to some practitioners.

In the main table below, various Louisiana civilian concepts are defined and correlated with common-law concepts where possible. The civilian terms defined in the table generally have some counterpart in common-law terminology, are interesting or unique Louisiana civilian concepts, are different uses of words than in the common law, or are simply used more often in Louisiana than in her sister states.

Some of the Louisiana expressions discussed herein are used commonly in states other than Louisiana. Similarly, common-law terminology is used increasingly in Louisiana as a result of the influence of Louisiana's forty-nine sister states, where civilian terminology should properly be used instead. For example, the common-law term *stare decisis* is often used erroneously in Louisiana instead of *jurisprudence constante*; the civilian concept "immovable property" has been used in Texas statutes.<sup>2</sup> Therefore, many of the civil-law and common-law concepts discussed herein are sometimes used in a state with the other legal system.

---

Copyright 1994, by LOUISIANA LAW REVIEW.

\* LL.M. (International Business Law) (1992), University of London—King's College London; J.D. (1991), Paul M. Hebert Law Center, Louisiana State University; M.S. Electrical Engineering (1990), B.S.E.E. (1987), Louisiana State University. The author is an associate in the intellectual property department of Schnader, Harrison, Segal & Lewis, in Philadelphia, and is licensed to practice in Louisiana and Texas, and before the U.S. Patent and Trademark Office.

The author would like to thank J. Lanier Yeates of Jackson & Walker, L.L.P., in Houston, and Professor Robert Pascal of L.S.U. for their helpful comments on an earlier draft of the article. Needless to say, any mistakes remain those of the author. For comments or suggestions for additional terms to be included in any later editions of this *Dictionary*, please write to: N. Stephan Kinsella, Schnader, Harrison, Segal & Lewis, 1600 Market Street, Suite 3600, Philadelphia, PA 19103-4252; internet: nskinsella@shsl.com.

## USAGE OF THE TABLES

Terms printed in SMALL CAPS are discussed in separate entries in the table. A cross-referenced term such as PROCEDURE—POSSESSORY ACTION refers to the concept "possessory action," which is discussed under the entry "Procedure." Terms defined are arranged alphabetically. In case of phrases, the first letter only of the phrase is capitalized. Where several related concepts are discussed together, they are placed alphabetically in the main table according to the spelling of the first term mentioned, and cross-references elsewhere in the table refer the reader to the appropriate location. For example, the table entry "Collateral relations, Propinquity of consanguinity" discusses both these concepts and is alphabetically sorted under the first term. The separate table entry "Propinquity of consanguinity" refers the reader back to the "Collateral relations" entry. However, related terms discussed under one entry are not discussed in alphabetical order; such related terms are listed in an order following that found in the relevant code article(s) or in an order more convenient to discussing the terms in turn.

Common-law terms are printed in **bold print** in the main table. A second table is provided that lists significant common-law terms mentioned in the first table and contains a correlation to the appropriate entry in the main table.

Civil-Law Concept	Definition
Absolute simulation	See SIMULATION.
Abuse of rights	"Stated in general terms, the doctrine of abuse of rights provides that 'fault' in the DELICTUAL sense may be imposed upon a party who has exercised a right in a manner that has caused injury to another." <sup>3</sup> At least one of four conditions "is required to invoke the doctrine: (1) the predominant motive for exercising the right is to cause harm; (2) no serious or legitimate motive exists for exercising the right; (3) the exercise of the right is against moral rules, good faith, or elementary fairness; [or] (4) the right is exercised for a purpose other than that for which it was granted." <sup>4</sup>
Accessory contract	See CONVENTIONAL OBLIGATION.
Accretion of renounced successions	The provision whereby the portion of an heir renouncing a succession goes to certain of his co-heirs. <sup>5</sup>

Civil-Law Concept	Definition
Acquisitive prescription	See LIBERATIVE PRESCRIPTION.
Aleatory contract	See CONVENTIONAL OBLIGATION.
Alimentary duties	Alimentary duties are the reciprocal obligations of children and ascendants to maintain each other. The obligation is limited to basic necessities. <sup>6</sup>
Alternative obligation	See OBLIGATION.
Amicable compounder	A type of <b>arbitrator</b> , "authorized to abate something of the strictness of the law in favor of natural equity." <sup>7</sup>
Apparent servitude	See SERVITUDES.
Arpent	An arpent is an area equalling approximately 0.85 acres. It can also refer to the length of the side of a square arpent, or 191.83 feet. <sup>8</sup>
Authentic act	A writing executed before a notary public or other authorized officer, in the presence of two witnesses, and signed by each party, by each witness, and by the notary public, all in the presence of each other. <sup>9</sup>
Bateau, Pirogue	A bateau is a small, flat-bottomed <b>boat</b> , typically made of aluminum and often used on bodies of water in Louisiana for purposes such as hunting. <sup>10</sup> A pirogue is similar to a <b>canoe</b> , used—and often raced—on swamps, rivers and bayous. <sup>11</sup>

Civil-Law Concept	Definition
Caducity	Caducity is a failure or lapse of a testamentary gift, for example, where a TESTAMENT is re-vo- ked by the subsequent birth of a LEGITIMATE child to the testator, unless the testator has made testamentary provision to the contrary or has made testamentary provision for such child. <sup>12</sup>
Cause	A CONVENTIONAL OBLIGATION (i.e., those aris- ing from <b>contracts</b> ) cannot exist without a lawful cause. Cause is the reason why a party obligates himself. <sup>13</sup> Cause is not the same thing as <b>consideration</b> . "The reason why a party binds himself need not be to obtain something in return or to secure an advantage for himself. An obligor may bind himself by a gratuitous contract, that is, he may obligate himself for the benefit of the other party with- out obtaining any advantage in return." <sup>14</sup>
Civil Fruits	See FRUITS.
Civil law, Civilian	Often, the term <b>civil law</b> refers to laws con- cerned with private rights and remedies, as opposed to criminal laws. In Louisiana, how- ever, "civil law" (or "civilian" or related ex- pressions) is usually used to distinguish a sys- tem of law based upon the Roman legal tradi- tion from a system based on the English com- mon law. A civil-law lawyer is also referred to as a civilian. <sup>15</sup>
Civil possession	Once possession of a THING is acquired, pos- session is retained by the intent to possess as owner even if the possessor ceases to possess CORPOREALLY. This concept is known as civil possession, and is similar in some respects to <b>constructive possession</b> . <sup>16</sup>

Civil-Law Concept	Definition
Collateral mortgage, Collateral mortgage note, Collateral mortgage package, Hand note	A collateral mortgage note is a note secured by a mortgage, itself called a collateral mortgage, where the note is pledged to secure a principal obligation. The principal obligation secured by the pledged collateral mortgage note is often evidenced by a note, called the hand note. The collateral mortgage note, the collateral mortgage, and any written pledge agreement are called the collateral mortgage package. See PARAPH; CONVENTIONAL OBLIGATION—PRINCIPAL CONTRACT.
Collateral relations, Propinquity of consanguinity	Collaterals are persons who descend from a common ancestor. <sup>17</sup> The number of degrees or generations separating two collaterals via a common ancestor is the propinquity of consanguinity. The number of degrees is equal to the number of generations between the heir and the common ancestor, plus the number of generations between the common ancestor and the deceased. <sup>18</sup>
Collation	Collation of goods is the return to the succession of property that an heir received in advance of his share, so that the property may be divided properly among heirs. Goods are collated because it is presumed that the testator intended equality among his descendants, so that the goods were given as an advance upon what the descendants could expect from the testator's succession. <sup>19</sup>
Commodatum, Mutuum	A commodatum, also called a <b>loan for use</b> , is an agreement by which a person delivers a thing to another, to use the thing and then to return it after he is done using it. A mutuum, or <b>loan for consumption</b> , is an agreement by which one person delivers to another a certain quantity of things that are consumed by their use, under the obligation by the borrower to return to the other as much of the same kind and quality. <sup>20</sup> See CONSUMABLES, NONCONSUMABLES.

Civil-Law Concept	Definition
Common, Public, and Private things	Common THINGS, similar to <b>communia</b> or <b>commons</b> , such as air and the high seas, may not be owned by anyone. Public things, similar to <b>public domain</b> , <b>public lands</b> , or <b>common property</b> , such as running waters and the seashore, are owned by the state in its capacity as a public person. Private things, a residuary category, are owned by individuals, other private persons, and by the state or its political subdivisions in their capacity as private persons, and are similar to <b>private property</b> . <sup>21</sup>
Commorientes	Commorientes is the phenomenon of several persons respectively entitled to inherit from one another dying simultaneously in the same event, such as a wreck, without any possibility of ascertaining who died first. Commorientes is also used to refer to the dying persons themselves. <sup>22</sup>
Community of acquets and gains, Community property	The community of acquets and gains is the community-property matrimonial regime in Louisiana, under which spouses are co-owners of certain property that either acquires during the marriage. <sup>23</sup>
Commutative contract	See CONVENTIONAL OBLIGATION.
Compensation	Compensation, which resembles <b>set-off</b> , takes place by operation of law when two persons owe to each other sums of money or quantities of fungible THINGS identical in kind, and extinguishes both obligations to the extent of the lesser amount. <sup>24</sup>

Civil-Law Concept	Definition
Component parts, Deimmobilization of component parts	Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered FRUITS of trees, are component parts of a tract of land if they belong to the owner of the ground. Component parts of immovables are immovables. <sup>25</sup> Component parts are similar to <b>fixtures</b> . <sup>26</sup> An owner may deimmobilize the component parts of an immovable, thereby giving them the status of distinct movables, by an act translatif of ownership and delivery to acquirers in good faith, or by detachment and removal of the component parts. <sup>27</sup>
Compromise	See TRANSACTION.
Concursus	See PROCEDURE.
Conditional obligation	See OBLIGATION.
Confusion	<p>A PREDIAL SERVITUDE is extinguished by confusion when the dominant and the servient estates are acquired in their entirety by the same person. Similar to <b>merger of title</b>.</p> <p>When the qualities of obligee and obligor are united in the same person, the obligation is extinguished by confusion. Similar to <b>merger of rights or extinguishment</b>.<sup>28</sup></p>
Conjunctive obligation	See OBLIGATION.
Consumables, Nonconsumables	<p>Consumable THINGS are those that cannot be used without being expended or consumed, or without their substance being changed, such as money, foodstuffs, and beverages.</p> <p>Nonconsumable things are those that may be enjoyed without alteration of their substance, although their substance may be diminished or deteriorated naturally by time or by the use to which they are applied, such as lands, houses, shares of stock, animals, furniture, and vehicles.<sup>29</sup> See COMMODATUM.</p>



Civil-Law Concept	Definition
<p>Conventional obligation; Synallagmatic, Onerous, Commutative, Aleatory, Principal and Accessory, and Nominate and Innominate contracts</p>	<p>Conventional obligations arise from <b>contracts</b>,<sup>30</sup> although contracts are themselves sometimes erroneously referred to as conventional obligations.<sup>31</sup></p> <p>A contract is a synallagmatic or <b>bilateral (or reciprocal) contract</b> when the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other.<sup>32</sup></p> <p>A contract is onerous when each of the parties obtains an advantage in exchange for his obligation. An exchange is the very essence of an onerous contract.<sup>33</sup> See CAUSE.</p> <p>A contract is commutative when the performance of the OBLIGATION of each party is correlative to the performance of the other. A distinction is made between correlative obligations, which make a contract bilateral, and correlative performances, which make the contract not only bilateral but also commutative.<sup>34</sup></p> <p>A contract is aleatory when the performance of either party's obligation, or the extent of the performance, depends on an uncertain event.<sup>35</sup> See SUSPENSIVE CONDITION.</p> <p>A contract is accessory when it is made to provide security, such as mortgage or pledge, for the performance of an obligation. If the secured obligation arises from a contract, that contract is the principal contract.<sup>36</sup></p> <p>Nominate contracts are those given a special designation, such as sale, lease, loan, or insurance. Innominate contracts are those with no special designation.<sup>37</sup></p>
<p>Conventional or voluntary servitude</p>	<p>See SERVITUDES.</p>

Civil-Law Concept	Definition
Coonass	Slang for the Acadians or Cajuns in Louisiana. While some consider the term to be derogatory, many Cajuns happily refer to themselves as coonasses. <sup>38</sup> Two of their favorite leisure activities are eating boiled crawfish and listening to zydeco music. <sup>39</sup> A common-law analog to coonass might be <b>redneck</b> , although redneck seems to have an especially offensive or derogatory meaning, while coonass does not. <sup>40</sup>
Co-owners	See INDIVISION.
Corporeals, Incorporeals	Corporeals are THINGS that have a body, whether animate or inanimate, and can be felt or touched. Incorporeals are things that have no body, but are comprehended by the understanding, such as the rights of inheritance, servitudes, obligations, and intellectual property rights. The corporeal/incorporeal distinction is similar to the distinction between <b>tangibles</b> and <b>intangibles</b> ; incorporeal property is also similar in some respects to a <b>chose in action</b> . <sup>41</sup>
Counter-letter	See SIMULATION.
Curatorship	See INTERDICTION.
Damages ex delicto	See DELICTS.
Dation en paiement	See GIVING IN PAYMENT.
Dative tutorship	See TUTORSHIP.
De cuius	<b>Decedent</b> . <sup>42</sup>
Declaration of destination	See SERVITUDES.

Civil-Law Concept	Definition
Declinatory exception, Dilatory exception, Peremptory exception	<p>The function of the declinatory exception is to decline the jurisdiction of the court, e.g., for <i>lis pendens</i>, improper venue, improper service of process, or lack of personal or subject matter jurisdiction. This exception does not tend to defeat the action.<sup>43</sup></p> <p>A dilatory exception retards the progress of a lawsuit, but does not tend to defeat the action. Examples include prematurity, vagueness of the petition, and nonjoinder of a necessary party.<sup>44</sup></p> <p>The function of a peremptory exception is to have the plaintiff's action declared legally nonexistent, or barred by effect of law. Hence, this exception tends to dismiss or defeat the action. Examples include PRESCRIPTION, <i>res judicata</i>, nonjoinder of an indispensable party, no cause of action, and no right of action.<sup>45</sup> Not to be confused with PEREMPTION.</p>
Deimmobilization of component parts	See COMPONENT PARTS.
Delicts, Damages ex delicto, Delictual	Equivalent to <b>torts</b> . Damages ex delicto, or delictual damages, are those damages arising from delicts. <sup>46</sup> See ABUSE OF RIGHTS.
Destination, servitude by	See SERVITUDES.
Devolutive appeal	See PROCEDURE.
Dilatory exception	See DECLINATORY EXCEPTION.
Disinherison	Process by which FORCED HEIRS may be deprived of their LEGITIME. Similar to <b>disinheritance</b> . <sup>47</sup> See UNWORTHINESS OF HEIRS.
Disposable portion	See LEGITIME.
Divisible obligation	See OBLIGATION.

Civil-Law Concept	Definition
Duty-risk analysis	Test used by Louisiana courts to determine whether there is negligence. Under this test, which collapses the common law's <b>duty</b> and <b>proximate cause</b> into essentially one question. The question asked is: "[D]oes this defendant owe a duty to protect this plaintiff from this risk which occurred in this manner?" <sup>48</sup>
Emphyteusis	The contract of rent of lands, or emphyteusis, is a contract by which one of the parties conveys to the other a tract of land, or any other IMMOVABLE property, and stipulates that the latter shall hold it as owner, but reserving to the former an annual rent of a certain sum of money, or of a certain quantity of FRUITS, which the other party (the emphyteuta) binds himself to pay him. <sup>49</sup>
Executory process, Executory proceeding	A proceeding used to effect the seizure and sale of property, without previous citation and judgment against the debtor, in order to enforce a mortgage or other PRIVILEGE. <sup>50</sup> When enforcing a mortgage by ordinary proceedings, the creditor must first obtain a judgment against the mortgagor and then execute the judgment. <sup>51</sup> Thus, executory proceedings are the most expeditious means of enforcing a mortgage. <sup>52</sup> See PARAPH.
Exposé des Motifs	A report or explanation of the motives or reasons for passing a given statute. <sup>53</sup>
Falcidian portion	See LEGITIME.

Civil-Law Concept	Definition
Fidei commissa, Fideicommissary Substitutions, Vulgar Substitutions, Instituted heir or legatee	<p>Fideicommissary substitutions were, before the French revolution, a devise whereby a grantor could transfer property to his grantee with the condition that the grantee would transfer the property to a third party upon the happening of a certain condition. This restriction on property transfers is known in the common law as the problem of <b>mortmain</b> or "<b>dead hand</b>" control, which the common law regulated via the <b>rule against perpetuities</b>. The Civil Code similarly bans fideicommissary substitutions. Substitutions that are prohibited are generally termed "substitutions." They are different from vulgar substitutions and are prohibited, except as permitted under laws relating to trusts.<sup>54</sup></p> <p>A vulgar substitution, which is allowed, is a direct substitution in which a testator provides for a substitute legatee, in the event that the first legatee, called the instituted heir or legatee, does not accept the legacy (or if the instituted heir predeceases the testator).<sup>55</sup></p>
Forced heirship	See LEGITIME.
Forced portion	See LEGITIME.
Fruits, Natural Fruits, Civil Fruits	Fruits are THINGS that are produced by or derived from another thing without diminution of its substance, and are either natural or civil fruits. Natural fruits are products of the earth or animals, and civil fruits are revenues derived from a thing by operation of law or by reason of a juridical act, such as <b>rentals, interest, and certain corporate distributions</b> . <sup>56</sup>
Giving in payment, or Dation en paiement	Act by which a debtor gives a THING to the creditor, who is willing to receive it, in payment of a sum which is due. Similar to <b>accord and satisfaction</b> . <sup>57</sup>
Habitation	See SERVITUDES.

Civil-Law Concept	Definition
Hand note	See COLLATERAL MORTGAGE.
Heritable obligation	See OBLIGATION.
Homologation	See PROCEDURE.
Hypothecary action, Hypotheca, Hypothec	A hypothecary action is instituted to enforce a mortgage, sometimes called a contract of hypotheca (or hypothec), even if the property has been sold by the mortgagor to a third party. <sup>58</sup> See PACT DE NON ALIENANDO.
Illegitimate children	See LEGITIMATE AND ILLEGITIMATE CHILDREN.
Immovables, Movables	Immovables are similar to <b>realty</b> or <b>real property</b> , and movables are similar to <b>personalty</b> or <b>personal property</b> . <sup>59</sup> Also called immovable and movable property. See COMPONENT PARTS; DEIMMOBILIZATION.
In Solido	See SOLIDARY LIABILITY—LIABILITY IN SOLIDO.
Incidental demand	See PROCEDURE.
Incorporeals	See CORPOREALS.
Indivisible obligation	See OBLIGATION.
Indivision, Ownership in indivision, Co-owners	Two or more persons may own the same <b>THING</b> in indivision, each having an undivided share. More frequently used common-law terms are <b>tenants in common</b> and <b>joint tenants</b> . <sup>60</sup>
Innominate contract	See CONVENTIONAL OBLIGATION.
Instituted heir or legatee	See FIDEI COMMISSA.
Interdiction, Curatorship	Similar to <b>commitment</b> of a habitually insane or imbecilic person, a judgment of interdiction appoints a curator and undercurator to care for the person and his estate. <sup>61</sup>
Interruption and Suspension of prescription	See LIBERATIVE PRESCRIPTION.

Civil-Law Concept	Definition
Jactitatory Action	Jactitation is a false claim repeated to the prejudice of another's right, similar to <b>slander of title</b> . The jactitatory action, now included with the POSSESSORY ACTION, is an action to remedy this defamation or disturbance of title. <sup>62</sup> See PROCEDURE—POSSESSORY ACTION.
Joint obligation	See OBLIGATION.
Juridical persons	See NATURAL PERSONS.
Jurisprudence constante	<p>"In Louisiana, courts are not bound by the doctrine of <i>stare decisis</i>, but there is a recognition in this State of the doctrine of <i>jurisprudence constante</i>. Unlike <i>stare decisis</i>, this latter doctrine does not contemplate adherence to a principle of law announced and applied on a single occasion in the past.</p> <p>"However, when, by repeated decisions in a long line of cases, a rule of law has been accepted and applied by the courts, these adjudications assume the dignity of <i>jurisprudence constante</i>; and the rule of law upon which they are based is entitled to great weight in subsequent decisions."<sup>63</sup></p> <p>Although similar to <b>stare decisis</b>, "The difference between <i>stare decisis</i> and <i>jurisprudence constante</i> 'is of such importance that it may be said to furnish the fundamental distinction between the English [i.e., common-law] and the Continental [i.e., civil-law] legal method.'"<sup>64</sup></p>
Legal servitude	See SERVITUDES.
Legal usufruct	See USUFRUCT.

Civil-Law Concept	Definition
Legitimate and Illegitimate children, Legitimation	<p>Children are either legitimate or illegitimate. Illegitimate children are those who are conceived and born out of marriage, who are not later legitimated.<sup>65</sup> Illegitimate children are legitimated, or made legitimate in certain cases, for example, by the subsequent marriage of their father and mother, whenever the parents have formally or informally acknowledged them as their children, either before or after the marriage.<sup>66</sup></p>
Legitime, Falcidian portion, Forced heirship, Disposable portion	<p>Forced heirs are descendants of the deceased who are so-called because, under the regime of forced heirship, they are entitled to a certain portion of their parents' estate, called the legal portion, forced portion, legitime, or legitimate portion. The disposable portion is the portion of an estate that a testator may freely dispose of, as it is not subject to the legitime.</p> <p>The falcidian portion is one-fourth of the testator's estate that, under Roman law, had to be reserved to the INSTITUTED HEIR. The purpose of the falcidian portion, which was abolished in Louisiana, was to protect the institutions of the family and its gods, rather than to benefit the testator's heirs directly, as in the regime of forced heirship.<sup>67</sup> See DIS-INHERISON; MARITAL PORTION.</p>
Lesion beyond moiety	<p>A seller can rescind a sale for lesion beyond moiety if he receives less than half the value of the THING sold.<sup>68</sup></p>
Liability in solido	<p>See SOLIDARY LIABILITY.</p>



Civil-Law Concept	Definition
<p>Liberative prescription, Acquisitive prescription, Prescription of nonuse, Interruption and Suspension of Prescription</p>	<p>Liberative prescription is a mode of barring actions as a result of inaction for a period of time. Similar to the <b>statute of limitations</b>. See PEREMPTION.</p> <p>Acquisitive prescription is a mode of acquiring ownership by possession for a period of time. Similar to acquiring title through adverse possession under the <b>statute of limitations</b>.</p> <p>Prescription of nonuse is a mode of extinction of a REAL RIGHT other than ownership as a result of failure to exercise the right for a period of time.<sup>69</sup></p> <p>Similar to <b>tolling of a statute of limitations</b>, prescription may be suspended in certain situations, for example, where prescription is suspended as between spouses during marriage.<sup>70</sup> If prescription is interrupted, the time that has run is not counted, and prescription begins to run anew from the last day of the interruption. For example, liberative prescription is interrupted when a lawsuit is filed in the proper court, and acquisitive prescription is interrupted when possession is lost.<sup>71</sup></p>
<p>Litigious right</p>	<p>A right is litigious whenever there exists a suit contesting the right. In another usage, litigious rights are those which cannot be exercised without undergoing a lawsuit. If a litigious right is sold, the person owing the correlative obligation or duty may be released by paying to the transferee the real price of the transfer, together with interest from its date.<sup>72</sup></p>
<p>Lump sale</p>	<p>See SALES.</p>
<p>Mandatory, Mandate, Procuration</p>	<p>A mandate or procuration is an act by which one person gives power to another, known as the mandatory or <b>agent</b>, to transact for him and in his name. Synonymous with <b>agency</b>.<sup>73</sup></p>

Civil-Law Concept	Definition
Marital portion	A portion of a deceased spouse's succession to which the surviving spouse is entitled. <sup>74</sup> See LEGITIME.
Minerals, Mineral servitude	<p>In American common law, the owner of land generally owns the minerals underneath it, if the mineral estate has not been severed. In Louisiana, the owner of land generally owns only the right to produce minerals underneath the land.<sup>75</sup></p> <p>Under American common law, the minerals may be severed from the surface, creating separate <b>surface</b> and <b>mineral estates</b>. In Louisiana, the landowner can convey the right to produce minerals to another, creating a mineral servitude. A principal difference is that the mineral servitude will be extinguished, through LIBERATIVE PRESCRIPTION, after ten years of nonuse, whereas a mineral estate is a perpetual estate in land.<sup>76</sup></p>
Moral damages	Moral damages are damages for nonpecuniary loss recoverable under a breached contract in certain situations. <sup>77</sup>
Movables	See IMMOVABLES.
Mutuum	See COMMODATUM.
Mystic or Sealed testament	See TESTAMENTS.
Naked owner	See USUFRUCT.
Natural fruits	See FRUITS.
Natural obligation	See OBLIGATIONS.
Natural persons, Juridical persons	Natural persons are human beings. Juridical persons are entities with legal personality, such as corporations or partnerships. (Louisiana treats partnerships as entities distinct from their partners, unlike some other states.) <sup>78</sup>
Ne Varietur	See PARAPH.

Civil-Law Concept	Definition
Negotiorum gestio, Negotiorum gestor	Negotiorum gestio is a type of spontaneous agency or interference by a person, called a negotiorum gestor, in the affairs of another, in his absence, from benevolence or friendship, and without authority. <sup>79</sup> See MANDATARY.
Nominate contract	See CONVENTIONAL OBLIGATION.
Non-alienation pact	See PACT DE NON ALIENANDO.
Nonapparent servitude	See SERVITUDES.
Nonconsumables	See CONSUMABLES.
Nuncupative or Open testament	See TESTAMENTS.
Objective novation	See SUBJECTIVE AND OBJECTIVE NOVATION.
Obligations: Natural obligation, Real obligation, Heritable and Strictly personal obligation, Conditional obligation, Several, Joint, and Solidary obligations, Conjunctive and Alternative obligations, Divisible and Indivisible obligations	<p>A natural obligation arises from circumstances in which the law implies a particular moral duty to render a performance. It may not be enforced by judicial action; however, whatever has been freely performed in compliance with a natural obligation may not be reclaimed, and a contract made for the performance of a natural obligation is ONEROUS. (See REPETITION.) An example of a natural obligation is an obligation that has been extinguished by PRESCRIPTION or discharged in bankruptcy. Similar to <b>moral consideration</b>.<sup>80</sup></p> <p>A real obligation is a duty correlative and incidental to a REAL RIGHT.<sup>81</sup></p> <p>An obligation is heritable when its performance may be enforced by a successor of the obligee or against a successor of the obligor. An obligation is strictly personal when its performance can be enforced only by the obligee, or only against the obligor.<sup>82</sup></p>

Civil-Law Concept	Definition
	<p>A conditional obligation is one dependent on an uncertain event. See RESOLUTORY AND SUSPENSIVE CONDITIONS.</p> <p>When there are multiple obligees and/or obligors, the obligation may be several, joint, or solidary. When each of different obligors owes a separate performance to one obligee, the obligation is several. When different obligors owe together just one performance to one obligee, but neither is bound for the whole, the obligation is joint for the obligors. An obligation is solidary for each of the obligees when it gives each obligee the right to demand the whole performance from the common obligor; similarly, an obligation may also be solidary for each of the the obligors.<sup>83</sup> See SOLIDARY LIABILITY; VIRILE SHARE OR PORTION.</p> <p>An obligation is conjunctive when it binds the obligor to multiple items of performance that may be separately rendered or enforced, in which case each item is the object of a separate obligation. An obligation is alternative when an obligor is bound to render only one of two or more items of performance.<sup>84</sup></p>
Oblique action	See REVOCATORY ACTION.
Olographic testament	See TESTAMENTS.
Onerous contract	See CONVENTIONAL OBLIGATION.
Open testament	See TESTAMENTS.
Ownership in indivision	See INDIVISION.

Civil-Law Concept	Definition
Pact de non alienando or Non-alienation pact	A clause in a mortgage giving the mortgagee the right to foreclose by EXECUTORY PROCESS directed solely against the mortgagor, and giving him the right to seize and sell the mortgaged property, regardless of any subsequent alienations. <sup>85</sup> An example is "The mortgagors hereby agree IN SOLIDO not to sell, alienate, deteriorate, or encumber said mortgaged property to the prejudice of this mortgage." <sup>86</sup> See HYPOTHECARY ACTION.
Pacte de preference	A right of preemption, equivalent to a <b>right of first refusal</b> . <sup>87</sup>
Paraph, Ne varietur	<p>A paraph is a signature by a notary on the evidence of an obligation, typically a COLLATERAL MORTGAGE NOTE, to identify the note with the COLLATERAL MORTGAGE securing the note.<sup>88</sup> The phrase "ne varietur," Latin for "it must not be altered," is traditionally used in the paraph. "Paraphing means that the notary signs the note with his official signature, thereby certifying to the note's genuineness. By paraphing the note 'ne varietur,' the notary binds and identifies the note with the act of mortgage."<sup>89</sup> Paraphing is no longer required for EXECUTORY PROCESS.<sup>90</sup></p> <p>The collateral mortgage will typically recite that the collateral mortgage note "has been paraphed 'Ne Varietur' for identification with this act . . . ." The paraph itself, appearing at the end of the collateral mortgage note, can read as follows:</p> <p style="text-align: center;">"Ne Varietur"</p> <p style="text-align: center;">For identification with an Act of Mortgage, dated the ____ day of __, 19__, passed before me, the undersigned Notary.</p>

Civil-Law Concept	Definition
Parish	<b>County.</b> <sup>91</sup>
Partition by licitation or by private sale, Partition in kind	A CO-OWNER of a THING owned in INDIVISION with another may demand partition of the thing. The court shall decree partition in kind when the thing is susceptible to such division, e.g., when lots are of nearly equal value. If the thing is not susceptible to partition in kind, the court will decree a partition by licitation or by private sale, and the proceeds are distributed to the CO-OWNERS. <sup>92</sup>
Partnership in commendam	A partnership in commendam is an equivalent to a <b>limited partnership.</b> <sup>93</sup>
Peremption	A period of time fixed by law for the existence of a right. Unlike LIBERATIVE PRESCRIPTION, which merely prevents the enforcement of a right by an action, peremption destroys the right itself. Also, unlike prescription, peremption may not be renounced, interrupted, or suspended. <sup>94</sup> See LIBERATIVE PRESCRIPTION.
Peremptory exception	See DECLINATORY EXCEPTION.
Personal servitude	See SERVITUDES.
Petitory action	See PROCEDURE.
Pirogue	See BATEAU.
Pledge, Pawn, Antichresis	A pledge is a contract by which a debtor gives something to his creditor as a security for his debt. The two kinds of pledge are pawn and antichresis. Pawn is the pledge of a MOVABLE THING, while antichresis is the pledge of an IMMOVABLE. <sup>95</sup> "Antichresis is probably limited to the pledge of land and other CORPOREAL IMMOVABLES." <sup>96</sup>
Possessory action	See PROCEDURE.
Potestative condition	See RESOLUTORY AND SUSPENSIVE CONDITIONS.

Civil-Law Concept	Definition
Precarious possession	Precarious possession is the exercise of possession over a <b>THING</b> with the permission of or on the behalf of the owner or possessor. <sup>97</sup>
Predial servitude	See <b>SERVITUDES</b> .
Prescription of nonuse	See <b>LIBERATIVE PRESCRIPTION</b> .
Principal contract	See <b>CONVENTIONAL OBLIGATION</b> .
Private things	See <b>COMMON, PUBLIC, AND PRIVATE THINGS</b> .
Privilege	A right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages. <sup>98</sup>
Procedure: Concursum, Incidental demand, Reconventional demand, Devolutive and Suspensive appeals, Homologation, Petitory action, Possessory action	<p>A concursus is equivalent to an <b>interpleader</b>.<sup>99</sup></p> <p>Incidental demands are reconvention, cross-claims, intervention, and the demand against third parties.<sup>100</sup> A reconventional demand is equivalent to a <b>counterclaim</b>.<sup>101</sup></p> <p>A suspensive appeal is one that suspends the effect or execution of an appealable order or judgment.<sup>102</sup> A devolutive appeal is one that does not suspend the effect of the judgment.<sup>103</sup></p> <p>A homologation is a confirmation or approval by a court, for example the confirmation and homologation of a sheriff's sale.<sup>104</sup></p> <p>A petitory action is one brought by a person who claims the ownership, but who is not in possession, of <b>IMMOVABLE PROPERTY</b> or of a <b>REAL RIGHT</b> therein, against another who is in possession or who claims the ownership thereof adversely, to obtain judgment recognizing the plaintiff's ownership.<sup>105</sup></p>

Civil-Law Concept	Definition
	The possessory action is one 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. <sup>106</sup> See JACTITATORY ACTION.
Proces verbal	A transcript of a hearing, such as a probate hearing, signed by a judge or clerk. <sup>107</sup>
Procuration	See MANDATARY.
Propinquity of consanguinity	See COLLATERAL RELATIONS.
Public things	See COMMON, PUBLIC, AND PRIVATE THINGS.
Real obligation	See OBLIGATION.
Real right	Real rights, as opposed to personal or obligatory rights, confer direct and immediate authority over a THING, whether MOVABLE or IMMOVABLE PROPERTY. "Real right" is sometimes erroneously associated solely with a right in immovable property. Examples include ownership, and personal and predial SERVITUDES. <sup>108</sup> See OBLIGATION—REAL OBLIGATION.
Reconduction of a lease	The reconduction of a lease is a continuation of an expired lease on the same clauses and conditions that it previously contained. <sup>109</sup>
Reconventional demand	See PROCEDURE.
Redactor, Redaction	A redactor is one who drafts a civil code or part thereof. The process of drafting a civil code is redaction. <sup>110</sup>



Civil-Law Concept	Definition
Redhibition, Redhibitory action, Redhibitory defect or vice	Redhibition is the avoidance of a sale on account of some vice or defect in the <b>THING</b> sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it had he known of the redhibitory vice or defect. Redhibition is sought in an action for redhibition or redhibitory action. <sup>111</sup>
Relative simulation	See <b>SIMULATION</b> .
Repetition	A demand or action for the restoration of money or a thing that was paid but that was not due. <sup>112</sup> Similar to <b>unjust enrichment</b> . <sup>113</sup> See <b>OBLIGATION—NATURAL OBLIGATION</b> .
Resolutive and Suspensive conditions, Whimsical condition, Potestative condition	<p>A condition is suspensive if the <b>CONDITIONAL OBLIGATION</b> may not be enforced until the uncertain event occurs and is similar in some ways to a <b>condition precedent</b>. See <b>CONVENTIONAL OBLIGATION—ALEATORY CONTRACT</b>.</p> <p>If the obligation may be immediately enforced but will come to an end when the uncertain event occurs, the condition is resolutive, similar in some respects to a <b>condition subsequent</b>.<sup>114</sup></p> <p>A suspensive condition that depends solely upon the whim of the obligor is a whimsical condition. This sort of conditional obligation is null. The expression "potestative condition," no longer in the Civil Code, meant a condition that makes an obligation depend on an event in the power of one of the parties to bring about or hinder.<sup>115</sup></p>

Civil-Law Concept	Definition
Respite	A respite is an act by which a debtor, who is unable to satisfy his debts at the moment, transacts with his creditors and obtains from them time or delay for the payment of the sums that he owes them. <sup>116</sup> See TRANSACTION.
Revocatory action, Oblique action	The revocatory action is the right of an obligee to annul an act of the obligor that causes or increases the obligor's insolvency. If an obligor causes or increases his insolvency by failing to exercise a right, the obligee may by the oblique action exercise the right himself, unless the right is STRICTLY PERSONAL to the obligor. <sup>117</sup> See OBLIGATIONS—STRICTLY PERSONAL OBLIGATION.
Rights of use	See SERVITUDES.
Sale	In Louisiana, "Land is not ' <b>conveyed</b> ' by deed but is sold. Sales of MOVABLES and IMMOVABLES are based on the same principles. One sells land by the same contract and in the same way—in terms of theory—as one sells an automobile." <sup>118</sup>
Sale of litigious rights	See LITIGIOUS RIGHT.
Sales: Sale of a hope, Sale of future thing, Sale by weight, count or measure, Lump sale, Sale per aversionem	<p>A sale of a hope is the sale of an uncertain hope, such as a fisher selling a haul of his net before throwing it.<sup>119</sup> A sale of a future thing is the sale of a thing to come, as of animals yet unborn.<sup>120</sup></p> <p>There may also be sales by weight, count, or measure, where goods, produce, or other objects are not sold in a lump, but by weight, by tale, or by measure. In this case, the sale is not perfected such that the risk of loss passes from the seller to the buyer until the things sold are weighed, counted, or measured.<sup>121</sup></p>

Civil-Law Concept	Definition
	<p>If, on the contrary, the goods, produce, or other objects have been sold in a lump, the sale is perfected even though the objects have not been weighed, counted, or measured yet.<sup>122</sup></p> <p>When property is seized and sold to satisfy a judgment, several items of a debtor's property that have been seized may be sold as a whole, or in globo, if a higher price may be obtained.<sup>123</sup></p> <p>A sale per aversionem is the sale of an immovable where it is designated by the adjoining tenements and sold from boundary to boundary, for a lump price.<sup>124</sup></p>
Sealed testament	See TESTAMENTS.
Servitude by destination	See SERVITUDES.
Servitudes, Legal servitudes, Predial servitudes, Personal servitudes, Habitation, Rights of use	<p>There are two kinds of servitudes: personal servitudes and predial servitudes.<sup>125</sup></p> <p>A personal servitude is a charge on a THING for the benefit of a person. There are three types: USUFRUCT, habitation, and rights of use.<sup>126</sup></p> <p>Habitation is the nontransferable REAL RIGHT of a NATURAL PERSON to dwell in the house of another.<sup>127</sup></p> <p>A right of use confers in favor of a person a specified use of an estate less than full enjoyment, such as a right of passage or of light and view, or fishing or hunting rights and the taking of certain FRUITS of products from an estate. Similar to the common law's <b>right of</b></p>

Civil-Law Concept	Definition
	<p><b>way, privilege, or easements in gross and profits in gross.</b><sup>128</sup></p> <p>Legal servitudes are limitations on ownership established by law for the benefit of the general public or particular persons, e.g. the obligation to keep one's building in repair so that it does not fall and cause damage to a neighbor or to a passer-by.<sup>129</sup></p> <p>A predial servitude is a charge on a servient estate for the benefit of a dominant estate. Similar to an <b>appurtenant easement.</b><sup>130</sup></p> <p>A conventional or voluntary servitude is a predial servitude which is established by an owner on his estate or acquired for its benefit.<sup>131</sup></p> <p>A predial servitude is either apparent or nonapparent. Apparent servitudes are those that are perceivable by exterior signs, works, or constructions, such as a roadway or a window in a common wall. A nonapparent servitude has no exterior sign of its existence, such as the prohibition of building on an estate or of building above a particular height.<sup>132</sup></p> <p>A predial servitude may also be acquired by destination. Destination of the owner is a relationship established between two estates owned by the same owner that would be a predial servitude if the estates belonged to different owners. When the two estates cease to belong to the same owner, unless there is express provision to the contrary, an apparent servitude comes into existence of right and a nonapparent servitude comes into existence if the owner has previously filed for registry a formal declaration establishing the destination.</p>

Civil-Law Concept	Definition
Several obligation	See OBLIGATIONS—SEVERAL, JOINT, AND SOLIDARY OBLIGATIONS.
Simulation, Absolute simulation, Relative simulation, Counter-letter	<p>A contract is a simulation when, by mutual agreement, it does not express the true intent of the parties. A simulation is absolute when the parties intend the contract to produce no effects between them. A simulation is relative when the parties intend that their contract shall produce effects between them, though different from those recited in their contract.</p> <p>If the true intent of the parties is expressed in a separate writing, that writing is a counter-letter.<sup>133</sup></p>
Solidary liability, Liability in solido	Solidary liability or liability in solido is similar to the common-law's <b>joint and several</b> liability. <sup>134</sup> See OBLIGATIONS—SEVERAL, JOINT, AND SOLIDARY OBLIGATIONS.
Solidary obligation	See OBLIGATIONS; SOLIDARY LIABILITY.
Stipulation pour autri	A stipulation in a contract that benefits a third person, called a <b>third party beneficiary</b> . <sup>135</sup>
Strictly personal obligation	See OBLIGATIONS.
Subjective and Objective novation	Objective novation takes place when a new performance is substituted for that previously owed, or a new CAUSE is substituted for that of the original OBLIGATION. Subjective novation occurs when a new obligor is substituted for a prior obligor who is discharged by the obligee. <sup>136</sup>
Substitutions	See FIDEI COMMISSA.
Suppletive law	Suppletive law is general background law that fills in gaps where, for example, a contract does not provide for a certain situation. <sup>137</sup>
Suspension and Interruption of prescription	See LIBERATIVE PRESCRIPTION.

Civil-Law Concept	Definition
Suspensive condition	See RESOLUTORY AND SUSPENSIVE CONDITIONS.
Suspensive appeal	See PROCEDURE.
Synallagmatic contract	See CONVENTIONAL OBLIGATION.
Testaments: Nuncupative or Open, Mystic or Sealed, and Olographic testaments	Testaments or <b>wills</b> in Louisiana may be nuncupative or open, mystic or sealed, or olographic. <sup>138</sup> Nuncupative testaments are oral wills declared or dictated by the testator in his last sickness. <sup>139</sup> The mystic (often called secret, closed, or sealed) testament is one which is put into a sealed envelope. <sup>140</sup> An olographic testament, similar to the common law's <b>holographic</b> will, is one in the testator's handwriting. <sup>141</sup>
Things	Things are divided into COMMON, PUBLIC, and PRIVATE; CORPOREALS and INCORPOREALS; and MOVABLES and IMMOVABLES. <sup>142</sup>
Transaction or Compromise	Equivalent to <b>settlement</b> of a lawsuit, a transaction or compromise is an agreement between persons who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent. <sup>143</sup> See RESPITE.
Tutorship, Tutor, Dative tutorship, Undertutor	A tutor is a person similar to a <b>guardian</b> of a child. A female tutor is sometimes called a tutrix. <sup>144</sup> A dative tutorship is one appointed by a judge. <sup>145</sup> An undertutor is also appointed in every tutorship. <sup>146</sup>
Undertutor	See TUTORSHIP.
Unworthiness of heirs	Heirs are called unworthy who, by the failure in some duty towards a person, have not deserved to inherit from him and are therefore deprived of his succession. <sup>147</sup> See DISINHERISON.

Civil-Law Concept	Definition
Usufruct, Legal usufruct, Naked ownership, Usufructuary	<p>Usufruct is a REAL RIGHT of limited duration on the property of another. It is similar to the common law's <b>life estate</b>, although the usufruct need not last for life.<sup>148</sup> Usufruct is one of the three sorts of PERSONAL SERVITUDES.<sup>149</sup> The owner of the usufruct, or usufructuary, is similar to a <b>life tenant</b>.<sup>150</sup></p> <p>A legal usufruct is one established by law in favor of a surviving spouse over the deceased spouse's share of the COMMUNITY PROPERTY that may be inherited by their descendants.<sup>151</sup></p> <p>The ownership of a THING burdened with a usufruct is the naked ownership, which is owned by the naked owner. Naked ownership is similar to a <b>reversion or estate in reversion</b>, the <b>residue</b> of a life estate.<sup>152</sup></p>
Virile share or portion	<p>A virile portion is the portion of an obligation for which each solidary obligor is liable.<sup>153</sup> As another example, a partner is bound only for his virile share—i.e., his partnership share—of the debts of the partnership (unlike other states, where each partner is liable for the whole debt of the partnership).<sup>154</sup> See OBLIGATIONS—SOLIDARY OBLIGATIONS.</p>
Vulgar Substitutions	See FIDEI COMMISSA.
Whimsical condition	See RESOLUTORY AND SUSPENSIVE CONDITIONS.

Cross-Correlation Table

Common-Law Term	Place Discussed in Civil-Law Table
Accord and satisfaction	Giving in Payment, or Dation en paiement
Acre	Arpent
Agent, Agency	Mandatary—Mandate

<b>Common-Law Term</b>	<b>Place Discussed in Civil-Law Table</b>
Appurtenant easement	Servitudes—Predial servitude
Arbitrator	Amicable compounder
Bilateral or Reciprocal Contract	Conventional obligation—Synallagmatic contract
Boat	Bateau
Canoe	Bateau—Pirogue
Chose in action	Corporeals—Incorporeals
Commitment	Interdiction
Commons, Common property, Communia	Common, Public, and Private things
Condition precedent, Condition subsequent	Resolatory and Suspensive conditions
Consideration	Cause
Constructive possession	Civil possession
Contract	Conventional obligation
Conveyance	Sale
Counterclaim	Procedure—Reconventional demand
County	Parish
“Dead hand” or mortmain control	Fidei commissa
Decedent	De cuius
Disinheritance	Disinherison
Easements in gross	Servitudes—Right of use
Entire or several contracts	Obligations—Conjunctive and Alternative obligations, Divisible and Indivisible obligations
Estate in reversion	Usufruct—Naked ownership
Extinguishment	Confusion



## ENDNOTES

1. See Code Napoleon (N. Stephan Kinsella ed., Claitor's Publishing Division 1994) (1827). For an excellent discussion of the Civil Code and its history in Louisiana, see Shael Herman, *The Louisiana Civil Code: A European Legacy for the United States* (1993), published by the Louisiana Bar Foundation (available for free upon request by calling (504) 561-1046). For a critical review of this book, see Professor Robert A. Pascal's book review, 54 La. L. Rev. 827 (1994). For a useful summary of the history of the legal systems of both Louisiana and Texas (as a representative common-law state), see Patrick H. Martin and J. Lanier Yeates, *Louisiana and Texas Oil & Gas Law: An Overview of the Differences*, 52 La. L. Rev. 769, 769-82 (1992). See also A.N. Yiannopoulos, *The Civil Codes of Louisiana*, Louisiana Civil Code xxv (A.N. Yiannopoulos ed., 1993). For a useful comparison of civil and common law, see W. H. Buckland, *Roman Law and Common Law* (F. H. Lawson 2d ed. 1952). Another useful source is found in John H. Crabb, *Glossary of the French Civil Code*, in *The French Civil Code* (as amended to July 1, 1976) (John H. Crabb trans., 1977). Louisiana's codal articles are sometimes reproduced verbatim in this *Dictionary*.

As mentioned in the text, the Code Napoleon was a source of the *text* of Louisiana's Civil Code. There has been considerable debate, however, concerning whether the *substantive* "source" of the Louisiana Digest of 1808, and thereafter the Civil Code, was French law or Spanish Law. See Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 45 Tul. L. Rev. 4 (1971); Joseph M. Sweeney, *Tournament of Scholars Over the Sources of the Civil Code of 1808*, 46 Tul. L. Rev. 585 (1972); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 Tul. L. Rev. 603 (1972); and Rodolfo Batiza, *Sources of the Civil Code of 1808, Facts and Speculation: A Rejoinder*, 46 Tul. L. Rev. 628 (1971). See also Herman, *supra* and Pascal, *Book Review, supra*. In this debate, Professor Pascal convincingly argues that "*the Digest of 1808, though written largely in words copied from, adapted from, or suggested by French language texts, was intended to, and does for the most part, reflect the substance of the Spanish law in force in Louisiana in 1808.*" Pascal, *Sources of the Digest of 1808, supra*, at 604.

2. Tex. Ins. Code Ann. art. 21.49, § 3(f) (Vernon Supp. 1994) provides: "Insurable property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein . . ." See also Tex. R. Civ. P. Ann. r. 695 (West 1994), entitled "No Receiver of Immovable Property Appointed Without Notice."

3. George M. Armstrong, Jr. & John C. LaMaster, *Retaliatory Eviction as Abuse of Rights: A Civilian Approach to Landlord-Tenant Disputes*, 47 La. L. Rev. 1, 15 (1986) (emphasis added). See also Julio Cuetó-Rúa, *Abuse of Rights*, 35 La. L. Rev. 965 (1975).

4. J.D. Morgan, *Recent Developments—Massachusetts Mutual Life Insurance Co. v. Nails: The Louisiana Abuse of Rights Doctrine*, 64 Tul. L. Rev. 1295, 1297 (1990).

5. La. Civ. Code arts. 1022-1031; Black's Law Dictionary 20 (6th ed. 1990) (defining "accretion") [hereinafter "Black's"].

6. La. Civ. Code art. 229; Black's, *supra* note 5, at 73 (defining "alimenta" as "In the civil law, aliments; things necessary to sustain life; means of support, including food . . . clothing . . . and habitation. . .").

7. La. Civ. Code art. 3110; Black's, *supra* note 5, at 82 (defining "amicable compounder"); *Darden v. Cox*, 240 La. 310, 123 So. 2d 68, 70 (1960); *Hotard v. City of New Orleans*, 213 La. 843, 35 So. 2d 752, 757 (1948); *Jung v. Gwin*, 176 La. 962, 147 So. 47, 49 (1933).

8. Black's, *supra* note 5, at 109 (defining "arpen," "arpent," "arpennus").

9. La. Civ. Code art. 1833; Black's, *supra* note 5, at 132 (defining "authentic act").

10. Pronounced BAT-toe. *Rushing v. State*, 381 So. 2d 1250, 1250 (La. App. 1st Cir. 1980) (frog hunting on a lake from an aluminum bateau). My wife, Cindy DeLaney-Kinsella, used to live near Bayou Manchac in Ascension PARISH. She tells me that one time, during a flood, she had to take a bateau to get from her front door to the road in front of her house, in order to make it to a friend's wedding.

11. Pronounced PEE-roe. *See also* Plescia v. Dunham, 319 So. 2d 812, 813 (La. App. 1st Cir. 1975) (pirogue races on Bayou Liberty in St. Tammany PARISH). The impact of pirogues on Louisiana law should not be doubted; in Johnson v. State Farm Fire and Casualty Company, 303 So. 2d 779, 785 (La. App. 3d Cir. 1974), the court stated that the "mere fact that the water was deep enough to float a pirogue or a flat-bottomed fishing boat does not prove navigability."
12. La. Civ. Code arts. 880 cmt. b ("The heirs succeed even when there is a valid testament to any portion of the property not disposed of by the testament, due to caducity of a legacy or simple omission, for example."), 1705; Bryan A. Garner, *A Dictionary of Modern Legal Usage* (1987) (defining "caducity"). *See also* Talley v. Stuckey, 614 So. 2d 55 (1993), eliminating the word "legitimate" from Louisiana Civil Code article 1705 on constitutional grounds.
13. La. Civ. Code arts. 1966-1967.
14. La. Civ. Code arts. 1967 cmt. c, 1970 cmt. c. For a discussion of the differences between cause and consideration, see Christian Larroumet, *Detrimental Reliance and Promissory Estoppel as the Cause of Contracts in Louisiana and Comparative Law*, 60 Tul. L. Rev. 1209 (1986).
15. Black's, *supra* note 5, at 246 (defining "civil law").
16. La. Civ. Code art. 3431; Ellis v. Prevost, 19 La. 251 (1841); Black's, *supra* note 5, at 314 (defining "constructive possession").
17. La. Civ. Code art. 901.
18. La. Civ. Code art. 900; Black's, *supra* note 5, at 261 (defining "collateral," "collateral consanguinity"), 262 (defining "collateral heir," "collateral kinsmen"), 303 (defining "consanguinity"), 1218 (defining "propinquity," "propinqui et consaguinei").
19. La. Civ. Code arts. 1227, 1229; Black's, *supra* note 5, at 52 (defining "advancement"), 262 (defining "collation"), 263 (defining "collect").
20. La. Civ. Code arts. 2891, 2893, 2910; Black's, *supra* note 5, at 937-38 (defining "loan for consumption," "loan for use").
21. La. Civ. Code arts. 449-453; Black's, *supra* note 5, at 278 (defining "commons"), 279 (defining "communia"), 1216-17 (defining "property—classification—common property," "private property," "public property"), 1229 (defining "public domain," "public lands").
22. La. Civ. Code art. 936; Garner, *supra* note 12, at 128 (defining "commorientes"); Max Nathan, Jr., *Common Disasters and Common Sense in Louisiana*, 41 Tul. L. Rev. 33, 40 n.19 (1966); Blanchard v. Tinsman, 445 So. 2d 149 (La. App. 3d Cir. 1984).
23. La. Civ. Code arts. 2327, 2338-2340; *see generally* La. Civ. Code arts. 2334-2359.1 (Book III, Title VI, Chapter 2, "The Legal Regime of Community of Acquets and Gains"); Black's, *supra* note 5, at 280 (defining "community property").
24. La. Civ. Code art. 1893; Black's, *supra* note 5, at 283 (defining "compensatio"), 1372 (defining "set-off").
25. La. Civ. Code arts. 462, 463, 493.1.
26. La. R.S. 10:9-313 (1993 and Supp. 1994); Black's, *supra* note 5, at 638 (defining "fixture").
27. La. Civ. Code art. 468; A.N. Yiannopoulos, *Property* § 125, in 2 Louisiana Civil Law Treatise (3d ed. 1991).
28. La. Civ. Code arts. 765, 1903; Black's, *supra* note 5, at 300 (defining "confusio," "confusion"), 989 (defining "merger—property interests," and "rights").
29. La. Civ. Code arts. 536, 537.
30. La. Civ. Code arts. 1756-1757, 1906; Black's, *supra* note 5, at 331 (defining "convention").
31. La. Civ. Code arts. 1906-2291 (Book III, Title IV, "Conventional Obligations or Contracts").
32. La. Civ. Code art. 1908; Black's, *supra* note 5, at 322-25 (defining "contract—unilateral" and "bilateral").
33. La. Civ. Code art. 1909 cmt. c; Black's, *supra* note 5, at 322-23 (defining "contract—gratuitous and onerous"), 1088 (defining "onerous").
34. La. Civ. Code art. 1911 cmt. b; Black's, *supra* note 5, at 281 (defining "commutative contract"), 322 (defining "contract—commutative and independent").
35. La. Civ. Code arts. 1912, 2982-2984; Black's, *supra* note 5, at 70 (defining "aleatory contract," "aleatory promise").

36. La. Civ. Code art. 1913; Black's, *supra* note 5, at 322-24 (defining "contract—principal and accessory").

37. La. Civ. Code art. 1914.

38. James Harvey Domengeaux, Comment, *Native-Born Acadians and the Equality Ideal*, 46 La. L. Rev. 1151 (1986), explains that "coonass" is derived from the French noun "conasse," which meant a stupid person or similar derogatory concepts. French soldiers referred to French-speaking American soldiers during World War II as "conasse." Non-French-speaking American soldiers "began to harass the Louisiana soldier by calling him 'coonass' as a takeoff of the word 'conasse' used by the French forces." After World War II, the term began to be used to refer to the Acadians in South Louisiana. *Id.* at 1168-69 (citation omitted). "Unfortunately, [Louisiana Governor] Edwin W. Edwards at one time proudly proclaimed that he was a 'coonass.'" *Id.* at 1168 n.100. Domengeaux feels that

This insulting word was never a proud or complimentary term affixed to the Acadian people. . . . Unfortunately, a small contingent of the Acadian population welcomed and promoted [the use of the term after World War II]. This ignorant acceptance was done with the unfortunate belief by some that the term is "cute" or "humorous."

*Id.* at 1168-69. Further, in 1981, the Louisiana legislature "condemned" (whatever that means) the use of the term "Coonass." *Id.* at 1169. As stated by Mike Myers (of *Wayne's World* fame) on a recent episode of *The Tonight Show with Jay Leno*, "Uh, I think that goes in the 'Lighten Up' file."

Domengeaux goes on to state that "a majority of the Acadian people despise the slur's use." *Id.* at 1169. However, he does not cite any evidence of this, and it conflicts with my own experience—most Cajuns I know like the term. My friend Jamie Malcombe, a native of Lafayette, the Cajun heartland, agrees with this. And in *State v. Silguero*, 608 So. 2d 627, 628 (La. 1992), there is a character mentioned, named "William 'Coonass' Hendricks," who must like being called "Coonass," although, admittedly, we have no evidence that he *is* a coonass. A typical usage of the term by a Cajun, to refer to himself, might be, "Ah don't know if Pierre's goin' to da crawfish ball [i.e., boil], but dis coonass gonna go." This example was kindly supplied to me by my friend Blaine Doucet, a lawyer from Lake Charles, Louisiana.

39. I note that Justice Sandra Day O'Connor attended a crawfish boil at the LSU Law Center a few years ago, as persuasive precedent for the proposition that crawfish boils exist. As for zydeco music, a good sampling can be found on the soundtrack to the film *Passion Fish*.

40. *Lalonde v. Mabry*, 489 So. 2d 1076, 1077 (La. App. 3d Cir. 1986) (fight started at a cockfight when one party thought he was being called a redneck); Ronald J. Rychlak, *Civil Rights, Confederate Flags, and Political Correctness: Free Speech and Race Relations on Campus*, 66 Tul. L. Rev. 1411, 1418 (1992) (discussing the negative stereotypical image of Mississippi "rednecks").

41. La. Civ. Code art. 461; Black's, *supra* note 5, at 241 (defining "chose in action"), 343 (defining "corporeal property"), 767 (defining "incorporeal property," "incorporeal rights," "incorporeal things"), 809 (defining "intangible property," "intangibles"), 1456 (defining "tangible", "tangible property").

42. *West v. West*, 475 So. 2d 56, 59 (La. App. 2d Cir. 1985); Black's, *supra* note 5, at 412 (defining "de cuius").

43. La. Code Civ. P. arts. 923, 925.

44. La. Code Civ. P. arts. 923, 926.

45. La. Code Civ. P. arts. 923, 927.

46. La. Civ. Code art. 2316; Black's, *supra* note 5, at 427 (defining "delict"). "According to Professor Ferdinand F. Stone, 'tort is a civil wrong for which reparation is sought, normally in the form of an award of money damages. The word comes from the French word *tort* or wrong, and from the Latin *tortus*, meaning conduct twisted from the norm. Formerly, the French used the term 'tort' but now they have discarded it in favor of the word *délict*, derived from the Latin term *delictum*.'" Herman, *supra* note 1, at 50 (paraphrasing Ferdinand Fairfax Stone, *Tort Doctrine in Louisiana: The Materials for the Decision of a Case*, 17 Tul. L. Rev. 159, 161 (1942).

47. La. Civ. Code art. 1617; Black's, *supra* note 5, at 468 (defining "disinherison," "disinheritance").

48. Thomas C. Galligan, Jr., *A Primer on the Patterns of Negligence*, 53 La. L. Rev. 1509, 1525 (1993). See also *Pitre v. Opelousas General Hosp.*, 530 So. 2d 1151, 1155 (La. 1988); Ferdinand F. Stone, *Tort Doctrine* § 289, at iii, in 12 Louisiana Civil Law Treatise (Supp. 1993, William E. Crawford, ed.); La. Civ. Code art. 2315.

49. La. Civ. Code arts. 2779-2792; Black's, *supra* note 5, at 524 (defining "emphyteusis," "emphyteuta"); *Butler v. Baber*, 529 So. 2d 374, 381 (La. 1988); *Louisiana & A. Ry. Co. v. Winn Parish Lumber Co.*, 131 La. 288, 313, 59 So. 403, 424 (1911).

50. La. Code Civ. P. art. 2631.

51. La. Code Civ. P. art. 3722.

52. Patrick S. Ottinger, *Enforcement of Real Mortgages by Executory Process*, 51 La. L. Rev. 87, 91 (1990).

53. La. Civ. Code, Book III, Title XXII, "Exposé des Motifs", at 3.

54. La. Civ. Code art. 1520; Black's, *supra* note 5, at 624 (defining "fidei-commissary," "fidei-commissarius," "fidei-commissum"), 1430 (defining "substitution"); Herman, *supra* note 1, at 48-49; John H. Tucker, Jr., *Substitutions, Fideicommissa and Trusts in Louisiana Law: A Semantical Reappraisal*, 24 La. L. Rev. 439 (1964).

55. La. Civ. Code art. 1521; M. Charles Wallfisch, *Vulgar Substitutions: The 1984 Amendment to Article 1521*, 61 Tul. L. Rev. 1515, 1517 nn. 9-14 (1987); *Swart v. Lane*, 160 La. 217, 106 So. 833, 834 (1926).

56. La. Civ. Code arts. 483, 551; Black's, *supra* note 5, at 669 (defining "fruits").

57. La. Civ. Code art. 2655; Black's, *supra* note 5, at 395 (defining "dation en paiement").

58. La. Civ. Code art. 1433; La. Code Civ. P. arts. 3721, 3741; Black's, *supra* note 5, at 742-43 (defining "hypotheca," "hypothecaria actio," "hypothecarii creditores," "hypothecary action," "hypothecate," "hypothèque"); *Adler v. Hill (In re Hill)*, 981 F.2d 1474, 1481-87 (5th Cir. 1993) (discussing the meaning of "hypothecate" and related terms, and current Louisiana usage).

59. La. Civ. Code arts. 462, 471; Black's, *supra* note 5, at 751 (defining "immovables"), 1014 (defining "movables"). These terms are sometimes spelled "immoveables" and "moveables," although spelling as listed in the text above is found in the Louisiana Civil Code.

It is interesting to note one (apparent) theoretical difference between the civilian and common-law conception of real property ownership, concerning the right of the sovereign (king or state) to ultimate ownership of land. In Louisiana, "Ownership is the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law." La. Civ. Code art. 477. Lands in the thirteen original American colonies were held in tenure, however, with the king as the ultimate lord and owner of the land. Cornelius J. Moynihan, *Introduction to the Law of Real Property* 7-8, 22 (2d ed. 1988); see also Roger A. Cunningham et al., *The Law of Property* (2d ed. 1984).

The American Revolution clearly ended any tenurial relationship between the English king and American landholders. Some of the original thirteen states adopted the view that the state had succeeded to the position of the English king as "lord" and that tenure continued to exist, while other states enacted statutes or constitutional provisions declaring that land ownership should thenceforth be "allodial," or otherwise declaring that tenure was abolished.

*Id.* at 21 (footnotes omitted). However, "[i]n the remaining states it would seem that lands are still held in tenure of the state as overlord." Moynihan, *supra*, at 23. "Throughout the rest of the United States, it seems clear that tenure never existed." Cunningham et al., *supra*, at 21-22.

However, despite this theoretical difference between civilian and common-law ownership, "[e]ven in the states where tenure may theoretically still exist between the state and one who owns land in fee simple, tenure would appear to have little or no practical significance. For all practical purposes, one who owns land in fee simple anywhere in the United States has 'complete property' in (full ownership of) the land." Cunningham et al., *supra*, at 22.

It must be pointed out that, in reality, in none of the fifty United States do nominal "landowners" really have "complete property" in "full ownership of" "their" land. To say that land is owned "allodially" is a fiction because it is subject to expropriation. See, e.g., La. Civ. Code art. 2626:

The first law of society being that the general interest shall be preferred to that of

111. La. Civ. Code art. 2520; Black's, *supra* note 5, at 1279 (defining "redhibition," "redhibitory action," "redhibitory defect or vice"), 1566 (defining "vice") (italics omitted); Garner, *supra* note 12, at 467 (defining "redhibition").
112. La. Civ. Code arts. 2301-2312; Black's, *supra* note 5, at 1299 (defining "repetition").
113. Black's, *supra* note 5, at 1535-36 (defining "unjust enrichment doctrine").
114. La. Civ. Code art. 1767; Black's, *supra* note 5, at 293 (defining "condition—civil law").
115. La. Civ. Code art. 1770 & cmts. a-e; Black's, *supra* note 5, at 293-94 (defining "condition—civil law," "French law").
116. La. Civ. Code art. 3084; Black's, *supra* note 5, at 1311 (defining "respite").
117. La. Civ. Code arts. 2036, 2044.
118. Martin & Yeates, *supra* note 1, at 787-88 (emphasis added). *See also* La. Civ. Code art. 2439; Black's, *supra* note 1, at 333 (defining "conveyance"), 1337 (defining "sale").
119. La. Civ. Code art. 2451.
120. La. Civ. Code art. 2450.
121. La. Civ. Code art. 2458.
122. La. Civ. Code art. 2459.
123. La. Code Civ. P. art. 2295.
124. La. Civ. Code art. 2495.
125. La. Civ. Code art. 533; Black's, *supra* note 5, at 1370 (defining "servitude").
126. La. Civ. Code art. 534; Black's, *supra* note 5, at 1370 (defining "servitude").
127. La. Civ. Code art. 630; Black's, *supra* note 5, at 711 (defining "habitation").
128. La. Civ. Code art. 639 cmt. b; Black's, *supra* note 5, at 509-10 (defining "easement—easement in gross"), 1197 (defining "privilege"), 1211 (defining "profit—profit à prendre"), 1326 (defining "right of way"); Cunningham et al., *supra* note 59, at 440.
129. La. Civ. Code art. 659-660.
130. La. Civ. Code art. 646; Black's, *supra* note 5, at 509 (defining "easement—appurtenant easement"), 1211 (defining "profit—profit à prendre"); Garner, *supra* note 12, at 426 (defining "pr(a)edial"); Cunningham et al., *supra* note 59, at 440.
131. La. Civ. Code arts. 697-774.
132. La. Civ. Code art. 707.
133. La. Civ. Code arts. 2025-2027; Black's, *supra* note 5, at 349 (defining "counter letter"), 1384 (defining "simulation").
134. La. Civ. Code art. 2324; Black's, *supra* note 5, at 837 (defining "joint and several contracts," "joint and several liability"), 1393 (defining "solidarity," "solidary"); Garner, *supra* note 12, at 317 (defining "joint and several").
135. La. Civ. Code art. 1978; Black's, *supra* note 5, at 1480 (defining "third party beneficiary").
136. La. Civ. Code arts. 1881-1882; Black's, *supra* note 5, at 1064 (defining "novation").
137. *See* La. Civ. Code art. 2602 (effective January 1, 1995) for an example of a reference to the suppletive law.
138. La. Civ. Code art. 1574; *see also* Garner, *supra* note 12, at 540 (defining "testament").
139. La. Civ. Code arts. 1577-1583; Black's, *supra* note 5, at 1069 (defining "nuncupative will").
140. La. Civ. Code arts. 1584-1587; Black's, *supra* note 5, at 1474 (defining "testament—mystic testament").
141. La. Civ. Code arts. 1588-1589; Black's, *supra* note 5, at 732 (defining "holograph"), 1086 (defining "olograph"); Garner, *supra* note 12, at 269 (defining "holograph").
142. La. Civ. Code art. 448; *see also* Martin & Yeates, *supra* note 1, at 782.
143. La. Civ. Code art. 3071; Black's, *supra* note 5, at 287 (defining "compromise and settlement"), 1372 (defining "settlement").
144. La. Civ. Code arts. 246, 256; Black's, *supra* note 5, at 1518 (defining "tutor").
145. La. Civ. Code art. 270; Black's, *supra* note 5, at 395-96 (defining "dative").
146. La. Civ. Code art. 273; Black's, *supra* note 5, at 1527 (defining "under-tutor").
147. La. Civ. Code arts. 964-966.
148. La. Civ. Code art. 535; Black's, *supra* note 5, at 924 (defining "life estate," "life interest"), 1544 (defining "usufruct"), 1546 ("usus fructus").

149. La. Civ. Code art. 534; Black's, *supra* note 5, at 1370 (defining "servitude").
150. Black's, *supra* note 5, at 924 (defining "life tenant").
151. La. Civ. Code art. 890.
152. La. Civ. Code art. 478; Black's, *supra* note 5, at 1320 (defining "reversion or estate in reversion") (italics omitted).
153. La. Civ. Code art. 1804; Garner, *supra* note 12, at 568 (defining "virile").
154. La. Civ. Code art. 2817.