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Further, to give full effect to the act, it should be interpreted to supersede Civil Code article 2924 as to any promissory note given in connection with a motor vehicle credit sale. So interpreted the act would protect the vendee against capitalized interest in excess of the legal maximum and would seem to make usury a real defense available against a holder in due course.¹⁴³

The question of usury in retail credit sales in Louisiana may be summarized as follows. Louisiana has adopted the general rule that usury statutes do not apply to credit sales. However, it is believed that "finance charge," the difference between cash sale price and credit sale price, is interest within the contemplation of the Civil Code. If so, article 2924 limits conventional interest to 8% per annum and this provision should apply to credit sales. Vendee should be entitled to sue and recover the interest paid if it was usurious.¹⁴⁴ If the interest has been capitalized in a promissory note, there is no usury regardless of the amount of interest capitalized. Practically, this may mean vendee is protected only if he has not given a promissory note for the unpaid balance. The Motor Vehicle Sales Finance Act may be interpreted to supersede article 2924 as to notes issued in motor vehicle purchases. This act may allow munificent interest rates, but in general it seems to offer greater protection to consumers than the illusory protection of article 2924.

Karl W. Cavanaugh

EXPROPRIATION—COMPENSABLE ITEMS IN LOUISIANA

INTRODUCTION

The expansion of state-sponsored public improvement programs has increased the frequency with which the property rights of individuals must yield to public interest.¹ An impinge-

natural obligation."

143. There is a conflict of authority whether usury is a real defense. Compare *In re Gerber's Estate*, 337 Pa. 108, 9 A.2d 438 (1939) (no) with *Employees Loan Co. v. Templeton*, 109 S.W.2d 774 (Tex. Civ. App. 1938) (yes). Apparently Louisiana has not passed on the question.

144. See LA. R.S. 9:3501 (1950).

1. State-sponsored public improvements are an inevitable result of an increasing population and a concentration of population in urban areas. An example is

ment on individual property rights by state action may take the form of an exercise of the police power, of the power of appropriation, or of the power of expropriation.² When an exercise of the police power injures private property interests, the individual property owner is without a remedy.³ The appropriation of land for local roads or levees along a navigable stream entitles the landowner to an amount not in excess of the assessed value for the prior year of the land actually used.⁴ If the impingement of private property rights takes the form of expropriation, article I, section 2 of the Louisiana Constitution controls. It provides that "private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."⁵

For purposes of article I, section 2, property is considered

afforded on a national scale by the current construction of an interstate highway system, necessitating expropriation of property in urban business and residential areas where highways were not contemplated a decade ago. Within Louisiana, the construction of the Toledo Bend Dam project on the Sabine River afforded on a national scale by the current construction of an interstate highway public improvements.

2. The distinctions existing between these three powers are not always as clear as the importance of the distinction merits. The general definition of these three areas are as follows:

The police power is exercised to prevent violence and secure the comfort, health, and prosperity of the state by preserving order in society. Property rights are often injured in order that the police power be effective, but this does not alter the nature of the power being exercised. An example of this is the prohibition of a public nuisance, *State v. Jackson*, 152 La. 656, 94 So. 150 (1922); or the operation of a zoning ordinance, *Civello v. New Orleans*, 154 La. 271, 97 So. 440 (1923).

The power of appropriation is exercised by the state when it uses a servitude established by article 665 of the Civil Code. This article establishes servitudes on shores of navigable streams for purposes of levees and roads. This is not an expropriation of the land encumbered with such servitude, since the owner acquired the land subject to the servitude. In theory, the state is merely exercising a pre-existing right in the land, not acquiring and creating a new right. *Peart v. Meeker*, 45 La. Ann. 421, 12 So. 490 (1893).

The power of expropriation is that power by which the state acquires private property for the purpose of constructing public improvements. *Shreveport & A. Ry. v. Hollingsworth*, 42 La. Ann. 749, 7 So. 693 (1890).

3. Department of Highways v. Southwestern Elec. Power Co., 243 La. 564, 145 So.2d 312 (1962); *Shreveport v. Kansas City, S.&G. Ry.*, 167 La. 771, 120 So. 290 (1929); *New Orleans Gaslight Co. v. Drainage Comm'n*, 111 La. 838, 35 So. 929 (1903), *aff'd*, 197 U.S. 453 (1905); *New Orleans Gaslight Co. v. Hart*, 40 La. Ann. 474, 4 So. 215 (1888).

4. LA. CONST. art. XVI, § 6. For discussion of road and levee servitudes, see *Wolfe v. Hurley*, 46 F.2d 515 (W.D. La. 1930), *aff'd*, 283 U.S. 801 (1930); *Delaune v. Board of Comm'rs*, 230 La. 117, 87 So.2d 749 (1956); *Hebert v. T. L. James & Co.*, 224 La. 498, 70 So.2d 102 (1954); *Board of Comm'rs v. Franklin*, 219 La. 859, 54 So.2d 125 (1951); *Board of Comm'rs v. School Bd.*, 130 So.2d 692 (La. App. 3d Cir. 1961).

5. LA. CONST. art. I, § 2: "No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

"taken" when the state acquires the right of ownership or one of its recognized dismemberments.⁶ Property is considered "damaged" when exercise of the power of expropriation results in diminution in the value of the property.⁷ As used in article I, section 2, "property" has no precise meaning: many items are included within its definition, but a final, unalterable enumeration is not established. Absence of such a closed classification provides a desirable flexibility which insures that protection can be afforded against new and different damages whenever the courts consider such protection desirable. Although the concept of property is flexible in Louisiana, it must as a minimum standard encompass any "property" falling under the protection of the due process clause of the fourteenth amendment of the United States Constitution.⁸ Interpretations of "property" under the Louisiana Constitution have never been successfully attacked under the fourteenth amendment, and it appears that Louisiana courts give the same meaning to "property" under both Constitutions.⁹ What now constitutes "property" under article I, section 2, is best understood by comparison of those items which the legislature or the courts have deemed compensable in expropriation proceedings with those items deemed not compensable.¹⁰

The legislature has discretion in determining what things may be expropriated, compensation being due for those things taken.¹¹ Although "property" could embrace movables and im-

6. See *Jefferson v. Texas Co.*, 192 La. 934, 189 So. 580 (1939); 2 NICHOLS, EMINENT DOMAIN § 6.1[1] (3d ed. 1950); Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963).

7. *Police Jury v. Hernandez*, 232 La. 1, 93 So.2d 672 (1957); *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So.2d 260 (1956); JAHR, EMINENT DOMAIN § 98 (1953); 4 NICHOLS, EMINENT DOMAIN § 14.2 (3d ed. 1950); 1 ORGEL, VALUATION UNDER EMINENT DOMAIN c. IV (2d ed. 1953).

8. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

9. See, e.g., *Dep't of Highways v. Stoer*, 133 So.2d 851 (La. App. 2d Cir. 1961).

10. This method of determining what constitutes "property" in article I, § 2, does not necessarily furnish a dependable guide for the inclusion of new items. Such inclusion is a matter of policy, to be worked out by the courts and legislature as conditions change. The policy involved is the extent to which the state can destroy and damage individual interests for the public good without compensating the individual. Therefore, items which are not now compensable because they have not been included within the meaning of "property" in article I, § 2, up to this time, such as business losses, may, at a later time be compensable, if such losses become oppressive.

11. Theoretically, "property" can be given a definition which would be so all-inclusive as to include every interest an individual could possess. This is illustrated by considering that "contract" rights are often referred to as "property"

movables, the Louisiana legislature has provided for expropriation and compensation for immovables only.¹² However, immovables include tracts of land, buildings, trees, crops, fruits not gathered, component parts of buildings, things which the owner of a tract of land has placed upon it for its service and improvement, usufruct and use of immovable things, servitudes on immovables estates, and actions for recovery of immovable estates or entire successions.¹³ It is therefore difficult to imagine a situation, under the prevalent concept of governmental power to construct public improvements, in which the state need acquire anything more than immovables in order to fulfill public purposes.

Although "taking" in expropriation proceedings is limited to immovables, "damages" caused by the exercise of the power of expropriation cannot be so limited if the constitutional right to compensation is fully to protect individual interests. It is more often the rule than the exception that individuals suffer more from "damages" resulting from expropriation proceedings than from the actual "taking" of property.¹⁴ The courts and the legislature must determine which of these damaged interests will be compensable. In the process of determining which interests are to be protected, the ambit of "property" becomes defined. This Comment will attempt to determine what items are considered as "property" for purposes of expropriation at

rights. The American Law Institute has perhaps gone further in defining "property" than has any other attempt. RESTATEMENT, PROPERTY §§ 5, 10 (1936). "Section 5. The word 'interest' is used in this Restatement both generically to include varying aggregates of rights, privileges, powers and immunities and distributively to mean any one of them." "Section 10. The word 'owner,' as it is used in this Restatement, means the person who has one or more interests." There is no objection to the American Law Institute giving "property" this broad definition. However, such a broad definition is useless for practical purposes. In the area of expropriation a more exact definition is needed since individuals and the state must know the extent to which the state may acquire private interests for public purposes. Because the legislature is the arm of the sovereign which exercises the power of expropriation, it can use any definition of property not repugnant to Louisiana Constitution article I, § 2, provided of course it does not contravene the provisions of the fourteenth amendment of the United States Constitution. The Louisiana legislature has limited itself to the "taking" of immovables.

12. LA. R.S. 19:1 (1950): "As used in this Part, the term 'property' means immovable property, including servitudes."

13. LA. CIVIL CODE arts. 462, 464, 465, 467, 468, 471 (1870).

14. The distinction between "taking" and "damaging" must be kept in mind. An example of a common situation in which "damages" cause greater loss to an individual than an actual "taking" is the expropriation of land and buildings within which a profitable business is conducted. The owner of the land and buildings will receive the market value of the land and buildings "taken," but nothing for the "damages" to his business, although the "damages" may reflect a greater loss than the loss of the land and the buildings.

the present time by determining which items are compensable in Louisiana.

“TAKING” AND “DAMAGING”—GENERAL METHOD OF VALUATION
UNDER EACH

In general, when property is “taken” the measure of compensation is the market value of the property—that is, the price which would be agreed upon by a willing buyer and willing seller.¹⁵ Therefore, comparable sales are the best evidence of market value.¹⁶ Sales of other property to the condemnor are not controlling, but may be considered.¹⁷ If there are no comparable sales, expert testimony is used, and the land is valued at its highest and best nonspeculative use.¹⁸ Factors considered in determining value are incomes received from the property, reproduction and replacement cost of the buildings, and depreciation.¹⁹

Property is “damaged” if an expropriation proceeding diminishes its value. Therefore, the general method of valuing damages considers the difference between the value of the property immediately before and immediately after the expropriation action.²⁰

15. Department of Highways v. Levy, 242 La. 259, 136 So.2d 35 (1962); School Bd. v. Nassif, 232 La. 218, 94 So.2d 40 (1957); Am. Tel. & Tel. Co. v. East End Realty Co., 223 La. 532, 66 So.2d 327 (1953); Department of Highways v. Caillier, 157 So.2d 274 (La. App. 3d Cir. 1963); see Comment, *Expropriation—A Survey of Louisiana Law*, 18 LA. L. REV. 509 (1958).

16. Department of Highways v. Cent. Realty, 238 La. 965, 117 So.2d 261 (1960); Police Jury v. Hernandez, 232 La. 1, 93 So.2d 672 (1957); Shreveport v. Herndon, 173 La. 144, 136 So. 297 (1931).

17. Orleans Parish School Bd. v. Paternostro, 236 La. 223, 107 So.2d 451 (1958); Department of Highways v. Caillier, 157 So.2d 274 (La. App. 3d Cir. 1963). Sales to the condemnor are not given the same weight as sales between willing buyers and willing sellers because of the compulsion found in sales to the condemnor.

18. Department of Highways v. D. H. Sanders Realty Co., 244 La. 934, 155 So.2d 24 (1963); Department of Highways v. Hub Realty Co., 239 La. 154, 118 So.2d 364 (1960); Louisiana v. Sauls, 234 La. 241, 99 So.2d 97 (1958); School Bd. v. Nassif, 232 La. 218, 94 So.2d 40 (1957); Texas Pipe Line Co. v. Barbe, 229 La. 191, 85 So.2d 260 (1956); Department of Highways v. Ferris, 227 La. 13, 78 So.2d 493 (1955); Department of Highways v. Glassell, 226 La. 988, 77 So.2d 881 (1955); Harrison v. Highway Comm'n, 191 La. 839, 186 So. 354 (1939).

19. Department of Highways v. Carmouche, 155 So.2d 451 (La. App. 3d Cir. 1963); Department of Highways v. Crockett, 151 So.2d 496 (La. App. 2d Cir. 1963); Department of Highways v. O'Neal, 150 So.2d 608 (La. App. 3d Cir. 1963). Expert testimony would relate primarily to the effects of these factors on market value. The weight to be given any factor is in the discretion of the court.

20. See Texas Pipe Line Co. v. Barbe, 229 La. 171, 85 So.2d 260 (1956).

"TAKING" OF OWNERSHIP

Lands and Buildings

If the state needs full ownership of a tract of land, with or without buildings on it, the owner must be paid full and adequate compensation before the property can be acquired by the condemnor.²¹ However, if the landowner places improvements on the property and has been warned not to do so by the condemnor, the owner is not entitled to compensation for the improvements.²²

Land with Trees and Crops Thereon

Although the Civil Code states that "standing crops . . . , and trees before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached,"²³ they are not consistently treated as part of the land taken in expropriation proceedings. At times, both may be treated as separate compensable items, depending on the ownership of and condition of the trees and crops, and the nature of the condemnor.

When land taken has trees thereon belonging to the landowner, trees will not be valued as a separate item but will be considered only in determining the value of the land.²⁴ Therefore if the land's highest and best use is for farming purposes, the existence of trees on the property should not augment the value of the land. However, if the land's highest and best use is for timber growing, the existence of trees on the property should be an important factor in determining market value. When there is a separate timber estate on the property, it should

21. LA. CONST. art. I, § 2. An exception to the requirement of prior compensation is the "quick taking" procedure available to the Department of Highways. *Sabine River Authority v. Phares*, 245 La. 534, 159 So.2d 144 (1963); *Department of Highways v. Bradford*, 242 La. 1095, 141 So.2d 378 (1962).

22. *Department of Highways v. Laird*, 219 La. 567, 53 So.2d 674 (1951).

23. LA. CIVIL CODE art. 465 (1870): "Standing crops and the fruits of trees not gathered, and trees before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached. As soon as the crop is cut, and the fruits gathered, or the trees cut down, although not yet carried off, they are movables. If a part only of the crop be cut down, that part only is movable."

24. *Ibid.*, see *Department of Highways v. Glassell*, 226 La. 988, 77 So.2d 881 (1955); *Birttingham v. Bd. of Comm'rs*, 167 La. 368, 119 So. 259 (1928); *Department of Highways v. Henderson*, 138 So.2d 597 (La. App. 3d Cir. 1962); *Yiannopoulos, Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963).

be considered as a separate compensable item with the expropriation price for the trees going to the owner of the timber.²⁵

When crops belonging to the owner of land taken by a condemnor other than the highway department are destroyed, they should be considered only in determining the value of the land taken, and not as separate items.²⁶ A statute provides for special damages for crops when the condemnor is the highway department.²⁷ When the land's highest and best use is as farm land, the statute should not affect the compensation otherwise due; however, it may increase the compensation when the highest and best use of the land with crops is not as farm land.²⁸ Under some circumstances, trees are classified as crops and receive the same protection.²⁹

Crops owned by the lessee of the property or by a third person are considered as separate items in all cases, and the expropriation price for the crops is paid to the lessee or third person.³⁰ Plants of all types which do not have their roots in the ground, such as pot plants, are movables, and damages caused by the necessity of moving them are not compensable.³¹

Land with Sand, Gravel, or other Minerals Beneath Surface

Land taken, under which there are sand and gravel deposits, is valued as usual — that is, according to its highest and best use.³² If such use is as farming land, the fact that sand and

25. See Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963).

26. See LA. CIVIL CODE art. 465 (1870); Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963).

27. LA. R.S. 48:218 (1950).

28. *Ibid.*; Department of Highways v. Henderson, 138 So.2d 597 (La. App. 3d Cir. 1962).

29. In Department of Highways v. Henderson, 138 So.2d 597 (La. App. 3d Cir. 1962), the question was whether trees which were part of the stock of a nursery were "crops." The court held that the trees were in fact crops, and extended the protection of LA. R.S. 48:218 to them. The court did not mention the possibility of trees on tree farms being classified as "crops." However, the tests used by the court in classifying the nursery stock as crops indicate that trees on tree farms would also be classified as crops. "We are aware that this constitutes an exception to the traditional definition of crops, as being harvested annually, but in all other respects this nursery stock is the same as a crop. It has been planted, cultivated, sprayed, and cared for like any other crop. It was intended to be dug from the soil and sold." 138 So.2d at 602.

30. De Moss v. Police Jury, 167 La. 83, 118 So. 700 (1928). This result follows from the Louisiana jurisprudential rule that gives lessees ownership of the standing crops which they have cultivated. See Yiannopoulos, *Movables and Immovables in Louisiana and Comparative Law*, 22 LA. L. REV. 517 (1962).

31. Department of Highways v. Henderson, 138 So.2d 597 (La. App. 3d Cir. 1962).

32. Texas Gas Transmission Corp. v. Broussard, 234 La. 751, 101 So.2d 657

gravel exist beneath the surface should not affect the value of the property. However, if the value of the sand and gravel is such as to cause the land's highest and best use to be for sand or gravel mining, it will be valued accordingly. Valuation is based on the testimony of sand and gravel contractors as to the value they would pay for the right to mine the sand and gravel; it is not based on the property's estimated sand or gravel content.³³

Land under which there is the possibility of oil and gas would likewise be valued at its highest and best use. If the possibility of oil and gas is strong enough, this possibility would be considered by appraising the land as potential oil and gas producing land. Except as otherwise provided by special statutes, the condemnor would acquire all rights to future minerals when full ownership of the land is taken since mineral rights are real rights.³⁴

Land Previously Expropriated and Subject to Public Use

Property which has previously been expropriated and dedicated to a public purpose is subject to re-expropriation.³⁵ As a general rule, compensation must be paid the first condemnor, even though what is expropriated is already subject to public use, since the thing expropriated was the private property of the condemnor who had first paid for it.

Whether expropriated property subject to public use can be re-expropriated depends on the character of the second condemnor. If the state itself, not acting through any agency or corporation, is seeking to expropriate property, the fact that

(1958); *E. Baton Rouge v. Ronaldson*, 150 So. 2d 356 (La. App. 1st Cir. 1963).

33. *Department of Highways v. D. H. Sanders Realty Co.*, 244 La. 934, 155 So. 2d 24 (1963); *E. Baton Rouge v. Ronaldson*, 150 So. 2d 356 (La. App. 1st Cir. 1963).

34. *Jefferson v. Texas Co.*, 192 La. 934, 189 So. 580 (1939). See Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963). Real rights are the rights of ownership and its recognized dismemberments. When the state acquires full ownership of land, it acquires all real rights in the land, including the mineral servitude.

When the land is encumbered with a mineral servitude, lease or royalty, the state also acquires these real rights. However, the situation most commonly involving these rights occurs on the taking of land for highway purposes through rural estates. Since the whole of the mineral servitude, lease, or royalty is not taken, the problem is considered in the text accompanying notes 142-147 *infra*, which treats the "damaging" of real rights.

35. *Department of Highways v. School Board*, 242 La. 682, 138 So. 2d 109 (1962); *Louisiana & N.W. Ry. v. Vicksburg, S. & P. Ry.*, 112 La. 915, 36 So. 803 (1904); *Kansas City, S. & G. Ry. v. Vicksburg, S. & P. R.R.*, 49 La. Ann. 29, 21 So. 144 (1896).

the property is already subject to a public use is immaterial.³⁶ However, a corporation or state agency having the power to expropriate private property cannot expropriate property already subject to public use unless the condemnor has special legislative authority to acquire such property.³⁷

If part of previously expropriated property has never been used for public purposes, that part may be expropriated as though it were ordinary private property,³⁸ and without special legislative authority.³⁹ Except for special legislative authority the normal rules governing expropriation apply to expropriation of property already subject to a public use.⁴⁰

The first condemnor who is a corporation such as a railroad is not compensated for an increase in the expense of maintaining property for purposes of public safety, caused by the second expropriation.⁴¹ If the company can prove damages resulting from interference with the exclusive enjoyment and use of the property by the presence of and use of the second condemnor, the company will be compensated to that extent, even though the damages are nominal.⁴² However, any property of a corporation such as a railroad, which is located on the public streets, is always subject to the police power, and loss resulting from exercise of the police power is not compensable.⁴³

"TAKING" OF REAL RIGHTS OTHER THAN OWNERSHIP

Concession or Franchise

The civilian counterpart of "franchise" is "concession."⁴⁴

36. See note 35 *supra*.

37. See note 35 *supra*.

38. *Kansas City, S. & G. Ry. v. Vicksburg, S. & P. R.R.*, 49 La. Ann. 29, 21 So. 144 (1896). See *Louisiana & A. Ry. v. Louisiana Ry. & Nav. Co.*, 125 La. 756, 51 So. 712 (1910).

39. See note 35 *supra*.

40. *Louisiana & N.W. Ry. v. Vicksburg, S. & P. Ry.*, 112 La. 915, 36 So. 803 (1904).

41. *Illinois Cent. R.R. v. Louisiana Pub. Serv. Comm'n*, 224 La. 279, 69 So. 2d 43 (1953); *Shreveport v. Kansas City So. Ry.*, 193 La. 277, 190 So. 404 (1939).

42. *Shreveport v. Kansas City, S. & G. Ry.*, 184 La. 473, 166 So. 471 (1936); *Shreveport v. Texas & Pacific Ry.*, 182 La. 36, 161 So. 12 (1935); *Shreveport v. Kansas City, S. & G. Ry.*, 169 La. 1085, 126 So. 667 (1930); *Eunice v. Louisiana W. Ry.*, 135 La. 882, 66 So. 257 (1914).

43. *Department of Highways v. Southwestern Elec. Power Co.*, 243 La. 564, 145 So. 2d 312 (1962); *Shreveport v. Kansas City, Southern & G. Ry.*, 167 La. 771, 120 So. 290 (1929); *New Orleans Gas-light Co. v. Drainage Comm.*, 111 La. 838, 35 So. 929 (1903), *aff'd* 197 U.S. 453 (1905); *New Orleans Gas-light Co. v. Hart*, 40 La. Ann. 474, 4 So. 215 (1888).

A common example of this principle is found when a condemnor has placed obstructions on a public street, and at a later date an increase in traffic causes the obstructions to be dangerous to the health and safety of citizens.

44. 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE

However, the Louisiana Constitution, statutes, and courts have used the term franchise.⁴⁵ In France there are two types of concessions: one is a temporary permit to use the public domain; the other is the grant of a monopoly in return for the undertaking of a work of public utility.⁴⁶ In Louisiana the same distinction exists between a mere privilege to use public property for private purposes, and the grant of a franchise to use the streets for purposes of a public utility.⁴⁷ The latter grant may be exclusive, non-exclusive, or revocable.

A concession to use public property for private purposes is not "property" within the meaning of article I, section 2. It is revocable at the will of the grantor, and damages suffered because of its revocation are not compensable.⁴⁸

Non-exclusive and revocable franchises are not considered "property" for expropriation purposes. Consequently, destruction of or diminution in value of such a franchise which results from the grant of similar privileges to a competitor is not a "taking" or "damaging" of property for which compensation is due.⁴⁹

An exclusive franchise, which gives the grantee a monopoly, is "property" for purposes of expropriation.⁵⁰ The "property" consists of the monopoly privileges granted plus the use of property necessary to exercise the privilege. This "property" cannot be taken for public purposes without the payment of just and adequate compensation.⁵¹ However, an exclusive franchise does

LOUISIANA STATE LAW INSTITUTE) no. 3092 (1959).

45. See *Thibodaux v. Louisiana Power & Light Co.*, 126 So.2d 24 (La. App. 1st Cir. 1960), *cert. denied*; LA. CONST. art. XIII, § 7; LA. R.S. 12:65, 12:150, 12:303, 38:2332, 48:84 (1950).

46. 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 3092 (1959).

47. See *Hutton v. Baton Rouge*, 217 La. 857, 47 So.2d 665 (1950); *Curtis & Phelps v. Morehouse*, 12 La. Ann. 649 (1857); *Shepherd v. Third Municipality of New Orleans*, 6 Rob. 349 (La. 1844); *Thibodaux v. Louisiana Power & Light Co.*, 126 So.2d 24 (La. App. 1st Cir. 1960), *cert. denied*.

48. *Hutton v. Baton Rouge*, 217 La. 857, 47 So.2d 665 (1950); *Shepherd v. Third Municipality of New Orleans*, 6 Rob. 349 (La. 1844). In the latter case the defendant had allowed plaintiff to construct certain structures over a street to expedite plaintiff's business.

49. *Curtis & Phelps v. Morehouse*, 12 La. Ann. 649 (1857). See *Hutton v. Baton Rouge*, 217 La. 857, 47 So.2d 665 (1950) for an example of such a franchise.

50. An example of a monopoly franchise is the franchise granted by a municipality to a private electric company in order to furnish electricity to the citizens of the municipality. See *Thibodaux v. Louisiana Power & Light Co.*, 126 So.2d 24 (La. App. 1st Cir. 1960), *cert. denied*, for an example of the expropriation of such a franchise.

51. *Thibodaux v. Louisiana Power & Light Co.*, 126 So.2d 24 (La. App. 1st

not give the grantee the right to use any particular property.⁵² Therefore, the state may require the grantee of a franchise to relocate any structures, erected pursuant to the exercise of the franchise, without payment of compensation.⁵³ This is justified on the principle that the state's action is an exercise of the police power.⁵⁴

Franchises authorizing the performance of acts injurious to the public health, safety, or morals are revocable at the will of the state, and the grantee is not entitled to compensation therefor.⁵⁵ However, the state may not take without compensation the corporeal property of the grantee used in the exercise of the franchise. Such property is protected to the same extent as any other property.⁵⁶

Predial Servitude

Any type of predial servitude may be expropriated by the state.⁵⁷ Those actually acquired include rights of way,⁵⁸ temporary servitudes for access to other property during construction periods,⁵⁹ and temporary servitudes for borrow pit purposes.⁶⁰

Cir. 1960), *cert. denied*; see also *Department of Highways v. Southwestern Elec. Power Co.*, 243 La. 564, 145 So.2d 312 (1962).

52. *Department of Highways v. Southwestern Elec. Power Co.*, 243 La. 564, 145 So. 2d 312 (1962).

53. *Ibid.*

54. *Department of Highways v. Southwestern Elec. Power Co.*, 243 La. 564, 145 So. 2d 312 (1962). It is an imperfect right held subject to the paramount right of the state to require the removal of the facilities under police power. *New Orleans Gas-light Co. v. Drainage Comm'n*, 111 La. 838, 35 So. 929 (1903), *aff'd* 197 U.S. 453 (1905).

55. 2 NICHOLS, *EMINENT DOMAIN* § 5.75[3] (3d ed. 1950).

56. *Ibid.*

57. It was established early that the condemnor was entitled only to the rights needed to accomplish his purpose. If a servitude is sufficient he can expropriate only a servitude. If the landowner pleads that only a servitude is needed, the condemnor must prove that full ownership is needed. However, if the landowner does not so plead, and the condemnor acquires full ownership, the landowner cannot thereafter complain. *Knox v. Louisiana Ry. & Nav. Co.*, 157 La. 602, 102 So. 685 (1925).

58. See *Am. Tel. & Tel. Co. v. East End Realty Co.*, 223 La. 532, 66 So. 2d 327 (1953); *Knox v. Louisiana Ry. & Nav. Co.*, 157 La. 602, 102 So. 685 (1925); *Louisiana Power & Light Co. v. Dileo*, 79 So. 2d 150 (La. App. 1st Cir. 1955).

59. See *Colonial Pipeline Co. v. Babineaux*, 154 So. 2d 594 (La. App. 3d Cir. 1963). When a temporary servitude or use of property for construction purposes is taken, the landowner is entitled, at most, to a fair rental for the period of occupancy. *Louisville & N. R.R. v. R.E.E. De Montluzin Co.*, 166 La. 211, 116 So. 854 (1928). If the need for the use of heavy machinery occurred, the rights of ingress and egress, which are inherent in the case of the servitude granted, would authorize the condemnor to enter upon and use additional necessary areas, subject to the right of the landowner to claim damages. *Texas E. Transmission v. Terzio*, 138 So. 2d 874 (La. App. 2d Cir. 1962).

60. See text at notes 67-69 *infra*.

The landowner is entitled to the value of the servitude taken plus damages suffered by his remaining property.⁶¹ In most instances the value of the servitude taken is less than the market value of the property encumbered by the servitude, since the ownership rights are of some value to the landowner.⁶² However, the condemnor's use of the servitude may so interfere with the landowner's use of the surface that compensation for the servitude will equal the market value of the land.⁶³ Damages suffered by the landowner because of the presence of the servitude on his property are not separately compensable, but are considered in arriving at the true value of the land taken.⁶⁴ There is a statutory exception to this rule in cases in which the Department of Highways acquires a servitude for highway purposes across land upon which there is a growing crop.⁶⁵ When crops or timber owned by a person other than the landowner are destroyed by the taking of a servitude, the owners of the crops or timber should be entitled to compensation.⁶⁶

Acquiring sand or gravel for public improvements can be accomplished by "taking" the land in full ownership. The Department of Highways, however, may acquire sand and gravel by expropriation of a temporary servitude for borrow pit purposes.⁶⁷ This procedure may become more prevalent as a result of the current increase in highway construction, requiring the use of increasingly large amounts of sand and gravel. Once

61. Damages to the remaining property when only part of the property has been taken by expropriation are called severance damages. These are considered in the text at notes 70-72 *infra*.

62. For example, the court allowed 75% of the value of one section of property and 60% of another as the value of a servitude, since the surface area would have some value as parking space, lawns, play areas, and gardens in Colonial Pipe Line Co. v. Babineaux, 154 So.2d 594 (La. App. 3d Cir. 1963).

63. In Louisiana Power & Light Co. v. Simmons, 229 La. 165, 85 So.2d 251 (1956), 110,000 volt electric transmission lines were constructed on a servitude, all the trees were cut down, and no trees or crops could be grown on the surface. The court held that, for all practical purposes, the value of the servitude equalled the value of the fee. See also Department of Highways v. Hayward, 243 La. 1036, 150 So.2d 6 (1963); Port Comm'n v. Morley, 232 La. 87, 93 So.2d 912 (1957); Department of Highways v. Glassell, 226 La. 988, 77 So.2d 881 (1955); Department of Highways v. Lumpkin, 147 So.2d 80 (La. App. 2d Cir. 1962).

64. Texas Gas Transmission Corp. v. Broussard, 234 La. 751, 101 So.2d 657 (1958).

65. LA. R.S. 48:218 (1950). See text at notes 26-29 *supra* for a fuller discussion of this statute.

66. See Yiannopoulos, *Movables and Immovables in Louisiana and Comparative Law*, 22 LA. L. REV. 517 (1962) for a discussion of the status of such crops.

67. LA. R.S. 48:222 (1950); Department of Highways v. Hayward, 243 La. 1036, 150 So.2d 6 (1963); Department of Highways v. Glassell, 226 La. 988, 77 So.2d 881 (1955); Department of Highways v. Lumpkin, 147 So.2d 80 (La. App. 2d Cir. 1962).

the Highway Department has taken the required sand and gravel, there is no further need for state occupancy of the property. Consequently, full possession can be returned to the landowner.⁶⁸ Since the land encumbered with such a servitude is of little practical use to the owner after the Highway Department has taken the sand and gravel, the owner generally receives the full market value of the land when the servitude is taken.⁶⁹

"Damaging" of an Immovable

Severance Damages

If only part of a tract of land is taken for public purposes, the value of the remainder is usually diminished. It is well settled that the landowner is entitled to compensation for this decrease in value.⁷⁰ In Louisiana such damages are taken into consideration by compensating the landowner for the difference between the value of the tract of land immediately before and immediately after the taking.⁷¹ Any benefits accruing to the land because of the location of the public improvement may be used as a set-off to the extent of the severance damages.⁷²

Change of Grade

The necessary cost of changes and alterations of improvements on the premises in order to preserve the same and to conform to a new street grade is a compensable item.⁷³ Com-

68. Actually, full ownership never left the owner. He retained all rights in the land when the temporary servitude was "taken," except for the one real right (servitude) taken. Once the servitude served the purpose it was taken for, it expired and the land was no longer encumbered.

69. *Department of Highways v. Hayward*, 243 La. 1036, 150 So. 2d 6 (1963); *Department of Highways v. Glassell*, 226 La. 988, 77 So. 2d 881 (1955); *Department of Highways v. Lumpkin*, 147 So. 2d 80 (La. App. 2d Cir. 1962). The fact that the landowner receives the fair market value of the land encumbered with the temporary servitude for borrow pit purposes may not appear to the landowner as the fairest solution in all cases. In some instances the value of the sand and gravel removed from the land, calculated at a certain price per cubic yard, exceeds the fair market value of the land. The landowner will nevertheless receive the lesser amount.

70. *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So. 2d 260 (1956); *Louisiana Highway Comm'n v. Guidry*, 176 La. 389, 146 So. 1 (1933); *McMahon v. St. Louis, Ark. & Texas R.R.*, 41 La. Ann. 827, 6 So. 640 (1889); *Colonial Pipe Line Co. v. Babineaux*, 154 So. 2d 594 (La. App. 3d Cir. 1963). See Comment, *Expropriation — Consequential Damage Under the Constitution*, 19 La. L. Rev. 491 (1959).

71. *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So. 2d 260 (1956).

72. *Highway Comm'n v. Hoell*, 174 La. 302, 140 So. 485 (1932).

73. *Cerniglia v. New Orleans*, 234 La. 730, 101 So. 2d 218 (1958); *Cucurullo v. New Orleans*, 229 La. 463, 86 So. 2d 103 (1956); *Manning v. Shreveport*, 119

compensation is given for this item because the interest a landowner has in the relation existing between his property and the street has been classified as a "property" interest for purposes of article I, section 2.⁷⁴ The right to compensation exists whether any property has been taken from the owner or not, as it is an award for "damages" under article I, section 2.⁷⁵

Once a street grade is legally established, the owner of land abutting the street will not be compensated for damages, caused by the change of grade, to improvements placed on the land subsequent to the establishment of the new grade but prior to the actual change of grade.⁷⁶ Nor is the landowner entitled to compensation if a grade change leaves the land burdened with problems similar to those existing prior to the grade change.⁷⁷

Access to a Public Street

A landowner's means of ingress and egress upon an adjoining street have been recognized as property rights in Louisiana.⁷⁸ Therefore, damaging of ingress and egress rights upon a public street by expropriation must be accompanied by compensation.⁷⁹ However, the state, in the exercise of its police power, may control the location of the places of ingress and egress upon the land without damaging ingress and egress rights and without paying compensation.⁸⁰ Temporary interference with access to a public highway or street causing diminution in the value of the land should entitle the owner to compensation, under the theory that the "property" right of ingress and egress has been "damaged."⁸¹

La. 1044, 44 So. 882 (1907) (leading case); *Carter v. Highway Comm'n*, 6 So. 2d 159 (La. App. 2d Cir. 1942).

74. *Manning v. Shreveport*, 119 La. 1044, 44 So. 882 (1907).

75. *Ibid.*

76. *Ibid.* If the new grade is not established for such a length of time as to cause the new grade to be abandoned, damages to the premises caused by a subsequent change are compensable.

77. *Thomas & Warner, Inc. v. New Orleans*, 230 La. 1024, 89 So. 2d 885 (1956). Grade changed from incline to decline, leaving the landowner with the necessity of going downstairs to enter the property instead of going upstairs, as he had to do prior to the change in grade.

78. *Efurd v. Shreveport*, 235 La. 555, 105 So. 2d 219 (1958); *Department of Highways v. Dowling*, 205 La. 1061, 18 So. 2d 616 (1944); *Gebelin v. Department of Highways*, 200 La. 409, 8 So. 2d 71 (1942); *Harrison v. Highway Comm'n*, 202 La. 345, 11 So. 2d 612 (1942); *Jones Island Realty Co. v. Midden-dorf*, 191 La. 456, 185 So. 881 (1939); *Department of Highways v. Lewis*, 142 So. 2d 652 (La. App. 1st Cir. 1962).

79. See note 78 *supra*.

80. *Department of Highways v. Dowling*, 205 La. 1061, 18 So. 2d 616 (1944); *Gebelin v. Department of Highways*, 200 La. 409, 8 So. 2d 71 (1942).

81. This result is a logical extension of the allowance of compensation for the

The right to ingress and egress upon land is protected under article I, section 2, only in respect to access upon public streets. Thus when access to property is other than upon a public street, and there is no servitude of passage involved, any damaging of this access does not entitle the landowner to compensation, even though the interference results in diminution of the value of the land.⁸²

Trees and Crops

When land is "taken" with trees and crops located thereon, such trees and crops are considered as having been "taken" with the land.⁸³ However, in many instances trees in or along expropriated land are not destroyed but merely damaged, as when an electric public utility company expropriates a right of way for electric power lines and trims trees along the route.⁸⁴ In these instances, the esthetic value of the trees will be considered. Thus when a tree has been carefully planted, arranged, and groomed so as to evidence special esthetic value, the compensation award will not be based on the value of the tree as such, but on its intrinsic value.⁸⁵ But when trees have grown naturally and have no especially significant beauty, a nominal award only is allowed.⁸⁶

"taking" of the "property" right of access upon public streets. The "damaging" of access would be compensable only when it results in a diminution of the value of the land, and only to the extent of such diminution. See *McMahon v. St. Louis, Ark. & Tex. R.R.*, 41 La. Ann. 827, 6 So. 640 (1889); *Carter v. Louisiana Highway Comm'n*, 6 So.2d 159 (La. App. 2d Cir. 1942). Personal inconveniences and business losses resulting from "damaging" of access rights upon public streets would not be compensable because those items are not normally compensable. See text at notes 164-179 *infra*. But see *Sholars v. Louisiana Highway Comm'n*, 6 So.2d 153 (La. App. 2d Cir. 1942). "[I]t is settled beyond debate that temporary interference with property rights or the rendering for a time use of property more inconvenient, when done for public purposes, do not amount to a 'taking' and loss resulting therefrom does not fall within the 'or damaged' organic provision. Sacrifices of this character are due by all property owners for the benefit of the general public." *Id.* at 155. Although the quotation appears as directly contradictory to the statement in the text, the quotation refers to business losses, which are never compensable.

82. *Buras Ice Factory v. Department of Highways*, 235 La. 158, 103 So.2d 74 (1958). Plaintiff's ice factory was located on a canal which led to the Gulf of Mexico. The factory was used almost exclusively for the purpose of making and selling ice to shrimp boats operating in the Gulf. The Department of Highways constructed a low bridge over the canal, completely cutting off all access to the Gulf by shrimp boats. This resulted in plaintiff's ice factory being rendered virtually worthless. After finding that no servitude of passage existed, the court held that the plaintiff was not entitled to compensation for the destruction of access to his property, since it was not on a public street.

83. See text at notes 23-31 *supra*.

84. As an example see *Morgan v. Dixie Elec. Membership Corp.*, 112 So.2d 315 (La. App. 1st Cir. 1959).

85. *Ibid.*

86. *New Orleans v. Shreveport Oil Co.*, 170 La. 432, 128 So. 35 (1930);

Torts of the Condemnor's Employees Which Damage Property

Until 1948 damages to property caused by torts of the condemnor's employees engaged in work pursuant to expropriation proceedings were recovered through an expropriation action under article I, section 2.⁸⁷ Then in *Angelle v. State*⁸⁸ the previous rule was expressly overruled; the Supreme Court held that recovery under article I, section 2, was possible only when the damages occurred as a necessary consequence of a public undertaking.⁸⁹ Therefore, damages caused by tortious acts of the condemnor's employees were excluded and could be recovered only in a separate tort action. In 1958 doubt was cast on the *Angelle* ruling in *Buras Ice Factory v. Department of Highways*,⁹⁰ which held that damages to property could be recovered under article I, section 2, if the property were injured in a manner that would give rise to an action under Civil Code articles 2315⁹¹ and 667⁹² for damages done by an individual or private corporation. The *Buras* case may indicate that the Supreme Court has returned to its former rule.⁹³

Whether recovery for this type damage is by a tort action or by an expropriation action is important procedurally. If a separate tort action is required, the doctrine of sovereign immunity will apply and legislative permission to sue the state will be required.⁹⁴ Such permission is not required in expropriation actions.⁹⁵ Also, the measure of damages varies in the

Tissot v. Great So. Tel. & Tel. Co., 39 La. Ann. 996, 3 So. 261 (1887); *Morgan v. Dixie Elec. Membership Corp.*, 112 So.2d 315 (La. App. 1st Cir. 1959); *Kerr v. Cent. Louisiana Elec. Co.*, 59 So.2d 209 (La. App. 2d Cir. 1952); *Goins v. Beauregard Elec. Co-ops., Inc.*, 44 So.2d 715 (La. App. 1st Cir. 1950); *Davis v. Chicago, R.I. & P. R.R.*, 13 So.2d 389 (La. App. 2d Cir. 1943); *Marbury v. Highway Comm'n*, 153 So. 590 (La. App. 2d Cir. 1934).

87. *De Moss v. Police Jury*, 167 La. 83, 118 So. 700 (1928). The condemnor's employees tore down a fence which protected crops from cattle. The fence was not replaced, and cattle entered the field, destroying the crop. The Supreme Court allowed recovery. See Comment, *Expropriation—Consequential Damages Under the Constitution*, 19 LA. L. REV. 491 (1959).

88. 212 La. 1069, 34 So.2d 321 (1948).

89. *Ibid.*

90. 235 La. 158, 103 So.2d 74 (1958).

91. LA. CIVIL CODE art. 2315 (1870): "Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it"

92. *Id.* art. 667: "Although a proprietor may do with his estate whatever he pleases, still he can not make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him."

93. *Buras Ice Factory v. Department of Highways*, 235 La. 158, 103 So.2d 74 (1958).

94. See *The Work of the Louisiana Supreme Court for the 1947-1948 Term—Torts and Workmen's Compensation*, 9 LA. L. REV. 224 (1949).

95. *Angelle v. State*, 212 La. 1069, 34 So.2d 321 (1948).

two actions. In tort actions it is the cost of restoration and the value of the lost use; while in expropriation actions it is measured by the difference in the market value of the property immediately before and immediately after the taking and damaging.⁹⁶

The argument has been advanced that such damages should be recoverable in a tort action because otherwise judicial expropriation proceedings required by the Constitution are a useless formality.⁹⁷ Also, recovery in an expropriation suit would deprive the landowner of the additional compensation he would be entitled to in the tort action.⁹⁸ However, recovery in a separate tort action is criticized because of the application of the doctrine of sovereign immunity.⁹⁹

It would seem that recovery of such damages in a separate tort action is the better method, for the reasons suggested and for the additional reason that article I, section 2, by its terms, would seem to preclude recovery of such damages in an expropriation suit. However, the effect of the *Buras* case upon the *Angelle* case, and the status of such damages, will not be known until the Supreme Court has an opportunity to re-examine this issue.

Speculative Damages and Damages Affecting the Public in General

Since damages to property are measured by the difference between the value of the property immediately before and immediately after the taking, speculative damages¹⁰⁰ to the remainder will not be compensated, when part of a tract of land is taken, unless the speculative damages decrease the value of the property immediately after the taking.¹⁰¹ Therefore, diminu-

96. *Hebert v. T. L. James & Co.*, 72 So.2d 754 (La. App. 1st Cir. 1954).

97. *Belgarde v. Natchitoches*, 156 So.2d 132 (La. App. 3d Cir. 1963).

98. *Ibid.*

99. See *The Work of the Louisiana Supreme Court for the 1947-1948 Term—Torts and Workmen's Compensation*, 9 LA. L. REV. 224 (1949).

100. "Speculative damages" are those damages which may occur in the future as a result of the public improvement being built.

101. *New Orleans v. Giraud*, 238 La. 278, 115 So.2d 349 (1959); *Lafayette v. Hernandez*, 232 La. 1, 93 So.2d 672 (1957); *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So.2d 260 (1956); *Department of Highways v. Glassell*, 226 La. 988, 77 So.2d 881 (1955); *Texas Pipe Line Co. v. Nat'l Gasoline Co.*, 203 La. 787, 14 So.2d 636 (1943); *Highway Comm'n v. Lasseigne*, 177 La. 440, 148 So. 672 (1933); *Yazoo & M.V. R.R. v. Teissier*, 134 La. 958, 64 So. 866 (1914); *Colonial Pipeline Co. v. Babineaux*, 154 So.2d 594 (La. App. 1st Cir. 1963); *United Gas Pipeline Co. v. New Orleans Terminal Co.*, 156 So.2d 297 (La. App. 4th Cir. 1963).

tion in value of land caused by fear that the location of a public improvement will result in future damages is compensable.¹⁰² However, fear of future damages, likely to result from the location of the public improvement, which does not lower the value of the land, does not entitle the landowner to compensation.¹⁰³

Damages which are not special to the property in question but which affect the public in general are not compensable.¹⁰⁴ These damages include diversion of traffic, narrowing of streets, loss of corner influence and loss of street parking.¹⁰⁵ However, if the diversion of traffic or narrowing of the street interferes with the means of ingress and egress, the property owner will be entitled to compensation.¹⁰⁶

Damages to Property of a Third Person, no Part of Which Has Been Taken

Article I, section 2, does not limit damages to those suffered by property which has been partly taken. That a public improvement necessitates the taking of a part of one tract of land while missing a neighboring tract by inches should not preclude the owner of the latter tract from recovering damages for the diminution in value of his land resulting from the expropriation.¹⁰⁷ This principle has been followed in cases involving obstruction of ingress and egress upon public streets.¹⁰⁸

102. An example is land expropriated for a pipe line. The fear of future explosion of the pipeline is so great that the value of the land is diminished. The reduction in value is compensable. *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So. 2d 260 (1956); *United Gas Pipe Line Co. v. New Orleans Terminal Co.*, 156 So. 2d 297 (La. App. 4th Cir. 1963); *Colonial Pipeline Co. v. Babineaux*, 154 So. 2d 594 (La. App. 1st Cir. 1963).

103. An example occurs when land is expropriated for railroad purposes. The fear that use of the land will cause future damages does not reduce the value of the remaining land, so compensation is not allowed. *Yazoo & M.V. R.R. v. Teisier*, 134 La. 958, 64 So. 866 (1914).

104. *Efurd v. Shreveport*, 235 La. 555, 105 So. 2d 919 (1958); *Cerniglio v. New Orleans*, 234 La. 730, 101 So. 2d 218 (1958); *Thomas & Warner, Inc. v. New Orleans*, 230 La. 1024, 89 So. 2d 885 (1956); *Rudolph Ramelli, Inc. v. New Orleans*, 223 La. 703, 66 So. 2d 617 (1953); *Patin v. New Orleans*, 223 La. 703, 66 So. 2d 617 (1953); *Britt v. Shreveport*, 83 So. 2d 476 (La. App. 2d Cir. 1955); *Jarnagin v. Highway Comm'n*, 5 So. 2d 660 (La. App. 2d Cir. 1942).

105. See note 104 *supra*.

106. *Harrison v. Highway Comm'n*, 202 La. 345, 11 So. 2d 612 (1942); *State v. Lewis*, 142 So. 2d 652 (La. App. 1st Cir. 1962).

107. *Jarnagin v. Highway Comm'n*, 5 So. 2d 660, 664 (La. App. 2d Cir. 1942): "We are of the opinion that a physical invasion of real property or of a real right is not indispensable to the infliction of damages within the meaning of the constitutional guaranty under discussion. If the public improvement, as a consequential effect, has caused special damages to property, such as is not sustained by the public or the neighborhood generally, whether it abuts the improvement or not, an action lies to recover." See Comment, 19 LA. L. REV. 491 (1959).

108. *Manning v. Shreveport*, 119 La. 1044, 44 So. 882 (1907).

The possibility of recovering other damages suffered by property a part of which has not been taken is considered in the *Buras* case,¹⁰⁹ where the Supreme Court held that compensation could be recovered under article I, section 2, only when the public improvement "is of such a nature as would give rise to an action in damages under 2315 and 667 of the Civil Code had it been done by an individual or private corporation."¹¹⁰ It thus seems that the *Buras* case has limited the recovery of damages suffered by property, no part of which has been taken,¹¹¹ to those situations where the public improvement is a nuisance¹¹² or otherwise involves a tortious interference with the landowner's rights. This limitation is severe, especially in view of the broadening concept of property. The concept of "damages" in article I, section 2, would not be strained by the inclusion of damages to property not actually taken if these damages actually diminish the value of the property. Allowance of such damages, however, is of necessity a matter of policy, and it is the duty of the legislature and courts to decide at what point the public interest in inexpensive public improvements overrides the individual interest of being free from state action which interferes with and damages private property.

"Damaging" of a Movable

Because movables cannot be "taken" by the state in expropriation actions, the owner must remove them from the expropriated property. Any damages to movables incurred as a result of an expropriation and the necessity of moving them are not compensable, as such damages are considered consequential.¹¹³ The cost of moving the movables is likewise not recoverable.¹¹⁴

109. *Buras Ice Factory v. Department of Highways*, 235 La. 158, 103 So.2d 74 (1958).

110. *Id.* at 179, 103 So.2d at 82.

111. See text at notes 87-99 *supra*, for a discussion of the possibility of recovering tort damages under article I, § 2.

112. See *Schneiday v. Highway Comm'n*, 206 La. 754, 20 So.2d 14 (1944). Damages caused by the nuisance must impair the value of the adjacent land before compensation is awarded. The fact that it is a nuisance to an occupant of the land is not significant.

113. *Department of Highways v. Sauls*, 234 La. 241, 99 So.2d 97 (1958); *School Bd. v. Nassif*, 232 La. 218, 94 So.2d 40 (1957); *Department of Highways v. Henderson*, 138 So.2d 597 (La. App. 3d Cir. 1962). The legislature has limited the property that can be "taken" to immovables. LA. R.S. 19:1 (1950).

114. See note 113 *supra*.

*"Damaging" of Real Rights Other Than Ownership
Predial Servitude*

If property encumbered by a pre-existing servitude is acquired by expropriation, and the servitude is destroyed, the owner of the dominant estate is entitled to compensation.¹¹⁵ The servitudes most commonly destroyed by the exercise of the power of expropriation are those of drain, passage, light, and view. A temporary interference with a servitude should entitle the owner of the dominant estate to compensation, if such interference diminishes the value of the dominant estate.¹¹⁶ In some circumstances there may be a second concurrent use of a servitude which does not interfere with or damage the first use, in which case the first user of the servitude is not entitled to compensation. The owner of the property would be entitled to no compensation for the second use.¹¹⁷ It seems that the above rules apply whether the existing servitude arose from the natural situation of the place, from contract between the owners of the property, or from a previous expropriation.

When a servitude of drain has been destroyed, and the condemnor does not restore it,¹¹⁸ the owner of the dominant estate is entitled to the reasonable cost of repairing the damage, upon the principle that the owner should be put in as good a pecuniary position as if the property had not been taken.¹¹⁹ A temporary interference with a servitude of drain which causes a diminution in value of the dominant estate should be compensable to the extent of the diminished value. In some circumstances the interference with the servitude of drain may be so severe as to cause

115. *Arkansas Louisiana Gas Co. v. Department of Highways*, 104 So.2d 204 (La. App. 2d Cir. 1958), in which the court stated that the principle that a right of way, whether called an easement or servitude, is property and that damage to its free use by the owners thereof amounts to a taking of property, is too well established to admit of question. The taking of a servitude entitles the owner to compensation. *Department of Highways v. Caldwell Bros. Real Estate, Inc.*, 155 So.2d 231 (La. App. 2d Cir. 1963); *Louisiana Power & Light Co. v. Department of Highways*, 142 So.2d 807 (La. App. 1st Cir. 1962).

116. *Boudreaux v. Landry*, 120 So.2d 535 (La. App. 1st Cir. 1960). The result is logical. A servitude is an immovable real right, and damage to it which diminishes the value of the dominant estate should be compensable to the extent of the diminished value.

117. Servitudes are strictly construed. See, e.g., *Am. Tel. & Tel. Co. v. E. End Realty Co.*, 223 La. 532, 66 So.2d 327 (1953); *Louisiana Power & Light Co. v. Dileo*, 79 So.2d 150 (La. App. 1st Cir. 1955).

118. In most instances the Highway Department restores the servitude of drain. See *Highway Comm'n v. DeBouchel*, 174 La. 968, 142 So. 142 (1932).

119. *Department of Highways v. Caldwell Bros. Real Estate, Inc.*, 155 So.2d 231 (La. App. 2d Cir. 1963).

the property to be "taken," in which case just and adequate compensation must be paid.¹²⁰

A servitude of passage which has arisen by contract between property owners will be strictly construed.¹²¹ When such a servitude of passage is merely temporarily interfered with by the exercise of the power of expropriation, and the value of the dominant estate is not diminished, there is no "taking" or "damaging" of property which requires prior judicial sanction and compensation.¹²²

A servitude of passage is discontinuous¹²³ and, with the possible exception noted below, can be established only by title.¹²⁴ Therefore, when access to land is not established by title, or is not upon a public street, an expropriation action which destroys this access is not a "taking" or "damaging" of "property" which entitles the landowner to compensation.¹²⁵

The problem is more difficult if access to land is by way of a discontinuous apparent passage established by destination. The Civil Code provides that, "If the owner of two estates, between which there exists an apparent sign of servitude, sells one of those estates, and if the deed of sale be silent respecting the servitude, the same shall continue to exist actively or passively in favor of or upon the estate which has been sold."¹²⁶ There is no requirement in the article that such a servitude be continu-

120. *Brockett v. Shreveport*, 160 La. 105, 106 So. 710 (1926); *Bickham v. Shreveport*, 156 La. 648, 101 So. 8 (1924). A dam was built which so interfered with the servitude of drain that the dominant estate was permanently covered with water. The land had to be expropriated.

121. LA. CIVIL CODE art. 709 (1870): "The use and extent of servitudes thus established are regulated by the title by which they are granted, and if there be no titles, by the following rules."

122. *Boudreaux v. Landry*, 120 So.2d 535 (La. App. 1st Cir. 1960).

123. LA. CIVIL CODE art. 727 (1870): "Servitudes are either continuous or discontinuous. Discontinuous servitudes are such as need an act of man to be exercised. Such are the rights of passage, or drawing water, pasture and the like."

124. *Id.* art. 766: "Continuous nonapparent servitudes, and discontinuous servitudes, whether apparent or not, can be established only by title. Immemorial possession itself is not sufficient to acquire them."

125. This results because access to a tract of land not established by a servitude is not one of the real rights in property. See *Yiannopoulos, Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963), for an enumeration and discussion of the real rights recognized in Louisiana. Since no real right is damaged when access to land is destroyed, the landowner property rights have not been "damaged" or "taken," and he is entitled to no compensation. The one exception to this occurs when the access is upon a public street. The jurisprudence has established that the means of access from land to a public street is a "property" right. See text at notes 77-81 *supra*. See also *Buras Ice Factory, Inc. v. Department of Highways*, 235 La. 158, 103 So.2d 74 (1958).

126. LA. CIVIL CODE art. 769 (1870).

ous. However, "The destination made by the owner is equivalent to title with respect to continuous apparent servitudes."¹²⁷ There has been much debate in France whether a discontinuous servitude may be established by destination.¹²⁸ However, Louisiana jurisprudence has failed to recognize the discrepancy existing between the two articles. In the *Buras* case, involving a discontinuous apparent passage in the form of a canal from the ice factory of the plaintiff to the Gulf of Mexico, established by destination of the owner of the land, the Supreme Court did not give effect to article 769.¹²⁹ The court declared that because a discontinuous apparent servitude of passage can only be established by title, any interference with such a passage, not established by title, is not a "damaging" of property which entitles the owner of land depending on the passage to compensation under article I, section 2.¹³⁰ This result has been criticized as having read article 769 out of the Civil Code.¹³¹

Once the condemnor has successfully expropriated a servitude, it becomes the condemnor's property and compensation must be paid before it can subsequently be taken or damaged for public purposes by another condemnor, even though it is already being used for public purposes.¹³² However, since the servitude is limited strictly to the purpose for which it was first expropriated, there may be a concurrent use of the servitude by another condemnor. If so, the first condemnor is entitled to damages to the extent that the value of the servitude has been decreased for his purposes.¹³³ When there is no interference with the first condemnor's use of the servitude, he will receive no compensation.¹³⁴ In these instances, the owner of the land

127. *Id.* art. 767.

128. See Comment, 8 LA. L. REV. 560 (1948).

129. *Buras Ice Factory, Inc. v. Department of Highways*, 235 La. 158, 103 So. 2d 74 (1957).

130. *Ibid.*

131. See *Legislative Symposium: The 1958 Regular Session — Civil Code and Related Subjects: Part II*, 19 LA. L. REV. 306 (1959).

132. *Louisiana Power & Light Co. v. Department of Highways*, 142 So. 2d 807 (La. App. 1st Cir. 1962); *Arkansas Louisiana Gas Co. v. Department of Highways*, 104 So. 2d 204 (La. App. 2d Cir. 1958).

133. *Shreveport v. Kansas City, S. & G. Ry.*, 184 La. 473, 166 So. 471 (1936); *Shreveport v. Texas & P. Ry.*, 182 La. 36, 161 So. 12 (1935); *Shreveport v. Kansas City, S. & G. Ry.*, 169 La. 1085, 126 So. 667 (1930); *Eunice v. Louisiana W. Ry.*, 135 La. 882, 66 So. 257 (1914).

134. See *Am. Tel. & Tel. Co. v. East End Realty Co.*, 223 La. 532, 66 So. 2d 327 (1953); *Shreveport v. Kansas City, S. & G. Ry.*, 184 La. 473, 166 So. 471 (1936); *Shreveport v. Texas & Pac. R.R.*, 182 La. 36, 161 So. 12 (1935); *Shreveport v. Kansas City, S. & G. Ry.*, 169 La. 1085, 126 So. 667 (1930); *Eunice v. Louisiana W. Ry.*, 135 La. 882, 66 So. 257 (1914); 2 NICHOLS, *EMINENT DOMAIN* § 5.4[1] (3d ed. 1950).

also is entitled to compensation for the taking of the second servitude.¹³⁵

Private roads, open only for the benefit of certain individuals to go to and from their homes and for the service of their lands, are servitudes.¹³⁶ If such a road is destroyed by expropriation, its users should be entitled to compensation.¹³⁷ If a landowner purchases a private road, and the road is subsequently expropriated, the landowner is entitled to the value of the land taken plus a sum for the road itself.¹³⁸

Damages by obstruction of light, air, and view are compensable,¹³⁹ but only if they cause a decrease in the value of the property.¹⁴⁰ The amount of compensation will be fixed at the difference between the value of the property immediately before and immediately after the expropriation action.¹⁴¹

Mineral Rights

There are three types of mineral rights in Louisiana: the mineral servitude, the mineral lease, and the mineral royalty. The mineral servitude is a real right. Real rights being "the rights of ownership and its recognized dismemberments,"¹⁴² the expropriation of a tract of land in full ownership gives the state all real rights in the land,¹⁴³ including the mineral servitude. Therefore, the owner of a mineral servitude which has been destroyed or damaged should be entitled to compensation.

135. *Am. Tel. & Tel. Co. v. East End Realty Co.*, 223 La. 532, 66 So.2d 327 (1953); *Louisiana Power & Light Co. v. Dileo*, 79 So.2d 150 (La. App. 1st Cir. 1955).

136. LA. CIVIL CODE art. 706 (1870).

137. Since such a road is established as a servitude in article 706 of the Civil Code, the road is a real right, and "damaging" or "taking" of it should therefore result in compensation. See Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963) for a discussion of real rights in Louisiana.

138. *Police Jury v. Borne*, 198 La. 959, 5 So.2d 301 (1941). In addition to the value of the servitude acquired, plaintiffs were allowed the value of the private road.

139. *Harrison v. Highway Comm'n*, 202 La. 345, 11 So.2d 612 (1942); *Carter v. Highway Comm'n*, 6 So.2d 159 (La. App. 2d Cir. 1942).

140. Damages to be compensable must be damages to property. See *McMahon v. St. Louis Ark. & Texas R.R.*, 41 La. Ann. 827, 6 So. 640 (1889); *Carter v. Louisiana Highway Comm'n*, 6 So.2d 159 (La. App. 2d Cir. 1942).

141. This is the general method used in computing damages resulting in diminution in value of land. See *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So.2d 260 (1955).

142. Yiannopoulos, *Real Rights in Louisiana and Comparative Law, Part II*, 23 LA. L. REV. 518, 549 (1963).

143. See *Jefferson v. Texas Co.*, 192 La. 934, 189 So. 580 (1939).

Although mineral leases are classified as both personal rights and real rights, the Supreme Court has indicated that for purposes of expropriation they will be treated as real rights.¹⁴⁴ Therefore, damage of this right by expropriation entitles the owner of the right to compensation.¹⁴⁵

The status of the mineral royalty is not entirely clear, but it is apparently classified as a *sui generis* real right because it is a charge on the land or an incorporeal immovable attached to the land — a mineral lease, or mineral servitude.¹⁴⁶ For purposes of expropriation, therefore, the mineral royalty should be treated the same as a mineral servitude or mineral lease.

If property is acquired by the United States or by Louisiana, the mineral rights therein may be reserved, and once reserved, are imprescriptible.¹⁴⁷ Therefore, expropriation of land by the state allows the landowner to reserve the mineral rights in the land, in which case they would not be "taken" or "damaged." It seems that a conventional reservation of mineral rights when property is expropriated by a condemnor other than the state is possible. In that case the mineral reservation should be subject to the normal ten-year prescription rules.

Mortgages

If full ownership of property is acquired by expropriation, it passes to the condemnor free and clear of all mortgages or privileges of any kind.¹⁴⁸ The compensation, which is paid into court, is distributed to the mortgagee and other privileged creditors according to their priority.¹⁴⁹

If full ownership of the property is not acquired by the condemnor, the expropriation may still impair the mortgagee's security. In such case the same rules that would apply in any other impairment situation should apply to determine the mortgagee's rights.¹⁵⁰

144. Department of Highways v. Guidry, 240 La. 516, 124 So. 2d 531 (1960).

145. *Ibid.*

146. See Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 LA. L. REV. 161 (1963).

147. LA. R.S. 9:5806 (1950). For a review of the jurisprudence associated with this statute see, *The Work of the Louisiana Appellate Court for the 1961-1962 Term — Mineral Rights*, 23 LA. L. REV. 323 (1963).

148. *Id.* 19:11.

149. *Ibid.*

150. 2 NICHOLS, EMINENT DOMAIN § 5.741[2] (3d ed. 1950).

Usufruct

A French statute¹⁵¹ provides that when immovable property subject to a usufruct is expropriated for the public utility, "the usufructuary's right is transferred from the thing to the award."¹⁵² The entire amount awarded as compensation in the expropriation proceeding is turned over to the usufructuary so that he may enjoy it instead of the expropriated property. However, as the naked owner's risks are thereby increased, the usufructuary must give security, even if he was previously exempted from doing so.¹⁵³

In Louisiana the effect of expropriation on usufructs has been litigated only once. In *Department of Highways v. Costello*,¹⁵⁴ the surviving spouse owned the statutory usufruct on the deceased's share of the community.¹⁵⁵ The naked owners contended that the usufruct expired when the land subject to it was lost. Reasoning that the statutory usufruct was created to insure the surviving spouse of means of support,¹⁵⁶ the court held that the usufruct did not expire and gave the usufructuary the entire expropriation award. This case which implies that only the surviving spouse or usufructuary would receive the compensation adopts a narrower rule than the French rule which applies to all the usufructs.

*"Damaging" of Personal Rights**Predial Leases*

When property subject to a lease is taken for public purposes, the lease terminates; and the lessee is not entitled to damages from the lessor.¹⁵⁷ However, the lessee is entitled to receive the value of his lease in the expropriation proceeding,¹⁵⁸ although leases are classified as personal rights in Louisiana.¹⁵⁹

151. Law of May 3, 1841, art. 39.

152. 1 *PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE)* no. 2844 (1959).

153. *Ibid.*

154. *Department of Highways v. Costello*, 158 So.2d 850 (La. App. 4th Cir. 1963).

155. LA. CIVIL CODE art. 916 (1870) is the source of the usufruct.

156. *Department of Highways v. Costello*, 158 So.2d 850, 852 (La. App. 4th Cir. 1963).

157. LA. CIVIL CODE art. 2697 (1870).

158. *Department of Highways v. Schnitt*, 238 La. 1069, 117 So.2d 595 (1960); *Department of Highways v. Ferris*, 227 La. 13, 78 So.2d 493 (1955).

159. See Yiannopoulos, *Real Rights in Louisiana and Comparative Law*, 23 *LA. L. REV.* 161 (1963).

Allowance of compensation for leases in Louisiana probably resulted from the fact that in Anglo-American law a lease is classified as an estate in the land, and the lessee is entitled to receive compensation upon its destruction just as the owner of any other estate.¹⁶⁰ Since the lessee in other jurisdictions received compensation, Louisiana probably felt obliged to follow.

The lessee's share of the expropriation price is measured by the market value of the lease minus the rent owed by the lessee for the remainder of the term.¹⁶¹ Thus, if the market value of the lease at the time of expropriation is no more than the rent due in the future, the lease has no value for expropriation purposes. However, if the market value of the lease exceeds the future rent due, the lessee is entitled to the excess as compensation for the lease. The profits which would have been derived from the lease cannot be used as a basis in determining the value of the lease.¹⁶²

As part of the lease agreement, a lessee may build a structure on the leased property. Where the terms of the lease provide that the structure shall become the property of the lessor upon the termination of the lease, the lessee should receive the value of the structure to the extent of its value to him. This value should be the difference between the market value of a lease upon the land with the structure minus the future payments the lessee would have paid under the lease. The lessor should be entitled to receive compensation for the value of the structure to him, which would be the value of the building to a full owner at the future date when the lease would have terminated.

If the terms of the lease provide that the lessee shall retain ownership of the structure upon termination of the lease, the lessee should be compensated for the value of the structure at the time of expropriation, minus the cost of moving the structure. The cost of moving the structure should be subtracted from the value of the structure because the lessee would have had to bear this expense at the termination of the lease. The lessor should have no compensable interest in the structure.

If the condemnor's acquisition of only part of the leased

160 2 NICHOLS, *EMINENT DOMAIN* § 5.23 (3d ed. 1950).

161. *Department of Highways v. Schnitt*, 238 La. 1069, 117 So.2d 595 (1960); *Department of Highways v. Ferris*, 227 La. 13, 78 So.2d 493 (1955).

162. See note 161 *supra*.

premises does not make the property unusable for purposes of the lease, the lease should not terminate.¹⁶³ If the taking interferes with the lease, but the lessee can continue without trouble, the lessee should receive the difference between what he will pay for the lease and the diminished market value of the lease.

Business Losses

Business losses resulting from expropriation proceedings are not compensable.¹⁶⁴ Compensation is refused on the principle that business losses are not property losses but personal deprivations, and that only damages to property are compensable under article I, section 2.¹⁶⁵

Business losses include the costs of moving the business, loss of anticipated profits while moving and re-establishing the business, and good will.¹⁶⁶ However, if the business itself is the thing expropriated, its good will is a compensable item.¹⁶⁷ Although business losses are not compensable, the fact that a certain type of business can be conducted on the land is relevant in determining what is the property's highest and best use.¹⁶⁸

Compensating business losses in expropriation proceedings is entirely a manner of policy.¹⁶⁹ Criticism of the present policy has been directed primarily at the fact that business losses suffered in expropriation proceedings are often more severe than other compensable losses.¹⁷⁰ At the same time the present policy has been justified on the basis that any allowance of business

163. The situation contemplated is that in which a servitude of right of way or passage is taken across a part of the leased property, which does not interfere with the lessee's use of the premises. For example, expropriation of a servitude across the back of the leased premises for purposes of laying a telephone cable or gas line normally does not interfere with the lessee's use of the leased premises. See *Garber v. Phillips Petroleum Co.*, 146 So. 2d 518 (La. App. 3d Cir. 1962).

164. *Department of Highways v. Levy*, 242 La. 259, 136 So. 2d 35 (1962); *Department of Highways v. Sauls*, 234 La. 241, 99 So. 2d 97 (1958); *School Bd. v. Nassif*, 232 La. 218, 94 So. 2d 40 (1957); *Housing Authority v. Green*, 200 La. 463, 8 So. 2d 295 (1942); *Shreveport v. Kansas City So. Ry.*, 193 La. 277, 190 So. 404 (1939); *McMahon & Perrin v. St. Louis, Arkansas & Texas R.R.*, 41 La. Ann. 827, 6 So. 640 (1889); *Sholars v. Highway Comm'n*, 6 So. 2d 153 (La. App. 2d Cir. 1942).

165. See note 164 *supra*.

166. *School Bd. v. Nassif*, 232 La. 218, 94 So. 2d 40 (1957).

167. 2 NICHOLS, *EMINENT DOMAIN* § 5.76 (3d ed. 1950).

168. *Department of Highways v. Crockett*, 151 So. 2d 496 (La. App. 2d Cir. 1963).

169. There is no U.S. CONST. amend. XIV problem involved because an established business has never been held to be "property" in the constitutional sense. See 2 NICHOLS, *EMINENT DOMAIN* § 5.76 (3d ed. 1950).

170. See Comment, *Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses*, 67 YALE L.J. 61 (1957).

losses would lead to countless claims, all of which would be difficult to appraise.¹⁷¹ One's business could be included within the definition of "property" in article I, section 2, without theoretical difficulty. If there is increased criticism of the present policy, the policy only need be changed, not the basic concepts of "damage" and "property."

Personal Inconveniences

Damages personal to the owner which do not affect the market value of the property are not compensable items under the expropriation laws.¹⁷² Such damages include mental suffering,¹⁷³ inconvenience,¹⁷⁴ unless such inconvenience diminishes the market value of the land not taken;¹⁷⁵ discomfort due to proximity to the public improvement;¹⁷⁶ loss of esthetic value, unless it diminishes the value of the property;¹⁷⁷ moving costs;¹⁷⁸ and any other inconveniences which are strictly personal and not connected with the property.¹⁷⁹

Conclusion

Constitutional clauses, requiring compensation for the taking of property for public purposes, are found in every state constitution. These clauses have been expanded through the years to protect individual interests against the power of the state to take property for public purposes. For example, until 1870 "damages" resulting from expropriation proceedings were not compensable. In that year the State of Illinois extended the

171. 2 NICHOLS, EMINENT DOMAIN § 5.76 (3d ed. 1950).

172. *McMahon & Perrin v. St. Louis, Ark. & Tex. R.R.*, 41 La. Ann. 827, 6 So. 640 (1889).

173. *DeBouchel v. Highway Comm'n*, 172 La. 908, 135 So. 914 (1931); *Nagle v. Police Jury*, 175 La. 704, 144 So. 425 (1932).

174. *Efurd v. Shreveport*, 235 La. 555, 105 So.2d 219 (1958); *Rudolph Ramelli, Inc. v. New Orleans*, 233 La. 291, 96 So.2d 572 (1957); *Police Jury v. Hernandez*, 232 La. 1, 93 So.2d 672 (1957); *Am. Tel. & Tel. Co. v. Maguire*, 219 La. 740, 54 So.2d 4 (1951); *Housing Authority v. Green*, 200 La. 463, 8 So.2d 295 (1942); *Highway Comm'n v. Boudreaux*, 19 La. App. 98, 139 So. 521 (1932).

175. *Highway Comm'n v. Guidry*, 176 La. 389, 146 So. 1 (1933); *Opelousas, Gulf & N.E. Ry. v. St. Landry Cotton Oil Co.*, 121 La. 796, 46 So. 810 (1908).

176. *New Orleans v. Giraud*, 238 La. 278, 115 So.2d 349 (1959).

177. *Ibid.*; *E. Baton Rouge v. Koller*, 94 So.2d 505 (La. App. 1st Cir. 1957); *Louisiana Power & Light Co. v. Dileo*, 79 So.2d 150 (La. App. 1st Cir. 1955).

178. *School Bd. v. Nassif*, 232 La. 218, 94 So.2d 40 (1957); *Department of Highways v. Ferris*, 227 La. 13, 78 So.2d 493 (1955); *Housing Authority v. Green*, 200 La. 463, 8 So.2d 295 (1942).

179. *Department of Highways v. Circle Center Corp.*, 148 So.2d 411 (La. App. 1st Cir. 1962). Request for damages for preparation of new plat plans, renderings, brochures, models, and other papers required by the shifting and re-arranging of prospective buildings was denied.

protection afforded by their constitution to include "damages."¹⁸⁰ Louisiana, the tenth state to follow the example of Illinois, included the term "damages" within its constitutional clause in 1879. As the need arose, the concept of "damages" has been further expanded.

This development emphasizes the ability of the courts to recognize the need for protection of individual interests as society grows more complex and the necessity of new public improvements increases. The necessity of new public improvements is obvious, but they should not be constructed at the cost of an individual. However, all individual loss cannot be compensated because it would render the costs of public improvements prohibitive. Therefore, the legislature and courts must determine when losses are oppressive and thus should be compensable. The concepts of "property," "taken," and "damages" in article I, section 2, allow the court and legislature sufficient discretion to accomplish this objective.

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180. See 2 NICHOLS, EMINENT DOMAIN § 6.44 (3d ed. 1950).