

SPECIFICATION IN THE CIVIL LAW

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Our rules governing the acquisition of title to chattels through accession, confusion, or specification have a civil law origin.¹ Because of this the rules of the Roman law on the subject and those of the modern civil law are of interest to students of Anglo-American law. In the present article an attempt will be made to set forth briefly the rules of the civil law governing specification.

ROMAN LAW

During classical times it became recognized in Rome that a person might acquire ownership in a movable which belonged to another, by manufacturing or transforming it into a new product. Since the time of the Glossators, this mode of acquiring ownership is known as that of "specification."²

At the beginning of the empire a dispute existed between the two schools of jurists, the Sabinians and the Proculians, whether the owner of a chattel could lose his ownership therein in the manner indicated. The Sabinians held the view that the owner of the material could not be deprived of his rights with respect thereto and that he could claim the new thing, irrespective of the change made therein or the value added thereto.³ The Proculians, on the other hand, took the position that if the manufacturer had made a new species of the original article he should become owner of the new thing.⁴ By the time of Paul,⁵ a compromise view had arisen, according to which ownership should pass to the manufacturer if the new thing could not be reconverted into the original form, but not otherwise. And this view was adopted by Justinian.⁶

¹ In his classic treatise Bracton followed either Azo's disquisition on the subject or Justinian's Institutes. See Maitland, Bracton & Azo, 8 *Publications of Selden Society* (1894) 109, 117. In the matter of specification, however, Bracton contented himself with giving a mere definition of the term. See Woodbine, 2 *Bracton* (1922) 47.

² The Roman texts do not use this term. See Institutes, 2, 1, 25 ("*cum ex aliena materie species aliqua facta sit ab aliquo*"); Digest, 41, 1, 7, 7 ("*ex aliena materie speciem aliquam facere*").

³ Gaius, 2, 79. The Sabinians regarded the acquisition of title as a kind of accession. Moyle, *Institutes of Justinian* (3d ed. 1896) 206, note.

⁴ Gaius, 2, 79. The Proculians gave the ownership of the new thing to the manufacturer on the analogy of acquisition of title by occupation. Moyle, *loc. cit. supra* note 3.

⁵ Digest, 41, 1, 24.

⁶ Institutes, 2, 1, 25.

The mere addition of value to the original material, however great, was not sufficient in Roman law to take the case out of accession and put it in the class of specification. The texts appear to require for specification a change of species, but no definition of the terms is given, and we must look for our information to the examples found in the *Corpus Juris*. In the Institutes of Justinian we find the following:⁷ "When a man makes a new object out of materials belonging to another, the question usually arises, to which of them, by natural reason, does this new object belong—to the man who made it, or to the owner of the materials? For instance, one man may make wine, or oil, or corn, out of another man's grapes, olives, or sheaves; or a vessel out of his gold, silver or bronze; or mead of his wine and honey; or a plaster or eye-salve out of his drugs; or cloth out of his wool; or a ship, a chest or a chair out of his timber."⁸

⁷ *Ibid.*

⁸ The passage continues as follows: "After many controversies between the Sabinians and Proculians, the law has now been settled as follows, in accordance with the view of those who followed a middle course between the opinions of the two schools. If the new object can be reduced to the materials of which it was made, it belongs to the owner of the materials; if not, it belongs to the person who made it. For instance, a vessel can be melted down, and so reduced to the rude material—bronze, silver, or gold—of which it is made: but it is impossible to reconvert wine into grapes, oil into olives, or corn into sheaves, or even mead into the wine and honey of which it was compounded. But if a man makes a new object out of materials which belong partly to him and partly to another—for instance, mead of his own wine and another's honey, or a plaster or eye-salve of drugs which are not all his own, or cloth of wool which belongs only in part to him—in this case there can be no doubt that the new object belongs to its creator, for he has contributed not only part of the material, but the labour by which it was made."

Gaius has the following to say on the subject: "On a change of species, also, we have recourse to natural law to determine the proprietor. Thus, if grapes, or olives, or sheaves of corn, belonging to me, are converted by another into wine, or oil, or (threshed out) corn, a question arises whether the property in the corn, wine, or oil, is in me, or in the author of the conversion; so too if my gold or silver is manufactured into a vessel, or a ship, chest, or chair is constructed from my timber, or my wool is made into clothing, or my wine and honey are made into mead, or my drugs into a plaster or eye-salve, it becomes a question whether the ownership of the new product is vested in me or in the manufacturer. According to some, the material or substance is the criterion; that is to say, the owner of the material is to be deemed the owner of the product; and this was the doctrine which commended itself to Sabinus and Cassius; according to others the ownership of the product is in the manufacturer, and this was the doctrine favoured by the opposite school; who further held that the owner of the substance or material could maintain an action of theft against the purloiner, and also an action for damages (*condictio*), because, though the property which is destroyed cannot be vindicated, this is no bar to a *condictio* or personal action for damages against the thief and against certain other possessors." Institutes, 2, 79.

The dyeing of wool was not regarded as specification.⁹ Whether a new species was produced when grain was threshed, is not clear.¹⁰ Buckland says that the prevailing view regarded the grain as a new species;¹¹ he also states that the killing of a pig and cutting it into joints did not constitute specification; whereas the making of sausage therefrom was regarded as a new species.¹² In the same way, breaking an egg was not specification, but making an omelet was.¹³

Writing or printing on material belonging to another was not regarded in Roman law from the standpoint of specification, but was dealt with from the point of view of accession, according to which the owner of the principal thing became owner of the accessory. In the case of writing, the parchment was regarded as the principal thing, without reference to its value.¹⁴ As regards painting, a dispute existed¹⁵ which was settled by Justinian, who determined that the painting and not the canvas should be regarded as the principal thing.¹⁶

According to Windscheid,¹⁷ the Roman law required that the original material should have been converted into a "new thing." According to Dernburg,¹⁸ a "new form" must have been given to the original material. According to Moyle,¹⁹ the material must have been converted into a "new form or species."

Whether the manufacturer would become owner only if he acted in good faith is one of the most controverted points in Roman law. The Roman texts do not expressly require good faith. The leading passages on the subject contain no suggestion that the acquisition of ownership was dependent upon the existence of good faith on the part of the manufacturer.²⁰ Other passages, on the other hand, would seem to require *bona fides* by implication.²¹

⁹ Digest, 41, 1, 26, 2.

¹⁰ According to Digest, 41, 1, 7, 7 i. f. it did not constitute specification; but Gaius entertained a contrary opinion. Institutes of Gaius, 2, 79; Institutes of Justinian, 2, 1, 25.

¹¹ Buckland, *Textbook of Roman Law* (1921) 216.

¹² *Ibid.* 216-217.

¹³ *Ibid.* 217.

¹⁴ Institutes, 1, 2, 33; Digest, 41, 1, 9, 1, though the letters are of gold and therefore more valuable.

¹⁵ Paul put the case of painting on the same footing as that of writing, regarding the material on which the painting was made as the principal thing. Digest, 6, 1, 23, 3. Gaius held a contrary opinion. Digest, 41, 1, 9, 2.

¹⁶ Institutes, 2, 1, 34.

¹⁷ Windscheid, *Pandekten* (9th ed. 1906) 963.

¹⁸ 1 Dernburg, *Pandekten* (7th ed. 1902) 474.

¹⁹ Moyle, *op. cit. supra* note 3, at 205, note.

²⁰ See, for example, Institutes, 2, 1, 25, quoted above in notes 7 and 8.

²¹ These passages are all from Paul, through whose influence, in the

The Glossators supported the requirement of good faith for the acquisition of ownership through specification.²² This view was accepted also by the Commentators, by the French school of jurists,²³ and by most of the early German school, who relied partly on the passages from the *Corpus Juris* referred to and partly on the analogy of the undisputed doctrine in Roman law that only a bona fide possessor of another's land would acquire rights with respect thereto against the owner. Lauterbach, a writer belonging to the German school, speaks of the requirement of good faith as if it were supported by the common opinion of jurists.²⁴

Early in the nineteenth century, however, encouraged no doubt by the Institutes of Gaius,²⁵ which say nothing about the requirement of good faith for specification,²⁶ an attack was made upon the traditional point of view. Since then the battle has raged, neither side being able to claim a decisive victory. Among the writers favoring the view that the Roman required good faith for the acquisition of ownership by specification, we find such eminent names as Arndts,²⁷ Baron,²⁸ Czychlarz,²⁹ Dernburg,³⁰ Girard,³¹ Moyle,³² Windscheid.³³ Among those taking the opposite view are Bekker,³⁴ Brinz,³⁵ Glück,³⁶ Keller,³⁷ Pernice,³⁸

opinion of Dernburg, the requirement of *bona fides* became established in Roman law. 1 Dernburg, *op. cit. supra* note 18, at 476.

²² See gloss to *ab aliquo* to Institutes, 2, 1, 25 ("scilicet bona fide").

²³ See Donellus, *Comment. de jure civili*, bk. 4, ch. 12, sec. 4 ("*Tertium est, ut quis speciem fecerit bona fide, dum materiam suam esse existimat*").

²⁴ Lauterbach, *Collegii Pandectarum*, bk. 41, tit. 1, secs. 84, 87.

²⁵ These were discovered by Niehbur in 1816.

²⁶ See Gaius, 2, 79, *supra* notes 3 and 4.

²⁷ Arndts, *Pandekten* (13th ed. 1886) 280.

²⁸ Baron, *Pandekten* (9th ed. 1896) 260.

²⁹ Czychlarz in Glück's *Ausführliche Erläuterungen der Pandekten*, bks.

³⁰ 1 Dernburg, *op. cit. supra* note 18, at 476.

³¹ Girard, *Manuel de droit romain* (7th ed. 1924) 333.

³² Moyle, *op. cit. supra* note 3, at 206.

³³ Windscheid, *op. cit. supra* note 17, sec. 187. See also Fischer, *Problem der Identität und Neuheit* (*Berliner Festgabe für Jhering*, 1892) 60, note; Fitting, *Die Spezifikation* (1865) 48 *Archiv für die civilistische Praxis*, 335; Örtmann, *Die Volkswirtschaftslehre des Corpus Iuris Civilis* (1891) 142, *et seq.*; 1 Scheurl, *Beiträge zur Bearbeitung des römischen Rechts* (1852) 285-286; Schulin, *Über einige Anwendungsfälle der Publiciana in rem actio* (1873) 109, *et seq.*; W. Sell, *Versuche im Gebiete des Zivilrechts* (1833) 194, *et seq.*; Sturm, *Die Bedeutung der Rückführbarkeit und der mala fides für die Spezifikationslehre* (1888) 72 *Archiv für die civilistische Praxis*, 123; 1 Unterholzer, *Verjährungslehre* (1858) 229, note.

³⁴ Bekker, *Recht des Besitzes bei den Römern* (1880) 28.

³⁵ 1 Brinz, *Pandekten* (2d ed. 1873) 577-578.

³⁶ 13 Glück, *Ausführliche Erörterungen der Pandekten* (1868) sec. 840.

³⁷ 1 Keller, *Pandekten* (2d ed. 1866) 312.

³⁸ 2 Pernice, *Labeo* (2d ed. 1895) 323-325.

Puchta,³⁹ Seuffert,⁴⁰ Sintenis,⁴¹ Thibaut,⁴² Vangerow,⁴³ Wächter.⁴⁴ In view of the uncertain state of the Roman texts it was but natural that the jurists should read into them their own theories concerning the basis of the acquisition of ownership through specification. The good or bad faith of the manufacturer is immaterial, of course, for the acquisition of ownership to those basing his rights on the theory that the old thing is destroyed and that ownership in the new thing is acquired through occupation.⁴⁵ According to the supporters of the strict "creation" theory, also, who award the ownership in the new thing to the manufacturer because he creates it, good faith is not required.⁴⁶ It is important, on the other hand, so far as the acquisition of ownership is deemed to rest upon the recognition of the fact that honest labor should be protected.⁴⁷ From this point of view, the manufacturer in bad faith is not entitled to consideration. A third view also has some support, according to which the Roman law regarded a manufacturer in bad faith as owner, but not the thief.⁴⁸

The principal passages in the *Corpus Juris* relied upon in support of the requirement of good faith are the following:⁴⁹ Digest, 13, 1, 13; Digest, 13, 1, 14, 3; Digest, 47, 2, 52, 14; Digest, 41, 3, 4, 20. The three passages first mentioned may be considered together. They read as follows:

Digest, 13, 1, 13: "If cups have been made out of silver that was stolen, according to Fulcinius, they can be condicted; accordingly, in a *condictio* for the cup, a value will be put upon any device engraved which was made at the expense of the thief; just as, where a (slave) child is stolen and grows to be a man,

³⁹ 1 Puchta, *Pandekten* (10th ed. 1866) sec. 154.

⁴⁰ Seuffert, *Pandektenrecht* (4th ed. 1860) sec. 131; 2 *ibid. Erörterung einzelner Lehren des römischen Privatrechts* (1820) pt. 2, 18.

⁴¹ 1 Sintenis, *Das praktische gemeine Zivilrecht* (2d ed. 1860) 490-491.

⁴² 2 Thibaut, *System des Pandektenrechts* (8th ed. 1834) sec. 743.

⁴³ 1 Vangerow, *Pandekten* (1863) 567, note 2.

⁴⁴ 2 Wächter, *Pandekten* (1881) 139. See also Böcking, *Pandekten* (1853) 166; Gesterding, *Lehre vom Eigentum* (1817) 273; 2 Holzschuher, *Theorie und Casuistik des gemeinen Zivilrechts* (3d ed. 1864) 265; Leist, *Zivilrechtliche Studien*, pt. 3, 169; Mackeldey, *Lehrbuch des römischen Rechts* (14th ed. 1863) sec. 243; Mühlenbruch, *Pandekten* (4th ed. 1844) sec. 248; 1 Pagenstecher, *Römische Lehre vom Eigentum* (1853) pt. 2, 118; Pfersche, *Privatrechtliche Abhandlungen* (1886) 137; Schneider, *Kritische Vierteljahresschrift* (1894) 309.

⁴⁵ So, for example, Glück, Puchta, Thibaut, Vangerow.

⁴⁶ So, for example, Arndts, Brinz, Pernice.

⁴⁷ So, for example, Dernburg, *loc. cit. supra* note 13.

⁴⁸ 2 Böcking, *Pandekten* (1853) 166, 167; 1 Unterholzner, *Ausführliche Entwicklung der gesamten Verjährungslehre* (1853) 236.

⁴⁹ Digest, 10, 4, 12, 3 is also often relied upon, but Windscheid, a supporter of the requirement of *bona fides*, admits that the passage is inconclusive. Windscheid, *loc. cit. supra* note 17.

the valuation will be of his worth as full-grown, although he grow to manhood under the care and at the expense of the thief."

Digest, 13, 1, 14, 3: "The rule is similar on a theft of grapes: there is a good right of *condictio* in law for the *mustum* and the grape stones."

Digest, 47, 2, 52, 14: "If any one has stolen a mass of silver belonging to me and made cups therefrom, I can sue for the cups or the mass with either the *actio furti* or the *condictio furtiva*. The same is true as regards the grapes, *mustum* and grape stones, for with respect to all of these I may bring the *actio furti* as well as the *condictio furtiva*."

These passages, as is alleged by the supporters of the good faith theory, prove unequivocally that the manufacturer would not acquire ownership in the absence of good faith.⁵⁰ Those so contending rely for their support chiefly on the following passage of the *Corpus Juris*: "In the case of a thing stolen the *condictio (furtiva)* can be brought by the owner alone."⁵¹ This goes to show, it is insisted, that the manufacturer in the above cases never became owner of the new product, for otherwise the owner of the material could not bring the *condictio furtiva*.⁵² But if the owner of the material became the owner of the new product, he ought to be allowed to bring the vindication action for the recovery of his property; and yet Gaius and the other jurists give him only the *condictio furtiva*, which is essentially a tort action for the recovery of damages, saying nothing about the *rei vindicatio* action. The contention is also made that the passage which allows the *condictio* to be brought only by the owner has reference to the old ownership. According to Roman law, it is claimed, the owner of the thing at the time of the theft could bring the *condictio furtiva* against the thief, although the thing had been destroyed; nor could the action be defeated through the act of another. If the destruction of the thing is known to the plaintiff, he may, according to this view, demand by the *condictio* directly what has taken the place of the old thing. In the case of specification, when the old thing has been destroyed, he can recover the value of the new product. The fact, therefore, that the owner of the material could bring this action against the thief does not prove, according to these authors, that the plaintiff is the owner of the product. The action is given to him without reference to the question whether or not he was the

⁵⁰ 1 Dernburg, *op. cit. supra* note 18, at 476, note 10; Windscheid, *op. cit. supra* note 17, sec. 187.

⁵¹ Digest, 13, 1, 1. See also Digest, 47, 2, 14, 16 ("*condictio autem ei demum dominium habet*").

⁵² 2 Seuffert, *loc. cit. supra* note 40; 2 Thibaut, *loc. cit. supra* note 42; 1 Vangerow, *op. cit. supra* note 43, at 567; 2 Wächter, *loc. cit. supra* note 44.

owner of the new thing. The action would lie although the manufacturer had become owner of the product.⁵³

The fourth passage, relied upon by the supporters of the good faith theory, Digest, 41, 3, 4, 20, reads as follows:

"If you make a garment from stolen wool it is more correct that the substance be regarded and the garment be deemed, therefore, stolen."

This passage is found under the title relating to the acquisition of ownership through prescription. Now it is well settled in Roman law that a thief cannot acquire ownership in stolen property through prescription. Does the passage prove also that the thief did not become owner of the garment through specification? Buckland⁵⁴ thinks that the passage is really against this view, because Paul, in order to give to the plaintiff the *condictio furtiva* where the thing has been made into a new species, adopted the Sabinian view, rejected by Justinian, ascribing ownership to the owner of the material.

It will have been noticed that the passages above given have reference to things that were stolen. Suppose, however, that the thing was not stolen but manufactured into something new in bad faith. On this point there is no direct passage in the *Corpus Juris*.⁵⁵ Windscheid⁵⁶ and the great majority of writers⁵⁷ hold that the conversion in bad faith of the material belonging to another into something new constituted theft in Roman law.

When the owner of the material who had become owner of the new product brought the *condictio furtiva*, the manufacturer could claim payment of the expenses incurred in good faith.⁵⁸ He had no independent action, however, for the recovery of such expense.⁵⁹ Where the manufacturer became owner of the new product, the owner of the material had a quasi-contractual action for the value of the material;⁶⁰ or, if the manufacturer acted in bad faith, a delictual action for damages.⁶¹

Let us see now to what extent the rules of the Roman law governing specification have been modified by legislation in the civil

⁵³ 2 Pernice, *Labeo*, 323-325.

⁵⁴ Buckland, *op. cit. supra* note 11, at 217, note. See also Gesterding, *loc. cit. supra* note 44; 1 Pagenstecher, *loc. cit. supra* note 44.

⁵⁵ Sokolowski, *Die Philosophie im Privatrecht* (1902) 87.

⁵⁶ Windscheid, *op. cit. supra* note 17, at 970.

⁵⁷ Fitting (1865) 38 *Archiv für die civilistische Praxis*, 340; 2 Pernice, *op. cit. supra* note 38, at 151, note 12; 2 Wächter, *loc. cit. supra* note 44.

⁵⁸ See Digest, 6, 1, 23, 4.

⁵⁹ See Digest, 12, 6, 33; *ibid.* 10, 3, 14, 1.

⁶⁰ See Digest, 6, 1, 23, 5; 1 Dernburg, *op. cit. supra* note 18, at 476; 1 *ibid. System des Pandektenrechts* (8th ed. of *Pandekten* 1911) 347; 1 Windscheid, *op. cit. supra* note 17, at 971, note 6.

⁶¹ Windscheid, *op. cit. supra* note 17, at 971, note 6.

law countries. Of the continental codes, the following are of special interest.

THE PRUSSIAN CODE (1794). The Prussian Code gave the term "specification" a wider meaning than it had in Roman law, so as to include cases which the Roman law regarded as falling within the rules relating to accession, for example, dyeing, painting, or the building of a vessel.⁶² According to Dernburg,⁶³ threshing also came within the notion of specification.

Good faith⁶⁴ is required for the acquisition of ownership, but not non-reducibility to its original form.⁶⁵ If the manufacturer acts in bad faith, he is required to pay to the owner of the material, if the latter elects to relinquish his ownership in the product, the highest value of the material between the time of the wrongful act and the suit.⁶⁶ On the other hand, if the owner of the material claims the new product, he has to pay to the manufacturer acting in bad faith only the lowest rate of compensation for his labor, fixed by experts, which sum the manufacturer may forfeit to the state.⁶⁷

THE FRENCH CIVIL CODE (1804). The owner of the material may recover the product upon payment for the labor, although a thing of a new kind has been produced and the material cannot resume its original form.⁶⁸ If the value of the labor greatly exceeds the value of the material used, the work is considered the principal part, and the manufacturer has the right to keep the product, on condition of paying the owner the value of the material.⁶⁹ Where the manufacturer has made a new thing of material belonging partly to himself and partly to another, the material not being completely destroyed but being incapable of separation without inconvenience, the product belongs to both in common, to the one in proportion to the value of the material contributed by him and to the other in proportion both to the value of the material contributed by him and the value of the labor.⁷⁰

Identical provisions with those of the French Code or substan-

⁶² A. L. R., pt. 1, tit. 9, secs. 209, 304.

⁶³ 1 Dernburg, *Lehrbuch des preussischen Privatrechts* (5th ed. 1894) 565.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*; 1 Koch, *Allgemeines Landrecht für die preussischen Staaten* (8th ed. 1884) 535, note 51.

⁶⁶ A. L. R., pt. 1, tit. 9, sec. 309; 1 Dernburg, *op. cit. supra* note 64, at 566.

⁶⁷ A. L. R., pt. 1, tit. 9, secs. 300, 301.

⁶⁸ France, Civil Code, art. 570.

⁶⁹ *Ibid.* art. 571.

⁷⁰ *Ibid.* art. 572. The French codifier intended to reproduce the Roman law, but the Roman rules governing the subject were not accurately known at the time. See 1 Planiol, *Traité élémentaire de Droit Civil* (8th ed. 1920) 854.

tially similar provisions exist in Belgium⁷¹, Luxemburg,⁷² and Italy,⁷³ Haiti,⁷⁴ Louisiana,⁷⁵ and Quebec,⁷⁶ Costa Rica,⁷⁷ Salvador,⁷⁸ Chile,⁷⁹ Colombia,⁸⁰ Ecuador,⁸¹ Uruguay,⁸² and Venezuela.⁸³ The code provisions relating to specification have scarcely any practical value, however, in France and in those countries which have accepted the provisions of Article 2279 of the French Civil Code, according to which in the matter of movable property possession is equivalent to title, for the manufacturer will be protected by virtue of that maxim in practically all cases.⁸⁴

THE AUSTRIAN CODE (1811). Ownership in the new product will not be acquired if reduction to the original form is possible. If such reduction is not possible, the parties become co-owners. This is true also if such reduction cannot be accomplished without seriously affecting the value of the product or without unreasonable expense. If the manufacturer is in fault the owner of the material may elect to claim sole ownership of the new product on paying for the improvement or to forego his right to the new product upon being compensated for his material. If neither party is at fault, the party who has contributed the greater value to the product is entitled to the above election.⁸⁵ The bad faith of the party at fault will enhance the damages that he may have to pay.⁸⁶

THE PORTUGUESE CODE (1868). The manufacturer of a movable thing belonging to another becomes owner of the new product (1) if he acts in good faith; (2) if the material used cannot be reduced to its original form or if it cannot be done without losing the value resulting from such transformation. In the case last mentioned the owner of the material may keep the object, however, if its value does not exceed the price of the material.⁸⁷ If the manufacturer acts in bad faith the owner of the material is

⁷¹ Belgium, Civil Code, arts. 570-572.

⁷² Luxemburg, Civil Code, arts. 570-572.

⁷³ Italy, Civil Code, arts. 468-470.

⁷⁴ Haiti, Civil Code, arts. 470-472.

⁷⁵ Louisiana, Code, arts. 525-527.

⁷⁶ Quebec, Civil Code, arts. 434-436.

⁷⁷ Costa Rica, Civil Code, arts. 513-514.

⁷⁸ Salvador, Civil Code, art. 688.

⁷⁹ Chile, Civil Code, art. 662.

⁸⁰ Colombia, Civil Code, art. 732.

⁸¹ Ecuador, Civil Code, art. 651.

⁸² Uruguay, Civil Code, arts. 740-741.

⁸³ Venezuela, Civil Code of 1916, arts. 555-557.

⁸⁴ 1 Planiol, *op. cit. supra* note 70, at 855; 1 Colin & Capitant, *Cours élémentaire de Droit Civil* (3d ed. 1921) 872.

⁸⁵ Austria, Civil Code, secs. 414-415.

⁸⁶ 1 Stubenrauch, *Commentar zum österreichischen allgemeinen bürgerlichen Gesetzbuch* (8th ed. 1902) 516.

⁸⁷ Portugal, Civil Code, art. 2302, par. 1.

entitled to the new product and if the value of the product does not exceed the value of the material by one-third, he need not compensate the manufacturer for his labor; if it does exceed it by one-third he must indemnify him as to the excess.⁸⁸

THE SPANISH CODE (1889). The manufacturer will become owner of the new product if he acted in good faith. If the material is more precious than the product or superior in value, the owner of the material may either claim the new product upon paying the manufacturer the value of his labor or demand from the manufacturer the value of the material used. If the manufacturer acted in bad faith the owner of the material is entitled to the product without paying for the labor put on his material or he may recover the value of his material and damages.⁸⁹

The provisions of the Spanish Code are in force in Cuba, Porto Rico, and the Philippine Islands, and have been followed in Honduras⁹⁰ and Panama.⁹¹

THE GERMAN CODE (1900). A person who by manufacture or transformation of materials belonging to another produces a new movable acquires ownership of the new thing.⁹² The code does not define what is meant by a new thing and leaves it to be determined by the courts. It provides, however, specifically, that writing, drawing, painting, engraving, or any other similar manipulation of the surface of a thing shall be deemed equivalent to manufacture.⁹³ Ownership is not acquired in the above cases if the value of the manufacture or transformation is considerably less than the value of the material.⁹⁴ Whether or not the product

⁸⁸ *Ibid.* art. 2303.

⁸⁹ Spain, Civil Code, art. 383; 3 Manresa, *Comentario al Código Civil Español* (4th ed. 1918) 307.

⁹⁰ Honduras, Civil Code, art. 399.

⁹¹ Panama, Civil Code, art. 395.

⁹² Germany, Civil Code, sec. 950.

⁹³ *Ibid.* sec. 950.

⁹⁴ *Ibid.* sec. 950. Most authors interpret "the value of the manufacture or transformation" as referring to the value of the labor. Planck, *Commentar zum bürgerlichen Gesetzbuch* (4th ed. 1920) 413. Suppose that a silver vase is made into something new. Does the Code refer to the value of the silver in the vase or to the value of the silver vase? Most authors assume that the code section refers to the value of the silver vase. Planck, *op. cit.* sec. 950; *contra*: 3 Staudinger, *Commentar zum bürgerlichen Gesetzbuch* (8-9th ed. 1912) 410.

If the manufacturer uses materials belonging to several other persons and the value of his labor is considerably less than the value of the materials, the party contributing the principal thing will be the owner of the product. If there is no principal thing the owners of the materials will become co-owners of the product in proportion to their contributions. Secs. 947-948, German Civil Code. The same rules apply where the manufacturer contributes a part of the material used. If he does not contribute any material he does not become co-owner to the extent of the value of his labor. Wolff, *Sachenrecht* (5th ed. 1923) 218, note 9.

can be reduced to its original form is of no consequence.⁹⁵ Nor is it material whether the manufacturer or transformer acted in good or bad faith.⁹⁶ Even a thief may acquire ownership through specification.⁹⁷ The code provides that upon the acquisition of the ownership of the new thing all property rights existing with respect to the material are extinguished.⁹⁸ The person who is deprived of any right under the provisions of Section 950 of the code may demand of the person in whose favor the alteration of right takes place or a transferee without consideration,⁹⁹ that he make compensation in money under the provisions relating to the return of unjustified benefits.¹⁰⁰ Restoration of the former condition may not, however, be demanded.¹⁰¹

In addition to the above, special reservation is made¹⁰² in favor of the provisions of the code relating to unlawful acts¹⁰³ or to reimbursement of outlay incurred¹⁰⁴ or to the privilege of removing something jointed to a thing belonging to another.¹⁰⁵

If the manufacturer uses partly his own material and partly that of another the rules governing accession apply by way of analogy.¹⁰⁶

THE SWISS CODE (1907). The Swiss law is similar to the German. Where the manufacturer acts in bad faith, contrary to the German law, the judge has the power to vest the ownership in the new product in the owner of the material if it seems just under the circumstances.¹⁰⁷ It did not seem right that a thief should become owner of the new product.¹⁰⁸ For the acquisition of ownership through specification it is not necessary that the value of the labor should be much greater than the value of the material.¹⁰⁹

⁹⁵ 3 Staudinger, *loc. cit. supra* note 94.

⁹⁶ 3 Staudinger, *op. cit. supra* note 94, at 409; 2 Warneyer, *Kommentar zum bürgerlichen Gesetzbuch* (1924) 176.

⁹⁷ Decision of Imperial Court of Jan. 1, 1902, 49 *Goltdammer's Archiv* 111; 2 Endemann, *Lehrbuch des bürgerlichen Rechts* (8-9th ed. 1905) 550; Planck, *op. cit. supra* note 94, at 412; Staudinger, *op. cit. supra* note 94, at 409; 2 Warneyer, *loc. cit. supra* note 96.

⁹⁸ Germany, Civil Code, sec. 950.

⁹⁹ Wolff, *op. cit. supra* note 94, at 219-220, note; Planck, *op. cit. supra* note 94, at 415.

¹⁰⁰ Germany, Civil Code, sec. 951, par. 1; *cf. ibid.* secs. 812, *et seq.*

¹⁰¹ *Ibid.* sec. 951, par. 1.

¹⁰² *Ibid.* sec. 951, par. 2.

¹⁰³ *Cf. ibid.* secs. 823, *et seq.*

¹⁰⁴ *Cf. ibid.* secs. 258, 997.

¹⁰⁵ *Cf. ibid.* secs. 947-948.

¹⁰⁶ 3 Staudinger, *loc. cit. supra* note 94.

¹⁰⁷ Switzerland, Civil Code, art. 726; Wieland, *Sachenrecht* (1909) 194-195; Leemann, *Sachenrecht* (2d ed. 1920) 194-195.

¹⁰⁸ Weiland, *loc. cit. supra* note 107.

¹⁰⁹ Leemann, *op. cit. supra* note 107, at 485.

Attention should be called also to the provision of two non-continental codes of modern date, the Brazilian and the Japanese.¹¹⁰

THE BRAZILIAN CODE (1916.) The manufacturer becomes owner of the product, without reference to his good or bad faith, if he uses in part his own material and it is impossible to reduce the article to its original form.¹¹¹ If all the material belonged to another, the manufacturer will become owner of the product if it cannot be reduced to its original form and he acted in good faith.¹¹² If it can be reduced, or even if it cannot be reduced, provided the manufacturer acted in bad faith, the product will belong to the owner of the material.¹¹³ An exception to this rule exists in the case where the value of the labor exceeds considerably the value of the original material. In this case the manufacturer becomes owner of the new product, even though he acted in bad faith.¹¹⁴

THE JAPANESE CODE. The manufacturer becomes owner if the value of the workmanship greatly exceeds the value of the material. If the manufacturer supplied a part of the material, the product will belong to him only if the value of the material supplied by him added to the value of the workmanship exceeds the value of the material supplied by the other person.¹¹⁵

Sunmarizing the law contained in the codes of the countries referred to, the following may be stated by way of comment.

The German code has carried the economic point of view so far that the manufacturer in bad faith, even a thief, may through

¹¹⁰ The provisions of the Argentine and Mexican Codes, though not of recent date, may also be mentioned.

Argentine Code (1869). Title passes (1) if the manufacturer acted in good faith, and (2) if it is impossible to restore the article to its original form. (Art. 2567). If the manufacturer acted in bad faith, knowing or being charged with knowledge that the material did not belong to him, and the article cannot be reduced to its original form, the owner of the material is entitled to indemnity for all damages and shall have the proper criminal action, if he does not prefer to retain the thing in its new form, paying the manufacturer the increased price he would have accepted therefor. (Art. 2569).

Mexican Code (1884). A manufacturer in good faith acquires title if the artistic value of the product is greater than the value of the material. If he acted in bad faith, the owner of the material may take the product without having to pay the manufacturer for his labor, or he may recover for the value of the material and damages. (Art. 820).

The Civil Code of Guatemala has identical provisions with those of the Mexican Code. (Arts. 640-642).

¹¹¹ Brazil, Civil Code, arts. 611-612.

¹¹² *Ibid.* art. 612.

¹¹³ *Ibid.* art. 612, sec. 1.

¹¹⁴ *Ibid.* art. 612, sec. 2.

¹¹⁵ Japan, Civil Code, art. 246.

specification become the owner of things belonging to another. It sanctions, therefore, the "creation" theory in its extreme form. This point of view has been criticized, however, on the ground either that it ignores the just claims of capital or that honest labor alone deserves protection.¹¹⁶

The Swiss legislator was unwilling, on the one hand, to protect the thief and, on the other, to deprive the manufacturer in bad faith of ownership in the product under all circumstances without reference to the facts of the particular case. The code refers the question, therefore, to the courts, providing as follows:

"If the manufacturer did not act in good faith, the judge may assign the new thing to the owner of the material, even if the labor is more valuable."¹¹⁷

The Brazilian Code of 1916 lays down the rule that a manufacturer in bad faith shall become owner of the new product, if the value of the labor exceeds considerably the value of the material.¹¹⁸ In Portugal the new product belongs to the owner of the material, if the manufacturer acts in bad faith, but he must compensate him for his labor so far as the value resulting from the transformation exceeds by one-third the value of the material.¹¹⁹ In most of the other countries, the manufacturer in bad faith loses the benefit of his labor altogether, however greatly he may have improved the material.

Assuming that the manufacturer acts in good faith, the laws of all countries are agreed that the owner of the material will not lose his ownership therein unless a new thing or a work of a new kind has been produced.¹²⁰ Many attempts have been made, especially by German writers,¹²¹ to define a "new thing," but without success.¹²² The framers of the German Code left the question, therefore, to the courts, which are to be guided by economic

¹¹⁶ Dernburg, *Das bürgerliche Recht des deutschen Reichs und Preussens* (3d ed. 1904) 325; 2 Eck, *Vorträge über das Recht des bürgerlichen Gesetzbuchs* (1904) 133; Fischer, *loc. cit. supra* note 33; Krüclmann, *Leipziger Zeitschrift* (1915) col. 879; Sokolowski, *op. cit. supra* note 55, at 196.

¹¹⁷ Switzerland, Civil Code, art. 726.

¹¹⁸ Brazil, Civil Code, art. 612, sec. 2.

¹¹⁹ Portugal, Civil Code, art. 2303.

¹²⁰ The expression "work of a new kind" appears to have reference only to a change of form and not to a change of species. See S Lacerda, *Manual do Código Civil Brasileiro* (1924) 369.

¹²¹ According to Fischer, *op. cit. supra* note 33, at 70, *et seq.*, no useful principle can be derived from Roman law because it rests upon false philosophic conceptions.

¹²² See Fitting, *op. cit. supra* note 33, at 4 (it must correspond to a new conception—"Begriff"); Hellmann, 37 *Kritische Vierteljahresschrift*, 305, *et seq.* (there must be a change of form); Fischer, *op. cit. supra* note 33, at 70-71 (there must be a change in economic use); Windscheid, *op. cit. supra* note 17, at 859.

and not by philosophic considerations.¹²³ The conception of people in ordinary intercourse is to control.¹²⁴ A new thing is produced, for example, where sugar is made from beets, wine from grapes, bricks from clay,¹²⁵ or a box from boards. New things regularly result from the activity of weavers, tailors, millers, bakers, shoemakers, goldsmiths, monument makers, and cooks.¹²⁶ Contrary to Roman law, a new thing may be produced to-day by merely changing the surface of the material, as by writing, drawing, painting, printing, engraving, or photographing.¹²⁷ This will not be the case, however, where the original object remains the principal thing and is merely improved, decorated and the like, as, for example, where a box is painted or a book is bound.¹²⁸ A new thing is not produced either when the original article is merely reduced to its constituent elements, as, for example, when an animal is killed, wood is split, grain is threshed, or silverware is melted.¹²⁹

Where a new thing has been produced by manufacture or transformation, ownership therein is not always vested in such manufacturer or transformer under the law of the different countries. It is frequently provided that ownership shall be acquired only if the value of the labor exceeds¹³⁰ or greatly exceeds¹³¹ the value of the material, that is, if the economic value expended upon the material is at least equivalent to the value of the material. In Germany, on the other hand, ownership passes unless the value of the manufacture or transformation is considerably less than the value of the material.¹³² The manufacturer will become owner of the thing, therefore, although the value of the material is greater than the value of the labor bestowed upon it.¹³³ Where the value of the material is more precious than the product or superior in value, the owner of the material has, according to Spanish law,¹³⁴ the choice either to claim the ownership of the new product on paying for the labor, or to claim compensation for the material used.

¹²³ 2 Warneyer, *loc. cit. supra* note 96.

¹²⁴ Planck, *op. cit. supra* note 94, at 412.

¹²⁵ Bricks formed from clay and ready for burning have been held to be new things. 2 Warneyer, *loc. cit. supra* note 96.

¹²⁶ Wolff, *loc. cit. supra* note 94.

¹²⁷ Germany, Civil Code, sec. 950, par. 1. For the Swiss law see Leemann, *op. cit. supra* note 107. For a philosophic justification see Sokolowski, *op. cit. supra* note 55, at 226.

¹²⁸ 4 Leemann, *op. cit. supra* note 107, at 484-485.

¹²⁹ *Ibid.*; 3 Staudinger, *op. cit. supra* note 94, at 409.

¹³⁰ Switzerland, Civil Code, art. 726.

¹³¹ France, Civil Code, art. 571; Japan, Civil Code, art. 246.

¹³² Civil Code, sec. 950, par. 1.

¹³³ Criticized by Hoffmann, *Die Eigenheit der Sachen, Zeitschrift für das Privat-und öffentliche Recht* (1896) 450.

¹³⁴ Spain, Civil Code, art. 383.

Justinian's rule that ownership in the new thing should be acquired only if the new thing could not be restored to its original form is still followed in a few countries.¹³⁵ This requirement, however, is generally recognized to-day as without any justification. If policy suggests the recognition of the rule that a person transforming material belonging to another into a new thing shall become its owner, it should apply equally to all materials. No sensible reason suggests itself why an exception should be made with respect to things made from metals or other materials that can be reconverted to their original forms.

So far the emphasis has been laid upon the "property" rights with respect to the thing in question. In the very nature of things, however, various personal rights and duties will arise where one person transforms the material belonging to another into a new thing. These will vary in accordance with the nature of the particular act in question, for the manufacturer may be a thief or other tortfeasor, or he may be acting in good faith and be even a manager of another's affairs without request (*negotiorum gestor*).¹³⁶ As the civil law rules governing the personal obligations between the manufacturer and the owner of the material differ greatly from those prevailing in England and the United States and vary materially in the different civil law countries, no attempt will be made to give even a summary of them.¹³⁷ Only one point will be mentioned, namely, that where a manufacturer, who does not become owner of the new thing, has acted in good faith, he has not only a lien on the thing for the value of his labor, but he may recover from the owner of the material the amount in question in an independent action.

The foregoing summary has taken account of all the codes mentioned above with the exception of the Austrian. The provisions of the Austrian Code differ from all the rest in that they regard the manufacturer and the owner of the material as co-owners, if a restoration to its original form is either impossible or impracticable, but give either to the one party or to the other the option of becoming sole owner of the new thing on indemnifying the other party or of letting his ownership in the property go on compensation.¹³⁸

In view of the preceding survey and the many solutions of the problem suggested, the question naturally presents itself whether

¹³⁵ Of the late codes only the Brazilian has retained this requirement. Civil Code, arts. 611-612. Disapproved by Lacerda, *op. cit. supra* note 120, at 370.

¹³⁶ As to *negotiorum gestor*, see Buckland, *op. cit. supra* note 11, at 533-535.

¹³⁷ For a detailed statement of the German law see Planck, *op. cit. supra* note 94, sec. 951; Staudinger, *op. cit. supra* note 94, sec. 951.

¹³⁸ Austria, Civil Code, secs. 414-415.

there is really a sufficient reason in the modern law for allowing ownership in another's chattel to be acquired through specification. As regards the origin of the doctrine we have seen that the Sabinians denied the possibility that ownership could be acquired in a chattel belonging to another without the owner's consent by manufacturing or transforming it into something new. It was only through the influence of the Proculians that the doctrine of specification became settled in Roman law. The suggestion has been made that the Proculians, in regarding the manufacturer as the owner of the new product, were actuated by economic considerations out of respect for industrial labor.¹³⁹ Others contend, however, that in view of the fact that commerce and industry were carried on mainly by slaves, the Romans entertained at no time respect for labor, and that the Proculians cannot have ascribed, therefore, to productive labor the power to produce ownership.¹⁴⁰ Others have sought to account for the difference existing between the Sabinians and the Proculians by taking notice of the philosophical views entertained by the two schools. Sokolowski¹⁴¹ in particular has made an elaborate attempt to prove that the stoic philosophy of the Sabinians, which regarded matter as the permanent and enduring quality, would naturally induce them to hold that the owner of the original material could recover as his own, that is, with a *rei vindicatio* action, the new thing into which his material had been converted by the manufacturer,¹⁴² whereas the metaphysics of Aristotle, accepted by the Proculians, with its emphasis on the form in the creation of things, naturally led them to regard the old material as destroyed, with the result that the owner thereof could not bring the *rei vindicatio* action against the manufacturer of the new thing. According to the same author, the middle view accepted by Justinian was influenced likewise by stoic philosophy.¹⁴³

¹³⁹ Czyhlarz, *op. cit. supra* note 29, at 318, *et seq.*, 335, *et seq.*; Sulzer, *Der Eigentumserwerb durch Spezifikation* (1883) 132, *et seq.*

¹⁴⁰ Bechmann, *Rechtsgrund und Spezifikation*, 47 *Archiv für die civilistische Praxis* (1864) 25, *et seq.*; Fitting, *op. cit. supra* note 33, at 149, *et seq.*; Sokolowski, *op. cit. supra* note 55, at 70.

¹⁴¹ Sokolowski, *op. cit. supra* note 55, at 345; 1 Dernburg, *op. cit. supra* note 60, at 346; Fischer, *op. cit. supra* note 33, at 70.

¹⁴² The hardship of this doctrine was averted in Roman law by the fact that the judgment had to be for the payment of money. The vindication action required an allegation that the thing belonged to the plaintiff and this allegation could be made only with respect to the original material. The manufacturer could discharge his legal duty therefore, when the vindication action was brought, by either delivering the new product to the plaintiff or by paying him the value of his materials. 1 Dernburg, *op. cit. supra* note 60, at 346, note.

¹⁴³ Sokolowski in Dernburg, *op. cit. supra* note 60, at 346. Still other writers feel that back of such philosophic considerations there must have been at least an unconscious feeling that honest labor should be rewarded.

The contention has been made that the Roman point of view should be abandoned altogether and that the owner of the material should under all circumstances have the option either to claim the new thing on making compensation or to abandon the ownership therein to the manufacturer or transformer on recovery of compensation for his material.¹⁴⁴ Such a mode of dealing with the problem certainly would avoid most of the difficulties now arising under the provisions of the different codes, and might be acceptable especially in those civil law countries in which a party to whom a chattel has been voluntarily entrusted by the owner or someone representing him has the power to pass ownership therein to a third party who buys it in good faith for value, although the party in possession acted without authority. The problem of the acquisition of ownership through specification is in such countries of importance only as between the original parties. In Anglo-American law, on the other hand, as well as in Roman law, where the possessor of a chattel has no such power¹⁴⁵ and where the owner may trace his chattels as long as he can identify them, the doctrine of specification serves to protect subsequent purchasers and in so doing promotes security in commercial transactions. This fact, together with the economic arguments advanced in favor of the traditional doctrine, would tend to prove its usefulness in Anglo-American law.

According to the traditional view, acquisition of ownership through specification implied that the labor bestowed upon the materials of another has resulted in a "new thing" or a "new species." This requirement has been criticized by Schulz¹⁴⁶ on the following grounds: (1) because it is unnecessary; (2) because it introduces a term which is incapable of definition and giving rise to endless disputes; (3) because it owes its existence purely to the influence of Roman law and does not rest upon sound considerations. Schulz suggests in place thereof the

Örtmann, *Civilistische Rundschau*, 13 *Archiv für bürgerliches Recht* (1897) 119.

¹⁴⁴ Sokolowski, *op. cit. supra* note 55, at 203-204; G Machado, *Exposicion y Comentario del Código Civil Argentino* (1922) 562, note. As the owner of a chattel, under Anglo-American law, may throw the "title" into the manufacturer or transformer by recovering its value in an action for conversion, the proposed solution, so far as our law is concerned, would modify it (1) by denying that the manufacturer will ever acquire *ipso facto* "title" to the material of another through specification, and (2) by imposing upon the owner of the material the personal "duty" to pay the manufacturer or transformer for his labor. No good reason for the imposition of such personal "duty" would seem to exist, however, when the manufacturer or transformer has acted in bad faith.

¹⁴⁵ See Wait, *Caveat Emptor and the Judicial Process* (1925) 25 *Col. L. Rev.* 129.

¹⁴⁶ Schulz, *System der Rechts auf den Eingriffserwerb*, 105 *Archiv für die civilistische Praxis* (1909) 369.

simple rule, that if the value of the labor is greater than the value of the material, the workman or manufacturer should become owner of the product.¹⁴⁷ By value of the labor Schulz understands what it would cost to reproduce the same labor and not what the labor cost nor the difference between the value of the thing less the value of the material.¹⁴⁸

Schulz assumes with the German Code that the change in the material has resulted from manufacture or transformation. Without such a requirement, a carrier might become owner of the goods transported through specification, by adding value to the goods as the result of transporting them to a market.

If the question affected merely the rights of the owner of the material and those of the manufacturer with respect to the ownership of the product, Schulz's point of view would appear to lean too much in favor of the manufacturer. In view of the fact, however, that the security of innocent purchasers from the manufacturer is involved likewise, the line drawn by Schulz may be justified on grounds of social policy. If the suggestion made should be deemed to go too far, it might be held that the owner of the material should not lose his ownership therein unless the value of the labor *greatly* exceeds the value of the material.

As regards the requirement of good faith, it would seem that the economic point of view, attaching importance to productive labor, has been pushed too far by the German Code, which recognizes that a thief who has made a new thing from the material stolen, will become owner of the product.¹⁴⁹ A less radical view is taken by the Brazilian Code,¹⁵⁰ according to which a manufacturer in bad faith will acquire the ownership of the product if the value of his labor exceeds greatly that of the material. Under the Brazilian formula, ethical and economic considerations appear to conflict less sharply than under the German formula and opinions will no doubt differ as to whether or not it deserves approval.

In the preceding discussion it has been assumed that the manufacturer contributed nothing but his labor. If he uses partly his own material in the manufacture or transformation, the question is whether the rules governing specification or accession should control, and if the former, whether the ordinary rules should apply. In Roman law the rules governing specification were held to govern also where the manufacturer used partly his own materials. The only point of dispute was whether under the law of Justinian the manufacturer became owner of the

¹⁴⁷ *Ibid.* 373.

¹⁴⁸ *Ibid.* 372-373.

¹⁴⁹ See *supra* note 97.

¹⁵⁰ Civil Code, art. 612, sec. 2.

product in this case, even though the material used could be reduced to its original form. The last sentence from Institutes, 2, 1, 25,¹⁵¹ would seem to say that the manufacturer would become owner. Most writers hold, however, that the ordinary rules govern also in this case.¹⁵² As for the modern codes, some provide expressly that the rules governing specification shall apply irrespective of whether the manufacturer uses exclusively material belonging to another or makes use partly of his own materials.¹⁵³ In Germany,¹⁵⁴ on the other hand, the rules governing accession control in the case under discussion, according to which the parties will become co-owners to the extent of their contribution, including the value of the labor, unless one of the things can be regarded as the principal one, in which event the owner of the principal thing will get title to the new product. The French Code¹⁵⁵ does not say that the case falls within the rules governing accession, but provides that co-ownership shall result if neither thing is fully destroyed and cannot be separated without inconvenience. Brazil and Japan apply the rules governing specification with slight modifications. According to Japanese law¹⁵⁶ the manufacturer will become owner only if the total value of the material and labor contributed by him is greater than the value of the material contributed by the other. Under Brazilian law¹⁵⁷ the manufacturer using partly his own material will become owner of the new product under all circumstances, if it cannot be reduced to its original form, without reference to his good or bad faith or the value of his contribution in comparison with the value of the contribution of the other party. A detailed consideration of this last problem is beyond the scope of this article.

¹⁵¹ *Supra* note 8.

¹⁵² See Windscheid, *op. cit. supra* note 17, at 970, note. There is much dispute among the writers whether the sentence referred to is to be understood as supplementing what goes before or whether it was meant by way of contrast.

¹⁵³ Mexico, Civil Code, art. 818; Spain, Civil Code, art. 383, and codes based on the Mexican and Spanish codes.

¹⁵⁴ 3 Staudinger, *loc. cit. supra* note 94. Schulz criticizes the German provisions on the ground that they are too complicated. *Op. cit. supra* note 146, at 376-377.

¹⁵⁵ Civil Code, art. 572.

¹⁵⁶ Civil Code, art. 246.

¹⁵⁷ Civil Code, art. 611.