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Timber Piracy, Statutory Interpretation, and Legislative Intent: The Louisiana Supreme Court’s Decision in Sullivan v. Wallace

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Timber Piracy, Statutory Interpretation, and Legislative Intent:
The Louisiana Supreme Court’s Decision in *Sullivan v. Wallace*

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I. Introduction

Timber piracy, otherwise known as “timber trespass,” has long been a problem in Louisiana.¹ “Timber piracy” is defined as any act by which a person cuts, fells, destroys, removes, or diverts for sale or use, any trees growing or lying on the land of another without the consent of the owner or legal possessor.² Almost fifty percent of Louisiana’s 14 million acres of

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² See La. R.S. § 3:4278.1.
land area is covered by timber. This timber provides environmental benefits such as habitats for wildlife and scenic beauty, as well as recreational opportunities. Timber is also a valuable economic resource. In 2010, the timber product industries had a $3.1 billion impact on the Louisiana economy, and Louisiana forest landowners earned approximately $400 million from their timber. Because eighty-one percent of those landowners are non-industrial, private owners whose timberland is located in remote areas, much of that timber is not subject to regular


4 Id.

5 See id.

6 Id.
surveillance. Timber piracy is thus a major concern for almost 120,000 private Louisiana landowners.8

If private timber owners die with multiple heirs, those heirs may come to co-own timberland in indivision, pursuant to the Louisiana law of intestate successions.9 This creates a potential for timber piracy perpetuated by one co-owner against another.10 Until the 2011 Legislative Session, Louisiana law did not provide a single, clear remedy, and timber piracy by

7 See id; See Sullivan v. Wallace, 51 So.3d 702, 712 (La. 2010)(Knoll, J., dissenting)(stating: “No one disputes tree piracy is a serious concern in this State in which remote tracts of timberland and absentee co-owners abound …. ”).

8 Id.

9 See La. C.C. arts. 797 and 888.

co-owners could have been governed by two divergent remedial schemes. The conflict between these two schemes was the subject of *Sullivan v. Wallace*, a case decided by the Louisiana Supreme Court in November 2010. The first remedy, established by Louisiana Civil Code Article 798, provides that a timber-pirating co-owner must pay the other co-owners their proportional shares of the timber profits, after deduction of the costs of production. The second remedy is established by Louisiana Revised Statute Section 3:4278.1, a punitive statute.

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12 See *Sullivan v. Wallace*, 51 So.3d 702.

13 See La. C.C. art. 798, which reads: “Co-owners share the fruits and products of the thing held in indivision in proportion to their ownership. When fruits or products are produced by a co-owner, other co-owners are entitled to their shares of the fruits or products after deduction of the costs of production.”
commonly referred to as the “Timber Piracy Statute,” or the “Timber Trespass Statute.”\textsuperscript{14} This remedy provides that a timber-pirating co-owner owes the other co-owners treble damages, plus

\textsuperscript{14} See La. R.S. § 3:4278.1. At the time of the \textit{Sullivan} decision, and until the legislative revision effective August 15, 2011, the text of the Timber Piracy Statute read as follows:

A. It shall be unlawful for \textit{any person} to cut, fell, destroy, remove, or to divert for sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove, or to divert for sale or use, any trees, growing or lying \textit{on the land of another}, without the consent of, or in accordance with the direction of, \textit{the owner or legal possessor}, or in accordance with specific terms of a legal contract or agreement.

B. Whoever \textit{willfully and intentionally} violates the provisions of Subsection A shall be liable to the owner or legal possessor of the trees for civil damages in the amount of three times the fair market value of the trees cut, felled, destroyed, removed, or diverted, plus reasonable attorney's fees.

C. Whoever violates the provisions of Subsection A \textit{in good faith} shall be liable to the owner or legal possessor of the trees for three times the fair market value of the trees cut,
felled, destroyed, removed, or diverted, if circumstances prove that the violator should have been aware that his actions were without the consent or direction of the owner or legal possessor of the trees.

D. If a good faith violator of Subsection A fails to make payment under the requirements of this Section within thirty days after notification and demand by the owner or legal possessor, the violator shall also be responsible for the reasonable attorney fees of the owner or legal possessor.

E. The provisions of this Section shall not apply to the clearing and maintenance of rights of way or to utility service situations where a utility is acting in good faith to minimize the damage or harm occasioned by an act of God. The provisions of this Section shall not apply to land surveying by or under the direction of a registered professional land surveyor, duly registered under the laws of the state of Louisiana.

F. Whoever violates the provisions of Subsection A as they relate to the cutting of standing cypress trees on water bottoms owned by the state of Louisiana shall, in addition to the
reasonable attorney’s fees.\textsuperscript{15} While the \textit{Sullivan} Court ruled that only the Civil Code remedy applied to timber-pirating co-owners, the Louisiana State Legislature changed the law so that those co-owners now fall clearly within the ambit of the Timber Piracy Statute.\textsuperscript{16}

Section II of this Note describes the facts and holding of \textit{Sullivan}. Section III traces the history and development of the text and interpretation of the Timber Piracy Statute, an associated statute known as the Eighty Percent Rule, and the relevant Civil Code articles. Section IV details the rationale of both the majority and dissenting opinions. Finally, Section V offers an analysis

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penalties otherwise provided in this Section, be subject to a fine not to exceed five thousand dollars, imprisonment not to exceed six months, or both.
\end{quote}

G. Notwithstanding any other provision of law to the contrary, a civil action pursuant to provisions of this Section shall be subject to a liberative prescriptive period of five years.

(emphasis mine)

\textsuperscript{15} \textit{Id.}

of those opinions, as well as the State Legislature’s recent amendment to the Timber Piracy Statute.

II. Facts and Holding

The plaintiff, Janice Sullivan, and the defendant, Bruce Sullivan, acquired a tract of timberland during their marriage.\(^\text{17}\) When the couple divorced, they retained the tract in co-ownership.\(^\text{18}\) Without the plaintiff’s permission, the defendant cut and stacked timber on the land and arranged for a third party timber company to purchase the timber and remove it from the land.\(^\text{19}\) Through multiple acts of deception,\(^\text{20}\) the defendant manifested his intent to avoid paying

\(^{17}\) *Sullivan v. Wallace*, 51 So.3d at 703.

\(^{18}\) *Id.*

\(^{19}\) *Id.* at 704; *See generally* La. C.C. art. 801, which reads: “The use and management of the thing held in indivision is determined by agreement of all the co-owners”; *See also* Alexander v. Dunn, 15 So.3d 302, 308 (La. App. 2d Cir. 2009)(Caraway, J., concurring)(explaining that a co-owner’s cutting and selling of co-owned timber without the unanimous consent of all co-owners is, in most instances, a violation of the joint management rule of La. C.C. art. 801.).
the plaintiff the proportional share of the timber profits that he owed to her pursuant to La. C.C. art. 798.\textsuperscript{21} When the plaintiff discovered that the timber had been sold and most of it removed from the land, she brought suit against the defendant,\textsuperscript{22} seeking treble damages and attorney’s

\textsuperscript{20} \textit{Id.} The defendant had some of the checks from the timber company made payable to his girlfriend. Additionally, the defendant maintained that he cut and sold the timber as a salvaging operation after the timber was damaged in an ice storm. Evidence later came to light that the ice storm occurred after the first load of timber was delivered to the timber company’s mill, and that the mill tickets showed the timber was not damaged.

\textsuperscript{21} \textit{See} La. C.C. art. 798, \textit{supra} note 13; \textit{See also} discussion of La. C.C. art. 798 in Part III(B), \textit{infra}.

\textsuperscript{22} \textit{Sullivan v. Wallace}, 51, So.3d at 704. The plaintiff also sued several co-defendants. These included the timber company, the owner of the timber company, and her ex-husband’s girlfriend, who the plaintiff alleged conspired with her ex-husband to defraud her and steal her timber.

When the case came before the Louisiana Supreme Court, the plaintiff’s claims against each of
fees pursuant to the Timber Piracy Statute. The trial court ruled for the plaintiff, holding that the Timber Piracy Statute applies to co-owners who sell timber from a co-owned tract of land without the consent of the other co-owners. The plaintiff was thus entitled to treble damages and attorney’s fees.

The defendant appealed to the Louisiana Second Circuit Court of Appeal, arguing that the court should uphold its earlier decision in Alexander v. Dunn (2009), where it held that the Timber Piracy Statute does not apply to co-owners. The plaintiff argued that the Timber Piracy

these defendants had been resolved, and only the claim against her ex-husband remained. Thus, this case note only addresses the plaintiff’s claim against her ex-husband.

23 Id; See also La. R.S. § 3:4278.1.

24 Sullivan v. Wallace, 51 So.3d at 704-05.

25 Id.

Statute does apply to co-owners, as the Third Circuit held in *Prewitt v. Rodrigues* (2005). The plaintiff pointed out this “circuit split” between the Second and Third Circuits and argued that the Second Circuit should reverse its earlier decision in *Alexander v. Dunn*. The Second Circuit reversed the trial court ruling and upheld its decision in *Alexander v. Dunn*, holding that the Timber Piracy Statute does not apply to co-owners and that the plaintiff’s injury could be remedied through a simple application of La. C.C. art. 798. The “circuit split” between the Second and Third Circuits remained.

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27 *Id.* at 1126-27 (Brown, C.J., dissenting); *See* Prewitt v. Rodrigues, 893 So.2d 927 (La. App. 3d Cir. 2005).

28 *Id.*

29 *Id.* at 1125-26 (holding: “We adhere, therefore, to our previous decision in *Alexander v. Dunn*, for the reasons set forth therein.”). *See also* Alexander v. Dunn, 15 So.3d at 307; *See also* La. C.C. art. 798.

30 *Id.*
The Louisiana Supreme Court granted certiorari to resolve the circuit split.\textsuperscript{31} The Louisiana Supreme Court \textit{held} that the punitive Timber Piracy Statute does not apply to co-owners of immovable property, and thus that a co-owner may not be held liable to his fellow co-owners for treble damages and attorney’s fees when he cuts and sells timber without the unanimous consent of the other co-owners.\textsuperscript{32}

\textbf{III. Background}

In analyzing \textit{Sullivan}, the Louisiana Supreme Court used statutes and interpretive jurisprudence from several areas of law, including principles of statutory interpretation, the basic laws of co-ownership, and laws pertaining to timber piracy.\textsuperscript{33} The \textit{Sullivan} Court also interpreted the reasoning used by the Second and Third Circuit Courts in the two cases that created the circuit split.\textsuperscript{34}

\textsuperscript{31} \textit{Sullivan v. Wallace}, 51 So.3d at 703.

\textsuperscript{32} \textit{Id.} at 710.

\textsuperscript{33} \textit{Sullivan v. Wallace}, 51 So.3d at 702-13.

\textsuperscript{34} \textit{Id.}
A. Principles of Statutory Interpretation

The Sullivan Court performed its analysis using principles of statutory interpretation established both by statute and by case law.

i. Statutes

The current Louisiana Civil Code includes a section pertaining to the Interpretation of Laws. According to these statutes, “[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” However, different rules pertain when the law is not clear and unambiguous. For instance, “[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.” Additionally, “[w]hen the words of a law are ambiguous,


36 La. C.C. art. 9.

37 See La. C.C. arts. 10 and 12.

38 La. C.C. art. 10.
their meaning must be sought by examining the context in which they occur and the text of the law as a whole.”

Other general rules include the principles that “[t]he words of a law must be given their generally prevailing meaning” and that “[l]aws on the same subject matter must be interpreted in reference to each other.”

The Louisiana Revised Statutes contains additional provisions pertaining to statutory interpretation. Section 1:3 states, in part: “Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.” Section 1:4 states: “When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.”

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39 La. C.C. art. 12; See also La. C.C. art. 2, which states: “Legislation is a solemn expression of legislative will.” La. C.C. art. 2, like Articles 9 through 13, became effective on January 1, 1988.

40 La. C.C. arts. 11 and 13.

41 See La. R.S. §§ 1:3 and 1:4.

42 La. R.S. § 1:3.

43 La. R.S. § 1:4.
ii. Jurisprudence

The Louisiana Supreme Court has issued several rulings pertaining to statutory interpretation. According to the Court:

[W]here two statutes deal with the same subject matter, they should be harmonized if possible.\(^{44}\) However, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.\(^ {45}\)

The Court also held, more particularly, that when a statute is specifically directed to timberland, it must be treated as an exception to the general rules of the Civil Code.\(^ {46}\)

In reference to punitive statutes, the Court held that “it is the universally recognized rule of law that [punitive statutes] must be strictly construed.”\(^ {47}\) To strictly construe a statute means


\(^{46}\) See Kennedy, 699 So.2d at 358.
that “every doubt must be resolved against the imposition of the penalty” that the statute
provides.\textsuperscript{48}

\textbf{B. The Basic Principles of Co-ownership}\textsuperscript{49}

The \textit{Sullivan} Court, and other courts analyzing claims of timber piracy by co-owners,
used several basic principles of co-ownership found in the Louisiana Civil Code.\textsuperscript{50} According to
these principles, co-owners must share the fruits and products of the co-owned thing in

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\textsuperscript{47} Tichenor v. Tichenor, 181 So. 863, 864-65 (La. 1938).

\textsuperscript{48} \textit{Id}.

\textsuperscript{49} See La. C.C. art. 797. According to this article, co-ownership, (also called “ownership in
indivision”), occurs when the same thing is owned by two or more persons. In the absence of
other provisions of law or juridical act, the shares of all co-owners are presumed to be equal.

\textsuperscript{50} See La. C.C. arts. 797 – 807, which became effective on January 1, 1991.
\end{flushleft}
proportion to their ownership, and if a co-owner himself produces fruits or products, he is entitled to deduct his production costs before giving the other co-owners their shares.\textsuperscript{51}

The Code also contains provisions dictating which types of decisions co-owners may make unilaterally and which types of decisions require unanimous consent.\textsuperscript{52} Generally, all decisions involving the use or management of the co-owned thing require the unanimous consent of all co-owners.\textsuperscript{53} A co-owner must also obtain unanimous consent if he wishes to make substantial physical alterations or improvements to the co-owned thing.\textsuperscript{54} However, a co-owner

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\textsuperscript{51} La. C.C. art. 798; See also supra note 13; See also discussion of the conflict between the two remedial schemes in Part I, supra.
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\textsuperscript{52} See La. C.C. art. 800, et seq.
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\textsuperscript{53} La. C.C. art. 801; See also Alexander v. Dunn, 15 So.3d 302, 308 (La. App. 2d Cir. 2009)(Caraway, J., concurring)(explaining that a co-owner’s cutting and selling of co-owned timber without the unanimous consent of all co-owners is, in most instances, a violation of the joint management rule of La. C.C. art. 801.).
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\textsuperscript{54} La. C.C. art. 804.
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may make “conservatory acts,” which are necessary steps for the preservation of the co-owned thing, without the consent of any other co-owner.\(^{55}\)

Debates between co-owners pertaining to these rules, and particularly debates over use and management decisions, are to be remedied through partition of the co-owned thing.\(^{56}\) Courts may order either a partition in kind or a partition by licitation, and any co-owner may demand a partition at any time, subject to other specific laws and agreements.\(^{57}\)

\(^{55}\) La. C.C. art. 800; See also Official Revision Comment to La. C.C. art. 800; See also La. C.C. art. 806 (providing that a co-owner who incurs necessary expenses, expenses for ordinary maintenance and repairs, or necessary management expenses paid to a third person is entitled to reimbursement from the other co-owners in proportion to their shares).

\(^{56}\) See La. C.C. arts. 803 and 807; See also Succession of Miller, 674 So.2d 441, 443-44 (La. App. 4th Cir. 1996)(explaining that generally, courts may not resolve disputes between co-owners pertaining to the use and management of the co-owned property unless a partition is either literally or functionally unavailable).

\(^{57}\) See La. C.C. arts. 807, \textit{et seq.}
C. Laws Pertaining to Timber Piracy

To understand the reasoning of the *Sullivan* Court and other Louisiana courts, one should be familiar with the history and development of timber piracy law as established by antiquated statutes, newer statutes, and the case law interpreting those statutes.

i. Early Timber Piracy Provisions: The Louisiana Civil Code of 1870

According to the provisions of the Louisiana Civil Code of 1870, the punishment for a “timber trespasser” depended on whether he was in good faith, legal bad faith, or moral bad faith.\(^{58}\) A trespasser was in good faith if he just reason to believe, and did subjectively believe, that he owned the timber he cut.\(^{59}\) A good faith trespasser was only liable for the stumpage value of the timber, which is the value of the standing timber in its place.\(^{60}\) A trespasser was in legal bad faith but moral good faith if he subjectively believed that he owned the timber he cut but


\(^{59}\) *Id.*

\(^{60}\) *Id.*
should have known from the circumstances that he did not.\textsuperscript{61} A trespasser in legal bad faith but moral good faith was liable for the sale price of the timber with deduction of his production costs.\textsuperscript{62} A trespasser was in legal and moral bad faith if he knew that he did not own the timber but cut it anyway, or if he cut it with reckless disregard for whether he owned it or not.\textsuperscript{63} A trespasser in legal and moral bad faith was liable for the sale price of the timber without deduction of production costs.\textsuperscript{64} Because a timber trespasser’s punishment under the Code of 1870 depended on his culpability, in some cases a landowner could recover what were effectively punitive damages.\textsuperscript{65}

\textsuperscript{61} Id.

\textsuperscript{62} Id.

\textsuperscript{63} Id.

\textsuperscript{64} Id.

\textsuperscript{65} See id.
The notion that punishment should depend on culpability was preserved in the current version of La. R.S. § 3:4278.1, the Timber Piracy Statute.\textsuperscript{66} However, the newer provision assigns even harsher penalties than the 1870 Code did.\textsuperscript{67} According to the Timber Piracy Statute, a timber trespasser who cuts timber that does not belong to him “willfully and intentionally” is liable for three times the fair market value of the timber\textsuperscript{68}, plus reasonable attorney’s fees.\textsuperscript{69} This present-day trespasser is equivalent to the 1870 Code’s trespasser in legal and moral bad faith, but the present-day trespasser is liable for three times the amount for which the 1870 trespasser was liable.\textsuperscript{70}

\textsuperscript{66} See La. R.S. § 3:4278.1, supra note 14.

\textsuperscript{67} See id.

\textsuperscript{68} The fair market value of the timber is the amount a purchaser would pay for standing timber to be cut and removed and does not include any profit that might be gained from selling the timber. McConnico v. Red Oak Timber Co., 847 So.2d 191, 198 (La. App. 2d Cir. 2003).

\textsuperscript{69} Id.

\textsuperscript{70} See Yiannopoulos, supra note 32; See also La. R.S. § 3:4278.1, supra note 14.
Another category provided in the Timber Piracy Statute is for the trespasser who cuts the timber in “good faith” but “should have been aware that his actions were without the consent or direction of the owner.” Because this trespasser is merely negligent and is not pirating timber “willfully and intentionally,” his is liable for three times the fair market value of the timber but not for attorney’s fees. This present-day trespasser is analogous to the 1870 Code’s trespasser in legal bad faith but moral good faith, but the present-day trespasser is liable for three times the amount for which the 1870 trespasser would have been liable, and he may not recover his production costs.

While the Timber Piracy Statute does not contain a category for present-day timber trespassers who are in subjective good faith and are not negligent (equivalent to the 1870 Code’s trespasser in good faith), Louisiana courts have traditionally ruled that trespassers of this type are

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71 See La. R.S. § 3:4278.1, supra note 14.

72 Id.

73 See Yiannopoulos, supra note 32; See also La. R.S. § 3:4278.1, supra note 14.
only liable for the fair market value of the timber.\textsuperscript{74} While the Timber Piracy Statute applies treble damages liability regardless of whether the trespasser was in “good faith” or acted “willfully and intentionally,” Louisiana courts have awarded treble damages only in cases of “palpable” bad faith.\textsuperscript{75}

\textbf{ii. Early Case Law}

While the Code of 1870 did not deal specifically with the issue of timber piracy by co-owners, the Louisiana Supreme Court dealt with the issue directly in 1903, when it decided

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\item \textsuperscript{74} Yiannopoulos, supra note 32.
\item \textsuperscript{75} \textit{Id.}, See also La. R.S. § 3:4278.1, supra note 14; See also Brown v. Bedsole, 447 So.2d 1177 (La. App. 3d Cir. 1984). In \textit{Brown}, the Third Circuit held that where an adjoining landowner does not “willfully and intentionally” pirate his neighbor’s timber, and where the two properties are not divided by any visibly designated demarcation lines, it cannot be said that the trespasser “should have been aware” that the timber did not belong to him. \textit{See id.} at 1183. Thus, this kind of timber trespasser is in good faith and is not liable for treble damages but only for the fair market value of the timber cut. \textit{Id.}
\end{itemize}
Cotten v. Christen.\textsuperscript{76} The Court held that where two co-owners each own an undivided one-half interest in a tract of timberland, one co-owner has no right to cut the timber without the other’s consent because to do this is an act “in the nature of a trespass.”\textsuperscript{77} Thus, a plaintiff co-owner has a cause of action against a defendant co-owner when the defendant cuts co-owned timber without the plaintiff’s consent.\textsuperscript{78}

\textsuperscript{76} See Cotten v. Christen, 110 La. 444 (La. 1903). In Cotten, the plaintiff and defendant each owned an undivided one-half interest in a tract of timberland. \textit{Id.} at 597-98. The defendant cut the timber without the plaintiff’s consent, and the plaintiff brought suit against the defendant, demanding an injunction, damages, and attorney’s fees. \textit{Id.}

\textsuperscript{77} \textit{Id.} at 598.

\textsuperscript{78} See id.; The Cotten Court ruled that the co-owner’s timber trespass could be stopped by injunction. \textit{Id.} The Court did not address the issue of damages, in spite of the fact that the plaintiff brought suit for damages and attorney’s fees, in addition to an injunction. \textit{Id.} at 599. The issue of damages was remanded to the trial court. \textit{Id.}
In 1910, the Louisiana Supreme Court decided *Breaux v. Albert Hanson Lumber Co.* The Court held that co-owners must “respect the rights” of other co-owners and that a co-owner owes “some duty” to the other co-owners, “to the extent of not taking the property unless he is entirely certain that he has their consent.” The Court ruled that a co-owner who takes co-owned property without the consent of the other co-owners commits a trespass with respect to

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79 See *Breaux v. Albert Hanson Lumber Co.*, 51 So.2d 444 (La. 1910). In *Breaux*, the plaintiffs were several of the Breaux siblings. *Id.* at 445-46. Along with another of their siblings, Ernest Breaux, the plaintiffs co-owned one-third of an undivided tract of timberland. *Id.* Ernest owned 20 percent of this one-third interest, and so he owned approximately 6.7% of the entire tract. *Id.*

The defendants, who co-owned another one-third of the undivided tract, obtained Ernest Breaux’s consent to cut and remove timber from the land, but they did not obtain the plaintiffs’ consent or even inquire as to whether the plaintiffs wished to cut and remove the trees. *Id.* at 446-47.

80 *Id.* at 447, citing *Cotten v. Christen*, 110 La. at 447 (additional citations omitted).

81 *Id.* at 447.
the other co-owners, even though this type of trespass may be different than an “ordinary trespass” where the trespasser does not have an ownership interest in the land.\textsuperscript{82}

The Louisiana Supreme Court appeared to reach a different holding in 1955 when it decided \textit{Juneau v. Laborde}.\textsuperscript{83} In \textit{Juneau}, the plaintiffs and the defendant were co-owners of a tract of land.\textsuperscript{84} The defendant possessed the whole of the land in an attempt to acquire ownership to the entire tract by acquisitive prescription.\textsuperscript{85} The Court held that although the defendant co-owner possessed the land in legal bad faith, he was not a trespasser with respect to his other co-owners.\textsuperscript{86}

\textsuperscript{82} See \textit{id.} at 447; Thus, the defendants, in appropriating the timber without regard to the plaintiffs’ ownership interests, had committed a trespass with respect to the plaintiffs and owed the plaintiffs the value of the lumber from the trees. \textit{Id.}

\textsuperscript{83} See \textit{Juneau v. Laborde}, 82 So.2d 693 (La. 1955).

\textsuperscript{84} \textit{Id.} at 695.

\textsuperscript{85} \textit{Id.}

\textsuperscript{86} \textit{Id.}
iii. Revised Statute Provisions and Relevant Case Law

In 1974, the Louisiana State Legislature added particular timber-related provisions to the Louisiana Revised Statutes, including La. R.S. §§ 3:4278.1, the Timber Piracy Statute.\(^87\) The Louisiana Supreme Court has held that the legislature’s intent in enacting the Timber Piracy Statute was “to impose a severe penalty upon those who disregard the property rights of timber owners.”\(^88\) Applying the general principles of statutory interpretation,\(^89\) the Court also held that the Timber Piracy Statute is a penal statute and thus must be strictly construed.\(^90\)

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\(^87\) See La. R.S. § 3:4278.1, *supra* note 14; *See also* discussion of La. R.S. § 3:4278.1 in Parts I and III(C)(i), *supra*.


\(^89\) See discussion of the principles of statutory interpretation in Part III(A), *supra*.

\(^90\) *Hornsby*, 902 So.2d at 369.
The 1974 additions to the Revised Statutes also include La. R.S. § 3:4278.2, known as the “Eighty Percent Rule.” According to the Eighty Percent Rule, a timber buyer may not buy and

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91 See La. R.Ss. § 3:4278.2; The precise text of La. R.S. § 3:4278.2, which has not been changed since the time of the Sullivan decision, is as follows:

A. A co-owner or co-heir of land may execute an act of timber sale whereby he sells his undivided interest in the timber, and any condition imposing a time period within which to remove the timber shall commence from the date of its execution.

B. A buyer who purchases the timber from a co-owner or co-heir of land may not remove the timber without the consent of the co-owners or co-heirs representing at least eighty percent of the ownership interest in the land, provided that he has made reasonable effort to contact the co-owners or co-heirs who have not consented and, if contacted, has offered to contract with them on substantially the same basis that he has contracted with the other co-owners or co-heirs.

C. A co-owner or co-heir of the land who does not consent to the exercise of such rights has no liability for the cost of timber operations resulting from the sale of the timber, and
shall receive from the buyer the same price which the buyer paid to the other co-owners or co-heirs. The consenting co-owners or co-heirs shall agree to indemnify and hold harmless the nonconsenting co-owners or co-heirs for any damage or injury claims which may result from such operations.

D. If the nonconsenting co-owner or co-heir fails or refuses to claim his portion of the sale price of the timber, the buyer shall be obligated to hold such funds in escrow, for and on behalf of such nonconsenting co-owner or co-heir and any interest or other income earned by such funds in escrow shall inure to the benefit of the co-owner or co-heir for whom they are held.

E. Failure to comply with the provisions of this Section shall constitute prima facie evidence of the intent to commit theft of the timber by such buyer.

F. The sale of an undivided interest in timber that constitutes community property shall be governed by the provisions of Chapter 2 of Title VI of Book III of the Civil Code.

G. Notwithstanding any other provision of law to the contrary, a civil action pursuant to provisions of this Section shall be subject to a liberative prescriptive period of five years.
remove timber from an undivided tract without obtaining the consent of the co-owners representing at least eighty percent of the ownership interest. If the buyer does this, there is prima facie evidence that he has violated the Timber Piracy Statute and is liable for treble damages and attorney’s fees. Thus, the Louisiana Second Circuit held that when a timber buyer purchases co-owned timber having only received consent from one co-owner with a one-half ownership interest, that buyer is liable under the Timber Piracy Statute to the other co-owner with the other one-half interest who did not consent.

The Louisiana Supreme Court has held that the legislature’s intent in enacting the Eighty Percent Rule was “to manage forest resources,” to promote the benefit of Louisiana’s economy and wildlife, and not [to] penalize [co-owners with an 80% interest when the co-owners with a

92 Id.

93 Id.; See also La. R.S. § 3:4278.1, supra note 14.

94 McConnico, 847 So.2d at 194-95.
20% interest] could not be located or for some reason refused to cut any timber.” The Court also stated that the Eighty Percent Rule was intended to further the following policy interests:

[T]he State of Louisiana clearly has an interest in promoting the timber industry since the economy would greatly benefit by allowing the majority co-owners to sell their timber over the opposition of a few minority co-owners, who may contest the sale for unreasonable reasons. It would be unreasonable and against public policy to prevent the majority co-owners from selling the timber for marketing when it was ripe for harvest or to cause an unreasonable risk of substantial property loss to the majority because the minority withheld consent.\(^\text{96}\)

\(^\text{95}\) Allain, 851 So.2d at 980.

\(^\text{96}\) Id.
D. The Circuit Split

At the time of the *Sullivan* decision, the issue of whether the Timber Piracy Statute applied to co-owners was unresolved. The Second and Third Circuits, in *Prewitt v. Rodrigues* and *Alexander v. Dunn*, had delivered opposite rulings on the issue, and the Sullivan Court granted certiorari to resolve this circuit split. In *Sullivan*, both the majority and dissenting opinions focused heavily on the reasoning that the Circuit Courts used in their respective decisions.


In *Prewitt v. Rodrigues*, the Louisiana Third Circuit Court of Appeal held that co-owners are subject to the Timber Piracy Statute and thus are liable for treble damages when they willfully and intentionally cut co-owned timber without any intention of paying the proportional

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98 *See Prewitt v. Rodrigues*, 893 So.2d 927 (La. App. 3d Cir. 2005); *Alexander v. Dunn*, 15 So.3d at 308; *See also* discussion of the circuit split in Part II, *supra*.

shares of the profits to the other co-owners.\textsuperscript{100} The court remarked on the legislative intent behind La. R.S. § 3:4278.1, which was “to impose a severe penalty [treble damages] upon those who flagrantly disregard the property rights of timber owners,”\textsuperscript{101} and to dissuade those who pirate timber for their own pecuniary gain from doing so.\textsuperscript{102} According to the court, the imposition of treble damages would deter timber-pirating co-owners because rather than only having to pay the other co-owners the value of the trees taken pursuant to La. C.C. art. 798, they

\textsuperscript{100} \textit{Prewitt v. Rodrigues}, 893 So.2d at 935. In \textit{Prewitt}, a father died, leaving a tract of timberland to his two children in indivision. \textit{Id.} at 929. The brother contacted a logging company and had the timber cut and sold without his sister’s permission. \textit{Id.} The sister brought claims against her brother and the logging company, alleging violations of La. R.S. §§ 3:4278.1 and 3:4278.2, seeking an injunction and treble damages. \textit{Id.}


would have to pay treble damages and attorney’s fees and thus would be unable to break even when they are caught.\textsuperscript{103}

The Third Circuit found “nothing in [the Timber Piracy Statute] which would prevent its being applied to a co-owner.”\textsuperscript{104} Neither did the court believe that anything in the [Eighty Percent Rule] could be construed to mean that only buyers, but not co-owners themselves, should be subject to the penalties of the Timber Piracy Statute.\textsuperscript{105} In reference to the Eighty Percent Rule, the court stated:

The provisions of [the Eighty Percent Rule] do not appear to exist in order to exempt a co-owner from the necessity of paying treble damages for timber trespass. Rather, those provisions [merely] impose penalties on those buyers who cut timber without having obtained the consent of 80% of the co-owners.\textsuperscript{106}

\textsuperscript{103} Id.

\textsuperscript{104} Prewitt v. Rodrigues, 893 So.2d at 934.

\textsuperscript{105} See id.

\textsuperscript{106} Id.
The court held that the punitive damages imposed by the Timber Piracy Statute are particularly justified in circumstances where a co-owner has “flagrantly disregarded” the property rights of his fellow co-owners, willfully and intentionally selling timber that does not belong to him without any intention of paying the other co-owners their shares.\textsuperscript{107} The court reasoned that in cases of this type, the mere requirement that a trespassing co-owner pay the other co-owners their shares of the profits will not dissuade those trespassers from taking their co-owners’ timber for their own gain.\textsuperscript{108} The court thus ruled that the Timber Piracy Statute applies to co-owners and affirmed the trial’s court’s award to the plaintiff of treble damages and attorney’s fees.\textsuperscript{109}

\textbf{ii. Alexander v. Dunn (2009)}

In Alexander v. Dunn, the Second Circuit Court of Appeal held that co-owners are not subject to the Timber Piracy Statute but are only subject to the remedial scheme set forth in La.

\textsuperscript{107} Id. at 935.

\textsuperscript{108} Id.

\textsuperscript{109} Id.
C.C. art. 798. The court based much of its reasoning on the principles of statutory interpretation. The court reasoned that the Timber Piracy Statute “is a punitive statute and thus must be strictly construed,” and also that the statute is “facially ambiguous with regard to co-owners, neither expressly including nor excluding these persons from its provisions.” The Timber Piracy Statute states that a person violates the provision when he cuts or removes trees “on the land of another.” According to the Second Circuit, this language suggests that co-

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110 Alexander v. Dunn, 15 So.3d at 307; See also La. C.C. art. 798, supra note 13.

111 Alexander v. Dunn, 15 So.3d at 302-08.

112 Hornsby, 902 So.2d at 369, cited in Alexander v. Dunn, 15 So.3d at 305.

113 Alexander v. Dunn, 15 So.3d at 306, citing La. R.S. § 1:4; See also discussion of La. R.S. § 1:4 in Part III(A)(i), supra. The Alexander court was arguing that because the Timber Piracy Statute was facially ambiguous, the court could not disregard the letter of the statute under the pretext of pursing its spirit.

114 Alexander v. Dunn, 15 So.3d at 306; See also La. R.S. § 3:4278.1, supra note 14.
owners who cut co-owned timber are not subject to the statute because the land in question will not be the “land of another” but rather belongs to the co-owner himself.\textsuperscript{115}

The court also stated that while older jurisprudence, such as \textit{Cotten v. Christen},\textsuperscript{116} recognized that the act of a co-owner cutting timber without the consent of the other co-owners was in the nature of a trespass, “later jurisprudence suggests that a co-owner who engages in wrongful conduct with regard to the whole property is not a trespasser with regard to his co-owners.”\textsuperscript{117}

The Second Circuit also held that because co-ownership of timberland is the subject of the Eighty Percent Rule, the Timber Piracy Statute must be read \textit{“in pari materia”} with the

\textsuperscript{115} \textit{Id.}

\textsuperscript{116} \textit{See} discussion of \textit{Cotten v. Christen} (decided in 1903) in Part III(C)(ii), \textit{supra}.

\textsuperscript{117} \textit{Alexander v. Dunn}, 15 So.3d at 306, \textit{citing Juneau v. Laborde}, 82 So.2d at 693; \textit{See} discussion of \textit{Juneau v. Laborde} (decided in 1955) in Part III(C)(ii), \textit{supra}.
Eighty Percent Rule.\textsuperscript{118} The court remarked that: “Where two or more statutes deal with the same subject matter, they should be harmonized if possible; but if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.”\textsuperscript{119} The court reasoned that if the Timber Piracy Statute were read to apply to co-owners, it would create a contradiction with the Eighty Percent Rule.\textsuperscript{120} The court explained:

The [Eighty Percent Rule] allows a timber buyer to cut standing timber when the buyer has the consent of co-owners holding 80% of the ownership interest.

Because [the Timber Piracy Statute] does not explicitly refer to co-owners, it contains no exception for the [Eighty Percent Rule] in La. R.S. § 3:4278.2. If [the

\textsuperscript{118} \textit{Alexander v. Dunn}, 15 So.3d at 306, \textit{citing} La. C.C. art. 13; \textit{See also} discussion of La. C.C. art. 13 in Part III(A)(i), \textit{supra}.

\textsuperscript{119} \textit{Id.}, \textit{citing} La. Assoc. Gen. Contractors v. La. Dept. of Agric. & Forestry, 924 So.2d 90 (La. 2006); \textit{See generally} La. C.C. art. 13; \textit{See also} discussion of La. C.C. art. 13 in Part III(A)(i), \textit{supra}.

\textsuperscript{120} \textit{Alexander v. Dunn}, 15 So.3d at 306.
Timber Piracy Statute] applies to co-owners, then one co-owner who holds more than 80% of the ownership interest and permits timber to be cut in accordance with [the Eighty Percent Rule] would nevertheless be liable to the other co-owners for treble damages under [the Timber Piracy Statute] even though the timber buyer would escape the penalty because of [the Eighty Percent Rule.]

The court held that the legislative could not possibly have intended to create a contradiction of this type when it enacted these statutes.

The Second Circuit went on to reason that in enacting these Revised Statutes, as well as La. C.C. art. 798, the legislature recognized the fact that co-owners ordinarily take actions that promote their own economic self-interest. “To apply the Timber Piracy Statute to co-owners would allow the owner of a 10% share of timberland to recover treble damages from the owner of a 90% share who, following [the Eighty Percent Rule], obtains an excellent price for the

121 *Id.*

122 *Id.*

123 *Id.*
timber and shares the proceeds with the 10% owner.\textsuperscript{124} The court held that this result would be nonsensical.\textsuperscript{125} For this reason, and because timber-pirating co-owners own a share of the land in indivision and thus are not pirating timber “on the land of another” as required by the Timber Piracy Statute, the phrase “any person” cannot apply to co-owners.\textsuperscript{126} According to the Second Circuit, “[a]ny other application of the [Timber Piracy Statute] would violate the principle holding that such penalty statues must be strictly construed.”\textsuperscript{127}

This reasoning led the Second Circuit to rule that because neither the Timber Piracy Statute nor the Eighty Percent Rule “governs the rights and duties of co-owners of timberlands

\begin{footnotesize}
\begin{enumerate}
\item[124] \textit{Id.} at 306-07.
\item[125] \textit{Id.} at 307.
\item[126] \textit{Id.}
\item[127] \textit{Id.}, \textit{citing} La. R.S. § 1:3; \textit{See also} discussion of La. R.S. § 1:3 in Part III(A)(i), \textit{supra} (The statute reads: “Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.”); \textit{See also} discussion of the strict construction of punitive statutes in Part III(A)(ii), \textit{supra}.
\end{enumerate}
\end{footnotesize}
vis-à-vis each other, the ordinary rules of” the Civil Code, specifically La. C.C. art. 798, apply.\textsuperscript{128} The court thus reversed the trial court’s award to the plaintiffs of treble damages and attorney’s fees and amended the award to the fair market value of the plaintiffs’ share of the timber, pursuant to the La. C.C. art. 798.\textsuperscript{129}

IV. The Louisiana Supreme Court’s Decision

The Sullivan decision includes both a majority and a dissenting opinion.\textsuperscript{130} The majority held that the Timber Piracy Statute does not apply to co-owners.\textsuperscript{131} In analyzing the case, the majority relied on the basic principles of statutory interpretation.\textsuperscript{132} The majority reasoned as

\textsuperscript{128} Alexander v. Dunn, 15 So.3d at 307; The Alexander court added: “On this point, we respectfully disagree with our brethren on the Third Circuit.” Id., citing Prewitt, 893 So.2d 927;

\textit{See also} discussion of the Prewitt holding in Part III(D)(i), \textit{supra}.

\textsuperscript{129} Alexander v. Dunn, 15, So.3d at 307; \textit{See also} La. C.C. art. 798, \textit{supra} note 13.

\textsuperscript{130} See Sullivan v. Wallace, 51 So.3d at 703-13.

\textsuperscript{131} Id. at 706.

\textsuperscript{132} Id.; \textit{See also} discussion of the principles of statutory interpretation in Part III(A), \textit{supra}.
follows: “The issue in this case is a legal one requiring us to interpret [the Timber Piracy
Statute.] The fundamental question in all cases of statutory interpretation is legislative intent and
the ascertainment of the reason or reasons that prompted the legislature to enact the law.”\textsuperscript{133}

The majority cited to the following principles of statutory interpretation: To interpret a
statute, a court must begin with the plain language of the statute itself.\textsuperscript{134} If the language of the
statute is clear and unambiguous and its application does not lead to absurd consequences, no
search should be made into the intent of the legislature in enacting the statute, and the law should
be applied as written.\textsuperscript{135} If the language of the statute is susceptible of different meanings, a court
must interpret the language as having the meaning that best conforms to the purpose of the law,
and the words of law must be given their generally prevailing meaning.\textsuperscript{136} When the language of
a statute is ambiguous, a court must examine the context in which the language occurs and

\textsuperscript{133} Id.

\textsuperscript{134} Id.

\textsuperscript{135} Id., citing La. C.C. art. 9.

\textsuperscript{136} Id., citing La. C.C. arts. 10 and 11.
attempt to harmonize the statute with laws on the same subject matter.\textsuperscript{137} Additionally, because the Timber Piracy Statute is a punitive statute, it must be strictly construed.\textsuperscript{138}

The majority underwent the following “strict construction” of the Timber Piracy Statute:

> We agree with the court of appeal in \textit{Alexander v. Dunn} that, although the statute is directed to “any person” who cuts, fells, destroys, removes, or diverts for sale or use any trees, the statute is facially ambiguous with regard to co-owners of the timberland, neither expressly including nor excluding these persons from its provisions. When viewed strictly, the statute is violated only when “any person” acts with respect to trees growing or lying “on the land of another” and when this action is taken without “the consent of ... the owner or legal possessor.”\textsuperscript{139}

The majority adopted another piece of the \textit{Alexander} court’s reasoning, pertaining to the contradiction that results between the Timber Piracy Statute and the Eighty Percent Rule if the

\begin{itemize}
\item \textsuperscript{137} \textit{Id.}, citing La. C.C. arts. 12 and 13.
\item \textsuperscript{138} \textit{Hornsby}, 902 So.2d at 369 (La. 2005), cited in \textit{Sullivan v. Wallace}, 51 So.3d at 707.
\item \textsuperscript{139} \textit{Sullivan v. Wallace}, 51 So.3d at 709.
\end{itemize}
Timber Piracy Statute is held to apply to co-owners.\textsuperscript{140} The majority held that the legislature could not have intended a contradiction of this kind and thus could not have intended for the Timber Piracy Statute to apply to co-owners.\textsuperscript{141}

The majority further reasoned that the legislative intent behind the Timber Piracy Statute could be interpreted through the placement of the statute in a part of the Revised States entitled “Protection and Reforestation,” within a chapter entitled “Forests and Forestry.”\textsuperscript{142} The majority held that this placement of the statute suggested that the legislative purpose behind the Timber

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\textsuperscript{140} Id. at 709-10; See discussion of the Alexander court’s reasoning in Part III(D)(ii), supra; See also Sullivan v. Wallace, 51 So.3d at 708 (Guidry, J., majority)(explaining that the Louisiana Forestry Association, in its amicus curiae brief to the Sullivan Court, posited that the Alexander court’s ruling provided “a loophole around the Eighty Percent Rule to allow unscrupulous contractors to purchase interests in the property,” become co-owners, “and therefore avoid the penalties of [the Timber Piracy Statute.]”
\end{flushleft}

\begin{flushleft}
\textsuperscript{141} Id.
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\textsuperscript{142} Id.
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Piracy Statute was “to protect those with interests in trees from loggers who enter their property without permission to harvest timber illegally.”\textsuperscript{143} The Court held that co-owners could not fit into this category and thus that the legislature could not have intended for the Timber Piracy Statute to apply to co-owners.\textsuperscript{144}

Notably, while the majority based its decision on the principles of statutory interpretation, it also acknowledged the relevant policy considerations.\textsuperscript{145} The Court stated:

We recognize the important policy considerations invoked by the Louisiana Forestry Association in its amicus curiae brief filed in support of the plaintiff.

However, our decision today is directed by the statutory construction required of a

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\textsuperscript{143} Id.
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\textsuperscript{144} See id.
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\textsuperscript{145} Id. at 710.
\end{flushleft}
statute that is penal in nature. Any change in the law must be made by the legislature.\textsuperscript{146}

For these reasons, the majority held that the Timber Piracy Statute is inapplicable to co-owners of timberland.\textsuperscript{147} The Court thus ruled that the defendant, Bruce Sullivan, was not liable for treble damages but merely owed the plaintiff, Janice Sullivan, her proportional share of the timber profits pursuant to La. C.C. art. 798.\textsuperscript{148}

The *Sullivan* decision also includes a strong dissenting opinion.\textsuperscript{149} According to the dissent, the way that the majority interpreted the Timber Piracy Statute neither comported with

\textsuperscript{146} *Id.* at 710 n.7; The types of policy concerns involved in the case included good forest management practices, deforestation, encouraging landowners to reforest their trees, and preserving Louisiana’s valuable timber resources. *See Sullivan v. Wallace*, 51 So.3d at 711-13 (Knoll, J., dissenting).

\textsuperscript{147} *Id.* at 710.

\textsuperscript{148} *Id.*; *See also* La. C.C. art. 798, note 13 \textit{supra}.

\textsuperscript{149} *See id.* at 710-13.
the “clear and unambiguous language” of the statute nor furthered the explicit intent of the legislature. The dissent reasoned that nothing in the language of the Timber Piracy Statute would prevent its application to co-owners or restrict its application to third parties. The dissent thus held that the majority, in ruling the way it did, created a jurisprudential limitation of the Timber Piracy Statute that exceeds the function of the judiciary.

In analyzing Sullivan, the dissent relied heavily on the basic principles of statutory interpretation, beginning by analyzing the plan language of the Timber Piracy Statute. The dissent reasoned that a timber-pirating co-owner falls under the umbrella of “any person” who “intentionally or willfully” steals timber and that co-owned land, which is “land owned by one

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150 Id. at 710-11.

151 Id. at 711.

152 Id.

153 See id. at 710-13.

154 Id. at 711.
co-owner with another,” thus falls under the umbrella of “land of another.” The dissent thus held that interpreting the Timber Piracy Statute to apply to co-owners comports with the plain language of the statute, as well as with the legislature’s clear intent that the statute be applied broadly, as expressed by the legislature’s use of very broad statutory language. According to the dissent, this interpretation of the statute also comports with long-established jurisprudence, as set forth in Cotten v. Christen, stating that co-owners can be trespassers with respect to other co-owners when they pirate co-owned timber. The dissent also argued that the facts that the Eighty Percent Rule immediately follows the Timber Piracy Statute and that the Eighty

155 Id.; See La. R.S. § 3:4278.1, note 14 supra.

156 Id. at 711-12; See also La. R.S. § 3:4278.1, note 14 supra.

157 Id. at 711, citing Cotten v. Christen, 110 La. at 447 (holding that a co-owner “has no right to cut the timber on the land without the consent of his co-owner…for the act is in the nature of a trespass.”); See also discussion of early case law pertaining to timber piracy, including Cotten v. Christen in Part III(C)(ii), supra.

158 The two statutes are La. R.S. § 3:4278.1 and La. R.S. § 3:4278.2.
Percent Rule explicitly references co-owners\textsuperscript{159} imply that the legislature intended that the Timber Piracy Statute should also apply to co-owners.\textsuperscript{160}

The dissent also maintained that because the legislature enacted the Timber Piracy Statue as a specific statute to govern timber policy, and because “it is well established [that] specific provisions prevail over more general provisions,” the Timber Piracy Statute must be held to trump the general, default rules of Civil Code.\textsuperscript{161} Thus, the dissent held that the Timber Piracy Statute, and not La. C.C. art. 798, should apply to co-owners.\textsuperscript{162}

Expanding on its interpretation of the legislative purpose behind the Timber Piracy Statute, the dissent reasoned that the legislature enacted the statute in an attempt to further various policy interests, including: preserving Louisiana’s valuable timber resources, combating

\textsuperscript{159} See La. R.S. § 3:4278.2, note 91 \textit{supra}.

\textsuperscript{160} \textit{Id.} at 711 n.1; \textit{See also} La. C.C. art. 13; \textit{See also} discussion of La. C.C. art. 13 and the other principles of statutory interpretation in Part III(A), \textit{supra}.

\textsuperscript{161} \textit{Id.} at 712, citing \textit{Kennedy}, 699 So.2d at 358; \textit{See also} discussion of the Kennedy case and other principles of statutory interpretation in Part III(A), \textit{supra}.

\textsuperscript{162} See \textit{id}.
deforestation and bad forest management practices, and deterring timber piracy, which is “a serious concern in this State in which remote tracts of timberland and absentee co-owners abound.”

The dissent adopted the position of the *Prewitt* court, which stated:

The provisions of La. R.S. § 3:4278.2 do not appear to exist in order to exempt a co-owner from the necessity of paying treble damages for timber trespass. Rather, those provisions impose penalties on those buyers who cut timber without having obtained the consent of 80% of the co-owners.

The *Sullivan* dissent held that to exempt co-owners from the severe penalties of the Timber Piracy Statute would be to create a “catch me if you can” policy under which a co-owner who owns as little as a one-percent undivided interest could pirate the co-owned timber and, if caught, only pay a pro rata share to each of the other co-owners. According to the dissent, the intent of

163 *Id.* at 712.

164 *Id.* at 711 n.1, *citing Prewitt v. Rodrigues*, 893 So.2d at 934.

165 *Id.* at 712.
the legislature was to impose a substantial and deterring penalty on co-owners who, in bad faith,
flagrantly disregard the property rights of their timber co-owners, and Bruce Sullivan was
“unquestionably…one such co-owner.”\textsuperscript{166} Therefore, the dissent held that the Timber Piracy
Statute should apply to Bruce Sullivan, the exactly type of person that the statute was intended to
punish and deter.\textsuperscript{167} For these reasons, the dissent ruled that the Timber Piracy Statute should
apply to co-owners and thus that the plaintiff, Janice Sullivan, was entitled to treble damages and
attorney’s fees.\textsuperscript{168}

V. Analysis

The majority held that the Timber Piracy Statute did not apply to co-owners and ruled in
favor of the defendant, Bruce Sullivan. While this decision was technically correct, it is
unsatisfactory as a policy matter. Additionally, the majority could have held that the Timber

\textsuperscript{166} Id.; See also supra note 20, explaining the various acts of deception and bad faith performed
by Bruce Sullivan.

\textsuperscript{167} Id.

\textsuperscript{168} Id. at 712-13; See also the language of La. R.S. § 3:4278.1, note 14 supra.
Piracy Statute did apply to co-owners and ruled in favor of the plaintiff, Janice Sullivan, without offending the rules of statutory interpretation and legislative intent. Given the 2011 Legislative Session’s amendment to the Timber Piracy Statute, it is now clear that the legislature intended for co-owners to be subject to the statute.

A. The Debate Over Statutory Interpretation and Legislative Intent

The *Sullivan* majority largely based its decision on the principle that punitive statutes must be strictly construed, meaning that if there is any doubt whatsoever as to whether a court should apply a penalty in a particular case, the court must refrain from imposing the penalty. Thus, if the majority identified a mere ounce of doubt as to whether the punitive Timber Piracy Statute applied to co-owners, it would be forced to rule that it did not apply, pursuant to the strict construction rule. The majority reasoned that the “facial ambiguity” of the Timber Piracy

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169 See discussion of the *Sullivan* majority’s reasoning in Part IV, *supra*.

170 See discussion of the principles of statutory interpretation in Part III(A)(ii), *supra*; See also *Tichenor*, 181 So. at 864-65, notes 47 and 48, *supra*.

171 See *id*.
Statute, in “neither expressly including nor excluding [co-owners] from its provisions,” created a doubt as to whether co-owners were subject to the statute.\textsuperscript{172} The majority held that because of this doubt, it could not rule that the Timber Piracy Statute applied to co-owners.\textsuperscript{173}

The dissent denied the existence of such a doubt, holding that the plain language of the statute, which was “clear and unambiguous,” showed the legislature’s clear intent to make co-owners subject to the statute.\textsuperscript{174} Although the dissent’s plain-language interpretation of the statute, as well as with the legislature’s clear intent that the statute be applied broadly, as expressed by the legislature’s use of very broad statutory language.

\textsuperscript{172} See discussion of the Sullivan majority’s reasoning in Part IV, supra.

\textsuperscript{173} See id.

\textsuperscript{174} See discussion of the Sullivan dissent’s reasoning in Part IV, supra: The dissent reasoned that a timber-pirating co-owner falls under the umbrella of “any person” who “intentionally or willfully” steals timber and that co-owned land, which is “land owned by one co-owner with another,” thus falls under the umbrella of “land of another.” The dissent thus held that interpreting the Timber Piracy Statute to apply to co-owners comports with the plain language of the statute, as well as with the legislature’s clear intent that the statute be applied broadly, as expressed by the legislature’s use of very broad statutory language.
statute is convincing, the very fact that the majority and dissent disagreed over how to interpret the plain language of the statute gave the majority the small ounce of doubt that it needed to hang its hat on.  

Once the majority found this doubt as to whether the Timber Piracy Statute applied to co-owners, it had no choice but to rule that the statute did not apply.  

While the majority’s ruling that a doubt existed was technically correct, the majority could have also correctly held that no such doubt existed. The majority maintained that the language of the Timber Piracy Statute was “ambiguous” and that this ambiguity led to doubt.  

In *McConnico*, the Second Circuit interpreted the same provisions and stated that the statute was “not ambiguous, but rather contain[ed] patently bad grammar” and was “poorly drafted.” Thus, although the language of the statute may have been grammatically imperfect, it was not

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175 See discussion of the *Sullivan* majority and dissent’s reasoning in Part IV, *supra*.

176 See discussion of the principles of statutory interpretation in Part III(A)(ii), *supra*; See also *Tichenor*, 181 So. at 864-65, notes 47 and 48, *supra*.

177 See discussion of the *Sullivan* majority’s reasoning in Part IV, *supra*.

178 *McConnico*, 847 So.2d at 194.
necessarily ambiguous in a way that required the majority to doubt whether the statute applied to co-owners. This was evidenced by the fact that the dissent analyzed the same grammatically imperfect provisions and was able to offer a plain-language interpretation that clearly indicated the statute’s applicability to co-owners.

Even if the majority was not entirely convinced by the dissent’s plain-language interpretation of the statute, an analysis of the legislature’s intent in enacting the Timber Piracy Statute would have allowed the majority to rule for the plaintiff. The majority began its analysis of the case by saying that “[t]he fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the legislature to enact the law.”

There is a host of evidence that the legislature intended for the Timber Piracy Statute to apply to co-owners. First of all, the legislature used very broad language in drafting the statute, stating that “any person” who pirates timber is subject to punitive damages. Additionally, both

179 See discussion of the Sullivan majority’s reasoning in Part IV, supra.

180 See La. R.S. § 3:4278.1, note 14 supra.
the Timber Piracy Statute and the Eighty Percent Rule are extensive, specific provisions

providing for heavy-handed punishments for timber pirates and careless or negligent timber

buyers. The imposition of heavy punitive damages indicates the legislature’s desire to punish

timber piracy in all its forms and to deter timber pirates of all kinds. Given this clear intent, it

would be counterintuitive to presume that the legislature also intended to create a sizeable

exception to the Timber Piracy Statute by exempting all co-owners from its provisions. This

presumption seems particularly unlikely in light of the fact that the State of Louisiana abounds

with timber co-owners, many of whom are disgruntled family members, ex-spouses, or absentee

landowners and thus are clearly potential victims and perpetrators of timber piracy.

This legislative intent, the pursuit of which is the “fundamental question in all cases of

statutory interpretation,” buttressed by the dissent’s plausible plain-language interpretation of the

\[\text{See id.; See also La. R.S. § 3:4278.2, note 91 supra.}\]

\[\text{See id.}\]

\[\text{Louisiana Forestry Association, 2011 Louisiana Forestry Facts (2011),}\]

statute, gave the majority the tools it needed to rule that there was no doubt as to whether the statute applied to co-owners. Thus, the court could have correctly ruled that the statute did, indeed, apply to co-owners while staying well within the bounds of the principles of statutory interpretation and without flying in the face of the strict construction rule. The majority chose not to rule this way, however, knowing full well that it’s ruling would be unsatisfying from a policy standpoint.\footnote{See Sullivan v. Wallace, 51 So.3d at 710 n. 7: “We recognize the important policy considerations invoked by the Louisiana Forestry Association in its amicus curiae brief filed in support of the plaintiff. However, our decision today is directed by the statutory construction required of a statute that is penal in nature. Any change in the law must be made by the legislature.”}

B. Unsatisfactory Policy Implications of the Majority Decision

The majority admitted that its decision, while technically correct, is unsatisfactory as a policy matter and suggested that certain policy considerations militate in favor of applying the
Timber Piracy Statute to co-owners.\textsuperscript{185} These considerations include environmental concerns such as encouraging landowners to preserve good forest management practices and to reforest their timberland, as well as curbing deforestation and preserving Louisiana’s valuable timber resources.\textsuperscript{186} The dissenting Justice pointed out that if the Timber Piracy Statute is not applied to co-owners, “landowners will be reluctant to reforest trees, knowing their valuable forests are exposed to an increased risk of piracy from their very own co-owners.”\textsuperscript{187}

The majority’s decision, in exempting co-owners from the statute, also erodes the deterrent value that the legislature intended to create.\textsuperscript{188} The majority seemed less concerned with deterrent value than it was with sympathy toward the hypothetical co-owner with a 90% interest in timberland who cannot convince a stubborn co-owner with the remaining 10% interest

\textsuperscript{185} See id.
\textsuperscript{186} See Sullivan v. Wallace, 51 So.3d at 711-13 (Knoll, J., dissenting); See also discussion of the value of timber resources in Part I, supra.
\textsuperscript{187} Id. at 712.
\textsuperscript{188} See id.
to consent to a timber sale. The effect of the majority’s ruling is that the ninety-percent co-owner may cut and remove the timber when it is economically beneficial for him to do so without being forced to pay treble damages and attorney’s fees to the unreasonable ten-percent co-owner. The ninety-percent co-owner will merely have to give the ten-percent owner his proportional share of the profits, deducted by costs of production.189

The dissent, on the other hand, sympathized with co-owners in Janice Sullivan’s position, who are victims of timber piracy by their fellow co-owners. One such co-owner, owning 50% of the timber interest, may not wish to cut the timber because he does not believe it is the most economically beneficial time to do so, or because he is absent, or for some other reason. In this case, the other fifty-percent co-owner may cut the timber without the first co-owner’s consent or intentionally steal it out from under his nose. Unsettlingly, the timber-pirating co-owner will not be subject to punitive damages but will only be obligated to pay his victim the proportional share

189 See La. C.C. art. 798, supra note 13.
of the profits.⁹⁰ Even more troublesome is the fact that the timber-pirating co-owner will be able to recover half of the production costs from his victim.⁹¹

The Alexander court attempted to downplay this problem by reasoning that in enacting both the Timber Piracy Statute and La. C.C. art. 798, the legislature recognized that co-owners ordinarily take actions that promote their own economic self-interest.⁹² But this is precisely the problem. Timber-pirating co-owners such as Bruce Sullivan are indeed acting in their own economic self-interest when they steal co-owned timber with the intention of keeping the profits for themselves without delivering to the other co-owner’s their proportional shares. Under the majority’s ruling, even these timber-pirating co-owners who steal co-owned timber “willfully and intentionally” will be exempt from paying punitive damages and will only be forced to pay out the other co-owners’ proportional shares if they are caught.⁹³ Thus, the majority’s ruling

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⁹⁰ See id.

⁹¹ See id.

⁹² Alexander v. Dunn, 15 So.3d at 306.

⁹³ See La. R.S. § 3:4278.1, supra note 14.
creates the very “catch me if you can” policy that the dissenting Justice warned against and strips the Timber Piracy Statute of its deterrent value in the realm of co-ownership.\textsuperscript{194}

The majority’s decision also seems to be unfair given the particular facts of \textit{Sullivan}. The defendant, Bruce Sullivan, was in blatant bad faith\textsuperscript{195} and thus is the quintessential timber pirate that the legislature intended to punish through the Timber Piracy Statute. Given the preceding analysis pertaining to principles of statutory interpretation and legislative intent, the majority could have ruled in the plaintiff’s favor while remaining within the bounds of the law.\textsuperscript{196} The majority’s failure to do so does not appear to comport with any notion of a just and fair result. In response to all of these counterarguments pertaining to fairness and other policy considerations, the majority remarked that its hands were tied by the strict construction rule and that “[a]ny change in the law must be made by the legislature.”\textsuperscript{197}

\textsuperscript{194} See \textit{id.} at 712.

\textsuperscript{195} See \textit{supra} note 20.

\textsuperscript{196} See discussion in Part V(A), \textit{supra}.

\textsuperscript{197} See \textit{supra} note 183.
C. The 2011 Legislative Session and the Amended Timber Piracy Statute

The *Sullivan* decision made clear that the language of the Timber Piracy Statute as it read at that time\(^{198}\) presented difficulties for statutory interpretation and was, as the Second Circuit remarked, grammatically imperfect.\(^{199}\) Thus, in the wake of *Sullivan*, it became apparent that the legislature needed to take action. The legislature did just that during the 2011 Legislative Session when it enacted Act 226, an amendment to the Timber Piracy Statute that became effective on August 15, 2011.\(^{200}\) This text of this amendment puts a decisive end to the debate over whether

\[^{198}\](The *Sullivan* case was decided on November 30, 2010. *See Sullivan v. Wallace*, 51 So.3d 702.)

\[^{199}\](See *supra* note 178.)

\[^{200}\](See State of Louisiana, *Enrolled Act No.* 226 (Regular Session, 2011), http://www.legis.state.la.us/billdata/streamdocument.asp?did=760254; The text of the Timber Piracy Statute (La. R.S. § 3:4278.1), as amended, is as follows:

A. (1) It shall be unlawful for any person to cut, fell, destroy, remove, or to divert for sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove, or to divert for sale or use, any trees, growing or lying on the land of another, without the consent of, or in
accordance with the direction of, the owner or legal possessor, or in accordance with specific
terms of a legal contract or agreement.

(2) It shall be unlawful for any co-owner or co-heir to cut, fell, destroy, remove, or to divert for
sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove,
or to divert for sale or use, any trees, growing or lying on co-owned land, without the consent of,
or in accordance with the direction of, the other co-owners or co-heirs, or in accordance with
specific terms of a legal contract or agreement. The provisions of this Paragraph shall not apply
to the sale of an undivided timber interest pursuant to R.S. 3:4278.2.

B. Whoever willfully and intentionally violates the provisions of Subsection A of this Section
shall be liable to the owner, co-owner, co-heir, or legal possessor of the trees for civil damages in
the amount of three times the fair market value of the trees cut, felled, destroyed, removed, or
diverted, plus reasonable attorney fees and costs.

C. Whoever violates the provisions of Subsection A of this Section in good faith shall be liable to
the owner, co-owner, co-heir, or legal possessor of the trees for three times the fair market value
of the trees cut, felled, destroyed, removed, or diverted, if circumstances prove that the violator
the legislature intended for the Timber Piracy Statute to apply to co-owners because the provision now explicitly states that co-owners are, indeed, subject to the provisions of the statute.\textsuperscript{201} Additionally, a new provision of the amended Timber Piracy Statute establishes the way in which the statute will interact with the Eighty Percent Rule, which remains unchanged.\textsuperscript{202} This new provision is indicative of the legislature’s intent to ensure that the two statutes can be read consistently without leading to contradiction or absurdity.\textsuperscript{203}

\textsuperscript{201} See La. R.S. § 3:4278.1(A)(2), supra note 194.

\textsuperscript{202} Id.

\textsuperscript{203} See id.
The sufficiency of the amended legislation to address all of the concerns arising out of *Sullivan* is out of the scope of this case note. However, if as additional case law emerges, it becomes clear that this amendment is insufficient to address those concerns, the legislature could potentially find it necessary to perform a complete legislative overhaul of both the Timber Piracy Statute and the Eighty Percent Rule.

**VI. Conclusion**

In future cases involving instances of co-owner timber piracy that occurred after August 15, 2011, litigants will have no doubt that the amended Timber Piracy Statute applies to them and that punitive damages will be imposed on all violators. However, cases involving co-owner timber piracy that occurred within the last five years up until August 15, 2011 will continue to be governed by the un-amended version of the Timber Piracy Statute.204 *Sullivan v. Wallace* will

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204 See La. C.C. art. 6, effective January 1, 1988, which states: “In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the
thus remain the reigning jurisprudence over such cases. It is therefore possible that Louisiana
will see future judicial decisions that, like Sullivan v. Wallace, are technically correct but that
perpetuate unsound public policy and unjust results for plaintiffs like Janice Sullivan.

contrary”; See also La. R.S. § 3:4278.1(G) (un-amended), supra note 14, pertaining to liberative
prescription.