PRIVATE INTERNATIONAL LAW ON RIGHTS IN REM *IN THE EUROPEAN UNION*
DERECHO INTERNACIONAL PRIVADO SOBRE DERECHOS REALES EN LA UNIÓN EUROPEA
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RIGHTS *IN REM* IN EUROPE: A COMPARATIVE PERSPECTIVE

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I. INTRODUCTION

This chapter depicts the general features of the system of property law in civil law and Anglo-American law with the aim of identifying the most common characteristics of rights *in rem*. It also addresses emerging trends, such as the significant role of the social function of the property in order to implement a new special property regime for primary residences in Spain, that is currently under state supervision,

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or the implementation of temporary and shared ownership in the Civil Code of Catalonia, a great breakthrough as far as the legal nature of the right of ownership is concerned (*e.g.* its perpetual nature), as well as new challenges to the classical model of property law, such as personal data, robots, blockchain, animals or the role that fundamental rights may play in adding a human rights dimension to EU private law.

II. THE CURRENT ACQUIS COMMUNAUTAIRE: A BASIS FOR HARMONIZATION OF PROPERTY LAW IN EUROPE?

The overall project of the European integration process has been the establishment of a common market, so the EU has never been concerned with the establishment of private law rules (*i.e.* contract, property and tort law rules) as a national legal order, based on private autonomy or freedom of contract. As a matter of fact, the EU does not adopt a clear distinction between private and public law[1] (the EU does not classify the Treaty Provisions according to their public or private nature as they have been created based on subject matter and policies). As opposed to national private law, the goal of achieving a common market has prompted the creation of a modern concept of private law in the EU: the so-called European regulatory private law, which surrounds the core of traditional national private law[2]. Accordingly, the main provisions that have been enacted in the private law field aim to protect the interests of consumers and to ensure a high level of consumer protection in the fields of product safety, digital market, financial services, food safety and labelling, energy, travel, leisure and transport[3], based on arts. 114 and 169.2(a) TFEU).

Even though art. 114.1 TFUE does not a priori set any limitation regarding the issues that may fall under EU competence[4], there are a number of conditions to be complied with, *i.e.* the EU may harmonise a field insofar as the measures taken contribute to the establishment

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[1] C. Semmelmann, «Theoretical reflections on the public-private distinction and their traces in European Union Law», *Oñati Socio-Legal Series,* Vol. 2, Issue 4, 2012, pp. 51 ff.

[2] Hans-W Micklitz, «The EU as a Federal Order of Competences and the Private Law», in Azoulai, L. (ed.), *The Question of Competence in the European Union*, Oxford, Oxford University Press, 2014, pp. 130 ff.

[3] See *https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints_en*. A study that provides a comprehensive overview of EU competence in private law is R. Mańko, *EU competence in private law, The Treaty framework for a European private law and challenges for coherence*, European Parliamentary Research Service, Brussels, 2015. Available at *https://pure.uva.nl/ws/files/2552503/168871_Rafal_MANKO_EU_Competence_in_Private_Law.pdf*.

[4] See R. Schütze, «Limits to the Union's 'Internal Market' Competence(s) Constitutional Comparisons», in Azoulai, L. (ed.), *The Question of Competence in the European Union*, *op. cit.,* pp. 216 ff.

and functioning of the internal market[5]. On this basis, a few proprietary-related rules have been adopted at EU level, such as the action for restitution of cultural property that has been illegally removed from the territory of a Member State[6], as well as the rules on retention of title[7], timesharing[8], collateral agreements[9], intellectual property[10], intangible assets[11] and credit agreements for consumers relating to residential immovable property[12]. Other rules have been passed within the procedural field[13]. The need for the measure to have a positive impact on

[5] This was established by the Court of Justice of the European Union (CJEU) judgement of 12 December 2006, Germany, C-380/03, ECLI:EU:C:2006:772, paragraph 80.

[6] Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (DO L 159, 28.5.2014, p. 1/10). However, ownership of the cultural object after return shall be governed by the law of the requesting Member State (art. 13).

[7] Art. 9 Directive 2011/7/EU of the European Parliament and of the Council dated 16 February 2011 on combating late payment in commercial transactions (DO L 48 de 23.2.2011, p. 1/10). This has made possible a common minimum standard regarding the retention of title, see E. M. Kieninger, *Security rights in movable property in European private law*, Cambridge, Cambridge University Press, 2004, p. 658.

[8] Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts (DO L 33 de 3.2.2009, p. 10/30).

[9] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (DO L 168, 27.6.2002, p. 43/50).

[10] Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1–24); Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1–99), in fact an EU trade mark may be given as security or be the subject of rights *in rem* (art. 22); and Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ L 361, 31.12.2012, p. 1–8).

[11] Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (DO L 211, 14.8.2009, p. 36/54); Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (DO L 158, 14.6.2019, p. 125/199); and Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (DO L 275, 25.10.2003, p. 32/46).

[12] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property (DO L 60, 28.2.2014, p. 34/85).

[13] Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (DO L 351 of 20.12.2012, p. 1/32); Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (DO L 141 of 5.6.2015, p. 19/72), and Regulation (EU) No650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107–134), which does not apply to the creation, administration and dissolution of trusts (art. 1.2.(k)), the

the common market explains, for example, why the competence for the adoption of a European Civil Code[14] or for the harmonisation of residential tenancies[15] has been called into question.

In short, the regulation of property rights in the community acquis is characterized by its fragmentation and lack of coherence[16], and it does not provide a basis for defining a property right, although some characteristics of the rights *in rem* may be found. For example, the object and the enforceability of property rights are mentioned in Regulation 2015/848[17]; and the abovementioned directives and regulations also show that property rights may be created over both corporeal and incorporeal things. For its part, CJEU case law[18] has also referred to the effects of property rights (*e.g.* a right of pre-emption) vis-a-vis third parties, even though the CJEU has used the national conception of property rights so far[19]. The lack of a comprehensive EU system on property law means that the issues related to the constitution, acquisition, modification, transmission, loss or extinction of property rights will be governed by the *lex rei sitae*, that is, by the law of the place where the property is located[20]. One possible explanation for the frag-

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nature of rights *in rem* (art. 1.2.(j)) and any recording in a register of rights in immovable or movable property (art. 1.2.(l)).

[14] J. W. Rutgers, *European Competence and a European Civil Code, a Common Frame of Reference or an Optional Instrument*, 2010, p. 11. Available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542533*.

[15] C. Schmid, «Epilogue», in Schmid, C., (ed.), *Tenancy law and housing policy in Europe. Towards Regulatory Equilibrium,* Edward Elgar Publishing, 2018, pp. 336 ff.

[16] According to J. M. Milo, «Property and real rights», in Smits, J. (Ed.), *Elgar Encyclopedia of Comparative Law*, Elgar, 2012, p. 728, who argues that «private property law has not seen many unifying or harmonisation projects either by formal supranational regulation and or by informal methods, such as the drawing up of principles, nor has there been much borrowing by national jurisdiction of foreign property law concepts».

[17] Art. 5 protects the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets in relation to the opening of insolvency proceedings, and art. 8.3 establishes that «The right, recorded in a public register and enforceable against third parties, based on which a right *in rem* within the meaning of paragraph 1 may be obtained shall be considered to be a right *in rem*».

[18] CJEU judgement of 3 April 2014, Weber, C-438/12, ECLI:EU:C:2014:212, paragraph 47: «In the light of the foregoing considerations, the answer to the third question is that Article 22(1) of Regulation No 44/2001 must be interpreted as meaning that there falls with the category of 'proceedings which have as their object rights *in rem* in immovable property' an action such as that brought in the present case before the courts of another Member State, seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to that property and which produces effects with respect to all parties».

[19] For this reason, Akkermans argues that «Increasingly, it is therefore the court that needs to take action to clarify the meaning of EU property terminology or to decide what national property law takes precedence over another», see B. Akkermans, «European-Autonomous Property Rights: Does the EU Operate Its Own Numerus Clausus?», *European Review of Private Law,* Vol. 27, Issue 4, 2019, p. 782.

[20] See E-M. Kieninger, «Property Law (International)», in Basedow, J. *et al.*, *The Max Planck encyclopedia of European private law*, Oxford, Oxford University Press, 2012, pp. 1374 ff.

mented regulation of property in EU law is the competence issue. The founding Treaties of the EU do not provide for express competence in this area; the only reference is found in art. 345 TFEU[21]. CJEU case law related to this article dealt with the ownership regime of companies at the national level, *e.g.* the CJEU judgement of 22 October 2013[22] dealt with the prohibition of privatization of electricity or gas distribution system operators in the Netherlands, meaning that shares held in these operators could not be the subject of private investment. The CJEU held that the law preventing the inclusion of this infrastructure in the privatisation of the electricity industry violated EU law, in particular the freedom of capital (art. 63 TFEU), which could only be justified on overriding reasons of public interest[23].

Notwithstanding art. 345 TFEU, nothing prevents the EU from acting in other areas of property law (which could be based on art. 114 TFEU[24]) insofar as the action benefits the internal market. Ultimately, it is a matter of economic efficiency[25]. The harmonization of mortgage law in the EU (through, for example, the so-called euromortgage[26]) and security rights in general, as well as the different models of property transfer, could benefit the internal market[27]. However, it is less certain

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[21] «The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership».

[22] Essent Nederland BV, C-105/12, ECLI:EU:C:2013:677.

[23] As a result, following S. Van Erp, «Article 345 TFEU: A framework for European property law», in Lauroba Lacasa, E. and Tarabal Bosch, J. (Eds.), *El derecho de propriedad en la construcciön del derecho privado Europeo*, Valencia, Tirant Lo Blanch, 2018, pp. 59-70, the «*four freedoms underlying EU market integration (freedom of goods, persons, service and capital) may discard provisions of national property law*».

[24] According to Akkermans, this article «can be used to remedy deficiencies with the internal market where there is a substantial hindrance to its functioning», see B. Akkermans, «Property Law in European Union Law», in Wallis, D. and Allanson, S. (Eds.), *European Property Rights & Wrongs*, Conexio Public Relations, Lahti, 2011, pp. 41 and 42. Available at: *https://www.elra.eu/wp-content/uploads/2016/10/European-Property-Rights-and-Wrongs-Ms-Diana-Wallis.pdf*.

[25] A. Gambaro, «Towards a Codification of the European Law of Property», in Gambaro, A. and Rabello, A. M. (Eds.), *Towards a new European ius commune*, Israel, The Hebrew University of Jerusalem, 1999, pp. 96 and 97.

[26] The resuscitation of the proposal for a common mortgage instrument for Europe to facilitate cross-border mortgage lending operations was proposed again in 2016, see P. Sparkes, *Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens*, Brussels, European Union, 2016, p. 150. Available at: *http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf*. Indeed, a single instrument like the eurohypothec, an accessory contractual right, would help to boost the common market because it fosters each EU freedom and the mortgage market in both active (housing) and passive (securitisation) operations. In fact, the study carried out by the London School of Economics (The Costs and Benefits of Integration of EU Mortgage Markets, 2005) showed the benefits of the integration of European mortgage markets, pp. 91-92. More information at: *https://housing.urv.cat/en/cover/research/project/eurohypothec/*.

[27] G. Affaki, «Analysis of Obstacles to the Proper Functioning of the Internal Market», in Drobnig, U., Snijders, H. J. and Zippro, E-J. (eds.), *Divergences of Property Law, an Obstacle to the internal Market?*, Sellier, München, 2006, pp. 196-198. See also F.M. J. Verstijlen, «General

whether the harmonization of other property rights, such as options, usage rights or usufructs, can benefit the internal market.

III. THE SYSTEM OF PROPERTY LAW IN CIVIL AND IN ANGLO-AMERICAN LAW

1. The civil law «ownership» and the common law «freehold»

1.1. The civil law «ownership»

Property ownership and the distribution of resources have played a key role in the prosperity of European societies, together with the economic institutions and policies. It is argued that the collapse of the *Ancien Régime* in the eighteenth and nineteenth centuries was related to the rise of capitalism[28]. In those times, the market, based on agricultural land, was highly regulated and the economic, political and legal institutions were absent, being a highly hierarchical society. Indeed, the system of landholding was based upon hierarchical division of rights between those who have the direct domain on huge lands (*seigneurie directe*) and their possessors (*seigneurie utile*), and even though the system that existed prior to the thirteenth century (in this period the lords were the only ones with proprietary rights) was improved, perpetual payments to the landlord (*e.g.* taxes and dues) still persisted.

The underlying goals of the French Revolution, which was fuelled by the classical liberalism of Locke's approach (for whom self-ownership originates from natural law and people are entitled to the products of their labor[29], with the main goal of the state being the protection of the life, health, liberty, and possessions of individuals, safeguarding property through a land holding system), was that the emancipation of citizens from the feudal regime could only be achieved through the emancipation of property[30]. Property symbolized[31] both freedom and lordship over the thing; namely, individuals were entitled to decide the use and destiny of their respective goods. Property became the absolute right to dispose of a thing without further limitations than those contained in the law[32].With the right of ownership being the central insti-

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Aspects of Transfer and creation of Property Rights including Security Rights», in Drobnig, U., Snijders, H. J. and Zippro, E-J. (eds.), *op. cit.,* p. 19.

[28] Acemoglu *et al*., «The Consequences of Radical Reform: The French Revolution», *American Economic Review*, Vol. 101, Issue 7, 2011, pp. 3286 ff.

[29] According to this Second Treatise of Government «every Man has a Property in his own Person...The Labour of his Body, and the Work of his Hands we may say, are properly his», § 27.

[30] R. Blaufarb, *The Great Demarcation: The French Revolution and the Invention of Modern Property*, Oxford, Oxford University Press, 2019, pp. 60 ff.

[31] V. L. Montés, *La propiedad privada en el sistema de derecho civil contemporáneo*, Madrid, Civitas, 1980, pp. 52- 53.

[32] Art. 544 of the *Code Civil* 1804, influenced by the *Déclaration des droits de l´Homme et du citoyen* 1789, which lays down that property is a "*droit inviolable et Sacre*" (art. 17). Both

tution of private law, it helped to establish an age of simple commodity production providing order in terms of both goods and power, so that the ownership of tangible assets provided both a place to live and a means of production for the whole family (the unity of production and consumption), *i.e.* the land, the house, the means of production and the commodities for consumption followed the same destiny[33].

French Law is the exponent of the classic system of property law, which is characterized according to Van Erp[34] by a close-fitting view of what could be an object of property law (mainly tangible) and by the adoption of the *numerus clausus* system (in order to avoid the revival of the feudal regime, the freedom of individuals was heavily restricted in the field of property law), which means that individuals are only allowed to create those property rights that are expressly provided by law. This system has also been adopted in English law[35], as well as in Germany, Greece, Italy, Portugal or The Netherlands[36]. It seems that Spanish law is more likely to accept a fragmentation of the right of ownership (*numerus apertus* principle[37]), but the truth is that property rights remain essentially the same since Roman law[38]. The principle of transparency, according to which third parties should have the means to easily verify the existence of property rights on clearly defined goods, should also be highlighted.

The fact that property is an absolute right has other implications. Broadly speaking, it implies the systematic distinction in the legal system between proprietary and obligatory rights, as well as the existence of a specific protective action aimed at the recovery of the property (*rei vindicatio*). The existence of this action means that the main objective of property law is the protection of property rights. This has an impact on civil liability, which tends to protect absolute rights, such as prop-

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available at: *https://www.legifrance.gouv.fr*.

[33] O. Okhan-Freund, «Introduction», in Renner, K. (2010), *The institutions of private law and their social functions*, Transaction Publishers, pp. 24 ff.

[34] S. Van Erp, *From 'Classical' to Modern European Property Law?* (April 2, 2009). Collection of Essays, Forthcoming, pp. 7 ff. Available at: *http://ssrn.com/abstract=1372166*): «This classical model of property law is most clearly visible in the civil law tradition, but its basic characteristics as described above can also be seen in the common law tradition», p. 19.

[35] B. Akkermans, *The Principle of Numerus Clausus in European Property Law*, Ius Commune Europaeum Series, Intersentia, 2008, p. 396.

[36] See the *General Report* of the EU Project *Real Property Law and Procedure in the EU*, coordinated by Dr. Christoph Schmid in the European University of Florence, p. 14. Available at: *http://www.eui.eu/*.

[37] L. Díez Picazo, «Autonomía privada y derechos reales», in JUNTA DE DECANOS DE LOS COLEGIOS NOTARIALES (ed.), *Libro homenaje a Ramón Ma. Roca Sastre*, vol. 2, Madrid, 1976, p. 321.

[38] Á. Serrano Nicolás, *Los derechos reales en los derechos civiles coexistentes en España*, a conference delivered at the «I International Seminar on rights *in rem* in the European Union», University Rovira i Virgili, Tarragona, 10 November 2022.

erty[39]. Furthermore, possession in fact is not necessarily possession in law, although in certain cases the possession of an asset is equivalent to title, if a transaction takes places in good faith and involves the acquisition of movable property (arts. 522-8 Catalan Civil Code (CCC)[40], 464 Spanish Civil Code (CCE)[41] and 2279 *Code*). Furthermore, some systems, such as the German and Swiss, only require contact with the thing (*corpus*) for the establishment of possession, while others, such as the Spanish, Catalan, Italian or Portuguese, require both a corpus and the intention to act as the holder of a right (*animus*) in order to constitute possession[42].

This concept of property later influenced the right of ownership in European Civil Codes. For instance, the Spanish (art. 348 CCE), German (§ 903 *Bürgerliches Gesetzbuch* 1899, BGB)[43], Italian (article 832 *Codi Civile* 1942)[44] or Dutch (article 1 Book 5 *Burgerlijk Wetboek* 1992[45]) legal systems are based on the concept of the right of ownership: property is regulated as an absolute and perpetual right, which means that its fragmentation is problematic from a private law point of view[46]. However, co-ownership is allowed[47], in which the co-owners have an ideal share of the thing in common, their shares may be transferred, and they may choose to dissolve the co-ownership regime at any time (*e.g.* see arts. 392 et seq. CCE, arts. 552-1 et seq. 10 CCC, arts. 1403 to 1413 Portuguese Civil Code of 1966-CCP-[48] or § 742 BGB —*Miteigentum*—). Another less common regime is the

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[39] Wenzel Burst states in relation to the notion of property that "this notion frequently results in the law of property having a suction effect on the law of tort", see W. Burst, "Protection of Property Rights", in Basedow *et al*., *op. cit.*, p. 1380. An example is found in neighborhood relations, whose norms have traditionally been closely linked to property rights. An example in EU Law is Directive 1985/374/EEC, of 25 July, on liability for damage caused by defective products, which allows claims for damage caused to a thing (art. 9) (OJ L 210, 7.8.1985, p. 29–33).

[40] Act 5/2006, of 22 June (Permalink ELI: *https://www.boe.es/eli/es-ct/l/2006/05/10/5/con*).

[41] Royal Decree 24 July 1889 (Permalink ELI: *https://www.boe.es/eli/es/rd/1889/07/24/(1)/con*).

[42] See H. Simón Moreno, *El proceso de armonización de los derechos reales en Europa*, Valencia, Tirant lo Blanch, 2013, pp. 284 y ss.

[43] See H. Fisher, *The German Legal System and Legal Language*, 4th Ed., Routledge-Cavendish, London, 2009.

[44] See A. Gambaro, «Property Law», in Lena, J. S. and Mattei, U. (eds.), *Introduction to Italian Law*, The Hague, Kluwer Law International, 2002, p. 284.

[45] According to S. Van Erp, «Globalisation or isolation in new Dutch property law? The New Civil Code of the Netherlands and the New Civil Codes of the Netherlands Antilles and Aruba Compared», *European Journal of Comparative law*, vol. 7.5, 2003, pp. 2 et seq.

[46] See S. Van Erp and Akkermans, «Property rights: a comparative view», in Bouckaert, B. (ed.), *Property Law and Economics*, Vol. 5, Edward Elgar Publishing, 2010, p. 34.

[47] See the book *Bienes en común*, edited by Sergio Nasarre Aznar (Valencia, Tirant lo Blanch, 2015), and the contributions made by the author of this paper («La comunidad llamada "romana"») and Julia Cornelius and Christoph Schmid («Alemania»).

[48] Decree-law 274/1966, of 25 November (*https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1966-34509075*).

Gesamthandseigentum, where there are no quotas, nor can the division of the common property be required by the co-owners. The law usually limits and specifies the cases in which this community can be established (*e.g.,* the property of a partnership —§§ 705 et seq. BGB— or the matrimonial property of a community of property —§ 1416 BGB and arts. 1344 et seq. CCE—). In addition, the right of ownership has evolved: Catalan law has regulated the right of ownership of a temporary nature, as shown below, and the Polish legal system regulates the perpetual usufruct, which may only be created as an encumbrance on land owned by the State or municipalities, a category of its own in this legal system, *i.e.* halfway between ownership and limited real rights[49].

1.2. In Anglo-American law: the doctrine of estates

The fragmentation of the right of ownership is possible in English law. In this sense, an important event was the establishment of feudalism in England since the Norman Conquest in 1066, when the King became the ultimate owner of all land. Consequently, the legal relationship between individuals and land in English law was based on possession (from which the relative title doctrine arises[50]) rather than ownership. This situation is still true today even though possession is of less importance in land law because property rights must be registered in order to be granted legal recognition since the enactment of the Land Registration Act 2002[51]. The difficulties in fragmenting the rights on land[52] means that the system is closer to the notion of property in civil law systems[53]. However, remnants of the feudal system still exist today, *e.g.* in the event that a British citizen dies without an heir, the heir is

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[49] M. Habdas, *Property and Trust Law in Poland*, 2nd ed., The Netherlands, Kluwer Law International, 2018.

[50] According to J. Smits, *The making of European private law. Towards a Ius Commune Europaeum as a Mixed Legal System*, Antwerp Intersentia, 2002, pp. 50-51.

[51] Chapter 9. Thus, a property right is afforded a strong legal protection from its inclusion in the Land Registry, which is a public record that documents the ownership of all registered properties. According to the *Law Commission Report* No 254, dated 10.11: «Where title is registered, the basis of title is primarily the fact of registration rather than possession».

[52] «The Land Registration Act 2002 may be particularly dramatic of the tendency of a registration system to work against fragmentation. I would like to suggest that, while the common law at present is an active, multititular system, the Land Registration Act 2002 makes it a conservative, unititular one», see E. Cooke, «The Land Registration Act 2002 and the nature of ownership», in Hudson, A. (Editor), *New perspectives on property law, obligations and restitution*, London, Cavendish Publishing Limited, 2004, pp. 120-121.

[53] K. Gray and S. F. Gray, *Elements of land law*, 5th ed., Oxford, Oxford University Press, 2009: «The titles maintained by Land Registry are beginning to evince a more ´absolute` quality than they have ever previously enjoyed, thereby demonstrating, in effect, an inexorable drift towards the hitherto alien continental concept of dominium», p. 183.

the Crown *bona vacantia*[54] (*Administration of Estates Act* of 1925)[55]. Therefore, common law is not so far removed from the current civil law approach, as far as real property (land) is concerned[56]. Both freehold and leasehold are the most important types of estate used for the holding of land (section 1 Law of Property Act 1925 —LPA—[57]). The former may be deemed to be the economic equivalent of the right of ownership in civil law legal systems[58], whilst in the case of the latter, both property (because it is a legal estate) and contract law (because there is a legal relationship between landlord and tenant, for instance, the *Rent Act* 1977 and the *Housing Act* 1988[59]) are considered applicable. The main difference between both is the duration of the right. This concurrence does not make this regime a co-ownership model, as the CJEU judgement of 15 December 2005[60] wrongly assumed.

Regarding movable property, the most striking singularity is that the doctrine of estates is not present, so that a general property and a personal property can be distinguished. Thus, the first would correspond to the owner and the second to the pledgee or any other holder who acquired possession through a bailment, which allows for the dissociation between ownership and possession of the thing. The interference of third parties in the possession of movable property does not necessarily imply that the recovery action implemented by its former possessor will lead to the restitution of the property, as occurs with land where this type of action will result in an eviction, which allows for the recovery of possession of a freehold or a leasehold. The absence of a clear delimitation and distinction between property law and civil liability implies that if a physical interference takes place on a land (trespassing on land) or if there is an external interference that does not involve a physical interference (an act that causes a nuisance), defence actions against such intrusions are not based on property law, but on the law of torts[61]. With regard to movable property (goods), this equally affects the defence of possession, which does not make it possible to exercise a real action. This is stated in the Tort (Interference

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[54] See *Law Comission Report* No 271, p. 246. Available at: *http://lawcommission.justice.gov.uk/docs/lc271_land_registration_for_the_twenty-first_century.pdf*

[55] *Chapter* 23. S. 46.(1).vi: «In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat». Available at : *www.opsi.gov.uk.*

[56] See H. Simón Moreno, «Towards a European system of property law», *European Review of Private Law*, Vol. 19, Issue 5, 2011, pp. 594-595.

[57] *Chapter* 20.

[58] See the Report *Real property and procedure in the European Union*, by Dr. Christoph U. Schmid. Available at *www.eui.eu.*

[59] *Chapters* 42 and 50.

[60] Centralan, Case 63/04, ECLI:EU:C:2005:773.

[61] Q. C. David Elvin y Jonathan Karas, *Unlawful interference with land*. 2nd Edition. London. Sweet & Maxwell. 2002, pp. 300 y ff. and pp. 347 and ff.

with Goods) Act 1977[62], which legitimizes the judge, in the event of a disturbance in possession, to grant compensation or restitution of the property, or both at the same time.

Things may also be held in common in English Law through a joint tenancy with the right of survivorship (joint tenancy) or a joint tenancy without the right of survivorship (tenancy in common)[63]. In accordance with section 1.(6) Law of Property Act, from a legal point of view the co-owners must adopt the form of joint-tenancy, which implies the creation of a trust for sale (with the obligation to sell the property unless all the owners agree otherwise). The particularity of this form of co-ownership is that each of the owners has an interest (unity of interest) over the entire property, without specified quotas and with the same extension. For the sale of the property to a third party under the form of joint tenancy, the consent of all owners will be required[64].

2. The Charter of Fundamental Rights of the European Union and the social function of the property

The Charter of Fundamental Rights of the European Union 2000 (CFREU)[65] has become primary law of the EU since the entry into force of the Lisbon Treaty in 2007 (Art. 6 TEU). Art. 17 CFREU states that «everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions», and «the use of property may be regulated by law in so far as is necessary for the general interest». It may be highlighted from the interpretation of this article by the CJEU[66] that the fundamental right to property, which includes intellectual property rights such as copyright, constitutes a general principle of community law (ECJ Judgment of 29 January 2008[67]), which must be given a high priority due to its social function, and that property entitles the owner to use, enjoy and dispose of the right.

Furthermore, the CFREU states that the law may establish any limitation affecting its exercise, insofar as its essence is respected (art. 52.1). The term «essential content» stems from the Constitution

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[62] *Chapter* 32.

[63] See the book *Bienes en común*, edited by Sergio Nasarre Aznar (Valencia, Tirant lo Blanch, 2015), and the contribution of Peter Sparkes («Inglaterra y Gales»).

[64] J. Bray, *Unlocking Land Law*. 3rd Edition, New York, Routledge, 2009, pp. 190 ff.

[65] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal C 83 of 30.3.2010.*

[66] According to J. M. Pérez de Nanclares, «Art. 17. Comentario», in Mangas Martín, A., *Carta de los Derechos Fundamentales de la Unión Europea. Comentario artículo por artículo*, Bilbao, Fundación BBVA, 2008, pp. 342 and 346.

[67] *Productores de Música de España (Promusicae)*, C-275/06, ECLI:EU:C:2008:54, paragraphs 61-62.

of the Federal Republic of Germany 1949 (arts. 14 and 19.2)[68]. German scholars have pointed out several theories regarding the use and meaning of the term essential content, it mainly consists of the following[69]: the absolute conception, which sets out that any fundamental right has a «core» or «nucleus» outside of the legislator's scope; and the relative conception, which argues that a fundamental right may be limited through the proportionality principle, *i.e.* it would set out a balance between the scope of the limitation of the right concerned and the resulting benefits of such a limitation, with the essential content becoming a purely formal concept. The CJEU has referred to the essential content (ECJ judgements of 11 July 1989[70], of 13 November 1990[71] and of 13 December 1994[72]), but also to the proportionality principle (ECJ decision of 13 April 2000[73]). The guaranteeing of the essential content is not uniformly regulated at European level. In this sense, some legal systems provide for this safeguard as a limit to the legislator's action, such as article 18.3 of the Portuguese Constitution 1976, whilst in others it is not explicitly laid down[74].

At the Spanish level, the guaranteeing of the essential content is provided for in art. 53.1 of the Spanish Constitution. Due to the scarcity of affordable housing and the inability of public authorities to manage and provide enough social housing in Spain, some Autonomous Communities, on the basis of the competence they have to regulate town and country planning and housing established in art. 148.1.3 CE, have implemented both soft measures to increase the social housing

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[68] Available in English in *https://www.btg-bestellservice.de/*.

[69] L. Michael, «¿El contenido esencial como común denominador de los derechos fundamentales en Europa?», *Revista Española de Derecho Constitucional Europeo*, Vol. 6, Issue 11, 2009, pp. 177 ff.

[70] *Schräder, C*-265/87, ECLI:EU:C:1989:303.

[71] *Marshall*, C-370/88, ECLI:EU:C:1990:392.

[72] *Winzersekt* GmhH, C-306/93, ECLI:EU:C:1994:407

[73] *Karlsson* and *Others,* C-292/97, ECLI:EU:C:2000:202.

[74] For instance, the Italian Constitution 1947, states in art. 42.3 that «private property will be recognised and guaranteed by the Law», but it has no provisions protecting the essential content of the law, a concept which has little relevance in practice although case law has adopted this term in some cases, see J. Rodríguez Calero, «La garantía de los derechos fundamentales en el ordenamiento jurídico italiano: el contenido esencial y la protección de amparo», *Anuario de la Facultad de Derecho*, Vol. 18, 2000, pp. 489 ff.; whilst the Constitution of the Federal Republic of Austria 1920, does not mention the term essential content, jurisprudence has made reference to this concept, see C. Elías Méndez, «El modelo constitucional austriaco desde la perspectiva de su interacción con el Derecho de la Unión Europea», *Revista Española de Derecho Constitucional Europeo*, Vol. 14, 2010, p. 141; the Danish Constitution 1953 does not include any mention of this term, nor is there any jurisprudence that makes reference to this content, see V. Faggiani, «Los ordenamientos constitucionales de Dinamarca, Suecia y Finlandia», *Revista Española de Derecho Constitucional Europeo*, Vol. 14, 2010, p. 227; this protection is not included in the Latvian Constitution 1922, a situation that may be extended to other Baltic countries, see A. Romano, «Los ordenamientos constitucionales de Letonia, Estonia y Lituania», *Revista Española de Derecho Constitucional Europeo*, Vol. 14, 2010, p. 264.

stock (for instance a legal right of pre-emption granted to the Public Administration in case a dwelling is transferred to a third party after being acquired by the seller as a result of a mortgage enforcement proceeding; Catalan Decree-law 1/2015, of 24 March[75]) as well as hard and intrusive interventions, such as the expropriation of the dwelling in cases where the social function of the property is not being fulfilled according to art. 33.2 CE (for example when it remains empty without just cause for a period of two years, Catalan Act 4/2016, of 23 December[76]) or the duty of large landlords (*e.g.* banks or individuals holding more than 15 properties), before initiating any mortgage enforcement procedure or eviction proceeding for non-payment of rent, to offer lessees facing eviction (if the family is at risk of residential exclusion) a rent below market price to remain in the dwelling (art. 5 of Catalan Act 24/2015, of 29 July[77]). As a result, the obligation to provide citizens with decent and adequate housing (art. 47 CE) has been progressively delegated to private owners by public authorities based on the social function of property, which, in conformity with the right to decent and adequate housing, has been the basis for the configuration of a statutory conception of this right focused on primary residences by Spanish Autonomous Communities. These measures, of an administrative nature, have been deemed to be in accordance with the CE by the Spanish Constitutional Court, which has applied the relative conception of the essential content.

The latest development has been Spanish Act 12/2023, of 24 May, on the right to housing[78], whose art. 10.1.a) (enacted under the competence the state has to legislate on civil law, art. 149.1.8 CE) stipulates that the ownership of a dwelling comprises the powers of use, enjoyment and disposition of the same in accordance with its classification, state and objective characteristics, in accordance with the legislation on housing and other legislation that may be applicable, *e.g.* the laws implemented by Autonomous Communities. In practice this means the implementation of a special property regime specifically for primary residences, that is now under state supervision.

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75 Permalink ELI: *https://www.boe.es/eli/es-ct/dl/2015/03/24/1/con*.

76 Permalink ELI: *https://www.boe.es/eli/es-ct/l/2016/12/23/4/con*.

77 Permalink ELI: *https://www.boe.es/eli/es-ct/l/2015/07/29/24/con*.

78 Permalink ELI: *https://www.boe.es/eli/es/l/2023/05/24/12/con*. More details at H. Simón Moreno, «La evolución constitucional de la función social de la propiedad y el nuevo régimen del derecho de propiedad sobre una vivienda en la Ley por el derecho a la vivienda», *Derecho Privado y Constitución*, Vol. 42, pp. 139-177.

3. Intermediate tenures

As pointed out elsewhere[79], Catalan Act 19/2015, of the 29th July[80], introduced temporary ownership and shared ownership into the Catalan Civil Code on the basis of the English leasehold (but without any remnants from the feudal system) and shared ownership schemes, respectively. The latter was introduced in the UK during the 1970s–1980s and today makes up less than 1 per cent of all households in England; however, the supply has increased substantially in recent years. In fact, the majority of respondents to the British Social Attitudes Survey in 2018 would choose to buy a home (87 per cent) rather than rent it (12 per cent)[81]. Like the English scheme, the Catalan intermediate tenures offer the opportunity to move into full homeownership, provide security of tenure and support community stability[82].

The temporary ownership tenure confers on its holder the ownership of an asset (any immovable and certain movables) for a limited and specified period (which may not be less than ten years for real estate and one year for movables, nor more than ninety-nine years, in any case; art. 547-4.(3) CCC) as a consequence of a legal transaction *inter vivos* (for valuable consideration or gratuitously) or *mortis causa*, at the end of which the ownership will revert back to the transferor or to a third party who has acquired the right of withdrawal (arts. 547-1 ff. CCC). It resembles the Anglo-American leasehold, which is deemed to be a right of ownership for a defined period of time from a civil law point of view, and it diverges from the concept of the perpetual right of ownership, more common in European Civil Codes.

The shared ownership tenure confers on the material owner (for example the buyer) a property share of the thing (movable or immovable property in question) which entitles them to the full possession, use and exclusive enjoyment of the whole thing (any immovable and certain movable assets) and the right to gradually acquire the remaining quota that may remain in the hands of the seller (formal owner)

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[79] S. Nasarre-Aznar and H. Simón Moreno, «Spain», in Schmid, C., *Ways out of the European Housing Crisis*, Elgar, 2022, pp. 7 ff.

[80] Permalink ELI: *https://www.boe.es/eli/es-ct/l/2015/07/29/19*.

[81] See UK PARLIAMENT, *Shared ownership (England): the fourth tenure?*, 2020, available at *https://commonslibrary.parliament.uk/research-briefings/cbp-8828/*; and Ministry of Housing, Communities & Local Government, *Public attitudes to house building: findings from the British Social Attitudes survey 2018*, 2019, pp. 50 ff. Available at: *https://www.gov.uk/government/publications/public-attitudes-to-house-building-findings-from-the-british-social-attitudes-survey-2018*. Homeownership is correlated with a good investment, security and the freedom of the owner.

[82] C. Sinn and S. David, *Shared ownership 2.0. Towards a fourth mainstream tenure*, 2015, Final Report. Available at *https://orbitgroup.org.uk/media/1337/shared-ownership-20-towards-a-fourth-mainstream-tenure.pdf.*

in the course of the following thirty years, unless otherwise agreed, with a maximum time limit of ninety-nine years (arts. 556.1 ff. CCC). The material owner has the exclusive use of the property and may sell or mortgage his share, but without compromising the integrity or functionality of the property. The buyer is not allowed to alter the structural elements of the property.

These intermediate tenures are not regulated in the Spanish Civil Code. These new ownership-like intermediate tenures have the potential to increase levels of sustainable homeownership for those who prefer this type of tenure but who cannot afford to take on full ownership without the risk of becoming over-indebted. They could become a model that helps Spain and other EU countries to put in place a *continuum* of different housing tenures. In fact, they have been chosen as one of the 50 out-of-the-box Housing Solutions that could provide affordable housing in Europe[83] as they try to mix the pros of homeownership (stability, freedom, autonomy, etc.) and leases (flexibility and affordability); and they are mentioned as a best practice in the Report «Concrete actions for social and affordable housing in the EU»[84].

4. The object of the property right

The object of the property right varies from one legal system to another. Thus, in Germany, property rights are applied to tangible things (§ 90 BGB), which can be movable or immovable, although German law also provides for the possibility of exercising a usufruct right over property rights (§ 1068 BGB). Other legal systems admit the possibility of constituting real rights over movable or immovable property or over other property rights, such as the Spanish (arts. 334 and 335 CCE), the Catalan (arts. 511-1 and 2 CCC) or Dutch law, which admits the right of property over «all corporeal objects that are susceptible to human control» (art. 3:2 Book 5 BW) and also over rights (art. 3:6 Book 5BW). For its part, Anglo-American law distinguishes between real property or land and personal property[85], which includes those goods or rights that cannot be possessed or are incorporeal (choses in action, for example patents or credit rights) and those that are susceptible to possession or are corporal (choses in possession, for example money, a computer...). Considering the new developments in the field of property law (rights on incorporeal things, virtual world, etc.), the adoption of a broader

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[83] Solution 46, 112. The publication is available at: *https://www.feantsa.org/en/news/2019/12/11/hsp-publication-50-housing-solutions?bcParent=27*.

[84] See S. Nasarre Aznar (coord.) (2021). *Concrete actions for social and affordable housing in the EU*, cit., 34 (Spain), 52 (UK) and 78 (the Netherlands).

[85] P. Sparkes, *Property and Trust Law in England and Wales*, The Netherlands, Wolters Kluwer, 2019, p. 5.

definition would make sense[86]. Furthermore, along with ownership and limited rights or interests, there is the possibility of a concurrence of the right of ownership and a limited property right created over the same ownership in the same hands, as takes place in the Catalan easement (art. 566-3.1 CCC) or usufruct (art. 561-16.1.c) CCC), or in the German *Grundschuld* (§ 1196 BGB). This possibility is not admissible in Dutch, French or English law, which has to do with the approach taken concerning the creation and extinction of property rights[87].

5. The legal entity known as a *trust*

The trust is a distinctive feature of Anglo-American law based on English law; it was an equity instrument created to correct any injustice arising from the rigid application of common law[88]. The trust is a legal relationship that derives from a unilateral act undertaken by the trustor or settlor, who transmits a series of assets to a third party (the fiduciary, called a trustee), who administers them for the benefit of one or more beneficiaries. The trustee becomes the legal owner (common law), while the beneficiary has ownership in equity (equity). Therefore, the Anglo-American trust produces a dismemberment of property and, specifically, a subjective dissociation between the management of assets and their enjoyment. A relevant effect is that the assets transferred to the trustee are not confused with the personal assets of the trustee, given that the entity created does not have its own legal status, and it cannot be sued by the personal creditors of the settlor, the trustee or the beneficiary. The main difficulty in adapting the trust to civil law systems is the admission of two different properties over the same asset. In order to overcome this problem, legal systems allowed the assets to be transferred to a separate patrimony held by the trustee, such as France[89] or Luxembourg[90]. Some, but not all, EU Member States (*e.g.,* Italy, Luxembourg, Liechtenstein, Malta, Monaco, Switzerland or the

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[86] Van Erp argues that "*in order to avoid a definition which resembles too much one legal tradition and particular types of objects, very open terms would have to be chose*n" Sjef Van Erp, «Can European Property...», cit., p. 171. In a similar sense, von Bar, in his book *Foundations of Property Law: Things as Objects of Property Rights*, Oxford, Oxford University Press, 2023, p. 4, argues that «in the understanding of this book, a ´thing`is anything in which a property rigth can arise. Only such a wide definition enables us to free ourselves from the particularities of individual jurisdictions and to perceive the reflexive relationship between property rights and their objects».

[87] B. AKKERMANs, «Concurrence of Ownership and Limited Property Rights», *European Review of Private Law*, Vol. 18, Issue 2, 2010, pp. 259 -284.

[88] See A. Hudson, *Understanding Equity & Trusts*, 6th Ed., Routledge, New York, 2017, pp. 1 ff.

[89] The *fiducie is regulated at the* Act 211/2007, of 19 February.

[90] *Loi du 27 juillet 2003 relative au trust et aux contrats fiduciaires* (*Journal Officiel du Gran-Duché de Luxembourg* A-nº124, de 3.9.2003, p. 2620).

Netherlands) have ratified the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition[91].

6. Condominium

Multi-apartment buildings are organized in different ways (*e.g.* cooperatives, a community of tenants or a community of owners), but the community of owners (also known as a «condominium») seems to be the dominant legal type of multi-apartment buildings in Southern and other European countries, as well as in many post-communist new member states[92], *e.g.* the scheme may be found in English Law (Commonhold and Leasehold Reform Act)[93], as well as in the Spanish (art. 3.1 Act 49/1960[94]), Catalan (art. 553-1 CCC), German (§ 1.2 *Gesetz über das Wohnungseigentum und das Dauerwohnrecht*[95]) or French legal systems (art. 1 *Loi n° 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis*). The condominium is characterized by the individual ownership of each apartment, a co-ownership over some common elements of the building and membership of an owner's association (with the exception of England and Ireland, where an association or a company normally owns the common parts of the building, with the unit holders having a right to the exclusive use of their own apartment)[96].

However, differences can be seen between each legal system. Thus, in The Netherland the building is owned all the owners, who have a right of use property right over a specific apartment or flat[97], and in Finland a limited liability company is created that owns all the homes, which moves these countries away from the traditional condominium scheme. Furthermore, the commonhold association, the owner of the common elements that is made up of all the co-owners, has its own legal status in English law (section 34 CLRA), but it does not have a separate legal status under Spanish law. Furthermore, a condominium may also be created over shops, offices, businesses or graves, as occurs in Spanish and Catalan Law (art. 553-2.2 CCC).

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[91] Available at: *https://www.hcch.net/en/instruments/conventions/full-text/?cid=59*.

[92] K. Matschoss *et al*. (2013), «Energy renovations of EU multifamily buildings: do current policies target the real problems?», *European Council for an Energy Efficient Economy Summer Study Proceedings*, pp. 1485-1496. Available at: *https://www.eceee.org/library/conference_proceedings/eceee_Summer_Studies/2013/5b-cutting-the-energy-use-of-buildings-policy-and-programmes/energy-renovations-of-eu-multifamily-buildings-do-current-policies-target-the-real-problems/*.

[93] Chapter 15.

[94] Permalink ELI: *https://www.boe.es/eli/es/l/1960/07/21/49/con*.

[95] G. v. 15.03.1951 BGBl. I S. 175, 209.

[96] C. Van der Merwe, «Perspectiva internacional de la propiedad horizontal», in Nasarre Aznar, S. (Eds.), *Bienes en común*, *op. cit.*, pp. 528 ff.

[97] See W. M. Kleijn, *et al*., «Property Law», in Chorus, J. et al. (Eds.), *Introduction to Dutch Law*, Third revised edition, The Hague, Kluwer Law International, 1999, p. 102.

A work published within the framework of the Common Core of European Private Law[98] analyzes the regulation of condominiums from a comparative perspective, for example the legal consequences of the sale of apartments under construction, restrictions on the sale and rental of housing, ownership of pets, the pursuit of a profession (such as a medical practice) in a home or sanctions against delinquent neighbors.

7. Ways of acquiring and losing property rights

The Anglo-American and civil law systems share ways of acquiring and losing property rights. Thus, the acquisition can be derived from a donation (Spain, art. 618 CCE; Catalonia, art. 531-7 CCC; or Germany, § 516 BGB), a succession (Spain, art. 609 CC; Catalonia, art. 411-1 CCC; or Germany, § 1922 BGB) or from the terms of a contract. In this last point, it is worth highlighting that there are three different systems for transferring property in European private law[99]:

a) The consensual causal system (no distinction is made between an agreement of an obligatory nature, on the one hand, and that of a real nature, on the other, so that the conclusion of the former produces the automatic initiation of both rights and obligations between the parties and the implementation of real effects[100]). In order for the transfer of property to be valid, this legal system may also require the validation of the obligatory transaction, as required by, for example, the French (art. 1108 *Code*) and Italian (art. 1325 *Codice*) legal systems.

b) The abstract system with tradition (requires the delivery of the thing for the transfer of ownership to be effective), which follows German Law (also Greek and Estonian law). In this case, the application of the principles of separation (*Trennungsprinzip*) and abstraction (*Abstraktionsprinzip*) means that the vicissitudes of the legal transaction that serves as the basis for the transfer of property are detached from the so-called real agreement (*dinglicher Vertrag*), whose conclusion is sufficient for the legal-real ownership modification to take effect. Thereby, the nullity or invalidity of the underlying contract does not

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[98] C. Van der Merwe, *European Condominium Law*, The Common Core of European Private Law, Cambridge, Cambridge University Press, 2015.

[99] Following G. Tomás Martínez, «La transferencia del riesgo del precio y la transmisión de propiedad: hacia una definitiva desconexión conceptual y temporal en sede de armonización europea», *Anuario de Derecho Civil*, Vol. LXVII, 2014, pp. 118-119. On the transfer of ownership of movable property and the historical origin, pros and cons of consensual systems and those that require the delivery of the thing for the transfer of ownership, see V. Sagaert, «*Consensual* versus Delivery Systems in European Private Law. Consensus about Tradition?», in Faber, W. and Lurger, B (Eds.), *Rules for the Transfer of Movables. A Candidate for European Harmonisation or National Reforms?*, Sellier, 2008, pp. 9 ff.

[100] Arts. 711 y 1138 *Code*; English law (*section* 18.(1) *Sale of Goods Act* de 1979; arts. 1376 and 1470 *Codice*; arts. 408 and 1316 CCP.

affect said agreement (§ 929 BGB) and means that the only recourse open to the transferor is the possibility of claiming compensation for unjustified enrichment from the purchaser (§ 812 BGB).

c) The causal system with tradition, which requires a cause for the transfer of property. If this does not exist, for example if the contract of sale does not have a specific price, this will make the transfer of ownership impossible. Examples are the Spanish (arts. 609 and 1261 CCE), Catalan (art. 531-1 CCC) and Dutch (art. 3:84 BW) legal systems.

It is worth highlighting the existence of a rule in the property system that is relevant in derivative acquisition systems: no one can give more than what they already have (*nemo dat quod non habet*). Exceptions to this rule may be found when third parties acquired movable or immovable property in good faith.

8. The publication of property rights

With regard to movables, possession is the main system for publishing property rights. For its part, land registration systems in Europe[101] may be classified based on a number of factors, such as the organisation of the land registry (*i.e.*, according to the public institutions responsible of dealing with land), the content of the registration (*e.g.*, whether rights or deeds are registered), the substantial effects of registration (*e.g.*, whether the registration has a declaratory or constitutive effect) or the protection (or non-protection) of good faith. For the sake of simplicity, the distinction between title by registration and the registration of rights or deeds is adopted, which is summarised in Figure 1.

Broadly speaking[102], a title by registration system means that the registration creates ownership, so the title or right is created through registration. Among the countries falling into this category, some are based on the system designed by Sir Robert Richard Torrent in the nineteenth century (such as UK and Ireland). Its distinctive features are: to confer "indefeasibility of title" to the person or persons registered; to limit the chance of changing the land registry records; and to provide a state guarantee to the registered proprietor. This guarantee is not provided in countries where the Central European system of *Grundbuch* is the constitutive system for the registration of rights, such as Germany and Austria. This system is operated through a special division of a local court and the land registry records are presumed to be correct for

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[101] H. Simón Moreno, «Registered Land and Adverse Possession: Comparative Remarks», in Hoops, B. and Marais, E. (eds.), *New Perspectives on Acquisitive Prescription,* The Hague, Eleven International Publishing, 2019, pp. 185-205.

[102] See E. Cooke, «Land Registration Institutions: Developed World», in Smith, S. (ed.), *International Encyclopedia of Housing and Home*, 1st ed., Elsevier, 2012, pp. 157 *et seq*.

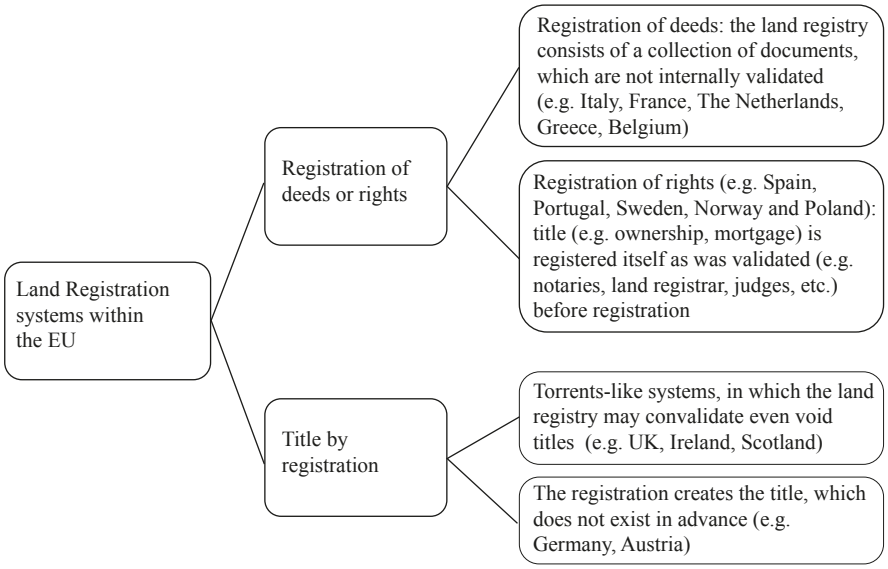

Figure 1. *A summary of the land registration systems in Europe*. Source: Own design.

the benefit of third parties based on the principle of good faith. Conversely, registration is not needed for the transfer of ownership to take place in registration of rights or deeds systems (with the exception of the Netherlands). Whereas in the former (*e.g.*, Spain, Portugal or Poland) rights are entered into the land registry and third parties may rely on the content of the land registry to a greater or lesser extent, what is registered in the latter system (e.g. in the Netherlands, France, Italy or Greece, which are mainly based on the French mortgage register) is the deed itself, a document that describes an isolated transaction without identifying the title holder. The deed is evidence that a transaction has taken place, but it does not provide evidence of its legality.

IV. NEW CHALLENGES IN THE EVOLUTION OF PRIVATE PROPERTY

Personal data, robots, blockchain, animals or fundamental rights pose challenges for the development of the classic model of property law, which are analysed below. However, it is worth noting that scholars are increasingly focusing on other areas of property law, such as the protection of the environment, the question of sustainability, and the circular economy, or on property law theory[103].

[103] See K. Zimmermann, «What's New in European Property Law? An Overview of Publications in 2019–2021», *European Property Law Journal*, Vol. 11, Issue 2, pp. 105 ff. Available at: *https://www.degruyter.com/document/doi/10.1515/eplj-2022-0004/html*.

1. Personal data

The EUCFR stipulates that European citizens have the right to the protection of their personal data (art. 8), and to that end Regulation (EU) 2016/679 of the European Parliament and of the Council, dated 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data[104], was passed. It lays down rules relating to the protection of natural persons with regard to the processing of personal data (*e.g.* subjects are empowered to lodge a complaint if the data processor does not follow the provisions of the Regulation) and to the free movement of personal data (art. 1.1), and it defines personal data as any information relating to an identified or identifiable natural person (art. 4.(1)).

Personal data is increasingly becoming an economic asset and a commodity in the context of the current «commodification of digital identities» era[105]. Studies suggest that consumers are more conscious of the value of the data they provide to companies and intermediary platforms to get personalized offers or discounts and product recommendations that match their needs, *e.g.* the vast majority of American consumers (79%) are open to engaging with the data economy[106].

This raises the question of how personal data should be protected under property law rules. Can personal data be treated as property and would it fit under the classical property law rules? From a property law perspective, the nature of the content, the person creating the content and the purpose and use of the content would be three key factors for personal data to be considered as an object of property[107]. This would entail replacing the notions of ownership and revindication with the concepts of control and access. The truth, however, is that the question of how to fit personal data into the four elements of ownership (control, protection, valuation, allocation) is unclear[108], and it is a matter of debate whether the propertisation of personal data leads to increased control by individuals[109]. Be that as it may, the current EU fundamental

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[104] OJ L 119, 4.5.2016, p. 1–88.

[105] G. Malgieri and B. Custers, «Pricing privacy – the right to know the value of your personal data», *Computer Law & Security Review*, Vol. 34, 2018, pp. 289–303.

[106] *https://globaldma.com/wp-content/uploads/2022/03/GDMA-US-Data-Privacy-2022.pdf*.

[107] According to S. Van Erp, *Ownership of Digital Assets and the Numerus Clausus of Legal Objects* (October 1, 2017). Maastricht European Private Law Institute Working Paper No. 2017/6, Available at SSRN: *https://ssrn.com/abstract=3046402*.

[108] V. Janeček, «Ownership of Personal Data in the Internet of Things», *Computer Law & Security Review*, Vol. 34, Issue 5, 2018, pp. 1039-1052, Available at SSRN: *https://ssrn.com/abstract=3111047*.

[109] Y. Padova, «Data Ownership versus Data Sharing: and What about Privacy?», *Lex Electronica*, Vol. 26, Issue 1, 2021, pp. 37 ff. Available at *https://canlii.ca/t/tc0x*.

right to data protection and its inalienable nature, developed by Regulation 2016/679, poses difficulties in the trading of personal data as it disqualifies personal data as a commodity[110].

2. Robots

The European Parliament resolution with recommendations to the Commission on Civil Law Rules on Robotics (16 February 2017)[111] stresses the increasing importance of robots in some spheres of our lives (*e.g.* employment, new technologies, adult care, etc.) and calls into question the application of ordinary rules on liability to robots as the more autonomous robots are, the less they can be considered to be simple tools in the hands of another actor, this poses difficulties in identifying the party responsible for providing compensation. The challenges regarding the legal status of robots are likely to increase soon because of the current trend towards developing smart and autonomous machines, with the capacity to be trained and to make decisions independently.

The potential unpredictability of robots' decisions, *i.e.* if developers incorporate an element of randomness into the robot's decision-making process, calls into question the current EU approach. Even though both the EP resolution and the follow up resolution by the European Commission (June 2017) made reference to the potential risks of robotics concerning human safety, health and security, freedom, privacy, integrity and dignity, self-determination and non-discrimination, and personal data protection, so autonomous vehicles, data protection, consumer protection, intellectual property, medical services, ciber security and employment, which are the main topics of research today, as well as regulatory concerns, lesser attention has been paid to property and civil and human rights law-related challenges, other than the aspects that pertain to civil liability and consumer protection[112]. The Proposal for a Regulation to be enacted by the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)[113] does not touch these issues either.

Currently, robots are considered as «things» in EU Members States. However, a robot that displays emotions, makes jokes and is capable

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[110] G. Malgieri and B. Custers, «Priceless data: why the EU fundamental right to data protection is at odds with trade in personal data», *Computer Law & Security Review*, Vol. 45, 2022, pp. 1 ff.

[111] Available at: *https://www.europarl.europa.eu/doceo/document/TA-8-2017-0051_EN.html*.

[112] See the European Parliament resolution of 20 October 2020 with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies (2020/2012(INL). Available at: *https://www.europarl.europa.eu/doceo/document/TA-9-2020-0275_EN.html*

[113] *https://artificialintelligenceact.eu*.

of holding a conversation, called Sophia, was granted Saudi nationality by the Kingdom of Saudi Arabia (2017)[114]. A Chinese man even «married» a robot he built himself despite the act not being recognised by public authorities[115]. Also, companion robots for the elderly may make it difficult for old people to continue seeing robots as mere objects, and the Reborn dolls phenomenon is based on dolls resembling babies that are considered so realistic, they are available for adoption on specialist sites. Their «parents» treat them as if they were real: bring them to the park to have fun, experience a sort of «reborn pregnancy» when they are waiting on the arrival of a new doll or post photos with them on social networks. They are not just things or movable property, but objects that are animated with affective relations. As robots foster and allow for unique types of intersubjective relationships, it has been argued that the classical categories—property and person—fail to adequately capture the ways in which robots are positioned in human–robot relationships[116].

As a result, there are a number of potential implications for property law rules that need to be explored in relation to robots[117]: whether robots, like animals, deserve protection against unlawful use by humans, *i.e.* harm or abandonment, thus restricting owners' property rights; whether robot should have the legal capacity to own rights and goods or to have legal obligations, *e.g.* thanks to a matrimonial property regime after getting married with another robot or human or to the fact that the robot has been appointed as an heir by the person the robot has taken care of during the later stage of their life; whether robots can have a right to make a claim for custody of a "replication" or if they might be entitled to labour rights, asking to only be used for specific purposes, or if they have any sort of duty concerning their «kids»; or whether or not, one day they could be given the right to vote as regular citizens and if they become a majority, could they conceivably vote for us to become «their» things, so that they could own us.

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[114] *https://economictimes.indiatimes.com/news/science/sophia-the-robot-gets-a-saudi-arabian-citizenship/first-ever-robot-citizen/slideshow/61355634.cms?from=mdr*.

[115] *https://www.theguardian.com/world/2017/apr/04/chinese-man-marries-robot-built-himself*.

[116] M. Dehnert and D. J. Gunkel, «Beyond ownership: Human–robot relationships between property and personhood», *New Media & Society*, 2023. The autor proposes as social-relational approach.

[117] According to S. Nasarre Aznar, «Ownership at a stake (once again): housing, digital contents, animals and robots», *Journal of Property, Planning and Environmental Law*, Vol. 1, 2018, pp. 69-86. More recently, see the approach of P. Księżak and S. Wojtczak, *Toward a Conceptual Network for the Private Law of Artificial Intelligence*, Springer, 2023, pp. 151 ff.

3. Blockchain

Blockchain technology allows virtual disintermediation and automation of property transactions, which can help to design future platforms that would help to promote cross-border real estate transactions in the EU, thus contributing to the objective of creating an internal market (art. 3.2 TEU) in a decentralized, secured, efficient and transparent manner. Indeed, ownership can be the object of smart contracts (self-executing contracts, that do not require the intervention of the parties and intermediaries, and are written in computer code, with electronic support, instead of using a printed document with natural or legal language) and may be transferred securely through blockchain. Along with tax evasion, money laundering, terrorist financing or the facilitation of other criminal activities, another challenge is the adaptation of private law to this new reality as few EU Member States have addressed this issue, *e.g.* only a small minority of EU Member States, such as Italy or Malta, have issued *ad hoc* regulations on smart contracts[118]. Indeed, there are a number of challenges in this field, such as the legal framework for smart contracts in general, and in international commerce in particular, real-world enforceability, jurisdiction and liability[119].

In practice this leads to legal uncertainty regarding the legal and economic qualification of virtual currencies, tokens, initial coin offerings (a method used to raise funds by offering crypto tokens created on a Blockchain before the launch of an enterprise), smart contracts and distributed ledger technology[120]. As any smart contract defined on the blockchain will have to at least comply with the contract regulations applicable in the corresponding jurisdiction[121], this poses challenges in relation to consumer protection, one of the key areas of European regulator law, the role of real estate intermediaries (*e.g.* notaries and land registrars), how to guarantee the legal capacity of the parties, or who would be responsible for satisfying any liabilities .

From a property law perspective, there is a legislative and doctrinal trend to conceptualize tokens as digital assets (of an incorporeal

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[118] Dell'Erba, D. M., *Technology in Financial Markets: Complex Change and Disruption*, Oxford, Oxford University Press, 2024, pp. 105 ff.

[119] J. Sebastián Cermeño, *Blockchain in financial services: Regulatory landscape and future challenges for its commercial application*. Working Paper, December 2016, pp. 16 ff. Available at: *https://www.bbvaresearch.com/wp-content/uploads/2016/12/WP_16-20.pdf*.

[120] S. Blemus, «Law and Blockchain: A Legal Perspective on Current Regulatory Trends Worldwide», *Revue Trimestrielle de Droit Financier* (Corporate Finance and Capital Markets Law Review), Vol. 4, 2017. Available at SSRN: *https://ssrn.com/abstract=3080639*.

[121] J. Sebastián Cermeño, *Blockchain in financial services: Regulatory landscape and futurechallenges for its commercia application*, Working Paper, December 2016. Available at: *https://www.bbvaresearch.com/wp-content/uploads/2016/12/WP_16-20.pdf*.

nature), which could be a starting point for a proper regulation of asset-backed tokens at a national level. Property law rules on the transfer of property may be adapted to the blockchain technology[122]. At the EU level, the potential contribution of smart contracts to the Digital Single Market has already been pointed out[123], Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act)[124] defines smart contracts (art. 2.39)) and has implemented essential requirements for smart contracts which professionals create for others or integrate in applications that support the implementation of agreements for data sharing (art. 36), and Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849[125] aims to prevent misuse of the crypto industry for the purposes of money laundering and the financing of terrorism.

4. Animals

The legal treatment of animals has evolved in recent decades in Europe. Art. 13 TFEU (which followed the protocol of 1997 in which the European Community admitted for the first time that animals are sentient beings[126]) has driven legislative progress in terms of the recognition of animals as sentient beings, even though several EU Member States already recognized the protection of animals, some even in their own constitutions[127]. This recognition led countries such as Germany, Austria, Switzerland and the Czech Republic[128] to modify their Civil

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[122] R. M. Garcia-Teruel and H. Simón-Moreno, «The digital tokenization of property rights. A comparative perspective», *Computer Law and Security Review*, Vol. 41, 2021.

[123] T. Schrepel, *Smart contracts and the digital single market through the lens of a "law + technology" approach*, European Commission, Publications Office of the European Union, Luxembourg, 2021. Available at: *https://digital-strategy.ec.europa.eu/en/library/smart-contracts-and-digital-single-market-through-lens-law-plus-technology-approach*.

[124] OJ L 2023/2854, 22.12.2023.

[125] OJ L 150, 9.6.2023, p. 1–39.

[126] Treaty establishing the European Community (consolidated version) D. Protocols annexed to the Treaty establishing the European Community Protocol (No 33) on protection and welfare of animals (1997) (OJ C 321E, 29.12.2006, p. 314–314).

[127] *E.g.,* EU Member States that recognize the protection of animals in their constitutions are Austria (art. 11.1 *Österreichische Bundesverfassung* —Federal Constitution of Austria—; *https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138*); or Germany (art. 20a *Grundgesetz für die Bundesrepublik Deutschland* —Constitution of the Federal Republic of Germany—; *https://www.gesetze-im-internet.de/gg/BJNR000010949.html*).

[128] See I. Vivas Tesón, «Los animales en el ordenamiento jurídico español», *Revista Internacional de Doctrina y Jurisprudencia*, Vol. 21, 2019, pp. 6 ff.

Codes to exclude the category of thing with respect to animals. They adopted a negative formulation in their modifications, that is, they limited themselves to indicating that animals cannot be classified as things or goods, without mentioning their sentience. This has been criticised as the reforms do not provide alternative applicable rules, so they are actually entirely cosmetic, *i.e.* with the only purpose being to ensure that their national legislation is compliant with art. 13 TFEU[129]. On the other hand, the latest reforms regarding animal protection and respect have opted for a positive formulation, such as France (art. 515-14 *Code*; see Act 177/2015, of 16 February, albeit property law rules have not been developed[130]), Portugal (Act 8/2017, of 3 March) or Spain. Indeed, the Spanish Act 7/2023, of 28 March, to protect the rights and welfare of animals[131], establishes that the owner may enjoy and dispose of animals (without being entitled to abuse them), which cannot be abandoned or sacrifised unless the procedure established by law is followed. Now animals are considered as living beings endowed with sensibility. From the property law perspective, companion animals cannot be seized, the mere fact that a person owns a companion animal shall not imply the right to keep it in case of divorce, other circumstances will also be taken into consideration, and property law rules shall be applied to animals only insofar as they are compatible with their nature. Furthermore, under Portuguese law the owner has the duty to ensure that animals have access to water and food and medical treatments, and under the Spanish legal system the owner must ensure the well-being of the animal. This means that some duties are imposed on owners by law on the basis of the particular circumstances of the object[132]. In addition, it is also possible to acquire the property of an animal by occupation, the rules for the transfer and acquisition of property may be applied (animals may be subject to occupation and be transferred through a donation or sale, in the latter case the rules on defects and acquisition in good faith will be applied) and the animal may be reivindicated by the owner from the possessor.

As a result, animals are currently being considered as a new object of property ownership as they are not movable or immovable property. But there are other potential rights that animals may have recognised that are yet to be explored, *e.g.,* whether new reforms should introduce legal rights for animals or the legal personhood of animals[133].

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[129] J. M. de Torres Perea, *El nuevo estatuto jurídico de los animales en el Derecho civil: De su cosificación a su reconocimiento como seres sensibles*, Madrid, Reus, 2020, pp. 119 ff.

[130] Indeed, new legislation does not include more provisions on animals, only the fact that subject to the laws that protect them, animals are subject to the property regime (art. 515-15 Code).

[131] Permalink ELI: *https://www.boe.es/eli/es/l/2023/03/28/7/con*.

[132] H. Correia Mendonça, «Recognising sentience in the Portuguese Civil Code», *Derecho Animal. Forum of Animal Law Studies*, Vol. 8, Issue 2, p. 2.

[133] See for example the approach of E. Bernet Kempers, «Transition rather than Revolution: The Gradual Road towards Animal Legal Personhood through the Legislature», *Trans-*

5. Fundamental rights and EU private law

The global financial crisis 2007 revealed the limited capacity of the EU to adapt its housing legislation. With consumer protection being the main field in which the EU has the power to pass legislation, the main approach from the EU Commission has been the enactment of the Mortgage Credit Directive, which does not touch upon the matter of abusive contractual terms, even though the classical liberal mortgage contract (individual contracts with negotiated terms, to which the general principles of contract law are applied) is undergoing a change due to the increasing influence of EU consumer law[134]. Indeed, the CJEU has scrutinised many EU national mortgage law and procedural systems for compatibility with these consumer rights. Based on the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (UTCD)[135], which protects consumers from those contractual terms that have not been individually negotiated and that cause a significant imbalance in the parties' rights and obligations, the CJEU case law has provided a new perspective on this issue when dealing with the protection of debtors from the existence of unfair contractual terms. Clear examples are the CJEU judgements of 14 June 2012[136], of 14 March 2013[137] and of 14 September 2014[138], which recognised that national courts are bound to examine all the contractual terms falling within the scope of the UTCD, that the consumer contract related to «home» and that the right to accommodation is a fundamental right guaranteed under art. 7 EUCFR («Respect for private and family life»). The CJEU forced the adaptation of national procedural rules to EU consumer law standards following the Aziz case, *e.g.*, Spanish law through Act 1/2013[139]. However, it is doubtful whether the UCTD may be used to go beyond procedural issues, *i.e.*, aspects such as the security of tenure or any other dimension of the right to housing would exceed the scope of controlling the fairness of contractual terms[140]. For its part, the CJEU has not further developed the relationship between the EU Charter and consumer law until quite recently: the CJEU judgement of 9 November

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national Environmental Law, Vol. 11, Issue 3, 2022, pp. 581 ff, who proposes an alternative approach to animal legal personhood as a gradual transition rather than a revolution.

134 See P. Kenna and H. Simón-Moreno, «Towards a common standard of protection of the right to housing in Europe through the charter of fundamental rights», *European Law Journal*, Vol. 25, Issue 6, 2019, pp. 608-622.

135 OJ L 95, 21.4.1993, p. 29–34.

136 Banco Español de Crédito, C-618/10, ECLI:EU:C:2012:349.

137 Aziz, C-415/11, ECLI:EU:C:2013:164

138 Kušionová, C-34/13, ECLI:EU:C:2014:2189.

139 Act 1/2013, of 14 May, available at: www.boe.es/eli/es/l/2013/05/14/1/con.

140 I. Domurath and C. Mak, «Private Law and Housing Justice in Europe», *Modern Law Review*, Vol. 83, Issue 6, 2020, pp. 1188-1220. See also CJEU Judgment of 7 December 2017, Banco Santander, Case C-598/15, ECLI:EU:C:2017:945.

2023[141] recognises the importance of the consequences of the eviction of the borrower when interpreting the unfairness of the clause.

From a broader perspective, the duty of national legislators to pass legislation in a EUCFR-compliant way (based on art. 51 EUCFR) could offer the potential for the housing rights already accepted at international level by EU Member States to be integrated into EU law[142]. Nevertheless, this approach has not been integrated into neither the Mortgage Credit Directive nor Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU[143].

V. CONCLUDING REMARKS

Even though EU legal systems have different roots, common and broad features of the concept of right *in rem* may be found. Thus, a right *in rem* may grant: a) A full or limited power over a proper or alien thing; b) A full or limited power for a limited or unlimited period of time (*e.g.* full faculties for a limited period of time —civil law ownership and the English freehold—; full faculties for a limited period of time —the English leasehold or the Catalan temporal ownership—; or limited faculties for a limited period of time —the limited real rights— or an unlimited period of time —*e.g.* the Polish perpetual usufruct—); c) A full or limited power over movables, immovables or rights (*e.g.* as is the case in the German pledge over rights —§ 1273 BGB—); d) A power effective against everyone (*erga omnes* effects)[144] in accordance with the opposability systems provided for in each legal system, which would allow their holder to follow the thing independently of its possessor as long as its acquisition was not protected (*e.g.* by *bona fides*

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[141] Všeobecná úverová banka, Case 598/21, ECLI:EU:C:2023:845. The CJEU dealt with the validity of an acceleration clause that allowed the mortgage creditor to require early repayment of the loan if the debtor has failed to pay 3 or more monthly instalments. The Court held that it is essential to examine the proportionality of the term, in particular the gravity of the infringement by the consumer of his or her obligations in relation to the total sum of the loan and its term, as well as the fact that the consumer credit contract is secured by the family home (a reference is made to the Kušionová case).

[142] H. Simón-Moreno and P. Kenna, «Towards a new EU regulatory law on residential mortgage lending», *Journal of Property, Planning and Environmental Law*, Vol. 11, Issue. 1, 2019, pp. 51-66.

[143] OJ L 438, 8.12.2021, p. 1–37.

[144] Following Milo, «property rights are exigible against an indefinite number of people or have an erga omnes effect, and are as such opposed to personal rights», see Milo, *op. cit.*, p. 726. Also, Von Bar says that «Property law worthy of the name must (i) recognize rights over assets with effect against third parties as building blocks of private law, and provide appropriate legal remedies», Von Bar, *op. cit.*, p. 23.

purchasers), *i.e.* its durability[145]. There is, of course, controversy about some rights, such as the German *Anwartschaftsrecht* (§ 446 BGB) or the «propter rem» obligations, which are connected to certain property rights in the sense that the subject of such obligations is determined to be the title-holder of a right upon an asset[146].

Suprisingly enough, the harmonization of property law is not a priority for the EU in the short or medium term, as efforts to achieve an internal market have focused mainly on contract law. This decision by the EU is due to the deep roots of property rights in each Member State, the complexities in harmonizing this area of law and the lack of express competence in the Constitutive Treaties. However, personal data, robots, blockchain, animals or fundamental rights pose challenges for the development of the classic model of property law.

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[145] See C. Lebon, *The Proprietary Nature of Claims*: «A property right rests immediately and direct on the physical thing which is its object and remains resting on that thing, wherever it is located and in whose hands it may have passed from a substantive law viewpoint. The person entitled to a property right has a right to follow the object of his right and, generally speaking, derives from this right the possibility to demand the thing by a property *actio* from who holds the thing in his hands». Extract of the book *Het goederenrechtelijk statuut van schuldvorderingen*, Diss, Leuven, 2008, translated to English by S. Van Erp and B. Akkermans, *Cases, Materials and Text on Property Law*, Ius Commune Casebooks for the Common Law of Europe, Oxford and Portland, Oregon, Hart Publishing, 2012, p. 42.

[146] Following the «National report on the Transfer of Movables in Spain», in Faber, W. and Lurger, B. (eds.), *National Reports on the Transfer of Movables in Europe, Vol. 5: Sweden, Norway and Denmark, Finland, Spain*, Sellier, European Law Publishers, pp. 407-408. Thus, art. 9.1.e) Spanish Act 49/1960 establishes that the seller of a unit remains personally liable for all previous condominium's debts, but a legal charge arises securing the payment for the present and the preceding three financial years for the benefit of the condominium board. This charge runs with the asset, so the foreign purchaser, the new owner, will have to pay the debt so as to be released from that charge, with the chance of claiming the amounts satisfied to the seller.