



IMOLA

Secondary Rights



Secondary Rights

- I. IMOLA
- II. Parts A and B
- III Part C
- IV. Types of secondary rights
- V. Aspects to be considered
- VI. Concluding remarks

Secondary Rights

- I. IMOLA (1)
 - Differing
 - legal traditions
 - land registration systems
 - degrees of digitalisation
 - The results so far have unlocked exceptional comparative information

Secondary Rights

- I. IMOLA (2)

- Europe's legal map (a)

- Civil Law

- » French tradition

- » German tradition

- » Scandinavian tradition

- Common Law

- » England & Wales, Northern Ireland, Ireland

Secondary Rights

- I. IMOLA (3)

- Europe's legal map (b)

- Mixed legal systems

- » Cyprus, Malta, Scotland

- Small states

- » Andorra, Channel Islands, Isle of Man,
Liechtenstein, Monaco, San Marino, Vatican City

Secondary Rights

- I. IMOLA (4)

- Europe's legal map (c)

- Different registration systems within one national state
 - Global registry: Cape Town Convention aircraft registry in Dublin

Secondary Rights

- II. Parts A and B
 - Object (factual or legal reality)
 - Primary rights

Secondary Rights

- III. Part C (1)
 - Limitations on B
 - Private law
 - Secondary rights
 - Neighbour law
 - Attachment and seizure
 - Public law (right of preemption)

Secondary Rights

- III. Part C (2)
 - Limitations can be seen as
 - Subtraction (French approach)
 - Cumulative (German approach, cf. “Eigentümergrundschild”)
 - More limitations through tertiary rights (the borderline area between contract and property)

Secondary Rights

- IV. Types of secondary rights (1)
 - (a) Security rights
 - (b) Use rights
 - (c) Management rights

Please note (1): Common law difficult to categorise

Secondary Rights

- IV. Types of secondary rights (2)

- (a) Security rights

- Mortgage/hypothec
 - Transfer of ownership for security purposes
 - Pledge (movable property)
 - Legal and equitable charges

Please note (2): Security servitudes (combining (a) and (b) categories)

Secondary Rights

- IV. Types of secondary rights (3)
 - (b) Use rights (i)
 - Real servitudes/Easements
 - Personal servitudes
 - Usufruct
 - Quasi-usufruct
 - Use and habitation
 - Limited personal servitude

Secondary Rights

- IV. Types of secondary rights (4)
 - (b) Use rights (ii)
 - Term of years absolute (“leasehold”)
 - Emphyteusis
 - Superficies
 - Special use right (“droit de jouissance spéciale”)
- Please note (3): if “leasehold” is seen as a primary right, what about emphyteusis?

Secondary Rights

- IV. Types of secondary rights (5)
 - (c) Management rights
 - Beneficiary under a trust, Treuhand or fiducie

Please note (4): the trustee could be registered under the primary rights of B.

Secondary Rights

- IV. Types of secondary rights (6)
 - Please note: Tertiary rights
 - Option to purchase
 - Expectation rights
 - Qualitative duties (“dingliche Obligation”)
 - Restrictive covenants
 - (Commercial) lease

Secondary Rights

- V. Aspects to be considered
 - Evidence (“iuris et de iure” or “iuris tantum”)
 - Liability
 - Purpose: full extract
 - Test stage: limited extract (limited registries, limited number of rights)

Secondary Rights

- VI. Concluding remarks
 - The information which has become available is more than impressive
 - Information flow management
 - From test stage to fully operative stage

Secondary Rights

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