



# FORMANTS METHODOLOGY

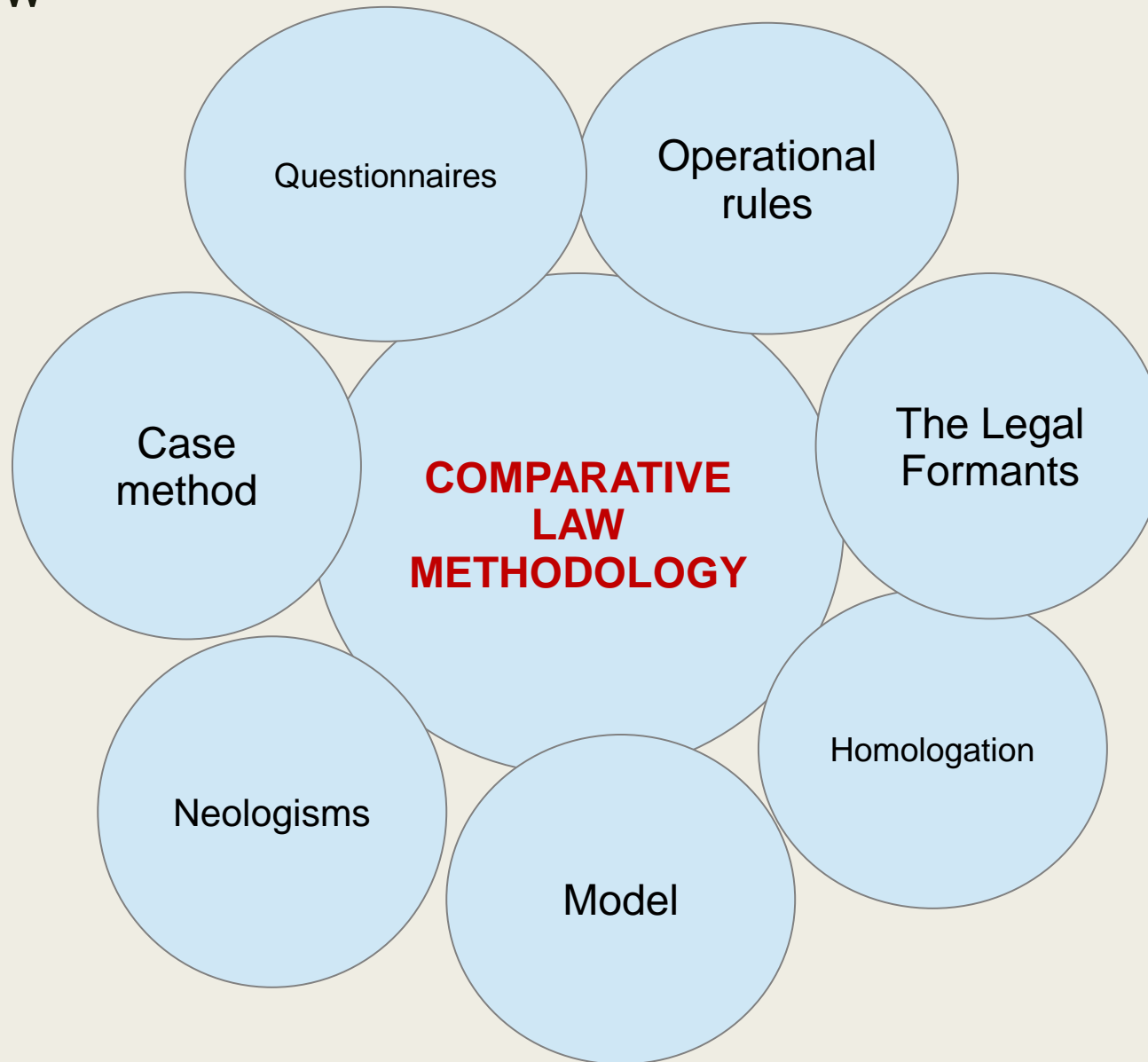
TRENTO TEAM, IMOLA III

**IMOLA III project**  
Brussels – Madrid  
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# Comparative law methodology

## Overview



# The Legal Formants

The definition

*Formants* are groups of norms sharing the same characteristics in providing solutions to a specific legal problem (or legal matter, question of law).

As the solution to a question of law can be found in legislation (legislative formant), in case law (judicial or case law formant) and in the work of scholars (doctrinal formant), these groups of rules are the three main formants.

# The legal formants and the land registry

With regard to the land registry system the legal formants are the legal basis (legal ground) of an inscription in the land registry, observed from a comparative law perspective.

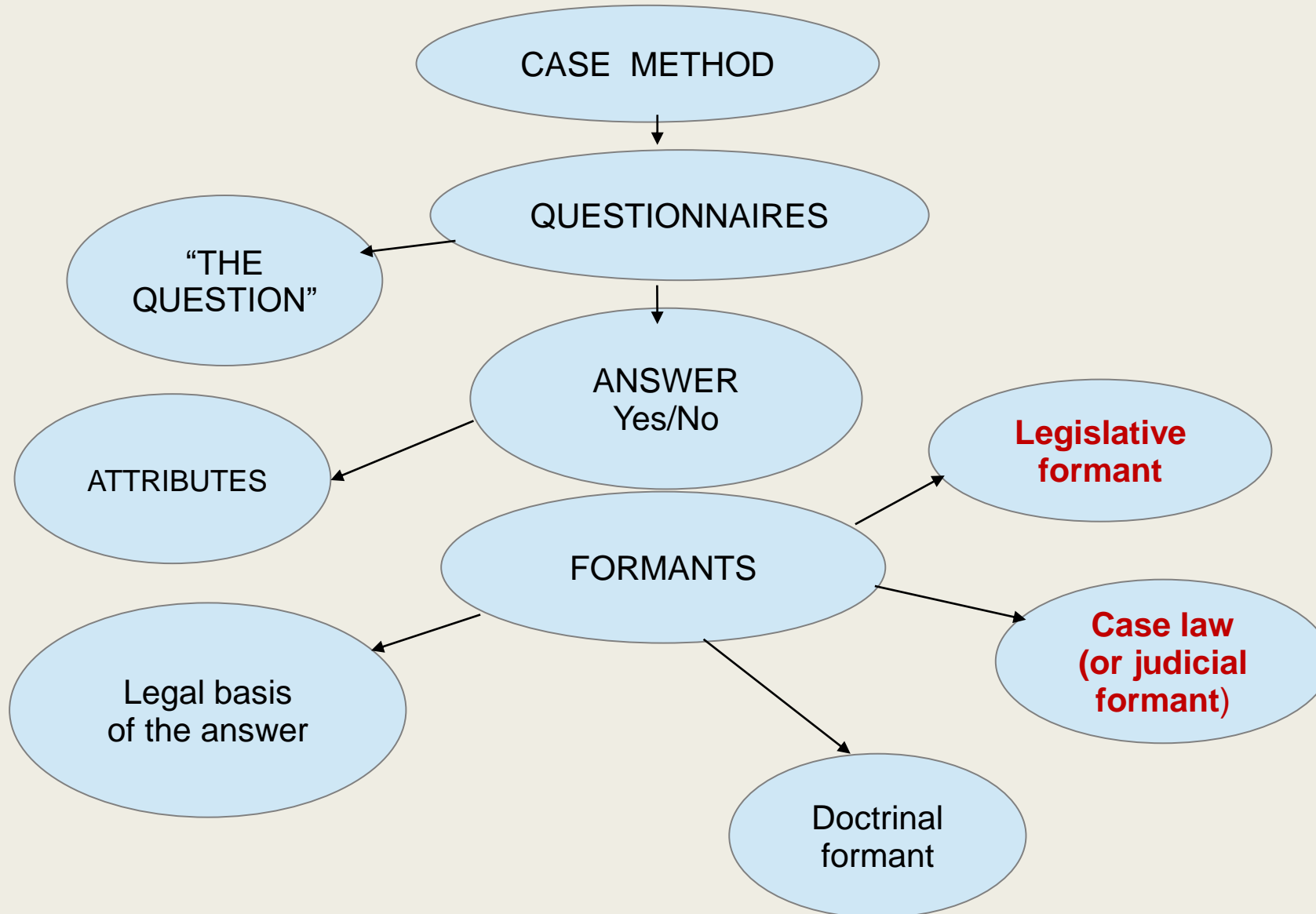
e.g. ownership or servitude: legislative formant (civil code) as as basis for registration

e.g. trust: in Italy the case law formant is the basis for registration

# The legal formants and IMOLA III

- In IMOLA III the legal formants are the legal basis (legal ground) of the answers (yes or not) asked to the contact points with regard to a specific registration matter.

# Comparative law, formants and IMOLA III



# A (new) Land Registry (LR) formant?

- The issue
- The framework (main formants; number of formants; different formants, e.g. critptotye)
- The investigation in IMOLA III (the questionnaires)

# The example of Italy

«Principio di tassatività» (the principle of exhaustivity):

burdens and limitations on third parties rights are admitted only when provided by the law;

- numerus clausus of rights like servitude, usufruct, habitation (and so on...)
- limited number of registrations (e.g. lease lasting more than 9 years)

## The tabular systems

Formants are:

- legislative (civil code or statutes)
- judiciary (case law and decree of the tabular judge)

## The system of the public immovable property register (trascrizione system)

- Legislative formant (civil code or statutes)
- case law
- in very few residual and mostly theoretical cases: praxis (also based on circulars)  
e.g. the servitude of «depluvio»



# The questionnaires

## Italy (trascrizione system)

Question:

15.- Whether in the legal system there is some **authority or governmental body** —in any case different from the courts— which sets criteria about land registration matters, or not.

- Yes: X
- The Ministry of Justice in coordination with the Ministry of Finance can set such criteria issuing a document such as a circular with a lower value than law.

# The questionnaires

## Malta

### Question

13.- Whether a LR system applies or could apply **practices for registration** not specifically governed by legislation, or not.

- Yes, because certain practices become customary law.

# The questionnaires

## Spain

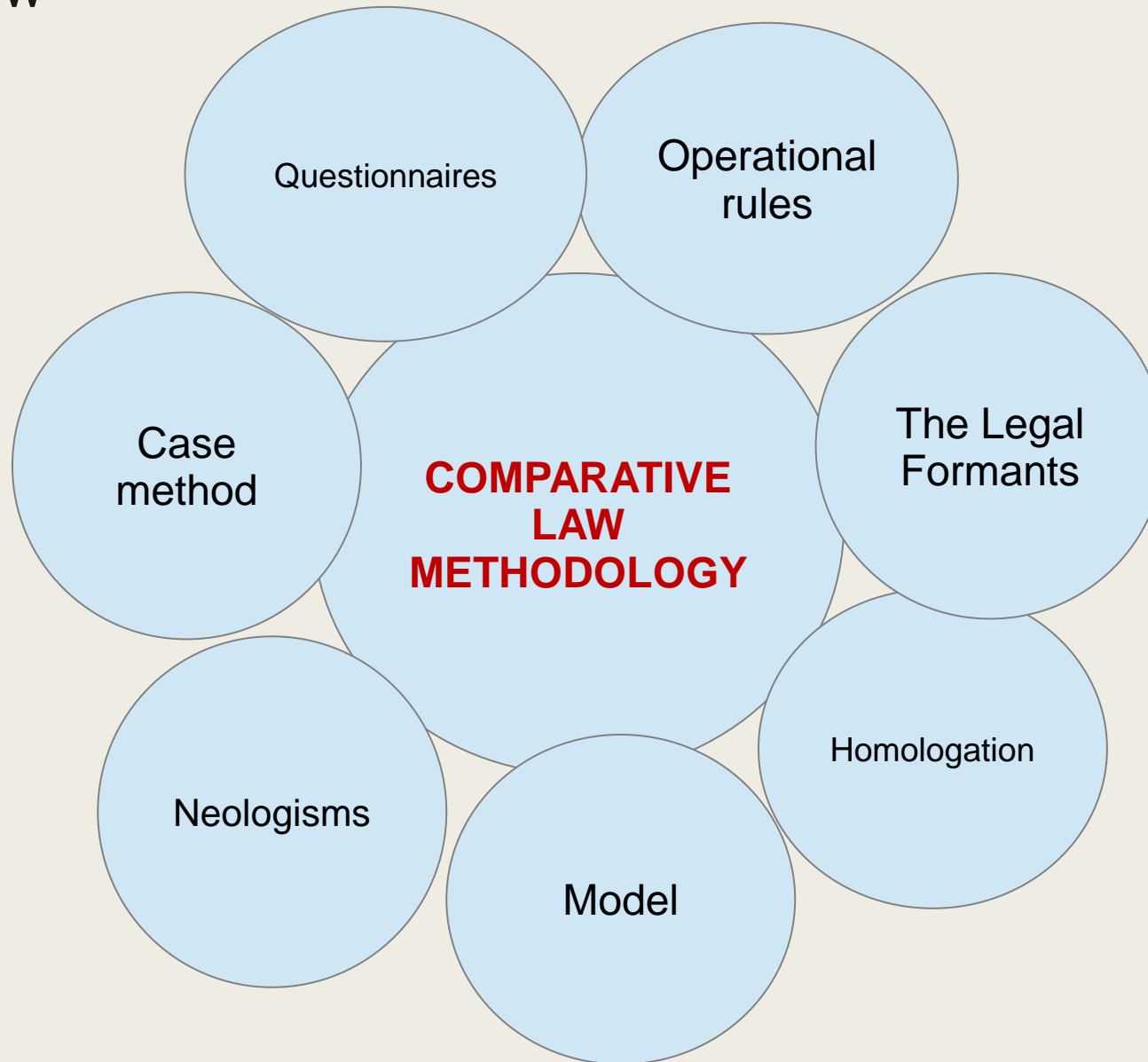
- The principle of exhaustivity is not in force, as in Italy.
- As a consequence: more «discretionality» of *registradores* with regard to registrations (capacity, experience, crucial social role).
- If the *registradores* decides for a registration that is not grounded on legislation or case law, and nobody files a claim in court, this might give rise to a new formant (legal ground of the registration).
- **The formant might be denominated «LR Formant «**

# The operational rules

- In comparative law terminology the *operational rule* is the final solution, in practical terms, of a legal matter.
- Operational rules are often similar in the different legal systems, regardless of the provisions formulated in the legislative and case law (and even doctrinal) formant.
- E.g. the legal matter: “*Can the holder of a right of habitation create a mortgage over that right and register it in the land registry?*”

# Comparative law methodology

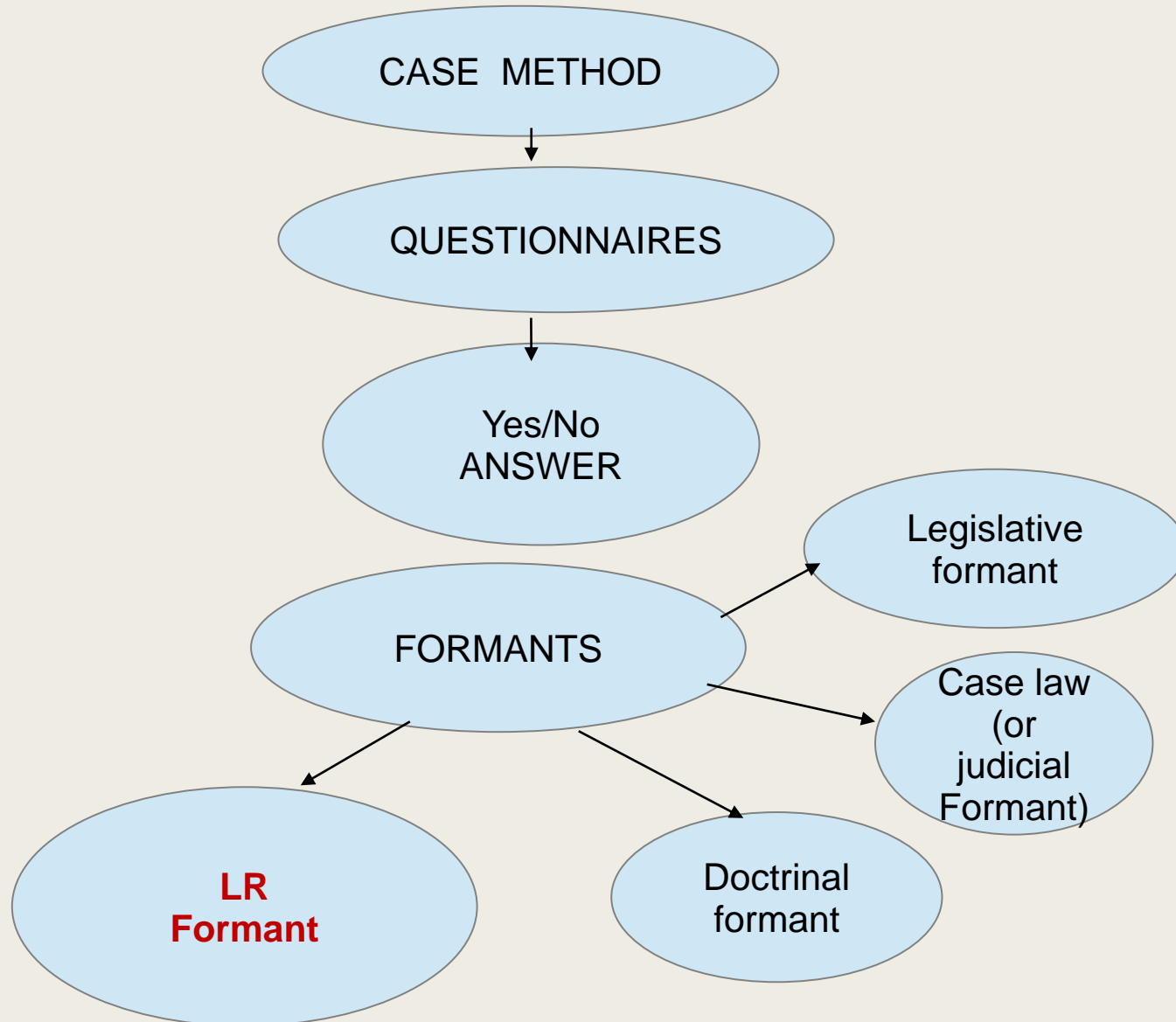
## Overview



# Suggestion 1: LR formant

- 1. LR formant to be investigated as the legal ground of the answer when no other formants are at the basis of the registration (verification by subtraction)

# A Land Registry formant (LR)



# Suggestion 2: common operational rules

- As a new separate task of IMOLA III: mapping and storing operational rules, that are common to all or to some legal systems, regardless the formants which form the legal ground of the register. Similar or identical operational rules in two or more legal systems might have their legal ground on different formants.
- An example: we have already noted that in Italy operational rules produce legal effects that overlook, or even contradict, the legislative formant.
- The creation of a shared European land registry system or a system of shared data contained in national land registries implies a deep knowledge of the operational rules, as they might be similar among different systems even when the legislative formants are different.



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