

Sustainability and Property Law

ELRA General Assembly

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Structure



- Sustainability and its Criteria
- Energy Transition in Property Law
- Accession
- Condominium Law


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Sustainability?


SUSTAINABLE DEVELOPMENT GOALS
 17 GOALS TO TRANSFORM OUR WORLD

1 NO POVERTY	2 ZERO HUNGER	3 GOOD HEALTH AND WELL-BEING	4 QUALITY EDUCATION	5 GENDER EQUALITY	6 CLEAN WATER AND SANITATION
7 AFFORDABLE AND CLEAN ENERGY	8 DECENT WORK AND ECONOMIC GROWTH	9 INDUSTRY INNOVATION AND INFRASTRUCTURE	10 REDUCED INEQUALITIES	11 SUSTAINABLE CITIES AND COMMUNITIES	12 RESPONSIBLE CONSUMPTION AND PRODUCTION
13 CLIMATE ACTION	14 LIFE BELOW WATER	15 LIFE ON LAND	16 PEACE, JUSTICE AND STRONG INSTITUTIONS	17 PARTNERSHIPS FOR THE GOALS	SUSTAINABLE DEVELOPMENT GOALS


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Criteria?

- Sustainability is too complex to handle
- Translate it into lawyer-friendly criteria:
 - limiting / banning extraction of a certain resource
 - promoting the use of renewable energy sources
 - promoting energy efficiency
 - promoting the re-use of materials (recycling; circular economy)

Property Law and Sustainability (PropLS)

- Methodology:
1. Identify obstacles to sustainability
 2. Develop
 - sustainability-conform
 - but balanced
- changes to law or practice

Property Law and Sustainability (PropLS)

- Areas of interest:
- Concept of ownership / abuse of right
 - Accession and right of superficies
 - Servitudes (easements) with positive obligations
 - Condominium law
 - Neighbour law
 - Public-law obligations to climate-proof
 - Nature as owner of itself (Rights of Nature)
 - Registration of off-shore wind and floating cities

Energy Transition in Property Law

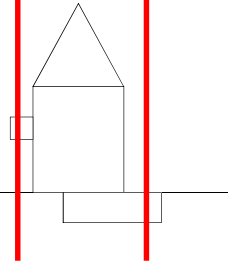


Characterising the Challenge

- Heightened fragmentation
- Universal need, but no automatic economies of scale
- Decentralisation leads to higher transaction costs
- Funding problems

Accession

- Art. 3:4 DCC: Components of a thing
 - no detachment without damage?
 - incomplete without one another?
 - coordinated design?
- Art. 5:20(1): immovable things owned by the landowner
 - lit. e: permanent connection?



Non-Integrated Solar Panels



Non-Integrated Solar Panels (II)

- › Art. 3:4 DCC (-): not a component of the house
- › Art. 5:20(1) lit. e DCC (+): permanent connection
- ➔ no separate ownership, no pledge

Non-Integrated Solar Panels (III)

- Heightened fragmentation
 1. security right on the solar panel
 2. renting solar panels (☹ funding problems)
 3. having solar panels on the roof of third party
- Solution? Right of superficies (*opstalrecht*)!?

☹ *transaction costs, no economics of scale*

Integrated Panels



Integrated Solar Panels (II)

› Art. 3:4 DCC (+): a component of the house

➔ No separate ownership, no pledge, AND
 NO RIGHT OF SUPERFICIES, art. 5:101 DCC
 (no 'work' according to traditional doctrine)

... contract law to the rescue!!!

Property Law and Sustainability in Action

- › Changing the law to promote the energy transition
 1. Legislative proposals
 - 2. Re-interpretation of vague norms**
 3. Creating and standardising beneficial practices

Property Law and Sustainability in Action

- 2. Re-interpretation of vague norms**
 - Vague norms:
 - common opinion
 - permanent connection
 - Proposal: no more accession of solar panels
 - goals of accession?

Property Law and Sustainability in Action

2. Re-interpretation of vague norms

- Vague norm: 'work'

- Proposal: right of superficies for integrated solar panels
 - identifiable
 - economically acceptable

Condominium Law

- › Apartment rights in NL:
 - limited scope for individual initiatives
 - majority + quorum for individual or collective initiatives
 - e.g., common solar panels:
 - 2/3 of votes
 - 2/3 of all votes represented
 - property rights and unorthodox initiatives
 - + at least 80% of all votes
 - + registered notarial deed

Condominium Law

- › Recent draft legislation in NL
 - right of each owner to install a charging station
 - easier creation of limited property right
 - mandate for Minister to lower voting requirements

Thank you for your attention!

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