

CONTRACT AND PROPERTY WITH
AN ENVIRONMENTAL PERSPECTIVE

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(eds.)

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PREFACE

This book includes the conference proceedings of a conference in September 2019 in Leuven. The Institute for Property Law of the University of Leuven had the opportunity to welcome numerous authoritative legal scholars to debate on the impact of sustainability challenges on the crossroads between contract and property. While environmental issues, and more broadly sustainability, are often conceived as a matter of public law, if a matter of law at all, in recent years, also private law aims to join in. More fundamentally, environmental law could challenge the main division in private law, the division between contract and property. Fundamental rules of traditional private law, with strong historical roots, such as the privity of contracts, the closed system of property rights, the praedial rule with regard to servitudes, etc. are under pressure. The contributions of this book therefore are situated at the point of encounter of at least three fields of law: environment, contract and property. Very often, a fourth field of law joins this encounter: the constitutional protection of ownership plays a major role in the described challenges. The contributions in this book are on the one hand, careful analyses of national laws, and on the other hand, more general views on the interplay between property law and sustainability.

Vincent **Sagaert** provides in his contribution ‘Property Law, Contract Law and Environmental Law: shaking hands with the (historical) enemy’ a general historical and theoretical glance on the development of the fields of law at stake, with property law as the hinge of the analysis. Environmental law and property law are born enemies, but have developed towards a gradual conversation during the last decades. Within private law, contract law and property law were living more apart than together for historical reasons. The contribution demonstrates how this has changed over the decades, and how environmental law even strengthens this development.

Bram **Akkermans** discusses ‘Sustainable Obligations in (Dutch) Property Law’ and frames the current developments in a broader framework of property theory, especially the Human Flourishing Theory, which could provide a basis for further going change. He illustrates this with a discussion of the Dutch qualitative obligation (*kwalitatieve verbintenis*).

Siel **Demeyere** discusses the ‘Contractual regulation of property rights’ and the opportunities in contract and property law to impose obligations on a land

owner, even if the legislator has not provided for a specific legal framework for environmental obligations. For instance, in Belgian law, no specific legal instruments aimed at enhancing sustainability are available in private law.

In ‘Towards Sustainable Real Estate in a Circular Economy’, Benjamin **Verheye** analyses the possibilities of the circular economy for real estate. In the field of real estate, an increasing number of circular initiatives are being developed, but often these initiatives are hindered by existing rules on property law. This contribution, based on Verheye’s award winning article published in the Belgian legal journal *Tijdschrift voor Privaatrecht*, researches to what extent the Belgian building right could be interpreted to circumvent these hindrances.

In many countries, the legislator has recently developed new legal instruments enabling individuals to take on more responsibility for the environment and sustainability in general. Not only are these analyses invaluable for the national law at hand, but also allow to learn from the other systems and to see what works (or what does not work) in given contexts.

Gaëlle **Gidrol-Mistral** demonstrates in her contribution ‘Quebec private law, destined to preserve the environment?’ the diversity of tools available in Québec property law to strive for sustainability: the social trust, the servitude of conservation, and the undivided property affected to a lasting purpose. While the first sounds very promising, the latter two are in practice more effective and more frequently used. She moreover analyses how the current developments put under pressure, and even change, long lasting property law principles such as the (limited) duration of property rights and exclusivity.

Andrew **Steven** discusses ‘Real burdens in Scots law: an environmental perspective.’ These real burdens are embedded in the generally permissive (speaking from a civil law viewpoint) Scottish property law. He provides a close analysis of both conservation burdens and climate change burdens, which are in practice hardly used. After this surprising finding, he suggests how the attractiveness of these burdens can be increased.

Elsabe **Van der Sijde** writes on ‘Positive and negative obligations of landowners in South African law’ from an environmental perspective, with reference to the real life example of endangered ‘fynbos’ and with consideration of the broader societal issues in environmental protection, such as the special environmental concerns in developing regions.

Christopher **Pulman** and Nicholas **Hopkins** analyse in their contribution ‘The Introduction of Conservation Covenants in English Law’ in detail the conservation covenants which may soon become part of the English law body.

Taking into account the most recent developments, they give a broad overview of relevant instruments, both in public and private law, which may not only inspire English lawyers, but also lawyers from other legal systems.

Blandine Mallet-Bricout provides for an extensive overview and critical analysis of ‘The “obligation réelle environnementale” in French law’, interwoven with real life examples. Also the French practice of ‘conservation measures’ and the specific problems arising from it, are addressed.

Christine Godt writes on ‘Environmental Duties in the German Land Register’ and provides interesting insights in the private-public law divide. She also more closely analyses the *beschränkte persönliche Dienstbarkeit* and questions the need for European harmonisation in regard of environmental land burdens.

In ‘Nordic perspectives on contract and property law with an environmental perspective: examples from Norway’, Berte-Elen Konow gives a view on the broader framework of Nordic, more specifically Norwegian, property law, both historically and in terms of more general contract and property law. She moreover shows how courts integrate environmental concerns in specific cases, by referring to more general environmental legislation and how the legislator integrates environmental concerns in older acts.

Many authors are positive towards the statutory legal devices introduced in their national legal system, but also emphasise the need for a further adjustment of the legislative framework and the careful follow up and performance of the measures. The contributions demonstrate the urge of the pressing need for protection and the inadequacy of most current measures.

We hope you enjoy this book, and the ideas and questions it triggers, as much as we did!

Siel DEMEYERE and Vincent SAGAERT

CONTENTS

<i>Preface</i>	v
----------------------	---

Property Law, Contract Law and Environmental Law: Shaking Hands with the (Historical) Enemy

Vincent SAGAERT	1
§1. Introduction	1
§2. A historical approach: the absence of ‘commons’ in property law	2
1. Ownership as exclusive dominion	2
2. Impact on the relation between property law and environmental law ..	5
§3. The birth of a grey area between contract and property: a gradual conversation between property law and environmental law	6
1. General analysis	6
2. The growth of the environmental dimension in property law	8
3. The virtual content of ownership: internalisation of environmental land burdens	14
4. Nuisance law as engine for environmental protection?	18
5. Environmental limitations and the compensation of private owners ..	19
§4. What is the impact of the convergence between property law and environmental law on the dualism between contract and property?	20
1. General framework	20
2. Negative environmental land burdens	22
3. Affirmative environmental land burdens	24
§5. Conclusion	27

Sustainable Obligations in (Dutch) Property Law

Bram AKKERMANS	29
§1. Introduction	29
§2. Theoretical foundations of property law	30
1. Utilitarianism	31
2. Human Flourishing	32
§3. Property and Human Flourishing	34
1. Obligations of ownership	35
§4. Case study: legal obligations in Dutch law	37
1. The qualitative duty	37

2.	Sustainable applications of the qualitative duty	39
3.	Qualitative duties revisited	42
§5.	Conclusion	43

Contractual Regulation of Property Rights: Opportunities for Sustainability and Environmental Protection

	Siel DEMEYERE	47
§1.	Introduction	47
§2.	Concrete illustration	50
§3.	Contractual regulation and the <i>numerus clausus</i> principle	55
§4.	Limits to contractual regulation	59
	1. Obligations	62
	2. Rights	69
§5.	Conclusion	74

Towards Sustainable Real Estate in a Circular Economy

	Benjamin VERHEYE	77
§1.	Introduction: towards future-proof property law	77
§2.	Circular Economy: the essentials	79
§3.	Property Law hindrances (?) to a Circular Economy for real estate	86
	1. Introduction: real estate in a Circular Economy and property law	86
	2. Real-life Circular Economy initiatives in the real estate sector	90
	3. Towards a more holistic approach?	94
	4. The notion ‘immovable’ in Belgian law: three categories	97
	5. Leasing incorporated building parts in a Circular Economy	99
	5.1. Accession to immovables	99
	5.2. Accession to immovables in a Circular Economy: a hindrance	104
	5.3. Alternative solutions to prevent accession to immovables?	108
	6. Leasing of movables used in an immovable, without being incorporated	117
	6.1. Risks connected to leasing movables in a Circular Economy	117
	6.2. The rogue lessee	118
	6.3. Bankruptcy	120
	6.4. Privilege of the real estate lessor	121
§4.	Conclusion	121

Quebec Private Law, Destined to Preserve the Environment?

	Gaële Gidrol-MISTRAL	125
§1.	The social trust	130
§2.	Servitude of conservation	133

§3. Undivided property affected to a lasting purpose	136
§4. Environmentally compatible property law	138
1. Affectation	138
2. Duration	139
3. Exclusivity	140
4. Powers	140
§5. Conclusion	141

Real Burdens in Scots Law: An Environmental Perspective

Andrew J M STEVEN	143
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§1. Introduction	143
§2. The common law on real burdens	144
§3. The road to feudal abolition	147
§4. The Title Conditions (Scotland) Act 2003	149
§5. Conservation burdens	150
§6. Climate change burdens	155
§7. Assessment	159
§8. Conclusion	162

Positive and Negative Obligations of Landowners in South African Law: An Environmental Perspective

Elsabé VAN DER SIJDE	163
--------------------------------	-----

§1. Introduction	163
§2. Overview of the challenges of protecting biodiversity on privately-owned land	165
§3. Endangered fynbos in the Western Cape, South Africa	167
§4. The biodiversity stewardship programme	171
§5. Constitutional framework for positive and negative obligations on landowners in the environmental context	176
§6. Evaluation	179
§7. Concluding remarks	183

The Introduction of Conservation Covenants in English Law

Christopher PULMAN and Nicholas HOPKINS	185
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§1. The limitations of current English law	186
1. Contractual obligations	187
2. Proprietary interests	188
2.1. Ownership rights: sale or lease	189
2.2. Limited proprietary rights: easements	190
2.3. Limited proprietary rights: restrictive covenants	191

3.	Statutory mechanisms	192
3.1.	Voluntary mechanisms	192
a.	Agreements with special effects	192
b.	Legislation expanding the scope of restrictive covenants.	193
c.	Planning consent conditions	194
3.2.	Involuntary mechanisms	194
a.	Listed buildings	195
b.	Designation of an area as a site of special scientific interest.	195
§2.	The scope and nature of conservation covenants	197
1.	Relationship to land	198
2.	Voluntary agreements	199
3.	Responsible bodies	200
4.	Conservation purpose	202
5.	Public good	204
6.	Effect on third parties	205
7.	Judicial oversight	206
§3.	Illustration of the use of Conservation Covenants in a planning context	206
§4.	Conservation covenants and proprietary interests.	210

The ‘*obligation réelle environnementale*’ in French law

	Blandine MALLET-BRICOUT	215
§1.	Issues and implementation of an ORE based on an environmental ethic	217
1.	A targeted and sustainable burden on the property	218
1.1.	A real burden	218
1.2.	A targeted burden	220
1.3.	A sustainable burden.	221
2.	Reciprocal commitments	221
3.	A secured act	222
3.1.	Securing the content of the contract.	222
3.2.	Securing third party effectiveness.	224
3.3.	Compatibility with pre-existing rights on the property concerned	224
4.	Legislative incentives	225
§2.	Mobilization of the ORE as a compensation measure	226
1.	Specific context of the use of a real environmental obligation: ‘compensation measures for damage to biodiversity’.	227
2.	Implementation of the real environmental obligation as a compensation measure	229
§3.	Conclusion	232

Appendix	233
Article L. 132–3 C. Envir.....	233
Article L. 132–3 C. Envir.....	234
Environmental Duties in the German Land Register	
Christine GODT	235
§1. Any problem? Environmental Duties in the German Land Register ...	235
§2. Current practise under §1090 BGB in two areas of environmental law. ...	238
1. Climate Change Regulation	238
2. Nature Conservation	239
3. Technical Interpretation of §1090 BGB.....	243
§3. Conflicting Principles?	245
1. Appurtenant rule	246
2. Praedial rule	246
3. No positive duties.....	248
4. Rule against perpetuities / rule against unreasonable restraints on alienation	249
5. Numerus clausus	251
§4. Explaining the German practise of §1090 BGB	252
1. The liberal legacy	252
2. Circumventing the numerus clausus?.....	253
3. The Modern Regulatory State.....	254
4. Registration.....	258
5. Circumvention of the rule of law (here: planning law)?.....	260
§5. Conclusion: European harmonisation needed?	261
Nordic Perspectives on Contract and Property Law with an Environmental Perspective: Examples from Norway	
Berte-Elen Konow	267
§1. Characteristics of Nordic contract law and Nordic property law – introductory remarks	267
1. Interwoven historic and political development shaping a Nordic legal tradition	267
2. Key elements of the common Nordic historical development	268
3. Development of a Nordic legal tradition – a ‘nutshell version’	270
4. Trademarks of the Nordic legal tradition.....	273
§2. Contract law: a long and strong Nordic legal tradition	274
§3. Property law in the Nordic countries: similar basic principles, but differences in content	276

- §4. Can contract law and property law serve as tools to solve climate change challenges? Examples from Norwegian legislation and court practice 278
 - 1. Some starting points 278
 - 2. Integration of environmental considerations in the framework of the Constitution and the Act of Protection of Biodiversity 278
 - 3. Environmental considerations in contract law (Norway) 279
 - 4. Environmental considerations in property law..... 280
 - 4.1. Disputes regarding neighbour law 280
 - 4.2. Disputes regarding servitudes 283
 - 4.3. Co-ownership..... 284
 - 4.4. Contract and property law as tools for sustainable finance? .. 284
- §5. Concluding remarks 285