

## Summary of the concepts undergirding French Property and Property rights:

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*This is not an exhaustive study, or legal advice. It is simply outline guidance as to classification of property rights in France.*

*Please refer to Peter Harris for advice on queries arising from a comparison between this document and any given factual situation before acting on it.*

Firstly there is a distinction between patrimonial rights and extra-patrimonial rights.

The patrimony is what belongs to a person, what, in English terms, can constitute his or her estate. The English notion of an estate as such is not recognised in French law<sup>1</sup>.

The criteria are basically the old Roman law definitions of ownership of an asset or right in a social sense, i.e. in relation to the competing claims of others, and whether it has pecuniary value:

*Are these rights part of the patrimony which is the class of rights which can be valued in money or in money's worth by money of an individual or a legal person making up their assets and their liabilities, and that person's ability to acquire others; or are they not?*

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<sup>1</sup> The Estate duty Conventions between France and Canada and France and the USA on the other hand do contain references to these American concepts, simply to facilitate taxation.

## Patrimonial Rights : real, personal and extra-patrimonial.

### I. Real Rights, or rights *in rem* :

A property right which is directly exercised by a person on or over a thing or “chose” (*res* in Latin, which is the root of the term, not the word real in the general sense).

A direct legal link between the active legal subject: the owner of the right, and an object : the thing on which the right is fixed. A *chose* can include an immaterial right and is therefore close to an English *chose in action*.

These are sub-divided into two categories :

- ❖ The real rights of entitlement and
- ❖ Accessory real rights or real security rights.

Again the common denominator is that these rights are fixed on a *chose*.

The principal real rights are divided into two categories : one which comprises pure ownership, *droit de propriété*, the other of divided property rights, *droits de propriété démembrés* :

1. The right of ownership, *droit de propriété*, is composed of three attributes:
  - a. User : the right of user of the thing ;
  - b. Fruits : the right to the fruits or income produced by the thing; and
  - c. The right to abuse, *abusus* : the absolute right to dispose of the thing, by gift, sale, by not using it, or by destroying it.
2. The divided rights of ownership only comprise either two or one of these rights alone :
  - a. The *usufruit* : which confers on the person entitled the user and the income, the *abusus* being retained by the person holding the remainder of the entitlement to the thing: *le nu-propriétaire*;
  - b. The *usage*, user : which confers on the person entitled the right to use the thing, and to take certain of the fruits, but only to the extent necessary for their needs, and not to extract further the income;

- c. *Habitation* : which only confers the right to user, not to rent out, and which is limited to family residential user ;
- d. The *servitude* which permits an owner of one parcel to use and enjoy certain prerogatives over a neighbouring parcel: easement of right of passage, of drilling etc. The *servitude* is linked to the parcel, the one which benefits is called the *fonds dominant*, the burdened parcel, the *fonds servant*.
- e. *Servitudes* can be overt, or hidden, continuous or discontinuous;
- f. *Emphytéose* which is a long term lease of a thing (18 to 99 years) and which the law treats for this reason as a *droit réel*, whilst the medium or short term lease is treated as a *droit personnel*.  
The Construction lease is a form of *emphytéose*.

The creation of a right of ownership in relation to the full legal ownership is known as a *démembrement*, in other words a severing of that right from the other constituents of ownership. There is no equitable interest or settlement created over the whole property by a *démembrement*, merely a severance of a legal property right. The Law of Property Act and its statutory fictions as to interests taking effect in equity do not apply in France.

In addition, some confusion has arisen by English lawyers assuming that the old Roman law qualification of a *usufruit* within the category of a Roman law servitude is correct in modern French legal classification. It is not, the *usufruit* is now a French property right, not a burden or charge on a property to the benefit of another property. French property law does not comprehend the English or American concept of a person's estate as being a 'property' right in itself.

### 3. Accessory real rights or real guarantee rights:

These have no separate existence as such, but are accessories to personal rights or lender's rights. They are creditor's rights or guarantees which attach and are fixed to a debtor's chose or assets, and are therefore categorised as real rights.

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## II. Personal Rights, rights *in personam* or *droits personnels*:

1. The personal right (*droit personnel* or *droit de créance*) is a legal relationship between two or more persons, of which one, the obligee/creditor or active subject, has the right to require of another, the obligor/debtor or passive subject, a service, or to refrain from an action, or to provide an object : So the obligations are of three types : the obligation to give or assign, that is to transfer the property in the thing, the obligation to do something, the obligation not to do something.
2. Contrary to the *droit réel*, which attaches directly to the thing itself, the *droit personnel* can only be enforced against the person, and not directly on the thing, which means that a creditor on an unsecured loan cannot prevent the sale of the thing, for example..
3. On the other hand a *droit personnel* can be added to a *droit réel*, right *in rem*, for example, a mortgage, which is accessory to the debt. The creditor may require and obtain a right *in rem* over the thing, by virtue of a mortgage or a lien over the thing, but not by virtue of the loan itself.

## III. Extra-patrimonial rights (exceptions to the principle) :

1. Intellectual or immaterial property rights :
2. Certain commercial rights e.g. the rights over a *clientèle* or *fonds de commerce*;
3. The rights of the individual person; Human Rights etc.