**PROPERTY LAW**

**General**

According to Greek law the number of real rights is limited (numerus clausus): ownership, personal and predial easements (servitudes), pledge and mortgage. Real rights other than those provided by law may not be created nor their content (features) may be altered by private will. By way of contrast private will is entitled to create contractual rights freely defining their content (principles of private autonomy and freedom of contracts AK 361). Outside the AK the real right of surface is provided Possession and detention are not real rights, they are sui generis rights.

Real rights confer direct and absolute power over a thing. Directness means that the thing is directly subject to the will of the holder of the right. As absolute rights, real rights can be opposed as against every one. Their holder can oppose on any third party respect for his power. The holder is entitled to pursuit the thing in whoever’s hands the thing is. A *real contract* is a contract by which a real right is constituted, transferred, encumbered (charged) or abolished. Thus we have to distinguish between a promissory and a real contract. Promissory is a contract which obligates one or both contracting parties to do or not to do something e.g. the contracts of sale, lease etc. A real contract usually follows a promissory one.

Real rights must be distinguished from personal obligational rights which confer power not over a thing but over the will of a concrete debtor who is bound by an obligation towards his creditor. Through a promissory contract an indirect power of the creditor on the thing is created. The creditor may even by the use of compulsion compel the debtor to effect his performance e.g. to transfer ownership on the thing and deliver it to the creditor.

Real rights are subject to the rule of temporal priority (prior tempore potior jure), which means that if two or more persons have on the same thing competing real rights which are inconsistent with each other, the party who has acquired his right first is entitled to exercise his right to the exclusion of the other.

**Possession**

We have to distinguish between possession and detention. Possession is the exercise of physical power over a thing with the intent to own it, independently whether the possessor has ownership or not over the thing. Quasi possession is the exercise of the powers of a limited real right with the intent to be holder of the right, as in case of servitudes, independently whether the person is holder of the limited right or not. Detention is the exercise of physical power over a thing without intent to own it e.g. the lessee of an apartment exercises detention on it. Possession is protected by the action for the recovery of possession and the action of disturbance of the possession. When a possessor has been dispossessed unlawfully and without his consent of the thing he possesses, he may bring an action against the person who dispossessed him, asking the recovery of his possession (*action of dispossession*). If the possessor has been disturbed in the exercise of his physical power over the thing by a behavior of a third person that falls short of dispossession, e.g. by a trespasser, the possessor may seek the lifting of the offence and its prohibition in the future (*action of disturbance*). Independently of the above actions, the possessor, under the condition of an urgent need, may exercise his right to judicial protection seeking provisional remedies for the temporary regulation of possession in a summary proceeding.

**Ownership**

Definition

It is the real right which under certain restrictions imposed by law or rights of third parties confers the broadest powers over a thing, movable or immovable, to its holder e.g.to enjoy, occupy, possess, rent, sell, burden it with limited real rights, transfer, or even destroy it. The traditional Roman conception of dominium has undergone substantial changes. Ownership, like any other right, is subject to the rule of prohibition of abusive exercise of rights (AK 281), neighborhood rights restrict the powers of the owner of an immovable, expropriation in the public interest after due compensation is possible e.t.c.

Acquisition

Ownership may be acquired by many ways, as by transfer from a previous owner or by way of exception even by a non-owner, by operation of law, by a judgment or by an act of public authorities. Scholars make a distinction between original and derivative acquisition.

Original is called the acquisition of ownership over a thing, when it is not based in the will of its previous owner. Examples: *occupancy* of things that belong to no one, *acquisitive prescription*, which is based on the possession of a thing for a certain period of time with the intent to own it e.g. one who possesses in bad faith a thing, whether movable or immovable, acquires it after 20 years of possession whereas one who possesses in good faith acquires ownership over o movable in 3 years and over an immovable in 10 years, *expropriation* which is predicated on the payment of full compensation to the owner (art. 17 of the Constitution).

Derivative acquisition usually demands an agreement between the owner and the transferee. In the case of movables –unlike that of immovables- art. 1036 AK, widhing to facilitate transactions in movables, introduces an exception to the rule that the transferor must have ownership. The provision requires that at the time of the delivery of possession (according to an opinion the delivery of possession must be material) of the thing the transferee is in good faith and the movable is not lost or stolen. For the transfer of movables the law requires delivery of possession of the thing, whereas for immovables an agreement dressed in the notarial form and its entry in the public conveyance records of the district where the immovable is located.

Protection

Ownership is protected by revendicatory (AK 1094), negatory (AK 1108) and publician (AK 1112) actions *Revendicatory action* is brought by an owner who was dispossessed against a possessing non-owner seeking the recognition of his ownership and the return of the thing. Since the plaintiff has the burden of proof of his ownership and proof of ownership on immovables is difficult to be carried out, the owner of an immovable may exercise the *publician* *action* which is conferred to possessors under lawful title and in good faith of an immovable property. Thus he may recover his immovable from the defendant without having to prove ownership.

A *negatory action* is brought against a person who bothers the owner in the exercise of his ownership but his interference falls short of dispossession (eviction). The claim may result in a mandatory (ordering the lifting of the offence) and prohibitory (prohibiting any interference for the future) injunction.

**Servitudes**

There are two types of servitudes: *predial*, attaching to property, and *personal*, attaching to a person.

*Predial servitudes* (AK 1118-1141)are constituted on an immovable (servient immovable) for the benefit of another immovable belonging to another owner (dominant immovable) conferring a power on the servient immovable. It may be negative, disallowing an act or use, such as industrial use, or affirmative, allowing the servient estate to be used for a particular purpose, such as right of way, drainage, etc. A predial servitude is transferred along with the ownership of the dominant estate, it cannot be transferred separately from it.

*Personal servitudes* are usufruct, habitation and various limited personal servitudes (AK 1142-1191). They are constituted i=for the benefit of a person. *Usufruct* confers the power of enjoyment of limited duration of a movable or an immovable belonging to another person under the obligation of preserving the substance of the thing. *Habitation* is the personal servitude which grants to its holder the exclusive right of habitation in a building or in an apartment of a building gratuitously (without paying rent). The holder of habitation is entitled to occupy such building only as a dwelling place not as a professional establishment. A right of habitation may be created either for a period of time or for the life of the grantee.

**Real security rights**

Greek civil law recognizes two (limited) real security rights for the securing of an obligation: pledge and mortgage. They give to their holders (pledgee and mortgage creditor) the power of preferential (prior in relation to other creditors) satisfaction from the burdened thing by its compulsory sale. Pledge is established on another’s movable asset while mortgage is established on another’s immovable or on the usufruct of an immovable for as long as the usufruct lasts.

For the constitution of a **pledge** the law requires *1.* an *agreement* vested a form (the notarial form or the form of a private document bearing an officially certified date) between the owner of the movable and the creditor and *2.* *delivery of the possession*. Negotiable instruments and rights and claims susceptible to transfer may be also pledged.

Law 2844/2000 provides for a pledge for the securing of claims of enterprises or professionals against their clients –but not against consumers- that does not involve delivery of the possession of the movable (chattel mortgage). This pledge is created by the entry of the pledge agreement in public registers. It is obvious that this type of pledge serves the interests both of creditors and debtors who are not deprived of the possession of their assets.

For the constitution of a **mortgage** *a title* granting a mortgage and its *entry* in the public mortgage registers of the district of the immovable are required. The possession of the immovable is not assigned to the creditor. The title may be a unilateral notarial juridical act (private title), the law (legal title) or a judicial decision (judicial title).

**Recordation**

In Greece there are two existent systems of recordation in the conveyance records of acts that affect immovable property. According to the older one, influenced by French legislation, entries are made according to the names of persons stipulating real contracts and not the location and description of the immovable property. This system of recordation satisfies only partially the needs for publicity of real transactions, since public records do not guarantee their validity. The system of a land registry, which previously existed only in some of the Dodecanese islands (e.g. in Rhodes), has been recently (L. 2308/1995 and 2664/1998) introduced in Greece and has not yet substituted everywhere in the country the old system. The system of land registry secures the requirement not only for typical but also for substantial publicity of real relations on immovable property.

*Bibliography*

Kerameus/Kozyris Introduction to Greek law 3rd ed. 2008

Stathopoulos/Karampatzos Contract law in Greece 3rd ed. 2014

Elisabeth Poulou