CONTRACT AND PROPERTY WITH AN ENVIRONMENTAL PERSPECTIVE

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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 Verheyes 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

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