



Break(...)down of Property Essentials

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**BREAKDOWN
VS
BREAK DOWN**

Property Essentials Breakdown

Introductory remarks

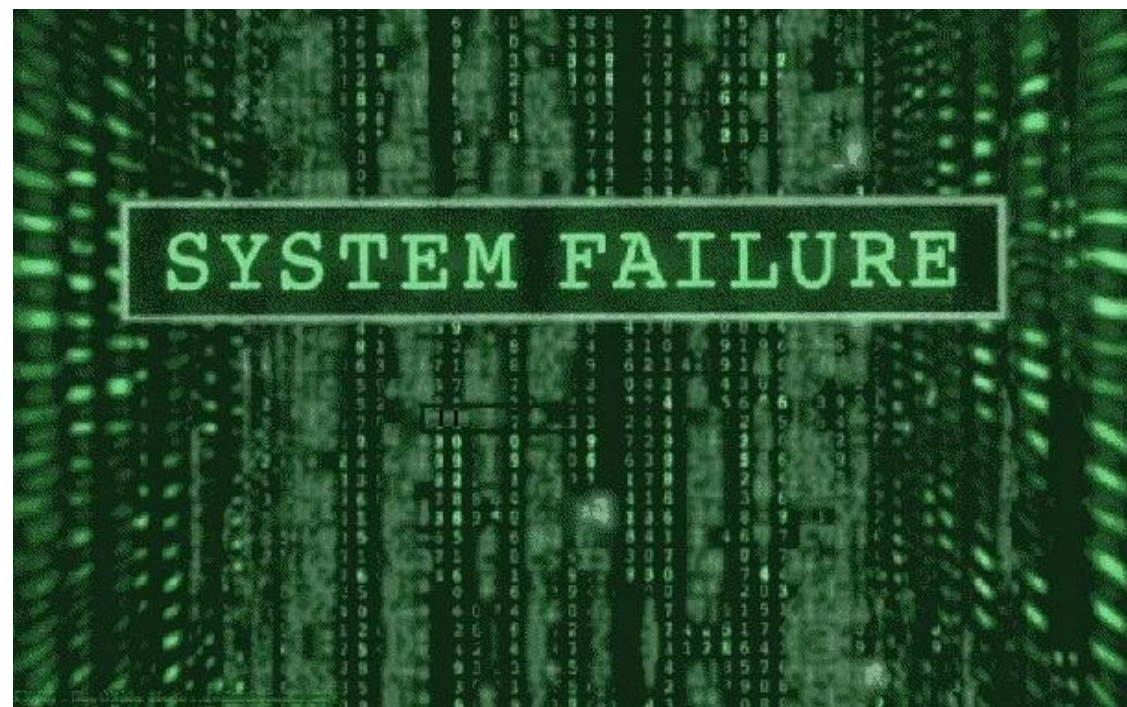
1. Major problems facing modern (Western) societies
 - a. Digital Revolution
 - b. Climate Change
 - c. Migration
 - d. Aging Society
2. Role of national law, EU law, international law
3. Role of the judiciary and the legislature
4. Academic (theoretical) analysis v. practical applicability
5. Example: property law
6. Comparative approach
7. Conclusions



Property Essentials Breakdown

Two ‘triangles’

- Property essentials
 - Subject
 - Object
 - Legal Relationship
- Leading Principles
 - Numerus clausus
 - Transparency
 - Hierarchy



Property Essentials Breakdown

Changes regarding subjects

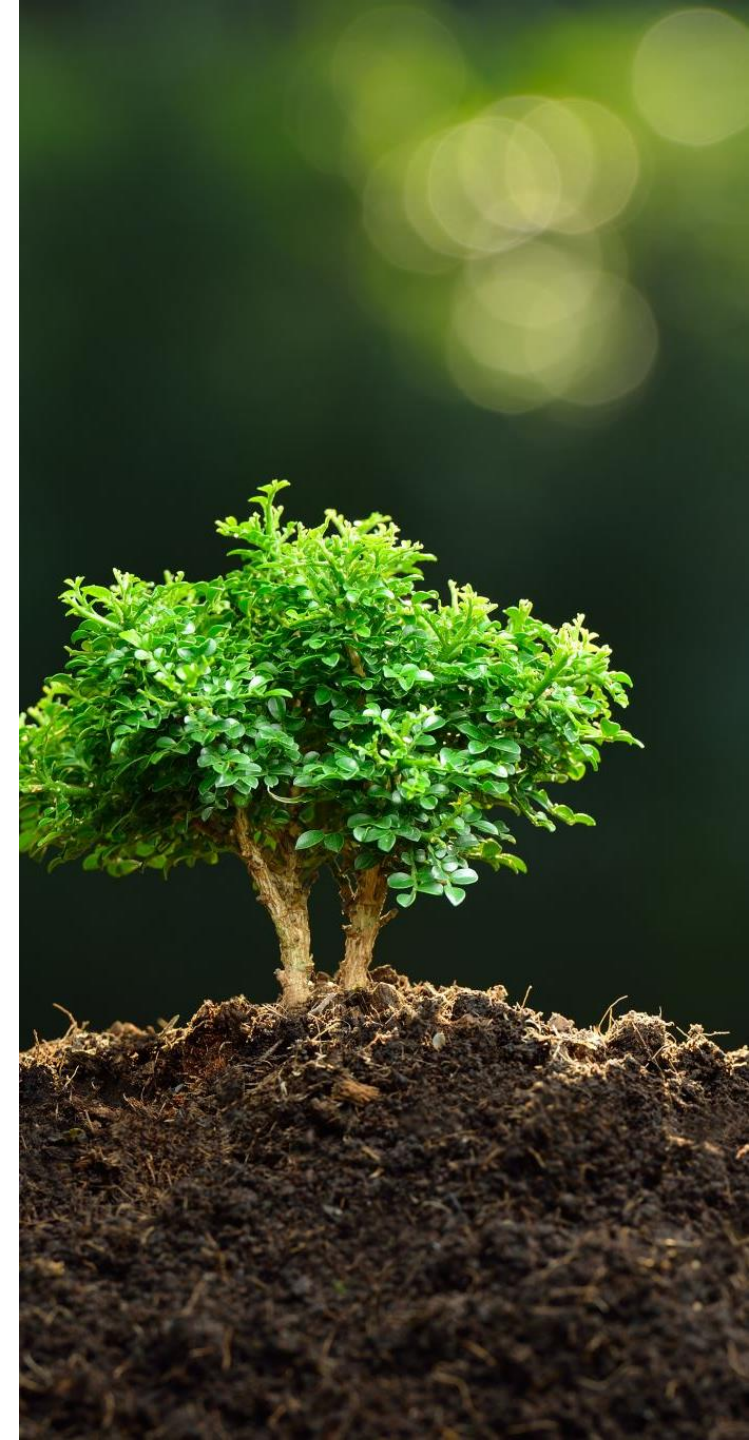
- Can nature become a subject?
- Can data (software) become a subject?



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Changes regarding objects

- Can an object become a subject (nature)?
- Can a subject (consumer) become an object (data profiling)?
- Or does the object then become a subject (a digital copy of him/herself: avatar)?





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Impact of these changes on legal relationships

1. What does this mean for our understanding of ‘ownership’ or, more generally, property rights?
2. What remains of the distinction between a property right and a contractual right/tort duty?
 - *Example: Is the Digital Euro a contractual right against the bank that holds the Digital Euro account, or is it a proprietary right against the ECB (or NCB) with erga omnes effect, because it is equal to cash? Or is it both?*



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Numerus clausus

- *Explicit aspects*
 - Substantive (number and content)
 - Procedural (creation, change, transfer and termination)
- *Implicit aspects*
 - Subject
 - Object



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Transparency

- Specificity
 - How specific are data? How specific is a ‘mountain range’?
 - What constitutes a data cluster or a ‘river’?
 - Problem of accession (what ‘belongs to’ an object)?
- Publicity
 - Data society – Privacy
 - Anonymous/Pseudonymous systems



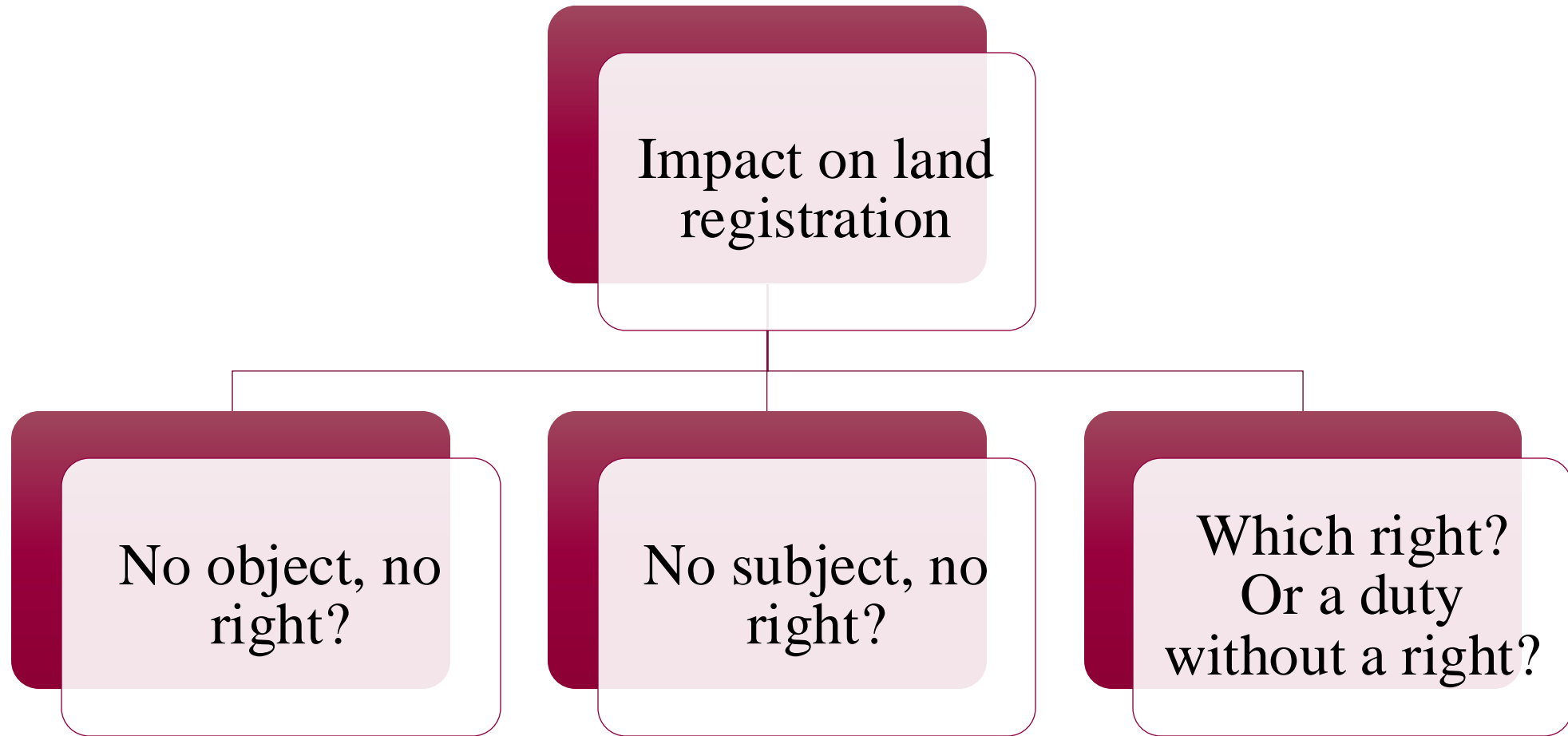
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Hierarchy

- Property has priority over an obligation
- Different ground rules
 - Example: Oldest right has priority



Property Essentials Breakdown



Property Essentials Breakdown

UNIDROIT Principles on Digital Assets and Private Law

Principle 2

Definitions

(1) ‘Electronic record’ means information which is (i) stored in an electronic medium and (ii) capable of being retrieved.

(2) ‘Digital asset’ means an electronic record which is capable of being subject to control.





Property Essentials Breakdown

UNIDROIT Principles on Digital Assets and Private Law

Principle 6

Control

(1) A person has ‘control’ of a digital asset if:

(a) subject to paragraphs (2) and (3), the digital asset, or the relevant protocol or system, confers on that person:

(i) the exclusive ability to prevent

others from obtaining substantially all of the benefit from the digital asset;

(ii) the ability to obtain substantially all of the benefit from the digital asset;

and

(iii) the exclusive ability to transfer the abilities in sub-paragraphs (a)(i), (a)(ii) and (a)(iii) to another person; and

(b) the digital asset, or the relevant protocols or system, allows that person to identify itself as having the abilities set out in sub-paragraph (a).

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Te Urewera Act 2014

Section 89 - Registration of Te Urewera establishment land in Te Urewera

(1) The Registrar-General must, in accordance with a written application by a person authorised by the Director-General,—

- (1) create, in the name of Te Urewera, 1 computer freehold register for the fee simple estate in Te Urewera establishment land; and
- (2) record on the computer freehold register—
 - (a) any interests that are registered, notified, or notifiable (including the Te Urewera easements), and are described in the application; and
 - (b) a notation that the establishment land is subject to this Act; and
 - (c) for the purpose of section 91, a notation that the register is limited as to parcels.

(2) Despite the registration of Te Urewera establishment land in the name of Te Urewera, the Board must exercise and perform all the rights, powers, and duties of the registered proprietor of the establishment land on behalf of, and in the name of, Te Urewera.

(3) The Registrar-General must have regard to subsection (2).

(4) A computer freehold register must be created for the establishment land as soon as is reasonably practicable after the settlement date, but not later than 24 months after that date.

(5) Subsection (1) applies despite—

- (a) the Land Transfer Act 1952 or any other enactment or rule of law; and
- (b) the fact that Te Urewera establishment land is situated in 2 land registration districts.

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Technical description - Te Urewera establishment land



South Auckland Land District and Gisborne Land District—Wairoa District, Gisborne District, Whakatane District, and Opotiki District, 208671.3397 hectares, more or less, being Sections 1 to 63 SO 461052. All Gazette notices 133217.1, 117422.1, 113221.1, 76598, 66950, S612826, and 60531. Balance Gazette notices S655768 and 71352 and Part Gazette notice H679634.1.



Property Essentials Breakdown

Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca

Artículo 1.

Se declara la personalidad jurídica de la laguna del Mar Menor y de su cuenca, que se reconoce como sujeto de derechos.

A los efectos de la presente ley, se entenderá que la cuenca del Mar Menor está integrada por:

- a) La unidad biogeográfica constituida por un gran plano inclinado de 1.600 km² con dirección noroeste-sureste, limitado al norte y noroeste por las últimas estribaciones orientales de las cordilleras Béticas constituidas por las sierras pre-litorales (Carrascoy, Cabezos del Pericón y Sierra de los Victorias, El Puerto, Los Villares, Columbares y Escalona), y al sur y suroeste por sierras litorales (El Algarrobo, Sierra de la Muela, Pelayo, Gorda, Sierra de La Fausilla y la sierra minera de Cartagena-La Unión, con sus últimas estribaciones en el cabo de Palos), e incluyendo la cuenca hídrica y sus redes de drenaje (ramblas, cauces, humedales, criptohumedales, etc.).*
- b) El conjunto de los acuíferos (Cuaternario, Plioceno, Messiniense y Tortonense) que pueden afectar a la estabilidad ecológica de la laguna costera, incluyendo la intrusión de agua marina mediterránea.*



Property Essentials Breakdown

Law 19/2022 of 30 September on the recognition of the legal personality of the Mar Menor lagoon and its basin.

Article 1.

The legal personality of the Mar Menor lagoon and its basin is declared, which is recognised as a subject of rights.

For the purposes of this Act, the Mar Menor basin shall be understood to be composed of:

- (a) The biogeographical unit consisting of a large inclined plane of 1. 600 km² in a north-west-south-east direction, bounded to the north and north-west by the last eastern foothills of the Betic mountain ranges formed by the pre-coastal mountain ranges (Carrascoy, Cabezos del Pericón and Sierra de los Victorias, El Puerto, Los Villares, Columbares and Escalona), and to the south and southwest by coastal mountain ranges (El Algarrobo, Sierra de la Muela, Pelayo, Gorda, Sierra de La Fausilla and the Cartagena-La Unión mining range, with its last foothills at Cape Palos), and including the water basin and its drainage networks (wadis, watercourses, wetlands, crypto-wetlands, etc.).
- (b) All the aquifers (Quaternary, Pliocene, Messinian and Tortonian) that may affect the ecological stability of the coastal lagoon, including the intrusion of Mediterranean seawater.





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Conclusions

- The separation between object and subject is disappearing
- This has a fundamental impact on the legal relationships between subjects
 - We need to think more in terms of relations and dynamics



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