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The concept of economic real property: a comparative study of French law, Moroccan law and Common law

Abstract: Real property is one of the fundamental rights that one seeks to own. It plays a significant role in meeting both social and economic needs. The concept of economic real property takes its origins from the Roman law reflects two opposing facets: the first is expressed as “positive ownership”, which is the effective exercise of management power over a thing that one does not legally own, potentially to realize benefits, in one's own interest and in the interest of the legal owner, the latter being certain to eventually gain full ownership of the asset itself or a substituted asset, or its value. and the second as “passive ownership” whereas at the end of the term, for the complete ownership of an asset (or of a substituted asset or its value) for which one is not the legal owner, and on which the legal owner exercises, during this time, the power of management in the interest, for the benefit, of the economic owner to whom can possibly be added (but never exclusively) their own interest. This paper aims to examine how real estate property is impacted by economic factors in Moroccan and comparative law. The comparative legal methodology is adopted to study the spirit of the different legal systems, namely the French law due to historical considerations and the Anglo-Saxon law. The findings of the study reveal that economic factors contribute to the development and emergence of a novel approach to real property.

Key words: Economic property; Real property; Real contract; Comparative law; trust.

Le concept de propriété économique : étude comparative des droits français, marocain et de la Common Law

Résumé : la propriété immobilière constitue l'un des droits fondamentaux auxquels tout individu aspire. Elle joue un rôle essentiel dans la satisfaction des besoins à la fois sociaux et économiques. Le concept de propriété immobilière économique trouve son origine dans le droit romain, qui met en évidence deux facettes opposées : La première, dite « propriété positive », correspond à l'exercice effectif du pouvoir de gestion sur une chose dont on n'est pas le propriétaire légal, dans le but d'en tirer des avantages, à la fois dans son propre intérêt et dans celui du

propriétaire légal. Ce dernier est assuré d'obtenir, à terme, la pleine propriété du bien lui-même, d'un bien de remplacement ou de sa valeur. La seconde, dite « propriété passive », renvoie à la situation inverse : à la fin du terme, la pleine propriété d'un bien (ou d'un bien de remplacement, ou de sa valeur) revient à une personne qui n'en est pas le propriétaire légal, tandis que, durant cette période, le propriétaire légal exerce le pouvoir de gestion du bien dans l'intérêt et au bénéfice du propriétaire économique, auquel peut éventuellement s'ajouter (sans jamais l'exclure totalement) son propre intérêt. Cette étude a pour objectif d'examiner comment la propriété immobilière est influencée par les facteurs économiques dans le droit marocain et dans une perspective de droit comparé. La méthodologie juridique comparative est adoptée afin d'analyser l'esprit des différents systèmes juridiques, notamment le droit français, pour des raisons historiques, et le droit anglo-saxon.

Les résultats de cette recherche révèlent que les facteurs économiques contribuent à l'émergence et au développement d'une nouvelle approche du droit de propriété immobilière

Mots clés : propriété économique ; propriété immobilière ; contrat immobilier ; droit comparé ; fiducie.

Introduction

Philbrick (1938) conceptualized the relationship between humans and property as the connection between a person and “the things that a man owns”; emphasizing ownership as an extension of individual identity and autonomy. According to Cole & al (2002), real property rights significantly influence the efficiency of resource utilization, linking ownership structures directly to economic performance. This perspective is further reinforced by Benda-Beckmann & al (2009) who argue that property is inherently multifunctional, serving not only as an economic institution but also as a fundamental component in shaping the identity of individuals and social groups. To them, “property regimes cannot easily be captured within a one-dimensional political, economic, or legal model” (Benda-Beckmann & al, 2009). Such a statement further highlights the complex and interdisciplinary nature of property as both a social construct and a legal right.

The origin of property right has long been the subject of extensive debate among jurists (De Laveleye, 1878; Philbrick, 1938). Some scholars even argue that the right to property predates the emergence of human culture itself (Philbrick, 1938). Throughout history, this right has undergone profound transformations— since primitive societies, the Roman Empire, up to the present day. The French Revolution of 1789 marked a decisive turning point that reshaped the legal conception of ownership, establishing it as a sacred individual right (Pommier, 2019). At the time of the American founding, real property was considered as a primordial concept in states' Constitutions (Wong, 2019). Constitutionnalists embarked upon four features characterizing real property. First, real property was considered as a natural right. Second, real property was inviolable and not subject to seizure without the owner's consent (Wong, 2019). Third, trials involving real property were

sacred. Last but not least, State seizures or interventions in real property must be strictly regulated and subject to judicial control (Wong, 2019).

In Morocco, property right is also considered inviolable. It is guaranteed by Article 35 of the Moroccan Constitution. However, its enforcement has not always been easy. This difficulty stems, on the one hand, from the multiplicity of legal regimes regulating real property and from the coexistence of registered and unregistered real property, on the other (Levraud & al, 2020).

However, the classic conception of real property as a “sacred” right no longer fits within the modern economic perspectives. New legal schemes of ownership have emerged, in more alignment with the global economic imperatives under what is now referred to as ‘economic ownership’ (Al-Alwani, 2011).

The technological and economic developments, since the past century up to now, have highlighted the pivotal role that real property plays in the modern society. It can no longer be restricted to meeting the social needs only, but has exceeded them to encompass economic ones (Besley, 1995). Within this evolution, and beyond purely technical changes, it seems that the concept of real property is in constant evolution (Alobaidi, 2021).

Economic globalization has intensified this evolution, resulting in convergence between the Latin and common law systems. This convergence has led to a pressing need for renewed scholarly reflection on whether traditional property theories remain capable of accommodating modern global, technological, and economic developments or not. Property law, like business law, has been reshaped by these dynamics, borrowing concepts from Common Law systems—such as the trust and time-share models—later integrated into Latin legal systems, as exemplified by the French ‘*fiducie*’. Today, in light of the technological developments and globalization in its modern form, there is a real need for research that investigates real property law in the Moroccan legal system and comparative law.

This study aims at understanding the transformations that have affected the real property ownership in Morocco in relation to its economic environment. Due to their vast scope, comparing the entire real property rules of the two systems would be overambitious and far from being realistic. An important question arises in this context: Would the evolution of real estate private property right give rise to a new ownership paradigm shaped by the current economic and social transformations affecting the Moroccan society?

The comparative legal methodology is adopted to study the spirit of the different legal systems, namely the French law due to historical considerations and the Common Law. The latter has contributed to the evolution of real economic ownership either through legal schemes or case law. We aim to provide a critical analysis that would enhance knowledge about the economic real property in Moroccan law in comparison to other institutions, namely, in the “*fiducie française*”, the Common Law trust and the American concept of “public use”. This comparison of the different

legal systems is very enriching and can only lead to what Markesinis (2000) calls “intellectual interaction and borrowings.”

This article is organized as follows. After the introduction section 1 introduces the concept of real property right in the Moroccan and comparative law (1). Section 2 deals with the foundational principles of real economic ownership in the Common Law Trust system (2). Section 3 shows the manifestations of economic ownership through the system of *fiduci* in the French law (3). Section 4 explores the American concept of public use. In section, we examine the modern approach to economic ownership and its possible integration in the Moroccan legislation (4). Then, we conclude.

1. The concept of real property right in the Moroccan and comparative law

Article 14 of the Moroccan law number 08.39 of November 22th, 2011, states that “The right of ownership confers upon the owner the exclusive power to use, enjoy, and dispose of the property, constrained only by the provisions of the law”. This Article is inspired by Article 544 of the French Civil Code of 1804, described by Buckland (2007) as “a modern formulation of the Roman law principle of dominium”.

The French law regulating real property originates from the Roman civil law (Davies, 1980). The term “propriété”, which refers to ownership under the Common Law, is an exclusive right that one has on a thing. According to the Article 544 of the “Code Civil”, the owner has three major rights, expressed here in *Latin* as: *usus*; the right to use, *fructus*; the right to take its fruits, and *abusus*; the right to destroy the property or alienate it (Guelida, 2022). According to Mazeaud (1994), the French civil system reflects an absolutist approach of property. In other words, there will be a single person who has exclusive and perpetual rights over the thing. It is a direct relation between that thing and the owner. The French theory is that the land can be owned like any other thing, except that real property is immovable (Davis, 1980). However, this undivided absolute right might be divided (Davies, 1980), as in the case of real rights such as usufruct.

Decroux (1977) defines the Moroccan real property as the act of the complete appropriation of a real property which remains subject to the restrictions imposed by law. Riffi (2017) states that in the Moroccan context, Article 14 of the Moroccan law number 08.39 guarantees the same attribute of ownership as in the French Civil Law. In other words, the Moroccan legislation reflected the civilian conception of real estate property. Indeed, “the owner may deal with the property as they please, but this was subject to enactments of positive law” (Matthews, 2013). The owner has what Matthews (2013) refers to as an “absolutist view of property”. The law also guarantees the owner three types of rights: *usus*, *fructus*, *abusus*. As far as private property right is concerned, two types exist: (i) registered property with a specific legal structure, governed by the law of June 2nd, 1915 (as it is modified by the law 07-14, November, 22nd, 2011) and (ii) the real estate properties called “Melk”, the Arabic term of ownership, which are governed by the Muslim law and the Maliki rite (Guelida, 2022).

The France and Moroccan conception of real property is meant to reflect the civil school scheme, that guarantees the owner a full ownership on the property. The concept of real property within the Common Law is quite different. The anti-conceptual approach to the notion of real property is the main criteria distinguishing the Common Law system and the civil legal system (Matthews, 2013). First, the English legal system approach defines the real property as undivided one (Davies, 1980). That is to say, that property right is a relation that one has to thing, even an imaginary thing like a debt (Matthews, 2013). A person owns a right in a thing, it is what Matthews (2013) defines as a “metaphysical approach” to property right. These is described by Johnson (2007) as “the bundle of rights”. It is an abstract approach to the notion of property describing it as a set of rights *vis-à-vis* others, not a right to a thing (Johnson, 2007). In the 1930’s the American Law Institute (A.L.I) described the bundle of right concept of property as a set of relations among people (Johnson, 2007). These concept works for both tangible and intangible properties.

This comparison of real property right in the common law and the Civil legal system is marked by a distinctive complexity. While the first considers property as estates, the latter focuses on holistic ownership (Chang & al, 2012). Accordingly, interpreting the foundations of property ownership in Common Law through the framework of Latin-based legal systems may constitute conceptual challenges for Moroccan or French jurists. The difficulty arises from the idea that individuals do not possess, under the English Law for instance, absolute ownership of land except in the name of “the Crown” (Davies, 1980). Consequently, ownership of real property in England is neither absolute nor perpetual, except in a few exceptional cases. It typically endures for a fixed term or until the death of the holder, after which title to the property reverts to the Crown (Davies, 1980).

Despite the clear difference between the common law and civil law schools in terms of real property rights prerogatives, they both converge in their perception of real property right as a catalyst for social and economic development. A new approach has emerged, taking into account the economic variables in the analysis of the legal conception of real property, has led to the redefinition of real ownership.

2. Foundational Principles of Economic Ownership in The Common law Trust System

The economic conception of real property is debatable. Blanluet (1999) defines economic property as “the legal relation of a person, who is not the legal owner, to a thing enabling him/her a right exploit and take the economic advantage of the thing.” Pommier (2019) highlights that “Economic ownership is the right, currently or in the future, to derive all of a thing’s economic services, this situation being organized by law, contract or unilateral will”. In other words, it’s the possibility given to the economic owner to take the economic benefit from property within a period of time. Thus, the economic ownership has a personal character (Pommier, 2019). It is temporary, perpetual, exclusive, and *intuitu personæ*.

This section addresses the conceptual framework of the Common Law trust (2.1) and the legal basis of divided ownership within the Common Law (2.2).

2.1 Definition and Components of the Trust

Trust is generally defined as a relationship in which the trustee manages and holds real property for the benefit of the beneficiary or the settlor. Quoting Spiliotis (2019), the Trust has been viewed as:

“a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.” (Spiliotis, 2019).

Legally, the trust is defined as a juridical act by which the owner of a property—whether movable or immovable—transfers legal control over it to a trustee, who exercises his powers to manage and invest in the property for the benefit of one or more beneficiaries designated by the settlor (Al-Masri, 1984).

Emerging in fifteenth-century England, the trust developed as an institutional response to the rigid constraints of the feudal system that then governed property relations across Europe, providing a more flexible framework for the exploitation and management of real assets (Wynen, 1949). However, the origins of the trust remain the subject of doctrinal disagreement (Avini, 1995). Some scholars trace it back to Roman law, while others view it as a product of the Latin legal school (Holmes, 1899). A third category of scholars attributes its emergence to the Islamic institution of *waqf* (Goitein & al, 1983). The earliest features of the trust as a legal institution appeared in thirteenth-century England (Guelida & al, 2022), influenced by the practices of the Franciscan movement (Zartaloudis, 2012).

It is noteworthy that the Trustee Act 1925 in England provides no detailed statutory definition of the trust, despite its mention in Section 68. Similarly, the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition does not define the institution in substantive terms, limiting its purpose in Article 2 to specifying the Convention’s field of application. Accordingly, a trust is generally constituted by the unilateral intention of the settlor (Pommier, 2019) through a written instrument known as a *trust deed*. This document transfers the legal ownership of property—whether movable or immovable—to a trustee, while expressly setting out the purpose of the trust, identifying its beneficiaries, and defining the trustee’s obligations. In certain cases, however, the settlor may simultaneously assume the roles of trustee and beneficiary (Hansmann & al, 1998).

The trust deed is characterized by the trustee's strict obligations toward the settlor. The document often defines the objectives to be achieved, the beneficiaries, and the duration of the trust. In this context, the trustee is bound by an obligation of result, not merely of diligence. Anglo-Saxon jurisprudence has therefore developed two fundamental principles governing such fiduciary relationships:

The first principle, known as the “no conflict rule,” proscribes situations in which conflicts of interest may arise (Cuif, 2005). This rule is particularly relevant when an individual is entrusted with the management of multiple funds or assets whose respective interests are mutually incompatible (Schmidt, 2004). It extends beyond actual and immediate conflicts, encompassing potential and future conflicts as well. In doing so, it embodies one of the contemporary dimensions of financial and fiduciary transactions, where multiple parties may be simultaneously bound by interrelated legal relationships—such as trust arrangements, sales contracts, or membership agreements, among others (Mallet-Bricout, 2013). This principle is founded upon two fundamental rules : the first rule, known as the “self-dealing rule”, prohibits the person entrusted with managing real property from acquiring any of the assets that have been transferred to him by the investor; the second rule, referred to as the “fair-dealing rule”, forbids the manager from purchasing any right granted to the beneficiary (Ropenga, 2013).

In a case dating back to 1896, the court in England held that it is impermissible to combine the dual roles of managing a company and simultaneously obtaining a material advantage, given the fiduciary position that the manager occupies within the corporate hierarchy¹.

The second principle, known as the “duty of care,” imposes an obligation of prudent and diligent management of trust property. It requires the trustee to exercise a high degree of accuracy, foresight, and responsibility in the administration of the trust. In practice, this duty entails adherence to the objectives established in the trust deed, while maintaining a balance between the pursuit of profit and the protection of beneficiaries' interests. The trustee must therefore ensure both the appreciation of the property's value and the safeguarding of the rights of all parties involved (Garza, 2014).

2.2. Divided Ownership as a Structural Feature of Economic Property in the common law

Common Law property system is founded upon the principle of “legal fictions” (Al Wahhab, 1963). A clear example of this principle can be found in the realm of real property, where ownership is conceived of not as absolute dominion over the material asset itself, but rather as a right over the property. Consequently, the owner cannot exercise full physical control over the land—such as demolishing or reconstructing it at will—but may dispose of the legal right associated with it for a determined period (Davies, 1980). This conception bears a certain

¹ Bray v Ford 1896 AC 44 (HL).

resemblance to the usufruct right recognized within the Latin legal tradition, though with distinctions that fall beyond the scope of this study.

In this sense, the trust represents a concrete manifestation of the principle of divided or double ownership, as structured by the Law of Property Act 1925. Under this framework, legal ownership is vested in the trustee, while the beneficiary retains what is known as equitable ownership (Al Wahhab, 1963).

The common-law trust illustrates the flexibility of real property rights by separating the legal owner from the economic owner, in an attempt to meet the economic needs. In the same vein, the French “*fiducie*” demonstrates this functional approach within a civil-law system, whereby ownership is used for financial and economic purposes. This common economic perception brings together the two mechanisms despite their differing legal origins.

3. Manifestations of economic ownership through the system of the “*Fiducie*” in the French law

The French legislator introduced the *fiducie* system through Law No. 2007-211 of February 19th, 2007. According to article 2011, a “*fiducie*” is defined as: “the operation by which one or more settlors transfer assets or rights or securities, or a collection of assets or rights or securities, present or future, once separated from their own estate, to one or more trustees who manage them separately from their own property — for a specific purpose in favor of one or more beneficiaries. The settlor typically seeks to distinguish between his personal financial estate and his credit-estate.”

The “*fiducie*” system reflects a flexible conception of using property for economic purposes. Article 2018 of the French civil code states that this system requires the transfer of the settlor’s real estate ownership to the trustee under the conditions set out in the contract and for a fixed term¹. Thus, the trustee is obliged to manage the transferred real estate but within the limits agreed in the contract, and for the benefit of a third-party (Kuhn, 2007; Arsac, 2015). At the end of the contract these rights must be returned (Arsac, 2015). In this sense, the trustee is bound by the contractual terms and must achieve the agreed result (Atias, 2011).

The economic conception of real property in the French legal system might be recognized through the scheme of the “*fiducie*”. Nevertheless, despite the enacting of a specific law that governs the “*fiducie*” system, the latter has not been able to totally manifest the forms of economic ownership as it is embodied in the Common Law trust system. Indeed, from 2007 up to 2020 only 208 “*fiducie*” contracts were registered in the “National Register of Fiducies” (Pommier, 2019).

According to Pommier (2019), the weak uptake of the “*fiducie*” management is due to the fact that the manager is bound by the terms of the contract (Zenati-Castaing & Revet, 2008). Thus, he/ she

¹ Article 2018 2 states that the “*fiducie*” deed is set for 99 years.

is not a full owner as he/she does not have the right of disposal. It is what Emerich (2013) calls “an interlude in ownership”. Still, the Common Law trust has largely influenced the new “*fiducie*” scheme in France in terms of management, trustee duties among others (Mallet-Bricout, 2013). In some circumstances, the trustee is treated as a property owner (Dross, 2012). He/she is allowed to transfer the asset without any restrictions or dead line terms. Dross (2012) underlines that neither the “*fiducie*” nor the property right itself is temporary, but rather the “appropriated patrimony” to which it is assigned. In *Katzoo v. Kullu* The French Court of Cassation (Commercial Chamber) held that, within the framework of a fiduciary contract, the economic beneficiary could be treated as an owner.¹

The French legal system did not provide significant help to promote the “*fiducie*”. The law restricted the exercise of the trustee’s functions to a limited set of financial institutions. By contrast, in the Common Law trust the managerial decisions of the trustee are not tied by any restrictions or conditions. Pommier (2019) believes that the French legislator did not succeed in establishing an adequate legal framework that matches the characteristics of economic ownership. Nonetheless, we do not fully adhere to this viewpoint. Although it might be true that the “*fiducie*” does not reflect all the forms of economic ownership compared to the trust system, it still brings about a renewed approach of ownership that differs from the classical conception. It has introduced what is known as “the economic services of ownership”, which refer to the advantages the economic owner can draw from the asset.

In the next section, we will explore another facet of the use of real property as an economic catalyst manifested in the American concept of “public use”.

4. The US concept of “public use”

The notion of “public use” under the US fifth amendment is far from being easily understood. Its origins are traced back to Common law English and appeared in the USA in early seventeen centuries (Sackman, 1995). The “public use” is a mechanism that enables the state to use its eminent domain to take private real property for public use. The fifth amendment of the US Constitution “requires the government to compensate citizens when it takes private property for public use”.

However, the notion of public use was called into question. The main concern was to determine whether the public use referred to public benefits only, or it went beyond to involve economic development as well. Since the late nineteen century and early twentieth century, the US Federal

¹ French Cassation Court, 18 octobre 2016, 15-14.528. Retrieved from: [Cour de cassation, civile, Chambre commerciale, 18 octobre 2016, 15-14.528, Inédit - Légifrance.](#)

court held that the “public use” prerogative had to be limited to public benefit¹. Consequently, the use of eminent domain for private project violates the fifth amendment.

Jurists adopted two opposite views regarding the notion of public use. Some of them consider that eminent domain may be used by the state for schools, airports, public offices or hospitals. An opposing view held that the eminent domain may concern “any private use so long as the taking ostensibly produces a general public benefit” (Kelly, 2006). Thus, an expropriation may be justified to develop a real estate, build a factory or construct a stadium or casino².

According to Kelly (2006), the “public purpose” principal may be open to controversial interpretations. That is to say that the taking of private real property may be justified if the economic benefits are meant to generate global profits for the whole society. Private parties seek to use what Kelly (2006) describes as “inordinate private influence” to overcome the “hold out” strategy adopted by purchasers.

A number of US cases have confirmed this approach. In *Berman v. Parker*, the Court confirmed a redevelopment plan targeting a blighted area of Washington, D. C. The Court “upheld a redevelopment plan targeting a blighted area of Washington, D. C., in which most of the housing for the area’s 5,000 inhabitants was beyond repair. Under the plan, the area would be condemned and part of it utilized for the construction of streets, schools, and other public facilities. The remainder of the land would be leased or sold to private parties for the purpose of redevelopment, including the construction of low-cost housing”³. Similarly, in *Kelo v. City of New London*, the court held that “Economic benefits are a permissible form of public use that justifies the government in seizing property from private citizens”⁴. In light of the above cases, the court made no distinction between public or private use of the eminent domain. Also, the court considers that the use of eminent domain is necessary in the case of private project so as to overcome the “hold out” problem.

Reexamining the “public use” concept by the US Federal Court reiterates the economic conception of real property. The private real property can be seized for private projects, which guarantees economical and thus public benefits. By equating “public use” and “public purposes”, the court

¹ Clark v. Nash, 198 U.S. 361 (1905), retrieved from: [Clark v. Nash | 198 U.S. 361 \(1905\) | Justia U.S. Supreme Court Center](#).

² City of Las Vegas Downtown Redevelopment Agency v. Pappas, (2003) retrieved from: <https://law.justia.com/cases/nevada/supreme-court/2003/39255-1.html>.

³ U.S. Supreme Court, *Berman v. Parker*, 348 U.S. 26 (1954), retrieved from: <https://supreme.justia.com/cases/federal/us/348/26/>.

⁴ *Kelo v. City of New London*, 545 U.S. 469 (2005), retrieved from: [Kelo v. City of New London | 545 U.S. 469 \(2005\) | Justia U.S. Supreme Court Center](#). The court held that “[W]e do not... approv[e] of the broad proposition that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the State.”

concluded that the use of “eminent domain” by private parties might be justified for “a comprehensive developed plan”¹.

The public use concept demonstrates that real property right has witnessed great upheavals. The latter have resulted in major changes in this right in order to meet economic needs. New legal schemes are meant to respond to the economic strategies which contribute to the evolution of the conception of real property in both the Moroccan and comparative law.

5. The Modern Approach to Economic Ownership and Its Possible Integration in the Moroccan Legislation

The evolution of theories related to economic ownership has led to a renewed conception of property centered around the ownership of services with an economic character. This approach stems from the need to adapt the legal rules governing property rights to economic transformations. We examine the modernized conception of economic ownership through the principle of ownership of services and then the manifestations of economic ownership in the Moroccan legislation²

5.1 The Ownership of Services with an Economic Character

the economic property requires the division of ownership into legal ownership and economic ownership. The latter is defined as the right granted to a specific person to use all the economic benefits of the thing during a certain period (Goyet, 1983). The economic property reflects two opposing facets: the first is expressed as “positive ownership”, which is the effective exercise of management power over a thing that one does not legally own, potentially to realize benefits, in one's own interest and in the interest of the legal owner, the latter being certain to eventually gain full ownership of the asset itself or a substituted asset, or its value (Del Cont, 1997). and the second as “passive ownership” whereas at the end of the term, for the complete ownership of an asset (or of a substituted asset or its value) for which one is not the legal owner, and on which the legal owner exercises, during this time, the power of management in the interest, for the benefit, of the economic owner to whom can possibly be added (but never exclusively) their own interest.

The economic ownership differs from legal ownership, yet the two are concomitant. Both exist simultaneously. economic ownership is a right established by law (*propriété de droit*), since it cannot be conceived in the absence of legal ownership. In fact, it cannot be a mere factual property (*propriété de fait*) such as possession (Blanluet, 1999).

¹ U.S. Supreme Court, *Berman v. Parker*, 348 U.S. 26 (1954).

5.2 Manifestations of Economic Ownership in the Moroccan Legislation

The existence of economic ownership within the Moroccan law requires careful scrutiny before discussing its manifestations. Some confusion might arise with regard to some real rights including the condominium and usufruct.

Pommier (2019) highlights the similarities between economic ownership and condominium. One similarity which is shared by both schemes and is relevant to the present study is the fact that more than one person may hold rights over the same thing. Condominium is regulated under Articles 960 of the Moroccan civil law. However, the economic ownership and condominium differ in terms of benefits. While the co-owners, in the case of condominium, hold individual rights in their shares, the economic owner, in the case of the economic ownership, does not share the benefit of the thing with the legal owner.

As far as the usufruct is concerned, it is regulated by the Article 79 of the Moroccan Code of Real Rights. It is a “*right in rem*” that allows the usufructuary to use and exploit an immovable asset belonging to a bare owner for a specific period of time or until the death of the usufructuary. It is this temporary aspect of assets’ use that is common between the two schemes. The major difference though, lies in the fact that the usufruct constitutes a severance of the right of ownership (Ibn Maajouz, 1999). The economic ownership, however, as we previously mentioned necessarily requires the existence of legal ownership.

Having highlighted some of the similarities and differences between the economic ownership and other real rights, we will sketch next the characteristics of the economic conception of real property. Pommier (1999) considers economic ownership to be a hybrid right. This scheme reflects a mixture of personal and real rights. According to Grimaldi (1991) this approach posits that the trustee in a *fiducie* or trust has a double position: both a creditor of the fiduciary and a holder. As a creditor, the trustee is contractually obliged to manage the asset according to the terms of the agreement. Being a holder of a “*quasi*” real right over the thing, the trustee enjoys different rights to (i) use (ii) exploit and (iii) -under some circumstances- dispose of the asset for a determined period of time (Elland-Goldsmith, 1991).

In Moroccan law, repurchase agreement operations, governed by the law number 01-24, might reflect a sort of economic ownership. Article 1 of the law 01-24 states that “A pension is the operation by which a legal person (...) transfers in full ownership to another legal person, a mutual fund, or a securitization collective investment fund, for an agreed price, securities, shares or instruments referred to in Article 2 of this law and under which the transferor and transferee irrevocably commit respectively, the former to repurchase the securities, shares or instruments, and the latter to re-transfer them at a price and on a date agreed”. Al-Alwani (2011) considers that that these operations reflect an economic dimension and consequently represent one of the mechanisms of the security trust “*fiducie-sûreté*”, regulated under the French Law of 2007.

Residential real estate tourism for promotion (RRETP), governed by the Moroccan Law No. 01-07, might reflect the economic approach of real property. According to Article 10 of the law n 01-07, 70% of the RRETP units are to be necessarily leased to a management company for a time period of 9 years. Hence, the proprietors can only use the assets for a given time, i.e., 2 months a year and 15 days during the peak season. These constraints are highly restrictive in nature as they tend to limit the owner's right of disposal. For instance, in case the owner decides to sell his/ her estate, the buyer must abide by the terms of the existing lease contract in accordance with Article 12 of the law.

The RRETP case involves a set of legal relations, which differ considerably in their character and effect (Guelida, 2022). The RRETP brings about a new scheme of real property which forces the owner to rent his/ her estate for 9 years. This conception stands in clear opposition to the inviolable sanctity principle of right of disposal of the civil law school.

The RRETP legal mechanism can be described as a form of positive economic ownership, in which the management company holds the economic power to manage the asset in a manner that secures economic returns for both parties. The legal owner, while retaining legal title, is deprived of direct material benefits during the contractual term, a situation which some scholars have characterized as an instance of "bare ownership" (Ibn Maajouz, 1999; Decroux, 1977).

Type of right	Situation
Right of disposal	Yes with restrictions
Right of enjoyment	yes
Right to use	Limited
Right to seek partition	-
Alienability	Free (inter vivos by deed or testimony)

Table 1: Owner's right in RRETP

Conclusion

In the present article, we explored the new conception of real property in light of the economic context. The real economic property is a new way to align this right with the current economic needs. We compared the concept of real property based on different schools, namely the Common Law and the Civil School of law. While the former reflects an anti-conceptual approach to the notion of real property, the latter has an absolutist view of ownership.

We showed that economic ownership is derived from the parties' sole will. It is based on real estate such as the "trust", "*fudicie*", and the "RRETP" systems. The trust mechanism incarnates the concept of dual ownership, involving a legal owner and an economic owner. The *fudicie* institution, on its part, brings about a new approach of ownership under what is known "the economic services of ownership". The latter refers to the advantages the economic owner can draw from the asset.

The Moroccan RRETP can be described as a form of optimizing the economic function of real property. It is bifurcated into positive and negative ownership. In the former, the management company holds the economic power to manage the asset while in the latter, the legal owner is deprived of direct use. Another related concept we examined consists in the US “public use”, which refers to the seizure of private real property to ensure economic and public benefits.

We demonstrated that the economic conception of real property has been further supported by case law. The US Supreme Court held that the use of eminent domain by private parties can serve economic purposes. In France, the Cassation Court stated that the trustee of a “*fudicie*” is treated as an economic owner.

Our analysis revealed that the economic real property shares the same characteristics of classical real property, namely the right to use, to exploit and a particular right to dispose. The main difference, though, lies in the temporary aspect of economic ownership.

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