

A COMPARATIVE STUDY OF THE DISTRIBUTION OF OWNERSHIP RIGHTS IN PROPERTY IN AN APARTMENT OR CONDOMINIUM SCHEME IN COMMON LAW, CIVIL LAW AND MIXED LAW SYSTEMS

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I. INTRODUCTION

Most legal systems recognize that apartment or condominium ownership relates to two distinct components of the land and buildings comprised in a condominium development. Included in these components are firstly apartments, flats, or units which are intended for the exclusive use by apartment owners, and secondly, common property or common elements which are intended to be used collectively by all the owners. In most condominium statutes these two components are combined into an indivisible composite entity consisting of an apartment coupled with an undivided share in the common property.¹ Even in countries like Scotland, which construe the new entity, created in terms of the Tenements Bill² as a flat to which a right of common property in certain parts of the tenement scheme is attached as a pertinence, a distinction is still drawn between parts of the scheme which form part of the flat or apartment, and parts of the scheme which are considered part of the common property.

This distinction is important for the following reasons. Firstly, an apartment, unit or flat owner has exclusive ownership with regard to those parts of the scheme that are included in his unit, whereas he only has a form of collective ownership over the common property. This means that the owner has greater rights of use and enjoyment with regard to his or her apartment (as well as more power to alter his or her apartment according to individual taste) than he does to the common areas. Within the restraints of neighbor law, he

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¹ See C.G. van der Merwe, *Apartment Ownership*, ch. 5, vol. 6, p. 50, in *INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAWS* (U. Drobnig & K. Zweigert eds., 1994).

² See *SCOTTISH LAW COMMISSION REPORT No. 162, Report on the Law of the Tenement* 119 (1998) [hereinafter *SCOTS LAW COMMISSION*].

Ownership Of Rights In Audiovisual Productionsa Comparative Study

Xiaolong Qi



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