

## Distinction between real rights and personal rights

|                 | Real Right                                                                                                                                                                                                                                                                                                                                                                                                                                              | Personal Right                                                                                                                                                               |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Object          | Tangible <i>Corporeal</i> thing (except a pledge of claims)                                                                                                                                                                                                                                                                                                                                                                                             | Performance (to give something, to do something or not to do something)                                                                                                      |
| Content         | The holder of a real right will have a direct claim to and a right of disposal over a thing                                                                                                                                                                                                                                                                                                                                                             | The holder of a personal right is entitled to claim performance from a specific individual.                                                                                  |
| Remedies        | The holder of a real right can enforce his real right by means of a real remedy (e.g. <i>rei vindicatio</i> ) of owner, which can be instituted against anyone who is unlawfully in control of the thing.                                                                                                                                                                                                                                               | The holder of a personal right enforces his right by means of a personal remedy e.g. <i>condictio furtiva</i> (action of an owner against thief to claim back stolen object) |
| Source / Origin | Real rights have their origin in legal facts as opposed to obligations e.g. delivery, accession ( <i>accessio</i> ) and prescription.                                                                                                                                                                                                                                                                                                                   | Personal rights come into existence through obligations e.g. in terms of a contract or a delict.                                                                             |
| Absoluteness    | Real rights are "absolute" in principle : The holder of a right can vindicate his thing (subject to certain exceptions) from anyone who may be in control of a thing.                                                                                                                                                                                                                                                                                   | Personal rights are relative in principle : The holder can enforce his right only against that person who is obliged to perform in terms of an obligation.                   |
| Preference      | In case of insolvency, a real right enjoys preference over other rights <i>Maxime</i> 'first in time is stronger in law' ( <i>prior in tempore est potior in iure</i> ) is applied in case of two or more competing real rights.                                                                                                                                                                                                                        | In most cases the <i>prior in tempore est potior in iure</i> principle will not apply to personal rights.                                                                    |
| Publicity       | When it comes to creation, transfer or extinction real rights requires some form of publicity:<br>Delivery – transfer of ownership of movable thing.<br>Registration – immovable property<br>Reason for this lies in nature of real rights. Since these rights have to be respected by the world at large, it is important that there should be some form of publicity informing outsiders of existence, transfer or extinction of real rights therein. |                                                                                                                                                                              |

# Real Rights

**AW Rasmussen**



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