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LEGAL RELATIONS AND REGULATORY ISSUES IN THE DIGITAL ECONOMY

EU and China in a comparative perspective

Edited by
MARINA TIMOTEO AND BARBARA VERRI

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THE PROBLEM OF DATA OWNERSHIP: A COMPARATIVE LAW PERSPECTIVE

*Ermanno Calzolaio**

Abstract: The present contribution aims to investigate the issue of digital data ownership, which lies at the heart of the digital revolution and remains largely unanswered. The article opens with a preliminary outline of the characteristics that distinguish data from other assets. It then goes on to highlight the property models in the comparison between common law and civil law, thereby revealing the difficulties of reconciling the traditional property discourse with data. The EU data strategy demonstrates that the regulation of data collection and transfer is problematic. The paper presents a series of concluding remarks that underscore the necessity to reconfigure established principles in order to align with the demands of the contemporary world.

1. *Introduction*

Our daily activities constantly generate digital data, whether through our active or passive participation. Data does not arise from nowhere, but from every access to smartphones, devices, products and medical screenings. As data is closely tied to specific human beings, one may think that it belongs to the person to whom it is referred. Significantly, the former Business Director of Cambridge An-

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alytica, after giving evidence exposing its data harvesting practices, became a public speaker with the handle #OwnYourOwnData[1]. The term 'own' clearly evokes the claim of identifying someone to whom data belongs.

From a legal perspective, however, the issue of digital data ownership is complex. The question: "Who owns the data?" remains without a conclusive response.

This contribution aims to investigate on this issue, which lies at the heart of what is happening with the so-called digital revolution[2]. The analysis starts with a preliminary outline of the characteristics that distinguish data from other assets (§ 2). Subsequently, an overview of the property models in the common law-civil law comparison will reveal the difficulties of reconciling the traditional property discourse with data (§ 3). The attention will then turn to the EU initiatives in this field, showing the extent to which regulating data collection and transfer is a slippery slope (§4). Finally, some concluding remarks will reflect on the need to reshape traditional dogmas, in order to address the demands of our contemporary world (§ 5).

2. *The characteristics of data*

Digital data is a new asset, completely unknown until recent years, having gained crucial importance from an economic perspective. The term "data economy" denotes an economy built on the digital revolution to bridge the physical and cyber worlds. Data is conventionally distinguished in at least four categories. First, data can be the result of the datafication of real-life objects. Second,

[1] Cf. the petition with the strap line 'Mark Zuckerberg, change Facebook's rules and give us back control over our data, our digital assets, our property', started in 2018 by Brittany Kaiser, *Tell Facebook: Our Data Is Our Property #OwnYourData*, https://www.change.org/p/tell-facebook-our-data-is-our-property-ownyourdata (accessed February 12, 2026).

[2] This paper develops a previous study of mine, E. Calzolaio, *The Data Economy, Health Data and the Lexicon of Property: Comparative Remarks*, in M. Catanzariti, F. Incardona, G. Resta, A. Sönnerborg (eds.), *Data Privacy, Data Property, and Data Sharing. An Interdisciplinary Perspective for Post-Pandemic Transnational Scientific Research*, London, 2025, p. 69.

it can be related to the datafication of information (news, research results, etc.), thus constituting the outcome of intellectual activity or the representation of nonmaterial entities. Third, it is generated from people taken up through platforms and services available on the Web, allowing news about orientations, opinions, and sensitive aspects (age, name, gender, attitudes, behaviour) to be obtained. Finally, data can be automatically generated by digital technologies[3].

The ways data is stored and processed are continuously evolving. With the advent of the so-called Internet of Things, objects interact and gain 'intelligence' because they can communicate data about themselves and access aggregated information from others. Most data come from smart connected objects (cars, home appliances, manufacturing robots) and in computing facilities closer to the user than in classical clouds (this phenomenon is known as 'edge computing').

The rapid increase in the amount of data generated worldwide is also due to the diffusion of the demand for generative artificial intelligence models. It is worth noting, incidentally, that this phenomenon raises environmental concerns; for example, recent studies show that the deployment of AI servers across the United States could generate an annual water footprint ranging from 731 to 1,125 million m3 and additional annual carbon emissions from 24 to 44 Mt CO2-equivalent between 2024 and 2030, depending on the scale of expansion[4].

Despite its ever-growing economic importance, it is difficult to qualify data from a legal perspective, having peculiar characteristics of its own, different from other material and immaterial objects.

The first characteristic to emphasize is the easy transferability and replicability of data, which is not perishable, it does not have to exist at one specific place in the world and it can be used simultaneously by an indefinite number of subjects. The same data could be

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[3] J.-S. Bergé, S. Grumbach, V. Zeno Zencovich, *The 'Datasphere', Data Flows beyond Control, and the Challenges for Law and Governance*, in *Eur. J. Comparative Law and Governance*, 2018, p. 144.

[4] T. Xiao, F.F. Nerini, H.D. Matthews *et al.*, *Environmental impact and net-zero pathways for sustainable artificial intelligence servers in the USA*, in *Nature Sustainability*, 2025, available at https://doi.org/10.1038/s41893-025-01681-y.

instantiated in numerous diverse and scattered copies, without altering its consistency in any way. This means that the use of data is not 'rival', which is one of the main traditional features of property.

The second characteristic is that data is generated through the mediation of interested parties (search engines, social networks, etc.), capturing it in a way useful for collection. It is the capacity to understand people's conduct and needs in the context of large groups that makes data valuable. This means that what is relevant is not only the single data, but foremost its aggregation with other data.

The third characteristic is that aggregated data is more useful and valuable in combination with algorithms that analyse and predict patterns. This means, first, that its benefits are centralized, privileging incumbent actors to be oligopolies exploiting the data market, and, second, that data, appropriately collected and processed by computer tools (data analytics), soon escapes any possibility of identification[5].

3. *Property in the comparison civil law-common law*

Considering the characteristics of data outlined in the previous paragraph, it is now useful to delve briefly into the term 'ownership', which is very elusive from a legal perspective. In English, ownership and property are often used alternatively, whereas in other legal traditions they indicate different concepts. For this reason, it is worth tracing a brief outline of the differences between the two main models of property in the so-called Western legal tradition.

In the civil law (France, Germany, Spain, Italy, etc.), as well as in the definitions contained in the continental codes as in the systematic-conceptual framework, property continues to be shaped as a right tailored to the materiality of its object and connoted by the characters of absoluteness, plenitude and exclusiveness. The origins of this conception are commonly related to the influence

[5] For a full account, see W.H. Wong, J. Duncan, D.A. Lake, *Why data about people are so hard to govern*, in *Regulation & Governance*, 2025, 19, p. 236.

of Roman law, which distinguished corporeal things (*res corporales, quae tangi possunt*) from incorporeal things (*res incorporales, quae tangi non possunt*). The former included land, slaves, garments, gold, etc., while the latter included usufruct, the right of inheritance, and claims resulting from a right of obligation. The right of property was not included in this second category because it gained prominence through a relationship of confusion and identification with its material object. In essence, property acted as a filter to distinguish things that exist only from a legal point of view, as its creations, from things in the material sense, which derive their qualification and legal relevance as property insofar as they can be appropriated.

Despite the ambivalence of the term *res* (as a physical entity susceptible to appropriation and as an intangible object of ownership in the hands of someone, having the nature of a good insofar as it is part of his patrimony), the corporality of the thing stands in a biunivocal relationship with the commonly accepted notion of property. On the one hand, the right is, so to say, embedded in the thing, in the sense that it is the thing that satisfies the subject's interest (and by this is distinguished from other legal situations). On the other hand, the right of ownership can only have things as its object, i.e., corporal entities.

In contrast, in the common law model (Anglo-American countries), the term property does not take on a unique and precise meaning, which varies depending on the context in which it is used. It can designate a thing physically considered, or rights concerning the use and enjoyment of that thing, or rights that are independent of a direct relation to a physical thing, such as a claim. Because of the heritage of the feudal model, the common law world has a patrimonialistic conception of the relations of belonging, referring not to things understood in a material sense but to the rights that are exercisable over them and which, insofar as they have patrimonial value, constitute the object of belonging. One of the most relevant consequences of this conception is that more than one right of ownership may exist on the same thing. For these reasons, the common law model of property appears to be more inclined to include data and other digital assets, such as cryptocurrencies and NFTs.

However, it is worth noting that also in the common law debate the way to approach data and digital assets is also under scrutiny. In fact, some English scholars wonder whether it would be more appropriate to identify a *tertium genus* in order to provide a precise legal framework for the new digital entities. According to the traditional understanding, 'all personal things are either in possession or in action. The law knows no *tertium quid* between the two'[6]. The Law Commission addressed extensively this issue[7], concluding that the category of things in action includes those rights that can be 'asserted by taking legal action or proceedings', while digital assets exist independently of other subjects, so that it is not consistent to consider them as things in action. The recognition of a third category of personal property would make it possible to adequately consider the fact that digital assets have peculiar characteristics, which differentiate them either from things in possession or from things in action[8]. On 19th November 2025 the Property (Digital Assets etc) Bill was approved and it received the royal assent the 2nd December 2025. It aims at clarifying that a thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither a thing in possession, nor a thing in action[9].

This brief account confirms that the traditional lexicon of property proves challenging to align with data both in civil law and in

[6] *OBG Ltd v Allan* [2007] UKHL 21, *per* Lord Fry.

[7] The Consultation Paper is available at https://www.lawcom.gov.uk/project/digital-assets/ and the Report at https://www.lawcom.gov.uk/project/digital-assets/.

[8] The *tertium genus* thesis was formulated by D. Fox, *Cryptocurrencies in the Common Law of Property*, in D. Fox, S. Green (ed.), *Cryptocurrencies in Public and Private Law*, Oxford, 2019, p. 139, followed by J. Sarra, L. Gullifer, *Crypto-claimants and bitcoin bankruptcy: Challenges for recognition and realization*, in *International Insolvency Review*, 2019, p. 233; see also J.D. Michels, C. Millard, *The New Things: Property Rights in Digital Files?*, in *Cambridge Law Journal*, 2022, p. 325.

[9] For a punchy critic against the *tertium genus*, see K.F.K. Low, *Cryptoassets and the Renaissance of the Tertium Quid?*, in C. Bevan (ed.), *Research Handbook on Property, Law and Theory*, London, 2024, p. 463, noting that today's debate seems in line with the one started over a century ago regarding the legal nature of copyright and, in general, of intellectual property rights, which has proved to be

common law[10], even if the common law approach shows a potential to be fully explored, as it will be suggested at the end of these reflections. For the moment, it is time to consider the approach to data in the European Union.

4. *The EU approach to data: from property to access?*

The lack of a normative framework for claims in data and the absence of exclusive usage rights are at the origin of a deep debate since the beginning of the 2010s, leading to an intense legislative activity. A full analysis of the EU regulatory landscape is beyond the scope of this contribution. Suffice to mention the well-known Regulation on personal data (GDPR) adopted in 2016[11], followed by the Regulation of non-personal data in 2018[12], the Open Data Directive in 2019[13], the Data Governance Act (DGA) in 2022[14], the Digital Services Act (DSA) in 2022[15], the Digital Markets Act in 2022[16]

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rather sterile, since the flexibility of the English model of property has allowed the courts to easily place those new situations in the realm of personal property.

[10] See J. Asswad, J.M. Gomez, *Data Ownership: A Survey*, in *Information*, 2021, p. 465.

[11] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR) [2016], OJ L 119/1.

[12] Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union [2019], OJ L 303/59.

[13] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the reuse of public sector information (Open Data Directive) [2019], OJ L 172/56.

[14] Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) [2022], OJ L 152/1.

[15] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1.

[16] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L 265/.

and the Data Act, adopted at the end of 2023[17]. This body of laws is constantly growing, and it shows the interest of the EU legislator to adopt a comprehensive regulation of digital and data-intensive markets, or, in other words, to implement a Data Strategy[18]. It is worth mentioning that the European data strategy is currently under review. At the end of 2025, the European Commission published the Digital Omnibus Regulation proposal, which includes a series of amendments and repeals to the EU data acquis, such as the GDPR, the DA and the DGA, aiming at improving and facilitating rules for data sharing[19].

At the beginning of this process, legal doctrine and policymakers explored the idea of creating a data producers' right[20]. However, it was subsequently found that it was difficult to objectively determine to whom such a right in data should be attributed: to the owner of a device that contains the data, or to the parties having a contractual relationship with such an owner, or to the person from whom data is generated[21]. It soon came out that it was also difficult

[17] Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) [2023] OJ L 2854.

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European strategy for data (the European Data Strategy), COM/2020/66 final [2020]. For a comprehensive account, see T. Streinz, *The Evolution of European Data Law,* in P. Craig, G. de Búrca (ed.), *The Evolution of EU Law*, 3rd Edn, Oxford, 2021, ch. 29. For a recent and comprehensive account on the EU data legislation see N. Menéndez González, D. da Costa Leite Borges, M. Botta, *International Transfers of Personal v. Non-Personal Data: Reconstructing the EU Legal Puzzle*, available at https://doi.org/10.1515/ijdlg-2025-0019.

[19] European Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus).

[20] Cf. the EU Commission's Communication "Building a European Data Economy", 10 January 2017, COM(2017) 9 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0009, where a producer's right to use and authorise the use of nonpersonal data is discussed (p. 13).

[21] In a strongly critical sense about bringing data into the orbit of ownership, see S. Gutwirth, G. González Fuster, *L'éternel retour de la propriété des données:*

to establish whether this right should include recoverability of data and exclusivity over access.

Confronted with the difficulties in solving such relevant problems, the initial perspective aimed at creating *ex novo* property-shaped rights was (at least apparently) abandoned in favour of a governance regime. The idea was to shape a system of rights and responsibilities that determine who can take what actions with respect to data, placing the focus on the management of such rights and responsibilities[22].

For the moment, the latest achievement in the European Data strategy is the Data Act of 2023, which regulates the collection of data through the Internet of Things (IoT). It addresses this phenomenon with a complex and sometimes cumbersome regulatory framework, introducing cross-sectoral access and usage rights as regards data generated by connected products or related services, aspiring to promote the data economy by enabling the broad utilisation of such data.

Through the provision of new access and usage rights, the EU legislator aims to mitigate contractual imbalances and legal uncertainty, identified as 'problem drivers' leading to the suboptimal realisation of the value of data. Therefore, the Data Act pursues the objective to empower users and grant them data control, limiting the *de facto* control enjoyed by the data holders. It also fosters data reuse for innovative and other public policy purposes, such as the safeguard of the environment, the transition to the circular economy and the protection of health.

In order to achieve these aims, the Data Act establishes two new control rights: the right to access the data generated by IoT products

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de l'insistance d'un mot d'ordre, in C. de Terwangne, E. Degrave, S. Dusollier, R. Queck (ed.), *Law, Norms and Freedoms in Cyberspace. Liber Amicorum Yves Poullet*, Bruxelles, 2018, p. 117. In partially different sense, A. Strowel, *Les données: des ressources en quête de propriété*, *ivi*, p. 251.

[22] In this sense, T. Margoni, C. Ducuing, L.Schirru, *Data Property, Data Governance and Common European Data Spaces,* in *Computerrecht: Tijdschrift voor Informatica, Telecommunicatie en Recht*, 2023, available at SSRN: https://ssrn.com/abstract=4428364 (§2).

and ancillary services (ch. II, articles 3-7) and the right to switch to another service provider (ch. VI, articles 23-31).

The first right is shaped by Article 3. It prescribes that 'connected products shall be designed and manufactured in such a manner that product data and related service data, including the relevant metadata necessary to interpret and use those data, are, by default, easily, securely, free of charge, in a comprehensive, structured, commonly used and machine-readable format, and, where relevant and technically feasible, *directly accessible to the user*' (emphasis added). Article 4 then clarifies that where data cannot be directly accessed by the user from the connected product or related service, data holders shall make readily available data, upon a request via electronic means. In turn, Article 5 specifies that the user's right to access data can be assigned to a third party upon request of the data user. This service can be remunerated, in case of agreement between the data user and the data holder (Article 9).

The other new right provided by the DA is described under the heading «switching between data processing services». It allows customers «to switch to a data processing service, covering the same service type, which is provided by a different provider of data processing services, or to on-premises ICT infrastructure, or, where relevant, to use several providers of data processing services at the same time» (art. 23). The switch is regulated by a written contract, whose content is detailed in art. 25, heavily limiting the parties' autonomy. This contract is governed by the applicable national law, with evident outcomes in terms of divergences and disparities within Europe.

At first glance, the new rights provided by the Data Act seem to confirm the shift from data property to data access previously evoked. Recital 5 makes clear that the Regulation 'ensures that users of a connected product or related service in the Union *can access*, in a timely manner, the data generated by the use of that connected product or related service and that those users can use the data, including by sharing them with third parties of their choice' (emphasis added).

However, a closer look at the text of the Regulation challenges this reading. In fact, Article 4(13) prescribes that «A data holder

shall *only* use any readily available data that is non-personal data *on the basis of a contract with the user»* (emphasis added). This provision was present in art. 4(6) of the proposal and it attracted strong criticism, as it clearly implies that the user has an exclusive right to his/her non-personal data and that the data holder cannot use it without a previous contract with the user[23]. However, the final version confirms this provision, which means that the user retains contractual control over 'his' data, even when fundamental rights protecting personal data or exclusive intellectual or other property rights are not involved[24]. Without the explicit consent of the user, no data collection and process are allowed, nor are data holders authorised to make available non-personal product data to third parties for commercial or non-commercial purposes other than the fulfilment of their contract with the user (Article 4.14)[25]. Thus, the Data Act introduces *de facto* exclusive access-and-use rights in non-personal use-generated IoT data, challenging the common understanding that the European legislator has abandoned the property option in favour of an access regime.

In other words, the legal framework for a European data economy is taking place on the assumption that it is possible to circumvent the problem of the legal status of data from a private law perspective, in favour of a regulatory approach focused on the creation of access and management regime. However, the introduction of rights of access without clarifying the legal status of data and

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[23] The critics is raised, among others, by J. Drexl *et al.*, *Position Statement of the Max Planck Institute for Innovation and Competition of 25 May 2022 on the Commission's Proposal of 23 February 2022 for a Regulation on Harmonised Rules on Fair Access to and Use of Data (Data Act) 2022*, available at https://www.ip.mpg.de/en/publications/details/position-statement-of-the-max-planck-institute-for-innovation-and-competition-of-25-may-2022-on-the-commissions-proposal-of-23-February-2022-for-a-regulation-on-harmonised-rules-on-fair-access-to-and-use-of-data-data-act.html.

[24] M. Leistner, L. Antoine, *IPR and the use of open data and data sharing initiatives by public and private actors*, Report for the EP JURI Committee, 2022, available at www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2022)732266, p. 92.

[25] S. Geigerat, *The Data Act: Start of a New Era for Data Ownership?* (September 8, 2022), available at https://ssrn.com/abstract=4214704 or http://dx.doi.org/10.2139/ssrn.4214704.

without addressing the problem of its allocation turns out to be not coherent[26]. The fact that data is in the exclusive legal sphere of the user reveals that the announced option of abandoning the property discourse in favour of the creation of rights of access to data is not achieved. Since the new rights have a proprietary flavour, what was supposed to go out the door has gone back in, leaving the main problem of giving data a legal status unresolved.

5. *Concluding remarks. The potentials of the common law property model*

The preceding remarks confirm that data have peculiar characteristics, which differentiate it in respect of other assets. Because of the uncertainty about *what* is data from a legal perspective, it is also problematic to afford the problem of its allocation. In fact, data pertain obviously to the person generating it, but its value and interest depend on the aggregation with other data. Hampered by the slippery distinction between personal and non-personal data (not by chance now questioned by the Digital Omnibus proposal), the European approach also seems to suffer from an inherent limitation, which consists precisely in the idea that it is possible to address rights to access without first untangling the node relating to the *quid* such access is established.

The difficulties to encompass data from a legal perspective are linked to the traditional conception of property in the civil law countries, due to the heritage of a conception based on the materiality of the object of the property right and on the idea that property is identified with absolute and exclusive powers on it. To address this point, it is worth recurring to the teaching of two eminent comparatists:

> Ownership would seem to the layman to be a simple notion. It is merely a question of *meum* and *tuum*. If the thing is

[26] In this sense, see the insightful remarks by F. Szilágyi, *The necessity of data allocation: A plea for a private law (property law) perspective*, in *European Property Law Journal*, 2021, p. 180, available at https://doi.org/10.1515/eplj-2021-0011.

> mine, I own it; if it is not, I do not. Often the law conforms to this simple way of looking at ownership. Thus, for example, a person may live alone in a house which he has bought and paid for, no one else has any rights over it. […] he can correctly say, without qualification, that the thing is his. Or he may reasonably say that he is an absolute owner. But even in such simple cases it is evident that the words absolute owner are being used to express two quite different ideas: that his ownership is both indisputable and that it is unshared. The owner is asserting at the same moment that he and no one else is entitled to the house and car, and that his interest in them is exclusive and complete; or, in negative terms, that no other person can regard the things as his and that no other person can do anything which cuts down their use or reduces their value. The one assertion relates to what lawyers call 'title', the other to the content of ownership. In English law […] it is perfectly possible to have one without the other[27].

The assumption that "I own my data" equates to an exclusive and absolute right in that data is misleading. Instead, the distinction between title and content of ownership proves to be fruitful. It enables to work on the idea that the person from whom data is generated is vested with the right to exclude data acquisition, to anonymise personal information, and to transfer data to other recipients. In turn, the 'data holder' and the 'data recipient' (echoing the terminology used by the Data Act) can also be entitled to rights in respect of specific ways of processing, using and exploiting data.

In other words, the common law model has a potential to be fully explored. It shows that once ownership does not directly refer to data itself but to various rights of using it, it is possible to find a key to face the challenges of the data economy, avoiding both the risks of a normative hypertrophy that characterises the European landscape and to be prisoners of traditional classifications and dogmas. Instead of evading the intricate issue of apportioning data without achieving coherent resolutions, it is feasible to operate on these fundamental assumptions and to chart novel pathways towards a consistent data ownership paradigm.

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[27] F.H. Lawson, B. Rudden, *The Law of Property*, 2nd ed., Oxford, 1982, pp. 6-7.