

## CHAPTER 4

### Limited real rights

**Ownership** is the a **real right** that the person had over his own thing

**Ius in re aliena**(*right in respect of another*) in contrast is **real right** that a person could have in respect of a thing whose ownership vested to **another person**.

**Two categories** of limited real rights

- Real right of **enjoyment** - servitudes, quitrent and *sureficies*
- Real right to **security** - fiducia, pledge and hypothec

Limited real rights are also protected by real action and therefore enforceable against **3<sup>rd</sup>** person encroaching the right

#### 1. Servitude

##### 1.1 Intro

**Two kinds:** Personal; Praedial or real servitu

**A personal servitude** was a real right a person exercise for his **own benefit** over the thing belonging to another

In a case of per servitude the benefit occurs to the servitude holder in his **personal capacity**.

**A praedial servitude** was a real right a person exercise to the **benefit of land** of which he was the owner.

Benefit accrue in respect of the land irrespective of who it belonged to.

**Servitude were real rights over other people's things**

##### 1.2 Praedial servitude

###### 1.2.1 General remarks

Immovable, The **dominant tenement** was the immovable thing for the benefit of which a right of some kind was exercised over the **servient tenement**. The **servient tenement** therefore served the **dominant tenement**.

###### 1.2.2 Types of predial servitudes

**RURAL** and **URBAN** > according to the function **not** location  
Old rural ser - rec manicipini/ Urban (latter origin)rec nec mancipi  
Ser could further be divided in those obligation the owner to **do smt** and to **suffer smt**

###### 1.2.3 Requirements

- Praedio utilitas (the serv had to benefit the dominant tenement)**
- Causa perpetua**
- Civiter modo (a reasonable manner)**
- Ius in re aliena (right in respect of another's thing)** this imply that no one could exercise a servitude over his own thing
- Srv does not consist of doing smt but in allowing smt or refraining from doing smt**
- There could be no servitude over another servitude**
- A ser was indivisible**

**Conclusion:** Servitude cannot be established merely by an agreement and servitude had to benefit the dominant tenement.

##### 1.3 Personal servitude

###### 1.3.1 General remarks Movable + Immovable

Praedial servitude attached to particular piece of **land** in contrast **personal ser** vested in a **specific person**.

Real right and therefore protected by **real action**.

**It is called personal ser because accrued to the holder of the right in his personal capacity not because was a personal right.**

No transfer to another person neither inherited. The holder **however** could however allow some else to exercise the entitlement conferred to him. The **3<sup>rd</sup>** party didn't accrue a real right but merely **personal right** which he could enforce against the holder of the real right.

**1.3.2 requirements:** like the praedial

###### 1.3.3 Types of personal ser

###### (a) Usufruct

Right to enjoy another person's thing without **alerting its character**.  
Eg wife, children, 3<sup>rd</sup> person, children-ownership, wife - usufructuary limited real right; 3<sup>rd</sup> person personal right.

Object - thing

**Requirements:** The usufructuary was not permitted to **alert** the **nature** of the thing; Usufr had to **maintain** the property in condition received; Usufr had to use the res in **a reasonable manner**. The usufructuary was entitled to both civil+natural fruits. Justinian possessory interdict.

**(b) Quasi- usufruct** If money or consumable left

###### (c) Use

Real right to use some1 else thing without taking the **fruits**. The end of Classical per allowed to take from the fruits to support family and daily uses

###### (d) right to free occupation

Right to occupy some1's house, the holder can another person

###### (e) service of slaves or beast of burden

**1.4 The constitution of servitudes;** personal and praedial - in the same way.

###### 1.4.1 Mancipatio

Only **Res manicipi**, obsolete and later abolished by Justinian

###### 1.4.2 In iure cessio

###### 1.4.3 Reservation of servitude

###### 1.4.4 Legacy

###### 1.4.5 Adjudication

###### 1.4.6 Pact and stipulation

informal agreement(pactio)b/n parties and later confirmed by means of **formal verbal contract (stipulatio)**

###### 1.4.7 Quasi delivery

###### 1.4.8 Prescription

###### 1.5 Protection

Servitudes were real right and were protected by **real action** they could be protected by full way:

###### 1.5.1 Vendicatio servitudes Ius civile

Purpose: to obtain **recognition** serv from person who was refusing it

###### 1.5.2 Actio Negatoria

Action available to the **owner of the land** over which another person unlawfully obtained servitude.

###### 1.5.3 Special interdicts

###### 1.6 Termination of servitude

**Firstly:** 1 or both property destroyed or they become property of one person. **Secondly:** the owner of the dominant tenement could **relinquish (отхвърлям)** the servitude. **Thirdly:** rural servitude also lapsed through **disuse**. Originally 2 to years but Justin 10 or 20 depends of same province or

#### 2. Real security

**Two ways in which the lender will be able to ensure that he will recover the debit:**

- By insisting in which a **3<sup>rd</sup>** person should be held responsible for the debt - **SURETY**
- By **granting a real right** to a property of the borrower. The lender acquire limited real rights over the property (real security).

**Debt** was requirement for the creation of a real(and personal) security  
Real security is **terminate** when the debt is **discharge**:

###### 3 forms of real security

Fiducia	Pledge	Hypothec
Transfers of <b>ownership</b> of the res to the creditor	Only transfer <b>possession</b> to the creditor	Debtor <b>retains ownership +possession</b>
The cred may not use the thing <b>[most beneficial to the creditor]</b>	Unless the agreement stipulates the cred may not use res	Debtor uses the thing to <b>earn</b> an income and discharge his debt
Orig res man, later every corporeal	Any corporeal(usually movable)	Almost anything <b>[most ben to Debtor]</b>