

Table of contents

Preface of the editor	15
Preface of the authors	17
Authors	19
Abbreviations	21
Bibliography	25
Legislation	31
I Basic Aspects of the Law of Contract and the Law of Property	39
A Introduction	39
1 Characteristic features	39
2 Constitutional concept	40
3 Fundamental codifications	43
4 Historical development and future evolution	46
5 Outlook – constitutional and legislative projects	47
B Evolution of proprietary relations after 1945	49
1 Succession of the property of the Kingdom of Yugoslavia	50
2 Agricultural reform and colonization	50
3 Confiscation	53
4 Nationalisation	54
5 Seizure of property on other legal grounds	57
6 Compensation payment for seized property	58
C Legal foundations and structural principles	59
1 The material Law of Property	59
a Application of provisions of the SFRY, FRY, SU, and RS	59
b Significant laws in the field of property right	59
c Application of legal regulations	62
d Usages	62
da Trade usages	63
db Customs of the trade	64
dc Application of trade usages and customs of the trade after entering into force of the Law on Obligational Relations	65
e General terms and conditions	66
f Court practice	69
2 The procedural (formal) Law of Property	70
3 The material Law of Property	72
D Real estate property	75

Table of contents

1	The concept of property.....	75
a	Term and contents of the ownership right.....	75
b	Co-ownership (<i>condominium</i>).....	77
c	Joint ownership.....	79
d	Apartment ownership (flat property).....	81
e	State (government) ownership.....	83
f	Social ownership.....	84
g	Restrictions of ownership.....	85
ga	Prohibition of misuse of the ownership right.....	85
gb	The law concerning occupiers of adjoining property.....	85
gc	Statutory right of pre-emption – restrictions in the social interest..	87
2	Protection of the ownership right.....	91
a	Revindicative action (<i>actio rei vindicatio</i>).....	92
b	Publiciana action (action according to the supposed property rights/ <i>actio Publiciana</i>).....	93
c	Negatoria action (<i>actio negatoria/vindicatio libertatis</i>) – action due to nuisance.....	94
3	Termination of the ownership right.....	95
4	Changes in property.....	96
a	Ownership transformation up to 2001.....	96
b	Privatisation as of 2001.....	98
c	Denationalisation (restitution and compensation).....	103
ca	Partial denationalisation.....	104
cb	Comprehensive denationalisation.....	107
E	Acquisition and loss of property rights, especially ownership.....	111
1	General.....	111
2	Derivative acquisition.....	111
a	Translative transfer.....	112
b	Constitutive transfer.....	112
3	Original acquisition of the ownership right.....	112
a	Creation of a new thing (converting, specification).....	113
b	Combining and mixing.....	113
c	Building on someone else's land.....	113
d	Usufruct.....	117
e	Prescription.....	117
ea	Ordinary prescription.....	118
eb	Extraordinary prescription.....	118
ec	Counting of time. Interruption (termination) and suspension of prescription.....	119
f	Expropriation.....	119
g	Land consolidation (plot realignment).....	120
4	Derivative acquisition of the ownership right by conclusion of contract.....	121
a	Conclusion of the contract.....	121
aa	Concurring wills.....	122
ab	The moment of conclusion of the contract.....	125
ac	Precontract.....	126

ad	Subject of the contract	127
ae	Basis of the contract (<i>causa</i>)	128
af	Contractual capacity	129
b	Form of contract.....	130
ba	The mode of acquisition of immovables on the basis of a contract.....	132
bb	The mode of acquisition of movables on the basis of a contract.....	133
5	Transfer of risks (accidental deterioration or damage of the thing)...	133
a	The term of risk.....	133
b	Transfer of the risk by handing over of the thing.....	134
6	Defects in property transactions (void transactions).....	135
a	Term	135
b	Void legal transactions.....	136
c	Voidable contracts	138
ca	Consequences of voiding.....	139
cb	Error.....	140
cc	Wilful fraud.....	141
cd	Duress	142
ce	Damage in excess	143
cf	Convalidation	144
cg	Conversion.....	145
F	The securing of property transactions	145
1	General (creditor's rights and debtor's obligations)	147
a	The right to compensation for damage	147
aa	General rules on the right to damages.....	148
ab	Contractual penalty.....	153
ac	Default interest.....	154
b	Refuting (abatement) of debtor's legal transactions (<i>actio Pauliana</i>).....	155
c	Right of retention (<i>ius retentionis</i>)	157
2	The creditor's rights in particular specific cases	158
a	When an obligation involves giving objects of certain type specified by kind	158
b	When an obligation consists in doing.....	158
c	Court penalties.....	158
3	The rights of the buyer.....	159
a	Delivery of goods	160
b	The right to protection from substantial and legal defects.....	161
ba	Liability for legal defects.....	162
bb	Liability for substantive defects	165
4	The rights of the seller	167
a	Payment of the purchase price	167
b	Takeover of the goods	168

II Public Registry of Immovables (Land Books and Real Estate Cadastre)	169
A Historical background and development of property records.....	169
1 Definition	169
2 Registration systems in Serbia	170
B Constitution.....	171
1 Land books.....	172
a General	172
b Main book	172
c Collection of deeds	173
d Cadastre maps.....	174
e Registers.....	174
f Auxiliary register	174
2 The Real Estate Cadastre – a unified land recording system	174
a Definition	174
b Displaying survey data for public inspection, and ascertaining rights in real properties.	179
c Working out the cadastral documentation, and maintaining the REC system.	181
d Registration of rights in the course of operating the Real Estate Cadastre system.....	181
C Relationship between the Real Estate Cadastre and the land book.....	182
D Principles of the land registers.....	184
1 The truthfulness principle	184
2 The entry principle	184
3 The principle of the registered predecessor	185
4 The formal publicity principle (publication principle)	185
5 The principle of (public) trust	185
6 The priority principle	186
7 The legality principle.....	186
E Specific principles of the Real Estate Cadastre	187
1 The principle of unifying real property registries	187
2 The principle of mandatory registration	188
3 The principle of conducting the registry by an administrative body... ..	188
F Entries into the land books and the Real Estate Cadastre	188
1 Issue and legal grounds for an entry	188
2 Types of entries	189
a Entry (<i>intabulatio</i>).....	189
b Pre-notation (<i>praenotatio</i>)	190

c	Annotation (<i>adnotatio</i>).....	191
ca	Annotation of personal relations.....	191
cb	Annotation of facts which pertain to the real property	191
G	Land registration procedure.....	192
1	General.....	192
2	Procedure (land registry process) before the court.....	192
a	Procedure launching	192
b	Contents of the application and documents to be attached	193
c	Court decision on the basis of application.....	194
d	Joint mortgages	194
e	Delivery of decisions	196
f	Remedies.....	196
g	Action against land registry entry (action for cancellation of an entry).....	197
3	Procedure before the administrative organ in compliance with the SMCR	197
H	Corrections in the land registers.....	199
1	Corrections in the land books	199
2	Corrections in the Real Estate Cadastre	199
I	The title-deed system	199
1	General.....	199
2	Title-deed (deed)	200
3	Entry (Intabulation)	201
III	Credit	211
A	Forms of credit granting.....	211
1	Credit contract	211
a	Term and essential elements of a credit contract.....	211
b	Rights and obligations of the contracting parties.....	211
c	Specific way of ceasing of the credit contract	212
d	Types of credit contracts.....	212
e	Specific kinds of credit transactions	213
ea	Credit contract on the basis of pledging securities.....	213
eb	Discount and rediscount credit.....	214
2	Loan contract.....	214
a	Term and essential elements of the contract	214
b	Interest and loan agreement	215
c	Obligations of the lender	215
d	Obligations of the borrower	216
e	Sale by instalment payment/Hire purchase.....	218
f	Sale by maintaining the right of disposal of the right of ownership (<i>pactum reservati dominii</i>)	219

Table of contents

B	Forms of credit securing	219
1	Real securities	219
a	Movable pledge.....	219
aa	Possessory pledge on movables	220
ab	Kinds and essence of the possessory pledge on movables.....	220
ac	Rank of possessory pledge on movables	222
ad	Subject and content of possessory pledge on movables	222
ae	Termination of possessory pledge on movables	224
b	Lien on rights and outstanding accounts.....	225
2	Personal securities	229
a	Contract of suretyship	229
aa	Entering into a contract of suretyship.....	230
ab	The form of a contract of surety	231
ac	Relationship between a creditor party and a guarantor.....	232
ad	Guarantor and debtor relationship	232
ae	Surety in execution proceedings	233
b	Bank guarantee.....	233
ba	Legal relations and participants in a guarantee transaction	234
bb	Relationship of bank guarantee towards other legal operations	234
bc	Essential and non-essential elements of a bank guarantee.....	235
bd	Transfer of right from a guarantee	236
be	Differentiation of bank guarantees	236
c	Bill of exchange.....	237
ca	General	237
cb	Parties to a bill operation and their obligations	238
d	Securing of a credit (credit insurance)	240
e	Pledging of life insurance policies.....	241
f	Restriction on transferability of movable assets insurance policies in favour of a creditor	241
3	Specific contractual securities	241
a	Judicial non-possessory lien according to the Law on Execution Procedure.....	241
b	Pledge right on movable assets entered in the registry	244
c	Transfer of ownership with a view to securing a credit.....	245
IV	Mortgage Law.....	247
A	Definition	247
B	Principles of the law of mortgage.....	247
1	The principle of accessory	247
2	The principle of officiality	248
3	The speciality principle	248
4	The principle of unseparated liability (inseparability)	248
5	The principle of entry of a hypothec.....	249
6	The priority principle	249

7	The principle (right) of consecution (succession).....	249
C	The secured claim	249
D	The object and kinds of hypothecs	250
1	General.....	250
2	Sub-mortgage (mortgage on an existing mortgage)	251
3	Joint (simultaneous) mortgage	251
4	Constitution and types of mortgages	251
a	Mortgage established by legal transaction.....	252
b	Mortgage established by court ruling	252
c	Mortgage established by law	252
d	Creating a mortgage by way of court decision upon creditor's and debtor's request. Realizing the mortgage.	252
E	Acquiring of a mortgage	253
F	The rights of the mortgage creditor and the owner of a pledged immovable	254
G	Mortgage in case of insolvency (segregation rights).....	256
H	The extinction of the mortgage	257
I	Establishing a mortgage by foreign citizens	260