

DSRL Private Law: Property

Contents

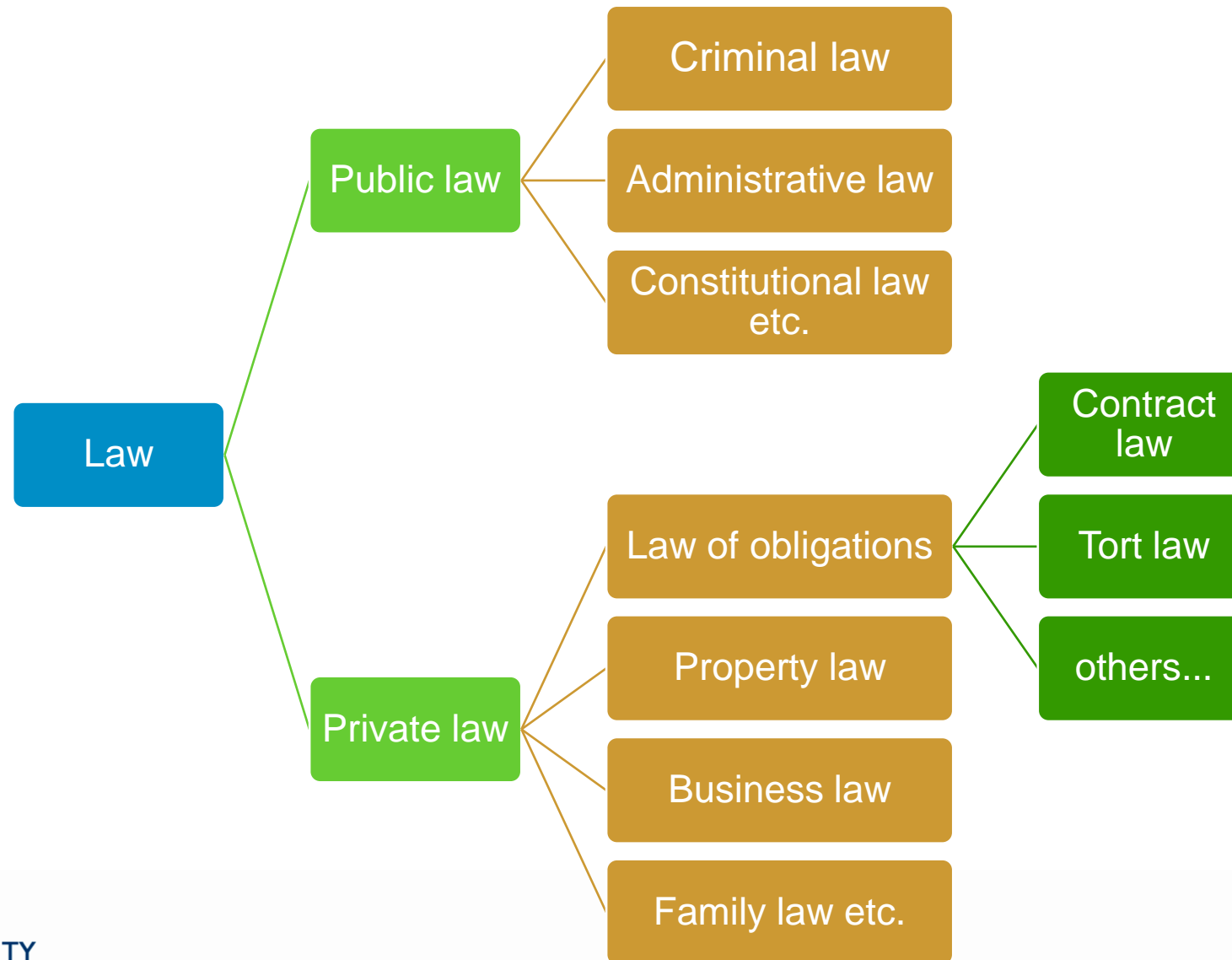
1. Private law, sources of law, and Obligations
2. Property law

Approach

- Global
 - Common law: England and former colonies (incl. USA)
 - Civil law: the rest of the world
- Practical



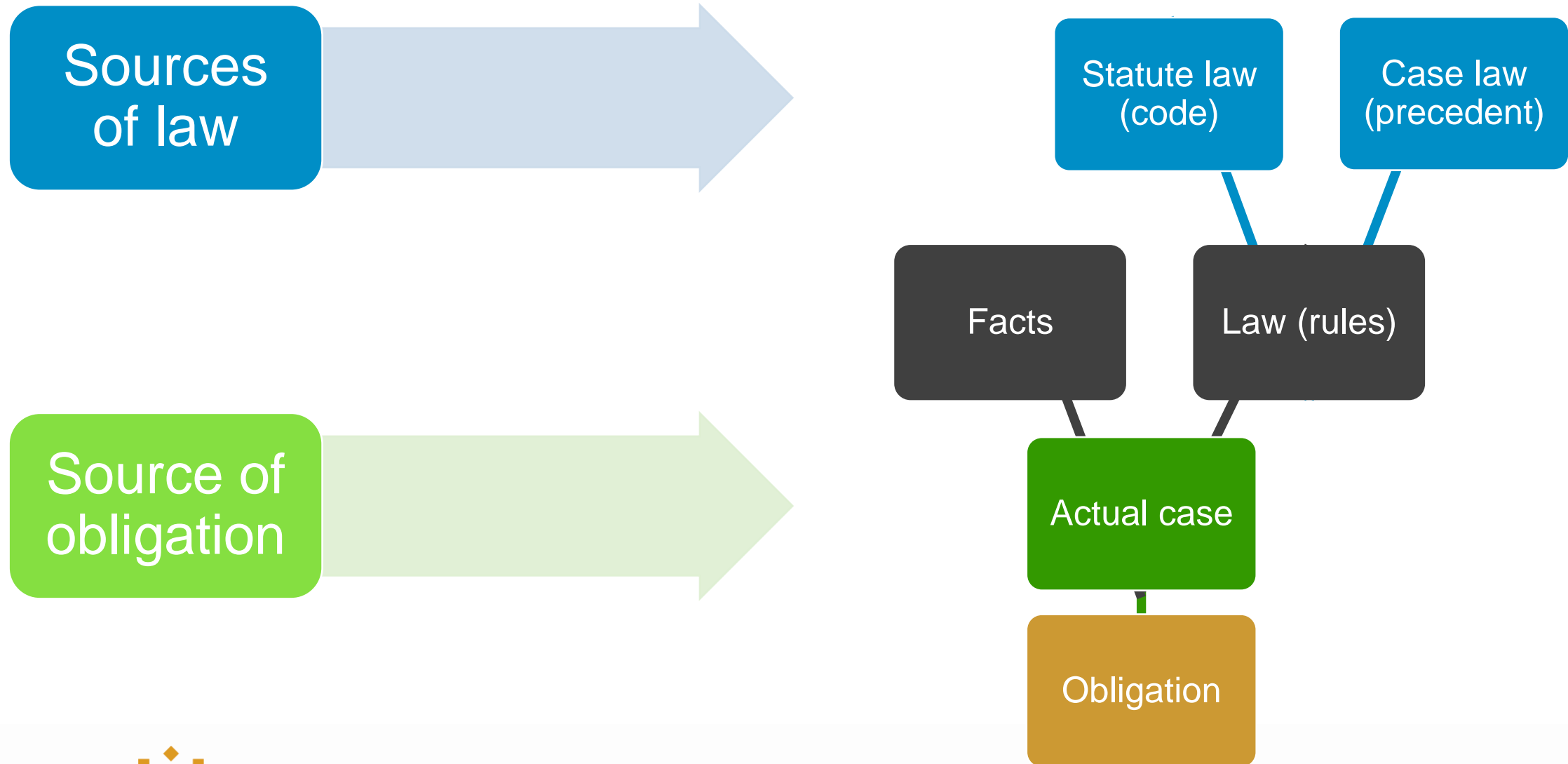
1. Private law, obligations, sources of law



Obligations

- Unconditional imperative: you *have* to do/*must* refrain (*verplichting/plicht*)
- Act or not act, give or not give
- More or less concrete
- **Enforcement by court** (remedies)

Sources of law and sources of obligations



Statute law





Consumer Rights Act 2015

2015 CHAPTER 15

An Act to amend the law relating to the rights of consumers and protection of their interests; to make provision about investigatory powers for enforcing the regulation of traders; to make provision about private actions in competition law and the Competition Appeal Tribunal; and for connected purposes.

[26th March 2015]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

CONSUMER CONTRACTS FOR GOODS, DIGITAL CONTENT AND SERVICES

CHAPTER 1

INTRODUCTION

1 Where Part 1 applies

- (1) This Part applies where there is an agreement between a trader and a consumer for the trader to supply goods, digital content or services, if the agreement is a

Art. 1135 Code civil

Agreements are binding not only as to what is therein expressed, but also as to all the consequences which equity, usage or statute give to the obligation according to its nature.

Case law: court decisions





Hilary Term
[2018] UKSC 4
On appeal from: [2014] EWCA Civ 15

JUDGMENT

Robinson (Appellant) v Chief Constable of West Yorkshire Police (Respondent)

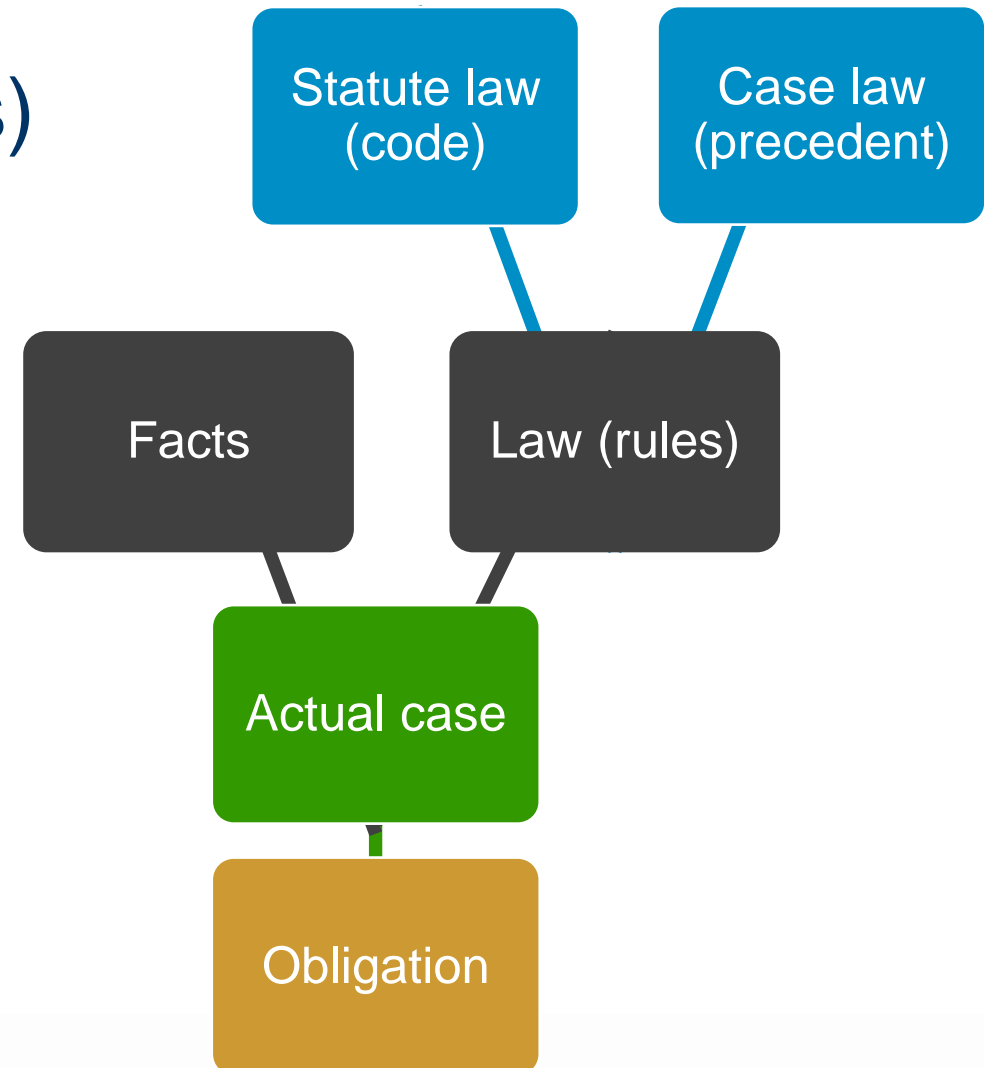
before

**Lady Hale
Lord Mance
Lord Reed
Lord Hughes
Lord Hodge**

JUDGMENT GIVEN ON

8 February 2018

- facts (+ supporting concepts)
- rule (relevant criteria)
 - and exceptions!
- consequence: obligation



What to know for exam (private law)?

- Doctrines
 - Possible categories and exceptions
 - Rules/criteria
- Apply: look for relevant doctrines
- Exam: given set of facts, and question
 - identify area of private law (contract, tort, property)
 - list and describe relevant rules
 - combine with relevant facts: what is the outcome of each rule?
 - conclude

Example

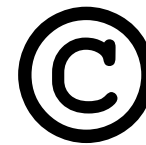
Private Law Question: John buys computer, is broken

Law/relevant doctrines:

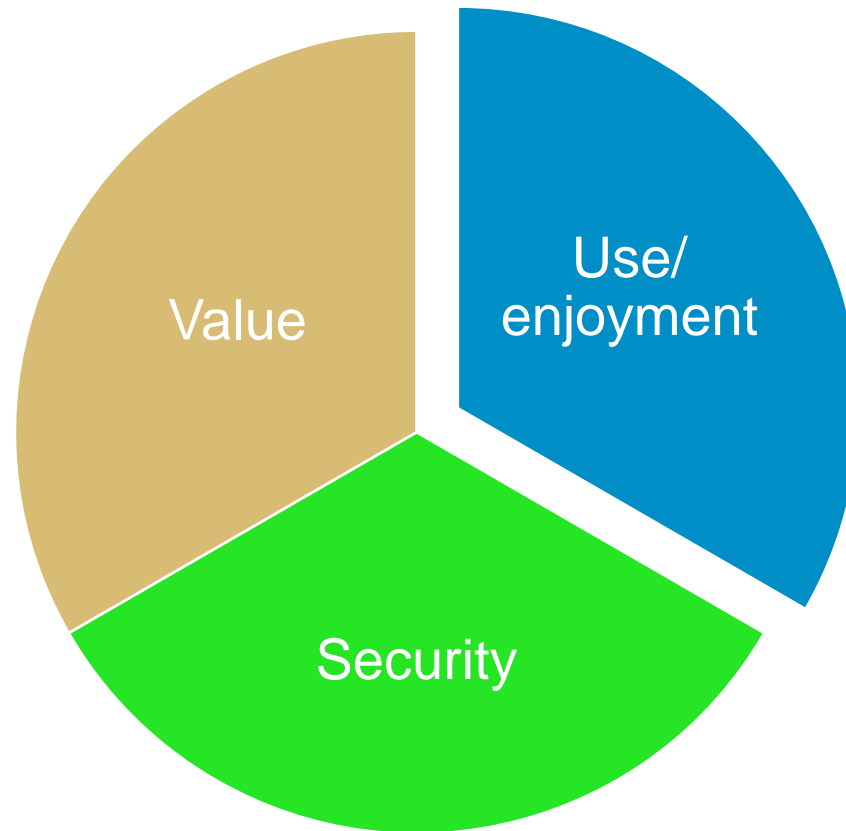
- contract law (not property or tort) [*and not criminal law, privacy*]
- breach of contract
 - criteria?
- consequence: remedies?
- exceptions/defences?
- other doctrines? defect of will? what does John want?

2. Property law: kinds of property

- Movables/goods
- Land/immovables
- Intangibles
 - Intellectual property rights
 - claims



Why property?



Ownership

- Property rights
 - erga omnes (claims/protection against everyone)
- Limited forms of property (Numerus clausus: kind and content)
- Party autonomy

Becoming owner

- Possession (creation, finding, registration)
- Transfer
 - specific transfer of good
 - general transfer (e.g. inheritance, merger)
- Statute of limitations?

Transfer of property

- Title
- Power to dispose
- Delivery



Transfer of property

Title

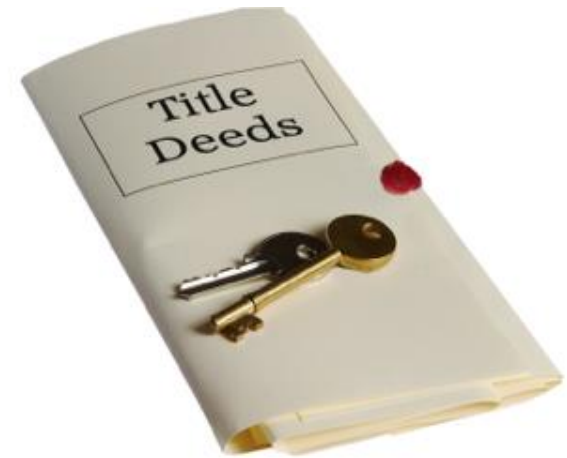


Power to
dispose

• Delivery

Kinds of delivery

- movables: possession
 - (sometimes deed + registration)
- immovables: deed (+ registration)
- claims: notification, or deed + registration
- IP rights: deed (+ registration)



Property & contract

- Contracts about property use:
 - Rent, lease...
 - Use rights: superficies, rights in rem: registration!
- Contracts about transfer
- Security rights



Enforcement

- Property & Tort
- Trespass
- Nuisance etc.



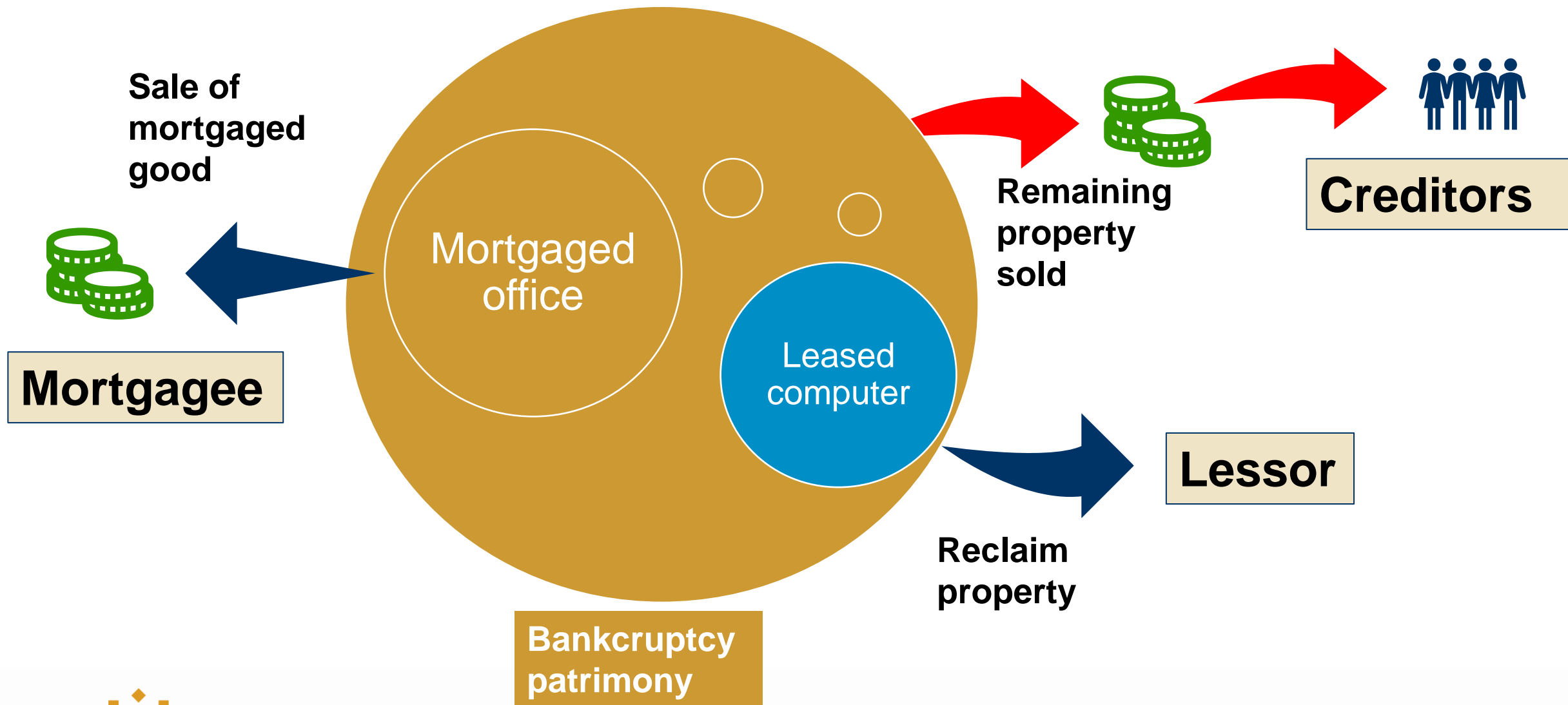
Reclaiming property

- Civil law: revindication
- Common law: conversion/trespass
- Based on ownership, only for tangible goods?
 - U.S. versus England

Insolvency

- Security rights (by deed)
 - mortgage (hypotheek)
 - pledge (pand)
- Bankruptcy
 - Only on own property!
 - claims are pooled





What about data science?

- A new start up company
 - Bank will want security when providing a loan
 - What are the assets?

Virtual property and data

- virtual swords, domain names etc.
- 'digital assets'
- data?
- bitcoin?

Question/case Property law

Annie accidentally steps on Abed's limited edition Batman DVD signed by Christian Bale. The DVD is broken. Without telling Abed, she buys a new DVD and replace the broken one with it. However, Abed finds out the difference because the DVD lacks the signature.

- a. Who is the owner of the new, undamaged DVD? Explain your answer (10 points)

Answer

- *Annie buys a new DVD: she becomes owner of that DVD. Does Abed become owner after Annie, i.e.. is there a valid transfer?*
- *title: there is no title, as there is a no agreement on transfer.*
- *power to dispose; that is present, as Annie is owner.*
- *delivery: questionable, as simply replacing does not constitute willing acceptance.*
- *Conclusion: Annie remained owner.*