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Distinctive Features of Contractual Constructions for The Alienation of Immovable Property in Foreign Legal Systems

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Abstract: This article examines a comparative-legal analysis of how sale, exchange, gift, and life-annuity contracts for the alienation of immovable property are constructed across the Romano-Germanic, Anglo-American, and mixed legal families, drawing on the legislation and legal literature of Germany, France, Switzerland, England and Wales, the United States, the Russian Federation, Kazakhstan, China, and Japan. Using a formal-legal, comparative, and historical-legal method, the study evaluates each national model against four criteria: the required form of the contract, the moment at which title actually passes, the constitutive or declaratory character of state registration, and the mechanisms that make a transaction opposable to third parties. The comparison shows that national models remain genuinely diverse in how they balance notarial prevention against market-based safeguards such as title insurance, yet are converging on constitutive state registration as the backbone of transactional security, a convergence reflected in the World Bank's Doing Business rankings. The analysis further traces the Roman-law and, for Central Asia, Islamic-law roots of these constructions, compares remedies for breach across systems, and follows a growing trend toward digitalizing immovable-property transactions, illustrated by Estonia, Georgia, and Sweden.

Keywords: Immovable property, alienation, contractual constructions, legal system, civil legislation.

Introduction: The institution of alienating immovable property turns out to look strikingly different depending on where one stands, and those differences are not accidental, they trace back to different historical trajectories, different social and economic foundations for property relations, and legal-drafting traditions that rarely borrow from one another. A comparative study of this kind is accordingly close to a precondition for improving national civil legislation. Comparative jurisprudence has long grouped the world's legal systems into a handful of major families — Romano-Germanic, Anglo-American, religious-traditional, and the mixed systems that grew out of a socialist legacy and that grouping gives us a workable framework for examining how each family constructs its rules for immovable property [1]. This section focuses on three contractual constructions in particular: sale, exchange, and gift, along with a fourth, closely related one — the life-annuity contract.

METHODS

Four criteria structure the comparison that follows. First, what form the contract must take — written, notarially certified, or left largely unrestricted. Second, the moment at which title actually passes, and what that moment says about the relationship between the underlying obligation and the transfer of the right itself. Third, what kind of state-registration system is in place — whether registration merely records a transfer or is what brings it into being. And fourth, what mechanisms make the transaction opposable to third parties once it is done. Applying these criteria meant working through the civil codes and relevant statutes of Germany, France, Switzerland, England and Wales, the United States, the Russian Federation, Kazakhstan, China, and Japan using a formal-legal, dogmatic reading of the texts themselves; a comparative method to set the resulting national models against one another; a historical-legal method to trace their roots back through Roman law and, for Central Asia, through Islamic law (fiqh); and, as an empirical check on all of this, the World Bank's 'Registering Property' indicator.

RESULTS

Germany has arguably built the most refined and also the most demanding version of this construction. The German Civil Code (Bürgerliches Gesetzbuch, BGB) organises the whole process around two ideas: the separation principle (Trennungsprinzip) and the abstraction principle that follows from it (Abstraktionsprinzip) [2]. In practice this means alienating land is never one transaction but two, entirely independent of each other. The first is the obligatory transaction — the sale contract itself (BGB § 433). The second is the transaction in rem — the separate agreement that actually transfers title (BGB § 925). Because the two are legally severed, a defect in the sale contract does not, as a rule, automatically invalidate the transfer; the buyer who ends up with property under a void contract is instead left to seek redress through the law of unjust enrichment (BGB § 812). The obligatory contract itself must be notarised under BGB § 311b or it is void outright, and title only passes once three things have happened together: a notarised Auflassung agreement, the formal recording of both parties' intent, and an entry in the Land Register, the Grundbuch (BGB § 873). That entry is what actually creates the right — nothing is transferred until it is made and its accuracy is backed by a fairly strong presumption of public faith (BGB § 892), which is a large part of why German land transactions are considered so secure: a buyer who reasonably relies on what the register says is protected even if the register turns out to be wrong [3]. One notable feature of German practice is what the notary actually does in this process: not just stamp a document, but explain the legal consequences to both sides, draft the contract themselves, and file it with the Grundbuchamt — a preventive function that goes well beyond simple certification.

France takes a nearly opposite approach. Its consensual system (solo consensus) means that, under Article 1583 of the Civil Code, a sale is complete and title has passed — the moment the parties agree on price and property, full stop [4]. No separate transaction in rem is needed; this is the practical face of the French doctrine of 'titre et mode', which treats the ground for the transfer and the mechanism of transfer as one and the same. But that consensual effect only runs between the parties themselves. To bind third parties, the sale still has to be recorded through the land-publicity system set up by the decree of 4 January 1955, which means French registration is declaratory rather than constitutive it doesn't create the right, it just makes it stick against outsiders. In practice, immovable-property contracts in France are almost always drawn up as a notarial instrument; a private document (acte sous seing privé) is legally valid between the parties, but only a notarial form can actually get entered in the register, which pushes notarial involvement from optional to essentially unavoidable [5].

Switzerland sits close to Germany on paper — a notarial deed is required (ZGB Art. 216), and title passes only once the transfer is entered in the Grundbuch (ZGB Arts. 656, 971) but the abstraction principle is applied more loosely there. Where the underlying contract turns out to be invalid, Swiss law generally lets that invalidity spill over and affect the transfer itself, something German law tries hard to prevent. Even within the same legal family, in other words, there is no single template; national legal traditions keep producing their own intermediate solutions.

England and Wales work from a different conceptual starting point altogether. Rather than the Roman-derived idea of 'ownership', English law thinks in terms of an 'estate' essentially a proprietary interest graded by how long it lasts and how much it covers. Alienating land runs through a procedure called 'conveyancing', which unfolds in three stages: an exchange of contracts, at which point the parties are legally bound to each other but title has not yet moved; completion, when the purchase price changes hands and possession is handed over, finally, registration with HM Land Registry under the Land Registration Act 2002, which is the point at which legal title actually passes to the buyer [6]. Registered land now covers nearly the whole of England and Wales, and registration there is constitutive: before the entry is made, the buyer holds only a beneficial interest, while legal title stays with the seller. And there is no continental-style notary anywhere in this chain the paperwork is handled by a solicitor or a licensed conveyancer, who acts as one side's representative rather than as an independent, state-empowered check on the deal. Security in this system comes less from a neutral third party and more from the reliability of the register itself, backed by a state indemnity if something goes wrong.

The United States complicates any tidy summary, because property law is set state by state rather than federally, so there is no single American model to describe. Some patterns do recur, though. Title moves through a deed — a warranty deed, a quitclaim deed, or one of several other variants — signed by the seller and typically recorded at the county recorder's office. What is worth noting is that recording in most states is declaratory rather than constitutive: it doesn't create the transfer, it establishes priority against competing claims, and which claim wins is decided by one of three recording-statute regimes — race, notice, or race-notice [7]. The distinctly American fix for the resulting uncertainty is title insurance. Because there is no strong central registry backing up the chain of title, buyers routinely purchase insurance from private companies to cover the risk of hidden problems in a property's history: undisclosed liens, disputed inheritances, defects in an earlier sale. Closings are usually run through escrow, with an independent escrow agent holding the money and documents until every condition of the deal has been met. A handful of states — Minnesota, Massachusetts, and Hawaii among them still run a Torrens system dating to the early twentieth century, which issues a state-guaranteed certificate of title and functions much like the German Grundbuch, though it never caught on more broadly in the U.S. [8].

Russia inherited the Romano-Germanic tradition through the Soviet period but has since gone its own way. Articles 549 through 558 of the Russian Civil Code set out what makes a sale of immovable property distinct as a contract type: it must be in writing, in a single document, with the property and the price fixed as essential terms [9]. Interestingly, the contract itself does not generally need notarial certification, the exceptions are specific, covering things like the sale of a shared-ownership interest or property belonging to a ward — but title only passes once the deal is entered in the Unified State Register of Immovable Property (EGRN), and that entry is constitutive [10]. Russia thus lands somewhere between French consensualism and the German model of constitutive registration: the paperwork can be informal, but nothing legally happens until the state registers it.

Kazakhstan's experience deserves particular attention, because it ran the experiment in reverse. In 2007 the country abolished mandatory notarial certification of immovable-property deals and left state registration to do all the work on its own. This did not hold up in practice: it soon became clear that citizens' rights were not adequately protected without a notary in the loop, and Kazakhstan walked the reform back, restoring notarial control in part [11]. The lesson generalizes reasonably well — stripping out notarial oversight to save time and cost can end up undermining the very security the system is supposed to provide, which is a point worth weighing for Uzbekistan too.

China's unified Civil Code, in force since 1 January 2021, treats state registration of immovable-property rights as constitutive, putting it broadly in the German camp, though land held in state or collective ownership carries its own specific rules — a usage-right construction that has no real German equivalent [12]. Japan, by contrast, kept a consensual system historically closer to France: title passes when the contract is concluded, and registration only matters for third-party effect. Together these examples make a simple point — legal families are not watertight boxes, and national legislators borrow across them more often than the textbook classifications suggest.

Exchange contracts rarely get their own independent regime; most systems simply apply the sale-contract rules by analogy, treating each party as simultaneously seller and buyer (§ 480 BGB, Arts. 1702–1707 of the French Code, Art. 567 of the Russian Code). All the formalities that attach to a sale — notarization where it applies, registration — carry straight over to an exchange of immovable property; the only real difference is that the price is paid in property rather than money. Gift contracts split more cleanly into two camps. Under the French-German model, gifting land demands strict notarial form: Article 931 of the French Code makes every gift void unless it is executed before a notary, while § 518 of the German BGB requires notarial certification of a promise to give — although if the gift is actually carried out despite a defect in form, German law lets that defect be 'cured' (the doctrine of Heilung). The Anglo-American model, having no independent notarial institution to lean on, handles gifts through a specially executed deed instead, with witnesses and subsequent registration standing in for notarial oversight.

Then there is the life-annuity, or rente, contract — a cousin of both sale and gift rather than a category of its own. France has run this institution as 'rente viagère' since 1804, codified in Articles 1968 through 1983 of the Civil Code: the owner hands over the property in exchange for periodic payments for life. The arrangement is common enough among elderly people living alone that it has its own colloquial name, 'viager', and it typically comes with a right for the seller to go on living in the home (droit d'usage et d'habitation) until death. Germany has a functional equivalent called the Leibrentenvertrag (§§ 759–761 BGB). Russia and Kazakhstan regulate it as a standalone contract type — the rente and life-maintenance agreement — with its own chapter in each civil code, splitting it into a purely monetary rente and a more demanding version where the buyer takes on an obligation to support the seller materially for the rest of the seller's life [13]. The social function is worth stating plainly: it lets an elderly; often isolated owner turn illiquid property into a stream of income while staying in the home.

One trend cuts across almost all of this: over roughly the last fifteen years, digitalization has moved from a nice-to-have to a policy priority in how states handle immovable-property transactions. Estonia is the standout case. Built on its X-Road data-exchange platform, the country now lets a portion of notarial acts, including steps in an immovable-property deal, be completed remotely through video identification, untethering notarial service from geography altogether. Georgia is another case worth citing: its National Agency of Public Registry (NAPR) runs an expedited registration system that can record a transaction in minutes, a reform the World Bank has repeatedly singled out as a success story. Sweden's national land survey authority ran a blockchain pilot between 2016 and 2018 that tested registering sale contracts through smart contracts, synchronizing the bank, the notary, and the registry in real time. None of these is an isolated experiment; together they point toward the same broader direction, shorter timelines, single-window service, and notarial and registration functions merging at the level of shared information systems. It is a direction Uzbekistan's own reform proposals would do well to keep in view.

The comparison can be summarized as follows:

State	Form of contract	Moment of transfer of title	Significance of registration	Notarial control
Germany	Notarial form (mandatory)	Upon entry in the Grundbuch	Constitutive	Mandatory, strong
France	Written (in practice, notarial instrument)	At the moment the contract is concluded	Declaratory (opposabilité)	Mandatory in practice
Switzerland	Notarial form (mandatory)	Upon entry in the Grundbuch	Constitutive	Mandatory
England	Written contract + completion	Upon entry in the register	Constitutive	None (solicitor institution)
USA	Deed (varies by state)	Upon delivery / recording of the deed	Usually declaratory	None (title insurance)
Russia	Written (notarial in specific cases)	Upon state registration	Constitutive	Partially mandatory
Kazakhstan	Written	Upon state registration	Constitutive	Partially restored
China	Written	Upon state registration	Constitutive	None

DISCUSSION

Stepping back from the table, one pattern stands out: the world is not split evenly between two approaches to the moment title passes, it is tilting. The consensual principle — title passes the instant the contract is signed — survives in France and Japan, but the constitutive principle, where nothing happens until the state register says so, now covers Germany, Switzerland, England, Russia, Kazakhstan, and China. That is not a coincidence: constitutive registration does a better job of preventing disputes like double selling, and it gives transactions a higher baseline of security. Notarial control tells a messier story. Continental Europe — Germany, France, Switzerland has kept it as a strong, preventive check on the front end of a deal, while the Anglo-American world has largely swapped it out for market tools instead: title insurance, professional liability cover, and the like.

Buyer protection is, in many ways, the real center of gravity in this whole area of law, because it is where the interests of the original owner and the need for stable transactions come into direct conflict, and each system resolves that conflict differently. Germany does it through the Grundbuch's presumption of public faith (BGB § 892): if the register lists someone as owner who, it turns out, was not, a buyer who neither knew nor should have known that still gets good title, and the true owner is left with damages claim rather than the property itself. It is hard to find a purer expression of trust placed in a public register. England, under the Land Registration Act 2002, arrives at something close to the same result by a different route: registered title is treated as effectively unshakeable, and if a bona fide buyer loses out because of a mistake in the register, the state compensates them directly. France cannot rely on the register the same way, because its declaratory system means the register does not itself create title — so protecting a good-faith buyer there falls mainly on the notary, who is obliged to trace the chain of title back thirty years, backstopped by professional liability insurance. That, more than anything, explains why the notarial profession sits at the center of the French model. Russia takes yet another route: Article 302 of its Civil Code protects a good-faith buyer only if the original owner lost the property through no fault of their own — theft or loss, for example, in which case even a good-faith buyer can be forced to give it back; but if the owner voluntarily parted with the property, say by handing it to a manager who then sold it unlawfully, the buyer keeps it.

The World Bank's 'Registering Property' indicator, part of its annual Doing Business series, gives this comparison an empirical backbone: it tracks the number of procedures, the time, the cost, and a quality-of-rights score for completing a property transaction [14]. States that cut down the number of steps, adopt a single-window approach, and merge notarial and registration functions into one administrative touchpoint Georgia, New Zealand, and Rwanda stand out here consistently top the rankings. Uzbekistan has made real progress on this front too, off the back of reforms launched in 2017, and was named one of the most active reformer states in the Doing Business 2020 report [15]. These gains are real, though not yet fully consolidated, and further legislative work is still needed to hold onto them.

Central Asia, including the territory that is now Uzbekistan, ran on a different inheritance for most of its history: Islamic law (fiqh). A sale of immovable property under classical fiqh went through the "bay' al-'aqar" contract, built like any other sale on the meeting of offer (ijab) and acceptance (qabul), the parties' legal capacity, and a clearly defined subject and consideration; witnesses mattered a great deal in establishing that a transaction was valid. Islamic law also developed the waqf, a distinct construction for dedicating property permanently to a religious or charitable purpose, effectively taking it out of ordinary circulation. These were the very tools the "qozikhona" (qadi) courts used on the territory of present-day Uzbekistan up until the early twentieth century. The Soviet period rebuilt civil law from the ground up, so this older tradition has no direct normative force today — but its indirect imprint on legal culture is harder to dismiss, particularly the deep-rooted expectation of witnesses and careful written documentation that still shapes notarial practice.

The sale of mortgaged property is where this theoretical apparatus meets practical constraints most directly, since immovable property is one of the most common forms of bank-loan security around. German law generally lets the pledge (Grundschuld or Hypothek) simply follow the property to its new owner — a right in rem doing what rights in rem do, attaching to the thing rather than the person (the German version of droit de suite) — and it can pass without the lender's consent, though banks in practice often insist on early repayment or a formal debt transfer (Schuldübernahme) anyway. Anglo-American practice handles this through 'mortgage assumption', or, in many U.S. states, a 'due-on-sale' clause that forces the loan to be repaid in full the moment the property is sold, which usually pushes the buyer into a new loan altogether. Russia and Kazakhstan take a stricter line still: selling mortgaged property without the creditor's written consent is generally prohibited outright, apart from exceptions carved out by statute or by the mortgage agreement itself. Every system studied here protects the creditor's interest in some form that much is constant but the mechanism varies quite a bit, from automatic attachment to outright consent requirements to forced early repayment.

Cross-border transactions raise a distinct question: which state's law governs when one party is foreign, or the contract is signed abroad? Private international law answers this with about as much consensus as it ever manages, through the lex rei sitae rule, under which questions about rights in immovable property, however they arise, transfer, or end, are governed by the law of wherever the property actually sits, regardless of what law the parties might otherwise have chosen. The reason this rule commands such broad agreement is not hard to see: immovable property is bound up with territorial sovereignty in a way movable property is not, and a state's register can only be reliable if that state's own law controls it. Practically, this means a contract alienating land situated in Uzbekistan answers to Uzbek law in form and substance no matter who the parties are or where they signed — which in turn is exactly why the ownership rights of foreign citizens over domestic immovable property need clearer systematization.

Where a contract for the sale of land is breached, what happens next depends heavily on the legal family in question. Continental systems, Germany and France included, generally let the injured party demand specific performance — a court can order the seller to hand over the property and sign whatever is needed for registration and treat that remedy as the natural first option, ahead of damages. Anglo-American law runs the opposite direction historically: damages have always been the default remedy, and specific performance survives only as an equitable exception, available when money genuinely will not do which, notably, land often qualifies for, precisely because it is treated as unique. Russia and Kazakhstan, following the continental tradition, keep specific performance available too. This is not just theoretical housekeeping for Uzbekistan: how well the courts actually enforce specific performance in practice determines what kind of disputes arise over failed property deals in the first place.

Harmonizing immovable-property law across borders has proven to be one of the harder projects in comparative private law, precisely because the subject sits so close to state sovereignty. The EU's EULIS network (European Land Information Service) makes it easier to pull information from different member states' land registers through one shared technical interface, but it stops well short of unifying the substantive rules behind those registers. UNIDROIT and UNCITRAL, for their part, have mostly aimed their model laws at movable property and commercial contracts, leaving immovable property largely untouched directly — though the general contract-law principles embedded in their work, good faith, freedom of contract, standards for what counts as a fundamental breach, still offer useful theoretical guidance when a country revises its own immovable-property rules. The upshot is that even a field as tied to national territory as this one cannot really stay sealed off from the broader development of international contract-law thinking.

CONCLUSION

Drawing these threads together, a fairly clear picture emerges. National models for alienating immovable property remain genuinely diverse, but they are converging on one point: constitutive state registration as the backbone of transactional security. Where they still differ sharply is in how much weight they put on notarial prevention versus market-based protections like title insurance. For Uzbekistan, a few practical takeaways follow fairly directly from this comparison. Kazakhstan's reversal is a caution against trading away notarial control for administrative convenience. The World Bank's 'Registering Property' indicator is a genuinely useful benchmark for where registration reform still has room to run. Estonia, Georgia, and Sweden between them sketch out where digitalization is heading, and it is worth moving in that direction deliberately rather than piecemeal. And the comparative record on remedies suggests it is worth looking again at how effectively specific performance actually works in practice, not just on paper. Taken together, these findings give the proposals developed elsewhere in this study a comparative-legal footing for improving how Uzbekistan's civil legislation handles the alienation of immovable property.

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