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The concept of ownership, and the Scandinavian way of thinking

Functionalism contra substantialism

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1:1 Introduction - what is this assignment about

Prior to my introduction to this assignment, I had no idea that different approaches to the concept of property and ownership existed. Preparing for it made me understand the vast approaches to the concept and how different legal traditions not only approach the concept differently but fundamentally understand it differently.[1]

As a Scandinavian law student, I understand that my approach to property is vastly different from other legal traditions such as Anglo Saxon and Continental systems.[2] Functionalism has formed the Scandinavian legal culture and property is seen less as an essence but more as a set of practical relations.[3] In contrast, formerly mentioned contrasting legal cultures approach property and ownership as a core legal concept and a fundamental part of problem solving.[4]

In this text I reflect over how functionalism has influenced my way of legal problem solving, how I approach problems and how I break them down. I aim to contrast this to the substantialist way of thinking and compare how these legal cultures differentiate. By comparing these traditions, I aim to explore both strengths and blind spots of my way of thinking as a lawyer.

To be specific when referring to "functionalism" in this text I mean a non-codified fragmented approach. When referring to "substantialism" I intend to mean a codified unitary approach.[5]

My "programming" - Scandinavian functionalism

The key identifiers of the functionalist way of thinking are that property and ownership is placed within context and relations, an essence of ownership is never discussed rather Scandinavian functionalists deal with each relation on their own and break up the problems

[1] Johan Sandstedt, 'Comparative Property Law and the Profound Differences between Nordic Functionalism and Continental Substantialism—The (Ir)Relevance of Ownership' in Annina H Persson and Eleonor Kristoffersson (eds), Swedish Perspectives on Private Law Europeanisation (Hart Publishing 2017) 53, 55.
[2] Martin Lilja, 'The Relevance of Concepts for the Transfer of Movables under the Uniform Commercial Code' (2014) 3 European Property Law Journal 52, 52–53.
[3] Wolfgang Faber and Claes Martinson, 'Can Ownership Limit the Effectiveness of EU Consumer Contract Law Directives? – A Suggestion to Employ a 'Functional Approach'' (2019) Austrian Law Journal, 93.
[4] Lars van Vliet, 'Acquisition and Loss of Ownership of Goods – Book VIII of the Draft Common Frame of Reference' (2011) 2 Zeitschrift für Europäisches Privatrecht, 294; Faber and Martinson, 'Functional Approach' (n 1), 88.
[5] van Vliet, 'Acquisition and Loss of Ownership of Goods' (n 1) 294; Sandstedt, 'Comparative Property Law' (n 1), 57.

into distinct parts that can be dealt with on their own merits, this is also called a fragmented approach.

Ownership in the functionalist world, is relative, without a clear problem there is no need to define who the owner of, for example a car is. Only when parties with relations, interests and intentions are presented can we discuss ownership, and even then, only in terms of potential solutions or more specifically outcomes. It's not to be used as a primary method of problem solving. The term ownership is rarely used as it serves no concrete purpose.

As a Scandinavian legal student, I rarely think about solving a problem by thinking about ownership, I usually approach a problem by studying the parties and trying to understand their intentions. In my way of thinking I have been trained to think that by understanding the intentions I can understand the problem better and thus reach a - in my world - fair solution.[6]

I would like to outline an example; *Adrian buys a car from BIL AB. Adrian has paid for the car in full and the car is being delivered by an employee of BIL AB. The employee stops for coffee and accidentally scratches the side mirror. The question is who should pay for the repairs?*

If I were to solve this problem I wouldn't think about who the owner is, I would begin with understanding the obligations and isolating the problem in question. The payment is not a concern, so I ignore it. The fact that Adrian is going to be the recipient of the car is not of concern, so I ignore it. The only question that arises is who should stand the risk in delivery and why.[7] Thus, I use the facts of the case to outline intentions and interests to argue who should stand the risk, that fact helps me conclude who should pay for the damages using norms in the legal system that deals with delivery and risk in isolation. This shines light to the fact that I have not once in the process thought to question if Adrian has acquired ownership of the car.

The constrains of this approach is that without reasonable detail it's practically impossible to, without a case, define the legal landscape. As every question is handled on a case-by-case

[6] Faber and Martinson, 'Functional Approach' (n 1), 96–97 (describing how functionalism identifies the 'real problem' as a collision of interests and weighs values for balanced solutions).
[7] I understand that by using the term "risk" I've already jump a couple of steps normatively in solving the issue, but it is far clearing in proving my point.

basis even small differences can lead to drastically different outcomes. There is no norm that trumps all other, rather it's a system of considerations that work together to form an outcome.[8]

Functionalism and the average joe

I have reflected about the fact that, if a friend asks me a legal question, they articulate it in a way that frames ownership (or some other related right that is thought to hold inherent rights) as the central crux of the matter. But when I answer it´s usually by asking questions that help me break it down into distinct parts, such as the contents of the agreement, the circumstances in the time leading up the agreement and most importantly what does my friend intend to get out of this dispute. So unintentionally I have steered the question into my way of legal thinking. Without even thinking about I have directed my train of thought away from the initial question of ownership and into a more fragmented set of sub-questions. I never concretely answered it, but I discovered the "real issue" [9]. Then delivered advise on how to reach the "true" desired outcome. This shines light to the fact that there is a disconnect between the legal professionals and the average person. This disconnect in the way of thinking most probably come with consequences in how the average person views dispute resolutions in formal situations that require help from legal professionals or that are handled by the courts.

Going by my own experience from my summer job as an insurance claims advisor, there was plenty of cases where we couldn't help through the insurance, but that were clear to me that the policyholder could get their claim from the counterpart. All they would need to do was to enact some type of official legal act, but as soon as this suggestion came forward, they were reluctant to act, usually by asserting that legal processes are too complicated and they didn't want to make it messy. Even though their claims where almost always above six figures (Swedish Krona). Now, I am not saying that the fact that we use a functionalist approach is the reason people find legal disputes repelling, but there is clear merit to investigating the connection further.

My way of approaching my friend's problem helped me understand the legal aspects and brake them down in a way that helps me connect the circumstances to norms and principles native for my legal tradition. From my point of view, it is a more pragmatic way of solving the problem as often it leads to me being able to help my friend solving the issue without the head gasket blowing. Although it may not help my friend at all, as it makes the case more confusing and complicated to deal with. However, if I've done my job right, my friend would

[8] Faber and Martinson, 'Functional Approach' (n 1), 98 (describing Step 4: weighing different arguments).
[9] Faber and Martinson, 'Functional Approach' (n 1), 96–97.

understand why one specific part of the problem is important to focus on. Then the whole legal question would rather become simpler as we can focus on one specific part. If I can convey to my friend why we are focusing on this, it could be even more practical to deal with, and it removes distracting parts of the procedure and possibly make our communication more straight forward.

With this background in mind, and connecting back to my example, I find it challenging to understand how it would be of relevance to a lawyer if Adrian has acquired ownership or not, because in my way of thinking ownership doesn't come with rights on its own, however for my non-jurist friend there is a diffuse understanding that ownership bears rights.

Looking across the fence – substantialism

Placing a substantialist lawyer in front of the aforementioned example my understanding is that the approach is vastly different. Because the metaphysical concept of ownership is deeply rooted in their legal way of thinking. In their paradigm ownership bears rights that inherently hold the key to finding a solution. [10]

To be perfectly clear, as I have a hard time understanding this way of thinking, I may also describe it in a way that a substantialist itself wouldn't. But I believe a substantialist would solve the issue is by trying to determine when the property is transferred. Because the concept of ownership bears rights that help determine who is liable for the damages. This determination is structured and based on clear norms that legislators have clearly outlined.[11] Therefore, substantialist traditions hold great weight to the structures put forward by a clear legislation, the point of the code is to cover all possible situations that may present themselves. To be able to provide this high level of predictability the legislation must be on a very abstract level otherwise it would be all to detailed and impossible to come up with.[12]

This requires that a high standard is put on the legislator as its job is to balance all interests that can possible be included in any given situation and being able to way them against each other as to not create imbalances.[13]

[10] Faber and Martinson, 'Functional Approach' (n 1) 93; Lilja, 'Relevance of Concepts' (n 2), 69–70 (discussing Ross's Tû-Tû analogy); Sandstedt, 'Comparative Property Law' (n 1), 60.
[11] van Vliet, 'Acquisition and Loss of Ownership of Goods' (n 1) 294.
[12] Martinson, Lecture at Handelshögskolan vid Göteborgs Universitet, 4 september 2025.
[13] Cf. van Vliet, 'Acquisition and Loss of Ownership of Goods' (n 1) 294; Karoline Raukneberg Haug, 'transfer of movables', 2021, 236.

Comparing this approach in relation to the example with my friend, a substantialist jurist will have no problem understanding my friend's dilemma from his perspective. They would take the question at hand and compare it to the considerably large legislation and figure out a solution without leaving the concept of ownership, this is much closer to the average joe's way of thinking. Therefore, it brings the law closer to the people it governs. This connects well with previous Nordic scholars takes on the matter, that the substantialist approach is a little bit more predictable, although this predictability comes with the cost of it sometimes being unbalanced in specific situations.[14]

Sandstedt as well as Lilja has drawn the parallel between this view of ownership and Alf Ross's Tú-Tú, a concept that without cultural context is just empty.[15] Replacing ownership with the word Tú-Tú wouldn't change the meaning it provides. Using this analogy it makes it easier for me to understand how this conceptual way of thinking can be abused by people in position of power, as you will read in 1:2 I draw an analogy to a parent that tells its child that "this is just how things are" as a way of getting around actually explaining why the child can't have candy for dinner. For people in positions of power the concept of ownership can be abused to getting away with not explaining their reasoning in each situation, as is exemplified by the Evaldsson and Others v Sweden[16]. The legislator holds great responsibility to legislate fairly and thus the legislation process is required to be way more meticulous.

My curiosity crawls toward understanding how the substantialist jurist argues in favour of a client, what argumentation is presented to courts and to counterparts? I find it close to think that the substantialist lawyers each representing a client would dispute each other's facts rather and reasoning around interpretations of documents. This puts weight to the doctrines of contract interpretations and adduction of evidence.[17]

The relationship between the different legal traditions

In a substantialist based legal system the norms that determine when ownership has passed are in all systems somehow brought into the legal landscape by a legislator. It is a decision that is codified and cannot be backed out of. Thus there is a risk that all possible situations are not

[14] The authors Martinson, Lilja and Sandstedt all somehow touch on this issue in their publications (mentioned before).
[15] Martin Lilja, 'The Relevance of Concepts for the Transfer of Movables under the Uniform Commercial Code' (2014) 3 European Property Law Journal 52, 69; Sandstedt 60; Alf Ross, 'Tû-Tû' (1957) 70 Harvard Law Review 812.
[16] Evaldsson and Others v Sweden, no. 75252/01, ECHR 2007 (13 February 2007).
[17] J H Langbein, 'The German Advantage in Civil Procedure' (1985) University of Chicago Law Review; R A Posner, 'The Law and Economics of Contract Interpretation' (2004).

accounted for and gaps in the legislation may exist,[18] this reflects what Martinson and Sandstedt previously put forward – the Scandinavian legal tradition is more flexible, it puts the balance of interest in the scope of legal professionals and thus it can be formed by society and therefore not frozen in time by the legislation process. The question that arises is a political and philosophical one, do we believe that the balance of interest should be handled by legal professionals or a legislator. Answering that is way beyond the scope of this text and therefore I will leave it as an open question.

This highlights how the profession is viewed in the different traditions. In the Scandinavian functionalist tradition, a legal professional is more like an entrepreneur, an innovator with the power to form the law to the reality around it.[19] They are given a toolbox, and they form their argumentation around values and bind together possible outcomes of different point of view to form a coherent conclusion.

The substantialist lawyer is closer to a mathematician using formulas and concepts to reach a conclusion.[20] When the substantialist is put in from of a problem, he is tasked with finding the formula by following a structure and finding a fitting solution. This does not mean that the substantialist lack creativity, they still have areas of freedom and argumentation, however its different, as it is more about arguing about the facts of the case, as they are key for what formula is applicable.

Breaking it down to its most simple forms the key differences in the legal traditions are not inherently if you use abstracts or more grounded concepts, it's who is tasked with unravelling the concept and defining it. To break it into clearer digestible words – difference between the legal traditions is who is tasked with balancing values and consequences. In the functionalist systems it's the legal professionals whereas the substantialist systems task the legislator. This is obviously a great oversimplification of a very intricate matters, but it brings forward the most central part of my reflection.

[18] Even though there are fallback rules these are not comprehensive enough to be deemed "fair" in all cases, thus substantialists often use solutions as "unjust enrichment" to cover these flaws.
[19] This line of thought has helped me understand why I love the law, I am a sucker for problem-solving and thrive of off finding solutions no one has ever thought of, even if it means breaking traditions and stepping outside of my comfort zone. Its's the creativity that. Enough of me and back to my analogy.
[20] Cf. Haug, 'Transfer of Movables', 2021, 70.

Conclusion

When I started to write this text, I wasn't quite sure I could understand the substantialist point of view, I had a hard time grasping the concept and contextualising it in a way that helped me understand its benefits. Slowly but steadily throughout the writing process, reading articles written by people that studied these concepts for years and going to lectures, I have gotten around to understanding it a bit more. At least to the point where I can understand that there are benefits to that system as well. However, with the short time I've had to study this phenomenon I find it difficult to contextualise it in a way that fairly depicts these benefits. When I look at situations I have been in before, as mentioned, times where my friend asks a question, I would like to think that we would understand each other better if we used the same terminology.

The functionalist approach feels more rational and grounded to me, as I've previously mentioned this is just how I've been taught to think. Although I would also say that the case-by-case nature of the approach is more flexible and thus fair for the individuals involved. Although there is a reason that the criminal statue of even Scandinavian law follows the codified traditions, its more predictable and provides legal certainty that the functionalist approach just cannot provide.

I hope that this text has been fair in providing my point of view surrounding these concepts and that I have brought my abstracts thoughts into words in a way that keeps them true to my understanding. But I want to leave this conclusion with a disclaimer, this is just my way of understanding today, and it most certainly will change as I begin to understand these concepts and the law itself on a deeper level.

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Illustrating the difference

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1:2 Background – the question

A year ago, the somewhat famous author Mr Penti Mylly made a deal with the Ola Company, a re-seller of vehicles. Mr Mylly bought a motorized home from Ola. It is a bus with most of the facilities of a home. Mr Mylly had the outspoken intention to live in the bus since the mobility much suited his writing. Ola had the outspoken intention to get some good will out of the fact that it would become known that Mr Mylly had bought the bus from them.

Since Mr Mylly negotiated a very low price for the bus, 20 000 € which is 20 % of the regular price, Ola insisted on a clause in the contract that would oblige Mr Mylly to sell the bus back to them whenever he sells it. Ola should then get to buy the bus for 20 % of whatever Mr Mylly could prove that the intended buyer at the time would commit to pay.

Three months after Mr Mylly bought the bus from Ola, Mr Mylly stops using the bus and moves into the apartment of his relative. Mr Mylly makes a deal with a friend that the friend can live in the bus against payment of 50 000 €, to be paid in monthly instalments of 1 000 €, for as long as the friend choses to use the bus. This is also what happens. The friend, Miss Nina Karhu, has now had the bus for the past nine months.

The Ola company now turns against mr Mylly and claims that they should immediately get to buy the bus back against a payment of 10 000 €. Ola points at the, above mentioned, clause in the contract that gives them this right. Mr Mylly refuses and argues that he is still the owner of the bus.

i) I will solve the case assume that the following rule (from the DCFR) is a part of the legislation in the jurisdiction, and that the rule below is found in a code! And use an approach that a lawyer from a code-tradition would use and explain the solution!

Requirements for the transfer of ownership in general

(1) The transfer of ownership of goods under this Chapter requires that:

a. the goods exist;
b. the goods are transferable;
c. the transferor has the right or authority to transfer the ownership;
d. the transferee is entitled as against the transferor to the transfer of ownership by virtue of a contract or other juridical act, a court order or a rule of law; and
e. there is an agreement as to the time ownership is to pass and the conditions of this agreement are met, or, in the absence of such agreement, delivery or an equivalent to delivery."

ii) I will then solve the case assuming that there are no more rules than the mentioned (no such rule as in i)! And use an approach that a lawyer from a functional tradition would use and explain the solution!

iii) Finaly I will reflect upon the differences between what I have done in i and ii!

i) Solving as a substantialist

Assuming that the following norm (from the DCFR) is part of our jurisdiction, a substantialist lawyer could present the following as a potential solution to the problem.

Following the system set out by the norm we can deduce the following. In the relation between Mr Penti Mylly (hereafter MPM) and the Ola Company (hereafter OC) I will hereunder assess each criteria one by one:

a. The motorhome exist. ✅

b. The motorhome is an object that can be individualised and identified. Thus, the motorhome is transferable. ✅

c. There are no disputing facts to OC inhabiting the right and authority to transfer the motorhome to MPM. OC is a salesman of motorhomes and also the owner of the business, therefore he is presumed to inhabiting the rights when no disputing facts are present. ✅

d. There are no disputes to the fact that there is a contract between the parties, even if it is not in writing there is a verbal agreement that is not disputed. The agreement consists of consideration and a specialised item, which are contractual musts when talking about the transfer of ownership.

   Herein there is room for argument in what the parties aim to agree on. There are facts that may lead us to conclude that OCs intention is to lease out the motorhome to MPM for his living, for once OC wants MPM to live in the vehicle, he also counts on a future value of the vehicle that in some parts may cut his losses on the deal, these are characteristics of a lease or usufruct. On the other hand, the wording of the agreement is based on a “sale” which usually involves the transfer of ownership, this is in itself a strong argument for the fact that MPM is entitled to the sale.

   However, OC aims to restrict MPMs ability to sell the vehicle to a third party, this fact should be a strong argument in favour of OC, by restricting MPMs right there is

argument for the fact that there is no agreement of sale, no matter the wording, if the ability to resell the vehicle is restricted.

I would still argue that the wording of the agreement is strong enough in favour of MPM being entitled to the ownership, OC never truly expressed his intention to MPM which makes me lean in favour of MPM. If the intention was to not transfer the ownership, then why would you choose such strongly loaded words such as “sale”. As I have demonstrated there are many arguments for and against the fact that there is a contractual entitlement and intention for the passing of ownership, I will for the purposes of exemplification go down the path that this criterion is fulfilled. ✅

e. There is no fact that gives us reason to believe that an agreement on when ownership shall pass has been put in place by the parties. Thus, the fallback clause stating that the delivery determines the time of the passing of ownership, and the fact that the goods are to be deemed transferred and held in the possession of MPM, the transfer of ownership may be determined to be completed. ✅

By respect to the analysis above is shall be presumed that ownership has passed to MPM, and a subsequent contractual obligation exists to sell the vehicle back to OC in the event of MPM having the intention to resell the vehicle.

The consewuences of this conclusion is that OC has no right to the vehicle itself, in the event of MPM reselling the vehicle OC only has a contractual right to damages that a breach of contract precludes.

In the Following relation between MPM and his friend Karhu (hereafter FK) the question of transfer of ownership is less clear. Using the same method as above we get the following argumentation:

a. The motorgome exist ✅
b. The motorhome is transferable ✅
c. By acquiring the ownership from OC, MPM has the right to transfer it as it by the right borne from the rights ✅
d. The question is whether the contract has the intention to transfer the title of the motorhome, the contract as stated in the question it is formulated in as a use-right and therefore no intention of transferring ownership. As there is no express intent to transfer the title this prerequisite cannot be deemed fulfilled. ❌
e. As the intentions never where transfer of title, even though delivery may be fulfilled is irrelevant. ❓

Going by this analysis there has been no transfer of ownership to FK. This does not inherently mean that OC has no right to damages but it can be a strong argument for the fact that the contract has not been breached. However, in the point (d.) there is the same room to argue for the opposite, rendering the contract a disguised hire-purchase which means that OC is entitled to damages. The determinations needed to conclude a disguised hire-purchase agreement lay in the contract interpretation and are subject to auditing the parties intentions, there are strong argument both for and against however I have chosen not to go into detail in those issues as I believe that I have exemplified the issues enough to understand the nuances needed to implement the rule in practice.

ii) Solving as a functionalist

Approaching the problem from a functionalist angle I would like to break it into distinctive parts, more specifically the different relations. There are three parties in this situation thus I begin by examining the different relations separately.

1.1.1 OC → MPM

OC's underlying intention is turning over (i.e for a specified rate, hand over the disposition rights of) motorhomes, as in this specific deal he is interested in selling a specified motorhome.[21] However in this deal OC has integrated a clause that restricts the disposition rights of MPM. Therefore, the underlying interest can best be described as handing over some disposition rights of a specified vehicle for a specified rate with the intention to retaining some value in the vehicle that can be realised later. MPM is therefore granted the right to utilise the vehicle for an unspecified amount of time.

MPM is receiving a well below market rate for the acquisition of the motorhome in exchange for being outspoken about buying it from OC, there is room to argue that OCs real intention is that MPM lives in the motorhome, likening the agreement to a lease. Also, MPM agrees that if he sells the motorhome, he will give OC a chance to buy it for 20% of the resale value. This specific part of their contract is very interesting because it is a way for OC to hinder MPM from turning this (extremely) good deal into an incredibly good profit, as otherwise it's like giving away free money. Effectively OC is making sure that MPM lives in the motorhome to be able to get use of the value that otherwise would be lost. OC is counting on a resale value in the vehicle for when MPM no longer wants to live in it.

[21] The reason behind the wording "Specified motorhome" is that in Swedish law being able to specify the property acts as a prerequisite to being able to claim a number of rights tied to it. As the law is a specific matter, I would like to handle it as such even in hypothetical matters.

On the other hand, OC is receiving value in MPM being unspoken about acquiring the vehicle from him, and this value could or could not be enough to cover for the fact that he is giving a great deal.

Compounding these facts, we sketch an outline of a lease, the full disposition rights to the vehicle are not transferred to MPM, thus he can't dispose of it however he wants. However, the contracts wording is clear that the restriction is of the resale of the vehicle, but could a lease-on go against the intentions of the parties?

There is room to argue that any disposition of the vehicle is enough to go against the agreement, OCs intention has been that MPM lives in the vehicle himself, however this intention has not been expressed in the agreement, the question becomes is that intention so clear that MPM should assume that this is the case? Looking at it from this perspective I don't believe that the intention has been expressed enough to make this the case, thus I believe it should only cover a subsequent sale.

Laying out the ground rules we can now conclude that MPM has received the right to utilize the vehicle, economically benefit from the vehicle by leasing it out but not economically benefit by handing over the disposition rights fully and unconditionally to a buyer. Thus retaining the sell on value of the vehicle and keeping future resale value for OC.

1.1.2 MPM → FK

MPM later moves into his relative's apartment and gives his friend FK the ability to live in the motorhome in exchange for him receiving a sum of 50 000 € paid in monthly instalments of 1 000 €.

FK can stay for as long as she wants, assumingly even after the full 50 000 € are paid off. Breaking this deal down FK is granted the full ability to live in the bus. This speaks for the fact that this may be a disguised hire-purchase, as FK holds most of the rights that an outright buyer would hold. Thus, the payment in installations could be seen as a credit handed to FK by MPM.

There is argument to be made here that MPM is never meant to regain access to the vehicle and that therefore the full disposition rights of the vehicle have transferred to FK.

1.1.3 Is MPM obligated to sell the bus to OC for 10 000 € (20% of 50 000 €)

The question arises if this deal is to be seen as a sale such as OC initially intended. If we begin with understanding if OC's true intention was to stop MPM from profiting from the deal or just receiving the "residual value" of the vehicle after MPM stopped utilising it.

By now looking back to our ground rules we can deduce that the full disposition rights of the vehicle have been transferred to FK, even if this was done illicitly by MPM. There is no

intention to regaining access to the vehicle, thus the future value is not retained by OC. Therefore the transaction goes against the essence of the agreement between OC and MPM.

Although it now can be concluded that this is an disguised hire-purchase it is quite irrelevant in relation to OC being able to claim the bus. There are no facts that indicate that FK hasn't been in good faith. In Swedish law a good faith purchase gives the receiver a right of rem to the object, this renders OCs ability to claim the right of title to the vehicle impossible (OC can receive right in rem by paying FKs acquisition cost, but this cost is higher than the value that OC would gain). Thus, he can only claim contractual damages by his deal with MPM not being fulfilled.

iii) Reflection

I would like to begin this part of the text by trying to explain why I find the substantialist way of thinking to difficult. The DCRF rule is on first glance very confusing as I many times had to consider what parties each criteria intends to handle. In point (d.) I was conflicted about to whom the transferee is entitled to the transfer of ownership. It took a while to sort out all these fundamental questions to be able to apply the rule. However, even after figuring the semantic out, I couldn't quite understand what the transfer of ownership meant for solving the issue. If now Mr Mully has acquired ownership of the motorhome, does that mean that The Ola company no longer could enforce the clause?

After getting my head around this issue it is now clear to me that, in yes, in fact that is the case. But this was not intuitive at first, you see I was actually using the rule in a rather wicked way, I was using it to figure out if the rule triggers the clause – I thought the rule determined if the agreement between MPM and FK was in fact a sale or lease of the motorhome. If the agreement fulfilled all criteria of the rule, then it would be clear that it was a sale, ownership has passed, and OC would be eligible to buy it back.

This may have been because of my poor understanding of the rule, but I would rather want to believe it was because the concept of ownership was to me meaningless. The fact that the first relation (OC – MPM) ticked all the boxes of the rule was so clear to me that I at first barely even thought about the criteria of the rule, which made me blind for all the nuances that were important. I graced passed the questions with such confidence in the fact that the rule was only important in the second relation that I never stopped to think about why ownership is important to figure out. When the penny dropped and I started to understand the consequences of the rule it became clearer how to apply the rule to the case at hand.

By doing this exercise in trying to put myself into the place of a substantialist lawyer I can say that I am more confused now than I was before. It has been really difficult to not fallback into my functionalist way of thinking.

Somewhat satisfyingly my conclusions in both ways of thinking are the same, which shows that even though they are different approaches, they are conformed from the same base values. This circles back to my previous insights in the first part of this document, as we have solved the legislation issues differently in different cultures we are not that different in what we value as a fair outcome.