

# A Libertarian Theory of Contract

## TITLE TRANSFER, BINDING PROMISES, AND INALIENABILITY



Based on the work of N. Stephan Kinsella

*The question for libertarians concerns when and why agreements are legally enforceable.*

# The Paradox of Enforcement

## The Premise

Libertarianism asserts that force is only justified in response to aggression (initiated force) against person or property. This is the Non-Aggression Principle.



## The Conflict

A "mere promise" is a speech act. Uttering words is not an act of physical aggression. Breaking a promise is silence or inaction, which is also not physical aggression.



*The Core Question: If breaking a promise is not an act of aggression, how can the use of force (the legal system) be justified to enforce a contract?*

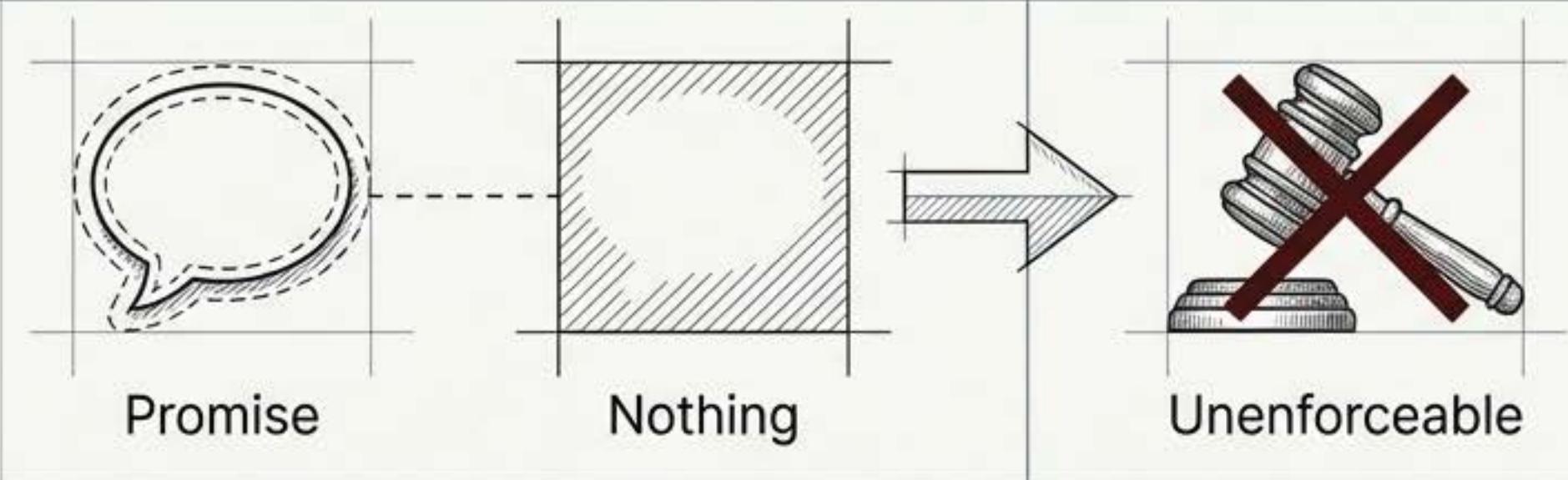
To solve this, we must determine if a contract is a binding of the WILL (a promise) or a movement of RIGHTS (property).

# The Flaw of “Consideration”

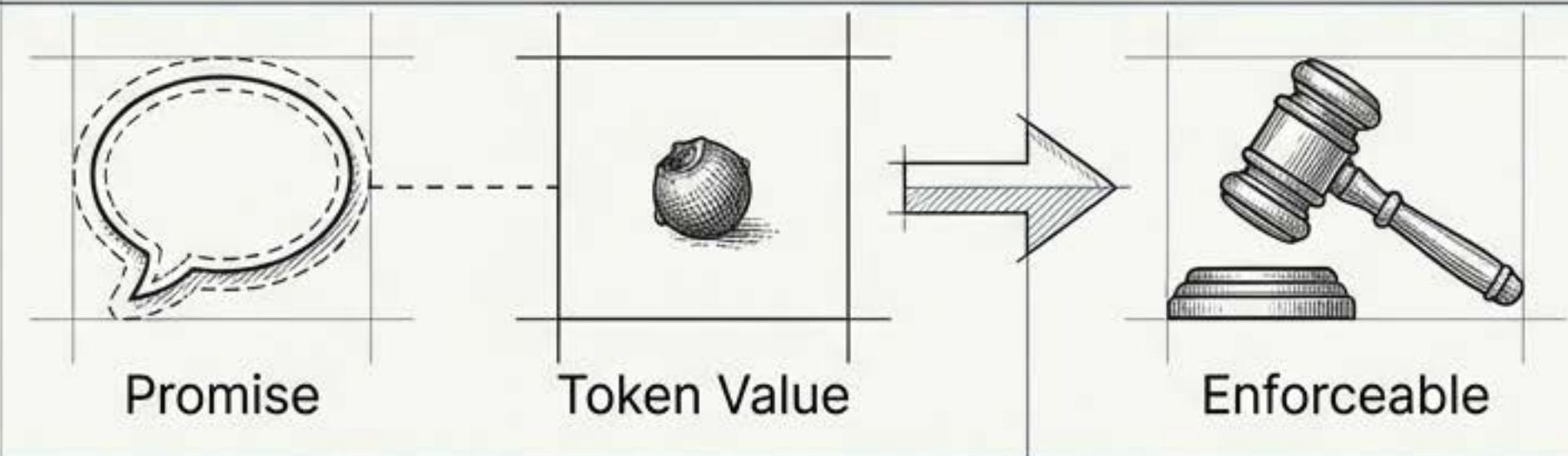
Current Common Law struggles to explain why some promises are binding and others are not.

The doctrine of “Consideration” demands something of value be exchanged to make a promise enforceable. This leads to the absurdity of the “Peppercorn Theory”.

## Nudum Pactum (Naked Promise)



## Valid Contract

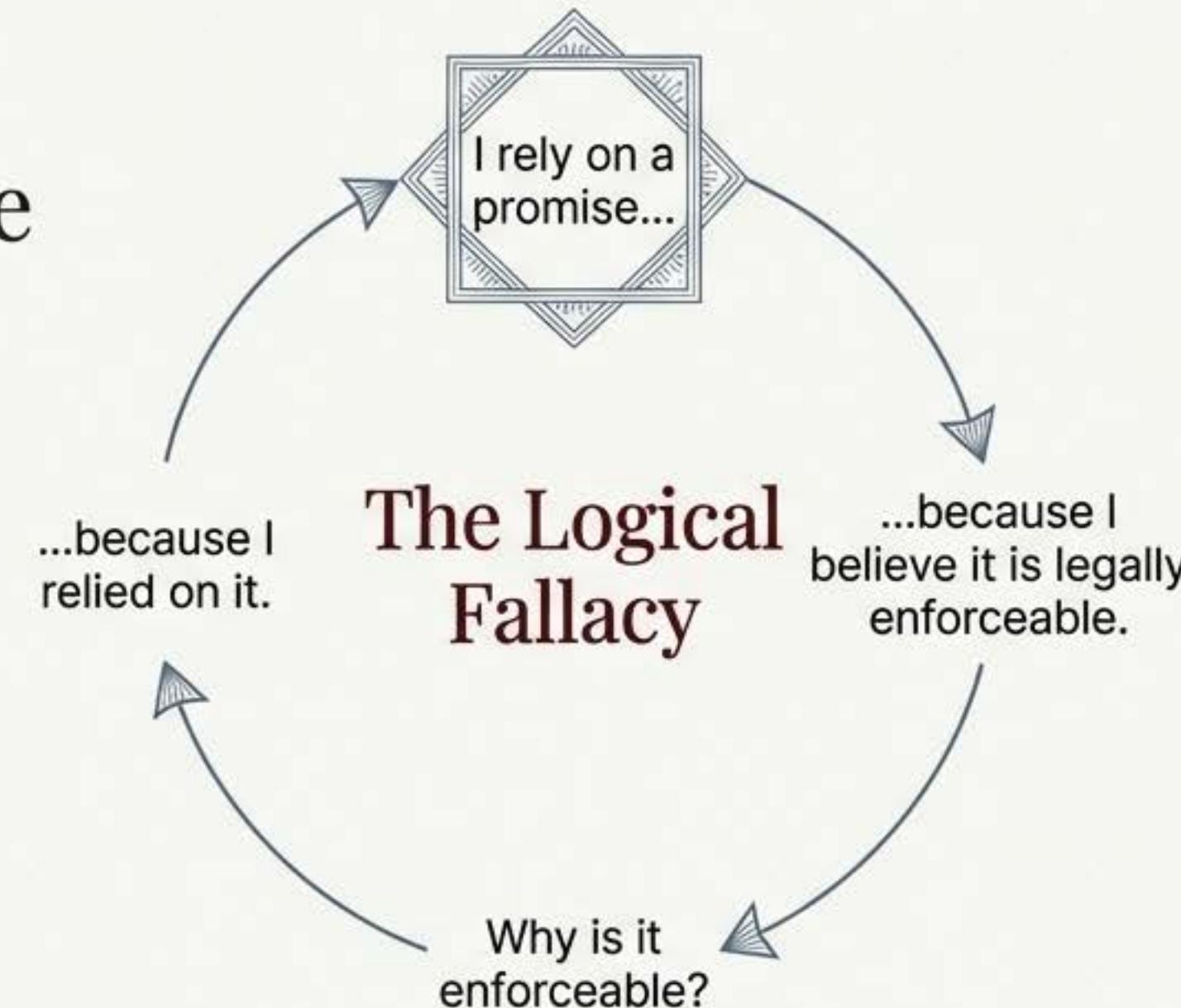


*Critique: If a mere formality like a peppercorn makes a promise binding, the doctrine elevates form over substance. It fails to explain why gift contracts should be valid without an exchange.*

# The Circular Logic of “Estoppel”

## Deconstructing the Detrimental Reliance Argument

Promissory Estoppel enforces promises when the promisee has “detrimentally relied” on the promise. But this reasoning creates a logical loop.

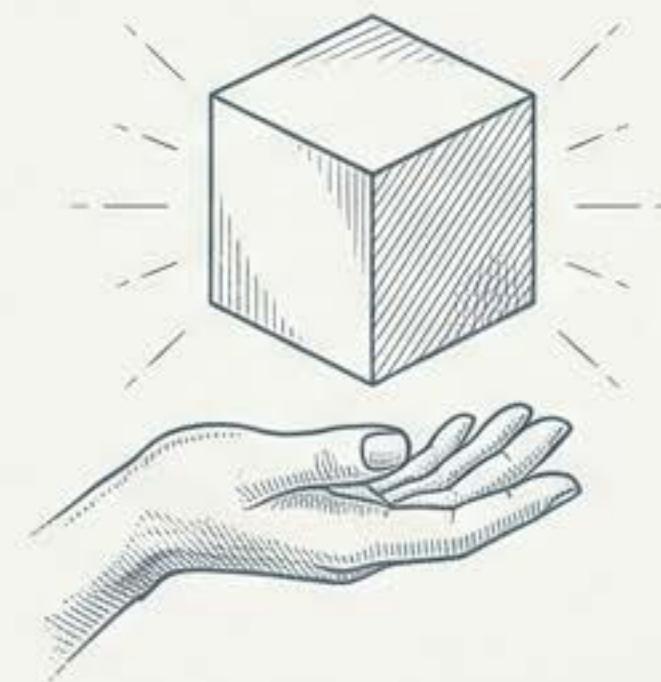


Reasonable reliance depends on enforceability. Therefore, enforceability cannot logically depend on reliance. The justification eats its own tail.

# The Pivot: From Promises to Property

**To save contract theory, we must abandon the “Promise” and embrace the “Transfer”.**

**A contract is not a commitment to DO; it is a manifestation of intent to GIVE.**



## 1. Speech is not aggression.

Therefore, speech (breaking a promise) cannot be punished.

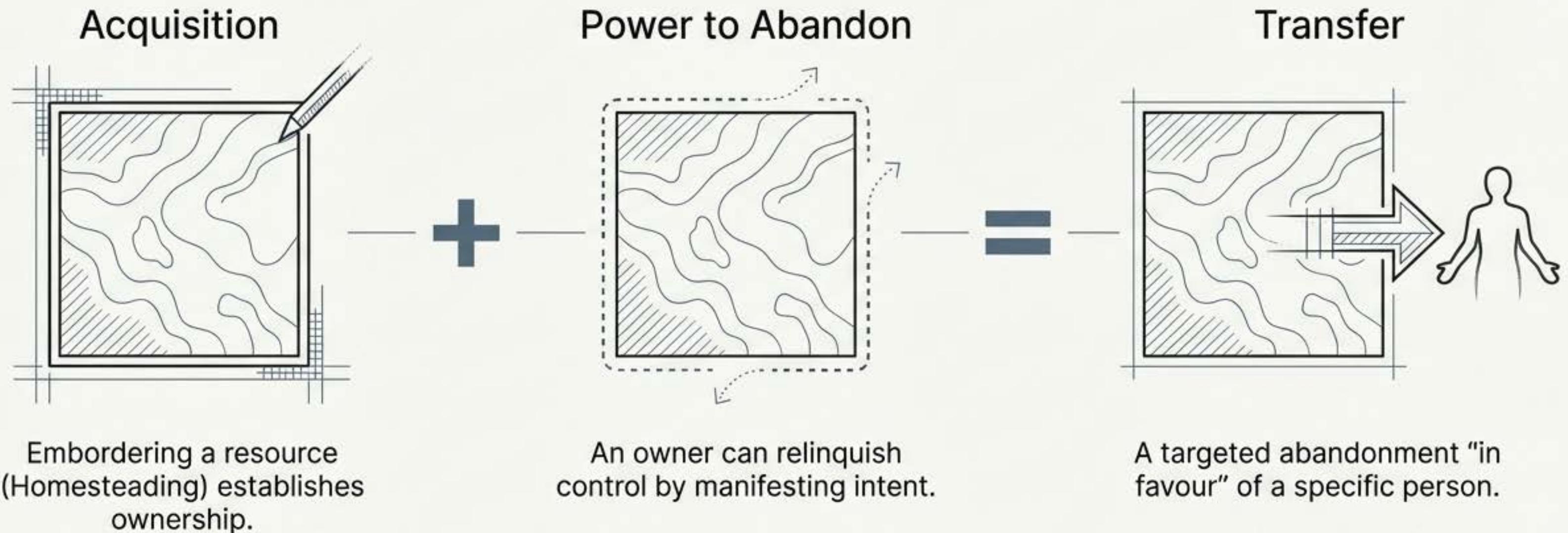
## 2. Theft is aggression.

Keeping property that belongs to another is an initiation of force.

## 3. Conclusion:

Contracts are enforced not to punish liars, but to compel the return of stolen property.

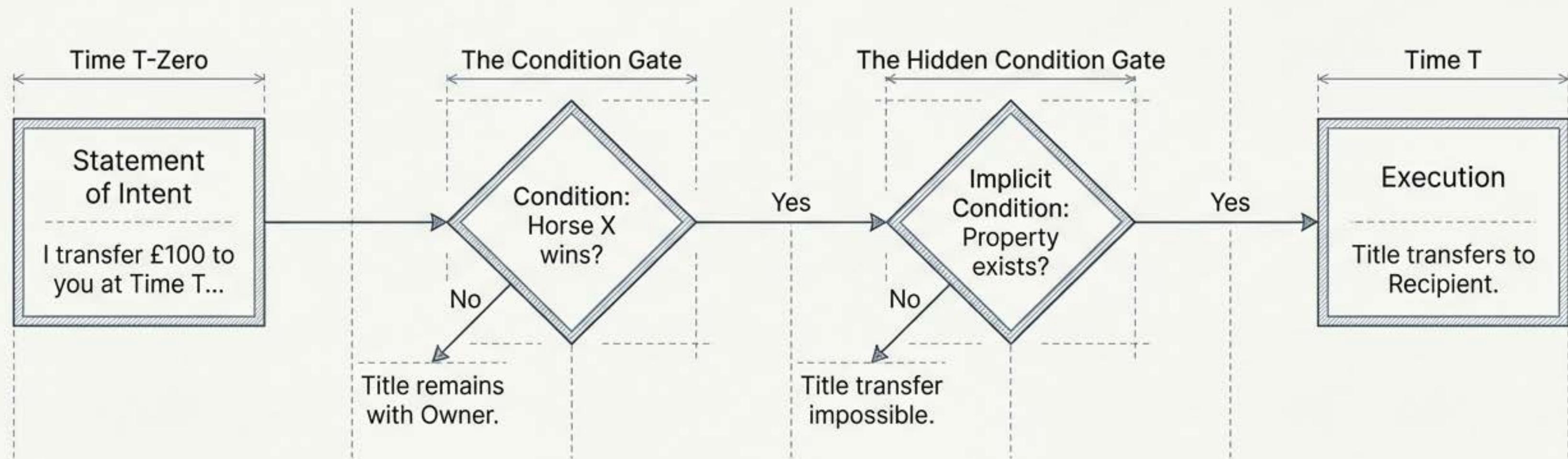
# The Mechanism of Transfer



You do not need a handshake or a "promise." You need an objectively observable conduct symbolizing consent to transfer title. This moves the ownership borders.

# The Logic of Conditional Transfers

All future-oriented transfers are inherently conditional.

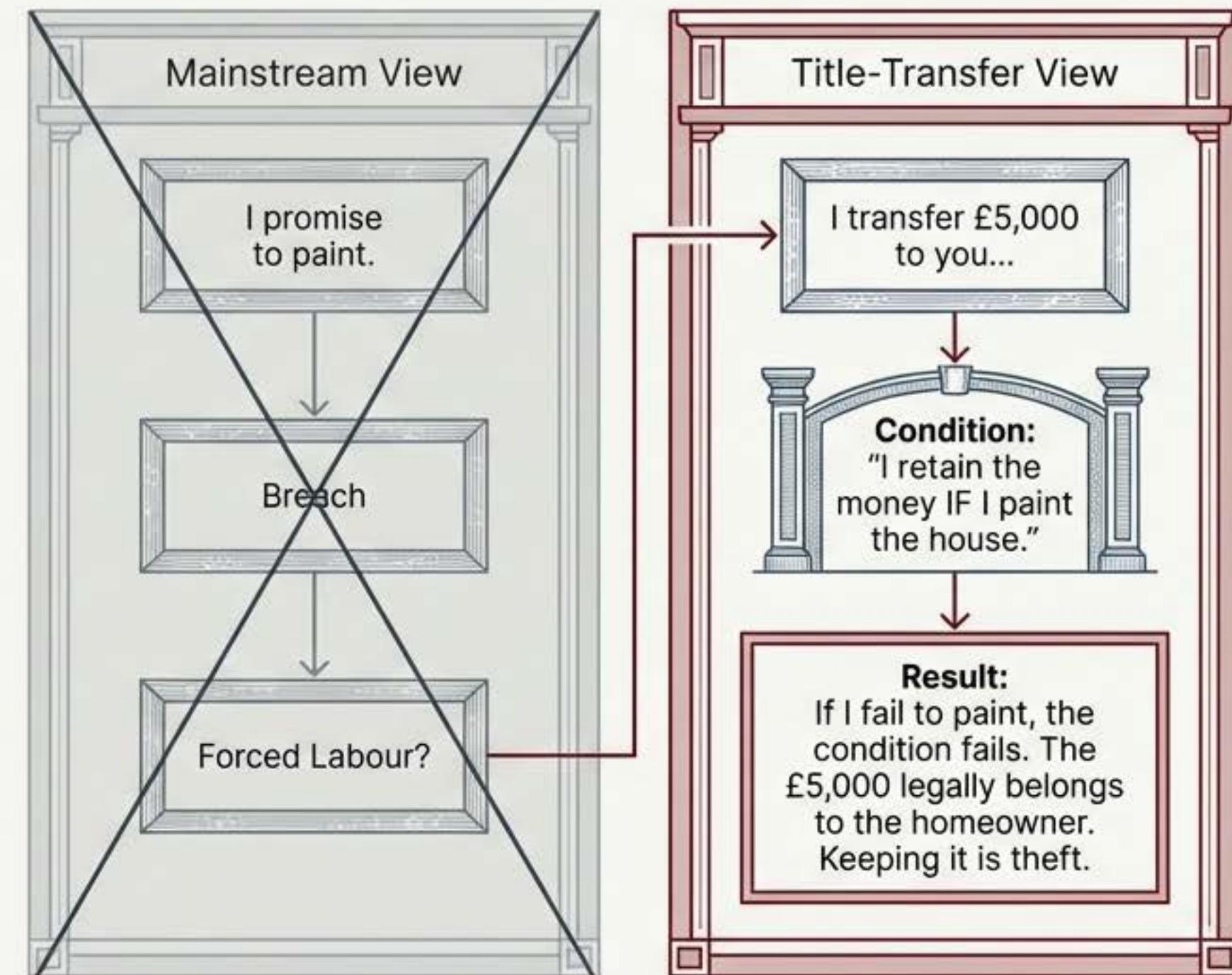


Key Takeaway: Contracts are bundles of 'If-Then' statements regarding property titles.  
You cannot transfer title to a hamster that has died, regardless of your promise.

# Enforcing Services Without Slavery

**The Problem:**  
A “promise” to paint a house cannot be enforced physically without violating bodily autonomy (Slavery).

How do we enforce performance?

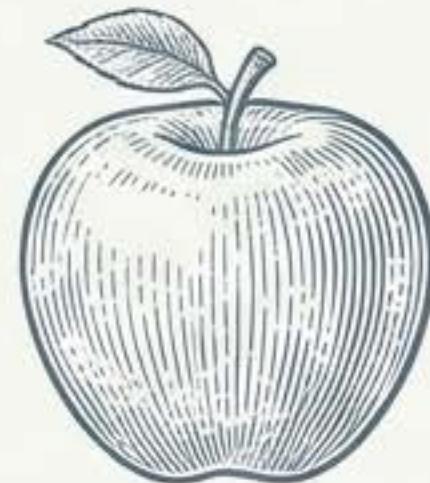


**The Solution:**  
The Performance Bond.

We convert the “obligation to do” into a “conditional transfer of money damages”.

# The Anatomy of Ownership

Why homesteaded resources can be sold, but the body cannot.

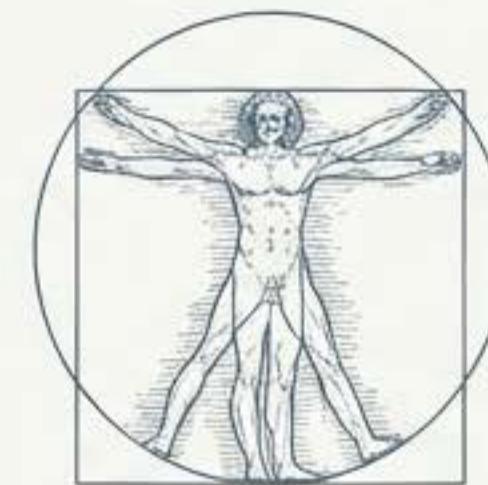


## External Goods (e.g., Apple, House)

- Owned via Acquisition (Homesteading)
- Separate from the self
- Can be abandoned

## ALIENABLE

Alienation stems from the power to abandon. You cannot abandon your own will or identity; therefore, you cannot sell yourself.



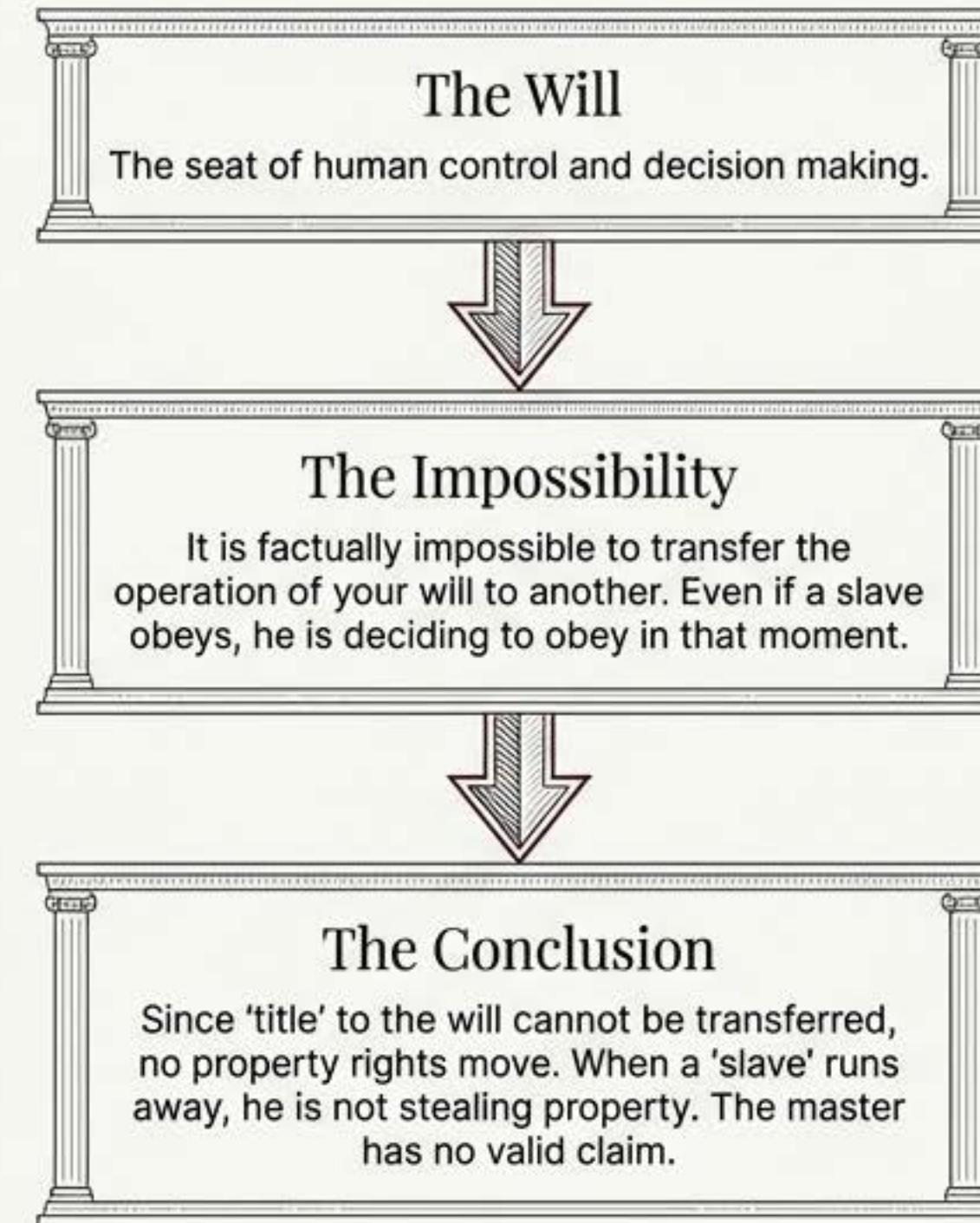
## The Body

- Owned via Identity / Direct Control
- Never “acquired” or found in nature
- Cannot be abandoned by will

## INALIENABLE

# The Fallacy of Voluntary Slavery

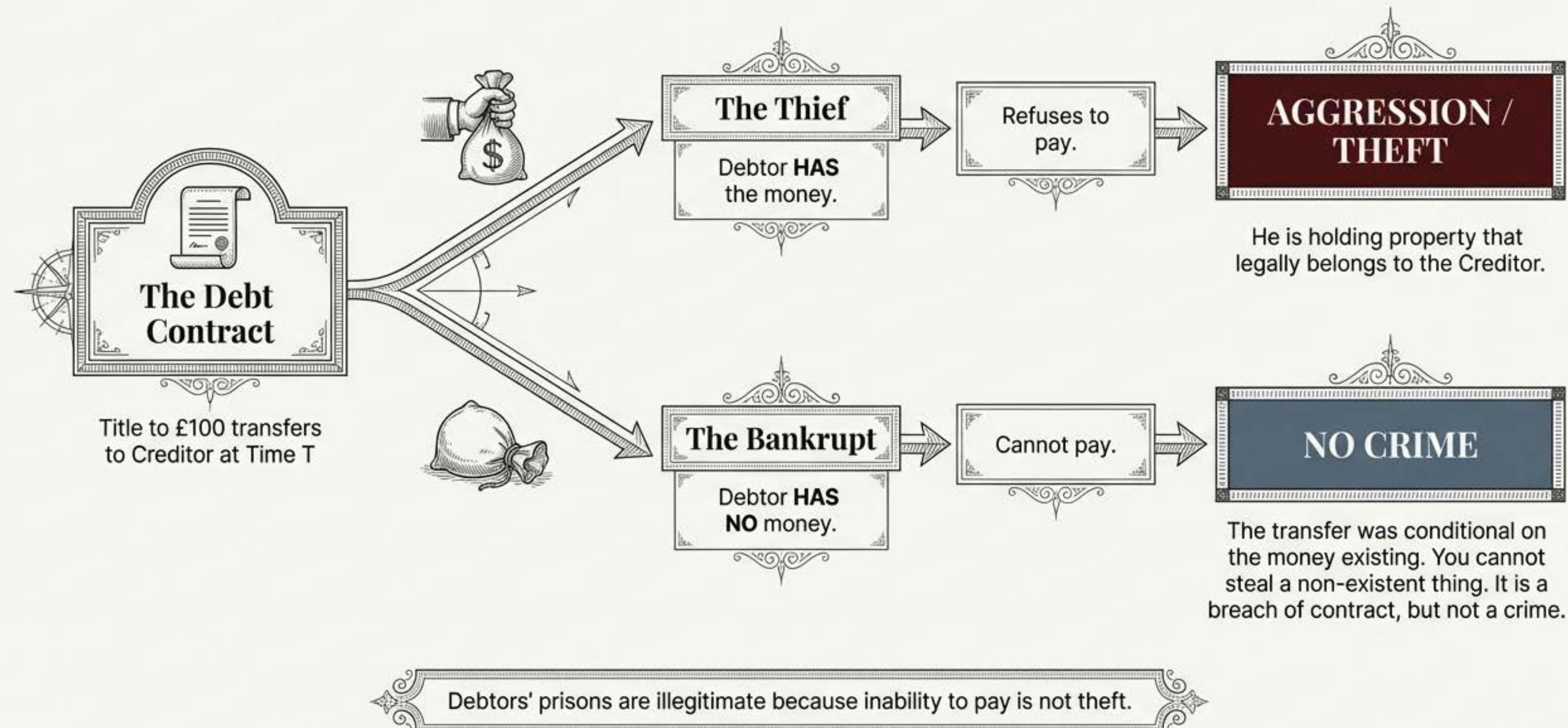
A contract to sell oneself into slavery is void ab initio (from the start) because the object of the contract is impossible.



You can sell your labour (products of the will), but not the will itself.

# Debt: Theft vs. Bankruptcy

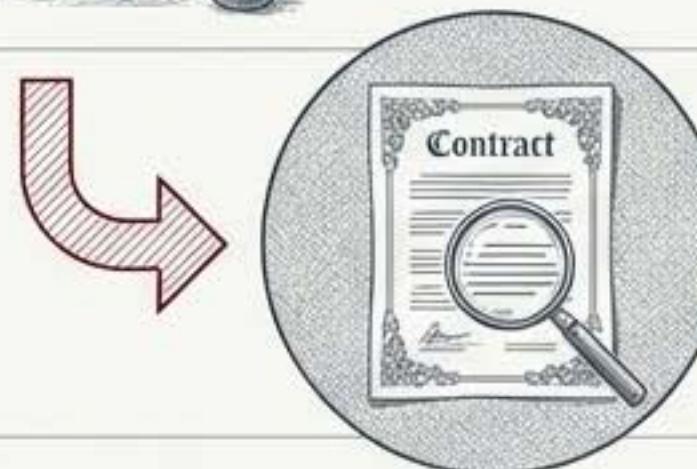
Distinguishing the Unwilling from the Unable.



# Fraud as Theft

Reframing fraud: It isn't about "lying" or subjective expectations; it is about unmet conditions in a title transfer.

## Visual Case Study The Apple Seller



Seller claims apples are fresh.  
Buyer hands over £20.

Implicit Contract:  
"I transfer £20 to you  
CONDITIONAL on these  
being edible apples."

Reality: Apples are rotten.  
Condition NOT met.

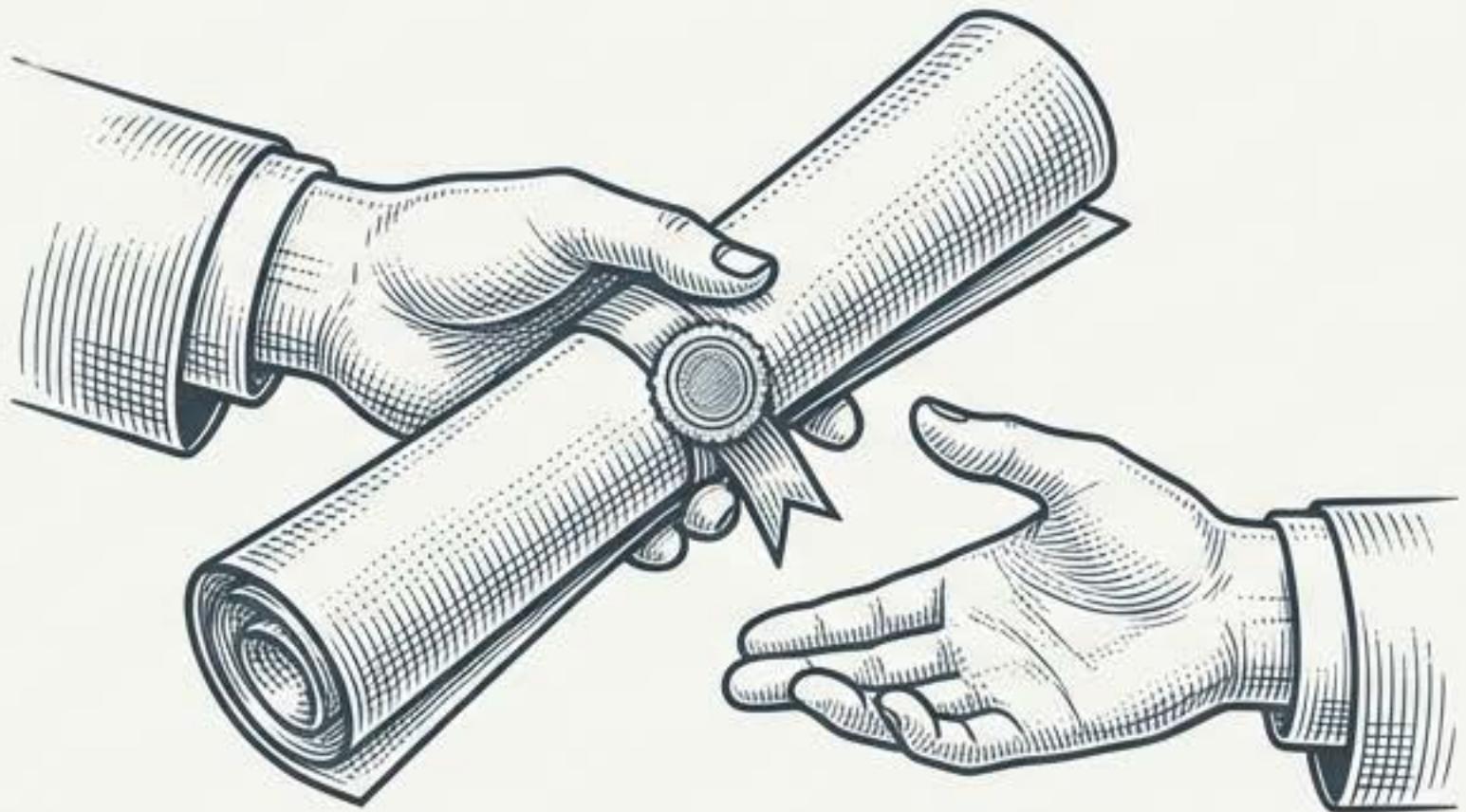
Since the condition failed, title to the £20 never transferred.  
The seller is holding the buyer's money without consent.  
consent. This is Theft.

# The New Framework

Concept	Mainstream Contract Theory	Libertarian Title-Transfer Theory
Basis	Promise / Expectation	Property Rights / Transfer
Enforcement	Compelled Performance	Restitution / Asset Transfer
Gifts	Unenforceable (needs Consideration)	Enforceable (Manifest intent)
Fraud	False Representation	Theft via Unmet Condition
Bankruptcy	Breach of Contract	Impossibility of Transfer

# A Legal System for a Free Society

- Rights are defined by objective property borders, not subjective mental states or expectations.
- Justice restores stolen property; it does not punish broken words.
- We do not need "promises" to build a complex economy; we need clear titles and conditional transfers.



# The End of “Implicit Theft”

By treating contracts as title transfers, we eliminate the need for force in “breach of promise” cases. We protect the innocent debtor while strictly punishing the fraudster.

*“The right of property implies the right to make contracts about that property: to give it away or to exchange titles of ownership for the property of another person.”*

— Murray Rothbard

