

Rules for the Transfer of Movables

A Candidate for European
Harmonisation or National Reforms?

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Wolfgang Faber
Brigitta Lurger (Eds.)


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edited by

Wolfgang Faber / Brigitta Lurger

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Preface

Comparative research in the area of property law is gaining importance. This volume contains the written versions of the contributions to the international conference ‘Rules on the Transfer of Movables – A Candidate for European Harmonisation or National Reforms?’, held in Salzburg on 15 and 16 February 2007, dealing with key issues in the field of transfer of corporeal movable property. The conference, financed by the EU’s 6th Framework Program for Research and Technological Development, the Faculty of Law of the University of Salzburg and DLA Piper Weiss-Tessbach, as well as this volume form part of the activities of the working group ‘Transfer of Movables’, one of the sub-groups of the ‘Study Group on a European Civil Code’.

The publication of this book would not have been possible without financial support by the University of Graz, the Salzburg Law Faculty’s ‘Evers-Marcic-Stiftung’ and the ‘Stiftungs- und Förderungsgesellschaft der Paris-Lodron-Universität Salzburg’. The editors wish to thank these institutions for their support. We also express our gratitude to our assistant Ernest Weiker for all his help in linguistic and editorial aspects, and our secretaries Monika Lammer and Eva Reintsch for formatting the manuscripts.

August 2007
Salzburg and Graz

*Wolfgang Faber
Brigitta Lurger*

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Introduction to the Project ‘Transfer of Movables’: Organisational Framework, Basic Issues and Goals

Brigitta Lurger*

Our Conference ‘Rules on the Transfer of Movables – A Candidate for European Harmonisation or National Reforms?’ pursues several goals: It is a general conference open to everybody – academic or practitioner – who is interested in the development of property law. But it is also a Conference with special guests and speakers: We are particularly happy to be able to welcome to this Conference the reporters of our working group ‘Transfer of Movables’. Their information is vital to our project and they took enormous efforts to answer our sometimes picky and complicated questions in extensive reports. Many of them will also contribute to this Conference as speakers. We are also very happy and honoured to welcome here the members of the ‘*Ius Commune* Group’ on property law. In this research group renowned experts of property law of several European countries co-operate to publish a European ‘Case Book’ on the whole of property law. This conference, therefore, aims at bringing together the different views and experiences of lawyers dealing with issues of property law in their academic or practical work, and to initiate a general discussion on persistent problems and recent developments in this area of law. And the conference shall also provide a forum for discussions and exchange among the members and exponents of European research groups who concentrate their activities on comparative research in European property law, especially the *Ius Commune* Case Book Group and the working group on ‘Transfer of Movables’ as part of the Study Group on a European Civil Code.

A. The working group ‘Transfer of Movables’ as part of the Study Group on a European Civil Code (SGECC)

The first initiative to establish a new working group on the ‘transfer of ownership in movables’ within the network of working groups within the ‘Study Group on a European Civil Code’ (SGECC)¹ was taken by Prof Michael Rainer, Salzburg, and Prof Willibald Posch, Graz, in 2001. Until 2004, to-

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¹ See <http://www.sgecc.net>.

gether with Wolfgang Faber, Salzburg, and Prof Brigitta Lurger, Salzburg, the first comparative studies and draft proposals on the transfer of ownership in movables on the basis of a contract or obligation and on good faith acquisition of movables were elaborated.

The main fields covered by the work of the SGECC are part of the law of obligations: general rules for obligations and for contract law, specific types of contracts, tort law, unjust enrichment, and benevolent intervention. However, also some issues of property law were identified as closely related to the law of obligations or contracts (sales, leases). In their study of 2004 on the interaction between contract law, tort and property law, commissioned by the European Commission, von Bar and Drobnig argued that the Internal Market needs a uniform regime of security rights and probably, not necessarily, also a uniform regime for the transfer of ownership in movables.² The 2004 Contract Law Communication of the Commission concluded from this study that the Common Frame of Reference and the optional instrument should cover retention of title clauses, the transfer of title of goods, security rights in movables and other related property law issues.³

As for all working groups of the SGECC, the goal of our working group on the 'Transfer of Movables' is the publication of a proposal of black letter rules together with comments and comparative notes (Sellier European Law Publishers). In addition to that, we plan the publication of all our country reports in several volumes.

B. The working group since 2005: The FWF-project and the Commission's Network of Excellence project 'Common Principles of European Contract Law' (CoPECL)

Since 2005 (until 2009) our research project is financially supported by the Austrian *Forschungsförderungsfonds*, the 'FWF', and the European Commission's Network of Excellence Project 'Common Principles of European Contract Law' (CoPECL)⁴ on the basis of the 6th Framework Program for Research and Technological Development.⁵ Our main financial investments are assistants, country reports, this conference, and travel expenses.

² Christian von Bar and Ulrich Drobnig, *The Interaction of Contract Law and Tort and Property Law in Europe, Part II: Property Law and Contract Law* (München: Sellier 2004), 468 *et seq.*

³ Commission Communication 11 October 2004, COM(2004) 651 final, 11, 20.

⁴ See <http://www.copeccl.org>.

⁵ Under the Sixth Framework Programme for Research and Technological Development (Decision No 1513/2002/EC, OJ L 232, 29.8.2002, 1), the 'Network of Excellence',