



Potestas Alienandi: Transfer of Ownership by a Non-Owner from Roman Law to the DCFR

Javier E. Rodriguez Diez

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The transfer of ownership by a non-owner is a common situation in everyday commercial practice. However, the dogmatic framework surrounding it has often led to controversy when studying both Roman and modern private law. Key to this controversy is the introduction by German scholars, in the course of the 19th century, of the notion of 'direct representation' in order to approach the transfer of ownership by a non-owner.

Regarding the study of Roman law, this involved assuming the existence of a primitive prohibition to alienate through a non-owner, since 'direct representation' was seen as a later innovation. This starting point had a decisive effect on the study of the transfer of ownership by a non-owner in Roman law, particularly concerning the significance of the voluntas domini, the way in which legal guardians alienate, the scope of praetorian innovations, the possibility to transfer ownership through formal acts, and the role of the nemo plus rule. Regarding modern private law, this starting point has brought along a radical distinction based on whether the alienation takes place in the context of direct representation or not. This book attempts to offer a fresh view through a source-oriented approach in order to provide an outlook on the evolution of the transfer of ownership by a non-owner in Roman law, as well as the dogmatic and systematic standpoints among the jurists of the ius commune. Special attention is dedicated to the innovations of German scholarship, due to their significance for the study both of Roman law and for the evolution of modern private law. [Subject: Private Law, Commercial Law]

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