

PROPOSITIONS

pertaining to the thesis

Potestas alienandi

Transfer of ownership by a non-owner from Roman law to the DCFR

Vervreemdingsbevoegdheid

Eigendomsoverdracht door een niet-eigenaar

vanaf het Romeinse recht tot het Ontwerp voor een Gemeenschappelijk Referentiekader

J.E. Rodríguez Diez

Erasmus University Rotterdam

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1. The *contemplatio domini* only acquired a decisive significance regarding the transfer of ownership by a non-owner in European Private Law after German scholarship systematically applied the concept of direct representation to the law of property.
2. Roman law knew no such thing as a pre-classical prohibition of direct representation.
3. Roman jurists exercised considerable freedom when determining the significance of the *voluntas domini* at the delivery by a non-owner.
4. Legal guardians in Rome were never considered to have ownership over the assets which they administered.
5. The *nemo plus* rule fulfilled almost exclusively an argumentative role in classical Roman law.
6. The notion of ‘just war’ was applied lightly in 17th century Chile in order to provide an additional income through the slave trade to one of the poorest possessions of the Spanish empire.
7. The evolution of the *operis novi nuntiatio* from a private injunction to a judicial procedure implies that the judge should assess the merit of the plaintiff’s claim before paralyzing the works, in order to avoid abusive lawsuits.
8. Open norms such as the objective good faith should be approached in the context of the judicial law making rather than as fixed principles which the judge may apply without explaining the grounds of his decision.
9. Although from a dogmatic perspective there is no doubt that electricity is a *res corporalis*, criminal courts which initially refused to consider it a movable object for the purpose of the law of theft were more respectful of the *nullum crimen* principle.
10. The institution of the *fideicomiso* in Latin American jurisdictions which adopted the Civil Code of Andrés Bello can be regarded as equivalent to the Anglo-American Trust, despite not being as versatile as the latter.
11. The legal scholar should take into account the words of Umberto Eco (*Il nome della rosa*) when assessing the consequences which follow from general rules and concepts: “L’ordine che la nostra mente immagina è come una rete, o una scala, che si costruisce per raggiungere qualcosa. Ma dopo si deve gettare la scala, perché si scopre che, se pure serviva, era priva di senso” (The order which our mind imagines is like a net, or like a ladder, that is built to reach something. But afterwards one has to throw the ladder away, because one discovers that, although it was useful, it was meaningless).

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