

# **Transfer of ownership of movables in the law of European countries**

## **Abstract**

The thesis focuses on the transfer of ownership of movables as the most common case of derivative acquisition of ownership. Despite the increasing number of cross-border transactions between EU Member States, the legal framework remains inconsistent across EU Member States, leading to many different legal consequences in cross-border transfers.

The thesis is thus primarily a comparative study of the contractual transfer of ownership. It presents most of the national rules governing the transfer of ownership of tangible movables in continental Europe together with the sale of goods in England. The contract of sale is the most common legal ground for the transfer of ownership in cross-border transactions. Therefore, the subject of the thesis is not only the property law regulation of the ownership transfer of a movable asset, but also the differences in the transfer based on the contract of sale. Given that the structure of the property law regulation of the transfer of movables has important consequences for the area of the law of obligations, the examination of the property law regulation in individual countries is linked to the views on certain institutes of the law of obligations. These include transfer of risk, impossibility of performance, unjust enrichment or retention of consideration. In a broader context, the thesis also touches upon the protection of the transferee against the creditors of the transferor (and vice versa). The thesis also deals with the good faith acquisition, which, although not usually understood in legal theory as a transfer of ownership, is an institute that significantly complements the regulation of transfers, especially regarding protection of legal certainty and protection of legal relations.

Based on the distinction of the basic principles governing the transfer of ownership of movables, the legal systems of European countries can be divided into several groups. Traditionally, in the Czech legal environment, only two modalities of transfer are discussed – consensual transfer, i.e. by contract, and traditional transfer, i.e. by tradition, by delivery, and the transfer is usually understood as causal in relation to the contract. However, the legal concept of transfer of ownership of movable property is also governed by other principles in other European legal systems, such as the principle of separation, principle of abstraction or the functional approach.

The thesis does not present the principles of the transfer of ownership of movables only descriptively, but above all analytically. In addition to the Czech regulation, a significant part of its analytical part is dedicated to German and Austrian regulations, as well as the French

regulation, the birthplace of the consensual principle, which is also established as the default rule for the transfer of individually determined movable tangible property by the current Czech regulation.

Therefore, after the first introductory part as a necessary comparative theoretical framework, including a discussion of the issue of "comparability of the compared" in the legal institution of transfer of ownership of movable property, the second part follows, containing a comparative study in a narrow sense. Each legal principle is followed by a presentation of national systems that are typical of the given principle or which are otherwise theoretically significant. The next subsections are devoted to the interdisciplinary aspects of the implications of the choice of the compared principles of ownership transfer, in order to provide a synthesis of the findings across the different principles of transfer, including a final assessment.

The third and final part outlines the cross-border transfer of movables under the applicable law (including the applicable rules of private international law). Furthermore, it presents an outlook for the future of European transfers of ownership of movables, including the (unsuccessful) proposals for future unification of private law at European level, *the Draft Common Frame of Reference* and *the Common European Sales Law*.

**Keywords: transfer of ownership; ownership right; consensual principle; principle of tradition; principle of abstraction; cross-border acquisition; movables**