Table of Contents

Foreword	l
Our Sponsors and Donors	:
Preface to this volume	X
Text of Articles	
English Acquisition and loss of ownership of goods	-
Bulgarian Придобиване и изгубване на собственост върху движими вещи	20
Dutch Eigendomsverkrijging en -verlies van zaken	40
Estonian Vallasomandi tekkimine ja lõppemine	58
rench Acquisition et perte de la propriété de biens corporels	74
German Grwerb und Verlust von Eigentum an beweglichen Sachen	92
Greek ίτήση και απώλεια κυριότητας κινητών πραγμάτων	112
łungarian Az ingó dolog tulajdonjogának megszerzése és elvesztése	133
calian Acquisto e perdita della proprietà dei beni mobili	151
panish Idanisición y pérdida de la propiedad sobre los bienes	160

188

Förvärv och förlust av äganderätt till varor

Swedish

	iciples of European Law on	
Acc	quisition and loss of ownership of goods	
Intro	oduction	
A.	General	
1,	Coverage	207
2.	Comparative survey	207
3.	Hardly any direct impact of EU law	208
4.	Impact of international conventions	209
5.	"Restatement" or "better law approach"	209
6. 7	Parts added or changed after publication of Book VIII DCFR	209
7.	Numbering of Articles and internal references	210
В.	Some terminological issues	
8.	Definitions	211
9.	"Right in rem"	211
10.	"Transfer"	211
	pter 1: neral provisions	
Sect	tion 1: Scope of application and relation to other provisions	
Arti	cle VIII. – 1:101: Scope of application	213
	and the state of t	213
Com	nments	213
_		
Α.	General	
1.	Function of Article	213
2.	Importance of issues covered	214
В.	Scope of Book VIII in general (paragraph (1))	
3.	Reasons and criteria for delimitation	211
4.	Goods	214
5.	Immovable property	214 215
6.	Intellectual and industrial property rights	215
7.	Rights to performance of an obligation	215
8.	Further exclusions and clarifications as to assets covered	215
9.	General; ownership	215
10.	Proprietary security rights and retention of ownership devices	215

11.	Other limited proprietary rights	216
12.	Central issue: transfer (Chapter 2)	216
13.	Good faith acquisition (Chapter 3)	216
14.	Acquisition by continuous possession (Chapter 4)	216
15.	Acquisition by production, combination or commingling (Chapter 5)	217
16.	Protection of ownership (Chapter 6)	217
17.	Protection of possession (Chapter 6), possession in general	217
18.	Consequential questions on restitution of goods (Chapter 7)	217
19.	Further modes of acquisition and loss of ownership	218
20.	Co-ownership and co-possession	218
C.	Exclusion of specific modes of acquisition and loss (paragraph (2))	
21.	General	218
22.	Universal succession (paragraph (2)(a))	218
23.	Expropriation and forfeiture (paragraph (2)(b))	218
24.	Separation from other asset (paragraph (2)(c))	219
25.	Division of co-ownership (paragraph (2)(d))	219
26.	Survivorship and accrual (paragraph (2)(e))	219
27.	Real subrogation (paragraph (2)(f))	220
28.	Occupation (paragraph (2)(g))	220
29.	Finding (paragraph (2)(h))	220
30.	Abandonment (paragraph (2)(i))	220
D.	Acquisition and loss of ownership by way of enforcement (paragraph (3))	
31.	General	220
32.	Extrajudicial enforcement (sentence 1)	221
33.	Judicial enforcement (sentence 2)	221
E.	Exclusion of specific types of assets (paragraph (4))	
34.	General	222
35.	Company shares (paragraph (4)(a))	222
36.	Documents embodying rights (paragraph (4)(a))	222
37.	Electricity (paragraph (4)(b))	223
F.	Money (paragraph (5))	
38.	Money in general; cases clearly covered or clearly not covered	223
39.	Applicability to banknotes and coins that are current legal tender	
	only with appropriate adaptations: underlying reasons	223
40.	Applicability in detail: basic overview	224
Note	es s	224

Arti	cle VIII. – 1:102: Registration of goods	224
Con	nments	
A.	General	225
1.	General approach	223
В.	The rule in detail	
2.	Paragraph (1): national law determines the categories of goods to	
	which ownership-registration applies	225
3.	Paragraph (1): "may be or have to be registered"	225
4.	Paragraph (2): different types of systems in terms of their effect	226
5.	Paragraph (2): partial exclusion of Book VIII rules	226
6.	National and international systems of registration	227
Not	es	
1.	The registration of motor vehicles	227
11.	The registration of vessels	236
111.	The registration of aircraft	245
IV.	The registration of animals	251
	cle VIII 1:103: Priority of other provisions	
A.	General	
I.	Function of this Article; relation to other parts of these model rules	251
2.	Concept of "priority over the provisions in this Book"	252
3.	Mandatory character	252
В.	Priority of Book IX on proprietary security rights (paragraph (1))	
4.	Priority of Book IX; scope of principle	252
5.	Examples of remaining scope of Book VIII	252
C.	Priority of Book X on trusts (paragraph (2))	
6.	General principle	253
D.	Priority of EU instruments and international instruments	
7.	General principle	253
Not	es	253
		200

Ar	ticle VIII. – 1:104: Application of rules of Books I to III	253
Сс	omments	
A.	General	
1.	General idea and function of this Article	254
2.	Comparative background	254
В.	The rule in detail	
3.	Agreement determining proprietary effects	254
4. 5.	Effect of reference to Books I to III	254
٦.	Reservation: "where appropriate"	255
No	tes	255
Ç a.	ction 2: Definitions	
26	CHOIT 2. Delinitions	
Αrt	ticle VIII. – 1:201: Goods	
Co	mments	
A.	General	
1.	Function and general idea	256
2.	Purpose of providing a definition here	256
В.	The rule in detail	
3.	Corporeal movable assets, including animals, liquids and gases	256
4.	Ships, vessels, hovercraft or aircraft, space objects	256
5.	Limitations as to scope contained in VIII. – 1:101	257
Not	tes	257
Art	icle VIII. – 1:202: Ownership	
Cor	nments	
A.	General	
١.	Function of the Article	257
2.	Comparative background	257
В.	The rule in detail	
3.	Comprehensive and exclusive right over property	258
4.	Right to use, enjoy, modify and destroy	258
5.	Right to dispose	258

6.	Right to recover, including separation in insolvency	259
7.	Other means of protection	259
8.	So far as consistent with applicable laws	259
9.	So far as consistent with rights granted by the owner	259
Note	or.	
1.	The concept of ownership in a historical and comparative	
٠.	perspective	260
	(a) Civil law	260
	(b) Common law	265
	(c) Scandinavian legal systems	267
И.	Constitutional guarantee of the right of ownership	271
Ш.	The content of the concept of ownership in the European legal	
	systems today	272
Arti	cle VIII. – 1:203: Co-ownership	
_		
Con	nments	
A.	General	
1.	Function of the Article	281
2.	Comparative background	281
В.	The rule in detail	
3.	Concept of co-ownership under this Article	281
4.	Party autonomy, different forms acknowledged by national law accepted	282
Not	20	202
NOU	cs.	282
Arti	cle VIII. – 1:204: Limited proprietary rights	
Con	nments	
A.	General	
i.	Function of the Article	
2.	Concept of limited proprietary right in general	304
3.	No full set of rules on limited proprietary rights	305
٥.	No run set of rules of infinited proprietary rights	305
B.	Particular limited proprietary rights	
4.	Proprietary security rights (subparagraph (a))	305
5.	Proprietary rights to use (subparagraph (b))	306
6.	Rights to acquire (subparagraph (c))	306
7.	Trust-related rights (subparagraph (d))	306

Notes

1.	Security rights	307
11.	Rights of use	309
111.	Rights to acquire	312
IV.	Trust-related rights	315
Art	icle VIII. – 1:205: Possession	
Co	mments	
A.	General idea	
1.	Possession and proprietary right	316
2.	Possession in other parts of Book VIII	316
3.	Different categories of possession	316
4. 5.	Owner-possessors (OPs)	317
э. 6.	Limited-right-possessors (LRPs) Possession-agents (PAs)	317
0.	1 055C551011 agents (1 A5)	317
В.	Interests at stake and policy considerations	
7.	Protection of possession as temporary legal regime	317
8.	Splitting of ownership and actual physical control	318
9.	Special function and character of remedies which protect possession	318
C.	Comparative overview	
10.	Notion of possession	319
Н.	Different types of possession and 'detention'	319
D.	General notion of direct and indirect possession - the corpus element	
12.	Direct or indirect physical control (paragraph (1))	319
13.	Direct possession (paragraph (2))	320
14.	Indirect possession and co-possession (paragraph (3)	320
Ε.	Mandatory character of the rules	
15.	Mandatory rules	321
Vot	oc	
100	The corpus element of possession in general	321
I.	Content and relativisation of the factual control	321
и. И.	Object of possession (corporeal assets and rights)	332
V.	Categories of possession based on the corpus element	336
/.	Functions of possession	341
/1.	Legal nature of possession	347

Article VIII I	1:206:	Possession	by	owner-possessor
----------------	--------	------------	----	-----------------

Con	nments	350
١.	General	350 350
2.	Owner-possession exercised through another person	330
Not		
ì.	Animus of an owner (content, importance, etc.)	351
II.	Legal presumptions	361
Ш.	Legal capacity	365
IV.	Qualities of possession – the element of good faith in particular	366
Art	icle VIII 1:207: Possession by limited-right-possessor	
Cor	nments	
A.	The limited-right-possessor	
t.	General	375
В.	Requirements of limited-right-possession	
2.	Three requirements	375
C.	Two types of limited-right-possessors	
3.	Paragraph (1)(a)	376
4.	Paragraph (1)(b)	376
D.	Specific legal or contractual relationship	
5.	Various types of specific legal or contractual relaitionships	376
E.	No different legal consequences for LRPs types (a) and (b)	
6.	Purpose of distinction: precise definition	377
F.	Validity of specific legal (contractual) relationship	
7.	Valid relationship required	377
G.	Protection of LRPs	
8.	Better means of protection than PAs	378
Н.	Direct and indirect limited-right-possession	
9.	Paragraph (2)	378
No	tes	379

Article VIII. - 1:208: Possession through a possession-agent

_					
	\sim	m	m	en	te

H. 1.	Control completely attributed to other person	39
B. 2.	Absence of specific legal relationship in the sense of VIII. – 1:207 Paragraph (1)(a)	39
C. 3.	Optional element of "binding instructions" Paragraph (1)(b)	39
D. 4. 5. 6.	Exemplary list in paragraph (2) Typical categories Paragraph (2)(a) Paragraph (2)(b)	391 391 392
E. 7.	Persons in physical control of the goods by coincidence (paragraph (3)) Paragraph (3)	392
F . 8.	No indirect possession-agents Only direct physical control	392
Note	25	393
Sect	ion 3: Further general rules	
Arti	cle VIII. – 1:301: Transferability	
Com	ments	
A . 1. 2. 3.	Transferability in general (paragraph (1)) General rule: all goods are transferable Exceptions provided by law Exceptions provided by parties ineffective	397 397 397
B . 4. 5.	Transferability of goods linked to other assets (paragraph (2)) General approach: reference to national law Reservation for Chapter 5	398 398
Note I. II.	rs Transferability in general Transferability of goods linked to other assets	398 401

Chapter 2: Transfer of ownership based on the transferor's right or authority

Section 1: Requirements for transfer under this Chapter

Article VIII. - 2:101: Requirements for the transfer of ownership in general

A.	General	
l.	Brief introduction to subject matter, function and scope of this Article	405
2.	Impact of registration under national law	406
3.	Terminology	406
4.	Unitary transfer approach versus functional approach	407
5.	Transfer by delivery versus "consensual" transfer	408
6.	Party autonomy	409
7.	Causal versus abstract transfer	409
8.	The concept of a separate "real agreement"	410
В.	Brief introduction to the approach taken in Chapter 2	
9.	Disputed subject matter	410
10.	Main approach taken in Chapter 2	410
C.	General discussion of the delivery approach versus a consensual	
	approach, including further options	
11.	Introduction	411
12.	Further options: payment	412
13.	Quantitative arguments from comparative survey; recent trends	412
۱4.	"Natural" solution, "ordinary people's expectations"	412
15.	Remark as to importance of the following arguments	413
16.	Generic goods	413
17.	Future goods (goods to be manufactured)	414
18.	Transfer of goods owned by a third person	415
19.	Alternative obligations	415
20.	Contract under suspensive condition	415
21.	General: method, subject matter	415
22.	Consensual model coincides with "natural expectations" of the parties, etc	417
23.	Consensual model: transferor and creditors sufficiently protected by	
	right to withhold performance	417
24.	Consensual model: protection of pre-paying transferee	417
25.	Consensual model: transferor has no specific interest in the goods	
	whereas the transferee has	418
26.	Consensual model: transferee pays best price - efficiency and benefit	
	for transferor's creditors	419
27.	Consensual model: macro-economic benefit from protecting transferee	419
28.	Consensual model: both parties usually want an immediate transfer	419

29.	Consensual model: requirement for contracting out of a delivery rule	
	would be a trap for ordinary people and would create additional	
	transaction costs	420
30.	Consensual model: increasing transaction costs resulting from alternative	
	security for pre-payment	420
31.	Consensual model: protection of good bargain	421
32.	Consensual model: party autonomy rule will anyway erode delivery principle	421
33.	Consensual model: clarity and simple application	422
34.	Non-mandatory delivery model: general remark on impact of insolvency	
	law principles	422
35.	The insolvency administrator's right to choose whether to uphold or	
	terminate the obligations under an unfulfilled bilateral contract in particular	422
36.	Delivery model: transferee of specific goods is a general creditor like others	423
37.	Delivery model: equal treatment of creditors	423
38.	Delivery model: performing in advance means taking risk; principle of	
	contemporaneous performance as well-balanced starting point	424
39.	Different scenarios under the non-mandatory delivery approach in detail:	
	only transferor has (fully) performed	425
40.	In detail: none of the parties has yet performed	425
41.	In detail: transferor still in possession of goods, transferee has fully paid	426
42.	In detail: transferor still in possession of goods, transferee has partly paid	427
43.	Delivery model serves optimal satisfaction of creditors by giving insolvency	
	administrator's right to choose a broader scope	429
44.	No significant difference as to kind of performance	429
45.	Non-mandatory delivery model: equal treatment argument not only	
	defensible when delivery is mandatory requirement; functions of	
	a default rule	430
46.	Non-mandatory delivery model: transferor's interests may be parallel	
	to those of creditors	431
47.	Delivery model: one rule appropriate for various situations	431
48.	The role of "publicity" in the sense of providing reliable information	422
	to third parties as a basis for taking decisions Physical control as a reasonable starting point for burden of proof	432
49.	Delivery: a manifest event from the parties' perspective	433
50.	Arguments put forward in favour of delivery (cutting off the transferor's	434
51.	control over the goods) as a mandatory requirement	434
57	General; comparative background	435
52.	Options and discussion	436
53.	The rule adopted	436
54. 55.	General; comparative background	437
56.	Advantages of delivery approach	437
	Right to obtain or recover possession from third party	438
57. 58.	Right to demand a protection order against third persons otherwise	750
JO.	interfering with the property	439
59.	Right to use the goods	439
59. 60.	Right to modify the goods and "right to destroy"	440
61.	Right to fruits	440
	A \$4 MATE TO T	

62.	Right to claim damages from a third party	44
63.	Right to claim reversal of unjustified enrichment	44
64.	General	442
65.	Transfer upon payment, even after delivery	442
66.	Transfer upon payment, or at latest upon delivery	442
67.	General	443
68.	Consumer can be either party	443
69.	Consensual rule and consumer protection	444
D.	General discussion of requirement of a separate real agreement	
70.	General; the concept of a "real agreement"	444
71.	Further details as to the real agreement concept	445
72.	Concept not needed	445
73.	Prevention of a passing of ownership without consent	446
74.	Technical construction of a retention of ownership	440
75.	Possibility of unilaterally imposing a retention of ownership	447
76.	Security for payment where performances are to be exchanged	
	contemporaneously	448
77.	Special situation: goods are already in possession of transferor when	
	entitlement to transfer ownership arises (in particular: re-transfer after	
	termination)	448
78.	Protection of a transferor lacking capacity at the time of delivery	450
79.	Extending the transferor's creditors' rights to treat the transfer as	
	ineffective in the transferor's insolvency	45
80.	Technical vehicle for implementing an "abstraction principle"	45
81.	Real agreement concept not needed	452
E.	General discussion of a "causal" versus an "abstract" transfer system	
82.	General; "causal" and "abstract" transfer concept	452
83.	Hypothetical alternative concepts	452
84.	The rule adopted: causal transfer	453
85.	Protection of commerce; conflict A–C.	453
86.	Only C in good faith deserves protection	454
87.	Conflict between transferor (A) and transferee's (B's) creditors	454
88.	Publicity	454
89.	Difficulties for abstraction policy due to voidability of real agreement	454
F.	Concluding remark on the role of party autonomy	
90.	Considerable importance	455
91.	Party agreements indirectly affecting third parties	45
G.	Concluding remark on a functional versus a unitary-based approach	
92.	Unitary starting point, but not as far-reaching as hypothetically possible,	
	and open to exceptions	450
93.	General reasons for this drafting style	15

H.	The basic rule in detail	
94.	General	457
95.	Parties: transferor and transferee, owner	458
96.	General	458
97.	Certain flexibility provided by party agreement	458
98.	General	458
99.	General	459
100.	Transferor's right to dispose	459
101.	Transferor's authority to dispose	459
102.	General: entitlement	460
103.	Entitlement must be "valid"	460
104.	By virtue of a contract or other juridical act	461
	By virtue of a court order	461
106.	By virtue of a rule of law	461
107.	General	461
108.	Hierarchy when applying the default rule system	462
	Reference to other paragraphs of this Article	463
	General	463
HI.	Accentuation of the causal approach	463
	Protection from transfer to take place where equivalent to delivery is	
	not referable to entitlement	463
113.	Terminology: based on, or referable to	463
	General	464
115.	Proposed understanding: no standardised requirements, rather a matter of proof	161
116	Sentence 2: reference to rules on transfer of goods forming part of a bulk	464 465
	Purpose of the rule	465
	Turpose of the fact	,05
Note	s	
١.	Basic distinctions	466
11.	Transfer by delivery	467
	(a) Causal transfer	468
	(b) Abstract transfer	482
Ш.	Transfer by mere consent	488
IV.	The functional approach to the transfer of ownership	509
V .	The issue of identification in particular	514
Artic	le VIII. – 2:102: Transferor's right or authority	
Comi	ments	
	General	
	Function of the rule	528
2.	Brief overview of cases regulated	529

В.	Subsequent acquisition of right to dispose	
3.	Rationale; comparative background	529
4.	How the rule works	529
C.	Ratification	
5.	General	529
6.	Ratification	530
7.	Effect of ratification in general (paragraph (2) sentence 1)	530
8.	Rights acquired by third persons before ratification remain unaffected	
	(paragraph (2) sentence 2)	530
Not	es	531
Arti	cle VIII 2:103: Agreement as to the time ownership is to pass	
Con	nments	
A.	General	
1.	Function of the rule	543
2.	Comparative background	543
3.	Concept of agreement as to time ownership is to pass	544
4.	Form of agreement	545
5.	When agreement can be made	545
6.	Burden of proof; no undermining of delivery rule	546
7.	General limits	546
8.	Reservation for registration	546
В.	Examples of agreements as to time ownership is to pass	
9.	Any time or condition	546
10.	Transfer upon payment, retention of ownership	547
11.	Transfer upon conclusion of contract or at any other time before delivery	547
12.	Agreement when goods are in possession of a third party	547
Not	es	
J.	Ownership transfer without delivery	547
II.	Ownership transfer after delivery	558
Arti	icle VIII. – 2:104: Delivery	
Con	nments	
A.	General	
١.	Function of the rule	561
2.	Comparative background	561
3.	Reservation for the "purposes of this Book"	562
		302

В.	The general delivery rule (paragraph (1))	
4.	General	562
5.	Recourse to the concept of possession, including indirect possession	562
6.	Requirements of delivery: transferor giving up and transferee obtaining	
_	possession	563
7.	Delivery in case of joint possession	564
C.	Delivery involving carriage by a third party carrier (paragraph (2))	
8.	Different situations involving transport; coverage of the rule	564
9.	Policy of the rule	565
10. 11.	Why the delivery-concept of paragraph (1) should not govern these cases First requirement of delivery in the sense of paragraph (2): transferor's	565
12.	obligation to deliver is fulfilled Second requirement of delivery in the sense of paragraph (2): carrier or transferee obtains possession	566 566
13.	Relation to rule on delivery of documents (VIII. – 2:105 (Equivalents to delivery) paragraph (4))	566
Not	tes	
l.	Notion and legal nature of delivery	567
Н.	Consequences of delivery	580
Con	nments	
A.	General	
١.	Function of the rule	602
2.	Common characteristics of "equivalents to delivery"	602
3.	Burden of proof	603
В.	Goods already in possession of transferee (paragraph (1))	
4.	General	603
5.	Comparative background	603
6.	How the rule works in detail	603
7.	Immanent risk: loss of security for payment	604
C.	Goods in possession of third person (paragraph (2))	
8.	Situations covered	605
9.	Comparative background	605
10.	Both notice approach and assignment approach possible under these model rules	605
11.	Notice	606
11. 12.	Person giving the notice	606
13.	Person receiving notice	607
14.	Time of transfer	607

15. 16.	Relation to rule on delivery of documents (paragraph (4) of this Article) Effect on position of third party in possession	607 607
D.	Delivery of means enabling the transferee to obtain possession of the goods (paragraph (3))	
17.	Basic idea; means	608
18.	Comparative background	608
19.	Transferor giving up, and transferee obtaining, possession of the means	608
20.	Codes (pure information)	608
E.	Transfer of document containing the undertaking to deliver the goods (paragraph (4))	
21.	General	609
22.	Open list, electronic documents included	609
23.	Requirements as to the document	609
24.	Transfer of goods upon transfer of documents	610
25.	Relation to other transfer rules: no exclusivity of transfer by document	610
F.	Acts not covered	
26.	Handing over single items only symbolising a bigger entity	
	no equivalent to delivery	611
27.	Marking the goods for the transferee no equivalent to delivery	611
Not	es	
I.	Delivery when the transferee is already in possession of the asset	612
II.	Delivery when the object is in the physical control of a third party	616
Ш.	Delivery by sign, symbol or means of control	623
IV.	Transfer by documents of title	630
Sec	tion 2: Effects	
Arti	cle VIII 2:201: Effects of the transfer of ownership	
Con	nments	
A.	General	
١.	Function and structure of the Article	640
В.	Effects of transfer in general (paragraph (1))	
2.	Reference to time; unitary transfer approach	641
3.	Reference to transferor's right or authority to dispose	641
4.	Effect as between the parties and effect against third parties	641
5.	Law of obligations may provide its own effects	642
6.	Some exceptions from unitary approach adopted under this Chapter	642
7.	No accountability linked to ownership	642
8.	Tax law issues not intended to be decided	642

C.	Clarifications as to relation to rights and obligations between the parties (paragraph (2))	
9.	General	643
10.	Risk (subparagraph (a))	643
11.	Right to withhold performance (subparagraph (b))	643
12.	Internal distribution of fruits and benefits, internal distribution of costs	043
12.	and charges (subparagraph (c))	643
13.	Internal right to use, or obligation not to use (subparagraph (d))	643
	instituting the to doe, or congutton not to doe (subparagraph (d))	073
D.	Clarifications as to rights of or against third parties (paragraph (3))	
14.	General	644
15.	Transferor's creditors' right to treat transfer as ineffective (actio Pauliana	
	and similar concepts)	644
16.	Right to claim reparation under Book VI from a third party damaging	
	the goods where person suffering economic loss is not the owner	
	(subparagraph (b))	644
E.	Effect of termination exercised when withholding delivery after transfer of ownership (paragraph (4))	
17.	General; situations covered	645
18.	Transferor still has a right to withhold delivery of the goods	645
19.	Termination of the contractual relationship	645
20.	Retroactive proprietary effect of termination	645
F.	Note on transferor's right of stoppage in transit	
21.	Right of stoppage in transit not explicitly provided for	646
	ragin of stoppings in the same supplied by	0 10
Not	es	
Ι.	Approaches to the transfer of ownership	647
H.	Transfer of ownership and passing of the risk	648
III.	Right to fruits and benefits in relation to transfer of ownership and/or	
	passing of the risk	662
V.	Stoppage in transit	666
V .	Insolvency and non-executed contracts	670
∕I.	Remedies for the reversal of fraudulent or prejudicial transactions	
	(actio pauliana – insolvency)	697
Arti	cle VIII. – 2:202: Effect of initial invalidity, subsequent avoidance,	
with	ndrawal, termination and revocation	718
Con	nments	
۹.	General	
l.	Function of the rule	719

В.	Initial invalidity and subsequent avoidance (paragraphs (1) and (2))	
2.	General	719
3.	Initial invalidity (paragraph (1))	719
4.	Subsequent avoidance (paragraph (2))	720
5.	Concept of retroactive proprietary effect	720
C.	Withdrawal, termination and revocation (paragraph (3))	
6.	General	720
7.	Termination	720
8.	Withdrawal	721
9.	Revocation of donation	722
D.	Other rights to recover not affected (paragraph (4))	
10.	Purpose of this paragraph	722
Not	es	
١.	Initial invalidity	722
Ħ.	Avoidance	740
<u> </u> .	Termination, withdrawal and revocation	752
Arti	cle VIII 2:203: Transfer subject to condition	
Con	nments	
A.	General	
га. 1.	Function of the rule	761
2.	Concepts of suspensive and resolutive condition	761
В.	Transfer subject to resolutive condition (paragraph (1))	
3.	General	761
4.	Comparative background	761
5.	Basic policy considerations	762
6.	General rule: no retroactive proprietary effect, but immediate "automatic"	.02
	re-transfer within the limits of the re-transferor's right or authority to dispose	762
7.	Arguments in favour of this general rule	762
8.	Mandatory exclusion of retroactive proprietary effect (sentence 2)	763
9.	In particular: effect on third parties	764
10.	In particular: mandatory character also applicable to donations	765
C.	Transfer subject to suspensive condition (paragraph (2))	
11.	Special application of agreement as to the time ownership is to pass	765
12.	Example: retention of ownership	765
D.	Note on transfer subject to time limit	
13.	Transfers subject to suspensive or resolutive time limits may be treated	
	like transfers subject to condition	765

Not	tes	
ſ,	Resolutive conditions and terms	766
И.	Suspensive conditions and terms	773
500	tion 2: Special constallations	
SEC	tion 3: Special constellations	
Art	icle VIII. – 2:301: Multiple transfers	
Cor	nments	
A.	General	
L.	Function of the rule	793
2.	Comparative background	794
3.	Primary options under a delivery-based transfer system: general	794
4.	Cases solved in the same way under both options	795
5.	Option 1: general delivery approach, reversed by non-contractual	
	liability if later transferee acts in "bad faith"	795
6.	Option 2: delivery approach, acquisition of later transferee being	
	excluded in case of "bad faith"	796
D	How the rule works in detail	
B. 7.	Scope: several purported transfers of the same goods	707
1. 8.		796
o. 9.	The scope left to the basic delivery rule; unproblematic cases Transferor still owner, later transferee in good faith	797
9. 10.	Transferor still owner, later transferee in bad faith (paragraphs (1) and (2))	797 797
10.	In particular: insolvency of later transferee in possession	791 799
12.	In particular: insolvency of fater transferer in possession	799 799
12.	in particular. Insolvency of transicion	199
Not	es	800
Arti	cle VIII. – 2:302: Indirect representation	
Con	nments	
A.	General	
1.	Function of the rule	813
2.	Direct and indirect representation	814
3.	Indirect representation for acquisition and for alienation	815
4.	Comparative background	815
5.	Related provisions in other parts of these model rules	816
В.	Discussion of "two-step transfer" versus "direct transfer" approach	
6 .	General: options; authority to dispose already implies solution for	
U.	representation for alienation	816
	4	

7.	Representation for acquisition: principal's perspective	817
8.	Representation for acquisition: third party's perspective	817
9.	Representation for acquisition: intermediary's and intermediary's	
	creditors' perspective	817
10.	Representation for alienation: principal's perspective	818
11.	Representation for alienation: third party's perspective	818
12.	Representation for acquisition	819
13.	Representation for alienation	819
14.	Simplicity, practicability, facilitating indirect representation	819
15.	Other general arguments	820
16.	Summary of evaluation	820
C.	The rule in detail	
17.	Scope	820
18.	Direct transfer between principal and third party	820
19.	Paragraph (3): requirements for, and time of, the transfer	821
20.	Agent's authority to transfer or receive the goods (paragraph (3)(a))	821
21.	Entitlement between intermediary and third party (paragraph (3)(b))	821
22.	Agreement as to time, delivery or equivalent (paragraph (3)(c))	821
Not	es	822
	chain of transactions nments	
A.	General	
д. 1.	Function of the rule	
1. 2.	Comparative background	832
3.		833
<i>J</i> .	Options: direct transfer or transfer "along the chain"	833
B.	Discussion of the options	
4.	General; avoiding artificial constructions and consistency	833
5.	Protection of insolvent middle person's creditors	833
6.	Transfer subject to retention of ownership or other encumbrance	834
7.	Invalidity of contracts in the chain	835
C.	The mile in detail	
8.	The rule in detail	
	Chain of entitlements to transfer same goods	835
9.	Chain of entitlements to transfer same goods Delivery or equivalent effected directly	835 835
	Chain of entitlements to transfer same goods	
9. 10. Not	Chain of entitlements to transfer same goods Delivery or equivalent effected directly Effect: as if transferred from each preceding member of chain to the next	835
9. 10.	Chain of entitlements to transfer same goods Delivery or equivalent effected directly Effect: as if transferred from each preceding member of chain to the next	835

Article VIII. - 2:304: Passing of ownership of unsolicited goods

A.	General	
١.	Function of the rule	850
2.	Comparative background and main policy questions	850
3.	Basic idea	850
4.	Place of provision	851
5.	Relation to unjustified enrichment law	851
В.	The main rule in detail (paragraph (1))	
6.	Scope: business delivering unsolicited goods to consumer	851
7.	Time of acquisition	851
8.	Right to reject (sentence 2)	852
9.	Effects of acquisition of ownership	852
10.	No effect against original owner if business acted without right or	
	authority to dispose	852
C.	Exceptions (paragraph (2))	
П.	General	853
12.	Exception for supply by way of benevolent intervention in another's affairs	853
13.	Exception for supply in error	853
14.	Delivery of excess quantity under contract for sale of goods	853
Not	es	854
Arti	cle VIII. – 2:305: Transfer of goods forming part of a bulk	
Con	nments	
A.	General	
١.	Function of this and following Article	862
2.	Comparative background	863
3.	Basic structure of the "bulk sale" rules	863
4.	Relation to Chapter 5	864
В.	Definition of "bulk" (paragraph (1))	
5.	Mass or mixture of fungible goods	864
6.	Identified as contained in defined space or area	864
C.	Main rule: creation of co-ownership (paragraph (2))	
7.	Specified quantity of identified bulk	865
3.	Intended time of transfer before identification	865
9.	Consequence: acquisition of co-ownership	866

D.	Calculation of the undivided shares: general rule (paragraph (3))	
10.	Mechanism of calculation: relation of quantity to which transferee is entitled to quantity of goods in bulk	866
	Situations covered by this general calculation rule ("at any time"):	
11.	acquisition of share	866
12.	Subsequent increase of bulk	867
13.	Voluntary legitimate diminution of bulk by transferor	867
E.	Diminution of the bulk (paragraph (4))	
 14.	Risk of shrinkage primarily placed on transferor	868
15.	Shrinkage subsidiarily to be borne by transferees	868
16.	Underlying policy	869
17.	Special constellations	869
F.	"Transfer" of quantity exceeding quantity in the bulk (paragraph (5))	
18.	Acquisition in respect of excess only in good faith (sentence 1)	870
19.	Calculation of shares (sentence 2)	870
20.	Underlying policy; subsequent increase of bulk	871
G.	Further dispositions relating to the undivided share	
21.	"Transfer of quantity" to subpurchaser; general	871
22.	"Transfer of quantity" where excess disposition has occurred	871
23.	Retransfer to the original transferor after excess disposition	872
Not		
l.	The existence of a "bulk sales" rule in the European legal systems and	
	the functionality of such a rule	873
II.	The existence of an identification requirement in contracts for the sale	
	of generic goods	875
Arti	icle VIII. – 2:306: Delivery out of the bulk	
Con	nments	
Con	mens	
A.	General	
١.	Function of the rule	875
2.	Basic policy choice: no far-reaching "first come, first served" principle,	
	but adjusted good faith acquisition principles	876
В.	Right to take delivery and acquisition of ownership (paragraph (1))	
3.	Transferee's right to take delivery	876
4.	Acquisition of ownership	877
C.	Delivery in excess of quantity corresponding to undivided share	
	(paragraph (2))	
5.	Acquisition in respect of excess only in good faith	878

6.	Good faith with respect to possible negative consequences of excess for other transferees	878
7.	How this is supposed to work in practice and why the good faith	
8.	approach makes sense Consequences regarding non-contractual liability for damage and	879
	unjustified enrichment law	879
Note	es	880
	cle VIII 2:307: Contingent right of transferee under ntion of ownership	
Com	ments	
A.	General	
1. 2.	Function of the rule Scope: retention of ownership devices	880
3.	Place of the provision	88 I 88 I
	1	
В.	The rule in detail	
4.	Transferee's right to pay the price under the terms of the contract	881
5.	Transferee's right to acquire ownership upon payment	882
Note	S	882
Cha	oter 3:	
	d faith acquisition of ownership	
	tle VIII 3:101: Good faith acquisition through a person out right or authority to transfer ownership	
Com	ments	
A.	General remarks	
l.	Purpose and effect of the rule	887
2.	Persons involved and terminology	887
3. 4.	Two types of situations covered Relationship to international conventions and EC law	888 888
⊣.	reductions to members to make the second transfer to members to me	000
B.	General policy of good faith acquisition	
5.	Balancing the interests of A and C – individual level	889
6. 7	Policy issues at a general level Doctrinal explanations of good faith acquisition	889 889
7. 8.	Political decision in favour of good faith acquisition	890
	•	

C.	Requirements for the transfer relationship B-C	
9.	Requirements of VIII. – 2:101	890
10.	Avoidance of contract B-C	891
П.	Requirement of possession by B – requirement of possession by C.	891
12.	Mere agreement does not suffice	891
13.	Arguments for this solution	892
14.	For value – paragraph (1) (c): balancing of party interests	892
15.	Additional reasons for adopting the "for value" restriction	892
16.	Mixed donations	893
17.	Alternative solutions	893
18.	Obligation to pay or actual payment	893
19.	Object of good faith	894
20.	Time when C has to be in good faith	894
21.	Standard of good faith	894
22.	Flexibility of general standard of good faith	895
23.	Good faith standard and protection of commerce	895
24.	Good faith standard and overall approach of VIII 3:101	896
25.	General acceptability of strict good faith standard	896
26.	Proof of good faith with respect to negligence	896
27.	Proof of good faith with respect to actual knowledge	897
28.	Rule on burden of proof in black letter text	897
D.	Relationship A-B: how A loses possession (stolen goods)	
29.	Different ways in which A may lose possession	897
30.	Exclusion of good faith acquisition of stolen goods	898
31.	Lost and entrusted goods	898
32.	Void or avoided contract	898
Ε.	Counter-exception of paragraph (2): in the ordinary course	
	of business, cultural objects	
33.	Rule of ordinary course of business in general	898
34.	Rule more flexibly adaptable to individual circumstances than	0,50
	traditional privileged situations	899
35.	Public auction	899
36.	Public markets	899
37.	Ordinary course of business	899
38.	No necessity of special protection of consumers	900
39.	Cultural objects	900
F.	Relation A-C: no right to buy back	
40.	Additional instrument to protect interests of owners is not necessary	901
41.	Disadvantages of buy back right	901
G.	Transferee already in possession of the goods (paragraph (3))	
42.	Clarification referring to VIII. – 2:105 paragraph (1) situations	901
43.	Good faith excluded	901

Notes

Not I. II. IV. V. VI.	General concept of good faith acquisition Standard of acquirer's good faith Acquisition for value or gratuitous acquisition Circumstances of the acquisition of possession Circumstances by virtue of which the original owner was dispossessed and the case of lost and stolen goods Right of the original owner to buy back the goods from the bona fide transferee and action for rei vindicatio Cultural objects	902 910 917 920 925 931 938
of li	cle VIII. – 3:102: Good faith acquisition of ownership free mited proprietary rights	
Com	nments	
A.	Scope and function of Article and relationship to VIII 3:101	
1.	Purpose of Article	940
2.	"Limited proprietary rights"	940
3.	Acquisition of ownership not regulated by this Article	941
4.	Examples for the differentiation between acquisition of ownership	
	and acquisition free of encumbrances	941
5.	Two or more proprietary rights in the same movable	941
6.	Basic structure: coherence with Article 3:101	941
В.	Requirements for good faith acquisition	
7.	Title for acquisition of ownership of the goods	942
8.	Delivery or delivery equivalent	942
9.	Acquisition for value	942
10.	Requirement of good faith	942
C.	Exceptions as to stolen goods and cultural objects	
П.	Reference to VIII. – 3:101 paragraph (2): goods stolen from owner	943
12.	Reference to VIII. – 3:101 paragraph (2): goods stolen from third person	943
D.	Special situations of transfer (paragraphs (2) and (3))	
13.	Transferee already in possession	944
14.	Transfer by notice in VIII. – 3:102 paragraph (3)	944
•		• •

944

Chapter 4: Acquisition of ownership by continuous possession

Section 1: Requirements for acquisition of ownership by continuous possession

Article VIII. - 4:101: Basic rule

A.	General	
1.	Acquisition of ownership by continuous possession	949
2.	Concept traditionally going beyond the scope of this Book	949
3.	Terminology	950
4.	Extinctive prescription of rei vindicatio and similar concepts	950
5.	Finding not covered	951
В.	Scope of application	
6.	General	951
7.	Acquisition from a non-owner	951
8.	Acquisition under invalid contract	952
9.	Control of goods obtained under a legal relationship other than one of	
	acquisition	952
10.	Further instances	952
11.	Registered goods: national law may have priority	952
C.	Interests underlying, and functions and policies of, the rules on acquisition by continuous possession	
12.	General	953
13.	Perspective and interests of the original owner	953
14.	Perspective and interests of the owner-possessor	954
15.	Perspective and interests of the parties' general creditors	954
16.	Interests of persons (potentially) acquiring rights related to the goods	
	from the possessor	954
17.	Functions and policies of acquisition of ownership by continuous	
	possession; general	955
18.	Sanction for owner's inactivity and related policies	955
19.	Legal certainty	956
20.	Possessor in good faith more worthy of protection, or acquisition in	
	bad faith not to be facilitated, respectively	956
D.	Overview of main requirements	
21.	Main requirements	957
22.	Possession	957
23.	Continuous possession	957
24.	For a certain period	057

25.	Possession may not be obtained by theft	95
26.	Requirements not adopted	957
Ε.	Possession	
27.	Owner-possessor	957
28.	Change of category of possession possible	958
29.	Owner-possession may be exercised through another person	959
30.	Acknowledgement of owner's right	959
31.	Continuous possession	959
32.	For a certain period	959
F.	Acquisition by continuous possession in good faith	
33.	General	960
34.	Meaning of good faith	960
35.	Good faith throughout the whole period	961
36.	Burden of proof as to good faith: options available	961
37.	Discussion and justification of the proposed solution (presumption of good faith)	067
38.	How the presumption of paragraph (2)(b) works	962 962
39.	Length of period	962
40.	No inappropriate results in case of void and avoided contracts: general	963
41.	Avoidance within ten years	963
42.	Avoidance after more than ten years	964
43.	Contract invalid from the beginning	965
G.	Acquisition of ownership by continuous possession in bad faith	
44.	Why acquisition of ownership by continuous possession in bad faith at all	965
45.	Technical implementation of the rule, paragraph (1)(b)	966
46.	Thirty-year period	966
Н.	Exclusion of acquisition by a thief, paragraph (3)	
47.	Policy	966
48.	Theft	966
49.	No circumvention by transfer and re-transfer	967
50.	No extension to person knowingly selling stolen goods or persons knowing that the goods have been stolen in general	967
51.	Limited-right-possessor refusing to return the goods after end of legal	301
J1.	relationship not covered	968
52.	Finder who keeps goods	968
52. 53.	Thief's heirs, donces and similar cases not covered	969
54.	Functionally comparable criteria in European legal systems	969
l.	Requirements not adopted	
55.	General	969
56.	Valid obligation (valid title)	969
57.	Possible substantive functions of valid title requirement	970
50	Possible impact of valid title requirement on burden of proof rule	071

59.	Public possession	971
60.	Unequivocal possession	972
61.	Peaceful possession	972
62.	Exclusion of possession obtained by violence, secretly or precariously	
	(nec vi, nec clam, nec precario)	973
Note I.	Overview: main requirements of acquisition by continuous possession	973
11.	Owner-possession	981
Ш.	Continuous possession in good faith	982
IV.	Continuous possession in bad faith	991
V.	Exclusion of acquisition by thieves	994
v. VI.	Other requirements	996
V 1.	Other requirements	330
Arti	cle VIII. – 4:102: Cultural objects	
Con	nments	
A.	General	
l.	Policy, length of period	1000
2.	Legal framework and purpose of this Article	1000
В.	Definition of cultural objects in the sense of paragraph (1)	
3.	General	1001
4.	The chosen option: definition of Council Directive 93/7/EEC	1001
5.	Irrelevance of removal from territory; irrelevance of date	1001
6.	Policy underlying this choice	1002
7.	Alternative option: definition of the UNIDROIT Convention 1995	1002
8.	Alternative option: definition of the UNESCO Convention 1970	1002
C.	Relation to other rules of law	1002
9.	Minimum standard of protection for owners of cultural objects	1002
10.	Protection under the international Conventions in particular	1003
П.	Interaction of this Article and the 1995 UNIDROIT Convention	, 003
	in particular	1003
Not	es	100
1.	Existing EC Directives and international conventions	1004
••	(a) Directive 93/7/EEC of 15 March 1993 on the return of cultural	1004
	objects unlawfully removed from the territory of a member state	
	(b) UNIDROIT Convention on Stolen or Illegally Exported Cultural	1004
	Objects (Rome, 24 June 1995)	
	(c) UNESCO Convention on the Means of Prohibiting and	1005
	Preventing the Illicit Import Fyrort and Transfer (O)	
	Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970)	
	Cultural Floperty (Falls, 14 November 1970)	1006

11.	National provisions addressing acquisition of ownership by continuous possession of cultural objects	1006
Art	icle VIII. – 4:103: Continuous possession	
Cor	mments	
A.	Involuntary loss of possession (paragraph (1))	
ł.	General	1009
2.	Involuntary loss of possession	1009
3.	Justification; impact on owner and third parties	1010
В.	Presumption of continuous possession (paragraph (2))	
4.	Presumption of continuous possession	1010
Not	res	
1.	Involuntary loss of possession	1010
И.	Presumption of continuous possession	1013
	icle VIII. – 4:201: Extension in case of incapacity	
Con	minents	
A.	Terminology in Section 2	
1.	General	1016
2. 3.	Extension of period Suspension of period	1016 1016
э. 4.	Postponement of expiry	1017
5.	Renewal of period	1017
В.	Coherence with Book III, Chapter 7 on the prescription of rights to the performance of an obligation	
6.	General approach	1017
7.	Criteria not adopted	1017
C.	Terminology relating to incapacity	
8.	Incapacity	1017
9.	Representative	1018
10.	Terminology: extension, suspension and postponement of expiry	1018
D. 11.	Basic policy decision: no, medium or even "strict" relevance of incapacity Main options	1018

12. 13.	Preferred solution: appointment of representative decisive criterion Situations for which regulation appears necessary	1019 1019
E. 14. 15. 16. 17.	Suspension in case of initial lack of capacity, paragraph (1) General; decisive moment in time Purpose of the suspension rule (as opposed to postponement of expiry) Differences to III. – 7:305 (Postponement of expiry in case of incapacity) End of suspension	1019 1020 1021 1021
F.	Postponement of expiry in case of subsequent lack of capacity, paragraph (2)	
18.	General	1022
19. 20.	Purpose of the postponement of expiry rule (as opposed to suspension) Possibility of restrictive interpretation regarding very short periods of	1022
20.	incapacity	1023
G.	Owner-possessor is representative, paragraph (3)	
21.	Policy	1024
22.	Sentence 1 Sentence 2	1024
23.	Sentence 2	1024
Н.	Other cases of acquisition of ownership by continuous possession within the family	
24.	General	1025
25.	Acquisition between minor brothers and sisters	1025
26.	Minor's acquisition against the representative	1025
١.	In particular: no suspension between spouses and registered partners	
27.	Suspension between spouses	1026
28.	Registered partners	1026
29. 30.	Rule not needed Aspect of "peace in the family" not so relevant for acquisition of	1026
30.	ownership by continuous possession	(02)
31.	No parallel provision in prescription rules of Book III	1026 1027
32.	Practical difficulties can be solved by other criteria	1027
J.	Further cases: unmarried couples, other household members	
33.	Suspension rule extending to partnerships similar to marriage	1028
34.	Extension of period as between persons sharing the same household	1028
Not		
1.	General on issues dealt with in Section 2	1028
11.	Persons subject to an incapacity who do not have a representative	102
III.	Persons subject to an incapacity who have a representative	103
IV.	Brothers and sisters	1033
V.	Spouses and registered partners	1034

Article VIII. - 4:202: Extension in case of impediment beyond owner's control

Comments

A .	General Policy	1036
2.	Corresponding rule in III. – 7:303 (Suspension in case of impediment beyond creditor's control)	1036
В.	Basic rule (paragraph (1))	
3.	Situations covered	1037
4.	Suspension concept	1037
5.	The question of actively hiding the goods	1037
C.	Qualifications as to time (paragraphs (2) and (3))	
6.	Restriction to impediments within last six months (paragraph (2))	1038
7.	Postponement of expiry in exceptional situations (paragraph (3))	1038
8.	No parallel to III 7:303 (Suspension in case of impediment beyond	
	creditor's control) paragraph (4)	1038
Not		
١.	Suspension for vis major	1039
11.	Only the last part of the period is relevant	1042
judi	cle VIII. – 4:203: Extension and renewal in case of cial and other proceedings	
COII		
A.	General	
l. -	Common core	1043
2.	Basic policy	1043
3.	Overview of how the Article works	1043
В.	Suspension for the duration of judicial proceedings, paragraph (1)	
4.	Only judicial acts covered	1044
5.	First effect of initiating proceedings: suspension	1044
6.	Contesting the possessor's ownership or possession	1045
7.	Proceedings begun by or on behalf of the owner	1045
3.	Proceedings against the owner-possessor, limited-right-possessor	
	or possession-agent	1045
€.	Suspension only in relation to the parties to the proceedings and persons	
	on whose behalf the parties act (third sentence)	1045

C .	When the claimant loses the proceedings, paragraph (2) Basic rule when claimant loses the proceedings ("the action is dismissed	
. 0.	or otherwise unsuccessful")	1046
П.	Details; differences to prescription rules	1046
12.	The problem	1047
13.	Option (1): suspension	1047
14.	Option (2): postponement of expiry	1047
15.	Option (3): no extension effect at all	1047
16.	The preferred option: postponement of expiry for six months as from	
	the decision declaring lack of jurisdiction	1048
D.	When the claimant (owner) wins the proceedings, paragraph (3)	
17.	Effect when the owner succeeds in the proceedings: renewal of period	1048
18.	Renewal instead of suspension	1048
19.	Additional justification for differences from the prescription rule	1049
Ε.	Other proceedings, paragraph (4)	
20.	Arbitration proceedings, paragraph (4)	1049
21.	Arbitration tribunal declaring itself to be incompetent	1050
22.	Mediation proceedings covered by other rules	1050
F.	Institution of enforcement proceedings	
23.	General: covered by general rules of this Article	1050
24.	Details	1050
Not	es	
1.	Judicial proceedings	1051
II.	Arbitration proceedings and other proceedings	1054
III.	Enforcement proceedings	1055
Arti	cle VIII. – 4:204: Postponement of expiry in case of negotiations	
Con	nments	
A.	Negotiations	
١.	Function and policy	1057
2.	Relation to III. – 7:304 (Postponement of expiry in case of negotiations);	1057
	length of period	
3.	Negotiations	1057
		1057
В.	Mediation proceedings in particular	
4.	Mediation proceedings covered by this Article	1058
5.	Main practical effects of this approach	1058
Not	ac	. 000
INUL	rs established	1059

Article VIII. - 4:205: Ending of period in case of acknowledgement

A.	General	
1.	Common core	1061
2.	Explicit rule adopted for purpose of clarification	1061
В.	The rule in detail	
3.	Acknowledgement	1062
4.	Subject of acknowledgement ("owner's right to the goods")	1062
5.	Acknowledgement by owner-possessor or a person exercising physical	
	control for the owner-possessor	1063
6.	Effect of acknowledgement and commencement of new period	1063
Not	res	1063
Art	icle VIII. – 4:206: Period of a predecessor to be taken into account	
Cor	nments	
A.	General rule, paragraph (1)	
I.	Basic idea	1065
2.	Succession in possession	1065
3.	Cumulative fulfilment of all requirements	1066
4.	Effect of paragraph (1)	1066
В.	Good faith and bad faith possessor, paragraph (2)	
5.	The problem	1066
6.	First basic choice: qualification of predecessor not to be adopted	
	automatically	1067
7.	Predecessor in good faith, successor in bad faith	1067
8.	Predecessor in bad faith, successor in good faith	1067
9.	Impermissibility of taking bad faith predecessor's period into account	
	for the purpose of acquisition under VIII 4:101 (Basic rule)	
	paragraph (1)(a)	1067
10.	Good faith successor may take bad faith predecessor's period into	
	account for acquisition under VIII 4:101 (Basic rule) paragraph (1)(b)	1068
Not	es	
I.	Succession in possession	1069
II.	Good faith and bad faith before and after succession in possession	1073
III.	Further criteria of differentiation relevant for succession in possession	1077

Section 3: Effects of acquisition of ownership by continuous possession

Article VIII. - 4:301: Acquisition of ownership

Com	men	ts
-----	-----	----

A.	Acquisition of ownership, paragraph (1)	
١.	General	1078
2.	Effects of acquisition of ownership	1078
3.	Retroactive effect or ex nunc effect	1079
В.	Effect on limited proprietary rights, paragraph (2)	
4.	General	1080
5.	Caveat	1080
6.	Effect of acquisition in good faith as to ownership and freedom from encumbrances	1080
7.	Effect of acquisition in good faith as to ownership but in bad faith as to	1000
	freedom of encumbrances	1081
8.	Effect of acquisition in bad faith as to ownership but in good faith as to freedom of encumbrances	1081
9.	Effect of acquisition in bad faith as to ownership and freedom from	1001
9.	encumbrances	1081
Not	tes	
I.	Acquisition of ownership	1081
II.	Encumbrances	1084
Art unj	icle VIII. – 4:302: Extinction of rights under rules on ustified enrichment and non-contractual liability for damage	
Cor	mments	
A.	Function of the rule	
1.	Policy	1086
2.	Types of rights excluded under this Article	1086
В.	Details	
3.	Exclusion of physical restoration	1087
4.	Exclusion of obligation to pay the monetary value for the substance	
	of the goods	1087
5.	Exclusion of obligation to pay for using the goods after acquisition	
,	by continuous possession	1087
6.	Benefits before expiration of period	1087
7.	No explicit exclusion of contractual obligations to return	1088
No	tes	1088

Chapter 5: **Production, combination and commingling**

Section 1: General provisions

Article VIII. - 5:101: Party autonomy and relation to other provisions

A.	General	
1.	Situations addressed in Chapter 5	1091
2.	Brief overview on issues solved differently in European legal systems	
	and main policy issues	1092
3.	Main approach: default rules, provisions on proprietary security rights	
	take priority in case of overlap	1092
4.	Function of Chapter 5 within Book VIII and these model rules in general	1093
В.	Overview of the relation between production, combination and	
	commingling, and other provisions of these model rules	
5.	General; criteria for distinguishing the three categories production,	
	commingling and combination	1094
6.	First tests: party agreement, Book IX to be applied	1094
7.	Another primary test: applicability of Book V	1094
8.	Labour performed, results are "new goods": production	1095
9.	Labour performed, but no "new goods" produced	1095
10.	Labour performed and new goods created, but labour is of minor	
	importance	1097
11.	Goods of different owners physically put together, but separation	
	into original constituents still possible and economically reasonable	1097
12.	Separation into each owner's original items impossible or economically	
	unreasonable, but separation into proportionate quantities possible and	
	economically reasonable: commingling	1098
13.	Other situations where separation into each owner's original items is	
	impossible or economically unreasonable: combination	1098
14.	Specific rules for producers and certain persons effecting a combination	
	with a specifically qualified grade of bad faith	1099
15.	Short reference as to relation to Books VI and VII	1100
C.	Overview of relation to other provisions of Book VIII	
16.	Relation to the rules on the transfer of goods forming part of a bulk	1100
17.	Relation to good faith acquisition under Chapter 3, general	1101
18.	Relation to exclusion of good faith acquisition of stolen goods in particular	1101
19.	Relation to acquisition by continuous possession under Chapter 4	1103
20.	Relation to rules on protection of ownership and possession under	
	Chapter 6	1103
21	Relation to Chanter 7	1104

D.	Party autonomy and scope of this Chapter (paragraphs (1) and (2))	
22.	Comparative background	1104
23.	Basic policy	1104
24.	Time of agreement	1105
25.	Parties to the agreement	1105
26.	"Agreement" subject to rules on general contract law	1105
27.	General	1105
28.	Agreement as to proprietary consequences, paragraph (2)(a)	1106
29.	Agreement as to obligations and corresponding rights, paragraph (2)(b)	1107
30.	Typical example of agreement: labour contract	1107
31.	Typical example of agreement: production ordered by the owner of material	1107
32.	General	1108
33.	Production etc. without consent of the owner of the material	1108
34.	Production etc. with consent of contributors, but without agreement as to	
	proprietary consequences	1108
35.	Production etc. with consent of contributors and with agreement as to	
	proprietary consequences, but without agreement as to obligations	1109
E.	Relation to Book IX on proprietary security in movable assets	
	(VIII 1:103 (1), VIII 5:101(3) and (4))	
36.	General policy	1109
37.	Priority of Book IX under VIII. – 1:103 (Priority of other provisions)	
	paragraph (1)	1110
38.	Goods subject to retention of ownership device, paragraph (3)	1110
39.	Proprietary security rights created by operation of law under this	
	Chapter (paragraph (4) sentence 1)	1111
40.	Proprietary security rights created by party agreement under paragraph (1)	
	(paragraph (4) sentence 2)	1112
F.	Relation to Book VI on non-contractual liability for damage	
	(paragraph (5) sentence 1)	
41.	General: Book VI always applicable in addition	1113
42.	Examples	1114
	•	,
G.	Relation to Book V on benevolent intervention in another's affairs	
42	(paragraph (5) sentence 2)	
43.	General Obligations and assume alternative side at the second sec	1115
44.	Obligations and corresponding rights arising from production, commingling or combination	
45.		1115
43.	Property rights arising from production, commingling or combination	1116
H.	General policies pursued in Chapter 5 and relation to Book VII	
	on unjustified enrichment	
46.	Main interests and basic policy of preserving proprietary equivalent	
	for value of goods	1116
47.	Further policies regarding proprietary consequences	1117
48.	Good faith or bad faith of parties involved	1117

49.	Policies regarding the calculation of monetary claims replacing a	
50.	right of ownership Relation to unjustified enrichment law	1117
3 0.	Relation to unjustified enrichment law	1118
Not	es	
1.	Party autonomy	1118
И.	Relation to non-contractual liability for damage and unjustified	
	enrichment	1121
Sec	tion 2: Default rules and supplementary provisions	
Arti	cle VIII. – 5:201: Production	
Con	nments	
_		
Α.	General Overview	
l. 2.	Terminology: production	1125 1125
2. 3.	Structure of this Article	1123
4.	Comparative background and main policy issues	1126
В.	General requirements for application (paragraphs (1) and (2)(a))	
5.	Conjunction of labour and another's goods; priority over commingling	
	and combination	1127
6.	Material	1127
7. 8.	Goods owned by another person – production involving own goods Labour	1127 1128
o. 9.	Producer	1128
J.	New goods, general	1129
11.	Criteria relevant for constituting new goods	1129
12.	Exclusion of labour contributions of minor importance, paragraph (2)(a)	1130
13.	Low importance of labour contribution, but producer uses own material	
	in addition	1131
14.	Increase in value no separate requirement	1131
15.	No requirement that restoration to the status quo ante must be impossible	
	or economically unreasonable	1132
C.	Proprietary consequences (paragraph (1))	
L. 16.	General	1132
17.	Sole ownership of the producer, owners of material being awarded a right	1132
	to compensation	1132
18.	Sole ownership (or co-ownership) of material-owner(s), producer has right	
	to compensation	1134
19.	Co-ownership of producer and owner(s) of material	1134
20.	Co-ownership and right to buy out	1135
21.	Rights to choose	1135

22.	Sole ownership of the producer and proprietary security rights for the	
	owners of material	1136
23.	How the concept works	1136
24.	Reasons for choosing this model	1136
25.	Supplementary rules as to proprietary security right	1137
D.	Material-owner's right to payment (paragraph (1))	
26.	General	1138
27.	Right to payment equal to the value of the material	1138
28.	At the moment of production	1139
29.	Why no unjustified enrichment concept	1140
30.	Prescription of the right to payment	1141
E.	Exception for producer knowingly using another's goods against that person's will (paragraph (2)(b))	
31.	Producer's bad faith in general: comparative background	1141
32.	Basic guidelines	1142
33.	General; arguments for adopting an exception	1142
34.	Scope of the exception: actual knowledge	1143
35.	Counter-exception: much higher value	1143
36.	Brief overview of consequences where exception applies	1144
37.	General	1145
38.	Problems inherent in the concept of paragraph (2)(b)	1145
39.	Paragraph (1) may provide adequate results	1146
F.	Consequences in situations exempted from general rules (paragraph (3))	
40.	General	1147
41.	Proprietary consequences where there is only one owner of material	1147
42.	Proprietary consequences where there are two or more owners of material	1147
43.	Compensation in respect of material owned by person contributing labour	1147
44.	Reversal of enrichment resulting from labour contribution: general	1148
45.	Special rule concerning VII. – 2:101 (Circumstances under which an	
	enrichment is unjustified) paragraph (1)(b)	1149
Note	es S	
١.	Scope of application	1150
II.	Proprietary consequences	1156
III.	Compensation	1166
V.	Division of co-ownership	1170

Article VIII. - 5:202: Commingling

Comments

A.	General
• • • •	Concide

I. Basic idea

2.	Terminology: commingling	1171
3.	Comparative background	1172
4.	Relation to other provisions	1172
В.	Scope of application	
5.	General	1172
6.	Goods owned by different persons; relevance of labour	1173
7.	Separation into original constituents impossible or economically	
	unreasonable; general	1173
8.	Separation into original constituents impossible	1174
9.	Separation into original constituents economically unreasonable	1174
10.	Separation into proportionate quantities possible and economically	
	reasonable	1175
11.	In particular: fungible goods	1175
12.	Commingling of "similar" goods	1176
13.	Commingling of different goods	1176
C.	Consequences of commingling (paragraphs (1) and (2))	
14.	Creation of co-ownership; calculation of shares	1177
15.	Subsequent shrinkage, increase	1178
16.	Relevance of the parties' good or bad faith	1178
17.	Co-ownership favourable as against sole-ownership of the possessor	1178
18.	Simplified mode of division: physical separation of quantity equivalent	
	to share	1178
19.	Separated quantity exceeds equivalent to share	1179
20.	Costs of separation, loss resulting from shrinkage or decrease in value	1179
21.	Further consequences: damages under Book VI	1179
Not	es	
l.	Scope of application: combination and commingling in general	1180
11.	Proprietary consequences	1185
Ш.	Compensation	1193
IV.	Division of co-ownership	1195
V.	Commingling of fungible goods in particular	1198
VI.	Division of co-ownership of fungible goods	1200
VII.	Consequences of good faith acquisition by third party	1200
Arti	cle VIII. – 5:203: Combination	
Con	nments	
A.	General	
1.	Overview of scope and relation to other provisions	1201
2.	Main content and structure	1202
3.	Terminology: combination	1202
4.	Comparative background and main policy issues	1202

В.	Scope of application (paragraph (1))	
5.	General	1203
6.	Goods owned by different persons	1203
7.	Separation into original constituents impossible or economically	
	unreasonable	1203
C.	Proprietary consequences where "principal part" rule	
	applies (paragraph (2))	
8.	Options for proprietary consequences	1205
9.	General	1205
10.	Principal part – subordinate part; general	1206
П.	Criteria for determining a "principal part"	1206
12.	Relation between principal part rule (paragraph (2)) and co-ownership	
	rule (paragraph (3))	1208
13.	How the "sole ownership and security right" concept works technically	1208
14.	Note regarding very small contributions	1209
D.	Subordinate part owner's right to payment (paragraph (2))	
15.	General	1210
16.	Owner of principal part effects combination: payment equal to value	
	of subordinate parts	1211
17.	Combination effected by subordinate part owner or by third party:	
	payment under unjustified enrichment principles	1211
18.	Synchronisation with Chapter 7	1212
E.	No principal part identifiable: co-ownership (paragraph (3))	
19.	General	1213
20.	Calculation of shares	1213
21. 22.	Further loss sustained by owners of component parts; subsequent damage Special rule for component parts of minimal importance, paragraph (3)	1214
	sentence 2	1214
23.	Relation to Chapter 7	1215
F.	Exception from acquisition of sole ownership where person	
	effecting combination knowingly uses another's goods without that other's consent (paragraph (4))	
24.	General	1215
25.	Scope of exception	1215
26.	Creation of co-ownership, calculation of shares (sentence 2)	1213
27.	Counter-exception: much higher value	1216
28.	Critique and alternative proposal: deletion of paragraph (4)	1210
K1 = 4		, 2, 1
Not	es	1218

Article VIII. – 5:204: Additional provisions as to proprietary security rights

Comments

A .	General Scope and purpose of this Article	1218
		,,,,
B.	Effectiveness without possession or registration (paragraph (1))	
2.	The general rule provided by Book IX	1218
3.	Necessity for adaptation for purposes of Section 2	1219
C.	Extension to proceeds (paragraph (2))	
4.	Extension of security right to proceeds (paragraph (2) sentence 1)	1220
5.	No possession or registration needed for extension of security right in	•
	proceeds (paragraph (2) sentence 2)	1220
D.	Priority over security rights created earlier in new or combined	
υ.	goods (paragraph (3))	
6.	The problem	1220
7.	Priority of security right created under Section 2	1221
8.	Priority of equivalent contractual security right	1221
Ε.	Further issues relating to proprietary security rights	
	created under Section 2	
9.	Relation to already existing proprietary security rights in the material	1222
10.	Extension of security right to certain proceeds of originally encumbered	
	asset	1223
H.	Enforcement of security right created under Section 2	1223
12.	Time limits	1223
Note	25	1224
. 100		1227
Cha	opter 6:	
	tection of ownership and protection of possession	
	School of officially sile procession of possession	

Section 1: Protection of ownership

Article VIII. - 6:101: Protection of ownership

Comments

٩.	General approach in Chapter 6	
۱.	Legal remedies of owners and possessors	1225

2.	Basic differences between remedies protecting ownership and remedies protecting possession	1225
В.	Sources and scope of application	1226
3.	Sources and relation to other fields of law	1220
C.	Basic principles and guidelines of remedies	
4.	Personal rights to possess protected	1226
5.	Types of remedies	1226
D.	Terminology	
6.	Definition of possession	1227
E.	Possession as a "right", a "proprietary right" or a mere "factum"?	
7.	Legal nature of possession	1227
8.	The right of a lessee as a personal or proprietary right	1228
F.	General idea of VIII 6:101	
9.	Protection of ownership in general	1229
10.	Protection of ownership and protection of possession	1229
G.	Interests at stake and policy considerations	
П.	Interests involved	1230
H.	Comparative analysis	
۱2.	The dominant approach	1230
13.	The possession vaut titre approach	1231
14.	Casuistic approach	1231
15.	Only tort remedies	1231
16.	No limitation but for acquisition by continuous possession	123
17.	Other limitation periods	123
18.	Reasons for the choices made by the working group	1232
l .	VIII. – 6:101 (1): receipt and recovery of physical control	
19.	Obtain and recover	1233
20.	Physical control	1233
21.	Claimant and respondent	1232
22.	Ownership	1234
23.	Right to possess the movable	1234
24.	Remedy of "recovery" and damages	1234
J.	VIII. – 6:101(2): other interferences	
25. 24	Interference	123
26. 27.	Declaration and protection order	1233
2 <i>1</i> . 28.	Rare situation for movables Nature of "interference"	123:
40.	rvature of interference	122

K.	VIII. – 6:101 (3): Protection order	
29.	Types of protection orders	1236
30.	Future interference	1236
31.	Existing interference	1236
32.	Past interference	1236
33.	Interferer has removed fruits or other objects from the movable	1237
L.	Relationship to other parts of the DCFR	
34.	Relationship to other rules	1237
М.	Character of the rules	
35.	Nature of rules	1237
Not	es	
J.	Remedies for protection of ownership (types/effects)	1238
H.	The claim for restoration of the previous situation in particular	1256
Ш.	Standing to sue	1257
IV.	Standing to be sued	1259
V.	Limitation of actions	1263
	cle VIII. – 6:102: Recovery of goods after transfer based invalid or avoided contract or other juridical act	
Con	nments	
A. 1. 2.	Restitution of movable if obligation is invalid, ineffective or avoided Personal and proprietary claim for recovery Contract or other juridical act invalid or avoided	1266 1267
B . 3.	Right to withhold the goods Right to withhold performance of the obligation to restore	1267
C. 4.	Resolutive condition Application to resolutive condition in the sense of VIII. – 2:203 paragraph (1)	1267

Section 2: Protection of mere possession

Article VIII. - 6:201: Definition of unlawful dispossession and interference

Comments

Notes

1268

A.	General idea	
1.	Central idea of "unlawfulness"	1269
В.	Interests at stake and policy considerations	
2.	Possession remedies	1269
C.	Comparative overview	
3.	Comparative overview	1269
D.	Acting without the possessor's consent unless permitted by law	
4.	Consent	1270
5.	Can a mere interior change of mind amount to an "unlawful"	
,	dispossession?	1270
6. 7	No right of self-help without exterior physical act	1270
7.	Permission by law	1271
E.	Character of the rule	
8.	Mandatory rule	1271
Not	es	
I.	Events triggering possessory protection	1271
H.	Will and knowledge (intentional and cognitive element) of dispossessor/	
	interferer	1280
Ш.	Reasons for excluding unlawfulness (possessor's consent/mistake of fact)	1283
IV.	Pre-existent legal relationship	1284
Δnti	cle VIII. – 6:202: Self-help of possessor	
11111	cie viii. = 0.202. Seli-fielp of possessor	
Con	nments	
A.	General idea	
١.	Situations addressed in this Article	1285
В.	Interests at stake and policy considerations	
2.	Aim and restrictions of self-help	1285
^		1203
C . 3.	Comparative overview	
J.	Different approaches in European legal systems	1286
D.	Persons entitled to self-help	
4.	Possessors and third persons may exercise self-help	1286
E.	Persons against whom self-help is directed	
5.	Past, present or imminent dispossession or interference	1207
6.	Unlawful act	1287
7.	Fault and legal capacity	1287 1287
		1201

F.	Restrictions on self-help in VIII. – 6:202 paragraph (2)	
8.	Restrictions in general	1287
9.	Immediate action	1288
10.	Proportionate action	1288
G.	Self-help by the direct possessor against the indirect possessor (VIII. – 6:202(3))	
11.	Relationship between OP and LRP	1200
12.	Different approaches in European legal systems	1289 1290
13.	Possession-agents	1290
Н.	Relation to other parts of the DCFR	
14.	VI. – 3:206 (Accountability for damage caused by dangerous substances or	
	emissions)	1290
15.	VI. – 5:202 (Self-defence, benevolent intervention and necessity)	1290
I.	Character of the rule	
16.	Mandatory rule	1291
Note	S	
1.	Self-help as possessory remedy	1291
II.	Conditions of lawful self-help (proportionality, time frame)	1297
III.	Persons against whom self-help can be enacted	1301
Artic	cle VIII. – 6:203: Entitlement to recover as protection	
of m	ere possession	
Com	ments	
Artic	ele VIII. – 6:204: Entitlement to protection order to	
prote	ect mere possession	
Com	ments	
A.	General idea	
1.	Claim for recovery and protection order	1304
2.	Protection of ownership and protection of possession	1304
3.	Aims and functions of these possession remedies	1304
4.	Right to possess is not a requirement	1304
В.	Interests at stake and policy considerations	
5.	Quick results	1305
6.	Restriction of private force and promotion of peaceful enforcement	
	of rights	1305

C.	Comparative overview	
7.	Protection remedies in the Member States	1305
D.	VIII. – 6:203(1) and VIII. – 6:204(1): requirements and persons entitled to remedy	
0	Unlawful dispossession or interference	1306
8. 9.	Persons entitled to the remedies	1306
9. 10.	Person against whom the remedy is directed:	1306
11.	No fault or legal capacity required	1307
12.	No identity between initial unlawful dispossessor and later possessor	,
12.	required, if later unlawful possession forms part of initial unlawful	
	dispossession	1307
E.	VIII. – 6:203 paragraph (1) and VIII. – 6:204 paragraph (1):	
	objective limitation period of one year	
13.	Why a relatively short limitation period is needed	1308
14.	Subjective and objective time limits	1308
15.	Why only an objective limitation period was provided	1309
۱6.	Limitation period for interferences	1309
17.	Protection of the possessor after the lapse of the limitation period of	
	one year	1310
F.	VIII 6:203(1) and VIII 6:204(1):	
	the remedies – recovery and protection order	
18.	Recovery	1310
19.	Protection order	1310
G.	VIII. – 6:203(2) and VIII. – 6:204(2): the relationship between	
20	direct and indirect possessor	
20.	Protection of direct LRP against unlawful OP / LRP	1310
21.	Right to possess must be valid	1311
H.	VIII. – 6:203(3): exclusion of remedy in case of unlawful dispossession by claimant within the past year	
22.	Initial unlawful dispossessor excluded from remedy	1211
22.	initial unlawful dispossessor excluded from femely	1311
I.	VIII. – 6:203(4) and VIII. – 6:204(3): enforcement of right or better position to possess	
23.	Relation of possessory remedy to right-based remedy	
24.	No return of the goods to claimant in cases of defence or counter-claim	1312
- 1.	based on right to possess	1212
25.	Procedure in cases of interference	1312 1312
		1312
j .	Character of the rule	
26.	Mandatory rule	1312

i.	Distinction between protection of mere possession and protection	
	of rights-based possession (possessorium and petitorium)	1312
Н.	Judicial remedies for protection of possession	1317
111.	Standing to sue	1326
IV.	Standing to be sued	1331
V.	Limitation period (calculation, cases of repeated interferences)	1339
Sec	tion 3: Protection of better possession	
	cle VIII. – 6:301: Entitlement to recover in case of ter possession	
Con	nments	
	cle VIII. – 6:302: Entitlement to protection order in e of better possession	
Con	nments	
A.	General idea	
1.	Protection of "better" possessors who have problems in proving their right to possess	1343
В.	Interests at stake and policy considerations	
2.	"Actio publiciana" and similarity to protection of ownership	1344
3.	Persons protected	1344
C.	Comparative overview	
4.	Forms of qualified possession in the Member States	1345
5.	Position of actio publiciana in relation to possessory protection and	
	ownership protection	1345
D.	VIII 6:301(1) and VIII 6:302: requirements in general	
6.	Comparison to VIII. – 6:203, VIII. – 6:204 and VIII. – 6:101	1345
7.	Proof of former possession, of interference with possession, of good faith	
	and of better right or position to possess	1346
8.	No unlawful dispossession by respondent required	1346
9.	Comparison of quality of possession of claimant and respondent	1346
Ε.	VIII 6:301(1) and VIII 6:302: persons entitled to	
	"better possession" remedies – OP or LRP in good faith	
10.	Protection requires former possession as an OP or LRP	1347
П.	Good faith of OP and LRP and valid right of LRP	1347
12.	Remedy	1347

F.	VIII. – 6:301(1) and VIII. – 6:302: persons against whom the remedies are granted	
13.	Person who exercises physical control	1347
14.	Relationship between OP and LRP	1348
G.	VIII. – 6:301(1) and VIII. – 6:302: proof of "better possession" or "better right to use or otherwise deal with the movable"	
15.	Proof of better possession	1348
16.	Proof in cases of interference	1348
Н.	VIII. – 6:301(2): determination of "better possession"	
17.	Persons whose possession to be compared	1349
18.	Respondent in bad faith	1349
19.	Only claimant has a right to possess	1350
20.	Claimant must have been in possession	1350
21.	Right to possess	1350
22.	Right derived from owner or someone else	1351
23.	Rights to possess derived from the same person	1351
24.	Relationship to VIII. – 2:301	1352
25.	Older rightful possession prevails	1352
26.	Current possession prevails	1353
	VIII 4:203; remedies against interference or invariant interference	
l.	VIII. – 6:302: remedies against interference or imminent interference	
27.	General	1353
28.	No declaration of right possible	1353
J.	Character of the rule	
29.	Mandatory rule	1354
Not	es	1354
		1337
Sec	tion 4: Other remedies	
Arti	cle VIII. – 6:401: Non-contractual liability	
Con	nments	
A.	Character of the rule	
д. 1.	Declaratory character	
1.	Declaratory Character	1361
В.	"Property right" and "lawful possession"	
2.	Interaction between VI. – 2:206 and Book VIII	124
	and book vill	1361
C.	Holder of proprietary right not in possession of the goods	
3.	Right holders not in possession also protected	1363

No	tes	
f.	Protection of ownership	1362
11.	Protection of possession	1377
	apter 7:	
Co	nsequential questions on restitution of goods	
Art	icle VIII. – 7:101: Scope	
Cor	mments	
A.	General	
I.	Introduction as to situations covered	1381
2.	Why Book VIII contains regulations on these issues	1382
В.	Scope of application, paragraph (1)	
3.	General criterion of owner's right to obtain or recover possession at the	
	time the relevant event occurs	1382
4.	Point in time when entitlement to recover must exist	1383
5.	Purpose; application by analogy	1384
6.	Non-exhaustive list of examples	1384
7.	Transfer based on void or avoided contract	1385
3.	Invalid or avoided right of use	1385
9.	Right to use goods has ended	1385
10.	Theft, unauthorised use, confusion of goods	1385
П.	Finding not intended to be covered	1385
12.	Goods obtained from a non-owner for the purpose of acquisition provided	
	that the possessor did not acquire ownership	1386
13.	Right of use granted by a non-owner	1386
14.	Service provided to third party: garage cases etc	1386
<u>.</u>	Different approaches in the European legal systems	
5.	Application of general rules of the law of obligations	1387
6.	Specific rules in a property law context	1387
) .	General approach taken in Chapter 7	
7.	Reference to general rules of Books VI and VII	1387
8.	General reasons for this approach	1388
9.	Still a separate Chapter	1388
:	Relation to Book V on benevolent intervention, paragraph (2)	
0.	Situations covered by Book V	1388
Н.	Policy and main effects of the reference to Book V	1389
	•	-

1389

Character of the rules

Non-mandatory character

F.

22.

G . 23.	Relation to Chapter 5, paragraph (3) General	1389
24.	Particular instances	1390
Note	S	1390
Artic	tle VIII 7:102: Loss of, or damage to, the goods during possession	
Com	ments	
A.	General	
1.	What is covered	1394
2.	Relevant time	1394
3.	Main approaches in European legal systems and basic policy issues	1394
В.	The main rule (paragraph (1))	
4.	Reference to Book VI on non-contractual liability for damage	1395
5.	How the rule works with a person who, in good faith, believes himself or	
	herself to be the owner of the goods	1395
6.	No specific rule excluding liability of owner-possessor in good faith needed	1396
7.	How the rule works with a person who, in good faith, believes himself or	
	herself to be entitled to use the goods	1396
8.	How the rule works with a possessor in bad faith	1397
9.	Further implications of the general reference to Book VI	1397
C.	The function of paragraph (2)	
10.	Situations addressed	1397
H.	Policy underlying the proposed rule	1397
12.	How the rule works	1398
13.	Reduction of liability under VI6:202 possible	1398
Not	es	
I.	Overview	1399
11.	Possession in good faith	1401
111.	Possession in bad faith	1406
Arti	icle VIII 7:103: Fruits from, use of, and other benefits derived	

Comments

from the goods during possession

A.	General	
1.	What is covered: fruits, use and other benefits	1410
2.	Relevant time	1410
3.	Main approaches in the European legal systems and basic policy issues	1410
В.	The proposed approach: reference to Book VII on unjustified enrichment	
4.	Overview	1411
5.	Categories of benefit	1411
6.	Good faith or bad faith of the enriched person (possessor)	1411
7.	No extra rule for fruits a possessor in bad faith failed to collect	1412
C.	Main policy reasons for not "immunising" a possessor in good faith	
8.	General	1412
9.	No "immunisation" of possessor in good faith as compensation for possessor's efforts	1413
10.	No "immunisation" of possessor in good faith as compensation for	1413
10.	purchase price paid to third party	1413
11.	Further aspects	1415
11.	Tuttler aspects	1413
Not	tes Overview	1.41.5
l. ll.	Fruits and uses	1415
	Possession in good faith	1418
III.	Possession in bad faith	1420
IV.	Possession in bad faith	1426
	icle VIII. – 7:104: Expenditure on, or parts added to, goods during possession	
Cor	nments	
A.	General	
١.	Situations covered by paragraph (1)	1431
2.	Relevant time	1432
3.	Main approaches as to reimbursement in European legal systems and	
	basic policy issues	1432
4.	Right to retain, paragraph (2)	1432
5.	Possessor's right to remove added parts (ius tollendi)	1433
6.	Relation to Chapter 5	1433
В.	Reimbursement of expenditure and for added parts	
7.	Overview	1433
8.	How the main criteria relevant under Book VII work in general	1433
9.	Differences to criteria relevant under the owner-possessor-relationship	
	tradition	1434
10.	How Book VII works in case of performance of an obligation to a third	
	person ("garage cases" etc.) in particular	1434

1.1	One-minut of main issues	1435
11. 12.	Overview of main issues Owner's subjective benefit smaller than value of expenditure	1435
13.	Effect where improvement or benefit disappeared or the purpose of	. ,
١).	expenditure incurred failed from the beginning	1436
14.	Different possible solutions	1437
15.	Discussion of the two policy choices	1438
16.	How paragraph (1) works technically when applied to a possessor	
10.	who actually knew of the lack of entitlement when incurring expenditure	1439
C.	Right to retain, paragraph (2)	
17.	General	1440
18.	Scope of right to retain, sentence 2	1440
19.	General principle of good faith and fair dealing applies	1441
20.	Effect of right of retention	1441
D.	Possessor's right to remove added parts (ius tollendi)	
21.	General	1441
22.	Extent of such right: limitation to situations where possessor remains	
	owner of the part or applicability beyond	1442
23.	Right implicitly accepted, but no need for explicit regulation	1443
Note		
l.	Overview	1443
II.	Expenses	1445
₩.	Reimbursement in the case of possession in good faith	1448
IV.	Reimbursement in case of possession in bad faith	1455
V.	Right to retain	1458
VI.	Right to remove improvements	1461
Anı	nexes	
Abb	reviations	1467
Tabl	e of Codes and Statutes	1485
Tabl	e of Cases	1599
Tabl	e of Enactments of the European Union	1609
	e of Literature Cited in Abbreviated Form	
	x to Model Rules	1613
mue	a to inionel unies	1659