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THE APPEARANCE AND ROLE OF RERUM NATURA IN THREE DIGEST TEXTS

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Abstract

This paper explores the role of *rerum natura* in three pivotal texts from the Digest, demonstrating its function as an interpretative and normative principle in Roman legal thought. By analysing cases involving usufruct, property conflicts over the newborn child of a female slave, and *immissiones*, the study highlights how Roman jurists integrated objective reality into their legal reasoning. The investigation reveals that *rerum natura* provided a conceptual bridge between objective reality and positive law, aiding in the resolution of legal disputes. Through exegetical analysis, the paper enhances our understanding of how natura, natural law thinking and positive law eventually intersected in classical jurisprudence, offering valuable insights into the foundational principles of Roman legal tradition.

Keywords: *rerum natura*, Roman law, Digest, usufruct, *ususfructus*, *servitutes*, *immissiones*, ownership, *partus ancillae*, *fructus*, *natura loci*.

The analysis of prepositive norms has consistently been a central focus of Wolfgang Waldstein's work. His comprehensive paper on the cornerstones of Roman jurists' decision-making was published in 1976 in volume 15, series 2 of *Aufstieg und Niedergang der Römischen Welt*.[1] Alongside the concepts of *natura*, *ius naturale*, and *fides*, he also elaborates on the topic of *rerum natura*.

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1 Wolfgang Waldstein: Entscheidungsgrundlagen der klassischen römischen Juristen. In: Hildegard Temporini – Wolfgang Haase (ed.): *Aufstieg und Niedergang der römischen Welt*. II, 15. Berlin – New York, 1976. 3–100.

This paper intends to examine three principal texts from the Digest intimately associated with the concept of *rerum natura*. The analysis of these texts will improve and facilitate the comprehension of the significance and function of *rerum natura* as a 'Grenzbegriff' in the decision-making processes of Roman jurists. The initial text to analyse will demonstrate how *rerum natura* served to determine the specific justice of the particular case in connection with the legal status of a female slave's newborn child while the mother was transferred to a third-party usufructuary. The other texts depict *rerum natura* as the representative of objective reality, highlighting the connection between positive rules of law and 'prepositivische Ordnungselemente' within the framework of the *actio aquae pluviae arcendae* and the *taberna casiaria*. These source texts are well-known and described by many.

The present work does not seek to provide a comprehensive overview of the sources of *rerum natura*; the author of these lines has attempted to accomplish this task in a previously published monograph. The primary objective of this paper is to enhance the understanding of the fundamental legal issues of *rerum natura* through an exegetical analysis of the most prominent texts. To this end, secondary literature will be cited as necessary.

1. Partus ancillae in fructu non est

According to the renowned Gaian report, the child of a female slave (*partus ancillae*) is not considered profit (*fructus*) and, therefore, belongs to the slave's master.[2] The initial reactions to this case are exhilarating. We predominantly observe these reactions when collaborating with students on this case. The initial reactions typically deem the Roman attitude inhumane because the decision is generally interpreted as if the lawyer had suggested separating the baby and the mother. Nonetheless, we encounter a methodological pattern akin to the case related to compensation for damage inflicted by an escaped bear.[3] The distinctive feature of this methodological scheme lies in the recognition that Roman jurists did not establish the cornerstones of the case assessment in the same manner as a layperson would.

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[2] Cf. Max Kaser: Partus ancillae. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 75, (1958), 156.; Fritz Sturm: Zur ursprünglichen Funktion der actio Publiciana. *Revue Internationale des Droits de l'Antiquité* 9, (1962), 405.; Georg Thielmann: Produktion als Grundlage des Fruchterwerbs. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 94, (1977), 76–77., and 98. For more information see also Elisabeth Herrmann-Otto: *Ex ancilla natus. Untersuchungen zu den „hausgeborenen" Sklaven und Sklavinnen im Westen des Römischen Kaiserreiches*. Stuttgart, Steiner, 1994. 268. skk., Theo Mayer-Maly: Romanistisches über die Stellung der Natur der Sache zwischen Sein und Sollen. In: Pietro De Francisi (ed.): *Studi in onore di Edoardo Volterra II*. Milano, Giuffrè, 1971. 118–119.

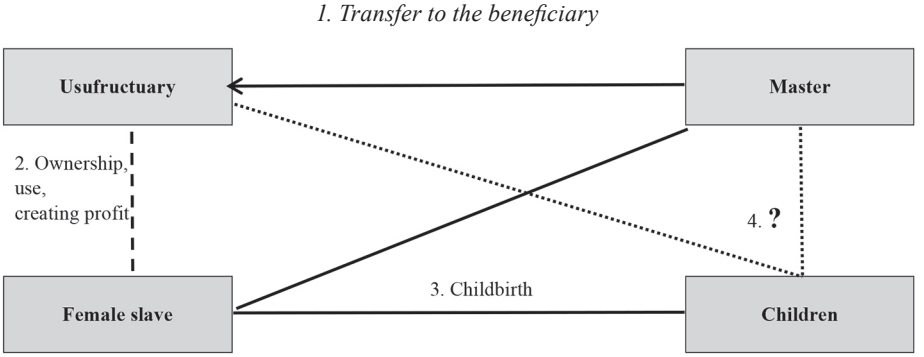
[3] Cf. Ulp. D. 9, 1, 1, 10 (18 ad ed.): *In bestiis autem propter naturalem feritatem haec actio locum non habet: et ideo si ursus fugit et sic nocuit, non potest quondam dominus conveniri, quia desinit dominus esse, ubi fera evasit: et ideo et si eum occidi, meum corpus est*. See also Nadja El Beheiri: Actio de pauperie. El caso del oso escapado. *Revista de Estudios Histórico-Jurídicos* 43, 1. (2021), 39–55.

Gai. D. 22, 1, 28, 1 (2 rer. cott.)

Partus vero ancillae in fructu non est itaque ad dominum proprietatis pertinet: absurdum enim videbatur hominem in fructu esse, cum omnes fructus rerum natura hominum gratia comparaverit.

The most recent English translation of the Digest interprets the text as follows: "But offspring of a female slave are not fruits; so they belong to the owner. It seemed absurd that a human being should count as fruits, since nature provided all fruits for man."[4]

The protagonists and their connections are illustrated in the following figure.



The events are the following in chronological order. First, the female slave as the object of the usufruct is transferred to the beneficiary. The second step is to point out that the beneficiary has the right to possess, use and gain the profits of the object of the usufruct but is also obliged not to impair its substance. In contrast, the ownership (*nudum ius*) of the item resides with the owner.[5] Thirdly, during the usufruct, the female slave delivers a child. The *responsum* in the Digest that the child of the female slave woman is not a profit, consequently, belongs to the master of the female slave.

The protagonists are the master (owner) of the female slave and the usufructuary. The latter claims the child, while the female slave's master contends that the child belongs to him. A text by Ulpian in Book 7 of the Digest covers all possible scenarios concerning the legal status of a female slave's child in connection with usufruct.[6] First, Ulpian outlines a case analogous to the one documented by Gaius. In this case, Brutus's

4 Cf. Alan Watson: *The Digest of Justinian*. Volume 1. Philadelphia, University of Pennsylvania Press, 2009. 182. https://doi.org/10.9783/9780812205510

5 Cf. Paul. D. 7, 1, 1 (3 Vitell.): *Usus fructus est ius alienis rebus utendi fruendi salva rerum substantia.*

6 Ulp. D 7, 1, 68 pr. – 2 (17 ad Sab.): *[pr.] Vetus fuit quaestio, an partus ad fructuarium pertineret: sed Bruti sententia optinuit fructuarium in eo locum non habere: neque enim in fructu hominis homo esse potest. Hac ratione nec usum fructum in eo fructuarius habebit. Quid tamen si fuerit etiam partus usus fructus relictus, an habeat in eo usum fructum? Et cum possit partus legari, poterit et usus fructus eius. [1] Fetus tamen pecorum Sabinus et Cassius opinati sunt ad fructuarium pertinere. [2] Plane si gregis*

opinion prevailed, and the rules related to usufruct are inapplicable to such a case. This exception arises from the principle that a human being cannot be treated as a profit of another. Consequently, the usufructuary will not acquire the child since a usufructuary is entitled to acquire property of profits via levy. Another possible case is when the usufruct of a female slave's unborn child is bequeathed. In this case, the beneficiary acquires the usufruct of the unborn child, not the property. Ulpian also references a distinction made by Sabinus and Cassius, who held that the young cattle belong to the usufructuary. If the usufruct of a flock or herd is left as a legacy, the usufructuary will be obliged to keep up the numbers of the flock out of the young that are subsequently born into it.[7]

At this stage, numerous legally relevant questions may be raised. What does *nudum ius* encompass? How does the usufructuary acquire the property of profits? Upon addressing these enquiries, we are left with a singular issue to resolve: Who is the master of the female slave's child? This inquiry prompts us to investigate the meaning and significance of *rerum natura* in this argument.

First, it is worth noting that Gaius uses the word *partus*, which has evolved into a noun from the *supinum* form of the verb *parere*. In this context, he denotes the child as an offspring, a progeny.[8] Gaius argues that a child is not a profit: it is absurd to consider man as a profit since *rerum natura* produces all profits for the sake of man, for man's benefit.[9]

Max Kaser analyses both Gaius' and Ulpian's texts. He emphasises that Ulpian's perspective presupposes a concept wherein the profit and the source from which it originates belong to the same *species*. However, this should mean that the child of a female slave could also be considered as profit. Nevertheless, Ulpian explicitly claims otherwise.[10] By comparison, Gaius emphasises that *rerum natura* created all profit for

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vel armenti sit usus fructus legatus, debebit ex adgnatis gregem supplere, id est in locum capitum defunctorum.

7 Cf. Kaser op. cit. 156. For Sabinus and Cassius, see Cicero's *De finibus* (cf. Cic. de fin. 1, 4, 12). Cf. Sturm op. cit. 404. He notes that Cicero's reference to the opinion by Brutus ("*ab iisque M. Brutum dissentiet*") implies that it was a minority opinion.

8 Ulpian (Ulp. D. 7, 1, 68 pr. [17 ad Sab.]) also uses this term, whereas Julian prefers circumlocution ("*[q]ui in utero sunt [...]*", "*[...] id quod natum erit [...]*", Iul. D. 1, 5, 26 [69 dig.]).

9 The last phrase of the Gaian text (*omnes fructus rerum natura hominum gratia comparaverit*) aligns with the Stoic anthropocentric view that man is the reference point of all that exists in the universe. See also Paul von Sokolowski: *Die Philosophie im Privatrecht. Sachbegriff und Körper in der klassischen Jurisprudenz und der modernen Gesetzgebung.* Halle, Verlag Niemeyer, 1902. 446–447.; Kaser op. cit. 158–159.; Mayer-Maly op. cit. 118. D. 33, 2, 42 (2 ex post. Lab.): *In fructu id esse intellegitur, quod ad usum hominis inductum est* [...]), an argument which is based on the premise that it would be absurd to regard man as fruit or as a beneficiary, as well as the holder of this benefit at the same time. Cf. Dario Mantovani: I giuristi, il retore e le api. Ius controversum e natura nella Declamatio maior XIII. In: Dario Mantovani – Aldo Schiavone (ed.): *Testi e problemi del giusnaturalismo romano*. Pavia, IUSS Press, 2007, 358. For the interpretation of fructus, see also Varro r. r. 2, 1.; for this Vsevolod Basanoff: *Partus ancillae*. Paris, Sirey, 1962. 223–225., with special reference to etymological considerations.

10 Kaser op. cit. 156–157. The contradictory nature of the fruit concept is also referred to by Stein, who, however, refers in this connection only to one of the Ulpian texts (Ulp. D. 7, 1, 68 pr.). Cf. Peter Stein: *Regulae iuris*. Edinburgh, Edinburgh Universit Press, 1966. 28.

the benefit of man. Consequently, he denies that the child of a female slave could be a profit.[11] The idea that man can enjoy all the advantages of the surrounding world is rooted in Ciceronian and Aristotelian thought.[12] Kaser points out that Gaius was more susceptible to the influence of philosophy than the mature classics; therefore, their ideas also influenced him more.[13]

In his text, Gaius invokes the concept of *rerum natura* to underpin his perspective concerning the child's legal status. *Rerum natura* reflects the objective reality of the external world, in which there are human beings on the one hand and profits (*fructus*) on the other. The purpose and essence of profits is to be of use to man.[14]

Regarding our case, *rerum natura* serves to resolve the conflict of interest between the owner and the usufructuary. As we have already seen, the usufructuary seeks to retain the child and argues that he has acquired ownership of the reproductive property through levy. He implies that the childbirth occurred in his residence; he may have even assisted with it. Ultimately, he contends that he will not be required to relinquish the child once the usufruct terminates. Conversely, the owner of the female slave intends to reclaim both the female slave and her child as his property. Based on the Paulian definition of usufruct, usufructuary is permitted to use the property and draw its profits. Thus, the question emerges as to whether the child of the female slave falls into the category of "profit". Gaius refutes the claim and refers to *rerum natura* as a guideline to substantiate his argument. What is also paramount to emphasise is that this *responsum* by Gaius does not automatically imply that the child must be immediately handed over to the slave's master. The mother and child could stay together, and upon the termination of the usufruct, the beneficiary will be obliged to return them to the original master.

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[11] Wieacker sees the explanation for this distinction in the fact that human dignity does not allow the child of the slave woman to be equated with the child of the animal. Cf. Franz Wieacker: Offene Wertungen bei den römischen Juristen. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 94, (1977), 21.; Kaser op. cit. 158. See also Arist. Pol. 1256b: "εἰ οὖν ἡ φύσις μηθὲν μήτε ἀτελὲς ποιεῖ μήτε μάτην, ἀναγκαῖον τῶν ἀνθρώπων ἕνεκεν αὐτὰ πάντα πεποιηκέναι τὴν φύσιν – If therefore nature is not imperfectly, nor ill-conceived, it necessarily follows that all these creatures were created for man's use." The Greek text is from *Aristotle*. ed. W. D. Ross: *Aristotle's Politica*. Oxford, Clarendon Press. 1957.

[12] See above Cic. de fin. 1, 4, 14, and in the previous note Arist. Pol. 1256b; Kaser op. cit. 158.

[13] Kaser op. cit. 159.; correspondingly Wieacker op. cit. 21., who sees an explicitly Stoic influence in Gaius' opinion. Thielmann considers Gaius' and Ulpian's opinions hypocritical, moralising and a simple intellectual game. He believes that a philosopher's approach is not worthy of a jurist. Cf. Thielmann op. cit. 98–99. Fortunately, Wieacker considers his view untenable. See Wieacker op. cit. 21.

[14] For a similar approach, cf. Max Kaser: *Ius gentium*. Forschungen zum römischen Recht 40. Köln–Wien–Weimar, Böhlau, 1993. 79–80. The Stoic origin of the idea that humanity as a trait is based on man's innate nature. See also the view of Cuena Boy, who argues that in some texts, the reference to *natura* or *rerum natura* does not necessarily have a direct connection with objective reality. Their purpose is to underpin the juridical *responsa*. In details cf. Francisco Cuena Boy: La idea de rerum natura como criterio básico de la imposibilidad física de la prestación. *Revue Internationale des Droits de l'Antiquité* 40, (1993), 232., and especially footnote 13. Contrary to these views, see Mayer-Maly op. cit. 119., who argues that a prepositive Sollen and a real Sollen confront here; therefore, the case does not involve any factual element.

2. Cerellius Vitalis and the cheese workshop

The notable case of the cheese workshop revolves around *immissiones*, a concept primarily addressed by classical jurists. This distinctive approach introduced innovation to the concept of *servitus*.[15] This perspective defers from the preclassical standpoint, where a *servitus* allowed the entitled neighbour to utilise the servient estate to satisfy an essential economic need of his estate. In instances of *immissiones*, the right to utilise a particular estate is spatially broadened and extended; consequently, this right may result in an intrusive use of that property due to this extension.[16]

> Ulp. D 8, 5, 8, 5 (17 ad ed.)
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> *Aristo Cerellio Vitali respondit non putare se ex taberna Casiaria fumum in superiora aedificia iure immitti posse, nisi ei rei servitutem talem admittit. Idemque ait: et ex superiore in inferiora non aquam, non quid aliud immitti licet: in suo enim alii hactenus facere licet, quatenus nihil in alienum immittat, fumi autem sicut aquae esse immissionem: posse igitur superiorem cum inferiore agere ius illi non esse id ita facere. Alfenum denique scribere ait posse ita agi ius illi non esse in suo lapidem caedere, ut in meum fundum fragmenta cadant. Dicit igitur Aristo eum, qui tabernam Casiariam a Minturnensibus conduxit, a superiore prohiberi posse fumum immittere, sed Minturnenses ei ex conducto teneri: agique sic posse dicit cum eo, qui eum fumum immittat, ius ei non esse fumum immittere. Ergo per contrarium agi poterit ius esse fumum immittere: quod et ipsum videtur aristo probare. Sed et interdictum*

In the case in question, Cerelius Vitalis leases a cheese workshop from the community of Minturnae and commences using it for its intended purpose, i.e., producing cheese.[17] The smoke generated during the cheese production process ascends from the workshop without any equipment to clear it. A resident of a higher building in the vicinity, presumably also using his property for its intended purpose, is disturbed at one point by the smoke emission.[18] As a result, the resident enquires with

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[15] Cf. Cosima Möller: *Die Servituten. Entwicklungsgeschichte, Funktion und Struktur der grundstückvermittelten Privatrechtsverhältnisse im römischen Recht mit einem Ausblick auf die Rezeptionsgeschichte und das BGB*. Quellen und Forschungen zum Recht und seiner Geschichte 16. Göttingen, Wallstein Verlag, 2010. 272. Contrary to this view cf. Max Kaser: *Das römische Privatrecht*. Bd. 2. Die nachklassischen Entwicklungen. Handbuch für Altertumswissenschaft. 10. Abteilung, Rechtsgeschichte des Altertums. München C.H. Beck, 1975. 2. Aufl., 217., with further literature.

[16] Correspondingly, cf. Möller op. cit. 272.

[17] See also Johannes Michael Rainer: *Bau- und nachbarrechtliche Bestimmungen im klassischen römischen Recht*. Graz, Leykam, 1987. 104.; Antonio Palma: *Iura vicinitatis*. Torino, Giappichelli, 1988. 186.

[18] Correspondingly, cf. Hugo Burckhard: *Die cautio damni infecti*. Erlangen, Palm & Enke, 1875. 215.; Palma op. cit. 186.

the jurist Titius Aristo about whether any measures may be taken to address this issue. As Ulpian reports on Aristo's *responsum*, he points out that emitting smoke from a cheese workshop towards taller edifices is typically unlawful. He mentions only one exception to this rule: the existence of a *servitus* granting rights to the manager of the cheese workshop. At this point, the jurist remarks that the higher elevation of the disturbed building is only necessary because smoke rises upwards. Aristo concludes that the actual resident of the higher property can sue the actual manager of the cheese workshop because the manager has no right to such invasion (*immissio*) into the higher property.[19] Consequently, Cerelius Vitalis, though he is the rightful tenant of the cheese workshop, may be prevented from emitting smoke by the resident above the workshop. As a result, Cerelius Vitalis may sue the community of Minturnae with *actio conducti* based on their *locatio conductio*.[20] The jurist Aristo additionally mentions *actiones negatoria* and *confessoria*, as well *interdictum uti possidetis*, as potential further legal remedies in this case.[21]

The secondary literature regards this text as the most renowned case of *immissiones*.[22] It comprises two fundamental statements. The first one is related to the general concept of property: every individual is entitled to utilise their property provided they do not infringe upon the rights of others.[23] According to the second statement, water or other substances cannot be lawfully discharged from a higher property to another lower one. Based on these two statements, the concepts of *facere in suo* and *in alienum immittere* can be outlined.[24] The second concept, *immittere in alienum*, occasionally expressed as *facere in alienum*, primarily emerges within the context of servitudes.[25]

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19 Correspondingly, see Pietro Bonfante: *Corso di diritto romano. La proprietà*. II, 1. Milano, Giuffrè, 1966. 363.

20 Similarly Bonfante op. cit. 364.; Palma op. cit. 186–187. According to Robaye, *action conducti* is also available to the tenant if the smoke is released due to the poor construction of the building (cf. "[...] le bâtiment, mal construit, laisse s'échapper la fumée [...]"). In detail cf. René Robaye: Remarques sur le concept de faute dans l'interprétation classique de la lex Aquilia. *Revue Internationale des Droits de l'Antiquité* 38, (1991), 352.

21 Cf. Burckhard op. cit. 216. Correspondingly, see Luigi Labruna: *Vim fieri veto. Alle radici di una ideologia*. Pubblicazioni dell'Univ. degli Studi di Camerino Napoli, Jovene, 1971. 226.; Alan Watson: *The Law of Property in the Later Roman Republic*. Oxford, 1968. 177sqq. Similarly see also Luigi Capogrossi Colognesi: *La struttura della proprietà e la formazione dei « iura praediorum » nell'età repubblicana*. Milano, Giuffrè, 1976. 503., footnote 2. Rainer mentions only the *actio negatoria* concerning this text. The mention of *actio confessoria* only makes sense if the following text is also considered. In this text (Ulp. D. 8, 5, 8, 6 [17 ad ed.]), Ulpian, referring to Pomponius, deals with the question of who is entitled to sue for the emission of smoke. What if the smoke emitted is not excessive, such as from a stove? In this dimension of active legitimacy, the relevant question is whether the right to emit smoke exists. Cf. Burckhard op. cit. 216.

22 Cf. Möller op. cit. 280.

23 Cf. in the Digest text: "*[...] in suo enim alii hactenus facere licet, quatenus nihil in alienum immittat [...]*". In the English translation: "[…] a man is only permitted to carry out operations on his own premises to this extent, that he discharge nothing onto those of another […]". Cf. Watson op. cit. 269–270.

24 On this, see also Burckhard op. cit. 199.

25 See also Bonfante op. cit. 361sqq.; Schahin Seyed-Mahdavi Ruiz: *Die rechtlichen Regelungen der Immissionen im römischen Recht und in ausgewählten europäischen Rechtsordnungen unter besonderer*

Thus, *immissio* denotes the physical intrusion of one corporeal thing into the spatial domain of another, thereby affecting its legal status.[26] It should be emphasised that any incursion by an incorporeal object does not immediately constitute an *immissio*. These *immissiones* represent a right to access the property of another in the broadest sense, whereas 'entry' as the foundation stone of this concept is most narrowly defined and, therefore, restricted only to corporeal objects.[27] If the 'entry' is physical and direct, then a violation of property occurs. However, the classical jurists were hesitant about whether the physical invasion invariably constitutes a violation of property.[28] In the case of *taberna casiaria*, Aristo asserts that the tenant of a cheese workshop lacks the right to emit smoke (*non putare [...]iure immitti posse*) unless he is entitled to it by a *servitus*.[29] In other words, the *servitus* is necessary for a legitimate physical intrusion. [30]

Furthermore, when the tenant utilises the cheese workshop to produce cheese, he uses the facility for its intended purpose. It also includes smoking the cheese as a means of preservation. The resident lives habitually in the property situated above; thus, he also utilises the estate for its intended purpose. Smoke emission is also a regular activity, so it appears to be a nuisance in this case. Two typical and regular uses of property collide in this case. The jurist offers a conflict resolution pattern, which favours the resident. The cheese workshop manager can only access an *actio in personam* against his contractual partners. Nevertheless, the jurist fails to give a reason for his decision. The concept of *rerum natura* as a ground for the decision appears in another text, which is associated with the case of the cheese workshop.

> Paul. D. 39, 3, 2pr. (49 ad ed.)
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> *In summa tria sunt, per quae inferior locus superiori servit, lex, natura loci, vetustas: quae semper pro lege habetur, minuendarum scilicet litium causa.*

The English translation of the text is as follows: "In short, there are three ways in which a lower site can become under servitude to a higher one, that is to say, regulation imposed, the nature of the site, and established custom, which last is always regarded as having the force of law, for the purpose, of course, of reducing litigation."[31]

The jurist identifies three reasons a lower tract of land may be submitted to an upper one: *lex*, *natura loci* and *vetustas*. *Natura loci* refers to the location of a property;

Berücksichtigung des geltenden deutschen und spanischen Rechts. Quellen und Forschungen zum Recht und seiner Geschichte 7. Göttingen, Wallstein Verlag, 2000. 16.; Möller op. cit. 273.

26 Cf. mainly Seyed-Mahdavi Ruiz op. cit. 16.; Möller op. cit. 272., with literature.

27 Cf. in the primary sources Cic. Top. 5, 26–27. and Sen. Ep. ad Luc. 6, 58, 11.

28 Cf. Bonfante op. cit. 362. On the question of the *servitus lapidem caedendi, ut in meum fundum fragmenta cadant*, see also Bonfante op. cit. 363–364.; Capogrossi Colognesi op. cit. 512.

29 Correspondingly, see Bonfante op. cit. 363.

30 Essentially in agreement with Seyed-Mahdavi Ruiz op. cit. 16.; Möller op. cit. 272.

31 Watson op. cit. 397.

vetustas denotes an extended period developed by the lapse of time.[32] Waldstein underscores that the text is structured so that *natura loci* is positioned between *vetustas* and *lex*. The conclusion is that if a case cannot be solved based on *lex* or *vetustas*, the ground's natural place is decisive. Concerning rainwater, these three cornerstones indicate that in the absence of *lex dicta* or an extended period defined by *vetustas*, the locations of the estates in question as a natural characteristic are to be observed. It means that lower-located estate must absorb the water that enters from the higher-located estate without human intervention.[33]

As a result, the actual possessor of the lower land must tolerate the flowing rainwater due to *natura loci*. Waldstein points out that the jurists relied on the nature of the ground as a departure point in decision-making.[34] In other words, *natura loci* is cited in the text because *lex* and *vetustas* were otherwise ineffective in solving cases. Observing *natura loci* renders the rules in the Law of the XII Tables (7, 7a) comprehensible. That is why Waldstein deems this text as an example of (rerum) natura expressing a specific nature or character of things.[35]

3. Summary

The present paper intended to examine the significance of the concept of *rerum natura* in three fundamental Roman legal texts from the Digest. The paper is centred around how *rerum natura* functioned as a principle in the decision-making of Roman jurists, particularly as a 'Grenzbegriff' in legal interpretation.

The first analysed text concerns the legal status of a female slave's newborn child when the mother is transferred to a third-party usufructuary. Gaius' *responsum* establishes that the child is not considered a profit (*fructus*) and thus belongs to the master rather than the usufructuary. This conclusion is grounded in the principle that human beings cannot be classified as profits since *rerum natura* dictates that all profits exist for human benefit. This case is the first indication how Roman jurists delineated objective reality and positive law norms based on this objective reality.

The second case involves a legal dispute over *immissiones* in the context of a cheese workshop. In this scenario, the tenant of a cheese workshop emits smoke that disturbs the resident of an upper-level estate. The jurist Aristo determines that such emissions are unlawful unless a *servitus* permits them. This case illustrates how the principle of *rerum natura* was invoked to balance ownership and resolve conflicts between two

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[32] Cf. *Oxford Latin Dictionary*. Oxford, Clarendon Press, 1968. s. v. "vetustas". Waldstein describes it as "*quae semper pro lege habetur*"; see in detail Waldstein op. cit. 39.

[33] On the basis of another text (Cels. D. 50, 17, 188, 1 [17 dig.]) Mayer-Maly concludes similarly that the Romans referred to *rerum natura* as a principle when only one possible solution existed to a particular issue: "Auf die *natura rerum* beriefen sie sich dagegen, wenn aus irgendwelchen Gründen – sei es aus physiologischen, sei es aus socio-kulturellen – für ein Problem nur eine Lösung denkbar schien." cf. Theo Mayer-Maly: Juristische Reflexionen über ius I. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 117, (2000), 11.

[34] Cf. Waldstein op. cit. 39–40.

[35] Cf. Waldstein op. cit. 37sqq.

legitimate but conflicting possessors. The decision affirms that ownership rights are restricted by the impact one's property use has on others.

The third case, as outlined by Paul, concerns the principle that a lower-lying property must tolerate natural rainwater runoff from a higher-lying property unless a legal provision dictates otherwise. The jurist identifies three factors that establish *servitus* in such cases: *lex*, *natura loci*, and *vetustas*. This case highlights how Roman jurists used *rerum natura* as a means of interpretation to supplement positive law, reinforcing the idea that the natural characteristics of a property could affect legal consequences.

Throughout the analysis, the study emphasises that *rerum natura* served as a fundamental concept in Roman legal thought, channelling prepositive norms (prepositive Ordnungselemente) into positive law. It provided jurists with a "toolkit" to resolve disputes based on objective principles rather than mere formalistic application of legal norms. In conclusion, it could be emphasised that understanding the role of *rerum natura* plays an essential role in the comprehension of the broader conceptual and theoretical framework of Roman legal theory.

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