



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Rights in rem RES - things

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Zápatí prezentace



Rights in rem

- Relationships to things, where is an obligation of other not to interfere
 - Absolute rights - actions erga omnes
 - Direct rights
- Types
 - Ownership (*dominium, proprietas*)
 - Possession (*possessio*)
 - Rights to a alien thing (*iura in re aliena*)

- Second book of Institutions of Gaius



THINGS - RES

- A part of an existing world
- An object of legal relationships
- Serves to people
- Not a free person, not a part of a person, even in case of separation

- Basic distinguishing:
 - in commercio x extra commercium



RES EXTRA COMMERCIIUM I.

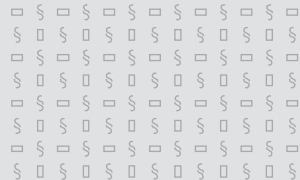
- Own legislation
- Private persons can't dispose of them, can't be an object of a property right
- ***Res divini iuris*** - things of the Gods' law
- Res sacrae
 - Cult of the gods - temples
 - Creation by law or senatusconsultum
- Res religiosae
 - Creation by will of people (graves)
 - *lura sepulchrum, iter ad sepulchrum*
- Res sanctae
 - Not belonging to gods, but under their protection - city walls, city gates



RES EXTRA COMMERCIIUM II.

■ *Res humani iuris*

- Meant to satisfy people, not an individual person
- Res omnium communes (things belonging to all)
 - Air, water, sea
 - Everyone can use them, even gain ownership right to a selected part
- Res publicae/populi
 - Streets, theatres, aqueducts, public buildings, public slaves
 - Belonging to the Roman people
- Res universitatis
 - Belonging to municipalities, colonies



RES IN COMMERCIO - RES IN NOSTRO PATRIMONIO

- Things that can be disposed of in private relationships
- Distinguishing as corporal/incorporal, tangible/intangible, generic/determined individually
- A specific thing belongs to more categories
- Distinguishing is mainly objective, may be subjective, individualized by the subjects of the relationship



RES CORPORALES X INCORPORALES

■ CORPORAL

- Can be touched (Gai II.13)
- Land, slave, gold, silver...

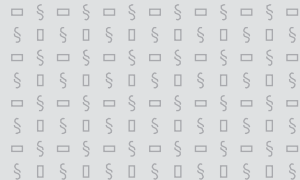
■ INCORPORAL

- Can't be touched, rights that can be disposed of (not a property right)
- Hereditas (inheritance), usufructus, servitudes in rem, debt
- Inheritance - can be gained through possession within one year, even with land in it - Gai II.54



RES MANCIPI X NEC MANCIPI

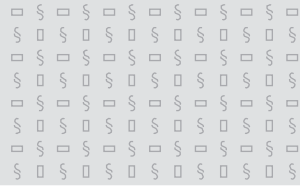
- Things with a substantial meaning for the Roman society
- Ownership can be transferred by a special, formal act (*mancipatio*, *in iure cessio*)
- Strict enumeration:
 - Lands *solo italico*,
 - Servitudes in rem to Italian land
 - Beasts of burden
 - Slaves
- Everything else
- Ownership could be transferred informally (*tradio*), *mancipatio* and *in iure cessio* were also possible



RES IMMOBILES X RES MOBILES

- Immovables
- Land and everything that is connected to it „SUPERFICIES SOLO CEDIT“
- Movables
- Things that can be moved without damaging their essence

Lex XII Tabularum - fundus x cetera res
Gaius - fundus x mobilia (Gai II.42)
Justinian - immobilia x mobilia (I.J. II.6.1)



RES NON COMPOSITAE X COMPOSITAE

■ Simple things

- One essence
- Slave, statue, rock

■ Compound things

- More things, mechanically joined, which make one thing without losing their essence - building, ship
- **Bulks** - more things, that are still individual - in case of ownership dispute is necessary to prove ownership to all of them (from Iustinian times to half)
 - Same species (cattle herd)
 - Different things (peculium, hereditas, dos)



Separable X Not Separable

■ Separable in reality

■ SEPARABLE

- Can be separated in reality
- Not a creation of joint ownership
- „Nomina ipso iure sunt divisa“ (debts are divided) - joint liability

■ INSEPARABLE

- Losing value in case of separation (slave, animal)
- Joint ownership (joint liability, joint debt)

■ Separable in law

- Even a things, which can't be separated in reality, can be separated ideally
- Ideal share - according to this, participating persons divide yields and take costs
- Can be separated in reality by exchange for separable thing(s)
- Legally, both corporeal and incorporeal things can be separated, but not servitudes in rem



FUNGIBILES X NON FUNGIBILES (Middle-ages terminology)

■ SUBSTITUABLES

- Can be substituted with another thing of the same quality
- Cattle, food, money, even new things from serial production

■ NON-SUBSTITUABLES

- Can't be substituted with another thing of the same quality
- Original x copy of art
- Individualized thing

The criteria is objective - usually is a thing given as substituable or as non-substituable, but parties can agree otherwise - in specific legal relationship, a substituable things can be individualized and non-substituable thing can be seen as designated generically.



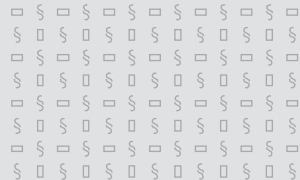
GENUS X SPECIES (Roman terminology)

■ DESIGNATED GENERICALLY

- „...things, that we measure, weigh, count, as money, vine, oil...“(Gai III.90)
- Object of mutuum - returning of the thing of same type, not the same thing
- „GENUS PERIRE NON CENSETUR“ - Obligation can't be resolved by impossibility to fulfill

■ DESIGNATED INDIVIDUALLY

- Things that have more important individuality
- Object of commodatum - returning of the same thing
- Obligation can be resolved by impossibility to fulfill



Quae USU CONSUMUTUR X USU NON CONSUMUTUR

■ USABLES

- Determined to be destroyed by using (change of their substance)
- Food, money, corn

■ UNUSABLES

- Not being destroyed by using, their substance is unchanged
- Furniture, buildings
- *Res quae usu minuuntur* (wearing down)
 - Wearing down by using, their value is reduced
 - Clothes, vehicles



FRUCTUS - fruits

■ FRUCTI NATURALES - natural

- Regularly given fruits of the thing
- Fruit, grain, youngs of animals, milk x minerals (sand, rock)
- Not children of slaves
- Until separated, they're part of the main thing

■ FRUCTI CIVILES - legal

- Not „fruits“ in the strict sense - more like gain from a thing „*loco fructuum*“
- Interest, rent, work of a slave

■ IN FRUCTO NON ESSE - (today) benefit

- Child of a slave, meat from a domesticated animal, wood from a fruit tree - always belong to the owner of main thing
- **Increment** - means of gaining property right to a thing belonging to another person, regardless of that person's will, by uniting the thing with mine



MAIN AND COLLATERAL THINGS, PARTS, ACCESSORIES

- PART OF A THING
 - Can't be removed without damaging the main thing
 - It's not independent and can't be an object of specific rights

- PERTINENTIA - accessories
 - Independent thing, meant by the owner to be used with the main thing, can be subject of specific rights

- PARS/PORTIO/MEMBRUM REI - close accessories
 - Things, without which the main thing wouldn't be perfect
 - Independent things, that share fate with the main thing
 - Eg. Keys, locks, roof tiles in case of a house, or parts of a ship

- INSTRUMENTUM - freer accessories
 - Cattle, vehicles, tools in case of a land
 - Doesn't automatically share fate with the main thing, this has to be explicitly announced



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**THANK YOU FOR YOUR
ATTENTION,
HAVE A NICE DAY**

P. Salák jr.