

BARTOSZ ZALEWSKI<sup>1</sup>

## Creative interpretation of *lex Rhodia de iactu* in the legal doctrine of *ius commune*

### Abstract

Among the institutions adopted from Roman law whose historical evolution within *ius commune* is particularly interesting, it is worth pointing out the issues connected with the distribution of damage incurred as a result of throwing a part of the cargo overboard from a ship due to the risk of its sinking because of overload. Deliberations of Roman lawyers, gathered under the title *De lege Rhodia de iactu*, were object of medieval jurists' creative interpretation. The role of the glossators' school representatives seems to be particularly significant here as an important contribution to the development of the European legal doctrine in subsequent centuries. In the modern era, the innovations introduced by representatives of this school were considered *communis opinio doctorum* and it was applied in legal practice of the Imperial Chamber Court of the Reich. Its purpose was compensation for any damage incurred in joint interest or in other people's interest, which was reflected in the content of ABGB, the Polish Civil Code and Roman-Dutch Law.

**Keywords:** Roman law, legal science of the *ius commune*, *lex Rhodia de iactu*, compensation for damage incurred in joint interest

---

<sup>1</sup> Bartosz Zalewski, LL.M. – Chair of Roman Law, Institute of History and Theory of State and Law, Faculty of Law and Administration, Maria Curie-Skłodowska University, Lublin, Poland; e-mail: bartosz.zalewski@poczta.umcs.lublin.pl.

BARTOSZ ZALEWSKI

## Twórcza interpretacja *lex Rhodia de iactu* w doktrynie prawnej *ius commune*

### Streszczenie

Wśród recypowanych instytucji prawa rzymskiego, których historyczna ewolucja w ramach *ius commune* jest wyjątkowo interesująca, wskazać należy zagadnienia związane ze sposobem rozdziału szkód powstałych na skutek wyrzucenia ze statku części ładunku ze względu na ryzyko jego zatonięcia wynikające z przeciążenia. Zebrane w tytule *De lege Rhodia de iactu* rozważania prawników rzymskim były już przedmiotem twórczej interpretacji średniowiecznych prawników. Szczególnie znacząca wydaje się tutaj rola przedstawicieli szkoły glosatorów, stanowiąc istotny wkład w rozwój europejskiej nauki prawa późniejszych stuleci. W czasach nowożytnych innowacje wprowadzone przez przedstawicieli wspomnianej szkoły postrzegano jako *communis opinio doctorum* i stosowano w praktyce orzecniczej Sądu Kameralnego Rzeszy. Celem ich była naprawa wszelkiej szkody, która poniesiona została w interesie wspólnym lub cudzym, co przełożyło się na treść ABGB oraz polskiego Kodeksu Cywilnego oraz norm prawa rzymsko-holenderskiego.

**Słowa kluczowe:** *lex Rhodia de iactu*, prawo rzymskie, *ius commune*,  
naprawa szkody poniesionej we wspólnym interesie

## Introduction

The issue of reception of Roman law into the legal systems of continental Europe arouses an increasing interest in the Roman studies worldwide.<sup>2</sup> Among the institutions adopted from Roman law whose historical evolution within *ius commune* is particularly interesting, it is worth pointing out the issues connected with the distribution of damage incurred as a result of throwing a part of cargo overboard from a ship due to the risk of its sinking because of overload. Deliberations of Roman lawyers, gathered under the title *De lege Rhodia de iactu*, have already been the object of interest of specialists in Roman studies. However, it should be noted that previous studies typically focused on ancient Roman law, occasionally taking also into account Byzantine law, but generally omitted the issue of creative interpretation of Roman jurists' achievements in the legal doctrine of *ius commune*.<sup>3</sup>

<sup>2</sup> As basic works of a synthetic character on the *ius commune*, see in particular: F. Calasso, *Medio Evo del diritto*, Milano 1954; P. Koschaker, *L'Europa e il diritto Romano* (Italian translation by A. Biscardi), Firenze 1962; M. Bellomo, *Common Legal Past of Europe. 1100–1800* (English translation by L.G. Cochrane), Washington 1995; R. Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford 1996; P. Stein, *Roman Law in European History*, Cambridge 2003.

<sup>3</sup> In the literature we can see a special interest of researchers in two issues, namely the question of reception of the discharge rules of maritime rights, Greek or unspecified customary maritime law, based largely on the rights of the Greek, and the issues of the jettison itself, including the issues of process-related vindication of compensation. Among the most important works on the *lex Rhodia de iactu* the monographs should be noted by W. Ashbruner, *The Rodian Sea-Law*, Oxford 1909 and S. Płodzień, *Lex Rhodia de iactu. Studium historyczno-prawne z zakresu rzymskiego prawa handlowo-morskiego*, Lublin 1961 (new edition: Lublin 2011). Besides, a number of different scholarly articles have been written on the *lex Rhodia*, among which are the following: R. Dareste, *Lex Rhodia de iactu*, "Revue de philologie de littérature et d'histoire anciennes" 1905, 29, pp. 1–29; H. Kreller, *Lex Rhodia. Untersuchungen zur Quellengeschichte des römischen Seerechts*, "Zeitschrift für das Gesamte Handelsrecht" 1921, 85, pp. 257–367; W. Osuchowski, *Appunti sul problema del „iactus” in diritto romano*, "Iura" 1950, 1, pp. 291–299; idem, *Ze studiów nad rzymskim prawem morskim. Uwagi nad zagadnieniem zrztu morskiego w prawie rzymskim*, CPH 1951, 3, pp. 41–52; F.M. de Robertis, *Lex Rhodia. Critica e anticritica su D.14.2.6*, [in:] *Studi in onore di Vincenzo Arangio-Ruiz nel XLV anno del suo insegnamento*, Vol. 3, Napoli–Jovene 1953, pp. 155–174; F. Wieacker, *Iactus in tributum nave salva venit (D. 14, 2, 4 pr.)*. Exegesen zur *Lex Rhodia de iactu*, [in:] V. Arangio-Ruiz (ed.), *Studi in memoria di Emilio Albertario*, Vol. 1, Milano 1953, pp. 513–532; A. Wiliński, *D. 19, 2, 31 und die Haftung des Schiffers im altrömischen Seetransport*, "Annales Universitatis Mariae Curie-Skłodowska", Sectio G, 1960, 7, pp. 353–376; K.M.T. Atkinson, *Rome and the Rhodian Sea-Law*, "Iura" 1974, 25, pp. 46–98; J.A.C. Thomas, *Juridical Aspects of Carriage by Sea and Warehousing in Roman Law*, "Recueils de la Société Jean Bodin pour l'Histoire Comparative des Institutions" 1974, 32, pp. 117–160; H. Wagner, *Die lex Rhodia de iactu*, "Revue internationale des droits de l'Antiquité" 1997, 44, pp. 357–380;

The legal principles pertaining to the distribution of risk at maritime transport of goods, adopted in Roman law, had been formulated in Greek regulations.<sup>4</sup> Legal customs originating in the island of Rhodes must have been especially significant, because the legal norms widely used in the Mediterranean Sea region were called the Rhodian law (*lex Rhodia*), which was most likely connected with the dynamic economic and political development of the island from the end of the Macedonian occupation until the establishment of a free port on Delos by Romans in 166 BC.<sup>5</sup> Moreover, this name survived a decline in Rhodes's importance, which is confirmed not only by the Digest of Justinian, but also by the information contained in *Etymologiarum sive Originum* of St Isidore of Seville (died in 636)<sup>6</sup>:

*De legibus rhodiis. Rhodiae leges navalium commerciorum sunt, ab insula Rhodo cognominatae, in qua antiquitus mercatorum usus fuit.*

The issue of reception of rules originating from Rhodian law into Roman law has been the object of a lively scientific debate, whose description goes beyond the scope of this paper. However, it should be noted that most probably the transfer of rules regulating goods cast overboard into Roman law did not consist in mere implementation of any specific statutes into the Roman legal order, but rather in the adoption of a particular legal principle which had been functioning earlier within *ius gentium*.<sup>7</sup> This issue, albeit significant from the perspective of contemporary researchers on Roman law, was irrelevant for scholars from the schools of

---

G. Purpura, *Ius naufragii, sylai e lex Rhodia, Genesi delle consuetudini marittime mediterranee*, "Annali dell'Università di Palermo" 2002, 47, pp. 275–292; E. Chevreau, *La lex Rhodia de iactu: un exemple de la réception d'une institution étrangère dans le droit romain*, "Tijdschrift voor Rechtsgeschiedenis" 2005, 73(1–2), pp. 67–80; D. Schanbacher, *Zur Rezeption und Entwicklung des rhodischen Seewurfrechts in Rom*, „Humaniora – Medizin – Recht – Geschichte” (special edition: B.R. Kern, E. Wadle, K.P. Schroeder, Ch. Katzenmeier (eds.), *Festschrift für Adolf Laufs zum 70. Geburtstag*), Berlin–Heidelberg 2006, pp. 257–273.

<sup>4</sup> This does not mean that other laws of antiquity did not recognise the rules relating to maritime law – e.g. see J. Dauvillier, *Le droit maritime phénicien*, "Revue Internationale des Droits de l'Antiquité" 1959, 6, pp. 33–63.

<sup>5</sup> Cf. S. Płodzień, op. cit., p. 13 et seq.; H. Wagner, op. cit., pp. 357–358.

<sup>6</sup> Isidorus, *Etym.* 5, 17. From the earlier period comes the testimony of Tertulian – see F.M. de Robertis, op. cit., pp. 158–159 and K.M.T. Atkinson, op. cit., pp. 52–53. It should be noted that Isidore probably did not use it in his work on Justinian compilation – see E. Brehaut, *An Encyclopedist of the Dark Ages: Isidore of Seville*, London 1912, p. 165. On the general importance of the work of Isidore for the law of the early Middle Ages, see M. Bellomo, op. cit., pp. 46–47.

<sup>7</sup> See S. Płodzień, op. cit., p. 55 et seq. A view negating any reception of norms for discharge into the Roman law was expressed by F.M. de Robertis, who assumed that all the principles gathered in the title *lex Rhodia de iactu* constitute a product of the Roman jurisprudence – F.M. de Robertis, op. cit., p. 157 et seq. See also D. 14, 2, 9.

glossators and commentators.<sup>8</sup> They adopted a view on the formal reception of a statute previously binding in Rhodes.<sup>9</sup> It should also be mentioned that in the later period the thesis about the formal reception of *lex Rhodia* in Roman law was adopted by Jacobus Gothofredus (Jacques Godefroy, 1587–1652).<sup>10</sup> He relied on the prologue to a private collection of maritime law *Νόμος Ροδων ναυτιχός*, compiled in Byzantium most probably in the 8<sup>th</sup> c. AD<sup>11</sup>, partly referring to the regulation of Emperor Antoninus Pius who ordered that the rules of Rhodian law should be obeyed unless they were contrary to the norms of Roman law.<sup>12</sup>

Further historical evolution of the discussed regulation occurred on several levels. First of all, the application of the rule of shared risk and redress of damage incurred in joint interest or in other people's interest was extended to include also other circumstances, not connected with maritime transport. Furthermore, the rules for claiming redress for damage in court changed as well. These issues are discussed in detail below. On the other hand, the paper does not address the issues connected with the influence of *lex Rhodia* on the development of maritime law and regulations pertaining to so-called "huge disaster".<sup>13</sup>

## Regulations concerning goods cast overboard in Justinian's law

The maritime transport contract was based by Romans on the construction of *locatio-conductio operis*, that is commissioning and performing a particular piece

<sup>8</sup> Representatives of these law schools – in contrast to the later humanists – did not conduct historical research on the law – see M. Kuryłowicz, *Prawo rzymskie. Historia, tradycja, współczesność*, Lublin 2003, p. 100; F. Calasso, op. cit., p. 524; P. Świącicka, *Prawo rzymskie w okresie Renesansu i Baroku. Humanistyczny wymiar europejskiej kultury prawnej*, CPH, 2012, 64(1), p. 15 et seq.; T. Wallinga, *The Common History of European Legal Scholarship*, "Erasmus Law Review" 2011, 4, p. 5.

<sup>9</sup> Cf. Accursius, *Corporis Iustinianaei Digestum Vetus, seu Pandectarum Iruis Civillis. Tomus Primus*, Lugduni 1604, gl. *Nauticis praescripta est, iudicetur ad D. 14, 2, 9*; gl. *Lege Rhodia ad D. 14, 2, 1*.

<sup>10</sup> Jacobus Gothofredus, was the representative of the *mos gallicus iura docendi*, the first reconstructor of Law of the Twelve Tables and the author of the well-known commentary on the Code of Theodosius II.

<sup>11</sup> For a detailed discussion of the prologue and the views see: S. Płodzień, op. cit., p. 39 et seq.; W. Ashbruner, op. cit., p. 71 et seq. For an English translation of the prologue, see: R.D. Benedict, *The Historical Position of the Rhodian Law*, "The Yale Law Journal" 1909, 18(4), p. 225 et seq. A French translation of the entire collection was made by R. Dareste, op. cit., p. 7 et seq.

<sup>12</sup> D. 14, 2, 9; cf. also: D. 47, 9, 4, 1 and K.M.T. Atkinson, op. cit., pp. 50–51. The authenticity of the text is disputed – see: S. Płodzień, op. cit., p. 28; H. Wagner, op. cit., p. 358 et seq.; K.M.T. Atkinson, p. 60 et seq.

<sup>13</sup> Cf. F. Calasso, op. cit., p. 436. For details see: S. Płodzień, op. cit., p. 99 and ffet seq.; P. Heck, *Zwei Beiträge zur Geschichte der Grosse Havarei*, Berlin 1889, passim.

of work.<sup>14</sup> The notion of work (*opus*) was treated broadly and included also carriage of goods.<sup>15</sup> Deliberations of Roman lawyers concerning the issues connected with throwing a part of the cargo or ship gear to sea were collected in Book 14 of the Digest under the title: *De lege Rhodia de iactu*.<sup>16</sup> The introduction to this title contains a general rule, ascribed to Paulus, concerning the distribution of a possible loss incurred as a result of goods being thrown overboard to save the overloaded ship:

D. 14, 2, 1 (*Paulus libro secundo sententiarum*): *Lege Rhodia cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est.*

In accordance with a view drawn by Justinian compilers from post-classical *Pauli Sententiae*<sup>17</sup>, the loss suffered in the aforementioned situation should be shared among all people whose goods were on the ship, including the carrier, because the cargo was cast to sea in joint interest. The general norm cited is elaborated on in a fragment from a commentary on an edict, authored by Paulus<sup>18</sup>:

D. 14, 2, 2, pr. (*Paulus libro 34 ad edictum*): *Si laborante nave iactus factus est, amissarum mercium domini, si merces vehendas locaverant, ex locato cum magistro navis agere debent: is deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest. Servius quidem respondit ex locato agere cum magistro navis debere, ut ceterorum vectorum merces retineat, donec portionem damni praestent. Immo etsi „non” retineat merces magister, ultro ex locato habiturus est actionem cum vectoribus: quid enim si vectores sint, qui nullas sarcinas habeant? Plane commodius est, si sint, retinere eas. At si non totam navem conduxerit, ex conducto aget, sicut vectores, qui loca in navem conduxerunt: aequissimum enim est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent.*

<sup>14</sup> R. Zimmermann, op. cit., p. 408. It was also permissible to rent the entire ship. Then, appropriate would be a contract of *location-conductio rei* – T. Palmirski, *Kilka uwag na temat przyczyn wprowadzenia edyktów pretorskich „in factum adversus nautas cauponas stabularios” oraz „furti adversus nautas cauponas stabularios”, [in:] W. Uruszczak, D. Malec (eds.), Krakowskie studia z historii państwa i prawa*, Vol. 2, Kraków 2008, p. 38.

<sup>15</sup> R. Zimmermann, op. cit., p. 406.

<sup>16</sup> D. 14, 2.

<sup>17</sup> Cf. *Pauli Sententiae* 2, 7, 1, and see also H. Wagner, op. cit., p. 360; W. Osuchowski, op. cit., p. 293. On *Pauli Sententiae*, see: H.F. Jolowicz, *Historical Introduction to the Study of Roman Law*, Cambridge 1972, p. 476.

<sup>18</sup> It should be indicated that the quoted passage is largely interpolated. The scope of postclassical changes is discussed in science, see: S. Płodzień, op. cit., p. 61 et seq.

In the quoted fragment, Paulus discusses issues of a procedural character and refers to the views of a Republican jurist Servius Sulpicius Rufus.<sup>19</sup> In the event of a part of the goods being thrown overboard, their owners could lodge *ex locato* claim against the captain of the ship (*magister navis*).<sup>20</sup> The captain could either compensate for the loss himself or file a petition (*agere potest*) against these owners of transported goods who did not sustain damage, using *actio conducti*. Furthermore, the captain was entitled to keep the goods entrusted to him until he received the amounts due. Jurists justified the adoption of this construction of a shared risk by referring to the equity principle (*aequissimum enim est...*).<sup>21</sup> The proportional distribution of damage took into account not only the value of the salvaged goods but also the value of the ship.<sup>22</sup> The property subject to indemnification liability included also valuables and clothes of travellers.<sup>23</sup>

In the course of time, the scope of the Rhodian principle was extended to include also other cases where damage was incurred only by some owners of the transported goods and by the ship owner. Such cases included: handing over a part of the transported goods to pirates as a ransom<sup>24</sup>, loss or damage to a part of the cargo while trans-shipping it from the vessel to boats<sup>25</sup>, damage done to the cargo in casting other goods overboard<sup>26</sup>, damage to the vessel itself during a dangerous event, damage done at an explicit request of passengers themselves, or when it was impossible to find out who caused damage due to an outbreak of confusion and panic as a result of danger.<sup>27</sup> An element common to all aforementioned cases is the occurrence of damage as a result of actions undertaken in a joint interest or in other people's interest.<sup>28</sup> A similar but extended interpretation of the rules concerning goods cast overboard can be noticed already in the works of the medieval

<sup>19</sup> For details about Servius, see E. Vemay, *Servius et son école. Contribution à l'histoire des idées juridiques à la fin de la République romaine*, Paris 1909, *passim*.

<sup>20</sup> *Actio locati* was also applicable when the owners of goods, which, thanks to making the dump have been saved, would compensate for the already caused damage, but would demand the return of the sums paid to discharge, because the injured could recover in some way his goods – cf. S. Płodzień, *op. cit.*, p. 102.

<sup>21</sup> Cf. R. Zimmermann, *op. cit.*, p. 408; H. Wagner, *op. cit.*, p. 362. S. Płodzień states that word *aequissimum* is interpolated – S. Płodzień, *op. cit.*, p. 93.

<sup>22</sup> The way of damage valuation is stated in D. 14, 2, 2, 4.

<sup>23</sup> D. 14, 2, 2, 2. See also: S. Płodzień, *op. cit.*, p. 98; H. Wagner, *op. cit.*, pp. 364–365.

<sup>24</sup> D. 14, 2, 2, 3.

<sup>25</sup> D. 14, 2, 4, pr.

<sup>26</sup> D. 14, 2, 4, 2.

<sup>27</sup> D. 14, 2, 2, 1.

<sup>28</sup> See S. Płodzień, *op. cit.*, p. 112–115. The Author discusses in detail all identified cases, on which application of the Rhodian principle was extended.

school of glossators who generalized the Rhodian principle so as to go beyond the scope of regulations connected with sea navigation.

## Creative interpretation of *lex Rhodia* by representatives of medieval schools of glossators and commentators

The foundations of the scientific discourse concerning Roman law, commenced in the Middle Ages by Irnerius (died in 1125) and his successors called glossators, lay in the regulations of Justinian's law.<sup>29</sup> Even though glossators regarded the Justinian's compilation as the highest authority and used it as the basis for their legal deliberations, it would be a mistake to perceive their work as derivative.<sup>30</sup> Thus, it should be stated that in many cases they contributed to a creative interpretation of Roman institutions, providing a lasting input into development of the European legal culture.<sup>31</sup> This kind of creative interpretation pertained also to the Rhodian principle, and in expanding the scope of its use beyond sea navigation, medieval lawyers went a step further than Roman jurists.<sup>32</sup> Another noticeable level of evolution of the institution at issue in the Middle Ages was the simplification of the process of claiming redress for damage by a person who had sustained a loss in a joint interest or in other people's interest.

Information about both aforementioned issues can be found in *Glossa Ordinaria*<sup>33</sup>, a collection authored by Accursius (died ca. 1260), which is a kind of a summary of

<sup>29</sup> Cf. P. Vinogradoff, *Roman Law in Medieval Europe*, Oxford 1961, p. 57. The scientific character of the glossators' discourse is emphasized by F. Calasso: op. cit., p. 369.

<sup>30</sup> As pointed out by R. Wojciechowski, especially in creating a synthetic *brocarda* the glossators formulated many rules unknown to the Justinian legislation.

<sup>31</sup> Cf. E. Szymoszek, *Tradycja i postęp w twórczości glosatorów*, [in:] *Z dziejów prawa*, Prace Naukowe Uniwersytetu Śląskiego no. 1581, Katowice 1996, p. 13 et seq. Of particular significance is the glossators' contribution to the political thought, as well as the development of public law issues, particularly the range of imperial power and its relation to the papacy – cf. idem, *Nowożytny wątki w poglądach prawnoustrojowych glosatorów*, "Acta Universitatis Wratislaviensis", Prawo XLV, 1975, 245, p. 191 et seq.; J. Baszkiewicz, *Omnia sunt principis. O własności i jurysdykcji w koncepcji politycznej glosatorów i postglosatorów (XII–XIV w.)*, "Zeszyty Naukowe Uniwersytetu Wrocławskiego", Seria A, Prawo VII, 1961, 34, p. 55 et seq.; F. Calasso, op. cit., p. 486 et seq.

<sup>32</sup> Cf. J.H.A. Lokin, F. Brandsma, C. Jansen, *Roman-Frisian Law of the 17th and 18th Century*, Berlin 2003, p. 260 et seq.

<sup>33</sup> All citations of *Glossa Magna* from the edition: Accursius, *Corporis Iustinianaei Digestum Vetus, seu Pandectarum Iruis Civilis. Tomus Primus*, Lugduni 1604.



the achievements of the whole school of glossators.<sup>34</sup> *Glossa Ordinaria* had enormous significance for the history of judicial law in continental Europe; suffice it to mention that a famous saying: *quidquid non agnoscit glossa, non agnoscit curia* referred exactly to this collection.<sup>35</sup> The extended scope of application of the Rhodian principle appears in the gloss *Aequissimum* to a fragment of Paulus's commentary on a praetorian edict<sup>36</sup>:

*Aequissimum. Et not. quod si quid pro communi utilitate, vel alterius damni patior, quod mihi est restitutio facienda, ut hic et supra l.j. et supra quod met. caus. l. metum. §. sed licet et infra pro soc. l. cum duobus. §. quidam. et infra de verbor. signif. l. impense. et infra de impens. l. quod dicitur. Sed contra infra ead. l. § seq. Sol. ibi non pro communi utilitate, nec sua vel aliorum voluntate fuit factum, autem sic.*

The gloss is unsigned, so it is impossible to claim with certainty that the idea to extend the scope of application of the Rhodian principle originates directly from Accursius, whose work, as it has already been mentioned, had primarily a compilatory character.<sup>37</sup> The author of the gloss makes a general statement that in any case where someone sustains damage to the benefit of another person or even to a common benefit, the damage should be compensated for. The glossator refers to other fragments of the Digest, which is a manner of argumentation typical of this school.<sup>38</sup> Hence, regulations are quoted pertaining to the use of *actio quod metus causa* against a person who benefitted from intimidating an aggrieved person<sup>39</sup>, settlements between business partners one of whom sustained damage in their joint interest<sup>40</sup>, and settlement of expenses incurred by husband in connection with dowry property.<sup>41</sup> The gloss is accompanied with the following note: *Damnum quod quis*

<sup>34</sup> Cf. P. Vinogradoff, op. cit., p. 61; F. Calasso, op. cit., p. 486; M. Kuryłowicz, op. cit., p. 99. H. Kantorowicz describes the epoch of Azo and Accursius as „an age of compilations” – H. Kantorowicz, *Studies in the Glossators of the Roman Law*, Cambridge 1938, p. 216.

<sup>35</sup> See: R. Wojciechowski, op. cit., p. 28 and the further literature indicated by this author.

<sup>36</sup> Accursius, op. cit., gl. *Aequissimum* ad D. 14, 2, 2, pr.

<sup>37</sup> The glosses whose authorship certainly can be attributed to Accursius were signed with the abbreviation Accur. The authorship of Accursius is accepted by R. Zimmermann, who, however, did not support this statement with any arguments – see: R. Zimmermann, op. cit., p. 409.

<sup>38</sup> Cf. J. Baszkiewicz, op. cit., p. 59.

<sup>39</sup> D. 4, 2, 9, 3.

<sup>40</sup> D. 17, 2, 52, 4.

<sup>41</sup> D. 50, 16, 79; D. 25, 1, 5.

*communi casu passus est, ex communi reparandum est* – damage sustained in a joint matter is compensated jointly.<sup>42</sup>

Thus, the rule of proportional distribution of liability for the damage suffered in a joint interest or in other people's interest was extended by glossators beyond the case of goods cast overboard and other cases made equal to it by Roman jurists. However, the gloss does not offer any examples of situations where it could be applied and gives only a general rule, based on the criterion of benefit. The general rule was consolidated and supplemented with specific examples by the most eminent representatives of the school of commentators (counsellors) – Bartolus de Saxoferrato (1314–1357) and his disciple Baldus de Ubaldis (1327–1400).<sup>43</sup>

According to Bartolus de Saxoferrato<sup>44</sup>, the rule of proportional distribution of the indemnification liability among all those who would benefit from the damage could be applied in the event of someone's house being demolished to save the neighbourhood from fire.<sup>45</sup> Bartolus justifies his view similarly as the author of the *Aequissimum* gloss, i.e. he refers to the idea of common benefit owing to which the house was demolished (*pro communi utilitate factus est...*).<sup>46</sup> The example of a house being demolished in order to save the neighbourhood from fire is also mentioned by Baldus de Ubaldis<sup>47</sup> who adds that the principle in question would also apply in the case of soldiers losing their horses during a defensive war.<sup>48</sup> In this event, the community should redress the loss of a horse. What is interesting, while remarking on Paulus's commentary on the edict, Baldus claims that, if necessary, food be also shared.<sup>49</sup>

<sup>42</sup> Accursius, op. cit., note to gl. *Aequissimum* ad D. 14, 2, 2, pr.

<sup>43</sup> Cf. R. Zimmermann, op. cit., pp. 409–410. For further details about the school of commentators and its most prominent representatives, see F. Calasso, op. cit., p. 564 et seq.; P. Koschaker, op. cit., p. 153 et seq.

<sup>44</sup> About Bartolus' life, see: C.N.S. Woolf, *Bartolus de Saxoferrato: His Position in Medieval Political Thought*, Cambridge 1913, p. 20 et seq.

<sup>45</sup> Bartolus de Saxoferrato, *Bartolus in Secundam ff. Veteris*, ed. J. de Jonuelle, 1523, com. ad D. 14, 2, 2, pr.: *Iste ver. equissimum enim etc. facit ad q. q. q. q. domus alicuius destruitur a vicinis: ne ignis ulterius transeat q. debeat ei emendari a vicinis: quia pro communi utilitate factum est in argumentum induco non determino.*

<sup>46</sup> Ibidem.

<sup>47</sup> Cf. J.H.A. Lokin, F. Brandsma, C. Jansen, op. cit., pp. 260–261.

<sup>48</sup> Baldus de Ubaldis, *Commentaria in digestum vetus et novum et codicem*, Vol. 7, Venetiis 1577, com. ad D. 14, 2, 2, pr.: *Ignis orto in aliqua contrata, si domus alicuius destruitur a vicinis ne ignis terius extendatur, fieri potest iure. Milites, qui tempore guerrae porpter defensionem vadunt ad bellum, si ibi perdunt equum, sibi per commune debet emendari.*

<sup>49</sup> Ibidem.

During the Middle Ages, the manner of claiming compensation for damage incurred in a joint interest or in other people's interest changed as well. This modification was introduced in the *Agere potest* gloss signed by Accursius<sup>50</sup>:

*Agere potest. Scilicet magister. Sed videtur quod non possit agi, ut infr. de preascrip. ver. l. qui servandarum. in princ quae est contra. Sed dic non potest agi (ut ibi dicit) actione legis Aquiliae contra proiicientem, vel simili : sed de aequitate ratione contributionis tenetur, ut hic vector magistro : et magister damnum passo : melius tamen esset ut via recta ageret damnum passus sublato circuitu : ut supra de conduct. inde. l. dominus testamento. et hoc admitto, si magister agere nolit, vel reinere : ut supra de eo per quem fact. est. l. fin. in princip. potest etiam agi act. negot. gest. quia utiliter gessit : ut supra de neg. gest. l. sed an ultro. § j. Accurs.*

The quoted gloss pertains to the already cited fragment from Paulus's commentary on the edict, according to which *magister navis* can sue with *actio conducti* the owners of the goods which were salvaged while other goods were thrown overboard.<sup>51</sup> In this manner, the obligation to redress damage was proportionally distributed among all the people who benefitted from the prevention of a common danger. Accursius suggests simplification of the whole construction. In his opinion, the aggrieved person could claim compensation for the appropriate parts of the loss directly (*via recta*) from owners of the salvaged goods.<sup>52</sup> He refers to Proculus's view about a claim by a third party, other than the owner, for a refund of undue benefit accrued in freeing a slave.<sup>53</sup> In such a situation, Proculus permits a possibility of a third party lodging a complaint directly, excluding the owner of the slave.

However, the concept proposed by Accursius required a specification of the legal relationship which would provide a basis for the claim lodged by the aggrieved person against the owners of salvaged goods. After all, they were not bound by any obligation-rising relationship whatsoever, for example resembling a partnership.<sup>54</sup> Nevertheless, the glossator finds certain analogies to managing another

<sup>50</sup> Accursius, op. cit., gl. *Agere potest* ad D. 14, 2, 2, pr.

<sup>51</sup> D. 14, 2, 2, pr.: *...is deinde cum reliquis, quorum merces salvae sunt, ex conducto, ut detrimentum pro portione communicetur, agere potest.*

<sup>52</sup> Cf. R. Zimmermann, op. cit., p. 410.

<sup>53</sup> D. 12, 6, 53. For further details on this passage, see: T. Kleiner, *Entscheidungskorrekturen mit unbestimmter Wertung durch die klassische römische Jurisprudenz*, München 2010, p. 80 et seq.

<sup>54</sup> This stems from the use of contract *locatio-conductio* in maritime transport – cf. S. Płodzień, op. cit., p. 102.

person's affairs without authorization<sup>55</sup>, so he suggests that in such a situation the aggrieved person should be granted *actio negotiorum gestio contraria*.<sup>56</sup>

## *Lex Rhodia* as viewed by selected representatives of the legal doctrine of *ius commune* in modern times (16<sup>th</sup>– 18<sup>th</sup> c.)

In the modern era, the innovations introduced by glossators were considered *communis opinio doctorum*.<sup>57</sup> Among German lawyers, such an opinion was expressed by Modestinus Pistoris (1516–1565) who referred both to the authority of the gloss and to the views of Bartolus de Saxoferrato.<sup>58</sup> The issue of damage incurred in a joint interest was also raised by Andreas Gaill (1526–1587). The remarks of this lawyer are interesting, particularly due to the fact that they refer to the practical application of the Rhodian principle by the Imperial Chamber Court of the Reich, established in 1495.<sup>59</sup> Gaill accepts the achievements of glossators and commentators regarding creative interpretation of *lex Rhodia*<sup>60</sup>:

*Imo pro salute totius vicinia, ne ignis omnia urat, et latius serpat, domus vicini diruatur, omnes vicini pro ejus reparatione in commune contribuere debent, quema modum in jactu mercium pro salvanda nave, hi, qui merces suas adhuc salvas habend, aliis damnum passis adjumento, et subsidio esse debent, per text (...) ubi Paul. J.C. ait [Aequissimum est commune detrimentum fieri eorum, qui propter amissas res aliorum consecuti sunt, ut merces suas salvas haberent,] quem text. ad hoc alleg. Bald. in d.l.2 in principi. gloss. ibi. in verbo, aequissimum, dicens quod damnum pro communi utilitate acceptum, commune esse debeat.*

<sup>55</sup> Accursius literally refers to D. 3, 5, 9, pr.

<sup>56</sup> Cf. J.H.A. Lokin, F. Brandsma, C. Jansen, op. cit., p. 261; R. Zimmermann, op. cit., p. 410.

<sup>57</sup> J.H.A. Lokin, F. Brandsma, C. Jansen, op. cit., p. 261.

<sup>58</sup> Modestinus Pistoris, *Consilia sive responsa*, Lipsiae 1596, Cons. XVI, 9: *Unde et insert ibi gl. quod damnum, quod quis patitur pro communi utilitate, debeat ei ex publico sarciri. Imò et Bart. ibi inducit illum textum in argumentum, quod quando domus alicuius destruitur à vicinis, ne ignis ulterius transeat, debeat ei emndari a vicinis, quia pro communi utilitate factum est.*

<sup>59</sup> Cf. F. Brandsma, *The Dutch Common Law Tradition: Some Remarks on Dutch Private Law and the Ius Commune*, [in:] J.H.M. van Erp, L.P.W. van Vliet (eds.), *Netherlands Report to the Seventeenth International Congress of Comparative Law*, Utrecht 2006, p. 10. For details about Imperial Chamber Court, see the collective work issued on the occasion of the 500<sup>th</sup> anniversary of its creation: I. Scheurmann (ed.), *Frieden durch Recht. Das Reichskammergericht von 1495 bis 1806*, Mainz 1994.

<sup>60</sup> A. Gaill, *Practicarum Observationum, tam ad Processum Judicarium, praesertim Imperialis Camerae quam causarum decisiones pertinentium, libri duo*, Colonia 1690, lib. II, obs. XXII, 4–5.

In the above quoted passage, Gaill cites a familiar fragment from Paulus' writings<sup>61</sup> and refers to a situation where damage occurred as a result of the destruction of a house while extinguishing fire, noticing its analogy to the damage incurred as a result of throwing goods overboard. As it has already been mentioned, such circumstances were discussed already by Bartolus de Saxoferrato and Baldus de Ubaldis, the latter directly cited by the German lawyer. Gaill emphasizes the criterion of damage being sustained *pro communi utilitate* already indicated in the gloss *Aequissimum*.

Similar views were expressed by representatives of *usus modernus Pandectarum*.<sup>62</sup> W. A. Lauterbach (1618–1678), professor of law at Tübingen, accepts the extension of the Rhodian principle after *communis opinio* justified additionally by the equity rule.<sup>63</sup> A similar opinion is expressed by another eminent scholar, A. Leyser (1683–1752), who refers to the extension of the Rhodian principle beyond sea navigation, in the following words<sup>64</sup>:

*Legis rhodiae de iactu frequentissima et in libris iureconsultorum et in iudiciis fit mentio, etiam apud Germanos, quorum fora tamen litibus maritimis rarius perstrepunt. Sed plerumque in aliis, quam maritimis, caussis lex rhodia adhibetur. Scilicet ex titulo hoc, et imprimis ex L. I. regulam eliciunt: Omnium contributione sarciri oportet, quod pro omnibus impensum est. Eam regulam ipsum quidem ius naturae et aequitas satis stabiliunt, ut non opus sit, ad legem rhodiam provocare. Quia tamen alius commodior de ea agenda locus non est, nos quoque hic illam tractabimus. Regulam nempe hanc ad omnia negotia, in quibus de iactu non agitur, applicant, tam propter aequitatem, quam leges ipsas.*

In the quoted fragment, Leyser notes that even though *lex Rhodia* is frequently discussed by lawyers and applied in jurisdiction, cases connected with sea navigation are rare in German courts. Furthermore, he points out that this law has a broader scope of application. Hence, Leyser claims that all damage incurred to

<sup>61</sup> D. 14, 2, 2, pr. *in fine*.

<sup>62</sup> About *usus modernus Pandectarum*, see: M. Kuryłowicz, op. cit., pp. 23–24; T. Wallinga, op. cit., pp. 16–17; P.J. Thomas, *Usus modernus Pandectarum. A Spurious Transplant*, "Revue Internationale des Droits de l'Antiquité" 2000, 47, p. 483 et seq.

<sup>63</sup> W.A. Lauterbach, *Collegium theoretico-practicum Pandectarum*, Vol. 1, Tubinga 1707, lib. XIV, tit. 2, 14: *Denique communis et aequissima est opinio, si urgente incendio domus aliqua diruta sit, caeterarum conservandarum causa, id damnum, in subsidium, contributione faciendum esse a vicinis, ad quos verisimiliter ignis potuit pervenire (...)*.

<sup>64</sup> A. Leyser, *Meditationes ad Pandectas*, Vol. III et IV, Lipsiae–Brunsvigae–Guelpherbyti 1776, sp. CLX, II, pp. 181–182.

the benefit of the general public should be redressed. The lawyer derives this rule from natural law and equity principle. Leyser presents the obligation to redress damage incurred in a joint interest or in other people's interest in an abstract way, without mentioning literally the writings of glossators or commentators. Thus, there are some noticeable tendencies typical of the representatives of *usus modernus Pandectarum*, such as the generalization of casuistic deliberations or attempts at discussing them taking into account local customs and practical needs.<sup>65</sup>

The issue of damage incurred in a joint interest or in other people's interest was also discussed by J. Voet (1647–1713) a Dutch representative of *usus modernus Pandectarum* and a humanist<sup>66</sup>, author of a famous work *Commentarius ad Pandectas*<sup>67</sup>:

*Contributionem fieri ob jactum ab omnibus, aequum erat, quia jactu non facto periculum imminere aequale omnibus navi vectis, tam salvis, quam jactis. At non ita ex orto incendio aequalis ad omnem viciniam spectat damni metus, sed ad proximos maximus minor at remotiores. Ut proinde rectius dicatur, vel a nullo refici tale damnum oportere, si ad depositas aedes jam ignis pertigerit; vel si necdum eo pervenerit incendium, ab eo solo, qui dejecit.*

Unlike the German scholars previously quoted, Voet rejects the concept of glossators to extend the scope of application of the Rhodian principle to include cases not connected with sea navigation. He considers the example of demolishing a house due to fire to be absurd, because the group of people obliged to compensate for damage would be practically unspecified. According to Voet, what is easy to find out at sea is virtually impossible on land.<sup>68</sup> However, despite the fact that Voet pointed to significant weaknesses of the glossators' concept, it was sometimes used in practice of the Roman-Dutch law.<sup>69</sup>

On the other hand, Cujacius (Jacques Cujas, 1522–1590)<sup>70</sup> – one of the most influential French lawyers – viewed the present issue differently from Voet. Cujacius referred to the situation most frequently mentioned by jurists – a fire which can be extinguished only by demolishing someone else's building. In such circum-

<sup>65</sup> Cf. T. Wallinga, *op. cit.*, p. 17; P. J. Thomas, *op. cit.*, p. 483.

<sup>66</sup> M. Kuryłowicz, *op. cit.*, p. 121. For details of Voet's life, see: J.W. Wessels, *History of Roman-Dutch Law*, Clarck 2005, p. 320 et seq.

<sup>67</sup> J. Voet, *Commentarius ad Pandectas*, Vol. 1, Lugduni 1698, XIV, tit. II, 18.

<sup>68</sup> Cf. F. Brandsma, *op. cit.*, p. 10.

<sup>69</sup> *Ibidem*, pp. 10–11.

<sup>70</sup> Cf. M. Kuryłowicz, *op. cit.*, p. 100; K. Koranyi, *Powszechna historia państwa i prawa w zarysie*, Vol. 2, Warszawa 1955, p. 386.

stances, the lawyer accepted the concept suggested by glossators, with the reservation that it should not be treated as a general rule but, quite the opposite, only as an exception.<sup>71</sup> Another French scholar, a representative of the natural law direction, J. Domat (1625–1696)<sup>72</sup> accepted the principle of proportional distribution of liability for damage among the people who benefited from it, but he referred neither to *lex Rhodia* nor to the writings of medieval lawyers.<sup>73</sup>

The analysis of the sources leads to the conclusion that the concept of expanding the Rhodian principle beyond sea navigation, adopted in *Glossa magna*, was implemented mainly in German-speaking lands. It was reflected in the content of § 1043 ABGB of 1811 which stipulates that:

§ 1043: *Hat jemand in einem Nothfalle, um einen größern Schaden von sich und Andern abzuwenden, sein Eigenthum aufgeopfert; so müssen ihn Alle, welche daraus Vortheil zogen, verhältnißmäßig entschädigen. Die ausführlichere Anwendung dieser Vorschrift auf Seegefahren ist ein Gegenstand der Seegesetze.*

A similar provision was included in the Polish Civil Code of 1964:

Art. 438: *Kto w celu odwrócenia grożącej drugiemu szkody albo w celu odwrócenia wspólnego niebezpieczeństwa przymusowo lub nawet dobrowolnie poniósł szkodę majątkową, może żądać naprawienia poniesionych strat w odpowiednim stosunku od osób, które z tego odniosły korzyść.*<sup>74</sup>

The debate concerning the character of the obligation-rising relationship between the aggrieved person and the owners of the salvaged goods developed separately. It had lesser practical importance and no generally accepted opinion on this matter was developed. As it has already been mentioned, Accursius regarded

<sup>71</sup> Cuiacius, *Commentarii in Lib. XXXIV Pauli ad Edictum*, [in:] idem, *Opera omnia, in decem tomos distributa*, Vol. 5, Napoli 1758, p. 532–533: *Qua ratione freti Doctores nostri etiam dicunt, nimis generaliter tamen, incendii arcendi causa, si justo metu percussi vicini vicinas aedes interdicerint, ne ignis evagaretur et ad se perveniret, inter eos pro portione communicare debere detrimentum intercisarum medium cum eo, cujus erant aedes. Quod ego uno tantum casu invento jus nostrum admittere: uno tantum casu, non generaliter, videlicet si ignis eo usque non pervenerit, puta si extinctus sit priusquam in eas eades, quae demolitae sunt pervenerit, tenentur vicini interdicto quod vi aut clam in simplum ei, cujus aedes demolitae sunt (...).*

<sup>72</sup> On the life and achievements of Domat, see: R.F. Voeltzel, *Jean Domat (1625–1696): essai de reconstitution de sa philosophie juridique, précédé de la biographie du juriconsulte*, Paris 1936.

<sup>73</sup> J. Domat, *Les loix civiles dans leur ordre naturel*, Vol. 1, Paris 1777, II, tit. VIII, 4, 7; tit. IX, 2.

<sup>74</sup> Translation: *Whoever suffers a material loss, forcibly or even voluntarily, in order to prevent damage to another person or to avoid common danger, is entitled to claim compensation for the loss sustained, in suitable proportions, from people who benefitted from it.*

this relationship as close to *negotiorum gestio*, and thus as a type of the *quasi ex contractu* obligation.<sup>75</sup> In general, this issue was not discussed by commentators, who apparently accepted the view presented by Accursius. However, in the later period the issue became the object of a lively debate. The opinion that the legal relationship resulting from damage resembles *negotiorum gestio* was criticised primarily by Cuiacius.<sup>76</sup> Modestinus Pistoris stated that the claim had a character of *illam actionem generalem (...), quae ex varijs figuris causarum oritur*.<sup>77</sup> There were also opinions that this was *actio in rem*, based on a maritime custom, or *condictio ex lege* whose source could be found in a *quasi-contractual* relationship.<sup>78</sup>

## Summary

The opinions of Roman jurists, gathered under the title *De lege Rhodia de iactu*, even though they pertained solely to the issues connected with sea navigation, were generalized in *ius commune*. Thus, the Rhodian principle, undergoing a creative interpretation, seems to be a significant issue, going far beyond the narrow scope of maritime law. Various levels of its development testify to the creativity of medieval lawyers, who, referring to the equity rule, conferred a new meaning on the Rhodian principle. Its purpose was compensation for any damage incurred in a joint interest or in other people's interest, which was reflected in the content of ABGB and the Polish Civil Code. Despite the fact that this concept is not devoid of certain weaknesses, it has been applied in legal practice. The role of the glossators' school representatives seems to be particularly significant here, as an important contribution to the development of the European legal doctrine in subsequent centuries.

Furthermore, the issues discussed herein stimulate reflections of a more general character. In the historical development of the Rhodian principle, there is a noticeable tendency towards the fulfilment of a sense of equity. This aspect was already visible in the writings of Roman jurists and the above reflections lead to the conclusion that *aequitas* was the basis of the creative work of glossators and counsellors

<sup>75</sup> Cf. Accursius, op. cit., gl. *Agere potest* ad D. 14, 2, 2, pr.: *...potest etiam agi act. negot. gest. quia utiliter gessit (...)*.

<sup>76</sup> Cuiacius, op. cit., p. 530–531: *Et inepte igitur Accursius, qui et cetera omnia legis non intellexit, dat dominis jactarum mercium adversus reliquos actio nem negotiorum gestorum, quia nec ipsi ultra projacerunt merces suas, ut alias servarent, sed de communi Consilio et decreto omnium, u test in legis Rhodiae novellae cap. nono.*

<sup>77</sup> Modestinus Pistoris, op. cit., Cons. XVI, 19.

<sup>78</sup> R. Zimmermann, op. cit., p. 410.



concerning the extension of the Rhodian principle to include a variety of other circumstances. It can testify to the permanent and everlasting role of Roman law as a source of inspiration for lawyers of all epochs.

## Bibliography

- Ashbruner W., *The Rodian Sea-Law*, Oxford 1909.
- Atkinson K.M.T., *Rome and the Rhodian Sea-Law*, "Iura" 1974, 25.
- Baszkiewicz J., *Omnia sunt principis. O własności i jurysdykcji w koncepcji politycznej glosatorów i postglosatorów (XII–XIV w.)*, "Zeszyty Naukowe Uniwersytetu Wrocławskiego", Seria A, Prawo VII, 1961.
- Bellomo M., *Common Legal Past of Europe. 1100–1800* (English translation by L.G. Cochrane), Washington 1995.
- Benedict R.D., *The Historical Position of the Rhodian Law*, "The Yale Law Journal" 1909, 18(4).
- Brandsma F., *The Dutch Common Law Tradition: Some Remarks on Dutch Private Law and the Ius Commune*, [in:] J.H.M. van Erp, L.P.W. van Vliet (eds.), *Netherlands Report to the Seventeenth International Congress of Comparative Law*, Utrecht 2006.
- Brehaut E., *An Encyclopedist of the Dark Ages: Isidore of Seville*, London 1912.
- Calasso F., *Medio Evo del diritto*, Milano 1954.
- Chevreaux E., *La lex Rhodia de iactu: un exemple de la réception d'une institution étrangère dans le droit romain*, "Tijdschrift voor Rechtsgeschiedenis" 2005, 73(1–2).
- Daresté R., *Lex Rhodia de iactu*, "Revue de philologie de littérature et d'histoire anciennes" 1905, 29.
- Dauvillier J., *Le droit maritime phénicien*, "Revue Internationale des Droits de l'Antiquité" 1959, 6.
- Heck P., *Zwei Beiträge zur Geschichte der Grosse Havarei*, Berlin 1889.
- Jolowicz H.F., *Historical Introduction to the Study of Roman Law*. Cambridge 1972.
- Kantorowicz H., *Studies in the Glossators of the Roman Law*, Cambridge 1938.
- Kleiner T., *Entscheidungskorrekturen mit unbestimmter Wertung durch die klassische römische Jurisprudenz*, München 2010.
- Koranyi K., *Powszechna historia państwa i prawa w zarysie*, Vol. 2, Warszawa 1955.
- Koschaker P., *L'Europa e il diritto Romano* (Italian translation by A. Biscardi), Firenze 1962.
- Kreller H., *Lex Rhodia. Untersuchungen zur Quellengeschichte des römischen Seerechts*, "Zeitschrift für das Gesamte Handelsrecht" 1921, 85.
- Kuryłowicz M., *Prawo rzymskie. Historia, tradycja, współczesność*, Lublin 2003.
- Osuchowski W., *Appunti sul problema del „iactus” in diritto romano*, "Iura" 1950, 1.
- Osuchowski W., *Ze studiów nad rzymskim prawem morskim. Uwagi nad zagadnieniem rzutu morskiego w prawie rzymskim*, CPH 1951, 3.

- Palmirski T., *Kilka uwag na temat przyczyn wprowadzenia edyktów pretorskich „in factum adversus nautas caupones stabularios” oraz „furti adversus nautas caupones stabularios”,* [in:] W. Uruszczak, D. Malec (eds.), *Krakowskie studia z historii państwa i prawa*, Vol. 2, Kraków 2008.
- Płodzień S., *Lex Rhodia de iactu. Studium historyczno-prawne z zakresu rzymskiego prawa handlowo-morskiego*, Lublin 1961 (new edition: Lublin 2011).
- Purpura G., *Ius naufragii, sylai e lex Rhodia, Genesi delle consuetudini marittime mediteranee,* “Annali dell’Università di Palermo” 2002, 47.
- Robertis F.M., de, *Lex Rhodia. Critica e anticritica su D.14.2.6,* [in:] Studi in onore di Vincenzo Arangio-Ruiz nel XLV anno del suo insegnamento, Vol. 3, Napoli–Jovene 1953.
- Schanbacher D., *Zur Rezeption und Entwicklung des rhodischen Seewurfrechts in Rom,* „Humaniora – Medizin – Recht – Geschichte” (special edition: B.R. Kern, E. Wadle, K.P. Schroeder, Ch. Katzenmeier (eds.), *Festschrift für Adolf Laufs zum 70. Geburtstag*), Berlin–Heidelberg 2006.
- Scheurmann I. (ed.), *Frieden durch Recht. Das Reichskammergericht von 1495 bis 1806,* Mainz 1994.
- Stein P., *Roman Law in European History*, Cambridge 2003.
- Święcicka P., *Prawo rzymskie w okresie Renesansu i Baroku. Humanistyczny wymiar europejskiej kultury prawnej*, CPH, 2012, 64(1).
- Szymoszek E., *Nowożytnie wątki w poglądach prawnoustrojowych glosatorów,* “Acta Universitatis Wratislaviensis”, Prawo XLV, 1975, 245.
- Szymoszek E., *Tradycja i postęp w twórczości glosatorów,* [in:] *Z dziejów prawa*, Prace Naukowe Uniwersytetu Śląskiego no. 1581, Katowice 1996.
- Thomas J.A.C., *Juridical Aspects of Carriage by Sea and Warehousing in Roman Law,* “Recueils de la Société Jean Bodin pour l’Histoire Comparative des Institutions” 1974, 32.
- Thomas P.J., *Usus modernus Pandectarum. A Spurious Transplant,* “Revue Internationale des Droits de l’Antiquité” 2000, 47.
- Vemay E., *Servius et son école. Contribution à l’histoire des idées juridiques à la fin de la République romaine*, Paris 1909.
- Vinogradoff P., *Roman Law in Medieval Europe*, Oxford 1961.
- Voeltzel R.F., *Jean Domat (1625–1696): essai de reconstitution de sa philosophie juridique, précédé de la biographie du juriconsulte*, Paris 1936.
- Wagner H., *Die lex Rhodia de iactu,* “Revue internationale des droits de l’Antiquité” 1997, 44.
- Wallinga T., *The Common History of European Legal Scholarship,* “Erasmus Law Review” 2011.
- Wessels J.W., *History of Roman-Dutch Law*, Clarck 2005.
- Wieacker F., *Iactus in tributum nave salva venit (D. 14, 2, 4 pr.). Exegesen zur Lex Rhodia de iactu,* [in:] V. Arangio-Ruiz (ed.), *Studi in memoria di Emilio Albertario*, Vol. 1, Milano 1953.

- Wiliński A., *D. 19, 2, 31 und die Haftung des Schiffers im altrömischen Seetransport*, "Annales Universitatis Mariae Curie-Skłodowska", Sectio G, 1960, 7.
- Woolf C.N.S., *Bartolus de Sassoferrato: His Position in Medieval Political Thought*, Cambridge 1913.
- Zimmermann R., *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford 1996.