RAIS RESEARCH ASSOCIATION for INTERDISCIPLINARY STUDIES
April 6-7, 2023

DOI:10.5281/zenodo.7900903

Traditio, Specificatio and *Accessio* - Methods of Acquiring Property in Roman Law

Ionuţ Ciutacu

Lecturer PhD, "Dimitrie Cantemir", Christian University of Bucharest, Faculty of Juridical and Administrative Sciences, Bucharest, Romania, ionutciutacu@yahoo.com

ABSTRACT: At the beginning of the Ancient Era, the quiritary property had only *res mancipi* as its object. The development of society and the evolution of legal ideas determined the appearance of *res nec mancipi.* The master mentality of the Romans led them to legally protect the control exercised over these assets and to expand the scope of the quiritary property. The creation of *accessio*, *specificatio* and *traditio*, as specific ways of acquiring property over *res nec mancipi*, had the effect of optimizing the legal regime of quiritary property and expanding the scope of application of this legal institution.

KEYWORDS: res nec mancipi, traditio, specificatio, accessio

Introduction

Quiritary property was the private property exercised by Roman citizens. Initially, it had as object *res mancipi.* These things were considered more important (*pretiosiores*), because the ancient Romans, who were shepherds and farmers, used them in carrying out these activities. As society developed and legal ideas evolved, the realities of the era of the Law of the Twelve Tables revealed a new category of things, *res nec mancipi.* Although they were considered less important by the ancient Romans, it was necessary that the rule exercised over them be protected from a legal point of view. These realities led the Roman jurists to extend the scope of quiritary property to *res nec mancipi* and to complete its legal regime with ways of acquiring these assets.

Traditio

Traditio was a way of acquiring property specific to the *ius gentium*, which was achieved by the simple material remittance of a corporeal thing (Popescu 1982, 128). It appeared against the background of the development of relations between citizens and pilgrims. Most of the time, the legal relations between citizens and foreigners were of a commercial nature and could not be generated by means of the old Civil Law acts, which were governed by a rigorous formalism and were not accessible to pilgrims. This primitive framework, in which the property of some *res nec mancipi* was transmitted (Pichonaz 2008, 260), required the use of a simple and extremely effective act. In order to perfectly respond to the requirements of the exchange economy, Roman jurists created *traditio*, which assumed the existence of two elements: the material remittance of the thing and the *iusta causa*.

The material delivery of the thing consisted in the actual delivery of the thing to the acquirer (*traditio corporalis*); *traditio* implied the execution of an obligation that the *tradens* had assumed through a contract. On this occasion, the possession of the thing was handed over, since possession represented the way in which the right of ownership was manifested. The return of the thing was carried out differently, depending on the category in which it was included. If the asset to be handed over was a movable asset, then the remittance was made from hand to hand (Molcuț 2011, 132). If, on the other hand, the asset was immovable, *traditio* was carried out by going through it, if it was a plot of land (Tomulescu 1973, 184), or by visiting all the rooms, if it was a building. Towards the end of the Republic, Roman society experienced an unprecedented development, which resulted in the evolution of legal ideas and the creation of legal acts adapted to the new realities. The development of Roman Business Law requires

the identification of solutions for achieving the commercial flow. For this purpose, Roman jurists created procedures that symbolized the material remittance of the thing and made the transfer of ownership to the acquirer faster. These were *traditio longa manu*, *traditio brevi manu*, *traditio simbolica* and *constitutum possessorium.*

Traditio longa manu was the long hand tradition. It consists in indicating the boundaries of the building by the *tradens*. This gesture symbolizes taking possession of the plot of land (Hamangiu and Nicolau 2022, 363-364). It is a more evolved legal procedure, used in the Classical Era, when land was increasingly the object of legal acts. *Traditio brevi manu* was the short hand tradition (Girard 1924, 310). It represented another situation in which the remittance of the thing was done through a symbolic gesture, because the *accipiens* was already in possession of the thing, and the role of *traditio brevi manu* was to transfer the property with the consent of the owner. And the *constitutum possessorium* is an evolved procedure for transmitting the right of ownership (Axente 2020, 232). It is used in the hypothesis that the owner, after selling his house, continues to exercise acts of control over it as a tenant. From here we can draw the conclusion that *traditio brevi manu* and *constitutum possessorium* have decisively contributed to the formation of the modern conception of legal transferable acts of ownership. *Traditio simbolica* applies in the case of the transmission of a house. This time, the outdated method of visiting all the rooms was replaced by handing over the keys to the acquirer. It came to complete the scope of *traditio brevi manu* and *constitutum possessorium*. For practical reasons, *traditio simbolica* is also applied in the sphere of commercial transactions, as can be seen from a text from the Institutes of the Emperor Justinian, according to which *"item si quis merces in horreo depositas vendiderit, simul atque claves horrei tradiderit emptori, transfert proprietatem mercium ad emptorem"* (Hanga 2002, 78)

Iusta causa represents the intentional element of *traditio*. It is identified with *titulus adquirendi,* namely with the legal act through which the manifestation of the intention to alienate the property was established. It was done this way, since, in the opinion of the Romans, simple remittance had the effect of transferring ownership only if it was preceded by a sale (*numquam nuda traditio transfert dominium, sed ita, si venditio aut aliqua justa causa praecesserit*) (Hamangiu and Nicolau 2022, 366). Later, in the Post-Classical Era, against the background of the evolution of legal ideas, *iusta causa* denoted the intention of the *tradens* to alienate and the intention of the *accipiens* to acquire (Tomulescu 1973, 185).

Specificatio

It was a way of acquiring property that consisted of creating a good from materials belonging to another person (*ex alia materia speciem aliquam facere*) (Axente 2022, 226). *Specificatio* appeared against the background of the production of the second social division of labor. The role of this legal institution was to ensure the legal protection of goods manufactured, often, from materials belonging to other people, without causing damage to the owners of the materials.

The jurisconsult Gaius tells us that the acquisition of the property of the created good generated controversies between the owners of the materials and the craftsmen. There were jurisconsults who considered that the newly created good belongs to the owner of the materials; on the other hand, others considered that the specifier must acquire the ownership of the manufactured good (Leesen 2006, 267) (*quidam materiam et substantiam spectandam esse putant, id est, ut cuius materia sit, illius et res, quae facta sit, uideatur esse, idque maxime placuit Sabino et Cassio; alii uero eius rem esse putant, qui fecerit, idque maxime diuersae scholae auctoribus uisum est*) (Girard 1890, 201). The unitary solution was found towards the end of the Post-Classical Era by the jurists who composed the legislative work of the emperor Justinian. According to a text from Justinian's Institutes, if the thing could be returned to the material from which it was created, the owner of the matter acquired the right of ownership over the newly created good; if not, the property belonged to the one who made the thing (*et*

post multas Sabinianorum et Proculianorum ambiguitates placuit media sententia existimantium, si ea species ad materiam reduci possit, eum videri dominum esse qui materiae dominus fuerat; si non possit reduci, eum potius intellegi dominum qui fecerit: ut ecce vas conflatum potest ad rudem massam aeris vel argenti vel auri reduci, vinum autem aut oleum aut frumentum ad uvas et olivas et spicas reverti non potest, ac ne mulsum quidem ad vinum et mel resolvi potest. quodsi partim ex sua materia, partim ex aliena speciem aliquam fecerit quisque, velut ex suo vino et alieno melle mulsum aut ex suis et alienis medicamentis emplastrum aut collyrium aut ex sua et aliena lana vestimentum fecerit, dubitandum non est, hoc casu eum esse dominum qui fecerit: cum non solum operam suam dedit, sed et partem eiusdem materiae praestavit) (Hanga 2002, 69-70). This solution could become inequitable because either the owner of the material lost his property, or the specifier lost his job. In order to solve this problem as well and to prevent unjust enrichment of one of the parties to the legal relationship, the one who acquired the ownership right over the newly created thing had to pay compensation either to the one who did the work or to the owner of the material (Garrido 1996, 192).

Accessio

It was a natural way of acquiring ownership over the accessory thing by incorporating it into the main asset (Plisecka 2006, 46). The Romans considered it as the main asset that did not lose its identity after the incorporation of the accessory (Schmidlin 2008, 239).

The Romans had a very developed sense of property, which was due to their practical sense, the activities in which they were involved, but above all the fact that, towards the end of the Republic, the Roman economy had turned into a genuine exchange economy. This explains the fact that the Roman legal texts established three ways of achieving the *accessio*: real estate *accessio*, *accessio* of a movable thing with an immovable one and movable *accessio*.

Real estate acquisition represented the increase of a real estate property. It was achieved through several legal procedures (*alluvio*, *avulsio*, *insula in flumine nata*, *alveus derelictus*) and was due to the farming mentality of the Romans, who constantly sought to expand the scope of property rights, so that they could exploit as many land surfaces as possible.

Alluvio was a way of acquiring property that consisted in enlarging the property of the riverside owner as a result of the deposits that formed on the bank of a river. The jurisconsult Gaius said that " *"per alluuionem autem id uidetur adici, quod ita paulatim flumen agro nostro adicit, ut aestimare non possimus, quantum quoquo momento temporis adiciatur: hoc est, quod uolgo dicitur per adluuionem id adici uideri, quod ita paulatim adicitur, ut oculos nostros fallat"* (Girard 1890, 200). This way of acquiring the right of ownership was only possible if the real estate properties were naturally delimited.

Avulsio was a way of acquiring ownership of a piece of land torn from a fund and attached to another real estate. In order to operate *avulsio*, it is necessary that the adhesion is not temporary but permanent. Sticking was considered permanent if the trees on the flooded bottom took root in that bottom.

Insula in flumine nata was a natural way of acquiring ownership of islands that appeared on the surface of flowing waters. The jurisconsult Gaius describes the way in which this way of acquiring ownership works: *"at si in medio flumine insula nata sit, haec eorum omnium communis est, qui ab utraque parte fluminis prope ripam praedia possident; si uero non sit in medio flumine, ad eos pertinet, qui ab ea parte, quae proxuma est, iuxta ripam praedia habent"* (Girard 1890, 200).

Alveus derelictus was a way of acquiring ownership over the abandoned bed of a running water. It operated in favor of the owners of the riparian funds. Justinian, through his Institutes, shows us that *"quodsi naturali alveo in universum derelicto alia parte fluere coeperit, prior quidem alveus eorum est qui prope ripam eius praedia possident, pro modo scilicet latitudinis cuiusque agri, quae latitudo prope ripam sit; novus autem alveus eius iuris esse incipit, cuius*

et ipsum flumen, id est publici. Quodsi post aliquod tempus ad priorem alveum reversum fuerit flumen, rursus novus alveus eorum esse incipit qui prope ripam eius praedia possident" (Girard 1890, 565).

Accessio of a mobile to an immovable is governed by the rule *accesorium sequitur principale*. By virtue of this rule, the owner of the immovable building will also acquire the right of ownership over the movable thing. This form of artificial *accessio* is realized in two ways: *inaedificatio* and *implantatio*.

Inaedificatio is a way of acquiring ownership over a construction erected on another person's land and operates in two situations: when a person builds on his own land, using materials belonging to another person, and when a person builds a house on another person's land with his own materials. Both hypotheses were mentioned in the Institutes of Emperor Justinian. In the first hypothesis, the jurists of Emperor Justinian show us that *"cum in suo solo aliquis aliena materia aedificaverit, ipse dominus intellegitur aedificii, quia omne quod inaedificatur solo cedit. Nec tamen ideo is qui materiae dominus fuerat desinit eius dominus esse: sed tantisper neque vindicare eam potest neque ad exhibendum de ea re agere propter legem duodecim tabularum, qua cavetur, ne quis tignum alienum aedibus suis iniunctum eximere cogatur, sed duplum pro eo praestat per actionem quae vocatur de tigno iuncto (appellatione autem tigni omnis materia significatur ex qua aedificia fiunt): quod ideo provisum est, ne aedificia rescindi necesse sit. Sed si aliqua ex causa dirutum sit aedificium, poterit materiae dominus, si non fuerit duplum iam consecutus, tunc eam vindicare et ad exhibendum agere"* (Hanga 2002, 71-72). In the second situation, the Institutes show us that *"ex diverso si quis in alieno solo sua materia domum aedificaverit, illius fit domus, cuius et solum est. Sed hoc casu materiae dominus proprietatem eius amittit, quia voluntate eius alienata intellegitur, utique si non ignorabat, in alieno solo se aedificare: et ideo, licet diruta sit domus, vindicare materiam non poterit. Certe illud constat, si in possessione constituto aedificatore, soli dominus petat domum suam esse, nec solvat pretium materiae et mercedes fabrorum, posse eum per exceptionem doli mali repelli, utique si bonae fidei possessor fuit qui aedificasset: nam scienti, alienum esse solum, potest culpa obici, quod temere aedificaverit in eo solo quod intellegeret alienum esse"* (Girard 1890, 567).

Implantatio was a way of acquiring ownership of things planted or sown by another person on one's land. The plantations came under the control of the owner of the soil after they took root, because only from this moment the control over them acquired a permanent character (Hamangiu and Nicolau 2022, 340). This also results expressly from the text of the Institutes of Emperor Justinian, which proves to us that *"si Titius alienam plantam in suo posuerit, ipsius erit: et ex diverso si Titius suam plantam in Maevii solo posuerit, Maevii planta erit, si modo utroque casu radices egerit, antequam autem radices egerit, eius permanet cuius et fuerat. Adeo autem ex eo ex quo radices agit planta proprietas eius commutatur, ut, si vicini arborem ita terra Titii presserit ut in eius fundum radices ageret, Titii effici arborem dicamus: rationem etenim non permittere, ut alterius arbor esse intellegatur quam cuius in fundum radices egisset. Et ideo prope confinium arbor posita si etiam in vicini fundum radices egerit, communis fit"* (Hanga 2002, 72-73). And the movable *accessio* is governed by the principle *accesorium sequitur principale*. And this way of acquiring property is due to the second social division of labor, because the craftsmen enriched the main thing by incorporating the accessory, and the control exercised over the new whole had to be protected from a legal point of view. This explains the fact that Roman jurists had to find legal solutions for the legal protection of property over the goods obtained as a result of the craft activities.

Following *accessio*, *res unita* or *res connexae* resulted.

Res unita results from the joining of two things that can no longer be separated and brought back to their original state. Roman legal texts mention the existence of four such things, designated by the terms *ferruminatio*, *pictura*, *scriptura* and *textura*. *Ferruminatio* consists in gluing the accessory work to the main one. *Pictura* was a way of acquiring ownership of the

canvas by the person who made a painting. In this situation, the Romans considered that *"si quis in aliena tabula pinxerit, quidam putant tabulam picturae cedere: aliis videtur pictura, qualiscumque sit, tabulae cedere. Sed nobis videtur melius esse, tabulam picturae cedere: ridiculum est enim picturam Apellis vel Parrhasii in accessionem vilissimae tabulae cedere. Unde si a domino tabulae, imaginem possidente, is qui pinxit eam petat, nec solvat pretium tabulae, poterit per exceptionem doli mali summoveri: at si is qui pinxit possideat, consequens est ut utilis actio domino tabulae adversus eum detur, quo casu, si non solvat impensam picturae, poterit per exceptionem doli mali repelli, utique si bona fide possessor fuerit ille qui picturam imposuit. Illud enim palam est, quod, sive is qui pinxit subripuit tabulas sive alius, competit domino tabularum furti actio"* (Hanga 2002, 74). *Scriptura* was a way of acquiring ownership of the writing by the owner of the material on which the text was written. According to the Institutes of Emperor Justinian, *"litterae quoque, licet aureae sint, perinde chartis membranisque cedunt acsi solo cedere solent ea quae inaedificantur aut inseruntur: ideoque si in chartis membranisve tuis carmen vel historiam vel orationem Titius scripserit, huius corporis non Titius, sed tu dominus esse videberis. Sed si a Titio petas, tuos libros tuasve membranas esse, nec impensam scripturae solvere paratus sis, poterit se Titius defendere per exceptionem doli mali, utique si bona fide earum chartarum membranarumve possessionem nanctus est"* (Girard 1890, 568). *Texture* is a way of acquiring ownership of the fabric by the owner of a garment. The Romans considered that *"si tamen alienam purpuram quis intexuit suo vestimento, licet pretiosior est purpura, accessionis vice cedit vestimento: et qui dominus fuit purpurae, adversus eum qui subripuit habet furti actionem et condictionem, sive ipse est qui vestimentum fecit, sive alius. Nam extinctae res licet vindicari non possint, condici tamen a furibus et a quibusdam aliis possessoribus possunt"* (Hanga 2002, 70).

Res connexae can be dismantled after it has been created. In these situations, the owner of the accessory can request its restitution through a special action, called *actio ad exhibendum*.

Conclusions

These ways of acquiring property rights manage to capture the evolution of quiritary property, as well as the way in which it managed to adapt to the realities due to the three social divisions of labor. *Accessio* and *specificatio* appear with the first social divisions of labor, which introduced shepherds and farmers, on the one hand, and craftsmen, on the other, into society. Instead, the *traditio* appears at a more advanced stage of the evolution of legal ideas, marked by the development of commerce, which required simple and efficient acts, able to meet the needs of the people involved in the development of commercial flows.

Traditio, *specificatio* and *accessio* played an important role in the development of Roman Private Law. They have contributed to the optimization of the legal regime of quiritary property and to the expansion of the scope of this form of property also on *res nec mancipi.*

References

Axente, Alina Monica. 2020. *Instituţii de drept privat roman. Vol. I. Izvoare. Procedura civilă. Persoane. Bunuri. Succesiuni (Institutions of Roman Private Law. Vol. I. Sources. Civil Procedure. People. Goods. Successions).* Bucharest: Hamangiu Publishing House.

Gaius. Instituţiunile dreptului privat roman, Traducere, studiu introductiv, note şi adnotări de Aurel N. Popescu. 1982. (*Gaius. Institutions of Roman Private Law,* Translation, introductory study, notes and annotations by Aurel N. Popescu). Bucharest: RSR Academy Publishing House.

Girard, Paul Frederic. 1890. *Textes de droit romain.* Paris: Librairie Nouvelle de Droit et de Jurisprudence Arthur Rousseau Ėditeur.

Girard, Paul Frederic. 1924. *Manuel élémentaire de droit romain,* septiéme édition revue et augmentee. Paris: Librairie Arthur Rousseau.

Hamangiu, Constantin and Nicolau, Matei G. 2022. *Dreptul roman,* ediţie îngrijită de Alin-Gabriel Oprea (*Roman Law,* edition edited by Alin-Gabriel Oprea). Bucharest: Hamangiu Publishing House.

Iustiniani Institutiones. Instituţiile lui Iustinian, text latin şi traducere în limba română, cu note şi studiu introductiv de prof. dr. doc. Vladimir Hanga (*Justiniani Institutiones. Justinian's institutions,* Latin text and Romanian translation, with notes and introductory study by Professor doc. Vladimir Hanga, PhD). 2002. Bucharest: Lumina Lex Publishing House.

Leesen, Tessa. 2006. "Produced and Bottled in Rome – Who Owned the Wine? The Controversy about Specificatio". In *Revue internationale des droits de l'antiquité*, 3e série, tome LIII.

Molcuţ, Emil. 2011. *Drept privat roman. Terminologie juridică romană (Roman Private Law. Roman Legal Terminology),* revised and added edition. Bucharest: Universul Juridic Publishing House.

Pichonaz, Pascal. 2008. *Les fondements romains de droit privé*. Paris: LGDJ.

Plisecka, Anna. 2006. "*Accessio and specificatio reconsidered".* In *Revue d'histoire du droit,* tome LXXIV, 1-2.

Schmidlin, Bruno. 2008. *Droit privé romain. Vol I. Origines et sources. Famille, biens, succesions.* Faculté de Droit de l'Université de Genève.

Tomulescu, Constantin St. 1973. *Drept privat roman (*Roman Private Law*).* Bucharest University Press.