La enseñanza del Derecho Romano para el análisis y solución de problemas jurídicos actuales.

Jorge ADAME, Universidad Nacional Autónoma de México (UNAM), Mexico

El Derecho Romano es una ciencia, antes que un ordenamiento normativo, por lo que las nociones, los criterios de juicio y las soluciones que los juristas romanos elaboraron pueden ser utilizados hoy para analizar y resolver problemas jurídicos actuales. Se propone el ejemplo del análisis de la propiedad y la explotación del petróleo y los hidrocarburos a partir de los conceptos Romanos de propiedad y contratos.

Specialization in Legal Education

Şebnem AKİPEK ÖCAL, Kadir Has University, Turkey

Years ago in 1927 a Harvard Law School professor, namely Felix Frankfurter, said that; "In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them." This sentence of Prof. Frankfurter is a very good summary of the importance of legal education.

The application is very important in law and lawyers, the persons who have taken a legal education, are the ones to apply the law. Therefore having a good and comprehensive education is very important.

After the foundation of the Turkish Republic, knowing and understanding the importance of law, Mustafa Kemal Atatürk asked for the foundation of a new law school, Ankara Law School, to teach the modern law of Turkey. Starting with this period the legal education in Turkey was highly affected by the German and Swiss system.

In those years the main aim of teaching law was teaching all the important and relevant topics to the law school students. Therefore the education covered all fields of law. But together with the developing needs many countries started to make certain changes in their teaching strategies and developed new techniques.

Among these new techniques, the most important one was not to teach all fields of law in all the details, but try to guide the students to choose their fields of interest and after giving a basic knowledge in the main branches of law, then to enable the students to deepen in their fields of interest. In order to provide this kind of an education, most of the law schools both in Anglo-Saxon law countries and Continental law countries created the system of compulsory and elective courses.

The compulsory courses contains the basic knowledge on the basic fields of law, and the elective courses enables the students to choose certain fields of law and to get a detailed knowledge in these fields. By that way when a law student graduates from the University, he or she will be graduated with a certain specialization.

When we consider the legal practise, again in most of the developed countries, an attorney at law no longer has to know and practise in every branch or at least most of the branches of law. The practising lawyer should be specialized only in certain branches of law. In the past having a one attorney at law working offices was very common. But in the modern world these offices are one by one decreasing and instead of them law firms start to emerge. In most

of these law firms tens or hundreds, even sometimes thousands of attorneys at law are employed. All these law firms require from their attorneys at law specialization in a very concrete area of law.
Turkey and most of the Turkish law schools has been a bit late in following the developments in legal education. But in the last five years an awareness have started and some of the law schools at least started to give importance to elective courses that may enable the student to specialize.
How it will be possible to achieve the specialization should be discussed thoroughly and the most suitable system for our country should be brought. Besides the specialization or even together with it, the balance between theory and practice should also be sustained in legal education.
In our country there is a need to discuss all these issues and guide the young academics according to the results achieved from these discussions. Lately the Turkish Bar Association has started an initiative for the mentioned purposes. Of course it is not enough all by itself but at least this initiative functions to ignite the universities, faculties and academics.

The Decline of Roman Middle Class and the Fall of the Republic
Carlos Felipe AMUNÁTEGUI PERELLÓ, Pontificia Universidad Católica de Chile, Chile

Rome's Middle Republic was a remarkably stable. After the complexities of struggle of the orders, Rome emerged as a cohesive society, capable of accomplishing major political and military enterprises. The presence of what we could call an extended middle class might have being the key element that gave the needed political stability to fulfil such proposes. The decline of such an important social element during the second century BC, was probably one of the key factors in the instability of the Late Republic.

From Lectures to Moot Courts: Recent Developments in Turkish Legal Education
Başak BAŞOĞLU, İstanbul Kemerburgaz University, Turkey

First modern law school of Turkey was built in 1925, following the foundation of the new Turkish Republic. However, the structure of the law faculty was only established after 1946. During the establishment of modern law faculties in Turkey, German and Swiss systems were highly influential. Thus the legal education in Turkey has based on lectures (vorlesung) in large-scale classes.
In late 1990s, first privately founded law faculties were established and in the last decade, the number of both privately and publicly founded law faculties dramatically increased. The boom of law faculties in Turkey has lead to a great competition. Thus, the pursuit of new teaching methods, such as legal clinics and moot courts become inevitable.
On the other hand, globalization becomes a challenge for the law schools in Turkey. Law students would like to benefit from short-term and long-term mobility possibilities of Erasmus and graduate programs abroad. Undoubtedly, such programs require students to have high command of foreign language and the law faculties to offer law courses conducted in foreign language and to have curriculum compatible with the Bologna process, which is as well challenging for the law schools in Turkey. All those challenges have led the law faculties to undergo a series of changes in their curricula and teaching methods.
This paper aims to present an overview of these recent developments in Turkish legal education and also to reveal the role and importance of "moot court" as a teaching method in developing the necessary skills for the future lawyers.

Alcune considerazioni su uno scritto inedito di Paul Koschaker
Tommaso BEGGIO, University of Helsinki, Finland

Paul Koschaker (1879-1951) ha dedicato non poca parte della sua attività di studioso allo studio del diritto romano, così come alla difesa del suo insegnamento nelle università, e, in particolar modo, in quelle tedesche. Al contempo, egli ha strenuamente cercato di esaltare il ruolo che tale diritto ha giocato nella formazione della cultura, giuridica e non solo, europea, nel corso dei secoli, dimostrando infine come ne rappresenti un pilastro fondamentale. La difesa del diritto romano, agli occhi dello studioso, passava necessariamente attraverso un rinnovato approccio allo studio della materia, che egli efficacemente riassunse nel motto "Zurück zu Savigny!" e nel concetto della Aktualisierung degli studi di diritto romano, da intendendersi quale una ripresa, attualizzata, della metodologia adottata da Savigny e dalla Scuola Storica. Koschaker ebbe modo di esporre queste idee sia nel suo scritto 'Die Krise des römischen Rechts und die romanistische Rechtswissenschaft', dato alle stampe nel 1938, sia, più tardi, in 'Europa und das römische Recht' (la cui prima edizione risale al 1947). Ad ulteriore testimonianza di come il tema della difesa del diritto romano e della necessità di mettere in risalto l'importanza del suo insegnamento, per la formazione dei giovani giuristi, abbia rappresentato un 'leitmotiv' del pensiero del Koschaker, in particolar modo a partire dalla fine degli anni Trenta del secolo scorso, vi è ora un documento, da me ritrovato presso l'archivio dell'Università di Tübingen, dal titolo: "Die Reform des romanistischen Rechtsstudiums in Deutschland". In questo testo, datato al 1942, l'autore si occupa di analizzare la condizione di crisi in cui versavano all'epoca il diritto romano ed il suo insegnamento in Germania, per poi tentare di offrire una soluzione a tale grave situazione. Affrontando in modo analitico non solo i corsi esistenti, e le migliorie che si sarebbero potute ad essi apportare, ma anche quelli che si sarebbero potuti istituire, e la relativa organizzazione, Koschaker si proponeva, ed indicava al governo della Germania nazista, una ristrutturazione articolata dello studio universitario del diritto romano. Il documento risulta essere pertanto di estremo interesse, sia perché, da un lato, ci offre almeno in parte un'idea di come concretamente l'autore pensasse di dare attuazione alle idee da lui espresse, nei due scritti in precedenza menzionati, sia perché, dall'altro, si possono trarre da esso alcuni indizi sull'atteggiamento di Koschaker nei confronti del regime nazista.

Cicéron et la transmission du droit à Rome : trois exemples
Yasmina BENFERHAT, Université de Lorraine, France

Nous proposons d'étudier la transmission de la science du droit à Rome à travers les yeux de Cicéron lorsqu'il évoque tout d'abord ses maîtres, les frères Scaevola, puis lorsqu'il parle de Servius Sulpicius, et enfin dans sa correspondance avec Trebatius.

Teaching Roman Law through the Case Method at the Law Faculty of the University of Vienna
Nikolaus BENKE, University of Vienna, Austria

The paper describes and analyzes the long tradition of teaching Roman Law through the Case Method at the Law Faculty of the University of Vienna.
Roman Law is a major first year subject of legal studies in Vienna. The teaching concept aims at introducing law students to the methods of legal thinking and to fundamentel legal concepts as well as at depicting the law as a phenomenon that reflects societal changes.

The Modern Lawyer and Roman Law on Inheritance Tax: How to Shift Legal Education to the Argumentative Model?

Grzegorz Jan BLICHARZ, Jagiellonian University, Poland

The paper argues that modern legal education should reflect historical and comparative legal reasoning to a greater extent than before. Nowadays, argumentation merely based on positivistic paradigm is not enough. As an example of this phenomenon can serve legal discussion on inheritance tax. Today, legal debate on inheritance tax is not distinctive enough. Economic, sociological, and political arguments are often employed and sometimes replace those based on law. Examining Roman law can help identify the specifically legal reasoning that stands behind inheritance tax. Even though there is no complete version of the statute that introduced inheritance tax in Roman law, it is possible to turn to the doctrinal discourse of jurisprudence, ius controversum, to reconstruct legal arguments regarding inheritance tax. An analysis of Roman legal texts provide several approaches to inheritance tax that can be treated as conceptual schemes that also apply to modern constructions. On the one hand, the idea of an inheritance tax was rejected both at the beginning of Roman law and at the end of its ancient development. On the other hand, several models of vicesima hereditatis were introduced during the development of the Roman state: from August to as late as Justinian. Thus, research identifies legal arguments that can help organize modern legal discussion on inheritance tax. In effect, it is possible to thematize legal arguments that exist in the legal tradition since Roman law and those which are purely modern inventions. The curriculum of the modern lawyer should take into account both of these in order to follow the process of legal development and to judge it appropriately.

Un revirement de la methode de justinien dans l'enseignement du droit romain en Roumanie

Mircea Dan BOB, Université Babeş-Bolyai, Romania

Le manuel et la méthode d'étude de Paul-Frédéric Girard ont fortement influencé l'enseignement du droit romain en Roumanie pendant presqu'un siècle. Le communisme soviétique instauré après 1945 a politisé cet enseignement, en le transformant parfois dans une poésie dogmatique. L'objet de notre communication est de présenter qu'est-ce qu'on a fait personnellement, depuis l'an 2000, pour changer cet état de chose : l'emploi d'une méthode de type *case law* au lieu des cours magistraux et l'utilisation des moyens informatiques pour capter l'attention des étudiants et faciliter leur compréhension.

The transformation of the study of Roman law as an expertise

René BROUWER, University of Utrecht, Netherlands

In my talk I will discuss an aspect of the transformation of the study of Roman law in the 1st century CE under the influence of Greek thought. Not only did lawyers become interested in dialectical methods (see e.g. Cicero, Brutus 152, Orat. 113), they must also have been fascinated by the Greek, notably Stoic accounts of what the use of these methods should result in. As I show, both with regard to method and result the notion of expertise (technē, ars) played an important role. This notion thus influenced the study of Roman law and subsequently Roman law itself as well as – via Justinian – the continental legal systems.

Die Schiedseinrede im römischen Zivilprozess
Wolfram BUCHWITZ, Rheinische Friedrich-Wilhelms-Universität Bonn, Germany

Nach gängigem Verständnis erfolgte die Absicherung der Schiedsvereinbarung nur durch Strafstipulationen, nicht aber durch eine verfahrensrechtliche Anerkennung als Einrede vor dem Prätor: Ex compromisso placet exceptionem non nasci, sed poenae petitionem (Ulp. 4 ed. D. 4.8.2). Eine genauere Betrachtung der Rechtsquellen und ein Vergleich mit der Urkundenpraxis zeigen jedoch, dass die Partei eines Schiedsvertrags auch im römischen Zivilprozess vor einer Inanspruchnahme geschützt war - wenn auch nicht durch eine Schiedseinrede im modernen Sinne, so doch über ein Zusammenspiel anderer Rechtsinstitute.

De verborum significatione and legal drafting between language and law[*]
Adelaide CARAVAGLIOS, Università degli Studi di Napoli Federico II, Italy

The aim of this investigation, through explanatory charts, is to compare how the careful use of words and their employ in the legal field may be considered, today as in the past, a valid teaching method.

Le caparre giustineanei
Patricio I. CARVAJAL, Pontificia Universidad Católica de Chile, Chile

La relazione riguarda il conosciuto problema sulla forma in cui Giustiniano a capito il regime delle arrhae, tra quelle greche e quelle dell'epoca classica, nelle Istitutiones 3.23 ed il Codex 4.21.17

Les Institutes de Justinien dans l'enseignement moderne du droit romain
Ionela CUCIUREANU, University of Bucharest, Romania

Les tendances actuelles dans l'enseignement du droit sont plutôt orientées vers l'exclusion ou la marginalisation de tout ce qui signifie les méthodes vieilles, surmontées par la réalité sociale et la perspective des étudiants en droit sur les matières étudiées. Dans le contexte d'idéalisation de l'idée de portée pratique des informations reçues et tenant compte que les « vedettes » dans les Facultés de Droit sont le droit des affaires, le droit de l'internet etc, le droit romain tende à souffrir un recul. Par conséquence, il peut sembler qu'on devrait tout faire pour moderniser et actualiser l'enseignement de droit romain. Cette présentation se propose à démontrer que même de nos jours, les Institutes de Justinien restent un outil très significatif dans ce sens – le droit romain, abordé de la manière suggérée par les Institutes de Justinien (et généralement, par tous les Corpus Iuris Civilis), va être plus facilement compris, suscitant de nouveau l'intérêt des étudiants.

Using the Basillica
Hylkje DE JONG, Free University Amsterdam, Netherlands

"Noch immer wird der Schatz, den uns die byzantinischen Rechtsquellen zu eröffnen vermögen, nicht hinreichend von der gelehrten Welt gewürdigt. Insbesondere ist es auffallend, wie wenig unsere Romanisten aus dieser Quelle zu schöpfen verstehen, als ob es

[*] Conférence en italien / This paper will be presented in English

auch noch heut zu Tage hiesse: Graeca sunt, non leguntur. Und doch erfahren wir hier so Manches, was zu weiteren Forschungen auffordert".1 After having studied Byzantine law for over forty years, almost at the end of his life, in 1885, Zachariä expressed in his article 'Die Meinungsverschiedenheiten unter den Justinianeischen Juristen' his disappointment about the fact, remarkable in his view, that only a few Romanists made use of the "Schatz, den uns die byzantinische Rechtsquellen zu eröffnen vermögen". Even nowadays, when many older editions of the Byzantine sources by, e.g., C.E. Zachariä von Lingenthal and C.W.E. Heimbach, have been superseded and are – literally – easy to access, we find only a few Romanists using Byzantine legal sources. In their historical and comparative studies, for instance, these legal scholars like to use – without specific knowledge of Byzantine law – the complete, authoritative edition of the main source in Byzantine legal literature, the Basilica, as published by H.J. Scheltema et al.2 Not only is a translation of these Basilica into a modern language desirable – for the Greek language is still a stumbling block for many – but a description of how to use the Basilica, methodologically as well. My aim is to address the latter desideration.

A Private Manual of Byzantine Law in the South of Italy
Ileana DEL BAGNO, Università Di Salerno, Italy

In the south of Italy, from the ninth century, the Byzantine law received a new impetus as the applicable law and applied. The existence of a book, certainly served as a legal manual, shows that there were local schools and the Byzantine law was taught.

Case Method ed insegnamento del Diritto Romano. L'importanza dei documenti della prassi quotidiana[*]
Francesca DEL SORBO, Università degli Studi di Napoli Federico II, Italy

In Italy the Case Method in teaching Roman Law was applied irregularly because of the prevalence of systematic study. Italian scholars have always looked up at the German model: the first book of legal cases appeared in Italy was the Italian translation of Jurisprudenz täglichen im Leben by Rudolf von Jhering, published in 1871 in Bologna by Filippo Serafini. After a brief introduction on the use and limits of the Case Method in Italy, I will explain the role of the documents of everyday practice in teaching Roman law today, according to my teaching experience at the University of Naples Federico II, at the University of Sannio in Benevento, and at University of Cassino.

Sauefius, der gute Manager
Gergely DELI, Szechenyi Istvan University, Hungary

Viele Rechtslehrer versuchten schon den Fall des Saufeius auf die verschiedenste Weise zu erklären, der bekanntlich eine der meist anigmätischen Fragmenten der justinianischen Überlieferung ist. Im Rahmen des Vortrages werde ich den Sachverhalt unter Berücksichtigung der wirtschaftlichen Interessenlage rekonstruieren, und dadurch auch die juristische Natur der rätselhaften actio oneris aversi ein bisschen pünktlicher bestimmen. Die Analyse kommt zu dem Schluss, dass diese actio dann gewährt wurde, wenn der Schiffer die an ihm vertrauten, vertretbaren Waren nicht vertragsgemäss ausgeteilt hatte. Die Funktion der

[*] Conférence en italien / This paper will be presented in Italian

Klage war zwei miteinander nur schwer vereinbaren Erwartungen, die Sicherheit des Warenverkehrs und die ökonomische Effizienz zu harmonisieren.

The 'Associative' Case Method in Hungary: an Outline
Gergely DELI, Szechenyi Istvan University, Hungary

I begin by summarising the role and the weight of Roman law courses in the curricula at the Hungarian law schools in general. Although Roman law is still an obligatory course for all first year students, recent developments show a slow decline with regard to its importance. The structure of the courses also has some peculiarities partly due to the socialist past of the country.
In the second step, I give an overview about the available textbooks and casebooks, describing more profoundly the casebook of Róbert Brósz (a leading Romanist in the second half of the 20th century in Hungary), what we use in the classrooms in Győr.
Then I explain why and how we developed a new approach of teaching through the analysis of legal cases which can be described as an 'associative' methodology. It has two main functions. First, it aims the internalisation and reiteration of the legal material we already discussed at the lectures, and secondly, it tries to develop the exploratory and analytic skills of our students.
I end up with presenting how the associative approach works in the real classroom setting by discussing an example from our casebook.

Le Rôle de ius naturale dans l'antiquité et dans la formation contemporaine
János ERDŐDY, PPKE JÁK, Hungary

Comme c'est bien connu, ius naturale apparaît plusieurs fois dans le Digeste, et par cela devient l'une des sources les plus importantes du droit romain à côté de ius civile, gentium et bien ius praetorium. Quelquefois les notions de ius naturale et gentium étaient contractées dans les sources, bien que les jurists classiques aient précisément défini tous les deux groupes normatifs en rendant claire les limites incontestables entre ces deux couches normatives. La notion de ius naturale a une application double. D'une part, ius naturale est bien défini ou circonscrit dans quelques sources, alors que d'une autre part, il se trouve de nombreuses occasions où cette tournure possède un sens explicatif ou illustratif. Le contexte du divers emplois de natura et ius naturale trouve son origine dans la philosophie stoique, l'influence de laquelle était plus que considérable, sinon prédominante, sur le droit-même spécifiquement, mais sur tous milieux en général.
En ce qui concerne le rôle de ius naturale dans la formation juridique ne nos jours, une référence peut être faite au Pape Benoît XVI qui a cité le Livre des Rois (1 R 3, 9) devant le Bundestag en 2011, en soulignant que celui qu'un politicien a vraiement besoin, c'est d'obtenir « un cœur docile pour gouverner [le] peuple, pour discerner entre le bien et le mal ». Et ce qui est encore plus important, c'est qu'une telle caractéristique est également primordial pour les jurists, pour qu'ils puissent pratiquer leur métier aequum ab iniquo separantes, licitum ab illicito discernentes – comme Ulpian l'avait élégamment décrit.

Teaching Radically Conservative Legal History

Ville ERKKILÄ, University of Helsinki, Finland

Franz Wieacker was among the most cited and influential legal historians in the post-war Europe. His famous book 'Privatrechtgescichte der Neuzeit' (1952) was a narrative of the learned law in the continental tradition, from the middle-ages to his contemporary world. Originally 'Privatrechtgescichte der Neuzeit', or at the time Wieacker's still undefined manuscripts about the subject, was supposed to serve as pedagogical material in order to teach "new legal thought" to the future student generations. It was a result of a long scholarly devotion, and the process, leading to this modern classic, started already during the war. Following the collapse of the National-Socialism Wieacker cleaned his rhetoric, and the blunt nationalistic concepts, favored by the Nazi-regime, in the later editions of his texts were forgot or replaced with others.

However, what remained was the conservative historical view. Wieacker's key-concepts or the literary tools to make sense of the European past, namely Rechtsgefühl or Rechtsgewissen, Rechtsbewusstsein and Schöpfung, are present in his war-time writings as well in the ones he wrote in 1950s or 60s. These concepts do not necessarily correlate with Nazi-rhetoric, but still reflect a radically conservative worldview of for example Carl Schmitt, an infamous political theorists and a National-Socialistic official, with whom Wieacker exchanged ideas and was acquainted from 1935 until 1944.

In this presentation I analyze the correspondence between Wieacker and Schmitt, and deconstruct the concepts Wieacker used in translating his historical vision into text. I argue that a) those concepts have their origins in the radically conservative worldview shared by many in the 1930s German academia, also by Wieacker and Schmitt, and b) education was in the core of the Wieacker's narrative of European legal history articulated and reconstructed with the help of Rechtsbewusstsein, Rechtsgewissen and Schöpfung.

Neuroscience, Law and Legal Education

Ozan ERÖZDEN, MEF University, Turkey

This paper aims to discuss whether or not the increasing interaction between law and neuroscience creates a need to introduce a certain knowledge of neuroscience and/or neurophilosophy in legal education.

The interaction between law and neuroscience has been a topic of scholarly interest for more than a decade now. Potential effects of the advances in neuroscience on the practice and theory of law are discussed on two juxtaposing planes: On the one hand, scholars tend to assess potential 'internal contributions' of neuroscience to law (Morse 2010: 541). That is to say, scholars try to incorporate developments in neuroscience to the field of law in a way that they furnish additional material for practitioners of law (judges, lawyers etc.) to solve issues that are raised in the framework of cases to be adjudicated. On the other hand, a debate is conducted on the 'external challenges' from neuroscience (Morse 2010: 543). This latter debate concerns basically whether or not further clarifications that neuroscience may bring on the functioning of human brain, especially on brain mechanisms which are plausibly determining human behavior, would alter drastically basic conceptions that govern modern legal systems.

'Internal contributions' of neuroscience to law is a rapidly developing area of research. Advances in neuroimaging techniques (Raichle, 2009), especially introduction of the fMRI (Functional Magnetic Resonance Imaging) as a mean to study functioning of the brain under

given tasks and in "default mode" (Raichle and Mintun, 2006), led scholars to explore the capacity of neuroscience in answering some crucial question that are often raised in court cases; such as lie detection, assessing insanity defense in criminal cases and effects of adolescence to one's capacity to control behavior.

Nevertheless, the issues raised within the framework of possible internal contributions of neuroscience to law are not usually discussed in a way that challenges the basic premises of modern legal systems. These systems presuppose a human agency who acts in a way that corresponds to the explanation offered by folk psychology, which claims that human behavior is the result of certain mental states such as desires, beliefs, intentions, wills etc. (Morse 2010: 530-1). Studies falling in the domain of 'internal contributions' tend to enhance the capacity of legal actors to detect mental states considered relevant in a legal case.

In scholarly works belonging to the domain of 'external challenges', on the contrary, the validity of folk psychology perception is discussed to a great extent in the light of advances in neuroscience. The core point of this discussion is whether legal systems would be subjected to a paradigm shift as neuroscience provides a better understanding of the brain's biological mechanisms that govern human behavior. This discussion is in fact a derivation of one of the main debates conducted in the field of neurophilosophy, which relate to the problem whether or not mind and/or consciousness can be defined independently from the brain's physiological mechanisms. In this debate reductionists claim that mental states are mere results of physical and chemical interactions between neural networks (Churchland 1988, Churchland 2002, Place 2002, Smart 2002, Armstrong 2002). Nevertheless these physicalist standpoints have been criticized from various aspects (for an overview see Chalmers 2002). The physicalist standpoint was brought to the domain of interaction between law and neuroscience by Greene and Cohen (2004). In their largely cited article, they argue that neuroscience will change law by transforming people's moral intuitions about free will and responsibility. According to them this change will not affect the need to determine and prevent socially harmful behavior, but it will result in a shift away from punishment aimed at retribution in favor of a more progressive, consequentialist approach to criminal law. Morse (2006, 2010), on the other hand, criticizes this standpoint and rejects the idea that neuroscience could bring radical changes to the concepts of personhood, responsibility, and competence.

The present paper argues that as far as internal contributions of neuroscience to law are concerned, the introduction of this scholarship in the law education is not a necessity, since it consists of issues reflecting a highly technical aspect. These issues may be taught in separate certificate programs for those lawyers who are interested in advancing their knowledge on these technicalities. For 'external challenges' from neuroscience to law, however, the paper develops a completely opposite argument. Studies conducted over the question whether mental states or brain mechanisms determine behavior have a crucial importance on fundamental assumptions of modern legal systems. If neuroscience reaches in the future a level in which the latter point would be proven, this would oblige modern legal systems to change all concepts based on a human agency acting according to mental states. Therefore, in order to protect legal science from devastating effects of such a paradigm shift, legal education should comprise a certain knowledge of neuroscience.

Roman Law and Formation of Modern Czech Legal Terminology

David FALADA, Charles University in Prague, Czech Republic

The paper addresses the crucial role of Roman-law studies for the formation and development of the Czech legal terminology both from the historical and positive-law perspectives. It also

offers a broader insight in the peculiarities of the historical context by which the Czech society was determined in the early modern era. Most notably, the paper focuses on the specific approach Czech lawyers had to take towards the understanding of the notion of private law in general, as well as on the implementation thereof in the Czech historical context in particular. Within the scope of the paper, the most prominent Czech lawyers of the era and their operae will be introduced.

Garanzie bancarie nel diritto giustinianeo
Francesco FASOLINO, University of Salerno, Italy

L'abolizione del receptum argentarii, stabilita da Giustiniano con la costituzione del 531 d. C., ora raccolta in C 4.18.2, non determinò il venir meno di schemi di garanzie bancarie, ampiamente diffuse nella prassi, che continuavano ad essere caratterizzate da due elementi evidentemente riconosciuti come utili nel mondo dei commerci e degli affari: l'ampiez di contenuto e l'assoluta autonomia tra l'obbligazione principale me quella di garanzia. Anzi, si assiste ad una notevole estensione sotto il profilo soggettivo in quanto tali garanzie risultano utilizzabili non più soltanto dai banchieri di professione, ma anche da un ampio novero di imprenditori (negotiatores). Il riconoscimento legislativo di figure contrattuali di garanzia assoluta, concluse indefense e dal contenuto assai elastico, evidenzia come la realtà dei traffici commerciali e le esigenze ad essa sottese abbiano prevalso, di fatto, sugli obiettivi, pur ufficialmente proclamati, dell'imperatore di razionalizzazione dogmatica e moralizzazione rivolti a prevenire situazioni di ingiustizia sostanziale potenzialmente derivanti dal ricorso a garanzie astratte.

Planes de estudios de Derecho en España en las últimas tres décadas. Análisis
Federico FERNÁNDEZ DE BUJÁN, Universidad Nacional de Educación a Distancia(UNED), Spain

A modo de premisa. Reflexión general sobre la Universidad.
La extensa vigencia del Plan de 1953.
El Plan de estudios de 1990 que no fue implantado, de facto, por algunas Facultades de Derecho españolas.
Los estudios de Derecho en el marco del EEES. El impropiamente denominado “Plan Bolonia”: virtualidades y deficiencias.
El estudio del Derecho Romano en el vigente plan de estudios: su excesiva diversidad en créditos y contenidos en las distintas Universidades.
Los estudios del Grado de Derecho y del Doctorado en la UNED.

Some aspects of the grounds for application of actio quod metus causa and actio vi bonorum raptorum
Emilia GANEVA, University of National and World Economy, Bulgaria

The grounds of the praetorian remedy “actio quod metus causa”, according to the edict’s texts, are “vis” (force) and “metus” (fear). In general they resemble the contemporary notion of physical and psychological coercion in both civil and in criminal law domain. Nowadays there is not any doubt that these two phenomena lead to invalidity of the transactions but in Roman civil law, the acts committed because of fear should be voluntary one and for that reason valid. In this regard in 79 BC, the praetorian edict introduces formula Octaviana giving

an opportunity for what modern legal doctrines call - “annulment of transactions” caused by force or fear.

In the Late Roman Republic, an ambiguity about the specific semantic content of “vis” and “metus” exists. It could be overcome by careful analysis of the primary sources about particular implementation of the actio itself. For this purpose, we use two Cicero speeches (In Verr.; Quint. Epist.), and corresponding historical background of the remedy:

In Verr. 2.3.152. eduxit vir primarius, C. Gallus senator; postulavit ab L. Metello ut ex edicto suo iudicium daret in Apronium, qvod per vim avt metvm abstvlisset;

Quint. Epist. 1.1.21. cogebantur Sullani homines quae per vim et metum abstulerant reddere;

We examine the specific semantic content of “vis” and “metus”, considering that the praetorian legal mechanism is “actio in factum”. Therefore it is very likely, the grounds for its implementation to vary according to the particular case in which actio quod metus causa is applied and also according to the praetors’ assessment for the relevant facts. It is possible that this action provides the basis for development of other praetorian remedies that emerge soon after its establishment, also covering some manifestations of coercion. For example in the 76 BC., the praetor M. Lucullus created a mechanism against violent damage to property or violent taking of goods - “rapina” (robbery). This remedy is called “actio vi bonorum raptorum” and emphasizes on physical coercion and on the grabbing of goods. The act of grabbing is expressed with the forms of latin verb “rapio” (rob): Dig.47.8.1 Paulus 22 ad ed. Qui rem rapuit.

Our research reveals that in the beginning, during the 1st century BC the nature of actio quod metus causa differs legally from the clasical and post–clasical times, as we can see from the formula wording in Edictum Perpetuum “si vis metus causa factum est” and in D.4.2.1 Ulpianus 11 ad ed “Quod metus causa gestum erit, ratum non habebo.”

We find some significant changes in the action’s formula about the conjunctions between “vis” and “metus” (“et”, “aut”) and about the use of different verbs expressing the act ("aufero" and "gero"), starting from 79 BC until the Edict’s codification, and then to the post-classics. It justifies the assumption that the protection initially had covered both the psychological and the physical coercion. The difference in the verbs characterizing the act (“per vim aut metum abstulisset”, “quod metus causa gestum erit) testifies for some changes of the actio function. As we see in the version used in Cicero’s speeches, especially in his speech against Verres, the actio quod metus causa carries the features of a penal action, where it indicates the perpetrator of the violent act. Later the remedy’s development (D.4.2.1) continues in the classical and the post-classical period when it becomes a powerful mechanism for recovery.

The praetorian mechanisms with penalty function such as actio vi bonorum raptorum possibly, gradually diminish the initial wider scope of the actio quod metus causa. Then the actio quod metus causa is applied mostly for the cases where the coercion influences personally the victim (especially “metus” – fear), unlike actio vi bonorum raptorum where the praetor emphasises perpetrator's malicious physical act (“vis” physical force; D.47.8.2pr. Ulpianus 56 ad ed. Praetor ait: "si cui dolo malo hominibus coactis damni quid factum esse dicetur sive cuius bona rapta esse dicentur, in eum, qui id fecisse dicetur, iudicium dabo. item si servus fecisse dicetur, in dominum iudicium noxale dabo")

Teaching Slaves and Fear of the Unknown: a Reflection on Ownership through the Juristic Interpretation of the Actio Servi Corrupti

Nicole GIANNELLA, Cornell University, United States of America

Studies of Roman ownership have tended to examine the absolute or nearly absolute rights of masters as exemplified in the power that a master had to sell, destroy, or make use of the body of his slave (for example, Birks 1985); instead this paper explores a moment of disruption in the dominium of a master over his slave through an examination of the juristic interpretation of the actio servi corrupti (D. 11.3). The Roman concept of ownership was somewhat distinct from ownership in other slave-holding societies because of the amount of responsibility placed on and autonomy given to certain slaves. Slaves held a variety of economic positions that necessitated the master having confidence in his slave's abilities and character. This uncertainty whether a slave will perform his duties in the manner prescribed lays seemingly at odds with the absolute ownership a master has over his slave's mind and body. For both Roman jurists and literary writers, this relationship between the ownership of the master and the mental autonomy of the slave created much consideration and debate.

The actio servi corrupti discusses the breaking, damaging, or corrupting (corrumpere) of both the mind and body of a slave by a third party (D. 11.3.9). The language of the edict hinges on persuasion; a man has persuaded another man's slave, changing his thoughts and actions, with the result that the slave makes himself worse. And while this could be physical—a freeman could persuade a slave to jump off a roof or to run away, thus physically injuring himself (D. 11.3.1.4, D. 47.2.36)—the majority of the casuistic examples that the jurists explore fall in the mental realm; their preoccupation is with the mind and character of slaves. The concern with third parties influencing slaves is not limited to the jurists; Columella provides a list of provisions for masters to use in order to protect their slaves from any harmful outside agents (Rust. 1.8.6-7). His ideas about the susceptibility of slaves to persuasion at the hands of a third party highlight the concerns about the persuasion of slaves found in the juristic discussion of the actio servi corrupti.

This paper investigates how the jurists and literary writers reconcile the dominium of a master without having true knowledge of his slave's character and intention. The paper argues that while most of Roman commercial law makes room for—and in fact encourages through limited liability—this lack of knowledge in business relations, the actio servi corrupti removes this inability of the master to not know the slave's mind by putting the fault at the hands of a third party.

Why English Tort Lawyers Should Know Roman Law: The Case of Conversion

Francesco GIGLIO, University of Manchester, United Kingdom

Conversion is one of the most mysterious English torts. And yet it has an extremely important function, which the English courts and academic authors compare to that of the Roman vindicatory action. In this paper, I will show how Roman law can provide some important insights into conversion and how it helps identify the correct place of this legal institution within the English law of torts. It will be argued that it is not vindicatio, but rather furtum the model of conversion, which implies taxonomy quite different from the one in use in English law. The bottom line is that Roman law offers a substantial support to the academic curriculum of modern law students even in those legal systems where the Reception of Roman law has not happened.

The origins of the Principles of Roman law
Jacob GILTAIJ, University of Helsinki, Finland

Fritz Schulz´s Principles of Roman law or Prinzipien des römischen Rechts, published in 1934, is actually a series of lectures held at the University of Berlin between 1931 and 1933. It is a noteworthy and peculiar work in many ways: every chapter contains a discussion of a single ´principle´ of predominantly classical Roman law, for instance ´fidelity´ and ´humanity´, but also matters like ´tradition´ and ´authority´.
Of course, these principles were not formulated as such by the Roman jurists, for instance in a preamble to their own works or in a separate law or legal document. Yet, modern Roman legal scholarship has more generally attempted to find and argue for the existence of general principles behind the development of Roman law. Even though he certainly he is not the first to argue for the presence of these principles in Roman law, with his Prinzipien Schulz does appear to have been a watershed-moment in this tradition: firstly, because the pre-war German contributions tended to focus on Interpolationenforschung and secondly, by his extensive use of non-legal and even non-ancient sources in formulating these principles. Therefore, it is no coincidence later contributions often refer to the Prinzipien as their inspiration or point-of-departure.
In this presentation I propose to examine where the idea for specifically formulating ´principles´ of Roman law comes from. Although Schulz himself as well as the secondary literature on the Prinzipien has referred mostly to Savigny and Jhering, I would like to weigh two more possible influences: the Free Law movement, in this case primarily personified by Hermann Kantorowicz (1877-1940), who was close to Schulz before and after their respective exiles to the UK; and several scholars of Common Law, James Bryce (1838-1822) and Benjamin N. Cardozo (1870-1938) in particular. Neither of these influences has garnered much attention in the literature, and I hope to show this lack of attention is unfounded.

From Cicero to modern lawyer
Fausto GIUMETTI, Università degli Studi di Napoli Federico II, Italy

The research aims to analyze the sources of the republican and early imperial relating to social representation of advocatus, infact apparently be able to draw from the sources available to us the advocatus - contemplated praetorian edict (Ulp. 6 and in. D . 3.1.1.4) - he was often 'squeezed' between the bulky image orator, which obscured, on the theoretical and ideological, a figure probably far more widespread than in the daily practice of the Forum, which was already in the Republican era from orator stand out as the iurisconsultus. It will then attempt a comparison between the instruments dell'advocatus in Rome and the modern defensive techniques.

Unfair exploitation in modern European Private Law: the traces of in integrum restitutio
Carmen GÓMEZ BUENDÍA, Universitat Rovira i Virgili, Spain

Proposals for harmonization European contract law as the Principles of European Contract Law, the Draft Common Frame of Reference, or the latest Proposal for a Regulation on a Common European Sales Law, contain an institution named in some cases "unfair advantage" and " unfair exploitation" in others. This institution allows to terminate a contract when one party had exploited the first party's situation by taking an excessive benefit or unfair

advantage, and this first party was dependent on, or had a relationship of trust with, the other party, was improvident, ignorant, or inexperienced. We can observe how these circumstances are connected with the conditions of granting the i.i.r. There are three essential elements that characterize the granting of the i.i.r.: the first one, the existence of injury; a cause contained in the edict and finally its basis in equity. In Title X of the Praetor's edict, De in integrum restitutionibus, there is a cause that can be clearly connected with the unfair advantage: the damage suffered by a minor under twenty-five years because of his inexperience.

The Importance Of The Two Law Schools (Proculianus-Sabinianus) In The Classical Period On The Formation Of The Modern European Civil Codes

Seldağ GUNES PESCHKE, Yıldırım Beyazıt University, Turkey

Roman law has an important role in the evolution of the European laws. Roman law is effected almost exclusively from the "classical" legal literature of the Principate (1. Century BC and 3. Century AD) which Roman jurisprudence came to its height at this time. The greatest jurists took a direct part in governmental tasks and the central imperial administration of justice. The role of jurists in the classical period was important in the reception of law . In the republican times the jurists had formed a secta or schola in the senate to discuss the problems which were asked to them. At those times, the jurists were giving opinions on different aspects of law, but the right to give responsa was given to the selected jurists. At the time of Augustus a second schola emerged in the senate around Antistius Labeo in addition to the existing school around Ateius Capito. These two senators had different characters and opposite ideas on legal and political fields. Capito was a supporter of Augustus and a traditional jurist, where Labeo was an innovator and was reputed to be an exceptionally gifted jurist. Over several centuries many ideas have appeared about the different ideas of the two schools. But there was one thing in common that; they were all based on the hypothesis that the law schools were “schools of thought” which helped the development of legal science. The opposing ideas of these two law schools shaped the law in Corpus Iuris Civilis from which the modern laws are influenced today. In my presentation I would like to mention how important it is, to discuss different legal ideas to create the ideal one with the comparison of Classical period and the modern times.

Labor Contracts in Roman Law (Locatio Conductio Operarum)

Kadir GURTEN, Ankara University, Turkey

As a consensual contract, locatio condictio operarum is briefly; letting or hiring of services. In Ancient Rome, because of the socio-economic structure, locatio conductio operarum was not known and applied as today. So it was classified in locatio conductio.
At the beginning times, services has made by slaves. Because of slaves accepted as a good, their masters hiring them to another. Locatio conductio rei is the biggest part of this classification. Because of slaves accepted as a good, their masters hiring them to another. So hiring services depended on this practice. When we examine the texts/rules in Corpus Iuris Civilis, we can see the reflection of this effect. Because of this, hiring goods was more important than hiring services at the beginning time of Roman era. When the people need services more as goods, locatio conductio operarum became more important. So hiring services depended on this practice. When we examine the texts/rules in Corpus Iuris Civilis, we can see the reflection of this effect; the all kinds of locatio contuctio’s (rei, operis, operarum) has common rules, especially depends on locatio conductio rei.

Finally if we make the proper definition of locatio conductio operarum in Roman Law, we can say that; it was a consensual contract where one party (locator) lets out his services to the other party (conductor) in return for a money payment

Teaching Justinianic law
Jan HALLEBEK, VU University Amsterdam, Netherlands

This paper reflects upon the traditional way Roman law is taught nowadays in law schools all over the world, i.e. on the one hand from a historical perspective with the emphasis on the private law of the classical period (especially property law and law of obligations) and, on the other, following the structure and dogmatics, derived from nineteenth century Pandectism and the contemporary Codes of civil law. The emergence of this approach at the end of the nineteenth and the beginning of the twentieth centuries, primarily in Germany and Italy, can also be explained historically. Nowadays, however, such Neo–humanism is no longer obvious.
Teaching Justinianic law, in the sense of taking the Corpus iuris itself, its system and its (interpolated) texts, as a starting point, can be a serious alternative, although it will still be necessary to put the sources in some kind of historical context (albeit not the one the classical era). The paper discusses the advantages of the alternative approach, but also some of the requirements, which must be met, so that Roman law becomes an essential element in legal education for the formation of future lawyers.

Traces of Oral Legal Educations found in the Paulus Fragments and the Formation of Institutiones Texts
Tomoyoshi HAYASHI, Osaka University, Japan

Giving legal responses is a crucial skill for Roman lawyers, especially for those who are in the top core position and are potentially capable of modifying the Roman legal system. They acquired it presumably through the oral discussions with their masters and through attending their responding activities. In my recent work, I noticed two fragments of the classical jurist Paulus, which suggest that pupils attended their master and listened to his opinions as well as that they had affection to him as his pupils. (D. 2,14,27,2; D. 4,4,24,2) Starting from them. I want to have a brief overview as to the contrast between the oral legal education and the education through written textbooks. At present, I plan to make a survey on the formation of books with the title "Institutiones" through the research of fragments in the "Digesta" in addition to the book of Gaius.

Die Rolle der Antiken Rechtsgeschichte in Deutschland[*]
Joachim HENGSTL, University of Marburg, Germany

Le thème de notre SIHDA actuelle est comme souvent complètement romanstique. Le droit romain était et fest une phénomène développée, approfondie par les juristes romaines et traité par les successeurs juridiques durant les siècles depuis. Les cultures d'avant et outre la culture romain ne connaît pas un système du droit comparable. Ce pourquoi une système d'enseignement du droit n'existait pas. C'était la pratique, qui enseignait, spécialement l'enseignement d'écrire. La seule exception était peut-être le droit démotique. En tout cas on

[*] Conférence en allemand / This paper will be presented in German.

connaît pas des détailles. Pour cela ma contribution veut étudier la rôle du droit extra-romain en Allemagne depuis la renaissance, la rôle en littérature juridique comme en enseignement. (en Allemand)

Algunas consideraciones en torno a las Sentencias de Paulo
Horacio HEREDIA VÁZQUEZ, Universidad Nacional Autónoma de México (UNAM), Mexico

Through the analysis of selected passages from the Pauli Sententiae, the A. discusses the relevance of a more comprehensive study of this book, and the importance of using the Pauli Sententiae as main source to understand the function and evolution of certain legal Institutions.

"La enseñanza del derecho en El Plan literario de estudios y arreglo de las Universidades del Reino. Real Orden de 14 de octubre de 1824".
Julio HERNANDO LERA, Universidad Nacional de Educación a Distancia (UNED), Spain

Intentaremos establecer una valoración actual, del denostado "Plan literario de estudios y arreglo de las Universidades del Reino. Real Orden de 14 de octubre de 1824", del cual es autor el turolense D. Francisco Tadeo Calomarde, ministro de Gracia y Justicia del Rey Fernando VII.
Este plan de estudios así como su autor han sido objeto de una agresiva crítica por los estudiosos, en la mayoría de las ocasiones, estas críticas no han sido realizadas con abstracción del contexto histórico-político en el que fue publicado el Plan de estudios, es decir en plena Década Ominosa, por lo que el contenido del Plan y su alcance no han tenido una adecuada valoración.
Las diferencias existentes en cuanto a cómo estaba regulado el estudio del Derecho en el Plan de Calomarde, y cómo está prevista su enseñanza en los Planes de Estudios en las Universidades españolas en la actualidad, y en particular el Derecho Romano, posibilita algunas modificaciones en las citadas críticas, y realizar una más ajustada valoración de las pretensiones de Carlomarde con su ambicioso y meticuloso Plan de estudios.
La comparación de estos datos, y la distancia en el tiempo entre ellos (1824 y 2015), prácticamente doscientos años, así como los resultados prácticos del actual Plan de Estudios del Derecho en España, nos permitirá disponer de una mayor objetividad para enjuiciar el Plan Calomarde, y comprobar como en la actualidad, a pesar de haber transcurrido dos centurias desde su publicación, la enseñanza de los estudios Universitarios, mantiene muchos de los errores que Calomarde trató de corregir con su Plan.

Roman Law for international students in Japan
Mariko IGIMI, Kyushu University, Japan

In 1994 Kyushu University launched the first and only international LL.M. program in Japan. Since then, Kyudai-LL.M. has been welcoming students from more than 50 countries from all over the world. As a faculty member of the program, speaker wishes to share her experience teaching international students and her perspective course on Roman Law in the program.

Zur Ausbildung der Notare im antiken Rom
Eva JAKAB, University of Szeged, Hungary

Wie ist ein Kaufvertrag oder ein Testament korrekt zu beurkunden? Wie ist ein bereits halbwegs ausgehandeltes Abkommen zwischen den Parteien in eine rechtlich unantastbare, gültige Form zu gießen? Was Sind die jeweils wichtigsten Klauseln? Sind Tilgungen im Text zugelassen? Wer darf etwa als Zeuge angeführt werden? Wie ist das Dokument gegen Fälschungen zu sichern?
Diese und ähnliche Verständnisfragen tauchen auf, wenn man sich der Beurkundung von Rechtsgeschäften aus dem Aspekt der techné, der Schreiberkunst, nähert. Sowohl in der Antike als auch heute hängt die Durchsetzbarkeit von Ansprüchen in hohem Masse von der Beweislage ab – und hier spielten die Rechtsurkunden schon immer eine entscheidende Rolle. Der Beitrag versucht anhand der überlieferten Quellen, auch wenn der Befund recht schmal ist, zur Ausbildung der Notare im antiken Rom bzw. im Imperium Romanum einiges beizutragen. Im Mittelpunkt stehen die epigraphischen und juristischen Texte, die durch literarische Belege ergänzt werden.

The Teaching of Roman law In Poland on the Turn of 18th to 19th Century.
Ireneusz JAKUBOWSKI, University of Lodz, Poland

In my paper I will present:
1) importance of the Roman law in Poland in the end 18th.
2) influence of the Roman law on old Polish law in 18th century
3) role of the Roman law at the Polish universities.
4) reform of Hugo Kollataj in Krakow
5) Roman law as a teaching subject in Krzemieniec
6) teaching Roman law in Warsaw

Kann sich eine Sklave für seine Herrin verbuergern? Bemerkungen zur fideipromissio servi in TP. 59 (=TPN 48=TPSulp. 58)
Aldona Rita JUREWICZ, Universitaet Warminsko-Mazurski, Poland

TP. 59 ist ein Tryptychon, das als chirographum hergestellt war, und im Archiv der Sulpizier aufbewahren wurde. Dem Text nach scheint es, hat Pyramus, ein Sklave der Ceasia Priscilla in Name seiner Herrin 4.000 Sesterzen (ein Darlehen?) erhalten und er hat dafür eine Bürgschaft, fideipromissio, geleistet. Der Gläubiger war Gaius Sulpicius Faustus. Wuerde diese Lekture des Textes korrekt, so kommt sofort die Frage: was für Sicherung konnte eine solche Bürgschaft für Gläubigern bilden?

Public water management in ancient Rome. 'Cura aquarum' in the eyes of Frontinus.
Renata KAMIŃSKA, Cardinal Stefan Wyszynski University, Poland

For the first 400 years after the founding of Rome, it was supplied with water by the surroundings springs, wells and Tiber. Gradual and at the end of Republic dynamic influx of population forced the state to look for new, and what's important - constant sources of water supplies. The breakthrough moment fell on the year 312 BC, when the first aqueduct for Rome was built. It was Aqua Appia, built on the initiative of censor Appius Claudius Caecus. By the end of Republic other four aqueducts were constructed, while in the time of empire –

six. Bigger number of waterworks contributed to increase quality of water within the City. Consequently, it was needed to form a stable system of public water administration.

In Republic there was no separate administrative body liable neither for the water management nor for its maintenance. In this period public water, including aqueducts and Tiber, were under the supervision of censors and edils. They were liable for maintaining the proper water status in the Tiber as well as the prevention and removal of the devastation caused by intermittent flooding. For, in Republic there was no special administrative body responsible for water supplies, also this became the duty of censors. They took care of ensuring the continuity of water supplies. They were also required to maintain the state aqueducts. In turn, ediles exercised the control over the central distribution and water quality. Moreover, they were entitled in all affairs connected with granting the water concessions, pursuing and punishing for any acts of abuse including imposing fines, cutting off deliveries of water to private homesteads, etc.

According to the historical sources, censors had also the right to conclude contracts for construction and renovation works of public buildings, between others – waterworks. One of the censors who conducted ambitious construction activity was Appius Claudius Caecus. He provided Rome with the first aqueduct and the longest road until then, named after him Aqua Appia and Via Appia.

The censors' and edils' activity in the field of water maintenance during Republic is very characteristic. Since, these magistrates supervised water supplies system in Rome simultaneously carrying out other duties, including these which were the causative factors of their appointment. That is why we still ask if we should call these republican officials – specially edils – curatores aquarum or not.

Thanks to some historical as well as legal sources (including the treatise of Frontinus) we know that the proper cura aquarum was brought into being in early Principate. The history remembered Augustus as the one who created the office of curator aquarum. Curatores were appointed on the initiative of Octavian Augustus in 11 BC on the basis of the senatus consultum de aquaeductibus. Frontinus in his De aquaeductu urbis Romae described their duties as well as the rules of holding this office.

The office of curator aquarum gradually strengthened, however curators were always depended on the Emperor and accountable solely to him. Thanks to Frontinus' treatise nowadays we are aware of relations between these officials and the Emperor.

Curators aquarum weren't the only official college liable for the water system management in Rome. Next office dealing the public waters within the City was established in 11 (15?) BC. It was the college of curatores riparum et alvei Tiberis. The name of these officials thmselves tells much about their duties. Generally, they were liable for the water supply system and the main river of Rome – Tiber. In 101 AD the Emperor Hadrian transformed these curators into curatores riparum et alvei Tiberis et cloacarum Urbis. It means that their competences were extended to the supervision of the sewers system, previously the duty of the curatores aquarum. Finally the curatores riparum occupied the highest position in the hierarchy of cura aquarum.

Frontinus' treatise The aquaeductu urbis Romae is crucial for the researches on the water supply system in republican and imperial Rome. During the reign of emperor Nerva (96-98) Frontinus held the office of curator aquarum responsible for the water administration within the capital. Therefore, in his treatise Frontinus published the results of his measurements and other considerations. He also quoted the contents of legal regulations in force in the field of the administration of public waters and other statistical data important for a contemporary researchers, both in its historical and legal aspects.

"Law Clinics" as a Teaching Method in Legal Education
K. Berk KAPANCI, MEF University, Turkey

In this presentation, I would like to analyze "law clinics" (or "legal clinics") as a -relatively- new teaching method in legal education for civil law countries. As known, law clinics are law school intracurricular programs in which students learn by their own experience in a laboratory-like environment under the supervision of law professors, each one an expert of a certain field. This teaching method is largely used in USA universities where it was originally born. On one hand, it provides, educational wise, a "union" between law theory and practice. On the other hand it serves as a means of social justice, in so what it enables economically poor people's access to justice. To fully understand this method, firstly I will take a look at its brief history in the common law world. Secondly, I will provide general knowledge about the basic concepts that are relative to clinical education. Thirdly, I will elaborate the method itself and will further evaluate its compatibility with the Turkish legal system. Finally, I will review the advantages and the risks using this method in legal education and will offer my conclusions.

Methods and Effects of Law and Cinema Courses in Legal Education
Emine KARACAOĞLU, MEF University, Turkey

Since the mid-20th century, changes in legal education resulting from various factors could be observed both in the range of the courses and the methods used. In this context, the technological developments have some influence on the change of legal education; cinema could be considered as one of them. This study focuses on the use of cinema in legal education and discusses how movies support the improvement of student skills and the understanding in the area of legal studies.

Secularity in Turkish Legal Education and Roman Law
Havva KARAGÖZ, MEF University, Turkey

In modern legal systems, Roman law courses can be found in legal curriculum for various reasons. For instance, in Turkey, Roman law interestingly played an important role in ensuring the secular legal education and recently there have been some interesting developments and legal cases regarding the place of Roman law courses in today's legal curriculum.
This situation is closely related to Turkey's transition to the secular system; a period of change in all areas including the governmental regime and social life. This phenomenon also created problems and conflicts from the fall of the Ottoman Empire to nowadays. The problem of secularity can be traced back to the Ottoman Empire; it represents both a desire in law and education and an unwanted progress for some. The Ottoman Empire had started establishing a new legal system after the Tanzimat reform era and for this reason legislated new codes imitating European countries. During these reception periods, a clash between the supporters and opponents of the secular law and the secular way of life had been observed. Along with changes in the legal system, the Ottoman Empire also aimed at establishing a reformed education system based on secular concepts. Yet, there had always been the pressure by the supporters of the old system against these developments regarding the establishment of a modern education system by going beyond religious rules and ideas.

After the fall of the Ottoman Empire, Turkey strongly counteracted to the supporters of the conservatism and took decisive steps to reform its legal and education systems. However, the religion-centered and conservative old mentality that was suppressed during the foundation of the Republic became more visible in recent years. Today's Turkey has been experiencing some serious problems concerning the supremacy of secularism in law and education. Because of the political and social dominance of the religion-centered and conservative view, conflicts affect not only the educational system, but also the making and execution of the law. Roman Law courses have taken place in the middle of these discussions; once the secular worldview and its place in legal education became debatable, a decision emerged regarding the removal of Roman law course from the legal curriculum, which was compulsory until recently. This is a result of a change in mentality which appeared first in politics, then in law and finally in society's lifestyle. Although some state that there has not been a change of view or intervention to the understanding of law, justice and education; it is clearly seen that religious and conservative thoughts explicitly or implicitly influence politics, education, law, social life and values. As a matter of course, universities, law faculties and faculty curriculums have been affected by this transformation as well.

Sulla riforma giustinianea degli studi giuridici
Basak KARAMAN, Galatasaray University, Turkey

Si tratta di dare una visione, per quanto possibile, completa della riforma giustinianea degli studi giuridici sulla base delle costituzioni inttroduttive del Corpus iuris con particolare riferimento alla const. Imperatoriam del 21 novembre 533, indirizzata alla cupida legum iuventus.

Roman law in the Crusader States and the School of Glossators
Tomislav KARLOVIC, University of Zagreb, Croatia

The paper starts from the question if the Roman law was or could be applied in the Crusader States, principally in the Kingdom of Jerusalem, in the legal relations between Crusaders themselves and in their business affairs with native Christian and resident or neighboring Arab population. After the presentation of principal legal sources in Crusader States, the examination is made of possible venues by which the Roman law could have entered the legal practice of the Latin Orient. Two of them, both having close connection with the teaching of Roman law at the time of Glossators, are dealt with in more detail. The first one would be actual reception of Roman law in the Kingdom's legislation. More precisely, this part of the presentation is based on the reevaluation of Prawer's theory of the transmission of norms of Lo Codi brought by the settlers from southern France in the Livre des Assises de la Cour des Bourgeois. This connection will be also checked against the timelines of creation and study of both sources. The second line of inquiry focuses on the studies of Levantine jurists at European universities, specifically on the example of Archbishop William of Tyre, author of Historia rerum in partibus transmarinis gestarum or Historia Hierosolymitana, who studied in France and Italy during the first half of 12th Century (cca. 1145-1165). As he listened to lectures by Hugo de Porta Ravennate, Bulgarus, Martinus, Jacobus, and considering his background and the later position in the Kingdom of Jerusalem, it is questioned how William's university knowledge and that of other jurists could have influenced the legal system of Kingdom of Jerusalem.

Iniuria autem occidere intellegitur, cuius dolo aut culpa id acciderit. Zur Behandlung des Deliktsrechts im Lehrbuch des Gaius.
Philipp KLAUSBERGER, Universität Wien, Austria

Gai Inst III.210 ff enthält einen knappen Abriss zur lex Aquilia. In Gai Inst III.211 wird das in diesem Zusammenhang zentrale iniuria-Kriterium wie folgt erklärt: "Iniuria autem occidere intellegitur, cuius dolo aut culpa id acciderit, nec ulla alia lege damnum, quod sine iniuria datur, reprehenditur; itaque inpunitus est, qui sine culpa et dolo malo casu quodam damnum committit." Der Vortrag soll die didaktische Ausrichtung dieser Passage überprüfen und ihre Aussage in den Kontext der klassischen Kasuistik stellen.

Teaching Roman Law in Eighteenth Century Oxford and Cambridge
Lukasz Jan KORPOROWICZ, University of Lodz, Poland

In my paper I would like to present the short biographies of the Regius Professors of Civil Law who taught in Oxford and Cambridge in 18th. Additionally I will try to present the methods of teaching Roman law in that period, the textbooks that were used during the lectures and works written by the Oxbridge civilians of the 18th century.

Ius civile est aequitas
Maria KOSTOVA ILIEVA, Varna Free University, Bulgaria

Un accent assez important dans l'enseignement du droit romain est la présentation des principes juridiques fondamentaux établis par les juristes romains et restés inchangés jusqu'aujourd'hui. La question concernant l'aequitas dans le système juridique est un thème permanent des études consacrées au droit romain. La discussion au sujet de l'aequitasattire les savants car l'égalité est la base sur laquelle sont créés les principes généraux du droit. L'égalité (aequitas) est un principe universel et nous pouvons le découvrir dans beaucoup de domaines de la vie humaine. La communication présente une analyse du texte d'Aristote (Polit., III, 1287b) ainsi qu'une opinion sur l'origine de l'aequitas.

Dangerous Deserters into Cooperative Criminals – Some Remarks on Active Remorse of Soldiers in the Light of Roman Jurists' Opinions
Przemek KUBIAK, University of Lodz, Poland

It is very tempting to search for rules and abstract generalisations in the works of Roman jurists, especially in the field of Roman criminal law which lacks elaborative institutions and precise classifications of private law. Nemo enim tali peccato paenitentia sua nocens esse desinit seems to be the dominant attitude of Roman jurisprudence towards the effectiveness of active remorse of criminals. Until the crime was not committed, the wrongdoer was acquitted. If it was already perpetrated – he was severely punished without any leniency. Even rhetorical sources confirm this way of reasoning in the court. Nevertheless, Roman jurists and emperors were pragmatists rather than theoreticians. The circumstances of the case and the long-term effect of the decision were much more important than some juridical guidelines. It is explicitly visible in the field of Roman military law where different interests and policies clashed together. The present political and strategic situation, the number of soldiers or enemies and even their emotional state were much more crucial than following certain tendency. In the Roman legal sources there are many examples of effectiveness of active

remorse of Roman soldiers, usually deserters. The fundamental distinction between emansores and desertors is actually based on the active remorse of vagabonds. Even transfugae could count on some indulgence when they had decided to come back and cooperate. The main goal of such solutions was obvious – concern about the military force and the number of troops. It seems that Roman lawgivers and commanders were extremely lenient and forgiving in punishing the most serious crimes. On the other hand, desertion and treason was a pathology threatening not only the efficiency and coherency of Roman legions but also internal integrity and security. Therefore, the myth of harsh military punishments, necessary for keeping discipline in the army, was still appreciated and even enforced. Many attempts were taken to find balance between the severity of penalties strengthening the preventive and disciplinary function of punishments and deterrence of possible culprits, and leniency encouraging criminals to return. Although it seems to be conflicting, such contradictions were part of everyday life in ancient Rome.

The Use of Religious Symbols at Turkish Universities

Arndt KÜNNECKE, MEF University, Turkey

I. Turkish Concept of Laicism

According to Article 2 of the Turkish Constitution (TC) from 1982 in its latest version, the Republic of Turkey is a laic state of law. The principle of Laicism gets its „institutional protection“ by the Presidency of Religious Affairs (Diyanet), which is established in Article 136 TC. This Presidency, being part of the general administration, „exercises its duties prescribed in its particular law in accordance with the principles of laicism, removed from all political views and ideas, and aiming at national solidarity and integrity“. Consequently, the Presidency of Religious Affairs has two responsibilities: the protection of Laicism and the protection of the national unity. However, de facto, the Presidency of Religious Affairs does not protect Laicism it rather promotes and favours Sunni Islam, which prevails in the Turkish population with a share of over 70 percent.

In contrast to the common western understanding of Laicism, Turkish Laicism does not meet its demands of establishing a laic order of the state by separating religion from the state and by legally regulating its mutual relationship. Instead, Turkish Laicism provided the State – in the form of the Presidency of Religious Affairs – with the interpretation monopoly on religion matters and bureaucratized religious life. The Turkish state does not stay neutral in religious matters. It has created its own Sunni state religion, that is directed, managed and promoted directly by the state-run Presidency of Religious Affairs. Thus, Turkey has – at least initially – become a Sunni Islamic republic, in which Islam was simply de-politicized and controlled by the state, and continues to exist as a religious and cultural source of Turkish identity as well as a tool to create national unity. Therefore, the Laicism being practiced in Turkey, can be described as a misnomer: Behind the facade of the institutional separation of state and religion, a state-organized and controlled state religion is concealed.

As the Turkish state controls the de facto state religion of Sunni-Hanafi Islam, only Islamic religious symbols are visible at universities in Turkey.

II. Religious symbols in Islam

There are several religious symbols used in Islam. In the narrow sense, the Name of "Allah" in Arabic writing, the colour green and mosques with their characteristic minarets symbolize Islam. In the wider sense, star and crescent as well as the headscarf also stand for the Islamic religion.

III. Religious symbols at Turkish universities

At the end of 2014, there were 180 universities in Turkey. Among these were 108 state-run universities and 72 private foundation universities. At these universities, several of the above mentioned religious symbols of Islam can be found.

1.) Star and crescent

The star and crescent symbol is visible at every Turkish university, namely on the Turkish flag being obligatory inside and outside the university building, showing a white star and a white crescent on red background. However, the star and crescent on the Turkish flag are used as historical reference to the traditional insignia of the Ottoman Empire, Turkey's predecessor state, and not as a symbol of Islam.

2.) Mosques

Some universities in Turkey have their own mosque on the campus. Currently, there is not law obliging universities to provide their own mosque on university ground. According to the Building Act, the Municipal Act and the Law on the Establishment and Duties of the Presidency of Religious Affairs, the construction of mosques lays in the hands of the local authorities and its operation in the hands of the Presidency of Religious Affairs. However, the head of the Presidency of Religious Affairs announced in November 2014 that each university campus in Turkey would be provided with its own mosque in the forthcoming years. In the political practice of the current Turkish Republic, this announcement of the head of the powerful Presidency of Religious Affairs has the same effect as a law or regulation. Each university and the municipalities where the university is located, will de facto feel obliged to build at least one mosque on the university campus. At the time of his announcement, there were already 15 mosques build and in use on university campuses. And, in the year 2015 another 50 mosques will be opened on university campuses. Thus, by the end of 2015, about a third of the Turkish universities will be having their own mosque on the campus.

3.) Little mosques and prayer rooms (Mescit)

In Turkey, no law or regulation exists, which obliges universities to provide prayer rooms for their staff or their students. However, on grounds of Additional Article 2 of the Building Act in connection with Article 16 of the Regulation on Construction Types in Planned Areas, prayer rooms shall be set up in any social space such as educational establishments, where there is need for it. But, according to Article 35 of the Law on the Establishment and Duties of the Presidency of Religious Affairs, any opening of a prayer room needs the approval of the Presidency of Religious Affairs. The details for the building permission and the specific features of the prayer room are laid down in the Building Act and the Municipal Act. Despite the lack of any legal obligation to provide prayer rooms at universities, according to requirements set by the Presidency of Religious Affairs, each university in Turkey should provide at least three prayer rooms. These prayer rooms (Mescit) are generally meant to be open for praying persons from any religion. However, in practice, the terms of using these prayer rooms are specific designed for Muslims. Therefore, in fact, the prayer rooms at Turkish universities are mainly made for the religious Muslim population and they do not take into consideration the needs of other religions than Islam.

4.) Headscarf

Although about two-thirds of all Turkish women cover their heads, headscarves were banned in Turkey in civic spaces and official buildings for more than 80 years. Only in 2008, the governing AKP, with its roots in Islam, amended the Turkish constitution to ease a strict ban at universities, allowing headscarves that were tied loosely under the chin. Headscarves covering the neck and all-enveloping veils were still banned. Before, according to additional Article 17 of the Higher Education Act, which was restricted by a decision of the Council of Ministers from 1981 and an administrative regulation by the Council of Higher Education from 1982 concerning the dress code at Turkish universities, female students covering their hair with a headscarf, were prohibited to attend lectures and seminars at universities. The AKP government argued the headscarf ban meant many girls were being denied an education. In contrast to that, the secular establishment was afraid that easing the use of headscarves would be a first step to allowing Islam into public life. According to the opposition's petition, the law changing the constitution and lifting the headscarf ban, was quashed by the Constitutional Court.

After some constitutional changes , in October 2010 the Council of Higher Education (YÖK) allowed the appeal of a female student at Istanbul University, who was banished from the lecture hall, because she had concealed her hair under a hat. The Council of Higher Education then ordered, that students must not be expelled from classes on grounds of having committed a violation of the disciplinary code. Professors and lecturers were only allowed to record the violation and report it to the university board. Academic staff, who continued to banish female students from the lecture hall, were threatened with disciplinary hearings themselves. Thus, the headscarf ban at Turkish universities was de facto abolished, even without having mentioned the headscarf itself in the Council of Higher Education's regulation.

In October 2013, by amending the Regulation Concerning Dress and Clothing of Employees of Public Agencies and Institutions, the governing AKP also lifted the rules banning women from wearing headscarves in the country's state institutions - with the exception of the judiciary, military and police.

Nowadays, the headscarf as a symbol of the Muslim faith is omnipresent at Turkish universities, namely among the female students. More and more of them show their religious belief in public and make their "being a good Muslim"-attitude visible to everyone. Nationwide, the number or the share of headscarf students at Turkish universities is not evaluated yet. Its number also differs from university to university. However, two things became visible: (1) The overall number of students with headscarves is constantly increasing. (2) The number of students wearing a headscarf obviously depends on the characteristics of the region, province or city where the university is located, and on the university's profile, i. e. what kind of students and students with what kind of (political or religious) convictions the university is aiming to attract.

Due to missing empirical research and evidence, the reasons for this development cannot be determined exactly. One explanation is, that after the lifting of the headscarf ban at Turkish universities, many female students enter the universities who formerly would have been excluded from higher education because of their religious beliefs shown by wearing a headscarf. And, by allowing female students to wear a headscarf at university, many female students who took off their headscarf before at the university's entrance gate or who were covering their natural hair under a wig, were now encouraged to wear their headscarf openly. However, it remains concealed, if and to which extent less religious female students at Turkish universities also wear a headscarf because they were facing or at least subjectively felt some open or unspoken social pressure by their classmates or academic staff.

Beyond the female students, headscarves as symbols of a woman's religious belief, also slowly become visible among the university staff, within the administrative staff, the service staff, but also within the academic teaching staff. Numbers or percentages of academic staff at universities wearing a headscarf are not available yet. However, their small number is expected to increase each term.

IV. Conclusion

Although, according to its constitution, Turkey is a laic state, with its absolute control of religion by the Presidency of Religious Affairs and its exclusive promotion of the Sunni-Hanafi Islam, the Turkish state has created its own Islamic state religion. Consequently, the Turkish state does not stay neutral in religious affairs. According to its absolute interpretation monopoly, it sets the official content of the Islam being practiced in Turkey. Under the AKP government, Islam steadily strengthened its position and became more and more visible in public. Exemplary, this development can be seen at Turkish universities. There, the use of Islamic religious symbols such as mosques, prayer rooms and headscarves became legalized and officially promoted by the state in form of the Presidency of Religious Affairs. As a consequence, especially in the previous five years, the use of Islamic religious symbols at Turkish universities increased dramatically and demonstrates the absurdity of the Turkish concept of Laicism in comparison to its original concept being established at the times of the French Revolution, describing the constitutional separation of state and church.

Le cause del negozio fiduciario

Paola LAMBRINI, Università di Padova, Italy

Il negozio fiduciario dell'antico diritto romano non aveva un'unica causa: esso era sorretto dalla causa di fiducia, spesso indicata nel formulario della mancipatio, che permetteva il trasferimento della proprietà e ne determinava le modalità di fruizione, e da un'altra causa, potremmo dire da una causa concreta, indicata nel patto aggiunto, che precisava lo scopo di quel trasferimento e giustificava per un certo tempo la conservazione dell'attribuzione patrimoniale. Le due cause erano legate da una relazione di reciproca interdipendenza; solo dal gioco congiunto di entrambe si poteva comprendere il vero intento delle parti.

Questa interpretazione è coerente con la ricostruzione della struttura del negozio fiduciario proposta dalla dottrina maggioritari, la quale lo vede composto da un collegamento negoziale, costituito dall'alienazione compiuta con l'atto formale, unita a un patto che vale solo inter partes e che ha lo scopo di specificare le modalità di uso della cosa e precisare la regolamentazione per la sua successiva ed eventuale restituzione ovvero per la sua vendita.

In generale, un atto di alienazione per poter trasferire la proprietà deve essere sorretto da una causa del trasferimento, cioè da un elemento che giustifica il prodursi dell'effetto reale in quanto assicura la serietà dell'impegno assunto; nel caso della fiducia l'atto di alienazione poteva essere posto in essere soltanto con uno dei negozi rigorosamente formali della mancipatio e in iure cessio, per i quali tradizionalmente si ritiene che la causa del trasferimento fosse costituita dal formalismo. Tali negozi erano capaci come tali di trasferire la proprietà, indipendentemente dalla presenza espressa di una causa che giustificasse il trasferimento; proprio per questo motivo essi, e non la traditio, potevano tollerare la funzione fiduciaria, malgrado il fatto che la proprietà trasferita potesse essere funzionalizzata e limitata. Tuttavia, l'atto formale, soprattutto se individuato nella mancipatio, non era sempre astratto ; l'astrazione della mancipatio poteva essere superata dalla volontà delle parti , in modo analogo a quanto avveniva con la stipulatio. Dunque, le parti potevano esplicitare la

causa per la quale si compiva la mancipatio e, quando lo facevano, ciò aveva importanti conseguenze giuridiche.
Da molteplici documenti della pratica risulta che pure la causa fiduciae era espressa nel testo stesso della mancipatio; mentre una mancipatio utilizzata per il trasferimento definitivo della proprietà su di un bene poteva anche non contenere l'indicazione della causa, quando lo scopo perseguito comportava un trasferimento di proprietà limitato era fondamentale menzionare espressamente la causa . L'estrinsecazione della causa fiduciae all'interno del formulario mancipatorio aveva conseguenze importanti relativamente agli effetti prodotti da tale atto, in particolare sul regime della proprietà acquistata dal fiduciario, che diventava funzionale e tendenzialmente temporanea.
Quindi, la causa del trasferimento, cioè l'elemento che giustifica il prodursi dell'effetto reale in quanto assicura la serietà dell'impegno assunto, era costituita nel negozio fiduciario dal formalismo dell'atto di alienazione specificato dall'indicazione che esso era posto in essere fidi fiduciae causa.
La presenza di un'espressa causa fiduciae all'interno dell'atto mancipatorio non impediva che il trasferimento fiduciario fosse posto in essere per scopi variabili, i quali erano specificati nel patto aggiunto alla mancipatio . Il pactum fiduciae serviva proprio a precisare lo scopo concreto di quella proprietà fiduciaria: dal momento che la stessa operazione fiduciaria poteva servire per gli scopi pratici più disparati, tali da comportare a volte un vantaggio per il fiduciante (ad esempio nella fiducia cum amico), altre per il fiduciario (come nel caso della fiducia cum creditore), si doveva indagare in ordine alla precisa natura degli interessi perseguiti dalle parti, onde poterne desumere la disciplina applicabile alla fattispecie concreta.
Nel patto era contenuta la causa che giustificava la conservazione dell'attribuzione patrimoniale, garantendo il permanere della proprietà fiduciaria presso l'acquirente: i beni sarebbero restati in fiducia, finché non fosse stato raggiunto lo scopo indicato nel patto, ove erano indicate altresì le modalità di utilizzo della cosa e della sua eventuale restituzione.
Tale scopo poteva essere di vari tipi: la dicotomia tra fiducia cum creditore e fiducia cum amico rappresenta soltanto una divisione a scopo esemplificativo, tale da ammettere usi diversi dello strumento stesso rispetto a quelli di garanzia e di custodia evocati, come quelli di rappresentanza processuale , donazione a causa di morte , donazione per interposta persona , manomissione . Quando lo scopo 'terminava' - perché il debito era stato pagato, erano cessate le esigenze di custodia, la gestione era stata realizzata - il trasferimento di proprietà non era più giustificato e occorreva procedere alla restituzione.

Teaching Roman Law in Innsbruck
Christine LEHNE, Universität Innsbruck, Austria

In my presentation, I will give a brief overwiew over the history of teaching Roman Law since ist introduction at the University of Innsbruck in 1669.First I am going to concentrate on the past, and in the second part of the lecture I am going to present a few didactic methods and their possible impact on effective teaching.

Deathbed Gifts in Polish Civil Law and Roman Legal Sources
Piotr ŁOCHOWSKI, Jagiellonian University, Poland

Six years ago we have started discussion on extending opportunities in disposing post mortem of particular components of property. The discussion concerned an alternative of specific bequests, i.e. legatum per vindicationem, or deathbed gifts (donations mortis causa). The

Senate of the Republic of Poland in 2009 proposed a bill on deathbed gifts to the Lower House of our Parliament. This proposal coincided with governmental legislative initiative concerning the specific bequest. The Parliament decided for second solution in 2011. But Senate of the Republic of Poland did not cease efforts to propose again a bill on deathbed gifts. This project was not further proceeded. However, we did not need to wait long for another attempt to introduce deathbed gifts to Polish legal system. The Polish Supreme Court stated that deathbed gift, of which subjects are specific things or laws, is admissible in Polish law. That was decided in a resolution of December, 13th, 2013. The Supreme Court defined donation mortis causa as a legal act inter vivos, possible on the basis of freedom of agreements, inviolable to principle of disposing of property in case of death only by the last will. Therefore, deathbed gifts are considered as a part of the Polish law of obligations, and of not law of succession. However, deathbed gifts are not regulated in an act. We must take advantage of historic and comparative study in order to understand them and to regulate them. The legal experience of Roman law leads us to ta conclusion that deathbed gifts are agreed between two parties. It is an act of generosity of a donator towards a second party. It meets the criteria, which can be applied both to gifts inter vivos and mortis causa. But deathbed gifts will result after death of a donor. Deathbed gift should be considered a legal hybrid placed on the border line between two orders: succession and obligations. It seems almost impossible to incorporate them entirely into one of them. It is confirmed by the comparative study.

Teaching Practical History on the Example of Evolution of the Law of Succession in Poland over the last 100 years

Franciszek LONGCHAMPS DE BERIER, Jagiellonian University, Poland

Regaining independence in 1918, the Republic of Poland had five different jurisdictions in private law. In the central voivodships of Poland the French civil code applied. The eastern voivodships, that had been incorporated into the Russian Empire, used the Svod zakonov (Collection of Laws). In the western voivodships, which had earlier been part of Prussia, the German civil code was in place. In the south, the law of succession was contained in the Austrian civil code. The legal situation in Spis and Orava requires some separate remarks. This is where mostly uncodified Hungarian civil legislation and the Hungarian code on civil proceedings of 1911 was in place. The existing state was preserved with the Law of 26 October 1921 in respect of the regulations which applied to the area of Spis and Orava that was part of Poland. The legal situation was changed by a regulation of the Council of Ministers of 1922 concerning the organisation of courts and judiciary in Spis and Orava, and extending over this area certain laws and decrees. Introduced here was the binding legislation of the district of the Appellate Court in Cracow.

Adoption of unified legislation on inheritance for the whole country was done in 1946 in the wake of a hurried consolidation process. The legal solutions adopted in 1946 were fully contained in the European tradition of private law, which soon brought about criticism from the ideologues of the new regime. Fortunately, in the Stalinist era, codification efforts were not successful. The civil code was not adopted until 1964.

The reform of the civil code carried out after the collapse of communism by the Law of 28 July 1990, in the domain of laws of succession touched virtually only the regulations of the last title. This meant that the civil code of 1964 proved – especially considering the time when it was formulated – very good codification, falling within the tradition of European inheritance laws. And only in the last decade, owing to increased interest in the subject of inheritances and specific expectations on the part of the society, the Polish law of succession

was modified with two major amendments. The first expanded – in opposition to the general European tendency – the list of statutory inheritors. As a consequence, a much farther place was awarded to the borough (gmina) of the last place of residence of the testator and the State Treasury. Whereas the main public expectation that was satisfied was reduced to the addition of grandparents as legal heirs. The other amendment served to restore in Polish law a provision on debt collection well known from Roman law and legal systems based on it. Decodification of the Polish law of succession is expanded by the body of rulings by the Supreme Court. Particularly important are: the ruling of 13 December 2013 which allows deathbed gifts and the ruling of 16 October 2014 which confirmed the validity of bequest, in which the object of the act has been described alternatively.

Practical considerations prevent us from reserving discussion on various regulations of contemporary law of succession to remarks pertaining only to the current state of legislation. The analysis focuses on the legal status at a given place and time. A genuine description of binding legislation will require an account of changes made to the individual laws. Constancy is nowadays merely a postulate in view of the prevailing inflation of norms and the competition for legal production run by parliament and courts. And yet accuracy of amendments applied to the law of succession can be said to be verified in the third generation. Since this branch of private law particularly well reflects traditions and achievements, beliefs and customs, depends on the presumptions, and primarily on the legislative habits of a society, it is nonetheless difficult to deny that the actions of testators usually follow their own convictions and ideas. Only to a certain extent is this corrected by consultations with lawyers versed in the subject. And so the stability of regulations is particularly desirable in the law of succession. If this then proves not possible in practice, needed are instruments for orientation in the changes which the law has undergone over the previous one hundred years: and it is the practical considerations which demand delving back even to times before World War I, as many cases of succession have been left neglected for decades. When successors do realize the need to put these in order, as it can affect the material situation of entire families, they realize with some degree of helplessness that they must recreate full succession mortis causa, sometimes reaching down to the early years of the twentieth century. Because of the many amendments to the Polish law of succession and the multitude of binding jurisdictions as well as variety of legal traditions, the example of evolution of Polish legislation on succession appears useful and instructive.

It is not enough to point to alterations of laws, it is of little consequence to check the content of regulations, which may arise from different systemic contexts – and not always domestic – and were adopted at very different times. We look for ways to properly read and understand the various provisions. A lawyer's work is basically interpretation, which should not overlook the ability to skillfully use historical argument as truly practical. Not all situations can be immediately foreseen and not all types of instances have been described in literature and rulings. In order to carry out the proper interpretation of binding regulations it is necessary first of all to describe the values and principles expressed in individual provisions on inheritance. An effective analysis of different succession regulations can be assisted by a system of concepts created in Roman law. In any case, the entirety of private law on Polish lands in the 19th and 20th century fell within this "magic circle" and yet remains there, utilizing ideas borrowed therefrom. Especially in the domain of inheritance, Roman law was particularly subtle and exceptionally elaborate, already in antiquity enabling the creation of a rich network of concepts in the domain of succession mortis causa.

The evolution of law of succession shows the richness of its tradition in Poland, characterized by many and varied detailed regulations, but also consistency of concept and predictability of

solutions. Variety brings about difficulties for those who need to apply Polish law of succession of various periods. That has to be considered in any legal teaching if we want to keep it useful.

Some Remarks on the Legal Status of Thespian's Children
Elzbieta LOSKA, UKSW, Poland

One of the most important functions of patres familias was to educate the children under their authority, so they would become good citizens of Rome. From thesource-texts a picture emerge showing that Romans did not always trust that this would happen - the offspring of persons engaged in certain professions, including actors, held sometimes legal position worse than children of other people. This applied not only to descendants remaining under the potestas of the actor. A profession practiced by the mother also had an impact on the legal position of her children in some aspects of life.

Diritti semiti e diritti dell'antico Oriente mediterraneo
Francesco LUCREZI, University of Salerno, Italy

1.- Lo studio dei diritti antichi nasce e si afferma, a partire dal XIX secolo, parallelamente al superamento del diritto romano come diritto vigente, alla formazione dei moderni diritti nazionali europei e ai processi codificatori.
2.- La pluralità delle concezioni riguardo alla funzione formativa dello studio del diritto romano - inteso come prevalentemente volto, in chiave di comparazione 'verticale', a una più profonda comprensione del diritto positivo, nella sua dimensione storica ed evolutiva, e quindi come "scienza applicata", o piuttosto come "scienza pura", focalizzata sulla pura conoscenza di realtà storiche del passato - resta intrinseca alla didattica romanistica, e appare parte integrante del suo interesse epistemologico.
3.- L'attivazione, agli inizi del XX secolo, delle prime Cattedre di Diritti dell'antico Oriente mediterraneo - seguita all'interesse scientifico dettato dalle scoperte archeologiche nel Vicino Oriente, a partire da quella del Codice di Hammurabi, del 1901 - ha dato l'avvio a un timido e parziale processo di superamento dell'incontrastato 'panromanismo giuridico', affiancando allo studio del diritto romano - sia pure in posizione nettamente marginale e subordinata - anche quello delle altre tradizioni giuridiche antiche conosciute (inizialmente riunite, nella classificazione ministeriale italiana, come Diritti dell'antico Oriente mediterraneo, e poi sotto la successiva, più generica sigla dei "diritti antichi").
4.- La presenza e la crescita di tale tipo di didattica, nelle Facoltà di diritto, si scontra con l'ostacolo del carattere specialistico di tali insegnamenti, che necessitano, da parte dei docenti, di competenze filologiche specialistiche, difficilmente disponibili da parte degli insegnanti di area giuridica. D'altra parte, lo scambio scientifico tra le Facoltà giuridiche e quelle di antichistica, volte a offrire agli studenti di diritto i risultati delle ricerche sugli antichi diritti del vicino Oriente, ha finora dato risultati modesti, per svariati motivi.
5.- L'esigenza di uno studio dei diritti antichi diversi da quello romano e greco si ripresenta tuttavia, ai nostri giorni - se si vuole ancora difendere la sensibilità verso la dimensione diacronica del diritto -, come ineludibile, soprattutto dal momento che diversi fattori - come l'inarrestabile osmosi tra tradizioni giuridiche continentale e anglosassone, l'avanzata economica e politica delle potenze asiatiche, la crescente presenza, nei confini europei, di immigrati di cultura islamica ecc. - mostrano ormai l'inadeguatezza delle discipline romanistiche a rispondere, da sole, alla complessiva domanda di formazione storico-giuridica.

6.- Dal progresso di tali conoscenze, inoltre, la stessa scienza romanistica avrà tutto da guadagnare, se è vero che del cd. ius gentium “sappiamo appena quel che è stato recepito dai Romani attraverso la pratica del tribunale del pretore peregrino dal II secolo a.C. in poi” (Casavola).
7.- Affinché tale domanda possa ottenere una proficua risposta, e i significativi segnali che sembrano andare in tale direzione possano essere raccolti e valorizzati, in vista di fecondi sviluppi, sarebbe opportuno che gli studi degli altri diritti antichi si svincolino dal condizionamento di alcune consolidate impostazioni e categorie che, se in passato hanno contribuito alla loro crescita e al loro interesse, sembrano oggi frapporsi soprattutto come forme di limite o di ostacolo.
8.- Un superamento che risulta insieme necessario e difficile, dal momento che la ricerca e l'insegnamento dei diritti dell'antico Oriente mediterraneo appaiono intrinsecamente collegati ad alcune convinzioni di fondo, che - al di là del loro dubbio fondamento scientifico - ne hanno a lungo segnato la diffusione e il radicamento, dando, in vario modo, forte impulso alla ricerca antichistica e archeologica dell'ultimo secolo.
Segnatamente:
a) il forzato comparatismo, in senso 'orizzontale', dei primi del Novecento, inteso come sistematica costruzione di parentele e genealogie, presunte influenze o origini comuni;
b) la rudimentale contrapposizione tra Occidente e Oriente, che vedrebbe il primo fucina di progresso, razionalità e libero pensiero critico, e il secondo alveo di dispotismo, staticità e superstizione magica e teocratica;
c) il deformante e riduttivo approccio alle varie esperienze storiche dell'Oriente mediterraneo in funzione dei loro rapporti di vicinanza o antagonismo con le civiltà ebraica ed ellenica (considerate, a vario titolo, generatrici del mondo occidentale), come anche la loro valorizzazione sulla base dei riferimenti ad esse presenti nella letteratura biblica e greca (elevate non solo a generale serbatoio di informazioni storiche, ma anche a complessivo paradigma di interesse scientifico e culturale);
d) il mito del vicino Oriente antico come "alba della civiltà" (terreno di nascita della famiglia, dello stato, della città e della scrittura);
e) la credenza nell'immaginaria categoria dei cd. "diritti semiti";
f) la visione forzatamente unitaria dei cd. "diritti cuneiformi" (sumerico, assiro, babilonese e ittita);
g) la ricorrente confusione tra ceppi e derivazioni di natura linguistica, etnica e giuridica, sovente del tutto indipendenti gli uni dagli altri.
9.- Non è facile superare correttamente tali pregiudizi (talvolta, inoltre, non scevri di elementi di interesse, se non di verità), senza contemporaneamente correre il rischio di un inaridimento dell'intrinseco fascino di tale tipo di ricerca storiografica, tanto strettamente legata alle grandi correnti dell'indagine filologica e archeologica, nonché della generale cultura umanistica.
10.- Dai più recenti studi in tali settori paiono comunque ricavarsi due esigenze di fondo:
a) l'inquadramento delle varie fonti nella loro specifica dimensione spaziale e temporale, senza semplicistici incasellamenti in improbabili scenari di ampio o amplissimo raggio;
b) l'analisi del dato giuridico come elemento peculiare di una data cultura, da inserire in essa ma senza offuscarne la specificità (separando, per quanto possibile, l'analisi del diritto dalla ricerca di tipo filologico, religioso e antropologico).
11.- Dalle ricerche condotte, in molti Paesi, a partire dalla seconda metà del XX secolo, emerge con evidenza, infine, l'assoluta unicità della posizione occupata, tra tutte le esperienze giuridiche antiche, dal diritto ebraico: unico a essere ancora, a tutti gli effetti, un diritto vivente, oggetto di quotidiana applicazione e interpretazione nelle yeshivòt e nei batè-din,

nelle accademie e nei tribunali rabbinici di molti Paesi del mondo, alimentato da un patrimonio sapienziale di incomparabile ampiezza - in massima parte inesplorato extra moenia -, nel quale fonti e interpretazioni antiche e moderne si intrecciano in un continuum senza cesure né soluzioni di continuità.
12.- Quello mosaico è l'unico diritto antico i cui precetti, nella loro diretta formulazione originaria, possono e debbono essere interpretati non solo sul piano antiquario, ma anche in funzione di pratica applicazione, così da rappresentare un peculiare luogo di incontro tra antichità e modernità, e un terreno privilegiato per una riflessione sulla dimensione metatemporale del diritto.

La (doppia) negazione mancante in Scaevola D.46,3,93,1-2. La "confusa" tradizione testuale in tema di riunione di debitore e fideiussore

Salvatore MARINO, WWU Münster, Germany

Al pari della disciplina, anche la tradizione testuale in tema di riunione in una sola persona di garante e debitore principale (cd. confusione impropria), è sintomaticamente incerta, si vorrebbe dire confusa.
Già Papiniano 28 quaest., D.46.3.95.3 (uno dei passi più significativi, perché testimonierebbe l'evoluzione giurisprudenziale raggiunta nel tardo-classico sul punto) presenta, così come riportato nella littera Florentina, un testo del tutto insoddisfacente, che dall'Umanesimo in poi è stato oggetto di proposte di emendazione più o meno convincenti sulla base del corrispondente testo dei Basilica, dal contenuto molto più pregnante.
Ma anche Scevola lib. sing. quaest., D.46.3.93,1-2 (un altro passo fondamentale nello sviluppo dell'istituto della confusione impropria, perché testimonierebbe la impostazione giurisprudenziale del periodo classico maturo, più direttamente dipendente dalla posizione di Giuliano, ma caratterizzato da una particolare terminologia) ha una tradizione testuale controversa.
Nella fattispecie, tutto dipende dalla mancanza di un non, uno dei più tipici problemi di tradizione testuale, ma uno dei principali problemi della ricostruzione del testo delle Pandette.
Tuttavia, a differenza del caso del frammento di Papiniano, per il passo di Scevola non si è avuto mai dubbio sull'effettivo reale significato del frammento, giacché le versioni più antiche del testo (sia la littera Florentina sia i Basilica) presentano una lezione logicamente insostenibile.
Il frammento, dunque, è un esempio di come la forza (filo)logica del contenuto si afferma sopra la tradizione testuale.
In questo intervento si intendono presentare i punti principali della storia e della riflessione sulla trasmissione testuale di questo frammento giurisprudenziale, che condensa in sé tutti i passaggi della storia giuridica dell'ultimo millennio, e costituisce un ottimo esercizio in vista del più complesso futuro lavoro di ricostruzione del passo di Papiniano.

Constitutiones de conceptione et confirmatione digestorum

Ana Rosa MARTÍN MINGUIJÓN, Universidad Nacional de Educación a Distancia (UNED), Spain

El objetivo de Justiniano fue crear un imperio fuerte y duradero asentado en tres pilares: la religión, el ejército y la ley. Este propósito excedía, sin duda, de su primer proyecto que consistía en la renovatio imperii romanorum. Para lograr su ambiciosa empresa, e instaurar la unidad del imperio, decidió establecer un nuevo orden jurídico y emprendió la obra que

pretendía ser una auténtica labor legislativa. Este nuevo orden exigía una legislación clara y precisa, que eliminase la confusión de las leyes y de la jurisprudencia, tal y como Justiniano manifiesta repetidamente en las constituciones que promulga. El 15 de diciembre del año 530 se promulga la Constitución Deo auctore (De conceptione Digestorum) con la orden a Triboniano de compilar la jurisprudencia más autorizada. En ella le da las instrucciones a seguir, rechaza con rotundidad las repeticiones y contradicciones y prohíbe los comentarios, las abreviaturas, signos y siglas enigmáticas. Una vez
concluida la obra el emperador promulga la C. De confirmatione Digestorum en la que confirma el trabajo realizado.

The Case Method: A Very Brief Introduction
Thomas MCGINN, Vanderbilt University, United States of America

I plan to introduce the panel with a short history of the Case Method and an equally short description of how it is supposed to work, followed by some of the chief criticisms that have been leveled against it.
The method was introduced in 1870 by an administrator and professor at Harvard Law School named Christopher Columbus Langdell. Instead of listening to lectures by professors, the students read and discussed decisions delivered by appellate courts, so that this material was presented to the students through the mechanism of question and answer, in the Socratic method of instruction. These cases were put together in textbooks published as Casebooks, the first of which was produced by Langdell himself. The new method met with great resistance, but with the passage of time the Case Method defeated all of its rivals. By the late 1920s it was practically universal in American law schools and is still widely used today.
Three basic characteristics are associated with the method. First, students are confronted with actual problems and legal texts. Second, the students are encouraged to develop their skills in reading the legal materials with a critical eye and in exercising their judgment. Third, classroom teaching focuses on an exploratory dialogue between the instructor and individual students.
For all of its evident popularity, the method remains highly controversial. I conclude my talk by describing some of the main lines of criticism and whether these are of potential relevance for the teaching of Roman law.

Teaching Roman Law Through the Case Method at Vanderbilt
Thomas MCGINN, Vanderbilt University, United States of America

Drawing upon more than twenty-five years of experience in teaching Roman law at Vanderbilt, I describe the design and implementation of three courses devoted to the law of delicts, family, and property, respectively. I begin by discussing the Casebooks we have available in English for classroom use, move on to other aspects of the courses such as the exams, writing assignments, and structuring of classroom discussion. I end up with a caution about the potential application to other contexts of these approaches, while expressing the hope that at least some of it may prove broadly useful, or at least worth attempting.

Our three Casebooks are all published by Oxford University Press: 1) B.W. Frier, A Casebook on the Roman Law of Delict (1989); 2) B.W. Frier and T.A.J. McGinn, A Casebook on Roman Family Law (2004); 3) H. Hausmaninger and R. Gamauf (trans. G. Sheets), A Casebook on Roman Property Law (2012). I briefly describe some of the

advantages and challenges involved in teaching from each and then introduce the "Required Supplemental Reading".
The three courses have the same structure as far as papers and exams are required. All of these concern analysis of Roman "cases", except for the long paper, for which the students are required to apply principles of Roman law to a modern US case.
Not all of these solutions may be appropriate for others, especially given that the context in which I teach represents in some respects an outlier, if not something utterly peculiar, from the perspective of colleagues teaching elsewhere, above all outside the U.S. Vanderbilt is a private university with a remarkably small base of students given its status as a research university. The phenomenon of a law course in an undergraduate liberal arts curriculum is an anomaly in the American context. This does allow for great freedom in course design, and I express the hope that others might profit from aspects of my experience, especially given the goals of the courses.

Legal Formation of Non-Legal Experts in Roman Antiquity
Ivan MILOTIĆ, University of Zagreb, Croatia

Legal formation in Roman antiquity was a process which lacked systematic approach and was not achieved through firm organisational or institutional forms. In most of its content it was achieved factually and on ad hoc basis by the young men attending hearings, observing the trial and its issue, listening to questions of clients and responses of prominent iurisconsulti and by further developing the practical ideas and concepts of a jurist they followed. Though, formation in Roman law was not exclusively restricted to them. There are considerable Roman legal and non-legal sources documenting that legal formation to some extent was received by numerous categories of persons who were not legal experts, but their professional activity was in some way linked with law.
Among the non-legal experts one can, for example, identify land surveyors (agrimensores, gromatici) who often used the legal background for achieving goals of land survey, especially in land disputes (as assessores or arbitri), setting the boundaries or conducting land divisions. Arbitrators (arbitri) in Roman law (who were usually not selected from the group of jurists) were frequently required to have adequate legal knowledge, experience and understanding of disputed issue. One of the most recognizable roles of assessor in the civil proceedings was to advise, inform or assist the lay-judge (iudex) on different points of law. Such role of assessor in the civil proceedings demanded a certain degree of legal formation. Vitruvius provided that law should be an object of architect's professional formation. Furthermore, he indicated reasons for that and diverse fields of law in which adequate legal qualifications were demanded for an architect. The writings of Roman chroniclers and
historians represent important sources of Roman law. At least some of them received legal formation. For example, a classical chronicler Aulus Gellius examined diverse legal writings (of Cato, Labeo, Capito, Sabinus, Scaevola etc.). By praising the jurists, Gellius indicated his good knowledge of the jurists' arguments and legal practice. There are many other examples of non-legal experts with legal background which can not be point out in this brief abstract.
In this paper the author will analyze the legal formation in Roman law which was received by the non-legal experts with primary reference to their nature, features and specificities. The question will be raised whether such formation was comparable with jurists' one or was achieved differently. It is aim of this paper to analyze how the non-legal experts obtained the legal background which they later used in their professional (expert) activities and whether such qualifications were demanded by their professions or were perceived just as means of

utilizing their skills more efficiently. Finally, it is our intention to point out that the legal formation in Roman law in the period of Roman antiquity considerably went beyond limits of the legal profession.

Lecturing among Jurists: Macer discusses with Ulpianus (and Others)
Valerio Massimo MİNALE, Bocconi, Italy

Macer, who worked under Caracalla, Elagabalus and finally Alexander Severus, was witness of a season of great change for the Roman legal system; in particular, through the study of his fragments preserved in the Digesta, it is possible to concentrate our attention on the relationship with the other jurists belonging to the Severan time, mainly Ulpianus, but also Paulus and Marcianus: the result will be interesting both to analyse their way of thinking and to consider the focus on new matters, connected for example with the reality of the provinces.

La corrupción electoral en la Roma republicana El Pro Murena de Cicerón
Martha Elena MONTEMAYOR ACEVES, Universidad Nacional Autónoma de México (UNAM), Mexico

En las elecciones del año 63 a. C., en Roma, contendieron para el Consulado Lucio Sergio Catilina, Servio Sulpicio Rufo, Décimo Junio Silano y Lucio Licinio Murena. Los dos primeros perdieron, los dos últimos resultaron electos. Servio Sulpicio Rufo, jurisconsulto eminente, había sido cuestor y pretor juntamente con Murena. Él entabla una demanda contra Murena, acusándolo de soborno electoral. A Servio Sulpicio lo defendieron Marco Porcio Catón, Cneo Postumio y Servio Sulpicio el joven; a Murena, por su parte, Marco Licinio Craso, Quinto Hortensio y Marco Tulio Cicerón.
Mi intención en esta ponencia es analizar la legislación que regía la corrupción en los comicios, especialmente en el tiempo de la república. Se hará referencia desde la legislación más antigua hasta la que estableció Agusto. Así pues el delito de ambitu comprendía, entre otros, la organización de motines y el soborno. Fue castigado, en Roma, primeramente por la Lex Poetelia del 558 a. C. y, en el siglo II, por la Lex Cornelia Baebia del 181 a.C. y la Lex Cornelia Fulvia del 159 a. C.
Para el año 63, en el cual Cicerón defiende a Murena, regían las Leges Calpurnia (67 a. C.), Cornelia (67 a. C.) y Tullia (63 a. C.). Todas éstas castigaban el delito de ambitu con penas como la pérdida del ius honorum, la expulsión del Senado, la prohibición de ocupar cargos públicos por 10 años, la de fuertes multas pecuniarias y hasta la relegatio también por 10 años.
A pesar de que Cicerón fue el autor de la Lex Tullia del año 63, se sintió obligado a defender a Murena para cerrar toda posibilidad de triunfo a Catilina, su enemigo.
La obra de Cicerón, por su naturaleza, nos muestra un estilo retórico pulcro y elegante, pero también es reflejo de situaciones políticas importantes que se sucedieron en el tiempo de la república y, sobre todo, es una fuente para algunas leyes que rigieron en su época. En esto último se centrará este trabajo.

Lex commisoria and purchase according to D. 20,1,16,9 and F.V 9
Marcelo NASSER, Universidad de los Andes, Chile

In a complex situation like the one of the possession of the object retained by lex commissoria, it turns obvious that that jurists were in the need to search for a fair possessory title that would grant at least, the publiciana action and the exceptio rei venditae et traditae.
As a result, jurists assimilated the operation of a lex commissoria to a purchase (iure emptoris) as revealed by Marcian and endorsed by Papinian. Therefore, lex commissoria may be understood as one of the iustae causae possessionis.

Die Rolle der Rechtswissenschaft in der rednerischen Bildung bei Cicero
Tamás NÓTÁRI, Institute for Legal Studies of the Hungarian Academy of Sciences, Hungary

Als Cicero sich in seinen Schriften mit den Maßstäben der rednerischen Ausbildung auseinandersetzte, schwebte ihm das Bild des vollkommenen Redners (plenus atque perfectus orator) vor. Allerdings reflektierte er auch in seinen forensischen – und sogar in seinen politischen – Reden auf seine eigenen, in den theoretischen Schriften festgesetzten Kriterien für den perfectus orator. Der vorliegende Beitrag befasst sich zuerst mit jener Rolle der Rechtswissenschaft, die Cicero ihr in seinen theoretischen Schriften (insbesondere in seiner De oratore) im Curriculum des perfectus orator zusprach, um sich dann jenen Stellen in den ciceronianischen Reden zuzuwenden, in denen er auf die (des Öfteren mangelnden) Rechtskenntnisse seiner Rednerkollegen und Prozessgegner eingeht und von ihrer iuris peritia, bzw. deren Mangel als Argument für seine eigene Sache Gebrauch macht.

Le droit romain en Bulgarie- passé, présent et future
Malina NOVKIRISHKA- STOYANOVA, Université de Sofia "St. Clément d'Ochride", Bulgaria

On présente le droit romain en Bulgarie comme droit positif au temps de l'Empire romaine sur le territoire balkanique et après la création de l'Etat bulgare autonome en 681. L'influence de droit romain sur le droit bulgare dès le Haut Moyen Age à l'époque moderne persiste toujours très sensiblement. Cela est la base de l'enseignement de droit romain d'une manière très vaste et approfondie comme une discipline obligatoire dès la création de l'Université de Sofia et de sa Faculté de droit en 1892.
On présentera au public le site IUS ROMANUM nouvellement créé en bulgare, italien, espagnol, français, anglais et russe dès le 1 avril 2015. C'est le premier site romaniste en Bulgarie qui englobe une revue on line dont le Numéro 1 est consacré à 2000 ans de la mort de l'empereur Octavien Auguste, et aussi une information abondante de tout ce qui concerne l'enseignement de droit romain et la recherche scientifique romaniste en Bulgarie, les activités des professeurs et des étudiants de la Faculté de droit de l'Université de Sofia et un projet scientifique qui va se développer vers une conférence internationale en 2016. Le site permet de voir quel est le présent de droit romain en Bulgarie et les perspectives futures des recherches et des études romanistes bulgares.

New Approaches in Legal Education

Arzu OĞUZ, Ankara University, Turkey

When the legal education and the reform of legal education in various European countries analyzed, it will be seen that some amendments has been made in line with the Europeanization and globalization in almost every European country. The reason of it is the change in the legal profession in conformity with the socio-economic developments in World and especially in Europe. The aim of the reforms made in the legal education is to equip the young lawyers with the skills which have not been foreseen till know. What are these skills and which lawyer type is aimed?

A lawyer who can meet the new needs of the profession should have flexible understanding rather than very well technical information. Only a lawyer who has given a methodological legal education can meet these needs. Furthermore lawyers who has given methodological legal education which provide them to comply with the different areas of law will be needed rather than the lawyers who only has a deep knowledge of national legal system in future. At that point it will be more important to give law students an education encouraging self-improvement and equip them some key skills. Law is becoming more international and preventing the legal disputes is being more important than solving the legal disputes in this day and age. Legal consultant, negotiation and mediation have more place in the activities of lawyer.

It is aimed to discuss the need of reform in legal education in the light of the examples through history in this paper.

The teaching model which equip the law students the skills of critical and analytical thinking, independence, creative thinking, broad-minded, ethic and responsible should be followed.

The Methodology of Roman law Courses in Turkey: Between the Legacy of Schwarz and Koschaker

Bahar ÖCAL APAYDIN, İnönü University, Turkey

The course of Roman law was first introduced in the curriculum of the Law Faculty of Istanbul University as a result of the westernization movement commonly referred to as the Tanzimat era (1839-76) during the reign of the Ottoman Empire. Moreover, with the reception of European codes, following the foundation of Turkish republic in 1923, the Roman law was officially introduced into the curriculum of the education of the jurist as a core subject. After the university reforms of 1933 in Turkey, the Roman law courses were taught by Mishon Ventura who had been the professor of Roman law since the Ottoman era and other two professors, namely; Richard Honig and Andreas Schwarz at the law school of the Istanbul University who had moved there after the loss of employment during the Nazi era. After the death of Professor Schwarz, Giovanni Pugliese came to Istanbul to teach Roman law for two semesters in 1954 and 1955.

In 1925, a new law school was founded in Ankara by M. Kemal Ataturk in order to realize the aspirations and policies of the young republic. Paul Koschaker was the professor of Roman law who had moved to Ankara after the Second World War. It should be emphasized that the objective of shaping the Turkish legal system with the European one found a fundamental basis with the support and contribution of European professors who were based and worked in Turkey.

It is important to point out that not surprisingly the lecture notes taken by Ventura's students of academic year of 1907-1908 were published in Ottoman language. However, in 1934 his

lecture notes were published in the modern Turkish language. It is worth noting that this book does not have a characteristic feature of a textbook. A book of Roman law was published by Professor Honig in 1935. In its preface, the author recounts the reasons that led him to publish his book. At the centre of which was to provide a general idea on the evolution of Roman law which is considered as the fundament of modern law; also according to the author the contribution of Roman law should provide assistance to law students regarding the institutions of law of persons, family law, rights in rem and inheritance law.
Schwarz taught Roman law and he was also an expert of comparative law and civil law. The teaching methodology of Roman law adopted by him was oriented towards the objective of tracing the Roman institutions in the modern Turkish law. In fact, according to the observation of Professor Pugliese his course was established on three pillars: a) a historical introduction, also dedicated to the events of Roman law and Roman scholars during the Middle Ages and the modern age; b) a general part, in which, besides the crucial notions on the law of person and legal acts, he also provided an idea of roman procedure; c) an extensive treatise on the law of obligations, and a minor treatise on rights in rem. The first volume of his book entitled “Roman Law Courses” was published in 1942 which includes only the two pillars mentioned above. Unfortunately, other volumes of his books were not published due to his sudden death in 1953. Upon the request of Professor Schwarz, Professor Ziya Umur translated into Turkish the textbook of Roman law written by Professor Salvatore di Marzo which was published in Turkey in 1954.
Koschaker in his seminal book authored with Kudret Ayiter entitled "the Outline of Roman Private Law as an Introduction to the Modern Private Law", which was published in 1950, explains the importance of Roman law for the education of the jurists. Accordingly, the Roman jurists constituted clear and logical legal notions thereby forming the basis of modern private law, hence the need for the course of the Roman law was introduced in the curriculum of the law faculty for first year students. Rather than choosing the historical methodology, he adopted the dogmatic methodology and also inserted a general part at the beginning of his book similar to Pandect scholars, as deemed useful both legally and pedagogically.
It is worth noting that Schwarz and Koschaker had more influence on Turkish Romanists. Beside their books on Roman law, they left another lasting legacy i.e. their methodology of Roman law courses which has been adopted by their successors ever since. This paper aims to analyse the methodology of Roman law courses by examining their textbooks and endeavour to consider the reflection and influence of this methodology into the recently published textbooks of Roman law.

Roman law education in Istanbul University, a closer look.
Ayşe ÖNCÜL, Istanbul University, Turkey

In the previous sihda session (in naples) we looked through the history of Roman Law education starting from the last period of the Ottoman era. In this study, we will see that; with this course of Roman Law, what kind of tradition of institutionalization was built in Istanbul University which has a strong influence on the law system in Turkey.

Note in tema di costruzione dell'identità nell'esperienza giuridica romana
Antonio PALMA, Università degli Studi di Napoli Federico II, Italy

Il ius civile inteso come ius proprium Romanorum non si comunica automaticamente ai neo cittadini.

Numerose sono infatti le testimonianze di una politica imperiale di distribuzione della cittadinanza caratterizzata da provvedimenti normativi non uniformi, strettamente condizionati dai contesti politici e localistici, segnalando un fenomeno di significativa dissociazione tra status civitatis e status familiae.
La cittadinanza romana assume, dunque, il significato di simbolo di ammissione ad una communitas garante di privilegi asimmetrici, sulla scorta anche del prevalere di ragioni ispirate ad un sistema assiomatico fondato sulla humanitas e sulla benignitas , assunte a fondamento di un rinnovato ius gentium, base della tradizione di un ordinamento complesso, di matrice potestativa, a metà, volendo utilizzare categorie concettuali moderne – e, ancor di più, postmoderne – tra natura interstatuale e sovrastatuale o universale.
Con Adriano, la patria potestas esce riplasmata dall'editto adrianeo attraverso la necessaria mediazione dell'accertata compatibilità con ragioni umanitarie, sì da poter essere considerata parte costitutiva di uno ius gentium oramai a valenza universal-giusnaturalistica; la ratio unificante del pluralismo essenziale della federazione di popoli costituenti l'Impero è nella tutela dei diritti umani.
Il freno alla tendenziale anarchia di un Imperium polietnico e poliarchico è così nella tutela degli homines, per alcuni aspetti contemplati come cives e sudditi, destinatari dei diritti politici a garanzia della loro integrità personale, anche nella forma di un'efficace ed effettiva tutela delle loro posizioni di interesse, per altri aspetti come individui, personae , homines destinatari di tutela priva di soggettività azionabile.

Marcien inventeur du concept de loi mémorielle ? Essai de lecture socio-historique de D. 1.8.6.5.

Arnaud PATURET, Ecole Normale Supérieure (ENS) Paris, France

Au Digeste D.1.8.6.5, le juriste Marcien affirme le caractère religieux du cénotaphe, et par là son appartenance à la catégorie des res religiosae comme toutes les sépultures alors même que le cénotaphe est un tombeau vide ne contenant pas de corps. Or, il apparaît que dans les responsa des jurisconsultes, la présence du corps est l'élément fondamental pour constituer une chose religieuse. Ce critère est admis par Ulpien dans sa définition du sepulchrum et également par Marcien lui-même au D.1.8.6.4. Pour étayer son propos dissident au D.1.8.6.5, l'auteur s'appuie sur un argument poétique, à savoir l'œuvre virgilienne sans plus de précisions. La lecture de certains passages de L'Enéide et notamment celui relatif au cénotaphe d'Hector fondé par son épouse Andromaque permet d'émettre une hypothèse pour comprendre le raisonnement de Marcien. Il faut dire d'emblée qu'il n'est pas expressément question d'un clivage entre le droit et la
religion, lequel existe parfois à certains endroits du Digeste, car il faut rappeler que le critère de la dépose du corps est aussi requis en plus des rites de fondation pontificaux pour forger un tombeau selon les procédures du paganisme d'après Cicéron De leg., 2, 22. A l'examen, l'opinion de Marcien ne s'appuie sur aucun argument juridique ou systémique du ius. Le droit s'ancre ici dans la vie sociale et dans l'épopée nationale retracée par l'Enéide. Le cénotaphe est porteur de la mémoire des grands hommes qui ont symboliquement contribué à ériger l'histoire romaine. La religiosité de celui-ci peut s'analyser comme une sanctuarisation de leur souvenir au sein du patrimoine culturel collectif et il n'est nul besoin d'un argument juridique tangible pour l'établir : la légitimité historique suffit. Une telle approche rappelle, dans un contexte certes très différent, l'émergence des lois mémorielles au sens large à l'époque contemporaine en Europe. Ces dernières entendent institutionnaliser certains faits passés et les inscrire de force au sein de la mémoire collective en les sanctuarisant, au mépris

parfois de certaines règles de droit établies. Ce n'est pas un hasard si ce type de démarche a émergé à Rome dans le cadre du droit funéraire car les tombeaux (et les cénotaphes) avaient un pouvoir structurant et symbolique très fort dans la mémoire collective. En effet, tout monument avait pour vocation de transmettre à la postérité la memoria du défunt aux termes d'un responsum de Florentin au D.11.7.42.

Caio Julius Caesar, Hugo Chávez y la Alta Estrategia Bolivariana,.

Enrique Luis PEDICONE, Universidad Nacional de Tucumán, Argentina

That is, theatre to present an ontology and, by presenting it, to make it happen-to make it actual. CLIFFORD GEERTZ, NEGARA: The Theatre State in the Nineteenth-Century Bal, 1980, p. 104.
Esto es, teatro para presentar una ontología y, mediante esta presentación, hacer que suceda y volverla real. (Traducción Federica Pedicone)

El propósito de este trabajo es demostrar que la educación estrategia legal aplicada en la Neo Venezuela utiliza arquetipos (principios estratégicos) extraídos de la historia de la antigua Roma. Específicamente Hugo Chávez Frías conduce, recrea y reproduce el proyecto político, legal e institucional de Cayo Julio Cesar al final del periodo republicano romano. Ambos líderes poseen similitudes dada la sincronicidad de encarnar el mismo arquetipo: el del líder o héroe populista. Entre estas similitudes encontramos la refundación de la comunidad con las reformas de las instituciones.
Palabras clave Arquetipo- Alta Estrategia- Homología- Populismo- Discurso del Deber- Discurso del Poder.
Todo arquetipo, en el sentido junguiano del término, contiene dentro de sí, fuerzas antitéticas y contradictorias, que se encuentran en permanente tensión. Los arquetipos suelen graficarse en el cuaterno de los alquimistas. Dentro de su propia dinámica puede haber hipóstasis o no.
Ahora bien, el arquetipo es un órgano psíquico que ha evolucionado en paralelo a nuestra estructura antropológica física. Posee la capacidad de incorporar valores y valoraciones, que luego se convierten en símbolos a lo largo de la historia. Estas valoraciones geopsíquicas se agregan en una cultura en su inconsciente colectivo a partir de acciones operadas en el medio. Una de las valoraciones, y luego símbolo que muchas culturas han incorporado es la del héroe populista. En la antigua Roma, Julio César es sin duda el representante más acabado.
Desde el punto de vista alto-estratégico, estos arquetipos de enorme carga simbólica se encuentran asociados a los principios estratégicos. Según Frischknecht los mismos son atemporales, aespaciales, universales, fundamentales, esenciales e inevitables.

Iurisperitus - vir bonus dicendi peritus? Zur Ausbildung der Rechtsgelehrten in den Rhetorenschulen

Marlene PEINHOPF, Karl-Franzens-Universität Graz, Austria

Recht und Rhetorik sind zwei Disziplinen, die einander beeinflussen und ergänzen. So wurden in den Rhetorenschulen des beginnenden Prinzipats die jungen Römer nicht nur in die ars oratoria eingeführt, sondern erwarben auch profunde juristische Kenntnisse, insbesondere auf dem Gebiet des Strafrechts. Beim Zuhören der Reden ihrer Lehrer und beim darauffolgenden selbstständigen Deklamieren differenzierten die Schüler Formen und Inhalte des Rechts weiter aus. Die Frage, inwieweit dieses Recht der Schulen mit dem tatsächlich geltenden übereinstimmt, wird nach wie vor kontroversiell diskutiert. Der Vortrag illustriert anhand Sen. contr. 1.4 (Fortis sine manibus) ein Beispiel.

Legal Education in Eleventh-Century Constantinople: Dead or Alive?
Daphne PENNA, University of Groningen, Netherlands

Around the middle of the 11th century a law school was established in Constantinople by emperor Constantine IX Monomachos. John Xiphilinos was appointed the "nomophylax", the head of this school. The information we have about this school mainly derives from the Novel by which the school was founded. This lengthy Novel is attributed to the intellectual John Mauropous. What is the information that we have in this Novel about the law school of Constantinople? Are there more traces of Byzantine legal education and teaching in other legal sources of this period? This paper will examine these questions.

Laudes imperiales in Byzantine Dalmatia
Marko PETRAK, University of Zagreb, Croatia

In mediaeval times, laudes to the ruler (laudes regiae, laudes imperiales) were one of the most important expressions of the supremitas of one ruler over a certain territory. By their very nature, laudes were liturgical reformulations of ancient Roman imperial acclamations. They were chanted in honor of a ruler as an integral part of the Holy Liturgy on great feast days of the Church (Christmas, Easter, Pentecost and the feast day of the local patron saint). On the eastern Adriatic coast, the tradition of the chanting of laudes as liturgical acclamations to the ruler was observed only in the eight towns which once formed the Byzantine Dalmatia – Kotor (Cattaro), Dubrovnik (Ragusa), Split (Spalato), Trogir (Traù), Zadar (Zara), Rab (Arbe), Krk (Veglia) and Osor (Ossero) – in some places remaining even until the 20th century.
Starting from the oldest preserved historical sources (11th -12 th c.) and treatises on Dalmatian and Croatian history (e. g. Johannes Lucius, De regno Dalmatiae et Croatiae, Amstelodami, 1666), the purpose of this paper is to analyse the nature, form and content of the oldest Dalmatian laudes imperiales, as well as their “strongly legal charachter” (E. H. Kantorowicz). They presented the unique preserved example of laudes chanted in honor of the Byzantine Emperor within the realm of the Latin liturgical tradition.
Furthermore, in the context of the general theme of this year's SIHDA (“legal education”), it would be particularly interesting to point out some educational aspects of Dalmatian laudes imperiales. In the mediaeval context, they undoubtedly also served as a source of knowledge of the most important public law information for common people related to questions such as: what were the highest state and church functions of that time, who were the current incumbents of these functions and what kind of hierarchy existed among them.

L’enseignement du droit romain au XXe siècle en Hongrie
Attila PÓKECZ KOVÁCS, Université de Pécs, Hungary

En Hongrie le droit romain avait sans cesse l’objet de l’enseignement juridique au cour de XXe siècle. Avant la Première Guerre mondiale l’enseignement du droit romain se divisait en deux parties: les cours des Institutes (histoire et le résumé de droit romain), et les cours des pandectes (la présentation des institutions du droit privé romain). Les professeurs de droit romain les plus connus de cette époque étaient: Tamás Vécsey (1839-1912), Lajos Farkas (1842-1921), Gusztáv Szászy-Scwarz (1858-1920), Mór Kiss (1857-1945) et Károly Helle (1870-1920). Entre les deux guerres la dualité des cours n’a pas survécu, on l’enseignait plus que les Institutes, qui a été une matière dogmatique avec une forte influence historique. Les

grands maîtres hongrois de cette période étaient: Zoltán Pázmány (1869-1948), Géza Marton (1880-1957), Kálmán Személyi (1884-1946), et András Bertalan Schwarz (1886-1953), qui est devenu enseignant á Istanbul aussi. Après
la Deuxième Guerre mondiale l'enseignement du droit romain a réussit de garder son rôle propédeutique pendant l'époque socialiste, et après le changement politique des années 90 aussi. Les spécialistes hongrois les plus réputés du droit romain après la Deuxième Guerre mondiale étaient: Károly Visky (1908-1984), Róbert Brósz (1915-1994), Elemér Pólay (1915-1988), Ferenc Benedek (1926-2007), János Zlinszky (1928-2015) et György Diósdi (1934-1973).

Die Preisbestimmung durch Dritte bei der emptio venditio
Stefan POTSCHKA, University of Vienna, Austria

Die Frage, ob ein Kaufvertrag nach römischem Recht wirksam ist, wenn eine dritte Person den Kaufpreis bestimmen soll, war Gegenstand einer Kontroverse, von der uns Gaius in seinen Institutionen berichtet. Erst Justinian führte das Problem in einer seiner berühmten 50 decisiones einer Lösung zu. Ziel des Vortrags ist es, die relevanten Quellen unter Berücksichtigung der neuesten Literatur zum Thema exegetisch darzustellen. Dabei werden auch Parallelen zu anderen Vertragstypen, etwa der societas oder der locatio conductio gezogen.

The Importance of Teaching Roman Law in Africa: A South African and Kenyan Perspective
Francisca PRETORIUS & Jennifer GITAHI, Strathmore Law School, Kenya

With a colourful history of European settlers as well as British colonisation, South Africa has a mixed legal system based on Roman-Dutch law, English law and some traditional African law. In 1996, as a young democracy, South Africa adopted a new constitution, the supreme law of the Republic. Roman law is currently part of the LLB curriculum at South African universities, but the relevance and importance of teaching the subject has recently been debated.
Formerly a British colony, Kenya's legal system was moulded by the English legal system. Logically, Roman law does not form part of the curriculum of legal studies in most of the institutions that train upcoming lawyers in Kenya. In 2010, Kenya also adopted a new constitution, fashioned in part on the South African Constitution.
We contend that Roman law should form an essential part of the curriculum of legal studies in Kenya and South Africa for various reasons. In South Africa, knowledge of Roman law is an obvious requirement to understand the basic legal norms in force and to provide a historical context for its legal system. Kenya's new constitution demands the adoption of numerous new laws, thereby lessening the importance of common law, and introduces certain civil law concepts. A basic knowledge of Roman law will aid Kenyan legal scholars' understanding, interpretation and ultimately implementation of the constitution. Furthermore, the constitutional dispensation in both countries not only requires a change in substantive law, but also in approach – from a technical, black-letter approach of finding justice in authority (restrictive jurisprudence) to a normative approach of finding justice in the values of their respective constitutions, while taking into account the wider context in which the law operates (critical jurisprudence). We contend that Roman law can foster a critical understanding of justice – this is embodied in the introduction of Justinian's Institutes where Ulpian states that

learning the law requires knowledge of matters both divine and human (iurisprudentia est divinarum atque humanarum rerum notitia) – and that Roman law provides an excellent historical example of law evolving with (as opposed to in isolation of) the political, economic and social circumstances of the time. Lastly, we contend that Roman law, the original law of nations and forerunner of public international law, is essential in the current African context to provide legal scholars a foundational knowledge of core international legal principles.
The use of a comparative approach between Kenya and South Africa is hoped to aid in making the case for the thesis statement. Ultimately, we hope to succeed in stimulating a robust discussion on the need to include Roman law as one of the core courses in legal training in Kenya and for the renewed appreciation and importance of teaching Roman law in South Africa, and, ultimately, the rest of Africa. CO-AUTHOR: DR JENNIFER GITAHI

Justinian's welcome to the Constantinople Law School
David PUGSLEY, Exeter University, United Kingdom

This paper re-examines the accounts of the origins of Justinian's Institutes in the primary sources in a new translation, and asks a number of related questions. Who was in charge, Tribonian or Justinian? Why did the Institutes start so late? What were the antiquae fabulae? And what happened to them?

Iura sepulcrorum nella Moesia Inferior: la realizzazione di un fenomeno romano in un ambito greco-trace.
Lyuba RADULOVA, Université de Sofia "St. Clément d'Ochride", Bulgaria

La relazione si propone di affrontare il problema generale della conoscenza del diritto romano nella provincia di Moesia Inferior attraverso l'esame della realizzazione locale di un fenomeno tipicamente romano: gli iura sepulcrorum. Concentrandosi esclusivamente sulle fonti epigrafiche locali, il lavoro inentde porsi diversi problemi, tra loro interconnessi.

Verrà indagata in primo luogo la questione della conoscenza che gli abitanti della Moesia Inferior hanno del diritto sepolcrale romano. L'analisi partirà dall'esame quantitativo dei documenti attestanti problemi gli iura sepulcrorum, messi al confronto con la totalità delle iscrizioni sepolcrali, allo scopo di studiare la diffusione dell'interesse per tale fenomeno romano in un contesto prevalentemente greco. Si passerà poi all'analisi contenutistica dei documenti, volta a individuare le realizzazioni pratiche dei diversi aspetti del diritto sepolcrale romano, soffermandosi sul problema dell'ereditabilità della tomba, della sepoltura illecita e della violazione del sepolcro. Attraverso un esame linguistico, inoltre, si cercherà di stabilire se, per quanto riguarda gli iura sepulcrorum, gli abitanti della Moesia Inferior tendono a riprodurre in modo passivo modelli fissi importati da Roma, o invece hanno una certa libertà interpretativa, indicante una conoscenza del tema più approfondita.
In secondo luogo, l'attenzione verrà concentrata sulla dimensione sociale della conoscenza del diritto romano. Si cercherà un legame tra l'interesse per gli iura sepulcrorum e il grado di romanizzazione dei personaggi coinvolti, chiedendosi se l'inclusione di formule del diritto sepolcrale negli epitaffi sia da concepire solo come una volontà di regolare l'uso della tomba, o funga anche da uno status symbol, volto a denotare il committente come una persona istruita, colta e partecipe alla civiltà romana dominante.

Teaching Roman law through the Case Method at Salzburg
Johannes Michael RAINER, University of Salzburg, Austria

School study as the drive for legal abstraction
Marton RIBARY, University of Manchester, United Kingdom

Scholars in recent times have characterised the classical period of Rabbinic and Roman law (approx. the first 250 years of the Common Era in both cultures) by a high level of conceptualisation and a low level of systematisation (Moscovitz 2002 and Watson 1995). It is only in the post-classical period that the undercurrent ambition of creating a fully coherent legal system comes to the surface and takes centre stage. In the 6th century CE, the Talmud Yerushalmi (ca. mid-6th century CE) and Justinian's Institutes and Digest (533 CE) set out to collect and organise centuries of legal knowledge in a systematic framework, arguably as a reaction to the increasing specialisation and isolation of legal subsystems. The paper argues that the terminological awareness, conceptual sensitivity and systematic presentation of the Yerushalmi's and Justinian's legal enterprises were encouraged by the educational setting of 6th century CE Rabbinic and Roman law. It is proposed that the intensive study of texts in the Roman law schools of Beirut and Constantinople and the Rabbinic study houses of Palestine and Babylonia was the driving force behind the conceptual development. The paper reconstructs Justinian's reformed legal curriculum according to his imperial pronouncements, and provides an overview of the indirect evidence for Rabbinic and Roman school study in post-classical times. By underlining the rhetorical and didactic goals of the elementary study of law, the paper suggests that the institutionalised study of law generated the need for an ideology of a coherent legal system which could be communicated effectively to the novice students. The suggested model could also account for some of the apparent inconsistencies which have perplexed scholars of Rabbinic and Roman law. If the Yerushalmi, the Institutes and the Digest are read as dynamic study materials and not simply as static binding law in which all elements (should) have the same force, then we can eliminate the inconsistency between passages which are directed at students at different levels of their study. According to the suggested dynamic scenario, students gradually immersed themselves in the study of specialised subsystems and acquired better understanding of the legal vocabulary and the particular legal institutions. By the end of their training, the initial ideology of a fully coherent legal system became almost irrelevant. Advanced students could realise that the ideology needed to be treated with a pinch of salt: it provided the didactic starting point for the novice and the idealised end-point for the master of law, but it should not hinder the increasingly specialised and internally coherent operation of the legal subsystems.

Sur l'actio in rem verso, en fait, la clause de procédure in rem verso Révision de la formule de reconstruction.
Encarnació RICART-MARTÍ, Université Rovira i Virgili, Spain

La formule, accompagne seulement l'actio de peculio ou peut accompagner d'autres actiones adiecticiae qualitatis?
Une hypothèse de fonctionnement indépendant de l'actio in rem verso
Diverses situations du locupletatio
Un texte controversé: D.15,3,7,2 Ulpian 28 edictum

Integration and Common Ground: Study of Latin and Roman Law Sources in University of Tartu

Merike RISTIKIVI, University of Tartu, Estonia

The presentation will focus on the changes in curriculum and principles of teaching the language of Roman Law – Latin, and Sources of Roman Law in recent decades in University of Tartu.

In acquisition of knowledge of Roman law and Latin technical terminology, a central factor is that a basic course on Roman private law is a compulsory subject for Estonian law students. Closely linked to that course are the special juridical Latin classes. A course of Latin legal terminology for once semester is also compulsory for all first-year students of law. In-depth knowledge of Roman law sources and terminology can be acquired by attending an elective course Fontes iuris Romani, meant for students who have passed the legal terminology course, lasting for one semester and complementing the concurrent lectures on the Basics of Roman Private Law.

The efficiency of learning Roman Law and Latin terminology lies in the integration of these subjects and emphasising their common ground – the form and aspects of meaning of the terms are discussed in Latin classes, aimed at ensuring their grammatically correct usage later in academic research or in practice, while in the Basics of Roman Private Law and Fontes iuris Romani classes, the content is discussed. Consequently, the extensive material on Roman law becomes more easily understood by the students and the terminology memorised more quickly and effectively.

Les émeutes de 115 à Alexandrie: une affaire liée à la Lex Iulia de Vi Publica

Chris RODRIGUEZ, Paris-I Panthéon-Sorbonne, France

En raison de son état de conservation parfois désespéré, le papyrus CPJ 158 (Acta Pauli et Antonini) a longtemps dérouté les chercheurs. Cette composante des Acta Alexandrinorum met aux prises Juifs et Alexandrins face à un empereur que l'on doit identifier comme Trajan. La condamnation au bûcher de l'un des deux protagonistes (Antoninos) et la libération du second (Paulos) a notamment suscité bon nombre d'interrogations. Or, en étudiant minutieusement les faits, il semble possible de faire un rapprochement avec les chefs d'accusation sanctionnés par la Lex Iulia de Vi Publica, et notamment les dispositions rapportées dans un fragment des Sentences de Paul. A travers ce prisme, Antoninos devient alors un traître à l'Empire, et sa condamnation au bûcher devient légitime et en conformité avec le droit.

Literary and legal sources in the evolution of D. 50,17,54

Javier RODRIGUEZ DIEZ, Erasmus University Rotterdam, Netherlands

This paper deals with the intellectual background of jurists from Rome to the Middle Ages in order to determine the influence which the literary sources had on the interpretation of the text of D. 50,17,54. The last title of the Digest (De diversis regulis iuris antiqui) contains in D. 50,17,54 (Ulp., 46 ed.) the well-known rule “Nemo plus iuris ad alium transferre potest, quam ipse haberet”. This text has a seemingly self-evident nature which has given place to conflicting interpretations regarding its validity throughout the ages. Up to this day, however, little attention has been paid to the literary sources reproducing this idea, which can already be found in use in the Symposium (196e) of Plato. Aristotle would extensively discuss the

validity of this idea in argumentation in his Sophistical Refutations (178a29 – 179a24), considering it to be a valid general opinion (endoxon) which can however be used to build fallacious reasoning by confusing different 'categories'.
For example, someone could induce his opponent to error by asking him whether a man could give what he does not have. When receiving a negative answer, the interrogator would refute him by showing that a person who had ten dice can give one die, even when he had ten and not only one. According to Aristotle, the original question therefore induces to confusion by confusing the substance of the object discussed with the position of the different objects it in relation to one another. Cicero would in fact take advantage of the ambiguity of this argument (Pro Flacco 56,4), which would make its way into Roman rhetoric, being highly regarded by Quintilian (Institutio Oratoria 5,10,74). The idea behind this argument would further become a widespread commonplace, being used in different contexts and with different significance by St. Paul, Seneca, Pliny the Elder and Epictetus. Roman jurists would also make an extended use of the idea that "no one can give what one does not have", which is often applied in an argumentative way to support a particular decision, but also as a mere reference point which can be contradicted (cfr. D. 7,1,63; 41,1,46; 41,2,21pr). Roman jurists appear therefore to be unaware or to omit the guidelines given by Aristotle on the application of this idea.
The nemo plus argument would become a fixed maxim in D. 50,17,54, but its significance would continue to evolve in literary sources. Christian authors made extensive use of it to discuss the validity of sacraments, reaching however contradictory solutions: while most of them considered that an heretic could not validly confer a sacrament – since he would be giving what he does not have – others thought that this would be no obstacle, since God himself confers the sacrament. This dispute has the interesting feature that both sides defend the validity of the argument, being reluctant to contradict it. Apart from its theological application, the argument was well known in the field of dialectics due to an early Latin translation of Aristotle's Sophistical Refutations by Boetius. This intellectual context appears to influence jurists from the 14th century onwards, when legists and canonists offer sophisticated philosophical explanations to assert that the nemo plus rule had no exceptions, an approach in which legal texts only play a secondary role. Such approach would eventually lead to an interpretation which would free the rule completely from exceptions by Philipus Decius (1454-1535), granting it a universal validity which would be upheld by most authors until the 19th century and would even influence modern Roman law scholarship.

The synchoresis in funerary inscriptions of Roman Tlos
Astrid RUPP, Austrian Academy of Sciences, Austria

Funerary inscriptions with prohibitions and sanctions are a common phenomenon in Roman Asia Minor, particularly in the South (Lycia, Pamphylia, Pisidia). In the polis Tlos in western Lycia two-thirds of all the funerary inscriptions contain provisions in order to protect the graves. While in some poleis the funerary inscriptions are quite standardized concerning the structure of the text as well as the terminology (like Termessos, Olympos, Aphrodisias), the Tloan inscriptions are rather differentiated. But even though the inscriptions do not present any uniformity, the synchoresis is attested in numerous cases. This legal deed is a special kind of concession, in which the beneficiary is granted either the whole grave or parts of it or particular rights regarding the grave. My paper will examine the characteristics of this legal transaction in Roman Tlos: How was the synchoresis granted and to whom? What exactly could the synchoresis imply and what are the aims of its regulations?

Since the synchoresis is very frequent in funerary texts from Tlos but can also be found in various other cities of Asia Minor, epigraphic material from these poleis (e.g. Aphrodisias) will be presented as a point of reference. Thus differences but also common features of the synchoresis will be pointed out. In addition to the presentation of the synchoresis in Roman Tlos my paper will also demonstrate the value of a detailed study of funerary texts for the history of ancient Greek and Roman law.

D.10.4.9.8 (Ulpianus 24 ad ed.)
Takeshi SASAKI, Universite di Kyoto, Japan

Questo paragrafo di Ulpiano, nel quale contengono i termini importanti, p.e. «exhibetur», «aestimandae», «utilitatem», sono poco esaminato direttamente, probabilmente perché ci sono le parole partilocale «minoris erit» (eccetto Marrone 1958; Medicus 1962; Tafaro 1980). Nella conferenza vorrei collocarlo nel contesto complessivo del passo ulpianeo e nel schema palingenetica, ma anche spiegare l'intenzione di Nerazio. Per questo motivo, nonostante l'estimazione potrebbe essere fatta mediante «jusjurandum in litem», si deve indicare la relazione concreta fra il prezzo («quanti ea res est / erit») ed «interesse» nel quadro esegetico di diritto romano antico.

Iudices pedanei e processo criminale. I casi del falso documentale e della falsa testimonianza
Silvia SCHIAVO, Università di Ferrara, Italy

Le più recenti ricerche in materia di iudices pedanei, i quali non godevano di autonoma competenza giudiziaria ma potevano essere delegati per la conduzione di interi processi o di parte di essi, hanno evidenziato la scarsità di informazioni a proposito del loro coinvolgimento anche in ambito penale. A tal proposito la dottrina appare divisa: mentre alcuni studiosi sostengono la possibilità di delega nei processi criminali, per altri si tratta di una questione ancora assolutamente non chiara. Nella comunicazione si proporrà l'esegesi di due testi, C. 9,22,11, rescritto di Diocleziano e Massimiano in tema di produzione in giudizio di un falso documento e C. 4,20,15, costituzione successiva al 486 e conservata solo nella redazione contenuta nei Basilici, dedicata a numerosi profili relativi alla prova testimoniale, tra cui il problema della falsa testimonianza (qui vengono richiamati i diaitetai di Costantinopoli).
Da queste fonti emerge l'idea che tali giudici delegati potevano condurre processi criminali incidentali, sorti a partire da una lis pecuniaria già in corso e a loro affidata.

Fructus intelluguntur deductis impensis[*]
Carolina SCHIELE, Pontificia Universidad Católica de Chile, Chile

Expenses categories are mostly within the rhetorical language than the juridical one. This is a non enough researched field, especially about the expenses that jurists applied about the production of fruits, not just to the thing it self. This paper tries to go forward about the juridical category of expenses for fruits production in Roman law.

[*] Conférence en italien / This paper will be presented in Italian

Rügepraktiken in Rom"/ "Shaming Sanctions in Rome"*
Anna Margarete SEELENTAG, Goethe-Universität Frankfurt, Germany

Konflikte konnten in Rom nicht allein vor Gericht bewältigt werden. Vielmehr standen dazu eine Reihe von außerrechtlichen und außergerichtlichen sozialen Praktiken zur Verfügung, mittels derer der Missetäter oder Gegner sanktioniert und zu einer Verhaltenskorrektur bewegt werden konnte. Der Vortrag geht der Frage nach, in welchen Erscheinungsformen diese Rügepraktiken auftraten, auf welche Weise sie ihre Wirkung erzielten und wie sie sich zu rechtlichen Formen der Konfliktbewältigung verhielten.

A short outline of legal education during the Roman history and some contemporary dilemmas
Magdolna SIC (SZUCS), University of Novi Sad, Serbia

The methods and tools of legal education and the ability to use the acquired knowledge in ancient Rome was not consciously chosen, but was instead dictated by overall social and political circumstances. Thus, following these social changes throughout the Roman history we can find four basic models of legal education: 1) pontifical jurisprudence of archaic period; 2) secularization and popularization of law in the pre-classical period; 3) the emergence of private law schools in the classical period; 4) state control and regulation of legal education in the post-classical period.

Contemporary legal education is still dictated by the circumstances and needs of the society, going beyond the particular country and taking into account the wider European and global, world-wide levels. Therefore, even in former socialist countries like Serbia, under the conditions of (re)established market economy and the so-called Bologna programme, legal education is seen as a commodity that should equip students with practical knowledge that they are later, after graduation, able to successfully sell on the labour market. In these circumstances, teaching Roman law was subject to another test of competency. The test was successfully passed, and Roman law remained a compulsory course for first year undergraduate students. However, the key question remains: what to provide for students from the wide heritage of Roman law and with which methods to present these so that teaching satisfies the needs of our modern society?

Teaching Roman Law Through the Case Method at University of Tartu (Estonia)
Hesi SIIMETS-GROSS, University of Tartu, Estonia

In teaching Roman law as an obligatory subject during 13 years I have used different methods to give students also possibility to participate actively in the seminars. I will give a short overview of those methods and concentrate then to the Case Method that I am currently using for all main field of private law: the law of persons, family, property, obligations, delicts and successions.
I will deal also other aspects of the courses such as the exams, writing assignments. I am using different Casebooks in constructing cases: 1) B.W. Frier, A Casebook on the Roman Law of Delict (1989); 2) B.W. Frier and T.A.J. McGinn, A Casebook on Roman Family Law (2004); 3) H. Hausmaninger and R. Gamauf (trans. G. Sheets), A Casebook on Roman

* Conférence en anglais / This paper will be presented in English

Property Law (2012), 4) N. Benke and F. Meissel. Übungsbuch Römisches Sachenrecht. (2008); 4) N. Benke and F. Meissel. Übungsbuch Römisches Schuldrecht. (2006)

Pandectism and the Teaching of Law
Boudewijn SIRKS, University of Oxford, United Kingdom

Pandectism is seen nowadays as a sterile system, based on concepts and reduced to classical Roman law. Originally this was not the case. In the early 19th century there was a need felt to adapt jurisprudence to the new scientific criteria. To this came Savigny's requirements, set out in his 'Vom Beruf', which led to the Historical School and Padectism. But next to this he has set out his views on the didactics of law, in which Roman law had a paramount position. Its purported use was to teach students the way to create a re-create the law, thus making law into a living phenomenon. Both goals met initially great success, but then it changed. What happened to this didactic ideal?

Diritto romano all´Universita di Praga
Michal SKŘEJPEK, Charles University Prague, Czech Republic

Anche se l´Università fu fondata a Praga nel 1438, il diritto romano non era qui inizialmente in curricula. L´inizio del suo insegnamento regolare fu legato alla nascita dell´Università Carlo-Ferdinandea nel 1654. Poi, il diritto romano era insegnato, così come nelle altre università della monarchia asburgica, e questo anche dopo la costituzione dello Stato cecoslovacco indipendente nel 1918. Dopo un'interruzione di insegnamento durante l'occupazione tedesca, il diritto romano ritornò per un breve periodo nel 1945. Il colpo di Stato comunista significò la fine dell´insegnamento del diritto romano come materia separata alla Facoltà di Giurisprudenza. Parzialmente fu restituito solo nel 1981 e dopo l´anno 1989 è di nuovo insegnato come materia obbligatoria.

Juridical panegyrics and forming of legal rhetoric in the Czech lands[*]
Petra SKŘEJPKOVÁ, Charles University Prague, Czech Republic

Teaching of Roman law formed an integral part of legal education at the Faculty of Law of the Charles University, founded by Emperor Charles IV. in 1348 in Prague. One of the patrons of the university and lawyers as a whole was St. Ivo of Kermartin (Yves Hélory). Panegyrics in honor of the patron spread through Europe during the 16 th century. In the spirit of ancient traditions speeches in his honor were also held at the Prague Faculty of Law mainly in the 17th and 18th centuries. By making and giving these speeches the young students of law improved their argumentation and polished their rhetorical skills. The speech from the year 1716, presented by the student of law J. A. Tschamerhell is used as an example of such a panegyric. The importance of the patron is documented by his Baroque sculpture created in 1708 by M. B. Braun on order of the Faculty of Law that stands to this day on the Charles Bridge in Prague.

[*] Conférence en allemand / This paper will be presented in German

A Brief Overview of Roman Sumptuary Laws

İpek Sevda SÖĞÜT, Kadir Has University, Turkey

The content of this paper provides interesting history, facts and information about Roman Sumptuary Laws. The word sumptuary comes from the Latin word which means expenditure. Roman Sumptuary Laws were imposed by the rulers of Ancient Rome to curb the expenditure of the people. Such laws applied to various items such as entertainment, food, beverages, jewellery and clothing. . In the states of antiquity it was considered the duty of government to put a check upon extravagance in the private expenses of persons, and among the Romans in particular we find traces of this in the laws attributed to the reges and in the Twelve Tables. These Laws were used to control behaviour and ensure that a specific class structure was maintained in the Roman Republic and the Roman Empire.

The censors, to whom was entrusted the disciplina or cura morum, punished by the nota censoria, all persons guilty of what was then regarded as a luxurious mode of living. But as the love of luxury greatly increased with the foreign conquests of the republic and the growing wealth of the nations, various Leges Sumptuariae were passed at different times with the object of restraining it: In 213BC a Roman Sumptuary Law was enacted that stated that, no woman should have above half an ounce of gold, nor wear a dress of different colours, nor ride in a carriage in the city or in any town, or within a mile of it, unless on account of public sacrifices. This law was repealed twenty years afterwards, whence we frequently find the Lex Orchia mentioned as the first Lex Sumptuaria.

In Ancient Rome, it is contended, the governing order's preferential access to the channels of public discussion was of decisive importance. It facilitated the expression of an ideological perspective which served to promote widespread acceptance of its legislative needs, as is exemplified by the passage of sumptuary controls so necessary for the well-being of the senatorial aristocracy in the second century B.C. The main discussion is prefaced by a typology of sumptuary laws, designed to account for the existence of expenditure restraint in widely differing political systems. In this paper, also, will be focused on how the Roman authorities attempted to compel obedience to these measures.

Giambattista Vico e l'insegnamento del diritto romano

Laura SOLIDORO, Università di Salerno, Italy

Vico, per il suo puntuale richiamo all'essenzialità del 'fatto', va considerato l'iniziatore dello 'studio della realtà' (attualmente evolutosi nella logica aletica) dal punto di vista della sua genesi e del suo divenire, cioè della sua storia. Su questo particolare approccio alla ricostruzione della civiltà umana e dei suoi ordinamenti giuridici ha influito in modo determinante l'intuizione della 'storicità del diritto' (in netto contrasto con l'allora imperante pragmatismo del mos Italicus), i cui canoni erano appena stati posti, nell'area napoletana, da Francesco D'Andrea. Il Filosofo napoletano rifiutò sin dalla sua giovinezza uno studio esclusivamente pratico del diritto, appassionandosi piuttosto alla storia ed alla teoria degli ordinamenti antichi e specie ai valori ed ai principi che li sorreggevano. Aequitas, ius naturae, ius gentium divennero perciò elementi fondanti della formazione vichiana, costantemente in bilico tra scientismo e storicismo. La passione per i diritti antichi, e segnatamente per il diritto romano, si trova alla base della sua opera 'Principi di una scienza nuova intorno alla comune natura delle Nazioni', in cui Vico fonda la scienza moderna della legislazione comparata, indicando nella comparazione non un fine, bensì un metodo inteso a individuare ciò che accomuna le varie formazioni socio-politiche e 'le virtù' (i valori) sui quali i loro ordinamenti

giuridici si reggono. Attraverso le minuziose ricerche incentrate sulle esperienze giuridiche romane, il Filosofo napoletano ha ben messo in evidenza come siano state la vitalità della scientia iuris e della iurisdictio pretoria, poi organizzate e sistemate nella legislazione imperiale, ad assicurare una continua rigenerazione degli antichi nuclei dello ius e quindi ad imprimere alle tecniche prudenziali e alla compilazione giustinianea i caratteri di perennità e universalità.

Lyceum-beginnings of the higher education in Serbia
Emilija STANKOVIĆ, University of Kragujevac, Serbia

Lyceum was established in 1838, in the Capital of Serbia – Kragujevac. At the time of Lyceum's establishing, the studies lasted two years and there were two departments: philosophy and law. This led to establishing the Faculty of Law. In 1850 Faculty of Law was extended for one more year and since then studying of law lasted three years, the same as at the other European faculties. Establishing the Faculty of Law was of a great importance for Serbia, because Serbia started to educate youth that was necessary for all the complex jobs in the state administration and judiciary. Since the codification of the Civil Law in 1844 was done, the Serbian Civil Code, as well as the other laws passed by the decision of Ministry of Education, became the subject of studying at the law studies. It is important to emphasize that Serbia was the fourth country in Europe which had codification of the civil law. France, Austria and Holland did that before Serbia. Serbian Civil Code led Serbia intoEurope and the German legislative circle, because its foundation was the Austrian Civil Code.

Le controversie dei Sabiniani e dei Proculiani nelle Istituzioni di Gaio
Kamila STLOUKALOVÁ, Charles University Prague, Czechia

I punti controversi di cui litigavano le due scuole di diritto concorrenti nell'epoca di principato – i Sabiniani ed i Proculiani – si possono trovare sopratutto nelle Istituzioni del giurista Gaio, che lui stesso aderiva ai Sabiniani, il che risulta dal modo in quello chiama i rappresentanti dell'altra scuola – diversae scholae auctores. Il Pomponio nel suo scritto Enchiridion (D. 1.2.2, particolarmente D. 1.2.2.43) tratta dell'origine e dello sviluppo delle due scuole succitate, ed anche di singoli insegnanti e succesori dei fondatori dei pensieri di Proculiani, Antistius Labeo, e di Sabiniani, Ateius Capito.

Il Gaio riporta in vari punti delle sue Istituzioni le opinioni diverse di queste scuole di diritto. La problematica così menzionata concerne le questioni seguenti: l'inizio della pubertà (Gai 1.196), se si tratta di res mancipi oppure di res nec mancipi nel caso degli animali, che possono essere addomesticati (Gai 2.15), la possibilità di in iure cessio hereditatem dagli eredi necessari (Gai 2.37), l'acquisto della proprietà a titolo di specificazione (Gai 2.79), l'invalidità del testamento nel caso che nei confronti del figlio maschio non sia proceduto né all'exheredatio (nominatim) né all'heredis institutio (Gai 2.123), il momento dell'acquisto del legato dal beneficiario nel caso di legatum per vindicationem (Gai 2.195), a chi appartiene quello che è lasciato in legatum per vindicationem sotto condizione (Gai 2.200), se il legatum per praeceptionem è soltanto una forma particolare di legatum per vindicationem e se così legatum per praeceptionem conseguiva i suoi effetti anche nei confronti di un estraneo (Gai 2.221), la designazione del tutore prima dell'istituzione dell'erede (Gai 2.231), la validità del legatum che si lascia alla persona sotto la potestà di quello che è istituito come l'erede (Gai 2. 244), ancora una volta gli effetti giuridici del in iure cessio dell'eredità fatto dal heres suus

autem et necessarius (Gai 3.87), la validità del legatum lasciato sotto la condizione impossibile (Gai 3.98), la validità di stipulatio a vantaggio di un terzo (Gai 3. 103), la distinzione tra il emptio-venditio e permutatio (Gai 3.141), l'acquisto mediante lo schiavo in comproprietà (Gai 3.167a), se la prestazione diversa da quella dovuta ha l'effetto dell'estinzione ipso iure dell'obbligazione (Gai 3.168), l'importanza di costituzione oppure scioglimento dello sponsor per la novazione (Gai 3.178), la questione dell'estinzione oppure solo dell'inutilizzabilità dell'azione per il danno causato dallo schiavo o dal figlio nel caso in cui essi sarano consegnati sotto la potestà del dannegiato (Gai 4.78) e del numero di mancipatio fatto in caso di noxae deditio (Gai 4.79). I Proculiani avevano l'opinione che ci devono essere tre mancipazioni, perché i figli si dispensi dalla potestà del suo padre, quindi i Sabiniani pensavano, che basta l'unica mancipatio e le provvisioni delle Dodici Tavole sulle tre mancipationes sono relativi soltanto alla mancipatione volonaria. Quest'ultime controversie relative alla responsabilità nossale sarano affrontate più dettagliamente nel contributo di convegno.

Amicus Paulus sed magis amicus est Windscheid. About Stanisław Wróblewski's modus docendi of Roman Law

Paulina ŚWIĘCICKA, Jagiellonian University, Poland

The aim of the presentation is to explain the method of teaching of Roman law proposed by one of the most distinguished Polish romanists and civilists of the 20th century – Stanisław Wróblewski (1868-1938), named "Polish Papinianus", a disciple of such scholars as cracovian professor Fryderyk Zoll Senior, and German romanists, such as Alfred L.L. Pernice, Werner Eck, and Hugo Goldschmidt.

Stanisław Wróblewski, although his entire scientific life was dedicated to Roman law, included almost every aspect of modern private law in his research. Perhaps such a wide scale of scientific interests determined his views on the role and functions of Roman law in lawyer's curriculum. His position on this matter he described in his professorship study: "The Programme of Lectures", and he remained faithful to it, often refreshing his idea in various works, such as still fundamental to the research in positive law, his monograph on possession or his article entitled "About the Lectures on Roman Law", which was a polemic with the views of his scientific master Fryderyk Zoll. According to Zoll, the classical, pure and unspoiled Roman law should form the basis of lectures on Roman law as a particular legal order, and Roman law should be presented in its historical development from the beginnings of the Roman State to the times of Justinian. In other words, classical Roman law as a perfect set of legal rules should be a model for modern law, hence students, as a part of lectures, should consult properly its sources. A contrario, Wróblewski explicitly claimed that "to him Windscheid was dearer than Paulus", and that he believed that the emphasis should be put on the so-called "today's Roman law". He emphasised that some legal concepts had been directly taken from the sources of Roman law, but, all the same, they stopped, long ago, to belong exclusively to this particular legal order, because they permeated new legal orders. In his opinion such legal concepts belong, therefore, to a common set of rules of private law of civilised societies, are justly used in lectures on Austrian law, French law and other laws, and are not untypical of these legal orders. At the same time, Wróblewski, although he dedicated himself to the studies on legal past, was against pure historical lectures on law, basing on the assumption that the purpose of legal training was to prepare a student to work as a lawyer. The polemic about the role of Roman law in the university curriculum led by professors at the

Jagiellonian University in Kraków fits squarely into the Western discussion of modern times about the importance of Roman law and its teaching in the post-codification reality.

The corruption and the legal language in the late Roman Empire. Review of the imperial constitutions contained in the Theodosian Code

Adam ŚWIĘTOŃ, University of Warmia and Mazury, Poland

The reading of the imperial laws promulgated in the 4th and the 5th centuries indicate that the vast corruption of the public sphere was the serious problem of the Roman administration. Its various forms like venal patronage of the powerful person (suffragium), bribes (sportulae), superexactiones and many others, caused anxiety and sometimes the anger of the Roman authorities. The imperial constitutions were not only the instrument of introducing the law but also established the channel of political communication between the palace and the society. The strength of the announcement depended on the lingual abilities of the qaestores sacri palatii. The style of the legal language shows the attitude of the emperors to the problem of corruption. Author examines the expressions that appear in the anti-corruption legislation - sometimes they are quite moderate, sometimes crude, and sometimes aggressive.

Interpretation as a Real Source of Law? - Roman Rules of Interpretation in the Practice of the Supreme Court of the Republic of Poland and the Problem of Teaching Roman Law

Bartosz SZOLC-NARTOWSKI, University of Gdańsk, Poland

The aim of the paper is to ask about the use of legal experience as a teaching method to the learning process.
Disputes arising in the modern doctrine and practice of the Supreme Court of Poland around the understanding of the favor testamenti principle and the rule venire contra factum priopium nemini licet can illustrate a role of historical argument as a supportive argument in the process of understanding the contemporary law.

La percezione della natura, dell'utilità e della ragione nel classico pensiero giurisprudenziale romano, come valori cognitivi o valori normativi: un tentativo di ricostruire i presupposti teorici del dialogo tra le scuole giuridici

Konstantin TANEV, University of National and World Economy, Bulgaria

Quella terminologia, anche se viene impiegata nelle tappe storici, risalenti alla repubblica, ha aumentato la sua frequenza e ha diventato un strutturante criterio sin dal II sec. d.C. ed avanti, sfruttando alla certa congiunzione tra il pensiero giuridico ed i assetti retorici e filosofici. Questa direzione, conservata nei alcuni giurisprudenziali frammenti, non rappresenta nessun coerente getto, ma un scontro delle onde dei diversi scuole teoretici, raffigurando nel suo corrente i contemporanei punti da vedere.
Generalmente il problema pratico nasce per la mancanza dell'idoneo soluzione legale nel un certo caso concreto, dove i sabiniani ed i proculeiani si avvalgono della argomentazione, fondata sui concetti fuori del diritto, come utilità o ragione, cercando a giustificare il loro opinione. Peter Stein ricorda la famosa discussione per specificatio tra le due scuole (Gai. 2.79; D.41.1.7.7) dove i sabiniani utilizzano la naturalis ratio (literally "natural reason," but with the connotation of "common sense") fondando il loro famosissima tesi che il proprietario della materia era il proprietario del prodotto, fatto di essa. Nell'altra cena (D.9.2.51.2)

Giuliano sottolinea una deviazione di regola civile da un determinato principio razionale del senso comune: multa autem iure civili contra rationem disputandi pro utilitate communi recepta esse innumerabilibus rebus probari potest. Lì, qualche persone che insieme hanno rubato tavole di legno d'altrui, vengono qualificati come ladri, nonostante che nessuno di loro secondo i ragionamenti sottili, non potrebbe essere tenuto responsabile come il ladro (quamvis subtili ratione dici possit neminem eorum teneri), siccome nessuno di loro non era capace portarle da solo.
Ancora nell'anno 45 Cicerone (de Fin. 2.59), con la sua saggezza sulle scuole filosofici, si ha tornato al dibattito storico con Carneade sul fondamento della giustizia e l'utilità definendo le fonti del diritto. Secondo il famoso scettico, il diritto prendeva la sua fonte dall'utilità direttamente e non dalla natura, finché lo stesso Cicerone, prima, nel anno 52 (Pro Mil. 4.10), ha pensato che la fonte vera dovrebbe essere la mera natura che da l'inizio della onestà ed il diritto. Quella opposizione si trova nel una testimonianza ciceroniana nel De re publica, 3 , dall'anni 54-51, per lo scontro tra i romani e Carneade durante 155 a.C.
Certamente quelli nozioni hanno trovato una nuova strada nei grandi manuali dalla epoca classica come quelli di Gaio ed Ulpiano (D.1.1.9, D.1.1.1.2) .
Un possibile punto per osservare quella storia d'idee ci presenta Cuiacio , chi ha discusso il testo di Gaio dal punto di vista scolastico, dunque stoico, opponendo al idee della utilità come fonte storica della giustizia con un riferimento al Orazio (utilitas iusti prope mater et aequi, Sat. I. Iii. 98).
Finendo, possiamo definire due modi di utilizzare la maglie tra utilità e la natura: la prima come una norma oggettiva, indipendente dalla volontà umana, registrata dalla tradizione storica e la seconda, la regola scaturita o comprovata da un fatto empirico, dunque vera e logica.
Al inizio dei tempi moderni quelle due strade si utilizzano assai frequente nei lavori dei scolastici e dei umanisti. Per esempio Grozio, De iure belli ac pacis, Prolegomena §16 .

From Padua to Constantinople. An Unpublished Commentary on Justinian's Institutes Written in Greek by Nikolaos Komnenos Papadopoulos (1706)
Marios TANTALOS, National and Kapodistrian University of Athens, Greece

The «Royal Institutes» is a didactical explanation in Greek of the Justinian «Institutes». It was composed by Nikolaos Komnenos Papadopoulos, a Cretan Professor at the Law School of Padua. The work was completed in the spring of 1706, at the request of Chrysanthos Notaras, a former student of Papadopoulos later Patriarch of Jerusalem. The goal of this paper is to present this unpublished commentary and to shed some light to its structure and origins.

L'activité juridique de François Hotman durant son enseignement à l'Académie de Lausanne (1550-1555)
Denis TAPPY, Université de Lausanne, Switzerland

François Hotman (1524-1590) est très connu de nos jours encore comme polémiste protestant de l'époque des guerres de religion en France, mais aussi comme juriste humaniste ayant notamment enseigné le droit romain à Paris, Strasbourg, Valence, Bourges, Genève et Bâle. Au début de sa carrière, il avait aussi enseigné le latin à l'Académie protestante de Lausanne. Une tradition historiographique locale soutient qu'il en avait profité pour y déployer aussi une

importante activité de romaniste, voire pour y enseigner le droit romain. Cette contribution a pour but de faire le point sur la réalité des travaux juridiques de Hotman à Lausanne

Justinian's Institutes in European Legal Teaching
Gerhard THÜR, Austrian Academy of Sciences, Austria

After a few introductive words about the didactic preferences of Justinian's institutiones compared with them of Gaius and about the position of Justinian's textbook throughout the Middle Ages and Early Modern Age the paper will suggest re-introducing the Byzantine textbook — upgraded with ad libitum chosen cases from Justinian's digesta — as a universal European device for teaching freshmen the principles of private law. Not law codes but rather coordinated legal teaching will form a new kind of unity within the European civil law systems.

La contribution d'Alvaro D'Ors a la législation de la Navarre (Fuero de la Navarre). L'enrichissement sans cause
Carmen TORT-MARTORELL LLABRÉS, Universitat Autònoma Barcelona, Spain

S'analyse l'importance de la participation de le romaniste Espagnol Alvaro D'Ors dans la législation de la Navarre conduisant à reconnaître et à renforcer l'influence de la jurisprudence de droit romain dans le régime juridique de la Navarre.
Alvaro D'Ors faisait partie d'un petit nombre de juristes qui entre 1960 et 1973, a développé une recompilation privée de législation de la Navarre, qui étaient la base de la nouvelle et actuelle législation de la Navarre de 1973.
Prenons comme exemple l'institution de l'enrichissement sans cause, qui D'Ors dit lui-même qui a une origine nettement romaine (lois 508, 509 et 510 Fuero de la Navarre)

Tortious versus contractual vicarious liability in locatio conductio[*]
David TRITREMMEL, University of Vienna, Austria

"[…] neque enim debet nocere factum alterius ei qui nihil fecit." – "[…] since the action of one person ought not to harm another who has done nothing." However, several exceptions to this general principle were developed within the classical period of Roman law. A number of cases of vicarious liability are handed down in Justinian's Digesta on locatio conductio. These give evidence for tortious as well as for contractual liability.
Within the framework of locatio conductio this paper discusses various doctrines concerning the development of vicarious liability in Roman law, focusing on the following sources: D.19.2.11; D.9.2.27.9 and D.9.2.27.11.

The Emperor as Legal Educator: Aelius Aristides and Imperial Rescripts
Kaius TUORI, University of Helsinki, Finland

In a speech held probably in the 140s AD, Regarding Rome (orat. 26), Aelius Aristides presents the Roman emperor as an ideal judge, who, guided by justice and equality, rights wrongs. A subject, if he has even the smallest doubt over a lawsuit or legal privilege, needs only to write to the emperor and wait for his message. There is no need to travel to petition

[*] Conférence en allemand / This paper will be presented in German

the emperor personally, the message will come swiftly and regardless of rank, assisting everyone equally.
The purpose of this paper is to explore the image of the emperor as a legal educator. According to Aristides, not only would the emperor resolve legal issues, he would equally instruct his subjects about the law.
Aristides illustrates how for the Greek elite, the Roman Empire was something unprecedented, a functional global administration that serves its subjects. What Aristides equally illustrates is how this admiration for the emperor and the seeking of imperial favor was mixed with complicated sentiments regarding Roman superiority. From the narrative of Aristides, it is evident how novel and unprecedented the idea of the emperor's jurisdiction executed from afar and available for his subject actually was. It was as if the emperor would have begun to execute the ideal of the good king in practice.

'Contra Ius Sententiam Dare': La riflessione giurisprudenziale tardoclassica sull'invalidità della sentenza contraria a diritto
Daniil TUZOV, Università Statale di San Pietroburgo, Russia

Contrariamente a quanto risulta dalla prospettiva generale tracciata già dalla Glossa e seguita in linea di massima dalla dottrina moderna, si ipotizza che la giurisprudenza romana non conoscesse una regola ben delineata in materia di sententiae contra constitutiones (o, in generale, contra ius) datae. È sostenuto che anche in questa materia, come in relazione a molti altri problemi giuridici, gli iuris prudentes, nell'individuare un criterio di nullità della sentenza contraria a norme di diritto sostanziale, si muovevano partendo da singoli casi concreti ed evitavano tendenzialmente di formulare regole astratte; le loro opinioni non sempre coincidevano tra di loro, contribuendo così a formare e a sviluppare quel particolare fenomeno che è noto come ius controversum.
Sono analizzate le seguenti fonti: Mac. 2 de appell. D. 49.8.1.2; Call. 3 cogn. D. 42.1.32; Ulp. 11 ad ed. D. 4.4.11.2; Alex. C. 7.64.2; Mod. l. sing. de enucl. cas. D. 49.1.19.

El lenguaje de Cicerón como recurso discursivo para la práctica forense: Pro Roscio Amerino
Genaro VALENCIA CONSTANTINO, Universidad Nacional Autónoma de México (UNAM), Mexico

La presente comunicación pretende demostrar cuál fue el progreso lingüístico que tuvo Cicerón durante su etapa formativa en el ámbito forense (la época en que pronunció el discurso Pro Roscio Amerino), recurso que aprovechó en el ejercicio legal de la oratoria y que le sirvió para llevar a buen término las causas que le fueron asignadas. La instrucción jurídica de un individuo durante la república romana estaba completamente asociada a la práctica de la oratoria, cuyo fundamento residía en el completo dominio de la lengua y su aplicación retórica.
Me propongo explicar la estructuración del lenguaje jurídico que para Cicerón representó un factor importante en la oratoria, pues dicho lenguaje se va configurando mediante expresiones con significados específicos relativos al ámbito forense romano. Asimismo, ofreceré algunos ejemplos tomados de su primera intervención en una causa pública defendiendo a Sexto Roscio, acusado por el crimen de parricidio, en donde se puede observar la utilización de esos elementos lingüísticos como recursos del discurso forense. Se indicará también un dilema de carácter jurídico dentro del discurso sobre las proscripciones en la época de Sila, a partir del

que observaremos la coyuntura que le permitió a Cicerón desarrollar su discurso y los medios con los que solucionó esa problemática.
Debe, además, considerarse que el texto de los discursos ciceronianos que tenemos actualmente fijado, no sólo puede estar alterado por las variantes textuales que sufrió durante su transmisión, sino también por la modificación que Cicerón hizo para la publicación del discurso después del proceso. Estos cambios deben tomarse en cuenta para estudiar el texto transmitido con mayor detalle y rigor directamente en la lengua original del sistema jurídico romano: el latín.

Learning as a social grace
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In this paper I will discuss, against the background of the basic education Romans received, a number of aspects that contributed to their further intellectual development and which eventually led to them becoming truly learned. Education-related topics to be discussed in this paper are the following: Roman booksellers, copiers and bookshops, which made a huge contribution towards Roman education and further learning; private and public libraries had an important influence on the literary culture of the Empire; public baths with libraries and lecture halls also contributed towards the edification of the Romans; scholarship and continuing studies furthermore encouraged intellectual discussions among learned people; and both travelling and relaxation provided more opportunities to broaden and enrich their knowledge and insight. In this discussion it will become apparent that educated Romans had a strong desire to extend their education and obtain more knowledge and that they made useof many opportunities to do so.

Los textos utilizados para la enseñanza del Derecho en México (ss. XVI a XVIII)
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La exposición tiene como objetivo hacer una revisión de los textos a partir de los cuales se impartía la enseñanza del Derecho en la Facultad de Leyes de la Real Universidad de México, desde su fundación en 1551 hasta inicios del siglo XIX. Para el análisis es relevante indagar, desde la perspectiva de la tradición clásica en México, la enseñanza de tipo europeo que se da en dicha universidad, a partir del plan de estudios que es trasladado al Nuevo Mundo desde España, así como de su recepción en tierra novohispana. Los elementos propios del nuevo contexto y las tensiones derivadas de la legislación imperial destinada a los reinos americanos, que permea los distintos ámbitos de la formación humanística y científica, dan paso a nuevas propuestas de enseñanza. Todos estos son elementos que, analizados a partir de las fuentes que en su mayoría están escritas en latín por ser la lengua principal de la comunicación de la cultura en ese período, contribuirán a dar una configuración propia al Derecho mexicano.

The approach to the 'ius antiquum' of the Eastern Roman emperor Justinian
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As part of Justinian's C6 codification project a huge overhaul of the ancient juristic law took place. In addition to the more famous Digest project, whereby favoured texts of the many different jurists were collated, sorted out and inserted into individual titles, the emperor and his legal advisors also prepared 'quinquaginta decisiones'. We know something about their

purpose through the introductory constitution to the Code: it tells us they provided the answer to the unresolved classical-era juristic disputes. These were often found in the two opposing schools of legal thought, the Proculians and Sabinians; but however these disputes may have arisen, Justinian decided that he would resolve them himself, through further imperial enactments.

It is almost definite that some decisiones ended up in in the Code; as much is said in the Code's introductory constitution although it does not tell us how they can be identified. There is a general consensus that we can find them in constitutions where the verb 'decidere' is used self-referentially, eg 'we decide' in this constitution, rather than eg 'we ordain'. Sometimes other sources make the reference, the most likely being Justinian's Institutes. The term had never before been used in this sense and these particular constitutions almost all overtly resolved ancient disputes. They were all issued within a very particular timeframe between July 530-April 531, and never again afterwards. There are only around 32-3 such constitutions however, but quite a few other constitutions issued within the same timeframe also resolved ancient disputes; they have no 'decidere' but otherwise contain the same vocabulary. It is considered very likely that these too were decisiones, but lost the crucial identifying terminology through the editorial processes applied to the Code.

I am considering the purpose of the decisiones, and specifically whether the disputes were resolved so that the Digest could contain the correct solution, which would entail that they were in effect absorbed by the Digest, either through choosing the correct juristic view or by interpolating the new rule. If this is correct, they had no relevance or role whatsoever after the Digest's publication. This indeed is the current academic consensus. After all, the Digest and decisiones had the very similar functions of sorting out the confused law of the C2-3 jurists and eliminating contradictions; and by resolving the disputes the compilers knew the correct law. And yet we also know some were placed in Code. So I am looking at whether their principles were indeed also transfused into Digest, by way of interpolation, and if a jurist was expressly followed, did their opinion get included?

By way of example I shall look at a decisio concerning loss of usufructs. These were life interests in another's property, usually land, whereby the usufructuary had the right to exclusive use (usus) and take the farm produce / rent (fructus); it ended on the death of the usufructuary so there was no testamentary transmission but it could also be lost in a number of ways. The decisio C.3.33.16 held that the usufruct was lost where in effect non-use was as long as the usucapio period (the time required whereby ownership could be claimed by long use). Although the decisio doesn't say how long the usucapio period was, an almost contemporaneous enactment says 10-20 years for land (depending on the usufructuary's presence) or 3 years for movables. Hitherto the usucapio period had been 1-2 years (eg G.2.42), which was also the old period of time for loss of usufructs whether or not conceptually the two legal institutions had been linked.

The Digest title on usufruct loss (D.7.4) contains fragments confirming loss by non-use but there is no mention here of being tied to any particular test, still less usucapio, even though we can be relatively sure that this was the classical view, see PS.3.6.30 and Fr.Vat.46. These texts are absent from the Digest; this may be because they state the old time period, as discussed below, but they certainly don't appear in an interpolated form; in the Digest we have to turn to a slightly different concept, ie the length of time necessary to be liberated from servitudes of all types, before the link is made out, see eg D.8.2.6-7, h.t.32.pr-1, D.41.3.4.28, D.8.6.18.2, D.8.3.34. Fragments which may be said to be inconsistent are also missing, eg PS.1.17.2.

Nor is there any simple assertion in the Title of the actual timeframes on usufruct loss. When we turn to Titles on adverse possession, Paul tells us in D.41.2.4.pr that he will discuss how long it take to usucape but he doesn't do so! Does this suggest deliberate omission on the part of the compilers? It would have been so easy to interpolate the actual new length but this does not happen. References to the old rule are found in pre-Justinianic sources, but are eradicated, receiving no mention: G.2.42, PS.3.6.33, Ulpian's Regulae 19.8, the reference in the Twelve Tables alluded to by Cicero. Instead, we find the phrase 'legitimo tempore', eg D.7.1.5.pr, which may be a Justinianic phrase used often in the Digest to replace an obsolete statutory provision on time so there is a possibility of interpolation here, but not so as to insert the rule contained in the decisio, but rather to prevent inconsistencies.
Finally, the juristic opinion which was the foundation of the decisio on loss through lapse of time was not included.
CJ.3.33.16 dealt also with loss by status change. Usufructs had hitherto been lost by any status change: when freed from the power of the paterfamilias, ie emancipatio; if adopted into another family; if exiled; if Roman citizenship lost.
By the decisio loss was no longer by virtue of the first two forms (ie minor). As for the Digest, it confirms status loss can lead to usufruct loss, but we are not told which type or about limitations. Yet compilers include the consequences of status change in other areas of law, in different Titles.
We know of a pre-Justinianic law which omitted the son's emancipatio as a cause (PS.3.6.29), but this was not included as a relevant fragment. Had the compilers consciously declined the opportunity to include it? But equally, they did not include inconsistent fragments, eg another from Sententiae confirming loss through adoption, and one assumes there were others. Again, the juristic opinion which was foundation of the decisio was not included.
CONCLUSIONS: From this small example, we can see that Digest reacted to C.3.33.16 but not as the consensus envisages decisiones to be reacted to:
- It looks as if a conscious effort was made to ensure the Digest was not inconsistent, or had a basic consistency with the decisiones
o Incompatible texts kept out
o Perhaps even as a result of changes
- Actual juristic opinions endorsed by decisiones do not make an appearance.
o there is also reluctance to repeat what was said in the decisio by including any precise replication, ie more obviously consistent pre-Justinianic material kept out
o Indeed intro constitutions reveal also that there should be no repetitions
- There are 'inconsistencies' but may well be in error, if eg an implied point

- the decisio's principle very rarely reflected in the Digest
o may be through interpolation or just choosing frags which reflected chosen view
o but usually only elements of reasoning.
o Again, is this down to a dislike of repetition?
o Or different compilers having different understanding of what to do?

Roman Legal Maxims in the mirror of evolution, or about the benefits of evolutionary psychology for 'Romanistic'

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Roman Legal Maxims exerted an influence on private law since the Middle Ages until the codification in the 18th-19th centuries. Some of them are repeated by the civil codes up today

and they are also frequently quoted in court sentences and by lawyers in their papers. The text tries to explain why some of Roman Legal Maxims are still valid in the light of Evolutionary psychology, which seeks to account for the human actions from the standpoint of biological and cultural evolution. It advances the research, or is a component part of sociobiology, a synthetic branch of scientific inquiry, which presumes that certain social behaviours of living beings, including Homo sapiens, may be viewed in the context of natural selection. The studies of the evolutionary psychologists point to possible biological basis of moral and legal norms. The conclusions that the text affords animate the discussion on the role of historical argument in law and serve to restore its significance: it demonstrates the actual, not declarative universality of historical experience preserved by some Roman Legal Maxims in solving of current problems.

Probleme der querela inofficiosi testamenti - Ein Vorschlag zur Deutung von Gesamt- und Teilreszission

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Die umstrittensten Probleme bei der Testamentsquerel stellen sich in folgender Fallkonstellation:
Von mehreren Noterben klagt einer mit der Querel und der andere nicht. Die Quellenlage dazu gilt als verworren: manchmal tritt Teilreszission ein, manchmal Gesamtreszission. Der Stand der Deutungen dazu ist: die herrschende Interpretation nimmt Juristenkontroversen an (Voci, Di Lella und noch andere), doch wird jüngst auch inexistente Kontroverse und Interpolationen vertreten (Ribas-Alba: klassisch war nur Gesamtreszission, Texte zur Teilreszission sind interpoliert mit nachklassischen Texteinschüben). Gesichert ist, dass 1/4 des Intestatteils - wie auch immer hinterlassen - von der Querel ausschließt.
Insofern sichert die Quart das Testament im Umfang des Intestatteils des Ausgeschlossenen. Dies wirkt sich zugunsten des Testamentserben aus und nicht zugunsten des anderen Noterben. Damit kann es nur noch zur Teilreszission kommen. Gibt es keine solche testamentssichernde Wirkung durch 1/4, steht dagegen wieder Gesamtreszission offen.
Daran anschließend möchte ich eine Deutung vorschlagen, die Quellengruppen zu scheiden in die Fälle, wo die Querel von testamentssichernden Wirkungen betroffen ist (und damit nur noch Teilreszission) und wo dies nicht der Fall ist (also Gesamtreszission). Ulp. 14 ed. D. 5.2.8.8 mit Paul. 2 quaest. D. 5.2.19 sowie Paul. inoff. test. sing. D. 5.2.23.2 werden dazu exemplarisch erörtert.

Règle et système dans l'enseignement du juriste

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Lawguvers and citizens in 5th-century Greece and Rome

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This paper discusses law-making in 5th-century Greece and Rome from the point of view of the persons involved in this process and their degree of "legal education" or specialization. It focuses on the paradigms of Rome (Law of the Twelve Tables), Gortyn (Law of the Twelve Tables) and Athens (decrees of the people's assembly).

Il contratto del deposito e lo sviluppo dell'attivita` bancaria a Roma antica. In margine delle commedie di Plauto.
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Le commedie di Plauto mostrano che la attività dei banchieri era abbastanza sviluppata a Roma nel III/II secolo a.C. e faceva una parte della vita economica. Il contratto del deposito era uno strumento molto utile dell'impresa bancaria. Plauto ne usava spesso mostrando le situazioni quando il cliente aveva un conto avendo depositato una somma dei soldi dal banchiere con la possibilità di ritirare quanto voleva in un qualsiasi momento. Questi contratti non sembrano depositi regolari. Si può concludere che la situazione del deposito bancario dove il bancheire era obbligato di restituire "tantundem" era conosciuta dal pubblico delle commedie plautine.

Teaching and Study of Roman Law in China
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Roman Law was introduced in China at the end of 19th century by some American scholars and was taught at the first Chinese state university Beiyan University. From its beginning till now, the Chinese scholars study the Roman Law and learn the successful foreign legal experiences for the purpose of the modernization the Chinese traditional legal system. They realize that Roman Law is the historical roots of advanced western legal system.
In the first part of 20th century, under the strong influence of the Japanese law, the study of Roman Law in China focused on the XII table laws and the basic concepts and institutions by drafting the textbooks. In that period, Roman Law played an important role for the reform of Chinese legislation. From 1994 to 1979, the teaching and study of Roman Law was almost totally abolished in China since it was considered as "a poison of capitalism". The boom period of Roman Law is from 1979 till now. The teaching of Roman Law is diffused in the main Chinese law schools. The Chinese scholars have translated significant parts of Corpus iuris civilis and many works of Roman Law in foreign languages. Due to the influence of materialism and nihilism of historiography, which is getting more and more serious In latest years, the teaching and study of Roman Law is losing its weight in legal curricula. We need attach more importance to the study of comparative law on the basis of legal historiography and the application of the case study approach of Roman Law.

Croatian Perspectives of Roman Legal Education
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It is the purpose of the following contribution to highlight the relevance of Roman Law in Croatian legal education, identify and analyze the challenges of legal curricula in transition, as well as ponder some preliminary solutions on how to ensure a vital role of a subject which serves as a backbone of legal education.
Through reforms of the legal system, after declaring its independence in 1991, Croatia started the process of returning to the civil law roots and European identity, it once was a part of. A particular significance in that process goes to legal education, especially Roman Law which raised the cultural level of legal education and facilitated in the process of reintegration in the western European legal culture. The tradition of the academic instruction of Roman law in Croatia can be followed back to the 15th century, but the uninterrupted public lectures had been held at the Academy of Legal Science in Zagreb since 1854 onwards. The curriculum

was progressing very much in line with other Faculties of Law in the Habsburg Monarchy. This system with two chairs and a division of instructions into two subjects (History and institutions of Roman Law and Pandect Law) has outlived the fall of the Monarchy and persisted until the end of World War II, leaving a strong Romanic mark to the overall legal education and Croatian Private Law science. After World War II and the establishment of the socialist government, the Roman Law instruction was greatly reduced, primarily out of ideological reasons. Roman Law remained a compulsory subject in the first year of study, but Pandect Law was completely eliminated from the curricula. Primarily due to the efforts and scientific quality of Professor Marijan Horvat (1903-1967), who is undoubtedly the greatest name of the Croatian Roman Law studies, the chair of Roman Law managed to survive, even in sometimes unfavourable socialist environment. The socialist curricula was unfortunately inherited after Croatia's independency and implemented in the legal framework of other Faculties of Law (Split, Rijeka, Osijek) that have been established more recently, namely in the 1960s and 1970s.

Although the reform of legal studies through adoption of Bologna-process in 2005 showed many benefits in legal education, the focus on practical legal skills and active competences of students deemphasized the role of Roman Law courses and legal history in general. This was, of course, not an isolated case in Croatia but a problem that has been recognized well ahead by distinguished scientists in the whole region (Petrak, Kranjc, Avramović).

Confronted with a constant marginalization of Roman law, instead of fighting directly "against the hurricane of positivist and pragmatic challenges" (Avramović), a more active and practical approach in the process of reforming the legal education is considered. Since the Croatian Qualifications Framework Act (2013) in Article 3 explicitly stated "preserving positive heritage of the Croatian educational tradition" as one of its main principles and objectives, the Faculty of Law in Osijek has launched a project 'Iurisprudentia - Quality Improvement of Higher Legal Education at the Law Faculties in Osijek, Rijeka and Split' as a lead beneficiary, financed by the European social fund - Operational Programme "Human resources development". The survey that will be, inter alia, carried out within this project will serve to determine the learning outcomes of Roman Law that can provide the necessary key competences for a modern lawyer. The research results of this project are aimed to build and maintain a bridge between the need of providing the students with an historical approach and insight into the broader dimensions and principles of law and the present labour market requirements of narrow specialisation.