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CASTRO SÁENZ A., ***El Gayo de Ulpiano. Una aproximación*** **[p. 1-70].**

Abstract

En el presente artículo se analiza la posibilidad de que el joven Ulpiano recibiese su primera formación jurídica, total o parcialmente, en Beirut (Berito) y que pudiese allí haber conocido la '*Instituta*' y haber entrado en contacto como estudiante con los círculos docentes galvanizados en la generación anterior por la figura de Gayo, muy probablemente '*magister iuris*' en esa ciudad, a quien incluso pudo haber conocido si este había vivido solo algunos años más de lo que es usual fechar convencionalmente sin prueba.

This article analyzes the possibility that the young Ulpian received his first legal training, totally or partially, in Beirut (Berytus) and that he could have known the '*Institute*' there and have come into contact as a student to the teaching circles galvanized in the generation earlier by the figure of Gaius, most probably '*magister iuris*' in that city, whom he might even have known if he had lived only a few years longer than is usual to date conventionally without proof.

Keywords

Gayo – Ulpiano – *Instituta* – Berito – Tradición docente.
Gaius – Ulpian – *Institute* – Berytus – Teaching tradition.

PLATSCHEK J., ***Die genera actionum in Gai 4.1*** **[p. 71-80].**

Abstract

Secondo tutte le edizioni delle *Institutiones*, in Gai 4.1 l'autore riporta un'opinione secondo la quale si conterebbero quattro generi delle azioni *ex sponsionum generibus* – "sulla base dei generi delle *sponsiones*". L'informazione ha causato varie speculazioni nella letteratura moderna sulla identificazione dei *genera sponsionum* e *genera actionum*. Il testo delle edizioni, però, risulta da una emendazione criticabile di quello tramandato nel manoscritto veronese. La ricostruzione proposta nell'articolo, ritenuta più probabile, produce un testo più semplice.

Keywords

Diairesis – *sponsio* – *agere per sponsionem* – *genera actionum* – Gaio Veronese – critica testuale.

NASTI F., ***Pour une relecture des douze premiers paragraphes de l'Enchiridion de Pomponius*** **[p. 81-97].**

Abstract

Cosa voleva raccontare Pomponio nella prima sezione dell'*Enchiridion* sulla *origo* e *processus iuris*? E qual è stato il modello da lui seguito? E, ancora, quale criterio egli ha adottato nella descrizione delle diverse parti dell'ordinamento giuridico romano? Questi gli argomenti affrontati nel contributo, per i quali l'a. propone nuove risposte.

Keywords

Enchiridion – origo et processus iuris – Cicerone.

MANNI A.*, Vini e oli: la competenza di Nerazio e le regulae per la spremitura* [p. 99-122].

Abstract

This paper analyzes the text in D. 19.2.19.2 (Ulp. 32 *ad ed*.) concerning the rental of a *fundus cum instrumento*. Ulpianus intends to define the *instrumentum* to be supplied by the *dominus fundi* in order to specify the responsibilities of the contractual parties. The text preserves – almost merging them – two *responsa* of Neratius about the rental of oil mills. The Samnite jurist depicts not an 'ideal' model of plant, but rather describes in detail two existing mills, which are a combination of modern elements with antiquated solutions and others related to specific production needs (such as *dolia vinaria*).

Keywords

Regulae – instrumentum – locatio conductio – oil mill.
Regulae – instrumentum – locatio conductio – oleificio.

SIRKS B.*, Die causa Rutiliana* [p. 123-140].

Abstract

The case of Rutiliana (D. 4.4.38 pr.) is well known. It poses the question what effect the *lex commissoria* had on a sale where the buyer died when the *lex* was still pending and what effect the position of the heir, a minor, had. Against Paul's opinion that the *lex* was effective Septimius Severus favoured *in integrum restitutio* as petitioned by the heir. It is questioned in literature how this might work but it is argued that this is of no consequence: it merely depended on what the heir wanted. Regarding the *lex*, it appears that this had rather the character of a side agreement in favour of the seller than of a condition which gained automatically effect at the moment set. Further it is argued that the importance the text had for the Justinian compilers was not the *lex commissoria* as such. Its importance lay was that a minor, who had not committed or participated in an act, but who was disadvantaged by this act during his minority when he or his guardians could have influenced the legal consequences of that act, could invoke *in integrum restitutio*.

Keywords

Causa Rutiliana – in integrum restitutio – lex commissoria – minority of age.

BARBATI S.*, Sul problema d'origine dell'editto giurisdizionale edilizio: tra protezione legale e tutela negoziale dell'acquirente* [p. 141-245].

Abstract

The essay deals with the topic of the origin of the aedilician edict. Taken the state of art into account, the paper follows the pretty forgotten theory, which dates that origin since 150 to 50 B.C. Particularly, the essay holds that only around 75 B.C. the *aediles* issued a judiciary remedy for the buyer of slaves acquired in a market overt, under the control of the *aediles* themselves, far away from the usual dating of it around 250/170. The origins of *noxis praestari* in a law advise given by Publius Mucius in 121/120, its acknowledgment and development into *noxis solutio*, which can be traced in the legal documents dating to 100/75 back in Varro's taking in 67 place *de re rustica*, as well as the origins of the *actiones in factum* (to whose belongs the *aedilician actio redhibitoria*), support the upheld date. Furthermore, the essay seeks to settle a chronological arrangement of the rules with which the aedilician edict dealt. It also aims to clarify that the limited scope of the legal protection given to the buyer, during the 1st century B.C., was linked to the widespread of the conventional remedies, as it results from the *de re rustica*. Roman society required the buyer to be cautious, expecting him to insist with the seller for a guarantee on the quality of goods bought. Along with that, had the sale taken shape of an *emptio-venditio*, which was based on *bona fides*, it must be remarked that implications of *bona fides* were far less extended than today. In fact, during the period here concerned (1st century B.C.), it was not held to be against *bona fides* to keep silence about defects nor it was against it to claim for specific qualities of goods, actually not existing, to be conceived as a mere puff. Neither from *mancipatio* itself arose any legal remedy to the buyer for defects of the *res mancipi* bought.

Esta contribución se refiere al problema del origen en el derecho romano del edicto de los ediles, en la perspectiva de los medios de protección de que dispone el comprador por defectos materiales del bien adquirido. Los documentos citados, directa o indirectamente, en el *de re rustica* de Varro muestran cómo era costumbre, en el 67 a. C., que el comprador estaba garantizado por el vendedor sobre la calidad de los bienes adquiridos. Este medio de protección se dejó a la autonomía de las partes y, en concreto, a la capacidad del adquirente de exigir la garantía al enajenador: sin embargo, estaba muy generalizado en la sociedad romana. Esto significaba que no existía una necesidad urgente de protección proporcionada por el ordenamiento jurídico. Por eso este ensaye afirma que la protección por los ediles solo fue otorgada alrededor del 75 a.C., de lo contrario de la opinión tradicional, que pone esa medida entre el 250 y el 170 a.C. Los orígenes de *noxis praestari* en el consejo legal dado por Publius Mucius en 121/120, su reconocimiento y desarrollo dentro del concepto de *noxis solutio*, que puede ser rastreado en los documentos legales que datan de 100/75 en el *de re rustica* de Varro, que toma lugar en el 67, así como los orígenes de las acciones *in factum* (a las que pertenece la *aedilicia actio redhibitoria*), sustentan la fecha propuesta. Además, esta contribución tiene un registro cronológico de las reglas contenidas en el edicto de los ediles. En todo caso, hay que destacar que, si la venta de la mercancía hubiera tenido la forma de un *emptiovenditio* de buena fe, el alcance de este último concepto era mucho menos extenso que el actual: al menos en el período pertinente (siglo I a.C.) no era de hecho contrario a la buena fe callar los vicios del bien o presumir de cualidades que en realidad no existen. En ese sentido también no existía una protección legal ni por el contrato de venta ni tampoco por la *mancipatio*, con la cual se hacía en ese periodo la transferencia de las *res mancipi*. El medio de protección general se encuentra en la garantía que el comprador tenía que exigir al vendedor y, solo para los esclavos y las *pecudes*, en las medidas otorgadas por los ediles.

Keywords

Actio redhibitoria – ius dicere ex edicto – actiones in factum – oportere ex fide bona – noxis praestari – solutio noxa praestari.

SACCHI O., ***La formula 'utei quoi optuma lege' nella l. 27 della lex agraria del 111 a.C.: elementi per una rilettura politica e giuridico-costituzionale*** **[p. 247-281].**

Abstract

The essay discusses the thesis of a possible political and juridical-constitutional meaning of the formula *ut qui optima lege* present in l. 27 of the epigraphic agrarian law of 111 B.C. The legislator may have used this formula not to distinguish a category of land ownership free from public or private charges of any kind, but to sanction the will and legitimacy of the legislator to confer full dominical title by law to the holders of the assigned *ager privatus*, with magistrates with adequate power. A dominical affiliation conferred therefore outside the traditional rules of the quiritary domain (*hereditas, mancipatio, in iure cessio*, etc.), but legitimate from the point of view of the *ius publicum*. A '*plenissimum ius*' conferred *ope legis* or 'by virtue of the maximum powers conferred by the law' (l. 27: *utei quoi optuma lege privatus est, esto*).

Keywords

Lex agraria of 111 B.C. *– ius publicum – ius privatum – ut qui optima lege – optimo iure - optima condicione.*

MEROLA G.D., ***I senatoconsulti nella legge doganale d'Asia*** **[p. 283-303].**

Abstract

In four clauses of the customs law of Asia are cited *senatusconsulta* (alone or with other sources of production of law) as a basis for the introduction or amendment of the customs tax. The paper examines these occurrences and similar (literary and epigraphic) sources to outline the role of the senate in the tax organization of the provinces.

Keywords

Lex portus Asiae – senatusconsulta – organizzazione tributaria romana.
Lex portus Asiae – senatusconsulta – Roman tax organization.

CRISTALDI S.A., ***Sulle manomissioni compiute dal minore di venti anni latino nel municipium di Irni*** **[p. 305-329].**

Abstract

The Author carries out a thorough analysis of the lines 12-15, chap. 28 of the *lex Irnitana*. The conclusion, in connection with Gai 1.41, shows that the regulation, laid down by the *lex Aelia Sentia* for the manumission carried out by a dominus younger than twenty years and attributing the *status* of *latinus*, was current also at Irni.

Keywords

Lex Irnitana – minor XX annorum – manumissio – optimo iure latini – lex Aelia Sentia.

MUSUMECI F.*, …pretiumque eius dari voluit (D. 46.3.98.8): di un discusso riferimento di Paolo al regime decemvirale della inaedificatio* [p. 331-352].

Abstract

In his book on the *inaedificatio*, the author had suggested that Paul, in D. 46.3.98.8, speaking of '*pretium*' meant to allude to the indemnity that, according to the law of the XII Tables, the owner of the *tignum aedibus iunctum* could have claimed, as a compensation for having lost its concrete availability, as a consequence of the conjunction to the *aedes*. The author defends his interpretation against the criticism of some scholars on this point.

Keywords

Tignum iunctum – lex XII Tabularum – pretium – duplum – actio de tigno iuncto.

CASCIONE C.*, Due anacronismi in Pomponio* [p. 352-358].

Abstract

On two not well known interpolations in Pomponius' *Enchiridion*, about the XII Tables (D. 1.2.2.4) and the *ius respondendi* (D. 1.2.2.49).

Keywords

Pomponius – *Enchiridion* – XII Tables – *ius respondendi*.

WACKE A.*, D. 50.17.45 pr.: Eine klassische Regel über den Erwerb von Rechten an eigenen Sachen. Bezogen sich pignus-Textstellen ursprünglich auf die fiducia?* [p. 358-413].

Abstract

La *regula* da Ulpiano formulata in maniera generica e disordinata è costellata di eccezioni. Includendo queste nella trattazione, l'affermazione del giurista acquista profilo. Vendita e trasferimento di una cosa già appartenente al compratore sono in linea di principio inefficaci per mancanza di oggetto del contratto. Tuttavia, nella misura in cui non siano finalizzati ad un doppio acquisto della proprietà, ma all'ulteriore acquisizione di poteri dominicali fino a quel momento mancanti, l'acquisto sia a titolo oneroso sia gratuito è valido. Anche nel caso di situazione giuridica incerta o controversa sono da considerarsi validi i contratti di conferma, proprio al fine di eliminare l'incertezza. I contratti che garantiscono l'uso (*conductio*, *commodatum*, *precarium*) stipulati dal proprietario a suo favore sono di principio inefficaci, ma sono eccezionalmente validi qualora un'altra persona abbia un diritto reale parziario privilegiato sulla cosa (ad es. *pignus*). L'esclusione del creditore pignoratizio dall'acquisto della proprietà sulla cosa data in pegno per il diritto classico è criticabile. Diversamente da quanto sostenuto da Riccardo Fercia, la *regula* di Ulpiano non si riferisce alla *fiducia*. Contrariamente alla dottrina prevalente, basata su una poco convincente tesi di Otto Lenel, non era necessario che i compilatori di Giustiniano sostituissero la parola '*fiducia*' con '*pignus*' nei testi classici. È più probabile che i testi che trattavano della *fiducia*, complessi e obsoleti, siano stati eliminati fin dall'inizio dai compilatori, insieme alla grande massa di materiale classico non incluso nei *Digesta*.

Keywords

Rei suae emptio et conductio, pignus et precarium – emptio rei pigneratae – 'pignus' interpolato al posto di *fiducia*?

BIANCHINI M.*, Note sul concubinato in età tardoantica* **[p. 413-424].**

Abstract

This paper analyzes three cases of concubinate, that were seen with disfavor by late imperial laws. Such unions were that between Christians and Jews, Roman citizens in province and barbarians, free women and *coloni adscripticii* (only in the Justinians' age).

Keywords

Concubinato – Legislazione tardoimperiale.
Concubinate – Late imperial legislation.

CASCIONE C.*, L'ininterrotta, incompiuta evoluzione di Jhering (dallo spirito del diritto romano alla sociologia dello scopo)* **[p. 425-428].**

Abstract

Brief notes on the important Italian translation of the second volume of the well known *Zweck* (1883) by Rudolf von Jhering.

Keywords

Jhering – *Zweck* – sociology of law.

ARCARIA F.*, Le refluenze ideologiche della politica antica su quella odierna: i paradigmi di 'Repubblica', 'Democrazia' ed 'Impero' tra storia e futuro* **[p. 429-455].**

Abstract

The author reflects, in the light of a recent book by A. Corbino, on the ideological refluences of ancient politics on today's politics, examining, in particular, the paradigms of 'Republic', 'Democracy' and 'Empire'.

Keywords

Republic – Democracy – Empire.

CAPOGROSSI COLOGNESI L.*, Ridiscutendo con Lepore: un percorso intellettuale* **[p. 456-463].**

Abstract

Brief considerations on the recent volume *Tra storia antica e moderna. Saggi di storia della storiografia*, edited by A. Storchi, and Ettore Lepore's studies in the context of the 20th century historiography on ancient classical world.

Keywords

Ettore Lepore – History and historiography – Scholarship on classical world.