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RADIX OMNIUM MALORUM?
SOME MONEY-RELATED QUESTIONS IN THE ROMAN LAW OF PROPERTY

Doctoral thesis summary

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I. Research objectives

The expression in the title of this tretise, redix omnium malorum (the root of all evil) stemming from the New Testament (1Tim 6, 10) is often understood as it would refer to money as the root of all evil. However, as a result of an in-depth analysis, it quickly turns out that it is not money itself, but rahter the love of money which is considered as a source of evil – this approach can be perceived not only in the New Testament, but also in several instances of ancient literature as such (cf. Tibullus, Ovidius, Cicero). The choice of such a title is easily comprehensible, if we realise that the general misinterpretation of the above cited phrase makes it necessary to attempt a realism-based scrutiny of money itself.

Corresponding with everyday experiences it can be stated that money plays a preponderant role in people's life. Suffice it to have reference to cash payments, or to the fact that the employer transfers our monthly salary to our bank account. In both cases money stands in the centre, yet these appearances are somehow divergent. Cash payment is processed via the physical delivery of bank notes and coins, while bank transfer is completed in the form of computer data; therefore no physical delivery is necessary. As a result of this, the sum of money transferred by the employer bears no material shape, it is still in existence. Even these simple examples indicate clearly how a natural concomitant of our daily lives money is. Despite all this – or on the contrary, even because of this – we hardly ever consider where money stemms from and what it really is. Similarly, the aforesaid attitude can be the very reason why contemporary jurists' for the most part restrict themselves to emphasise that money is moveable and fungible. It is, however, equally likely that dogmatic simplifications might as well contribute to the formation of this attitude. Moreover, as for this attitude regular reference is and has been made to the fact that such a classification of money originates from Roman law. Even on the basis of such a reference to Roman law models and patterns, it is most interesting to attempt to present these Roman law origins, with special attention to the actual meaning of the related primary sources.

The actual starting point of the thesis is twofold: it is to be examined on the one hand, whether money was considered as a thing in the legal sense, and on the other, how *iactus missilium* actually passed off, which is referred to in the Romanistic as *traditio in incertam personam*. While research related to the these problems were being conducted, another equally important issue arose attaching strongly to the former research topics, and this is the role and the proper meaning of *rerum natura* in the process of decision-making of the classical Roman lawyers.

As for the background of the first question related to the fact whether money was regarded as a thing in the legal sense, suffice it to have reference to Article 94 of the Hungarian Civil Code (Act IV of 1959), according to which all things that can be possessed can be objects of ownership. In addition to this, it is equally stated that unless otherwise provided by law, the provisions pertaining to ownership shall properly apply to money and securities as well as to natural resources that can be utilized in the same way as things. It is apparent from merely these provisions that the Hungarian Civil Code – allowing derogation though – approaches money as a thing. With special attention to our country's historic character, it is most logical to inquire if there are Roman law origins of this approach, and if yes, to what extent. This inquiry set the further direction and objectives of the research. Firstly, it is worth taking into account which approach the Romans followed when formulating the concept of a thing in the legal sense. What ideas influenced this concept? With respect to the Romanist *communis opinio* concerning money, it is similarly interesting, let alone important to outline the meaning of the category of *res, quae pondere numero mensura constant* in Roman legal thinking. How can the examples pertaining to "fungible property" in the primary sources be evaluated? Resulting from the Roman approach of things, how can the concept of *res incorporales* be assessed in Roman thinking? What is or could be the presumable reason for the foundation of this category? How should the examples of *res incorporales* in the sources be deemed?

As for the issue of *iactus missilium* the central subject of the scrutiny is how this actually took place, all the more so, because both primary and secondary sources are somewhat laconic on this topic. Yet, the majority of Romanists tend to believe that *iactus missilium* meant transfer of ownership towards an unspecified person, which thought is typically based on two primary texts (cf. Gai. D. 41, 1, 9, 7 [2 rer. cott.]; Inst. 2, 1, 46). Contrasted to this idea, there's another fundamental text in the Digest (Pomp. D. 41, 7, 5, 1 [32 ad Sab.]) which casts considerable doubts on this. As a result, the question arose how can *iactus missilium* be considered as *traditio in incertam personam*. What lies behind this concept? Is it possible to present and evaluate the sources without any prejudices and presuppositions? What consequences can be drawn from such an approach with respect to the true character of *iactus missilium*? In connection with the author's hypothesis on *iactus missilium*, it is likewise inevitable to clarify the actual character and content of both *occupatio* and *derelictio*.[1]

[1] As for the above mentioned hypothesis, it should be pointed out that there are other authors as well who strongly believe that *iactus missilium* was anything but the unification of *occupatio* and *derelictio*. Cf. on this e.g. BENEDEK FERENC: Így szórták a pénzt Rómában. [How money was thrown in Rome] *Jogtudományi Közlöny* 9/1982. 698-706; BENEDEK FERENC: Derelictio, occupatio, usucapio. *Jogtörténeti Tanulmányok V.* Budapest:

The need for examining the meaning of *rerum natura*, as well as its role played in decision-making is derived from the previously enumerated two basic questions. Essentially because both the approach of money in the scope of the Roman law of property and the specialities of *iactus missilium* are presumably due to the peculiarities of money and *missilia*.[2] The related rules seem to be peculiar because of their specific character, as a consequence the nature and character of each entity in a particular case can have certain impact on the fact how these entities are considered by the law. Did *natura* bear any role in decision-making, and if yes what role did it play? Was the case-by-case pursuit of justice a mere self-interest, or did any wider cultural frame exist, with which the decisions corresponded? What impact did *rerum natura* have on legal thinking? Was it the order and state of things, as well as human experience on this that channelled legally relevant responses for an actual case into one possible direction? These are only the very typical ones of the sort of questions this thesis is aming to respond, and as a result of this it attempts to place money in the scope of the law of property.

It is apparent both from the title and from all stated above that exclusively some certain aspects of the law of property come under scrutiny with respect to money. The reason for this is that the main goal of this thesis is to clarify the static rules, so that dynamic approach could also be examined afterwards.

It is beyond doubt that a legal thesis attempts to comprehend what money is from a legal aspect, however it is also essential to identify its quotidian role as well. From this aspect the use of certain economic terms and categories are hardly inevitable for the sake of better understanding, yet it should be avoided to be absorbed in complex and in-depth economic analyses. Similarly, the thesis strongly guards against dealing with the introduction and presentation of the Roman monetary system.[3] It should positively be emphasised that the thesis cannot undertake the burden of answering all money-related issues of the law of property. The present thesis therefore fails to cover the topics of *vindicatio nummorum* and

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Tankönyvkiadó, 1983. 7-31; BENEDEK FERENC: Iactus missilium. *Sodalitas. Scritti in onore di Antonio Guarino V*. Napoli: Editore Jovene, 1984. 2109-2129.

[2] It should be pointed out that the expressions 'money' and 'missilia' are not interchangeable, the meaning of the latter term is somewhat broader than that of money, referring to all those presents that were handed out by the magistrates or the emperor himself to a mass of people on any festive occasion. On this cf. e.g. ADOLF BERGER: *Encyclopedic Dictionary of Roman Law*. Clark, New Jersey: The Lawbook Exchange Ltd, 2010[8] s. v. 'missilia'; BENEDEK *Így szórták* 698; BENEDEK *Iactus* 2109; ZLINSZKY JÁNOS: Evictio missilium. *Iustum Aequum Salutare* II. 2006/1-2. 100-101.

[3] In connection with this topic suffice itt o have reference to the following works: THEODOR MOMMSEN: *Geschichte des römischen Münzwesens*. Berlin, 1860; JOHANNES GEORG FUCHS: *Iusta causa traditionis in der Romanistischen Wissenschaft*. Basel: Helbing & Lichtenhahn, 1952; MICHAEL H. CRAWFORD: *Roman Republican Coinage*. Cambride: Cambridge University Press, 1974.

consumptio nummorum, while the matters of *quasi ususfructus*, *commixtio nummorum*, *res consumptibiles* and *traditio nummorum* are merely mentioned *per tangentem*, that is to the extent that the main message of the thesis should be sufficiently established. It is to be also pointed out that any relations of money to the law of obligations go far beyond the scope of the present thesis. This, however, doesn't mean that the analyses of certain sources would be fully ignored: some texts connected to the aforesaid topics are also presented, if necessary, but without the in-depth analyse of these topics.

II. Description of work, research methods, the use of sources

With respect to the research conducted on the place of money as a means of measuring value in the scope of the law of property, as well as on certain aspect of the issue of acquiring ownership over money, a precept by the Emperor Marcus Aurelius serves as guiding principle: "Make for thyself a definition or description of the thing which is presented to thee, so as to see distinctly what kind of a thing it is *in its substance*, in its nudity, in its *complete entirety*, and tell thyself its proper name, and the names of the things of which it has been compounded, and into which it will be resolved".[4] Consequently, when thinking about money and following the imperial teaching, the first question to answer is what the examined object really is, that is what its place, its destination and goal is in the nature.[5] This explains the property law-approach, as in private law two basic questions count as essential: "What?" and "How?". The former inquires about the static, namely the actual place of the object scrutinised in the system of law. The latter deals with the dynamics, viz. how this object described by means of the question of "What?" could be acquired.

Accordingly, the basic guidelines of research are simplicity and methodical approach. A very delicate balance should be maintained to fulfil the research objectives, therefore it appears that the most effective technique is to base on the analysis of the primary sources, mainly that of the Digest. In this respect the main goal should be to be able to discover the actual case, to which the response of the jurist is referring. Thus, each source should be handeled from a practical view, mainly because all theoretical explanations are connected to practice itself. The second step could be to discover the meaning of the current text by means of the principles of interpretation. As for this, it is vital to point out that each primary text is considered to be free from interpolations – the unsustainable character of the textual criticism of the interpolation research is most incisively referred to by András Bessenyő.[6]

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[4] Meditations 3, 11 (translated by George Long). The Harvard Classics (ed. by Charles W. Eliot). New York: P.F. Collier & Son, 1909–14. Vol. 2, Part 3.

[5] Cf. Meditations 8, 11: "This thing, what is it in itself, in its own constitution? What is its substance and material? And what its causal nature, or form? And what is it doing in the world? And how long does it subsist?"

[6] BESSENYŐ ANDRÁS: *Római magánjog. A római magánjog az európai jogi gondolkodás történetében*. [Roman Private Law. Roman Private Law in the History of European Legal Thinking] Dialóg Campus Kiadó, Budapest-Pécs, 2003. 111. As for textual criticism cf. mainly MAX KASER: *Zur Methodologie der römischen Rechtsquellenforschung*. Österreichische Akademie der Wissenschaften. Philosophisch-Historische Klasse Sitzungsberichte 277, 5. Abhandlung. Wien: Verlag Böhlau, 1972, and especially 80 sqq. and 94 sqq.; FRANZ WIEACKER: Textkritik und Sachforschung. *ZSS RA* XCI (1974). 1-40; A. ARTHUR SCHILLER: *Roman law: Mechanisms of Development*. The Hague – Paris – New York: Mouton Publishers, 1978, 62-72, and especially 67-70; on Iustinian's codification MAX KASER: *Das römische Privatrecht II*. Handbuch der

In the course of the collection of primary sources, it was necessary to make use of the most important lexicons, encyclopaedias, dictionaries and manuals[7], by means of which it became possible to assemble the *corpus* of primary sources to examine.

The presentation of the authoritative secondary literature is doubtlessly important, with the restriction however that the main objective is to present and systematically analyse those secondary works strictly related to the actual topic. The presentation of secondary literature cannot prevail over the analysis of primary sources, as Roman law is best known via the works of Roman jurists. The achievements of secondary authors in better understanding the opinions of Roman jurists are obviously incontestable, yet it shouldn't be lost sight of the fact that the rules of Roman law are best preserved in jurists' opinions.

The attempts to answer all the aforesaid questions should be conducted on the basis of realism, that is starting from the question of „What?". The approach of the whole analysis is pronouncedly realistic in contrast to the relativistic, a.k.a. subjective idealistic approach: the point of departure never focuses on what arises from human conscious, mainly not from human conscious-based ideas (subjective idealism), but from an objectively existing reality that is independent of cognitive schemes.[8]

The thesis with respect to the examined topics comes into five parts. The first part covers a general introduction concerning the approach towards money. In this respect, it is established that a general definition for money capable of describing it in its complexity can hardly be

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Altertumswissenschaft X. 3. 3. 1-2. München: C. H. Beck'sche Verlagsbuchhandlung, 1975[2], 32-40, specifically on interpolations 35-36. About the research method of textual criticism see e.g. WOLFGANG KUNKEL – MARTIN JOSEF SCHERMAIER *Römische Rechtsgeschichte*. Köln – Weimar – Wien: Verlag Böhlau, 2005[14], 218-221; FÖLDI ANDRÁS – HAMZA GÁBOR: *A római jog története és institúciói.* [The History and Institutes of Roman Law] Budapest: Nemzeti Tankönyvkiadó, 2010, 138-139; BESSENYŐ ANRDÁS: *Római magánjog. A római magánjog az európai jogi gondolkodás történetében*. [Roman Private Law. Roman Private Law in the History of European Legal Thinking] Dialóg Campus Kiadó, Budapest-Pécs, 2003, 109-111; PETER STEIN: *Roman Law in European History*. Cambridge University Press, 1999, 170.

[7] Cf. without the need for covering all works: BERGER *Encyclopedic Dictionary*; BESSENYŐ *Római magánjog*; PIETRO BONFANTE: *Corso di diritto romano. La proprietà. II, 2*. Milano: Giuffrè, 1968; ALFRED ERNOUT – ANTOINE MEILLET: *Dictionnaire étimologique de la langue latine. Histoire des mots*. Paris, 1951; FÖLDI ANDRÁS – HAMZA GÁBOR: *A római jog története és institúciói.* Budapest: Nemzeti Tankönyvkiadó, 2010; ANTONIO GUARINO: *Diritto privato romano*. Napoli: Editore Jovene, 1992; MAX KASER: *Das römische Privatrecht I-II.* Handbuch der Altertumswissenschaft X. 3. 3. 1-2. München: C. H. Beck'sche Verlagsbuchhandlung, 1971[2]; FRITZ SCHULZ: *Classical Roman Law.* Oxford, 1951; PASQUALE VOCI: *Modi di acquisto della proprietà. Corso di Diritto Romano*. Milano: Giuffré Editore, 1952. Besides these, the following works were also very useful with respect to linguistic scrutiny: HERMANN GOTTLIEB HEUMANN – EMIL SECKEL: *Handlexikon zu den Quellen des römischen Rechts*. Jena: Verlag Gustav von Fischer, 1926; *Oxford Latin Dictionary*. Oxford: Clarendon Press, 1968; FINÁLY HENRIK: *A latin nyelv szótára*. Budapest: Akadémiai Kiadó, 2002 (reprint); HENRY GEORGE LIDDELL – ROBERT SCOTT: *A Greek-English Lexicon.* Revised and augmented throughout by Sir Henry Stuart Jones with the assistance of Roderick McKenzie. Oxford: Clarendon Press, 1940.

[8] Concerning the issues related to relativism cf. JOSEPH RATZINGER: *Glaube – Wahrheit – Toleranz. Das Christentum und die Weltreligionen*. Freiburg – Basel – Wien: Herden, 2005[4]. 94-95; JOSPEH RATZINGER: *Werte in Zeiten des Umbruchs. Die Herausforderungen der Zukunft bestehen*. Freiburg – Basel – Wien: Herden, 2005. 50.

elaborated. Consequently, the best attitude towards this topic is to advance money via its characteristics and basic functions. The former focus on user expectations with respect to money, while the latter describe money's appearance in regular daily trade – actually showing how money "moves". From a jurist's point of view the fungibility of money as a characteristic bears of utmost importance, as well as its functions as measuring value, means of trade and means of payment. As for the Roman concept of money, it should be noted that all these characters and functions were partially applied for the most part, mainly due to the fact the true value of money was predominantly dependent on its actual metal content.

The second part presents the Romanist *communis opinio* of money, according to which it is a fungible and a consumable asset. Both views dominant in the secondary literature are based on primary sources.[9] These also give a hint concerning money as a *res corporalis* (cf. Pomp. D. 34, 2, 1, 1 [6 ad Sab.]; Inst. 2, 2, 2). Following these considerations, the complex approach of money in the primary sources is revealed. The examined sources can be sorted into four groups. The first covers texts which consider money as *res „fungibiles"* (cf. e.g. Gai. 3, 90; Ulp. D. 30, 34, 3 - 4 [21 ad Sab.]). Texts in the second group outline the idea of money belonging to the category of *res incorporales*. Amongst other sources, some emblematic examples of this can be found in texts as follows: Iav. D. 12, 6, 46 (4 ex Plaut.); Ven. D. 34, 4, 32 pr. (10 act.). By means of texts in the third group it can be pointed out that money was also regarded as an original and independent category amidst other classes of assets (cf. Ulp. D. 13, 3, 1 pr. [27 ad ed.]). Those *responsa* (typically that of Paul. D. 45, 1, 37 [12 ad Sab.]) which have reference to money as *nummi*, focus exclusively on the coins themselves. Besides all these, it should be mentioned that there are some texts which fail to classify money unequivocally (cf. e.g. Ulp. D. 30, 30 pr. [32 ad Sab.]; Iul. D. 23, 4, 21 [17 dig.]). Even this brief overview is sufficient to support such a statement that the ideas of Roman jurists with regards to money were far from being unanimous. It is common in all investigated sources that jurists decline to classify money from a positive aspect, they meremly exclude it from certain specific category of assest in comparison to other assests. The lack of a unanimous attitude towards money in the sources leaves no other possibility but to conclude that even the jurists themselves somehow sensed the peculiar character of money compared to other valuables. In the background of this idea lies the duality of *qualitas* and *quantitas*, which Romanists tend to refer to as the dual nature of money.

[9] In this respect the following texts are to be cited: Gai. 2, 196; 3, 90; Ulp. D. 13, 3, 1 pr. (27 ad ed.); Ulp. D. 45, 1, 29 pr. (ad Sab.); Inst. 2, 4, 2.

The third part of the thesis encompasses the scrutiny of the meaning and application of the term *rerum natura*. The primary objective was to reveal in what cases and how Roman jurists had recourse to the notion of *rerum natura*. During this research, it became likewise important to explain what meanings and uses attached to the term mentioned above.

The results of the secondary literature based on the in-depth analysis and evaluation of the relevant sources show that the term *rerum natura* predominantly indicated the existence of something or somebody, or – using a negative form – reflected the lack of existence. In this respect the secondary literature is undivided. This sub-topic is given special focus and attention in the thesis with special reference to freeborn people, slaves and non-living objects, or – even beyond these categories – non-material entites. In connection with freeborn people the most interesting, also the most controversial issue is that of the existence of the *nasciturus* in accordance with the sources. Not many an author attributes other specific meanings to the term *rerum natura*, though evidence derived from the sources is overwhelming. There are several sources in the scope of which *rerum natura* represents the objective reality – in these particular cases the point is to channel legal decisions without truly restricting the freedom of decision-making. It is apparent from the texts in question that the respect of the objective reality, as well as the reflection of this respect in the actual legal decisions result in the experience that the aforesaid decisions are anything but accidental. As a third group, a cluster of such texts should be mentioned in which *rerum natura* marks a specific character of something or somebody in the case. The secondary literature is hesitant about considering this cluster of primary texts as an all independent group, therefore it should be examined what the basis of concurrence with the other two groups can be regarding each particular text. In the end, such texts are also cited in which the term mentioned above is placed in a wider, more abstract normative frame, and as a consequence of this the link between *rerum natura* and *ius naturale* becomes well established. As an additional *Gedankenexperiment*, the thesis also contains a comparison of the meaning and application of *rerum natura* in the Antiquities and legal facts in the modern legal systems. Resulting from this comparison it can be stated that the decisions of the Roman jurists had such a cultural hinterland that influenced not only the Roman thinking and legal thinking itself, but also it made an impact on both the Christian thinking on the one hand, and on the development of private law on the other.

The fourth part of the thesis is dealing with the prevalent uses of the term *res* in the sources, focusing mainly on the notions of *res, quae pondere numero mensura constant* as well as *res incorporales*. These topics are covered essentially in connection with the consideration of money as a thing in the legal sense. The use of the term *res* is examined, because both the

primary and the secondary sources show that Roman jurists regarded money as a physically existing entity for the most part, despite the diversity of response in this matter. The reason for this diversity is that both the casual and the legal use of the expression *res*, a material interpretation was dominant due to the effect of Greek philosophy, the impact of which exercised on public state of mind is very transparent in this case. Therefore, it useful to clarify the meanings of *res* on the one hand, and that of *Ding* and *Sache* on the other, separating them from one another at a time.

As for *res, quae pondere numero mensura constant* it is pointed out what examples the sources enumerate when mentioning this group of things, the most important of these is *pecunia numerata*. The significance of *pondus*, *numerus* and *mensura* is that things are defined on the basis of their weight, number or measure, thus these all belong to the nature of these entities. The whole scrutiny results in the assertion that there's a minor difference of meanings as for *pecunia* and *pecunia numerata*: the meaning of the former is somewhat wider than that of the other. This assertion is positively supported by the *excursus* on treasure trove: the text by Paul [10] defining treasure contains the register *depositio pecuniae*, in which expression the word *pecunia* – in accordance with other texts – refers to an object of value, an asset. In connection with services due with respect to *res, quae pondere numero mensura constant*, the principle of *eiusdem naturae reddere* in the sources reveals the practical application of justice as *ius suum cuique tribuens*.

The difference between *pecunia* and *pecunia numerata* is clearly traceable in the scope of the examination of the term *res incorporales*. Its importance can be approached from the aspect of assets which are considered mainly as property rights. The expression *res incorporales* finds its roots in both philosophy and rhetoric. Imported into legal usage, it referred to untouchable entities. The longer, theoretical texts in the Institutes of Gaius and that of Justinian[11] also contain examples of *res incorporales*, and on the basis of these and with respect to the content and meaning of other texts in the matter it can be stated that the wording of these texts are likely to be colloquial rather than technical: the expression *pecunia* as corporeal in these texts may refer to *pecunia numerata* instead.

All things considered, the importance of the difference between *pecunia* and *pecunia numerata* is that the Romans were aiming to apprehend the same phenomenon from two different aspects, the reflection of which in the sources are these two expressions. This is the point where the true meaning of the dual nature of money becomes clearly comprehensible.

[10] Paul. D. 41, 1, 31, 1 (31 ad ed.).
[11] Gai. 2, 12-14; Inst. 2, 2 pr – 3.

On the one hand there is *pecunia* as a measure of value that is money. On the other hand, there is *pecunia numerata* in the outer world which practically incorporates this measure of value. It is beyond any doubt that for the Romans the latter was more easy to comprehend, yet, the results of the research conducted it is apparent that they still sensed to some extent that abstract money and its actual bearer can be separated. However, it should also be pointed out that this dual nature of money stemms necessarily from the fact that even money itself is a part of *natura*, that all men are able to recognise due to their reason.

The last, fifth part covers the detailed analysis of the topic *iactus missilium*. The central question with regards to this topic is whether the traditional interpretation of those souces mentioning the expression *traditio in incertam personam* is acceptable or not. Preliminarily it is pointed out that the whole issue focuses on *missilia* which referred not only to money, but in a wider sense to any kinds of gifts thrown into the crowd by the magistrates or the emperors owing to different reasons. However, it is likewise important to underline that the goal described by Pomponius in the Digest[12] is highly unlikely, that is *missilia* were thrown in order that those who acquire them should obtain ownership over them. The interpretation of this act as *traditio in incertam personam* is contradicted by the aforesaid Pomponius-text, with special attention to the subject of *iusta causa traditionis* which is greatly debated in this matter. On the basis of the source it is more likely to consider *iactus missilium* as a synthesis of *derelictio* and *occupatio*. To support this concept, the notion, meanings and effects of both *occupatio* and *derelictio* are to be clarified. Mainly in connection with *derelictio*, the realistic approach and interpretation of *derelictio* of ownership, *usucapio pro derelicto* and *animus derelinquendi (derelinquentis)* are beyond doubt worthy, comparing the latter topic with that of *iactus mercium* at a time. In the scope of this scrutiny, the analysis of Title 7 Book 41 of the Digest was indispensable, with special attention to further texts as well (Iul. D. 14, 2, 8 [2 ex Minic.]; Gai. D. 41, 1, 9, 7 [2 rer. cott.]; Ulp. D. 47, 2, 43, 11 [41 ad Sab.]; Inst. 2, 1, 46). It occurs from the analysis of the relevant sources that *usucapio pro derelicto* was necessary because any *res derelicta* cannot be obviously regarded as *res nullius derelicta*, therefore merely the one-year period of *usucapio* could rectify the acquisition of ownership. As for the debate of *animus derelinquendi (derelinquentis)* the sources seem to support the concept known from secondary literature according to which *animus* signifies a cognitive relation of the *derelinquens* towards the act itself, as well as its possible results.[13]

[12] Pomp. D. 41, 7, 5, 1 (32 ad Sab.).
[13] LETIZIA VACCA: *Derelictio e acquisto delle res pro derelicto habitae.* Milano, 1984. 120.

After the evaluation of both the primary and the secondary sources, it can be stated that *iactus missilium*, in case of throwing money into the crowd, appears to be a *derelictio* and a subsequent and immediate *occupatio*, rather than a transfer of ownership towards a non-specified, uncertain person. It should be noted, however, that the behaviour of the *accipiens* and the circumstances amongst which the *iactus* actually took place, this act may as well include further ways of losing and acquiring ownership, such as an additional *derelictio* or even a *commixtio*.

III. Summary of scientific results, their potential use and usefulness

1. The general introduction concerning money was conducted via the characteristics and functions of money. On the basis of the relevant secondary literature it could be stated that from a legal point of view the fungibility of money as a characteristic bears of utmost importance, whereas its functions as measuring value, means of trade and means of payment attract the most attention. With respect to the Roman monetary concept, it should be noted that all these characteristics and functions gained only partial application; due mainly to the fact the true value of money was predominantly dependent on its actual metal content. Subsequently, the Romanist *communis opinio* is presented, and it is clear from the sources analysed that the Roman view on money was anything but unanimous: such a variety of legal opinions drives to the conclusion that Roman jurists themselves sensed the peculiar character of money to a certain extent. In the background of this approach lies the duality of *qualitas* and *quantitas*, which Romanists tend to refer to as the dual nature of money.

2. The analysis of the term *rerum natura* was necessary to reveal the actual content and meaning of this dual nature. The term *rerum natura* refers to the existence or non-existence of a person or a thing, as well as to their place, aim and function in the nature. The aforesaid place, aim and function can be recognised by any human being, which ability is granted to us due to our intelligence, similarly to the order of nature linked with these notions. The importance of this term from the aspect of legal thinking is that during the process of decision-making this order and all its experiences define and channel the actual responses given to specific questions. As a result, there’s no possibility to set them aside neither in the scope of unique decisions, nor in the process of legislation, because otherwise the decision or the norm would remain

separated from the social, cultural and legal background to which it was supposed to be incorporated.

3. In connection with the consideration of money as a thing it is to point out that – as it was indicated previously – Roman jurists generally regarded money as a physically existing entity, and therefore emphasised its material being. Resulting from the analysis of the categories of *res, quae pondere numero mensura constant*, and that of *res incorporales*, it could be asserted that the sources in this respect tend to have reference to two expressions, *pecunia* and *pecunia numerata*, which, however, bear a slightly different meaning: the interpretation of *pecunia* is somewhat broader than that of *pecunia numerata*. In addition to this, it could be likewise assumed that the text by Gaius, and as a result that in the Institutes of Justinian, are improper concerning the topic of *res incorporales*: the consideration of *pecunia* as *corporalis* appears to be obviously inappropriate; the text is essentially about *pecunia numerata*. The differentiation between *pecunia* and *pecunia numerata* was inevitable because as a result of this, it becomes possible to point out that the difference between money and its material incorporation was clearly sensed and even comprehended by the Roman jurists. *Pecunia* as 'money' in a broader sense represented and measured value, and was also used as a means of exchange and payment, while *pecunia numerata* materially incorporated this means of measuring value in the outer world. It is beyond doubt that for the Romans the latter was the concept that was easier to comprehend and apply, yet it is apparent from the analysis that they also understood this dual nature of money. This understanding was only possible because money itself is also part of *natura*, which human beings are able to recognise as a result of their sense.

4. It must be underlined that in the scope of *res, quae pondere numero mensura constant* the requirement of *eiusdem naturae reddere* with respect to the services due from this circle of things, means a practical application of the postulate of justice on the sense of *ius suum cuique tribuens*.

5. The aim of the analysis of *iactus missilium* was to present a practical case of acquiring ownership over money. The departure point in this respect was to do away with the idea of considering *iactus missilium* as *traditio in incertam personam*, which idea originates from Pandectistic. From an analytic approach of events and possible

alternatives, such a conclusion can be drawn that in case of throwing money into the crowd *iactus missilium* is actually a synthesis of *derelictio* and *occupatio*, during which it is sufficient for the transfer of ownership that the magistrate as the owner should express his will towards an unspecified person, which is represented in the outer world by the physical throwing of coins. As a result *iactus missilium* is a basically independent means of acquisition of ownership, in which the material elements are derived from the systematic unification of *derelictio* and *occupatio*; whereas the will to transfer ownership comes from the topic of *traditio*.

6. The use and usefulness of the assertions of this thesis can be traced on the one hand in the research activity, as well as in the education on the other. The method based on realism, and examining each entity on the basis of their absolute value, can be extremely useful in any further research activity: the importance and the advantage to certain extent of natural law thinking starting from objective reality is based vastly on the fact that this objective reality itself is the proper means to examine and present a certain topic free from any prejudices. The application of this principle channels the further directions of research at a time. Linked mainly with the notion of *rerum natura*, the primary objective is to scrutinise *ius naturale*, and *naturalis ratio* from the platform of objective reality. In addition to all this, the above described method is also suitable to pursue the in-depth re-examination of very basic legal notions and institutions; such an objective gains more and more importance during the times paradigm-changes.

IV. List of publications

„Uti legassit" – halál esetére szóló rendelkezés a XII táblás törvényben. ["Uti legassit – dispositions upon death in the Law of the XII Tables] In: HAJDÚ GÁBOR (szerk.): *Jogtörténeti Tanulmányok Dr. Horváth Attila tiszteletére*. In-Forma, Budapest, 2003. 17-27.

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Some Questions Concerning Money in Roman Law – A New Perspective. *Acta Ant. Hung.* 47, 2007. 241–259

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