TERMINOLOGY USED TO DENOTE REAL PROPERTY IN THE SOURCES OF CLASSICAL ROMAN LAW

RENATA ŚWIRGOŃ-SKOK*

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INTRODUCTION

In Roman law, only land was considered real property. Land itself was seen as a limited surface of the earth with everything attached to it, both by their own nature and artificially, e.g. buildings based on foundations, trees grown in soil, plants. Movable property located on the surface of land and attached to it permanently, pursuant to the *superficies solo cedit* rule, belonged to land and the land's owner.[1]

In the sources of Roman law of the classical period, one can find a great number of passages in which land was described by means of a variety of terms. They included: *praedium*, *fundus*, *locus*, *possessio*, *villa*, *ager*, *solum*. Those concepts were not uniform and the meanings of words used to describe them sometimes coincided or overlapped.

* PhD. hab., Professor of the University of Rzeszów, Institute of Law of the University of Rzeszów, e-mail: rswirgon@ur.edu.pl, ORCID: 0000-0003-2635-6462

[1] More on real property in Roman law see, e.g., Biondo, B., 'Cosa mobile ed immobile', *Novissimo Digesto Italiano*, Vol. 1, pp. 1023 et seq.; Bonfante, P., *Corso di diritto Romano, Part I, Proprietá*, Milano, 1966, pp. 217 et seq.; Di Marzo, S., *Res immobiles*, BIDR, 1947, Vol. 49–50, pp. 236 et seq.; Kaser, M., *Das Römische Privatrecht*, Vol. 2, München, 1959, p. 323; idem, *Die Typen der römischen Bodenrechte in der späteren Republik*, ZSS, 1942, Vol. 62, pp. 1 et seq.; Kübler, B., *Res mobiles und immobiles*, in: *Studi in onore di P. Bonfante*, 1930, Vol. 2, pp. 347 et seq.; Świrgoń-Skok, R., *Nieruchomość i zasady akcesji według prawa rzymskiego*, Rzeszów, 2007, pp. 10–196; idem, 'Akcesja do nieruchomości w prawie rzymskim', in: Dębiński, A., Wójcik, M. (ed.), *Współczesna romanistyka prawnicza w Polsce*, Lublin, 2004, pp. 289–299; idem, 'Grundstücke Grundstücksverbindungen nach römischen Recht – ein Überblick', *Orbis Iuris Romani*, 2008, Vol. 12, pp. 45–62.

In the doctrine of Roman law it is widely accepted that the term *res immobiles*[2] standing for real property appeared as late as in post-classical law.[3] It is pointed out that texts covered by the Justinian codification do not date back to the classical period but are Justinian interpolations.[4]

In this paper, a number of source texts of Roman law relating to land will be scrutinized and the purpose will be to present the scope of terms used to denote land. Terminology in this respect was rather flexible and the scope of terms applied in relation to land was being established by Roman jurists while deciding

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[2] Such views have been expressed, among others, by Bonfante, P., *Corso di diritto Romano...*, op. cit., pp. 219 et seq.; Di Marzo, S., op. cit., p. 236; Kaser, M., *Das Römische Privatrecht, Vol. 1,* München, 1971, p. 323; Kübler, B., op. cit., p. 347; Rasi, P., 'Distinzione fra cose mobili ed immobilia nel diritto ostclasico e nella glosa', in: *Atti del Congresso di Verona*, Milano, 1953, Vol. 4, pp. 415 et seq. L'Albertario, *Appunti sul peculio castrense,* BIDR, 1931, Vol. 29, p. 29, suggests that the phrase '*res immobiles*' should be substituted with '*praedium*'. Bonfante, P., 'Facoltà e decadenza del procuratore romano', in: *Studi giuridici dedicati e offerti a F. Schupfer*, Roma, 1975, Vol. 1, pp. 3 et seq. M. San Nicolo ('La clausola di difetto o eccedenza di misura nella vendita immobiliare secondo il diritto Babilonese', in: *Studi in onore di P. Bonfante*, Milano, 1930, Vol. 2, p. 42) maintains that the Roman division of things into *res mobiles* and *res immobiles* may be traced back to Neo-Babylonian law under which things were divided into movables, i.e. slaves and animals, and immovables.

[3] Justinian's Institutes (I.2,6pr) provide for a one-year time limit for the usucaption of a movable and a two-year time limit for the usucaption of an immovable (*si mobilis erat, anno ubique, si immobilis biennio tantum in Italico solo usucapiat...*), while in D.2,8,15pr Macer mentions a special category of possessors (*possessores immobillium rerum*) who were relieved from the obligation to provide the *satisdatio*. It is quite likely that in the original text instead of *immobillium* either *res soli* or *fundus* were used. The same situation occurs in D.3,3,63: "*neque mobile vel immobiles neque servos speciali domini mandatu (…) alienare potest*". Here, again, the phrase *alienare potest* was probably used in the opposite meaning than it originally had had in the works of Modestinus. Moreover, in a text by Marcellus (D.19,2,48) it seems suspicious that the word *rem* was followed by *non immobilem*. Also, in D.41,3,23pr (Javolenus), the phrase *temporis immobilium rerum* is in contrast to a previous phrase *temporis de mobilibus statuto* and it is likely that it was interpolated because it is appropriate for the style and language of Justinian's compilers. Also, as far as the Justinian code is concerned, the phrase *res immobiles* does not come from the period of classical law. It is, instead, a Justinian interpolation. In C.3,34,2 the phrase *servitutem exemplo rerum immobilium tempore quaesisti* does not date back to the classical period. Similarly, the phrase *etiamsi si res immobiles in his erunt*, coming from the C.12,36,1,2 constitution, as well as the phrase *res mobiles vel se moventes* appearing in C.3,36,4, are results of interpolations made by Justinian's compilers. The post-classical origin of the phrase *res immobiles* may also be evidenced by the constitutions contained in the Codex Theodosianus. The C.Th.8,12,1,2 passage reads as follows: "*donandum rem, si est mobilis, ex voluntate traditam donatoris vel, si immobilis, abscessu donantis novo domino paterfactam*", while in Fr.Vat.249,7 the same issue is covered in a slightly different way: "*non enim aliter vacua iure dantis res erit, quam ea vel eius voluntate, si est mobilis, tradatur, vel abscessu sui, si domus aut fundus aut quid eiusdem generis erit, sedem novo domino patefecerit*". In the first piece of text, the term used to describe real property is *immobilis,* while in the second it is *domus aut fundus aut quid eiusdem generis erit.* Besides, in another constitution of Constantine (C.Th.12,1,6 of 319 AD), which was later included in the Justinian code (C.5,5,3,1), it was clearly written: *"bonis eius mobilibus et urbanis mancipiis confiscandis, praediis vero rusticis mancipiis civitati ... mancipandis"*. As is seen, Constantine used the term *prediis*, not *immobilis*.

[4] More on interpolations in the quoted texts see *Index interpolationum Quae in Justyniani Digestis*, Levy, E., Rabel, E. (eds.), Weimar, 1929, which proves that all texts, i.e. D.2,8,15pr; D.3,3,36; D.19,2,48; D.33,6,3,1; D.41,3,23pr; C.3,34,2; C.3,36,4; C.12,36,1,2 were in fact interpolated; cf. Di Marzo, S., op. cit., pp. 236 et seq.; Rasi, P., op. cit., p. 216. It seems reasonable to approve the view of P. Bonfante (op. cit., p. 219) according to whom the division of things into *res mobiles* and *res immobiles* is appropriate for post-classical Roman law.

individual cases. Although the preserved sources of Roman law indicate that there were attempts by jurisprudence to define individual terms used to denote land, Roman lawyers did not fully introduce a complete division of land into individual categories. These are the issues that this study will be devoted to.[5]

1. LEGAL TERMS TO DENOTE LAND

Fundamental importance for the presentation of terms used in the sources of classical Roman law to denote land has the passage authored by Javolenus, from the Fourth Book of his *epistulae*:

> *D.50,16,115 Iavolenus libro quarto epistularum: Quaestio est, fundus a possessione vel agro vel praedio quid distet. "Fundus" est omne, quidquid solo tenetur. "Ager" est, si species fundi ad usum hominis comparatur. "Possessio" ab agro iuris proprietate distat: quidquid enim adprehendimus, cuius proprietas ad nos non pertinet aut nec potest pertinere, hoc possessionem appellamus: possessio ergo usus, ager proprietas loci est. "Praedium" utriusque supra scriptae generale nomen est: nam et ager et possessio huius appellationis species sunt.*

In the quoted text, Javolenus distinguishes four basic terms used to denote land, i.e. *fundus*, *ager*, *possessio* and *praedium*. *Fundus* was understood to mean all that was attached to the ground (*quidquid solo tenetur*). The word *ager* was in turn a specific name for such land that could be subject to separate ownership (*species fundi ad usum hominis comparatur*). The term *possessio* meant the property that was actually used. Moreover, Javolenus clearly distinguished *ager* from *possessio*. As he pointed out, ownership rights applied to land specified as *ager*, while land identified as *possessio* might be in actual possession (*"possessio" ab agro iuris proprietate distat*). The name *praedium*, on the other hand, was the basic general expression (*generale nomen est*) used in Roman law to denote land in general, as opposed to *ager* and *possessio* which were individual names.[6] In addition, the following terms were also used in the

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[5] The article is a modified English version of the text by Świrgoń-Skok, R., 'Prawne określenia gruntu jako nieruchomości w prawie rzymskim', *Czasopismo Prawno-Historyczne*, 2006, Vol. 58, pp. 151–163.

[6] As for the Roman terminology for land and agrarian structure see, among others, Zack, A., *Forschungen über die rechtlichen Grundlagen der römischen Außenbeziehungen während der Republik bis zum Beginn des Prinzipats. II. Teil: Fragen an Varro de lingua Latina 5,33: die augurale Ordnung des Raumes,* (file:///C:/Users/rskok/Downloads/ZackForschungenII.pdf); Jurewicz, A.R., '"Domniemanie" własności w reskrypcie Dioklecjana i Maksymiana', *Studia Prawnoustrojowe*, 2006, No. 6, pp. 253–258; Kamińska, R., 'Czy w prawie rzymskim istniała instytucja wywłaszczenia?', *Miscellanea Historico-Iuridica*, 2018, Vol. 17(2), pp. 71–86; Sacchi, O., 'Ager est, non terra, (Varro, l.l. 7.2.18). La "proprietà quiritaria" tra natura e diritto con qualche riflessione in prospettiva attuale', *Diritto & Storia*, 2015, No. 16 (https://www.dirittoestoria.it/17/memorie/romaterzaroma/Sacchi-Proprieta-quiritaria-natura-diritto-qual%20che-riflessione-prospettiva-attuale-[2015].htm); Buck, R.J., *Agriculture and Agricultural Practice in Roman Law,* Wiesbaden, 1983, pp. 9 et seq.; Bojarski, W., 'Prawne formy zapobiegania kryzysowi w rolnictwie w okresie późnego cesarstwa', *Meander*, 1975, Vol. 30, pp. 76 et seq.; idem, 'Przymus zagospodarowania nieużytków (epibole) w cesarstwie rzymskim według konstytucji z III–V wieku', *Acta Universitatis Nicolai Copernici*, 1971, No. 42, pp. 45 et seq.; Capogrossi Colognesi, L., '"Ager publicus" e "ager privatus" dall' eta arcaica al compromesso patrizio – plebeio', in: *Estudios en Homenaje al*

sources of Roman law for land: *solum*[7] and *res soli*.[8] Sometimes, to denote a square, space, part of land separated from the whole, the name *locus*[9] was also used.

Thus, the primary name for land in classical Roman law was *praedium*. According to Javolenus, it was a phrase generally used to denote land; it also stood for a landed estate (*uwiusque supra scriptae generale nomen est: nam et ager et possessio huius appellationis species sunt*). The term *praedium* was contrasted with *ager* and *possessio*, which were used separately to denote a field (*ager*) or a property (*possessio*).

The word *praedium* probably derives from *praes*, *praedis*, *praestendo*, which stood for land possessed by a superior in the family.[10] The Romans divided the *praedia* into *rustica*, *urbana* and *suburbana*:

> *D.50,16,198 Ulpianus libro secundo de omnibus tribunalibus: "Urbana praedia" omnia accipimus, non solum ea quae sunt in oppidis, sed et si forte stabula sunt vel alia meritoria in villis et in vicis, vel si praetoria voluptati tantum deservientia: quia urbanum praedium non locus facit, sed materia. Proinde hortos quoque, si qui sunt in aedificiis constituti, dicendum est urbanorum appellatione contineri. Plane si plurimum horti in reditu sunt, vinearii forte vel etiam holitorii, magis haec non sunt urbana.*

Ulpian understood the *praedia urbana* as land that was used for urban purpose. This category included not only land that was located in the city, but also that which was situated under stables (*stabulae*), inns (*meritoriae*), country houses (*villis*) and streets (*vicis*). In addition, *praedia urbana* included gardens that were located next to buildings. The jurist furtherly emphasizes that not all gardens (*horti*) may be classified as urban lands, because they do not include gardens that bring agricultural benefits, such as vineyards (*vinearii*) and gardens located on the shore (*holitoria*). Moreover, whether or not land belonged to the *praedium urbanum* category depended on the economic purpose of land and not on its location (*quia urbanum praedium non locus facit, sed materia*). The reason was that sometimes there was an enclave of rural land in an urban area. Hence, it can be assumed that all other land that Ulpian did not mention in the above-cited passage as *praedia urbana* was included either to *praedia rustica*, i.e. land used for agriculture, or to *praedia suburbana*, i.e. plots of land for a villa and park which yielded agricultural benefits and still were located within the city limits.

Prof. J. Iglesias, Madrid, 1988, Vol. 2, pp. 639 et seq.; idem, *Alcuni problemi di storia romana arcarica "ager publicus", "gentes" e "clienti"*, BIDR, 1980, Vol. 83, pp. 29 et seq.; idem, '"Ager publicus" e "gentilibus" nella riflesione storigrafica moderna', in: *Studi in onore di C. Sanfilippo*, Vol. 3, Milano, 1983, pp. 73 et seq.; Lauria, M., *Cato de agri cultura,* SDHI, 1978, Vol. 44, pp. 9 et seq.; Watson, A., *Agriculture and Law in Rome of the XII Tables, Les communantes rurales, Vol. 2, Antiquité,* Paris, 1983.

[7] See D.6,1,49pr Celsus; Gai. 2,7; D.41,1,30,1 Pomponius; D.10,3,4,1 Ulpian; D.43,8,2,21 Ulpian.

[8] See D.7,1,7,1 Ulpian.

[9] D.50,16,60 Ulpian.

[10] The word *praedium* probably derives from *praes*, *praedis*, *praestendo*, and was created by combining *prae* + *vas*, the archaic form *praevides*, i.e. surety, guarantor or surety's property. See Forcellini, A., *Totus Latinitatis Lexicon,* Prati, 1868, Vol. 4, pp. 785 et seq.; *Thesaurus Linquae Latine,* Lipsiae, Vol. 10,2, part 4, pp. 577 et seq.; cf. Buck, R., op. cit., pp. 10 et seq.; Gradenwitz, O., *Praedes und praedia,* ZSS, 1921, Vol. 42, pp. 565 et seq.; Sicardi, G.P., 'Saltus, praedium e colonia nella tavola veleiate', in: *Studi in onore di A. Biscardi*, Milano, 1982, Vol. 3, pp. 297 et seq.

The second frequently used term to denote land was *fundus*,[11] by which the Romans understood land property, having the character of a compact economic unit, which was also referred to by Javolenus in D.50,16,115: ... *"fundus" est omne, quidquid solo tenetur* (all that was related to the ground). Florentinus, on the other hand, in an excerpt from Book Eight of his Institutions, described *fundus* as follows:

> *D.50,16,211 Florentinus libro octavo institutionum: "Fundi" appellatione omne aedificium et omnis ager continetur. Sed in usu urbana aedificia "aedes", rustica "villae" dicuntur. Locus vero sine aedificio in urbe "area", rure autem "ager" appellantur. Idemque ager cum aedificio "fundus" dicitur.*

According to the jurist, the *fundus* was a land estate comprising all the buildings and land situated within the borders of such an estate (*omne aedificium et omnis ager continetur*). If the estate was located in a city, then the buildings (*urbana aedificia*) were called houses (*aedes*), while the buildings located in the countryside were villas (*villae*)[12] or farm houses (*rusticae villae*).[13] There were also tenement houses or *insulae*[14] in the city, inhabited by poorer people. The *fundus* category also included construction sites located in the city, called *area*,[15] and rural, single plots of land called *ager*. Finally, Florentinus adds that land with a building located on it is called *fundus* (*ager cum aedificio "fundus" dicitur*).

This is, in turn, how Gaius described *aedes*:

> *D.47,9,9 Gaius ad quarto libro duodecim tabularum: … appellatione autem aedium omnes species aedificii continentur.*

Thus, according to Gaius, the word *aedes* was used to describe all individual buildings. Moreover, in a narrower sense, the *aedes* meant a house situated in a city, as opposed to the *villa* which stood for a house located in the countryside as well as land on which the house was situated. The *aedes* was synonymous with the *domus*,

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[11] More on the *fundus – i* (basis, land, country property, plot of land) see Forcellini, A., op. cit., Vol. 3, p. 167; Heumann, H., Seckel, E., *Handlexikon zu den Quellen des römischen Rechts*, Graz, 1958, p. 225; *Thesaurus Linquae Latine*, Vol. 6, pp. 1573 et seq.; Giumelli, A.S., *Si fundus quem mihi locaveris. Conflitti e sopravvenienze nella locazione-conduzione.* Tesi di Dottorato (https://core.ac.uk/download/pdf/187926305.pdf).

[12] As to the *villa-ae* (country house, outbuildings, farmhouse, country property), which is synonymous with the *aedeficium* (building, house but without a plot of land, in contrast to *aedes*) and the *domus* (house, flat) see among others the following source texts on the basis of which it can be assumed that the words *villa* and *aedeficium* were used by Roman lawyers interchangeably and treated as synonyms: D.7,4,8 Ulpian; D.9,2,27,7 and 9 and 11 Ulpian; D.18,1,52 Paulus; D.19,2,30,4 Alfenus; D.19,2,60,4 Labeo; D.29,5,2 Callistratus; D.48,6,1 and 3 Marcian; I.2,1,1; I.2,3,1. Cf. also Heumann, H., Seckel, E., op. cit., p. 625. See also Witzschel, B., *Villa,* Paulus Realenyklopädie der classischen Altertumswissenschaft von G. Wissova, Stuttgart, Vol. 6, pp. 2599 et seq.

[13] As to farmhouse land cf. D.33,7,8pr Ulpian; D.33,7,18,4 Paulus.

[14] The *insula, – ae* was a tenement house, a separate city building or an outbuilding which was rented to poorer inhabitants of Rome (D.17,2,52,10 Ulpian; D.20,2,1 Papinian). See Forcellini, A., op. cit., Vol. 3, p. 553; Heumann, H., Seckel, E., op. cit., p. 276.

[15] As regards the *area – ae* (undeveloped square, courtyard, city plot) see e.g. two texts authored by Paulus D.8,2,20,2: "*area est pars aedificii*"; and D.46,3,98,8: "*est pars insulae area est*", according to which city lots were parts of buildings (*edificium; insulae*) located in the city. See also Sicardi, G.P., op. cit., pp. 289 et seq.

i.e. a house, household, flat, especially a private house as opposed to the *insulae* (tenement houses).[16]

It should be noted, however, that not every part of land separated from the whole was referred to by Roman lawyers as the *fundus*; sometimes, to denote a field or a plot of land they used the term *locus*.[17] The definition of *locus* can be found in D 50,16,60 from Book 69 of Ulpian's commentary to the edict:

> *D.50,16,60 Ulpianus libro sexagensimo nono ad edictum: "Locus" est non fundus, sed portio aliqua fundi: "fundus" autem integrum aliquid est. Et plerumque sine villa "locum" accipimus: ceterum adeo opinio nostro et constitutio locum a fundo separat, ut et modicus locus possit fundus dici, si fundi animo eum habuimus. Non etiam magnitudo locum a fundo separat, sed nostra affectio: et quaelibet portio fundi poterit fundus dici, si iam hoc constituerimus. Nec non et fundus locus constitui potest: nam si eum alii adiunxerimus fundo, locus fundi efficietur. Loci appellationem non solum ad rustica, verum ad urbana quoque praedia pertinere Labeo scribit. Sed fundus quidem suos habet fines, locus vero latere potest, quatenus determinetur et definiatur.*

In the quoted passage, Ulpian presented the differences between such terms as *locus* and *fundus*. Thus, the name *locus* implied a field or plot of land, separated from the whole of real property (*portio aliqua fundi*) where "the whole" was *fundus* (*"fundus" autem integrum aliquid est*). The lawyer furtherly adds that the term *locus* was most often used to denote land on which there was no country house (*sine villa*). Moreover, the using of different terms *locus* and *fundus* to denote land was subjective, because the size of the plot was not important here, but it depended on the will of the land's possessor (*nostra affectio*). For example, a small field (*modicus locus*) could be called *fundus*, and a large plot, if it was part of land, could be called *locus* (*magnitudo … locum*). Always, however, the land referred to as *fundus* had its borders, while the boundaries of the *locus* could remain hidden until they were demarcated. Moreover, Ulpian, referring to a statement by another Roman lawyer, Labeon, contends that land referred to as *locus* constitutes urban land, not rural. It should be noted that Ulpian, making a reference to rural land, instead of using the expression *praedia rustica* (which stood for rural land), used the word *solum*, meaning soil, land or real property. This may indicate that Roman lawyers sometimes used these terms interchangeably.

In turn, the name *ager*[18] was used by Roman lawyers to denote a single, undeveloped plot of land located in the countryside, which was part of the *fundus*. The following source texts refer to them:

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[16] Murga, J.L., *Sobre una nuova calificatión del aedificium por obra de la legislacion urbanistica imperial*, IURA, 1975, Vol. 26, pp. 41 et seq.

[17] *Locus – I* (place, part of land separated from the whole, square, space, field, plot, part of land as opposed to *fundus*), see Heumann, H., Seckel, E., op. cit., pp. 320 et seq.

[18] *Ager, – agri* (land, ground), see Forcellini, A., op. cit., Vol. 1, pp. 166 et seq.; Heumann, H., Seckel, E., op. cit., p. 24; see also Branca, G., *Ager,* Novissimo Digesto Italiano, Vol. 1, pp. 410 et seq.; Buck, R., op. cit., pp. 15 et seq.; Capogrossi Colognesi, L., *Ager publicus,* pp. 639 et seq.; idem, *Alcuni problem,* pp. 29 et seq.; idem, *Ager publicus e gentilibus,* pp. 73 et seq.; Crook, J.A., *Law and Life of Rome,* London, 1970, pp. 140 et seq.; De Ruggiero, E., *Ager,* Dizionario Epigrafico di antichità romane, De Ruggiero, E. (ed.), Roma, 1964, Vol. 1, pp. 355 et seq.; Kaser, M., *Die Typen,* pp. 3 et seq.; Kubitschek, W., *Ager,* Paulus Realenyklopädie der classischen Altertumswissenschaft von G. Wissova, Stuttgart, Vol. 1, p. 780.

D.50,16,115 Iavolenus libro quarto epistularum: "Ager" est, si species fundi ad usum hominis comparatur. "Possessio" ab agro iuris proprietate distat...

D.50,16,211 Florentinus libro octavo institutionum: ...Locus vero sine aedificio in urbe "area", rure autem "ager" appellatnur.

D.50,16,27pr Ulpianus libro septimo decimo ad edictum: "Ager" est locus, qui sine villa est.

In the first passage, Javolenus defined the *ager* as sort of a cultivated land, e.g. a farming field. Moreover, unlike the *possessio*, land referred to as the *ager* was always subject to separate ownership. In D.50,16,211 from Book Eight of the Institutions of Florentinus, *ager* was in turn presented as an undeveloped square located in the countryside. The same undeveloped squares, but located in the city, were called *area*. On the other hand, Ulpian, in D.50,16,27pr, described the *ager* as a square without a country mansion. The term *ager* was sometimes used to denote the entire territory of a commune, state or tribe, e.g. *ager Campanus*.[19]

Finally, in order to describe land Roman lawyers used the term *solum*,[20] meaning soil (*terra*), land (*ager*) or field (*campus*). The following text by Celsus is worth citation:

D.6,1,49 pr Celsus libro octavo decimo digestorum: Solum partem esse aedium existimo nec alioquin subiacere uti mare navibus.

In the above passage, to denote land the word *solum* was used, and a building (*aedium*) was part of it. The name *solum* also appears in the source texts referring to the *superficies solo cedit* principle:

Gai.2,73: Praeterea id, quod in solo nostro ab aliquo aedificatum est, quamuis ille suo nomine aedificauerit, iure naturali nostrum fit, quia superficies solo cedit.

Also, Gaius, when considering the problem of ownership of a building erected on someone else's land, to denote land, used the word *solum*, stating that ownership of the building belonged to the landowner, regardless of on whose behalf it had been constructed.[21] Sometimes, land was referred to as *res soli*. This phrase was used, among others, by Ulpian in D.7,1,7,1:

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[19] Cf. Branca, G., *Ager,* p. 410.

[20] *Solum, – i* (land, ground, real property, field) see Forcellini, A., op. cit., Vol. 4, p. 558.

[21] The word *solum* also appears, among others, in texts authored by Gaius relating to the *superficies solo cedit* principle (D.41,1,7,10: *omne quod inaedificatur solo cedit*; D.41,1,9pr: *plantae quae terra coalescunt solo cedent ... frumenta ... quae sata sunt solo cedere intelleguntur*; D.41,1,9,1: *solo cedere ... ea quae aedificantur aut seruntur*), Ulpian (D.43,17,3,7: *semper ... superficiem solo cedere*), Paulus (D.44,7,44,1: *superficies ... natura solo cohaeret*) and Epit.Gai. 2,1,4 (*superficies solo cedat*), as well as the constitutions of Emperors Diokletian and Maximian (C.8,10,5: *aedificia, quae alieno loco imponuntur, solo cedant*). The *superficies solo cedit* principle was discussed, e.g., by Kuryłowicz, M., *Zasada superficies solo cedit. Obrót nieruchomościami w praktyce notarialnej,* Kraków, 1997, pp. 79 et seq.; Meincke, J.P., *Superficies solo cedit*, ZSS, 1971, Vol. 88, pp. 180 et seq.; Sokala, A., *Zasada superficies solo cedit w prawie rzymskim*, AUNC, 1987, Vol. 25, No. 172, pp. 145 et seq.; Żak, E., 'Współczesne przemiany zasady superficies solo cedit', in: *Polska lat 90-tych, Przemiany państwa i prawa*, Lublin, 1997, pp. 319 et seq.

D.7,1,7,1 Ulpianus libro septimo decimo ad Sabinum: Rei soli, ut puta aedium, usu fructu legato quicumque reditus est, ad usufructuarium pertinet quaeque obventiones sunt ex aedificiis, ex areis et ceteris, quaecumque aedium sunt.

In the quoted text, the term *res soli* was used to denote real property, i.e. land understood as a limited part of the earth's surface with everything that was attached to it in a natural or artificial way. Ulpian mentions *aedium* (a house located in a city) as an example. According to the jurist, the right of usufruct (*ususfructus*), having *aedes* as an object, comprised both the profits of the building itself (*aedificium*) and those that were brought by the city plot (*area*), as both the building and plot were in fact one real property.[22]

The above terms are not the only ones to be found in the sources of the law of the classical period to denote real property. The then lawyers also used phrases such as: *res quae solo continentur*[23] (things related to land) or *tenentur*[24] (to be in a relationship), or *res solo cohaerentes*[25] (things attached to land). The phrases *res quae solo continentur* and *res quae solo tenentur* were used to denote land, among others, by Gaius in his Institutions:

Gai.2,53: Et In tantum haec usucapio concessa est, ut et res, quae solo continentur, anno usucapiantur.

Gai.2,54: ... Et quamvis postea creditum sit ipsas hereditates usucapi non posse, tamen in omnibus rebus hereditariis, etiam quae solo tenentur annua usucapio remansit.

The above-quoted passages concern issues related to usucaption of individual things belonging to the inheritance. Gaius, referring to real property, i.e. land with everything that was naturally or artificially attached to it, used the phrase *res quae solo continentur* (things related to land – Ga. 2:53) and *res quae solo tenentur* (things attached to land – Gaia 2:54).

On the other hand, the expression *res solo cohaerentes*, meaning an immovable thing, was used, *inter alia*, by Paulus:

D.44,7,44,1 Paulus libro septugensimo quarto ad edictum: Sic et in tradendo si quis dixerit se solum sine superficie tradere, nihil proficit, quo minus et superficies transeat, quae natura solo cohaeret.

Thus, the ownership of land may not be transferred if the ownership of everything that is on its surface, being permanently attached to land, is not

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[22] Forcellini, A., defines *res soli* as everything situated on earth (*terra*), i.e. buildings (*aedes*), land (*ager*), plants (*plantae*) and all other immovables attached to land (*quo solo coniunguntur*), op. cit., Vol. 4, pp. 557 et seq.; see also Sondel, J., op. cit., p. 839, according to whom the phrase *res soli* stands for land, real property.

[23] The phrase *res quae solo continentur* in relation to land was used by Ulpian in D.6,1,1,1 and D.33,7,12,11.

[24] The phrase *res quae solo tenentur* appears among others in Gai.2,204; D.50,16,115 Javolenus.

[25] As for *res solo cohaerentes* meaning real property see, e.g., D.43,16,1,4 and 8 Ulpian; D.43,24,9,10 Veneleius; D.43,24,22,1 Veneleius; D.47,2,62,8 Africanus.

transferred simultaneously. Here, to denote land, Paulus used the term *quae solo cohaeret* (things attached to land).

Based on the preserved source material it can be concluded that the most commonly used term to designate land was *fundus*, followed by *praedium*.[26] It seems, therefore, that these were common phrases used to designate land as real estate, but the subject ranges of the two terms did not fully cross. By contrast, the terms *ager* and *possessio* were used individually to designate a field or estate. In addition, based on the economic purpose land was to serve, Roman lawyers divided the term *praedium* into three types: *urbanum*, *rusticum*, *suburbanum*. Moreover, taking into account buildings located on land, the term *fundus* can be divided into: land with buildings, i.e. *aedes-urbana aedificium* and *rustica vilae*, as well as land without buildings, i.e. *area* and *ager*. Based on the preserved sources of Roman law, one can distinguish the still existing division of buildings between the *aedes* (buildings in the city, in the narrower sense), *domus* (private house), *villa* (country house) and *insula* (tenement house). Another classification of land that can be derived from the preserved sources of Roman law is the division between the *fundus* and *locus*. The latter formed part of the *fundus* (the *locus* was in fact the *fundus* without the *villa*). The *locus*, in turn, was understood as the *praedia urbana* and *praedia rustica*. Finally, one can demonstrate various terms used to denote Roman estates, i.e. land with all the buildings and plants that were on its surface. Those terms were: *praedium*, *fundus*, *posessio*, *villa* and *villae rusticae*.

The above land categories with their different names also served different economic purposes. Moreover, they showed how real estate was defined in Roman law, i.e. whether in Roman law real estate was treated as a composite thing and buildings and plants as components of land, or whether Roman jurists treated surface and land in terms of a natural and obvious relationship, without reference to the notion of a composite thing and component part.

As all the source passages cited above indicate, only land was considered real estate in Roman law. Land was understood as a certain limited part of the earth's surface with everything connected with it in a natural or artificial way, e.g. buildings on foundations, trees growing in the ground, plants. All movable property located on the surface of the land and permanently attached to it, based on consistent application of the superficies solo cedit rule in Roman law, belonged to the land and its owner. As a result of being detached from the land, objects located on the surface of the land become independent movable things, i.e. things that can change their position without damaging their essence, and it is irrelevant whether they are moved by an external force or whether they move themselves. Before detachment, the above objects were merely dependent parts of an immovable thing. Roman law treated surface and land in terms of a natural and obvious relationship; it did not know building or premises property. It is true that Roman jurists considered questions of the permissibility of separating individual parts of buildings, but these were considerations on the plane of possession, use or easement of urban.[27]

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[26] *Vocabularium Iurisprudentiae Romanae,* Vol. 1–5, Berlin, 1903–1985.

[27] Cf. the following passages D.39,2,47 Nerva; D.43,17,3,7 Ulpian; see also Kaser, M., Das Römische, Vol. 1, p. 430; idem, Das Römische, Vol. 2, p. 308; Meincke, J.P., op. cit., p. 141.

SUMMARY

Briefly summarizing, terms that were used in classical Roman law to designate land were: *praedium*, *fundus*, *locus*, *possessio*, *villa*, *ager*, *solum*. The analysis of the source texts shows that the meaning of the terms discussed in this paper sometimes coincided or overlapped. Therefore, in order to refer to land Roman lawyers sometimes used the terms in question interchangeably.

Thus, the term *praedium* implied land with all the buildings and plants that were on its surface. Similarly, the term *fundus* was used to describe a landed estate, i.e. land and buildings. Thus, the words *praedium* and *fundus* were sometimes used by Roman lawyers interchangeably, most often to represent land with everything that was on its surface.[28] In the source texts, the words used to denote a landed estate were *possessio* and *villa*.[29] Similarly, when referring to a specific land the words *ager-fundus*[30] and *praedium-solum*[31] were used interchangeably.

It seems, however, that terminology fluctuated and the meaning of individual terms was being determined by Roman jurists when resolving individual cases. Although jurisprudence attempted to specify terms used in respect of land, Roman lawyers did not fully develop a complete division of land into individual categories.

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[28] The fact that *praedium* and *fundus* were used by Roman lawyers interchangeably to describe land property (i.e. land with everything on its surface) is evidenced, among others, by the following source texts: D.10,1,4 Paulus; D.33,7,3 Papinian; D.33,7,20 Scaevola; D.41,1,7,2 Gaius; D.50,16,60 Ulpian; I.2,1,21 and 22.

[29] The words *fundus* and *villa* (meaning landed property) appear interchangeably e.g. in D.7,8,12 Ulpian; D.8,1,9 Celsus; D.33,7,16 Alfenus; D.33,7,19 Paulus; D.33,7,21 Pomponius; I.2,3,1. The fact that the words *praedium* (understood as landed property) and *villa* were used interchangeably is evidenced, among others, in: I.2,3,1; C.Th.5,14,4 of the year 364 = C.11,66,2.

[30] The words *fundus* and *ager* may be used interchangeably, see among others D.39,3,1 – 3 Ulpian and Paulus; D.41,1,3 Gaius; D.44,2,25 Julianus.

[31] The fact that *praedium* and *solum* were used interchangeably is evidenced, among others, by the following source texts by Ulpian: D.50,16,60 and D.50,16,198.

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TERMINOLOGY USED TO DENOTE REAL PROPERTY IN THE SOURCES OF CLASSICAL ROMAN LAW

Summary

This paper has discussed a variety of terms used in classical Roman law to denote land, namely: praedium, fundus, locus, possessio, villa, ager, solum. Apart from those, terminology used for land in the classical law period comprised: res quae solo continentur/tenentur (things related to land), res solo cohaerentes (things attached to land) or simply res soli (real property), while the term res immobiles, meaning real property, appeared in the sources of Roman law as late as in the post-classical period.
The analysis of the selected sources of Roman law indicates that the scope of those terms was wider or narrower, which means that they sometimes coincided or overlapped, and as a result they were sometimes used interchangeably. The terminology in this respect fluctuated, and the scope of individual terms was being determined by Roman jurists when resolving individual cases. The preserved sources of Roman law indicate that although attempts were made to define individual terms used in respect of land, Roman lawyers did not fully develop a complete division of land into individual categories.

Keywords: land, real property, Roman law, praedium, fundus, locus, ager, solum

OKREŚLENIA NIERUCHOMOŚCI W ŹRÓDŁACH RZYMSKIEGO PRAWA KLASYCZNEGO

Streszczenie

W niniejszym artykule przedstawione zostały terminy jakie występowały w rzymskim prawie klasycznym na oznaczenie gruntu jako nieruchomości. Były używane m.in. takie określenia jak: *praedium*, *fundus*, *locus*, *possessio*, *villa*, *ager*, *solum*. Ponadto prawnicy okresu klasycznego używali dla oznaczenia gruntu jako rzeczy nieruchomej jeszcze takich sformułowań jak: *res quae solo continentur* (*tenentur*) (rzeczy pozostające w związku z gruntem), czy też *res solo cohaerentes* (rzeczy połączone gruntem), albo po prostu *res soli* (nieruchomość). Natomiast termin *res immobiles* oznaczający nieruchomość pojawił się w źródłach prawa rzymskiego dopiero w okresie poklasycznym.

Analiza fragmentów źródłowych prawa rzymskiego wskazuje, że zakres tych pojęć był szerszy lub węższy co powodowało, że niekiedy pokrywały się one lub krzyżowały w swoim znaczeniu i stąd też czasami stosowane były zamiennie. Terminologia w omawianym zakresie była dość płynna, a zakres pojęciowy poszczególnych określeń juryści rzymscy precyzowali przy rozstrzyganiu poszczególnych przypadków prawnych. Zachowane źródła prawa rzymskiego wskazują, że podejmowane były wprawdzie przez jurysprudencję próby zdefiniowania poszczególnych określeń gruntu, ale kompletnego podziału na poszczególne kategorie gruntów jako nieruchomości prawnicy rzymscy do końca nie wyprowadzili.

Słowa kluczowe: grunt, nieruchomość, prawo rzymskie, *praedium*, *fundus*, *locus*, *ager*, *solum*

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