

HUMAN AGE AND ITS IMPORTANCE IN ROMAN COMMERCIAL LAW

WIEK CZŁOWIEKA I JEGO ZNACZENIE W RZYMSKIM PRAWIE HANDLOWYM

ABSTRACT

In every legal system, regardless of whether we mean antique or modern law, there have always been and there are regulations that have specific effects depending on the age of a given person. Such regulations are known in all contemporary legal systems of the world in every branch of law. In the presented article the author has elaborated the influence of human age on persons' trade rights in ancient Rome. Consequently it has occurred that in Roman law there were two age limits which played a significant role in commerce. The first one was the age of 14 years when a boy got full legal capacity, and the second one was the age of 25 years when he was becoming fully independent from any restrictions and special protection.

STRESZCZENIE

W każdym systemie prawnym, niezależnie od tego, czy to mówimy o prawie antycznym, czy współczesnym, występowały i występują regulacje, które pewne konkretne skutki uzależniały od wieku danej osoby. Co więcej normy takie funkcjonują obecnie w każdej gałęzi prawa. W niniejszym artykule autor poddaje analizie znaczenie wieku człowieka dla jego praw do udziału w szeroko rozumianej działalności gospodarczej

w starożytnym Rzymie. Badania pokazują, że w prawie rzymskim istniały dwie granice wiekowe, który odgrywały znaczną rolę w handlu. Pierwszą z nich była granica 14 lat, która wyznaczała moment osiągnięcia przez mężczyznę pełnej zdolności do czynności prawnych, zaś drugą była granica 25 lat, kiedy to osoba stawała się w pełni niezależna i wychodziła spod ograniczeń prawnych i specjalnej ochrony.

KEYWORDS: *Roman commercial law, ius commercii, legal capacity, Roman law, age*

SŁOWA KLUCZOWE: *Rzymskie prawo handlowe, ius commercii, zdolność do czynności prawnych, prawo rzymskie, wiek*

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Nowadays commercial law is one of the most important branches of the legal system which influences economy in the widest range. Within the commercial law the most important regulations are those which define when and what kind of business activities could be undertaken. It is hard to find general regulations which could describe a person's quality to run a company. In the past it was widely accepted that a person who was planning to be an entrepreneur should had some level of understanding to run own business. It was commonly known that commerce was reserved for the world of adults, and it was quite clear that a person who run his own business had full legal capacity. In the XXI century, in the world of fast-paced economy, we have to face the question about appropriate age limit to start own business. Modern types of business activities like e-commerce are starting to take a bigger share in the world economy. And a bigger share in this type of business activities is taken over by very young people, speaking precisely, by minors with limited legal capacity. Commonly minors have better understanding of that type of business than older people. As a result of this it may happen that those minors to undertake some activities will need formal consent of their parents or legal guardians, who are often less oriented in the subject. The situation

forces us to rethink the legal concept of the minors' active participation in the business activities.

Before we will start changing future regulations, we should explore the past first. Thus, in my work I would like to present the situation of young people in ancient Rome from the commercial law perspective. I would like to introduce a topic about the influence of human age on *ius commercii* (literally – right to trade). By my presentation I wish to show, how person's age affected his right to engage in business transactions. I selected particular age limits which played a significant role in defining person's position in Roman commercial law. The idea of my presentation is not to reduce my views only to Roman law, because the content of my speech could be used as a contribution to further studies of contemporary commercial law from the person's age perspective. In the conclusion part I will make some references to contemporary Polish law.

It must be stated here that the selected subject reduces the research scope to known sources. As a consequence my presentation will not be highly insightful but rather descriptive. Thus, I will not reveal something what was undiscovered, but I will present some already known facts, albeit I will focus on the commercial law aspects. I wish to present some famed sources but focusing on specific side of them. Novelty of that assumption is that in the literature there was no such elaboration which has focused on commercial side of human age.

I

I would like to start with an introduction to Roman commercial law and after that I will move on to the title subject which is the role of human age in that law.

When we think about Roman commercial law we should begin with the explanation of the Latin term "*ius commercii*", which might be translated literally as "right to trade". It should be noted that the phrase *ius commercii* actually appears quite rarely; *commercium* is used more often (Roselaar, 2012, p. 381). In practice it was understood as the right of commerce, the right to engage in business transactions, including the right to negotiate and conclude

contracts and to transport goods to friendly states for sale or purchase (Fellmeth, Horwitz, 2009, p. 152; Aubert, 2004, pp. 160-178). In legal sources we are able to find one precise definition of *commercium* made by Ulpianus. The jurist, while explaining the idea of *mancipatio* (a solemn verbal contract applied to specific types of goods) between Roman citizens and foreigners, stated that: *commercium est emendi vendendique invicem ius*, what we could understand as the right of reciprocal purchase and sale (Roselaar, 2012, p. 387 [see footnote 26]; Fernández de Buján, 2003, p. 216 [see footnote 4]; Kaser, 1953, p. 131).

Notwithstanding the fact that Romans were able to distinguish “right to trade”, they did not have any provisions which nowadays could be comprehended as commercial law. As Boudewijn Sirks (Sirks, 2019, p. 53-117; Žeber, 2014, p. 40-48). stated, there was no specific body of Roman commercial law, but rather it was a group of legal figures concerned with issues important for commerce, such as sale, mandate, partnership, loans for consumption, and stipulation. There were also general applications (*actiones*), some of which proved very useful in commerce (*actiones adiecticiae qualitatis*), while others were specifically designed for commerce, such as the action against shipmasters. Furthermore, the contract of deposit was ingeniously used to make banking and financing on a large and commercial scale possible, while the chirograph, originally a Hellenistic documentary debt paper, acquired the traits of a commercial paper that made transfer of debts very easy. Commercial law as a concept has developed only since Middle Ages. In the practice of Roman times, there were merchants who invented and developed legal constructions that they needed for their trade. These concepts they could not find in the *Corpus iuris* (Sirks, 2019, p. 53).

Ius commercii could also be considered as a person’s quality, and that is the key factor which rests in my area of interest, because it leads to the matter of human age and its influence on person’s trade rights. While talking about the person’s quality it should be mentioned that among human beings the theory of Roman law distinguished three kinds of “status”, (i.e. degrees of legal capacity among men): the *status libertatis* (according to which men were either free or slaves); the *status civitatis* (according to which freemen were either Roman citizens or foreigners); and the *status familiae* (according to which a Roman citizen was either a *pater familias* or a *fillius familias*) (Sohm, 1892, p. 108; du Plessis, 2015, p. 87-117).

In the legal theory *ius commercii*, alongside with *ius connubii* (the right of contracting a lawful marriage), is associated mainly with the *status civitatis*, as the feature which belonged generally to Roman citizens (Sohm, 1892, p. 116; Humbert, 2010, p. 139-152). It should be highlighted here, that not only Roman citizenship was a factor which granted *ius commercii*, but the age of a person played a significant role too. In the literature virtually no one seeks the role of human age in this particular aspect, while I think it also should be taken into account. And just in this place the age of 14 years should be mentioned. This is the first age limit which had great influence on the trade activity of young people in ancient Rome.

II

In ancient Rome reaching the age of 14 was one of the most significant moments in a man's life from the legal perspective. With that moment a boy stopped being considered as immature (*impubes*) and he entered another age category called *pubertas*, what meant formal physical maturity (Tafaro, 1991, pp. 256; Fayer, 2005, p. 425-454). In case of women, that moment was settled at 12 years (Laurence, 2007, p. 95-111). However, due to the specifics of Roman society, the man benefited more from the achievement of this age because it opened him the prospects of active participation in public life, including trade activities (Zabłocki, 1992, p. 271-273). That is a reason why the age limit of 14 years played a great role in Roman commercial law.

Before a man reached age of 14, it was difficult for him to take a really active part in trade. The fact that such man had a limited legal capacity was an oppressive limitation from the commercial point of view. Although a legal position of the immature boy was better than a child (who had no legal capacity at all), but his autonomy in legal matters was restricted (Knothe, 1983, p. 7ff.). In fact, a child (*infans*) was incapable of doing any legal acts, and an immature boy (*impubes*), who had passed the limit of childhood (which was set at 7 years [Knothe, 1982, p. 239ff.]), could do any legal act with the *auctoritas* of his tutor. Without such consent he could only do those acts which were for his benefit (Smith, 1875, p. 630-631 [s.v. "impubes"]; Fischer-Lescano, Christensen, 2005,

p. 213-241; Solazzi, 1963, p. 653-657; Domingo, 1996, p. 485-500). An immature boy could independently perform legal acts, but only those which could enlarge his property, for others he required the formal approval of his tutor. In practice position of a tutor in Roman law was strong enough to effectively limit his pupil's activities in commerce area. An *impubes* could enter into a contract by which he was released from a debt, but he could not release a debt without the *auctoritas* of his tutor. He could not pay money without his tutor; nor could he receive money without his tutor, because it was comprehended as a release to the pupil's debtor. An *impubes* could not be a plaintiff or a defendant in a suit without his tutor. He could acquire the ownership of property alone, but he could not alienate it without the consent of his tutor, nor could he manumit (liberate) a slave without such consent (Smith, 1875, p. 630-631 [s.v. "impubes"]). All those limitations were made only to save an *impubes* from loss. In this situation it is easy to imagine that an immature boy was practically deprived from any commercial activities. Another issue was his lack of *ius commercii*, which was the crucial legal element to undertake trade activities.

The legal position of a man had significantly changed when he reached 14 years of age and transferred into the category called *pubertas*, what symbolized full physical capacity (Forcellini, 1868 – 1875, p. 952 [s.v. „pubes”]; Heumann, 1958, p. 434 [s.v. „puber”]; Berger, 1953, p. 661 [s.v. „pubes”]). Behind the main subject, it should be mentioned that there were discussions if the age of 14 years played the same role only in the late empire period or earlier, but I will not get into it now (Kosior, 2018, p. 114-135; Kodrębski, 1974, p. 175ff.). The important fact was that from the legal point of view, attaining the age of 14 years was the moment of obtainment full legal capacity. Becoming *pubes* meant that a man obtained the full power of his property, and the tutela ceased. A man could also dispose of his property by will and he could contract marriage (Smith, 1875, p. 630-631 [s.v. "impubes"]). From the trade perspective, reaching the age of 14 years entailed attribution of *ius commercii*, what in practice meant that a man could run a business on his own account. So as I stated before, *ius commercii* was not particularly derived from the *status civitatis*, but the matter of age had great influence too. Because a man, even if he was a Roman citizen, but he was under the age of 14 years, he was deprived of the *ius commercii*.

III

It could appear that after reaching 14 years of age, a Roman citizen was fully and truly independent in trade activities. Actually, he was independent from the formal point of view, but there was one limitation which came up from the matter of human age. And in this place the age of 25 years should be mentioned. This is the second age limit which had great influence on the trade activity of young people in ancient Rome.

The attainment of *pubertas* conveyed full legal capacity to act. But the conditions of life became more complicated and more unsuitable. The progressive evolution of trade and economic relations demanded from participants in trade and legal circulation appropriate recognition and experience. Men formally mature (*puberes*) who attained the age of 14 years had full legal capacity, but at the same time, did not have adequate experience in legal transactions. That fact could be used by a fraudulent contractor and some acts undertaken by that man could be eventually unfavorable to him. In order to protect such people in 192 or 191 BC, under *lex (P)laetoria de circumscriptione adulescentium*, a new category of mature people referred to as *minores XXV annis*, i.e. mature people who were under 25 years of age, was introduced (Kosior, 2018, p. 127-135; Ankum, 1992, p. 21-33; Di Salvo, 1979, pp. 262). As Ch. Laes and J. Strubbe stated, *lex Laetoria* protected young men below the age of 25 years against economic exploitation. Before reaching this age, such men was a minor, only at 25 did he really become a *maior* (James, 1960, p. 22ff.). The law stipulated that every commercial transaction that was harmful to a minor could be cancelled by law. Young people were thus protected, not only when they were cheated, but also when they had made a commercial mistake. Theoretically they were fully capable of contracting. In practice, however, many potential business partners prevent themselves from doing business with a young man, since there was always risk that he would invoke the lack of experience of his young years (Laes, Strubbe, 2014, p. 32).

Under the *lex Laetoria* the praetor granted a penal action against the fraudulent contractor, and granted furthermore an *exceptio legis Laetoriae* in bar of the action on the transaction by which advantage had been taken of the minor, and finally an *in integrum restitutio* to undo any performances and all

other measures which were disadvantageous to the minor (Kaser, 1984, p. 82; Musumeci, 2012, p. 53-66; Alvarez, 1976, p. 62). In practice every commercial act which was undertaken by a young man before reaching 25 years of age, could be declared null and void because of his age and lack of experience. Additionally, on the application of the minor the praetor could appoint a curator as an advisor for him, originally for single transactions, and from the emperor Marcus Aurelius, onwards for all transactions (Kaser, 1984, p. 82). In fact the appointment of a curator was apparently never obligatory, although the emperor made it compulsory for all young people. All in all minors should have obtained a curator's consent to conclude agreements (Watson, 1967, p. 157-158). From the commercial point of view it was crucial, because since a curator took care of the commercial interests of a young man and ratified his agreements, a possible business partner received a guarantee that a contract could not simply be cancelled because of youth (Laes, Strubbe, 2014, p. 33).

The reason why such law as *lex Laetoria* was implemented in Rome should be seek in two circumstances. According to the first one, the legal and trade circulation in the II century BC was more complicated than years before. Additionally law was quite formalistic back then, and all of this caused that young people could not make their way in such conditions. According to the second one, we should also take into consideration the implementation date of *lex Laetoria*. It assumes that the law was adopted in 192 or 191 BC, or according to others around 200 BC. At that time Rome just finished the Second Punic War (218 – 201 BC) with Carthage, and that war brought a severe human loss at the Romans' side, especially in young men who served as soldiers. So in fact, the trade market was left in hands of very young boys who just attained the age of 14 years and formally could act, and they also needed legal help.

In commercial practice that special protection adopted by *lex Laetoria* could be evaluated as an advantage and as a disadvantage at the same time. In fact, the instruments prescribed in that law protected young contractors from fraudulent activities undertaken by dishonest business partners. But on the other hand, as Ch. Laes and J. Strubbe stated, those instruments could deterred potential business partners who were interested in cooperation with young contractors. There was always risk that contracts would be annulled because of the reason of age. Consequently, it was difficult for young people to do business

with someone. Plautus, a Roman playwright, in his play “Pseudolus” brought a dialogue of a man under the 25 years of age, who said: “*I am finished! This law concerning twenty-five years of age is my ruin. Everybody is afraid of lending me money*” (Plautus, Pseud. 303-4) (Laes, Strubbe, 2014, p. 33). It should be also mentioned that *lex Laetoria* created legal instruments to protect young people from fraudulent partners in business, but we know cases where those young people were dishonest and they abused that mechanism. In the papyri of Roman Egypt we read about a young man who had sold his property at far too low a price, and when he realized it, he requested annulment of this act and demanded compensation since he had still been a minor when he had decided to sell that property (Laes, Strubbe, 2014, p. 33).

Such situation needed some remedy which could reconcile the opposite interests. According to Ch. Laes and J. Strubbe the exact solution was implemented in 321 AD, by the emperor Constantine who introduced a measure called *venia aetatis* (CTh. 2, 17, 1). That instrument granted men from the age of 20 years and women from the age of 18 years the advantages of full legal majority (Meyer-Marthaler, 1968, p. 141-142; Bove, 1964, p. 759-761). It was a legal fiction, under which those people could be treated as they attained 25 years of age. If they gave a proof of outstanding moral conduct and integrity, they could apply for that measure (Laes, Strubbe, 2014, p. 34). Thanks to it, from the commercial point of view, the risk that business contracts would be invoked because of youth, was moved away.

In my article I wanted to present how human age influenced on person's position in Roman commercial law. In ancient Rome human age influenced commercial rights and potential business activity. Ius commercii, i.e. right to trade was granted for Roman citizens who had full legal capacity, so for those who attained 14 years of age. But in practice their ability to act effectively in business was limited due to the special protection measures prescribed for those under the age of 25 years.

In my opinion the discussion about the relation between age and commercial rights is still relevant and may be important (Cathers, 2003, p. 3-26). Nowadays in every modern legal system there is a distinction between full legal capacity, limited legal capacity and lack of legal capacity. That distinction is generally dependent on human age. Apparently that distinction is clear when we talk about general private rights, but when we go deeper into the commercial law, it may be troublesome. The pending question could be – is a person with limited legal capacity entitled to run his own business (Cheeseman, Carlson, Gac, 1999, p. 91ff.). For example in Poland, a person has full legal capacity when he or she attains 18 years of age. Limited legal capacity is granted when a person is 13 years old. Speaking generally, in theory a person with limited legal capacity can act legally if he or she has consent from his/her parents or legal guardians. But in practice the necessity of acquiring such consent in every business act would be very problematic, and such person would not be able to act effectively in business. Even the Supreme Administrative Court of Poland (Judgment of the Supreme Administrative Court of Poland (NSA) of 19.01.1998, no. II SA 1238/97) confirmed the above limitation and stated that a minor below 18 years of age, even having limited legal capacity, cannot apply for any licenses or concessions in business, if such are needed.

Given the foregoing we could make some comparative remarks. From the theoretical point of view either in ancient Rome or in modern Poland some range of capacity (in Rome – full, and in Poland limited legal capacity) was sufficient to undertake commercial acts on person's own account. Commercial rights are incorporated in private right, so there should not be any differentiation when we talk about availability to run business. But in practice, in ancient Rome gaining full legal capacity with the day of 14th birthday was not enough to act successfully in the trade market as a business partner. Such possibility was coming when a person reached the age of 25 years and become able to act independently. In modern Poland, even though limited legal capacity is sufficient to undertake legal acts with the consent of legal guardians, acting in business effectively with all necessary concessions and licenses, is possible if a person has full legal capacity.

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ENDNOTES

- [1] Plaut. Pseud, 303-4; *Perii, annorum lex me perdit quinavicenaria. metuont credere omnes. Eadem est mihi lex: metuo credere.*