

**The Casus Codicis of
Wilhelmus de Cabriano
and the *Dissensiones Dominorum*
about *laesio enormis***

Tammo WALLINGA

(Universités de Rotterdam et d'Anvers)

This paper¹ is about the afterlife of Roman law rather than about Roman law in Antiquity, and consequently it may be useful to introduce the two books mentioned in the title, since they may not be familiar to the average expert on the laws of Antiquity. The *Dissensiones Dominorum* are a series of collections of opinions held by the early Glossators, which date mostly from the XIIth century. The standard edition is by Gustav Haenel, published in 1834². These collections are important, because they show us the differences of opinion that existed among the first couple of generations of Glossators during the first century of the reception of Roman law. They are mostly structured around specific legal problems, presenting the solutions to those problems that were given by a number of different Glossators.

¹ This article is the written, slightly formalised version of a paper given at the congress of the Société Fernand de Visscher pour l'Histoire des Droits de l'Antiquité at Fribourg (Switzerland) in September 2008. I would like to thank all those who contributed to the discussion on that occasion. Further thanks are due to my brother Gertjan Wallinga for correcting my English.

² G.HAENEL, *Dissensiones Dominorum sive controversiae veterum iuris romani interpretum qui glossatores vocantur*. Leipzig 1834 (reprint Aalen 1964).

The *Casus Codicis* of Wilhelmus de Cabriano is a book which I published three years ago³. Strangely, although I spent more than nine years working on it, I only once gave a paper for this Société that was based on them, eight years ago in Antalya. Given the amount of time that has passed, they probably need an introduction as well. These *Casus Codicis* are a kind of lecture notes, in which Wilhelmus de Cabriano summarised the teaching on Justinian's Code of his master, the Glossator Bulgarus de Bulgarinis, which took place during the academic year 1156-1157. He did not make a verbatim report (a *lectura*) of his master's voice, but only wrote down – or, in any case, published – what he considered most important. Textual variants, for instance, are hardly ever mentioned, and he concentrates on the legal argumentation. Even so, the reader of the *Casus Codicis* practically finds himself in Bulgarus' lecturing hall: he can see which texts Bulgarus treated – some of them briefly, others very elaborately. The *Casus Codicis*, in other words, are a direct and especially a very detailed source of Bulgarus' opinions.

The *Dissensiones Dominorum*, on the other hand, normally give the opinions of the Glossators without much explanation. To put it differently: they generally render the opinion of any given Glossator without any motivation, or only with a very limited motivation, sometimes with a few references to texts from the *Corpus Iuris*. By reading the *Dissensiones*, we may learn what the opinion of a certain Glossator was, but his motivation for it normally remains unknown. They also contain a number of passages where opinions are attributed to *quidam* or *alii* who remain unknown. The *Dissensiones* therefore are no doubt a very useful, but also a somewhat superficial source. They tend to leave the reader wanting to know much more.

For many centuries, the *Casus Codicis* of Wilhelmus de Cabriano were only known to have existed through references made to them during the Middle Ages, but we did not have the actual text. The discovery of manuscripts of the *Casus Codicis* by Dolezalek⁴ in 1970 and their subsequent publication in a modern critical edition have been very important steps forward for research into the motivation

³ T.WALLINGA, *The Casus Codicis of Wilhelmus de Cabriano* [Studien zur Europäischen Rechtsgeschichte, 182]. Frankfurt/Main, 2005.

⁴ G.DOLEZALEK, *Die Casus Codicis des Wilhelmus de Cabriano*, in W.Wilhelm (ed.), *Studien zur europäischen Rechtsgeschichte*, Frankfurt/M 1972, 25-52.

behind opinions in the *Dissensiones Dominorum*. Now we have, at least for one Glossator, a source which shows us in far more detail how he arrived at his opinions. The logical next step for my research therefore is to make a complete and systematic comparison between the *Casus Codicis* and the *Dissensiones Dominorum* in order to see what the *Casus Codicis* may offer for a better understanding of the controversies among the early Glossators. This is a project which I have only recently taken up. By the way, it is not a matter of one-way traffic, with the *Casus Codicis* illustrating the *Dissensiones Dominorum*, but also the other way round. For instance, a master-pupil relationship between Bulgarus and Wilhelmus de Cabriano has been shown to be very likely, but more evidence for it would be welcome, and the *Dissensiones Dominorum* may well contain some useful information in this respect.

Let us elaborate on that for a moment. Thus far, our knowledge about the relationship between Wilhelmus de Cabriano and Bulgarus is based only on a study of 61 passages from the *Casus Codicis* in which Bulgarus is mentioned explicitly⁵. I have compared these passages to the *Dissensiones Dominorum*, which confirmed Dolezalek's conclusion that Wilhelmus de Cabriano and Bulgarus were connected as pupil and master. But it is still possible – and, in my opinion, necessary – to make a more extensive comparison between *Casus Codicis* and *Dissensiones Dominorum*. In principle, one should study all the commentaries on texts of Justinian's Code which are found in the *Dissensiones Dominorum* and compare them to the commentaries in the *Casus Codicis* on those particular texts from the Code, if there are any. Special attention should also be paid to the passages in the *Dissensiones Dominorum* which mention Bulgarus or Wilhelmus de Cabriano, or both – especially the latter passages. In principle, one should find Bulgarus and Wilhelmus on the same side in any controversy, even if I found in the *Casus Codicis* that Wilhelmus occasionally criticises Bulgarus' opinion and makes room for an opinion of his own⁶.

I said I have just started on a more detailed comparison between the *Casus Codicis* and *Dissensiones Dominorum*. Let me say a few words on methodological aspects of the investigation. The method,

⁵ WALLINGA, *Casus Codicis* (above, note 3) xxviii-xxxii.

⁶ WALLINGA, *Casus Codicis* (above, note 3) xxix.

essentially, is an example of the tried and trusted recipe: 1% inspiration and 99% of – let us say – perseverance, in order not to use stronger words. The edition of the *Casus Codicis* already contains a list of passages (in the *Index Glossatorum qui in casibus codicis nominantur*) where anonymous jurists are quoted as *alii* or *quidam*⁷. This list has already been compared with the *Dissensiones Dominorum*, which in some cases reveal the identity of a jurist who remained anonymous in the *Casus Codicis*. A small part of the work therefore has already been done: the cases where the *Dissensiones Dominorum* give us more information than the *Casus Codicis*. I have also made a list of passages in the *Dissensiones Dominorum* where both Wilhelmus de Cabriano and Bulgarus are mentioned. The list is not very long: about a dozen passages. Of course it will also be necessary to check all the passages in the *Dissensiones Dominorum* where Bulgarus and Wilhelmus are mentioned individually, one without the other. This may be done by using the *Index Glossatorum* of the *Dissensiones Dominorum*, but I have decided against it, because the list is long and also contains text from the Digest and the Institutes. It is more efficient to compare the *Index legum* of the *Dissensiones Dominorum* with the *Index legum et commentorum* of the *Casus Codicis* and list the texts that are treated in both. And we must not forget that in the *Casus Codicis* there are a few commentaries on texts of the Digest: on title D.20.1 *De pignoribus*, which should be compared as well.⁸ This list will be long: for the first three books of the Code, the *Casus Codicis* and the *Dissensiones* already share commentaries on no fewer than 143 texts, so that all in all there will be several hundreds of texts to be compared.

Let us turn now from theory to practice. In this paper I would like to present one specific example of what a comparison of the *Casus Codicis* and the *Dissensiones Dominorum* may tell us. The example I have chosen concerns the figure of *laesio enormis*, the possibility that the seller has to rescind a contract of sale if the price is too low. This is not classical Roman law. In classical Roman law the parties were free to arrive at any price they wanted, and could even resort to *invicem se circumscribere* – a certain amount of gamesmanship in

⁷ WALLINGA, *Casus Codicis* (above, note 3) 797-802.

⁸ WALLINGA, *Casus Codicis* (above, note 3) 565-569.

order to trick the other into the best possible deal, as we can see in the following text:

D.19.2 (*Locati conducti*) 22 (Paulus *libro trigesimo quarto ad edictum*) 3

*Quemadmodum in emendo et vendendo naturaliter concessum est quod pluri sit minoris emere, quod minoris sit pluri vendere et ita invicem se circumscribere, ita in locationibus quoque et conductionibus iuris est*⁹.

This text testifies to a negotiation process in which some sharp practice, or at least gamesmanship (*circumscribere*) is allowed. Parties are supposed to be able to take care of themselves, and if one of them gets a rough deal, he has no one to blame but himself. The limit of this *circumscribere* of course would lay in what is still in accordance with the *bona fides*; explicit deceit would be *dolus* and therefore unacceptable. In other words, we are talking about a typical situation of haggling, as one could find even today, for instance in an oriental bazaar.

The next text (C.4.44.2) is the most famous one in which the principle of *laesio enormis* is set out. There is one other: C.4.44.8 – but C.4.44.2 was the main text, so well-known in the Middle Ages that it was often referred to simply as *lex secunda*. Its attribution to Diocletian has been called into question¹⁰, but that is of no concern here; we will look at the Medieval reception and as far as that is concerned, all that is relevant is the fact that the text was included in Justinian's Code.

C.4.44.2 *Impp. Diocletianus et Maximianus AA. Aurelio Lupo*

Rem maioris pretii si tu vel pater tuus minoris pretii distraxit, humanum est, ut vel pretium te restituente emptoribus fundum venditum recipias auctoritate intercedente iudicis, vel, si emptor elegerit, quod deest iusto pretio recipies. Minus autem pretium esse videtur, si nec

⁹ “Just as in a transaction of purchase and sale it is naturally allowed to purchase something which is worth more for less, and what is worth less for more, and hence mutually mislead one another, so the rule is the same in leasing and hiring.” (Tr. Scott.)

¹⁰ See e.g. A.J.B.SIRKS, *Quelques remarques sur la possibilité d'une règle dioclétienne sur la rescision d'une vente à cause de lésion énorme (laesio enormis)*. *Atti dell'Accademia Romanistica Constantiniana*, V, Perugia 1981 (1983) 39-47.

*dimidia pars veri pretii soluta sit. PP. v.k. Nov. Diocletiano A. II et Aristobulo cons*¹¹.

The text offers the possibility for the seller of a plot of land (a *fundus*) to rescind the contract when the selling price was too low. “Too low” is defined as “less than half the *pretium verum*”. The buyer, however, can maintain the validity of the contract if he offers to make good what is lacking of the “*pretium iustum*”. This leads to the ironical situation that a buyer who haggled well and bought something worth ten for four finds himself having to pay six more if he wants to keep what he bought, whereas if he had not made such a sharp deal and offered five, the sale would remain valid and the seller would have to be satisfied with a price of five.

In order to highlight the contrast with later developments, it may be useful to stress that this text C.4.44.2 refers to a specific case: the seller of a plot of land is given the possibility to rescind the contract for having received too low a price for it. In other words: the text is written for a contract of sale concerning a specific good, namely immoveable property, and only one of the two parties to the contract – the seller – is granted this new possibility to rescind the contract. The presumption underlying this possibility of rescission of course is that there must be a known *pretium iustum* or *pretium verum* for all commodities. The idea of such a fixed price of course may be associated with Diocletian, although his Edict on Prices was only published many years later, in 301¹². Be that as it may, all we are concerned with is the Medieval reception of this text, and to that we will now turn.

It is not my intention to give an exact historical overview of the development of the doctrine of *laesio enormis* during and after the

¹¹ “*The Emperors Diocletian and Maximian to Lupus*. If either you or your father should have sold property for less than it is worth, and you refund the price to the purchasers, it is only just that you should recover the land which was sold, by judicial authority; or, if the purchaser should prefer to do so, you should receive what is lacking of a fair price. Too low a price is understood to be one which does not amount to half of the true value of the property. Edited on October 28 during the second consulate of the emperor Diocletian and during the first consulate of Aristobulus.” [285] (Tr. Scott, slightly corrected.)

¹² S. LAUFFER (ed.), *Diokletians Preisedikt*, Berlin 1971.

Middle Ages¹³. For the points I eventually want to make, it is sufficient to have an general impression of what the Medieval and later reception made of this text in the course of time. This impression may be given by a small selection of texts, taken from a 1627 printed edition of the Code with the Gloss¹⁴. Let me quickly go through the most interesting points made.

The first three texts show that the principle of *laesio enormis* was extended to other *bona fide* contracts that resembled the contract of sale:

I. *Illud autem constat, in aliis bonae fidei contractibus (a) habere locum legem istam (b).*

“This much is certain, that this law applies to other *bona fide* contracts.”

II. a. *Adde, qui tamen venditioni sunt similes.*

“Add: that is to say, those that are similar to sale.”

III. b. *Quaerit Accurs. an huic constitutioni locus sit in aliis contractibus? Et constat eam locum habere in locatione & permutat. & divisione. (...) Ad alia negotia, quae ad empt. non accedunt constitutionem non temere trahemus. (...)*

“Accursius asks whether this constitution applies to other contracts. And it is certain that it applies to leasing and exchange and partition of the estate. (...) We will not apply it lightly to other transactions that are not similar to sale. (...)”

The fourth text shows that it was possible to renounce one’s right to invoke the *laesio enormis* – and this must have been important,

¹³ About the history of *laesio enormis*: J.GORDLEY, *Equality in Exchange*, *California Law Review* 69 (1981) 1587-1656; J.W.BALDWIN, *The Medieval Theories of the Just Price. Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries*, *Transactions of the American Philosophical Society*, New Series 49, part 4, Philadelphia 1959; R.ZIMMERMANN, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford 1996, 259-270.

¹⁴ *Corpus juris civilis cum commentariis Accursii... studio Ioan. Fehi*, IV, Lugduni 1627 (repr. Osnabrück 1966), column 1015. The handout for the original paper provided a copy of the relevant page of the edition, with eight “Medieval” hands indicating these eight texts drawn in. The numbering has been retained here, although I have decided against including a copy of the page, which would have become practically illegible because of the necessary reduction in size.

since the existence of this form of rescission must have created a lot of uncertainty in the world of commerce. By introducing a contractual clause renouncing the *laesio enormis*, the parties would know immediately where they stood:

IV. *pactis. Sic mulier renuntiat Velleiano, creditor actioni, debitor exceptioni, minor restitutioni, condemnatus iudiciis, heres falcidiae. Cui.*

“Accursius asks whether one may renounce the benefice of this law? We must answer that one may, if we look at C. 2,3,39. This way a woman renounces the *SC Velleianum*, a creditor his action, a minor the return to the former situation, a convicted person his appeal, the heir the *lex Falcidia*. Cui(acius).”

The fifth text is a short one, showing several textual variants:

V. † *deest in quibusdam. al. iusti*

“Not present in certain <manuscripts>. Elsewhere: ‘the just’.”

As we noticed above, the text of the Code uses both *pretium iustum* and *pretium verum* with probably much the same meaning. This had apparently led to some uncertainty about the actual reading of the text.

Texts seven and eight – and I am not forgetting number six, but I prefer to hold it back for a moment – show how one may determine this *pretium verum* of a commodity:

VII. § *Sed qualiter sciam quando excedit? Resp. non, per hoc quod duo vel tres volunt tantum dare. quoniam precia rerum non constituuntur ex affectione singulorum. (...) Dic (e) ergo inspicere venditiones factas locorum existentium iuxta illum.*

“But how do I know when it is exceeded? Answer: not through the fact that two or three people want to give that much, because the price of things is not decided by the will of individuals. (...) Therefore, say that one inspects the sale of nearby properties.”

VIII. § *& hoc in immobilibus. In mobilibus autem rebus, ut frumento, est pretium certum.*

“And this applies to immovables. But to movables, such as wheat, a fixed price applies.”

For immovables an objective method is used, looking at the selling price of similar plots of land nearby, rather than investigating what

people will offer for it – a wise decision, because friends of the seller could go around saying that they would be prepared to offer a high price. For movables, like wheat, it is said that a fixed price applies. And indeed, city authorities in the Middle Ages would often fix the price of essential articles in order to avoid speculation. Moreover, the guilds were also interested in fixing the prices for their products. By the way, we also see here that there is a further extension of the applicability of the *laesio enormis*: it now also applies to movables, whereas the original text speaks of a plot of land. We have therefore already seen the principle of *laesio enormis* being extended to other contracts than sale, and to other property than land. But it did not stop at that.

In text six, we see another important development: the *laesio enormis* is no longer the seller's prerogative, but is being applied to the buyer as well: it is being extended even further: to both parties rather than just the seller¹⁵:

VI. § *Sed quae (d) est haec dimidia? Dic in emptore decepto: si res valet decem, emit pro xvi. licet alii dicant, emit pro xxi. quod non placet, quia tunc non dimidiam iusti pretii, sed duplum egreditur. In venditore: sicut si res valet decem, vendidit pro quatuor.*

“But what is this half? Say in the case of a deceived buyer: when the thing is worth 10 and he bought it for 16, even though others say, when he bought it for 21. But that is wrong, because then not half, but double the just price is exceeded. In a vendor: as when the thing is worth 10 and he sold it for 4.”

In extending the principle of *laesio enormis* to the buyer, we come across a problem: where exactly is the cut-off point for the buyer? When does he pay too much? Is it when he pays more than the *iustum pretium* and half again (more than fifteen for a thing worth ten – this is called the arithmetical method)? Or is it when he pays more than

¹⁵ It would eventually be reduced again, especially by Natural Law in which generally the autonomy of the contracting parties prevailed over *laesio enormis*. Consequently, it is not found in most modern codifications of private law – except to a limited degree in France (Cc artt. 1674 ff.), Belgium, Luxemburg, Italy (Codice civile 1448) and Catalonia (Proyecto de la Compilación del Derecho civil especial de Cataluña, 1955, art. 321), and as a more important general principle of contract law in Austria (ABGB §§ 934-935).

double the *pretium iustum* (more than twenty for a thing worth ten – an approach referred to as the geometrical method)?

In the text of the Gloss, these two interpretations are put forward and attributed to anonymous authors, with *alii* being in favour of the geometrical method and the author of this gloss in favour of the arithmetical method.

This is not just an academic point. If one opts for a cut-off at double the *pretium iustum* rather than at one-and-a-half times, the parties have greater liberty to determine the price without fear of a possible rescission of the contract. This is to the advantage of the seller. It limits the range of applicability of the *laesio enormis*, something that the Medieval jurists appear to have tried to achieve. There is logic in that: *laesio enormis* in its extended form is a powerful general principle of contract law which opens wide possibilities to call into question the validity of contracts. In the interests of commerce, its application should be reduced as much as possible. As we saw earlier, this may be achieved generally through a clause of renunciation, but also, at this particular point, by opting for the highest possible cut-off price for the buyer.

It is high time to turn to the relevant texts from the *Casus Codicis* and *Dissensiones Dominorum*. Let us first look at the text of the *Casus Codicis*:

Wilhelmus de Cabriano, Casus Codicis

Ad C.4.44.2 Rem. *Rescinditur ergo uenditio propter metum; rescinditur etiam quia dimidium iusti pretii non sit datum. Set hic electio emptoris est ut uel quod deest iusto pretio suppleat uel rem restituat iudicis officio, uel forte conuentus utili ex uendito, uel rem non petet si nec dum tradita est. Et hoc totum accipio cum uenditor uerum rei pretium ignorauit, nam si sciuit uidetur accessisse donationi*¹⁶.

A first point to note is that this text limits itself to looking at the right of rescission of the seller and to the buyer's possibility to maintain the validity of the contract. In other words, this is still a

¹⁶ "The sale is therefore rescinded because of fear; it is also rescinded because half of the just price has not been given. But here it is the buyer's choice whether he adds what is lacking of the just price or whether he gives back the item on the judge's authority, or maybe when the *actio utilis* on sale is brought against him, or whether he doesn't claim the thing if it has not yet been handed over. And all this I understand when the seller did not know the true price of the thing, because if he knew he is taken to have agreed to a donation."

fairly literal interpretation of the text of the Code; there is no sign of extension of the *laesio enormis* to the buyer. The only novelty comes in the last sentence: this introduces the requirement that the seller did not know the real value (*pretium verum*) of the thing he was selling. If he consciously sold it at too low a price, he is supposed to have donated the excess value and cannot rescind the sale. This is a requirement that limits the application of the rescission¹⁷.

This fairly literal interpretation of the text ties in nicely with the reputation of Bulgarus: he is known as the champion of a strict application of the texts of the *Corpus Iuris* – unlike his contemporary and rival Martinus Gosia, who often proposed more adventurous solutions based on *bona fides*.

There is one question left about this text. Why would the seller use an *actio venditi utilis* rather than a normal *actio venditi*? A possible – and, in my view, plausible – answer is the following. The possibilities for the buyer named in the text are: pay more, give the thing back in front of the judge, be sued for it with this *actio venditi utilis*, or refrain from claiming it if delivery has not yet taken place. In all cases, the first step must be to take the decision that the price was, in fact, too low. The buyer, if he is not prepared to pay more, may accept his fate and return the object of the sale right there before the judge, at the latter's instigation: this is *iudicis officio*. Or, if delivery has not taken place yet, he may refrain from claiming the object. But if delivery has taken place, he may also be unhappy with the decision and refuse – for the time being – to return the object of the sale. This forces the seller to take further action, but given that the rescission of the contract has already taken place, a purely dogmatic interpretation would imply that he cannot use an action on the contract, the normal *actio venditi*, since the contract has been rescinded and no longer exists. Hence the *actio utilis*¹⁸. This interpretation, incidentally, would also confirm Bulgarus' reputation as a champion of a rather literal, dogmatic and limited interpretation of the texts.

¹⁷ ZIMMERMANN, *The Law of Obligations* (above, note 12) 263-264.

¹⁸ Of course this is not the *actio utilis* as it would be understood in the Roman procedure *per formulas*; there is no standard *formula* in the Middle Ages any more. The fact that the action used is referred to as an *actio utilis* simply implies that for some special reason, the ordinary action on sale (*actio empti*) does not lie. Cf. BALDWIN, *The Medieval Theories of the Just Price* (above, note 13) 24.

Turning to the text of the *Dissensiones Dominorum* ad C.4.44.2, we see that it is all about the reverse application of the *laesio enormis*: in favour of the buyer who has paid too high a price. The differences of opinion mentioned are about the problem which cut-off point to choose:

Dissensiones Dominorum (Ed. Haenel p. 426-427)

§ 253. C. *De rescindenda venditione* (C. 4, 44) L. 2.

Quando emtor enormiter laesus dicatur?

Dissentiant in C. de Rescind. vend. (C. 4, 44) L. 1. et L. 2., ubi dicitur, quod potest rescindere venditionem, si deceptus sit, etsi minus pretium habeat. "Minus autem pretium esse videtur, si nec dimidia pars veri pretii soluta sit". Unde dominus Azo dicit, quod idem sit in emtore, ut si quis rem, quae X valebat, emeret pro XVI, quod emtor, si voluerit, potest rescindere venditionem, quia deceptus est ultra dimidium iusti pretii; et hoc ita probat: verum et iustum pretium erat in X et deceptus est in VI, ergo ultra dimidiam iusti pretii, id est, ultra dimidiam X; nec Lex dicit, quod debeat esse deceptus in duplum, sed tantum in dimidiam iusti pretii, ut C. de rescind. vend. (4, 44) L. 2 et L. Si voluntate tua (8.). Sed Pla. (Placentinus), Al. (Albericus) et M. (Martinus) et Alii Sapientes dicunt contrarium et dicunt, quod non potest agere, nisi sit deceptus in duplum, et hoc ita probatur. Lex dicit, quod tunc potest rescindere venditionem, si non habet dimidiam iusti pretii. Hoc ita intelligi, si sit deceptus in duplum. Nam deceptus est in duplum, quia ipse venditor debuisset accepisse X et non accepit nisi quattuor. Unde deceptus est ultra duplum, quod debuisset accepisse. Per similitudinem et iste emtor, qui emit rem, quae valebat X, pro XVI, non est deceptus in duplum, nisi XX dedisset; unde non ei subvenitur et ita per consuetudinem adprobatur et ita probosententiam Alb. (Alberici) et Aliorum¹⁹.

¹⁹ « § 253. C. About the rescission of a sale (C.4.44) L. 2. When is the buyer said to have suffered enormous loss? They disagree in C.4.44.1-2, where it is said that he can rescind the sale, if he has been deceived, and if he has too low a price. "Too low a price is understood to be one which does not amount to half of the true value of the property". And Azo says that it is the same with the buyer, so that if someone has bought a thing worth ten for sixteen, then the buyer, if he wishes, can rescind the sale, because he has been deceived for more than half of the just price. And this he proves as follows: the true and just price was ten and he was deceived to the extent of six, therefore for more than half the just price, that is to say, for more than half of ten. And this constitution does not say that he must be deceived for double the amount, but only for half the just price, as in C.4.44.2 and C.4.44.8. But *Placentinus* and *Albericus* and *Martinus* and other scholars say the opposite, and say that he cannot bring an action unless he was deceived for double the amount, and this is proved as

Several Glossators appear on the scene²⁰. The first opinion mentioned is attributed to Azo, who extends the *laesio enormis* to the buyer, putting the cut-off point at one-and-a-half times the price. Exceptionally for the *Dissensiones Dominorum*, Azo's reasoning is specified: he considers that the buyer should be deceived for more than half the *iustum pretium*, and the *iustum pretium* being ten and half of it five, paying more than fifteen opens up the possibility of rescinding the contract.

However, several Glossators disagreed with Azo: Placentinus, Albericus and Martinus. The latter, as we said before, was a contemporary of Bulgarus. This puts this controversy – and therefore the extension of the *laesio enormis* to the buyer – right in the middle of the XIIIth century. Placentinus († 1192) and Albericus (XII-2) are somewhat younger. Their reasoning is also specified and approved by the author of this text, Hugolinus.

It is interesting to see that the Glossators in favour of a cut-off point at double the *pretium iustum* are from the dissident line of the Glossators; Azo belongs to the so-called mainstream and was the teacher of Accursius.²¹ Moreover, he was the *Enkelschüler* of Bulgarus – his master was Bulgarus' pupil Johannes Bassianus – and to that extent we might expect Bulgarus to have taken the opposite view to Martinus'. However, in the *Casus Codicis*, the extension of *laesio enormis* to the buyer is not yet mentioned, which suggests that this extension dates from later than 1157. Bulgarus would not have missed the opportunity to criticise Martinus' opinion, had he known it. Many controversies between him and Martinus are known from both the *Dissensiones Dominorum* and the *Casus Codicis*, as well as from other sources, and usually the two say all sorts of unpleasant

follows. The constitution says, that he can rescind the sale then, when he has less than half the just price. This I understand thus: if he was deceived for double the amount. Because he was deceived for double the amount, since the seller himself should have received ten and has only received four. Therefore he was deceived for more than double the amount he should have received. By analogy, the buyer himself, who bought the thing that was worth ten for sixteen, is not deceived for double the amount, unless he gave twenty; therefore he receives no help, and thus it is approved by custom and thus I approve of the opinion of Albericus and the others."

²⁰ Cf. about this text BALDWIN, *The Medieval Theories of the Just Price* (above, note 13) 22-24.

²¹ H.LANGE, *Römisches Recht im Mittelalter I* (Die Glossatoren), München 1997, 215; 255; 337.

things about one another²². If Bulgarus was silent about this particular point, the most logical explanation is that it had not been raised yet when the *Casus Codicis* were written.

To sum up: a comparison of these two texts suggests that the extension of the *laesio enormis* to the buyer may be dated to just before 1160: after the *Casus Codicis* were written, but before the death of Martinus Gosia (approx. 1160). This may seem a small point, but it is always interesting when we can tie down a specific development and give it its rightful place on the timeline of history. And with many of these small points, we will eventually be able to say more about the early developments in contract law in the *ius commune*. I have already compiled a list of hundreds of possible other small points, which are waiting to be investigated. I intend to keep you informed.

²² F.C.VON SAVIGNY, *Geschichte des römischen Rechts im Mittelalter* IV, 2nd ed. Heidelberg 1850 (repr. Aalen 1986), 95; 127-128.