

Ten Legal Cases in Cicero's *De oratore* 1.175-184: Examples of Famous Historical Trials or of School *Theseis* and *Controversiae*?

Bartosz Awianowicz
(Faculty of Languages, Nicolaus Copernicus University)

*Monographs on Cicero's rhetorical studies are,
all too often, silent about the progymnasmata.*
Frazel (2009), 34

1. "Anti-rhetorical" dialogical form of *De oratore* and traces of school exercises in Cicero's rhetorical studies

Cicero's dialogue *De oratore* is commonly considered a work of an exceptional orator, whose view on eloquence is clearly distanced from the one presented in the rhetoric handbooks. The choice of the dialogue form itself is very symptomatic. According to Jakob Wisse:

These symbolic function of the dialogue form, the 'anti-rhetorical' and the political, are clearly important. Yet the dialogue is even more than a meaningful, symbolic form superimposed on what could still be regarded as a regular treatise. It is used by Cicero to present his views in ways that would not have been possible in a manual-like work.¹

Moreover, the author of *De oratore* on numerous occasions questions the usefulness and completeness of the prescriptions given in traditional handbooks as well as he criticizes the rhetoricians, accusing them of conveying the knowledge which is hardly useful in practical orator's work at forum.²

Cicero deliberately makes Crassus a leading character of his dialogue, as he had a profound knowledge of the views of Peripatetics, Stoics and

¹ Wisse (2002a), 379.

² See *De orat.* 1.86-87; 2.62-64, 75-76, 111, 117, 132-134; 3.54, 81 and 92-94. cf. Wisse (2002a), 346.

especially Academics,³ and still being a Roman orator, he “wanted to be thought of, not so much as someone who had learned nothing, but rather as one who looked down on these things.”⁴ Therefore, Crassus of Cicero may require the orator to possess a broad knowledge of philosophy, politics, history and law and, at the same time, he claims that the talented orator, who is practicing eloquence, would be able to beat in the discussion the most erudite philosophers.⁵ *Ipsa facto* he takes the floor in a struggle between the philosophers and the rhetoricians, the struggle that apparently leaves no place for technical guidance of rhetoric textbooks. Still Crassus agrees that at the professional Greek eloquence teachers “there was, apart from this exercise of the tongue, still some learning to be found and some knowledge worthy of human culture.”⁶ This “knowledge worthy of human culture” comprises definitely the knowledge of rhetoric preliminary exercises, called in the imperial times *progymnasmata*, that were widely taught at the schools of grammarians and rhetoricians: maybe not so in 91 BC when *De oratore* took place, but for sure in 55 BC, when Cicero wrote his dialogue.⁷

³ See *De orat.* 1.45-47.

⁴ *De orat.* 2.4: “Crassus non tam existimari vellet non didicisse quam illa despiciere et nostrorum hominum in omni genere prudentiam Graecis anteferre.” (tr. by May and Wisse (2001), 126)

⁵ See *De orat.* 3.79. cf. also Kennedy who, interpreting the passage from *De oratore*, writes: “We see here that characteristic view of many Romans that it is good to know something about philosophy, and many other subjects, but not to become too deeply involved in its study or, like Cato the Younger, to become too extreme in applying its doctrines.” Kennedy (1994), 146.

⁶ *De orat.* 3.94: “nam apud Graecos, cuiusmodi essent, videbam tamen esse praeter hanc exercitationem linguae doctrinam aliquam et humanitate dignam scientiam” (tr. by May and Wisse (2001), 254).

⁷ There are traces of elementary exercises in rhetoric among others in *Rhet. Her.*: 1.8, 12-13 (in the theory of *narratio*), 1.9, 14 – 10, 17 (virtues of *narratio*: *narratio dilucida*, *brevis* and *veri similis* - cf. Theon, *Prog.* 5, Patillon (1997), 40-48), 2.30, 47-49 and 3.13, 24 (progymnasmatic elements in the characteristic of *loci communes*) and 4.42, 54 and 44, 56-57 (characteristic of *expolitio* resembles the progymnasmatic theory of *chreia* and sentence - cf. Theon, *Prog.* 3, Patillon (1997), 18-19), as well as in Cicero’s *De inv.* 1.25 (*apologus*, *fabula* and *inrisio* bears a likeness to the *fable* and division of narrations in Greek progymnasmata), 1.27 (analgies in the theory of *narratio*), 1.28-30 (virtues of *narratio*: *narratio aperta*, *brevis* and *probabilis*), 1.75-76 and 78 (characteristic of *expolitio*) and 1.100-109 (progymnasmatic character of *loci communes*). For more see Awianowicz (2008), 30-31; Bonner (1977), 250-251; Kennedy (1994), 202 and Kennedy (1999), 27;

The relation with *progymnasmata* is seen in Crassus advice to study different authors “for the sake of practice, praise, expound, correct, criticize and refute them.”⁸ The preserved Greek handbooks of *progymnasmata*: Theon of the first century AD, Pseudo-Hermogenes of the second or third century AD and Aphthonios of the second half of the fourth century AD contain both theory and examples of a praise (the praise of the writer Thucydides is an example of Aphthonios works), an invective and a refutation (at two latter authors).⁹ In book 2 the other of main dialogue characters, Antonius, defines the subject of an indefinite issue (*quaestiones infinitae*) similarly to thesis in the handbooks of Greek rhetoricians (2.42). He also mentions examples typical to the progymnasmatic tradition “Is eloquence to be persuaded?”, “Are high honours to be persuaded?”¹⁰ as well as he discusses so called theoretical *theseis* on the size of Sun and shape of Earth (2.66). The theoretical and practical or political *theseis*¹¹ seem to be also an inspiration for Crassus reasoning on simple questions (3.116-117). The progymnasmata recommendations on praise and comparison are also present in a part of Antonius characteristic of a demonstrative genre.¹² On the other hand, while speaking about *loci communes*, which “partly consist of bitter, amplified condemnations of, or complaints about, vices and offences, which are usually left unanswered and are indeed unanswerable – such as

Kraus (2005), 160 and Patillon (1997), XII; cf. also Suetonius, *De gramm. et rhet.* 25.8.

⁸ *De orat.* 1. 158: “exercitationis causa laudandi, interpretandi, corrigendi, vituperandi, refellendi.” (tr. by May and Wisse (2001), 93)

⁹ See Theon, *Prog.* 9, Patillon (1997), 74-78 (*enkomion* and *psogos*); Pseudo-Hermogenes, *Prog.* V, Patillon (2008), 190-191 (*anaskeuê* and *kataskeuê*) and *Prog.* VII, Patillon (2008), 194-198 (*enkomion*); Aphthonios, *Prog.* V, Patillon (2008), 120-126 (*anaskeuê*), *Prog.* VIII and IX, Patillon (2008), 131-140 (*enkomion* and *psogos*).

¹⁰ *De orat.* 2.42: “expetendane esset eloquentia? expetendine honores?” (tr. by May and Wisse (2001), 135); see also Theon, *Prog.* XI, Patillon (1997), 82-94; Pseudo-Hermogenes, *Prog.* XI, Patillon (2008), 203-205 and Aphthonios, *Prog.* XIII, Patillon (2008), 152-157.

¹¹ For “practical” (gr. *πρακτική*) see Theon, *Prog.* 11, Patillon (1997), 83-84; for “political” (gr. *πολιτική*) see Pseudo-Hermogenes, *Prog.* XI, Patillon (2008), 204-205 and Aphthonios, *Prog.* XIII, Patillon (2008), 152. cf. Awianowicz (2008): 32 and 72-73.

¹² See *De orat.* 2.347-348; cf. Theon, *Prog.* 9, Patillon (1997), 74-75 and *Prog.* 10, Patillon (1997), 78-82; Pseudo-Hermogenes, *Prog.* VIII, Patillon (2008), 198-199 and Aphthonios, *Prog.* VIII and IX, Patillon (2008), 131-140.

attacks on embezzlement, on treason, and on murder,”¹³ Crassus gets particularly close to the theory of a common-place (gr. κοινὸς τόπος) as seen by Aphthonios, who defines them as: “language amplifying evils that are attached to something.”¹⁴

2. *De oratore* 1.175-184. School *theseis* and *controversiae* hidden amongst real trials

Since the remarks that are close to the *progymnasmata* theory can be found in each of three *De oratore* books, then the question should be posed whether the passus on the need for knowledge of the law (1.166-203) actually threatens the whole rhetorical education model of the time or it rather undermines so called *rhetores latini*, who, according to what Crassus says in book 3, cannot even provide “some knowledge worthy of human culture” (3.94)? The Greek rhetoricians in course of rhetoric exercises have distinguished so called examination of laws. Theon has described this exercise most precisely and found out that: “scrutiny of laws is two-fold; for either they are being introduced and proposed or they are already in effect.”¹⁵ Since Cicero dedicates his dialogue mainly to a forensic orator and he constructs Crassus’ reasoning on the need to know the law over the court eloquence context, therefore it is reasonable to have a closer look at the examples of ten legal cases (1.175-184) cited in this reasoning as the possible progymnastic exercises in the assessment of laws that “are already in effect.” Theon describes these exercises as follows:

¹³ *De orat.* 3.106: “communes a veteribus nominati sunt; quorum partim habent vitiorum et peccatorum acrem quandam cum amplificatione incusationem aut querelam, contra quam dici nihil solet nec potest, ut in depeculatore, in proditore, in parricidam.” (tr. by May and Wisse (2001), 256) cf. Aphthonios, *Prog.* VII, Patillon (2008), 126-127: “Εἰρηται δὲ οὕτως ἀπὸ τοῦ κοινῆ πᾶσιν ἀρμόττειν τοῖς μετασχοῦσι τοῦ αὐτοῦ πράγματος· ὁ γὰρ κατὰ προδότου λόγος κοινῆ πᾶσιν ἤρμοσε τοῖς κοινωνοῦσι τῆς πράξεως.”

¹⁴ *Prog.* VII, Patillon (2008), 126: “Κοινὸς ἐστὶ τόπος λόγος ἀνέμητικὸς τῶν προσόντων κακῶν” (tr. by Kennedy (2003), 105); see also Awianowicz (2008), 59-60.

¹⁵ *Prog.* 12, Patillon (1997), 95: “Τῶν δὲ νόμων ἐξετασις διχῶς· ἢ γὰρ εἰσφερομένων αὐτῶν καὶ τιθεμένων ἢ κειμένων ἤδη.” (tr. by Kennedy (2003), 62)

Concerning those already in effect, debates take place in court by those pleading, not to abolish the laws entirely, but advancing on each side what is more profitable interpretation and the speakers amplify what seems to have been enacted by the law and conceal opposing interpretations.¹⁶

To succeed, one not only needs to know the legal acts but also need to interpret them. According to Cicero this ability is impossible to gain by the court practice alone, as he accuses those who act in the forum and in front of tribunals having not graduated from the law studies before of being lazy and shameless (1.172). The solution is to study the rule books, mentioned in the further part of Crassus' argument (1.192-198) and consultation with the respectful lawyers (1.199-200), as well as examination of laws that Cicero does not directly refer to. It seems that amongst ten listed legal cases the first, the third and the last one (1.175, 177 and 183) are of clearly educational significance¹⁷. Unlike the other ones, they do not contain the names of people engaged in the cases – as in the example 2 (1.176: Claudii vs. Marcelli), 4 (1.178: Orata represented by Crassus vs. Gratidianus represented by Antonius), 5 (1.179: Buculeius vs. Fufius), 6 (1.180: Curius represented by Crassus vs. Coponius represented by Scaevola Pontifex¹⁸) and 7 (Rutilius vs. Mancinus). Unlike examples 8 and 9 (1.182 and 183) they have some case circumstances described making them more concrete. Therefore they can be regarded as examples of *thesis* – one of two most advanced *progymnasmata* – or *controversiae* – declamations practiced in the rhetorical schools after *progymnasmata*.

Let us recall these three examples then. The first one regards the case of a soldier whom the listeners seem to do know (as he is described with the pronoun *ille* – “illius militis”). His father having received a false message (*falsus nuntius*) from the army (*ab exercitu*) on his son's death,

¹⁶ *Prog.* 12, Patillon (1997), 95: “Περὶ δὲ τῶν ἤδη κειμένων [νόμων] αἱ ἀμφισβητήσεις γίνονται τοῖς δικαζομένοις οὐ παντελῶς ἀναιροῦσαι τοὺς νόμους, ἀλλ’ ἑκατέρῳ πρὸς τὸ λυσιτελέστερον ἐξηγούμεναι, καὶ αὖξονται μὲν ὅσα ὑπὲρ αὐτοῦ γεγράφθαι δοκεῖ, συγκρούονται δὲ τὰ ἐναντία.”

¹⁷ All these three cases arose, as Elaine Fantham observes, “from problems of identity.” Fantham (2004), 117.

¹⁸ The *causa Curiana* was a famous trial argued before the Centumviral Court, but – as observes Frier (1985), 136 – “its implications were shrouded in ambiguity” and as such can't be regarded as a universal exercise in oratory or jurisprudence. See also La Bua (2006), 188-192.

believing the story, changed his will and appointed another heir as he thought appropriate, then subsequently died. When the soldier returned home, he filed suit by means by *legis actio* for recovery of his patrimony, for though a son, he had no share in the inheritance according to the will.

Crassus adds that the case was heard by the Council of One Hundred and it was on a civil law: “whether or not a son could be excluded from a share of his father’s property when the father in his will had neither specified him as a heir nor disinherited him by name.”¹⁹ The authors of a commentary: Anton D. Leeman, Harm Pinkster and Hein L. W. Nelson²⁰ are right pointing out that Valerius Maximus has described the same case and reported the soldier’s victory (7.7, 1). Naturally, we may see the case of the soldier recalled by both authors as one of the famous legal cases held at the second or at the turn of the second and first century BC. However if we take a closer look to soldier’s reasoning, cited by Valerius Maximus, where he claims that he had sacrificed his youth to his fatherland, he had suffered the hardship and dangers; he also shown his war wound scars, then it seems clear that in case of this suit held in front of the Council of One Hundred the decision whether lack of bequest on the son who had been presumed dead is legally binding was equally important as the settlement of a moral issue: whether the hero fighting for his fatherland may be deprived of his patrimony? This approach to the case goes over the law interpretation alone and as such is a perfect example of a school exercise in declamation, probably similar to *controversia* 8 of book 1. *Ter fortis* or 5 of book 8. *Fortis nolens ad patrem fortem redire* by Seneca the Elder. The example 1.8 describes a father who struggles to hold his son back from going to war since the law relieves from the military service those who were fighting bravely three times (“Qui ter fortiter fecerit, militia vacet”). The example 8.5 regards the disinherited son, a brave soldier, who does not want to come back to his father, as the latter had not wanted his son to return home as a reward for his war acts.

The third of the ten examples concerns exiled foreigner “who had come to live in Rome, having the right to do so provided that he attach himself to someone who would act as a kind of *patronus*, subsequently died without

¹⁹ *De orat.* 1.175: “pater eius re credita testamentum mutasset et, quem ei visum esset, fecisset heredem essetque ipse mortuus, res delata est ad centumviros, cum miles domum revenisset egissetque lege in hereditatem paternam testamento exheres filius? nempe in ea causa quaesitum est de iure civili, possetne paternorum bonorum exheres esse filius, quem pater testamento neque heredem neque exheredem scripsisset nominatim.” (tr. by May and Wisse (2001), 98)

²⁰ See Leeman, Pinkster, Nelson (1985), 61.

leaving a will.”²¹ The only concrete information in this case is Crassus' mention of the case being heard by the Council of One Hundred. There is no need to give the detailed information on person, time and place of the law suit, as the most important is the knowledge and a proper interpretation of the law regarding attachments of client to patron. Therefore, it is a *sui generis* example of *quaestio legalis* (gr. ζήτημα νομικόν) known from Hermagoras theory which has been analysed by Cicero in his early handbook *De inventione* (2.116-122), as well as in the book 2 of *De oratore* (2.110-111).

The third example regarding a particular law case, however lacking the details of parties involved in a case and the case itself, is — listed as a tenth one — the legal case of a head of a household (*pater familias*), who came to Rome from Spain and “although leaving a pregnant wife in the province, he married another woman in Rome without sending the first wife a notice of divorce. He died without a will, while a son had been born to each of the women.”²² Now, the result of the case is dependent on the knowledge of divorce law where the decision whether the second woman is a wife or a lover and her child is a legal son or a bastard is based on a judgment to accept the divorce on the basis of a notice of divorce alone or on a fact that the new marriage automatically annuls the previous one. Using the words “in our father's time” (“*memoria patrum*”) Crassus seems to make believe that the case is real²³. However, reading into a particular historical case here is quite useless, as the very style the main interlocutor of Cicero's dialogue uses to describe the issue of the other woman and her son (1.184):

[...] *pater familias* qui ex Hispania Romam venisset, cum uxorem praegnantem in provincia reliquisset, Romae alteram duxisset neque nuntium priori remisisset, mortuusque esset intestato et ex utraque filius natus esset [...]

resembles the abstracts of *controversiae* of Seneca the Elder, i.e. *controversia* 6 of book 4. *Indiscreti filius et privignus*:

²¹ *De orat.* 1. 177: “qui Romam in exilium venisset, cui Romae exsulare ius esset, si se ad aliquem quasi patronum applicavisset, intestatoque esset mortuus.” (tr. by May and Wisse (2001), 98)

²² *De orat.* 1.183: “cum uxorem praegnantem in provincia reliquisset, Romae alteram duxisset neque nuntium priori remisisset, mortuusque esset intestato et ex utraque filius natus esset.” (tr. by May and Wisse (2001), 101)

²³ cf. Leeman, Pinkster, Nelson (1985), 48.

Quidam mortua uxore quae in partu perierat, alteram duxit; puerum rus misit. ex illa subinde filium sustulit. utrumque puerum ruri educavit; post longum tempus redierunt similes. quaerenti matri uter eius sit non indicat.

The other details may be found in the second example (1.176) where *nomen gentilicium Claudii* may be seen as a symbol of any clan, while *cognomen Marcelli* – of any branch of a clan. Still, if one constrains himself from searching for particular, historical *Claudii* and *Marcelli*, there is a general legal issue here: who should succeed to a childless son of a freeman – the closest relatives of the patron or a whole clan? The generality of this example is, therefore, none the less than the example of inexpedient law, mentioned by Theon, which requires “pulling down part of the city wall for a procession in honour of an Olympic victor.”²⁴

The analogy to *progymnasmata* by Theon and *controversiae* by Seneca is even more probable, as Seneca himself testifies that what he called by the name of *controversiae*, were called legal cases (*causae*) by Cicero and *theseis* before his times.²⁵ Therefore one can see the above discussed examples as both individual declamations practiced by adult speakers at home,²⁶ and the topics commonly known from the rhetoricians’ schools. It is also confirmed by, typical to *theseis*, lack of circumstances in examples 1, 3 and 10 (the information on the father coming to Rome from Spain adds nothing to the case) and using the pronoun *ille* with respect to the soldier of the first example which suggests that he was well known person, also he was not called by his name, alike the other characters from the majority of legal cases exemplified in the first book of *De oratore*. Therefore, it is very likely that both the case of the soldier and the legal status of bigamist’s sons were well known to Crassus auditory as they were often used in rhetoric exercises. It is enough to say that as much as 15 of *controversiae* by Seneca²⁷ concerns entering to the family or disinheritance.²⁸

²⁴ *Prog.* 12, Patillon (1997), 101 (the text preserved only in the Armenian version translated into French by Patillon and Bolognesi and into English by Kennedy (2003), 65).

²⁵ Seneca the Elder, *Controversiae* I, pr. 12: “[...] quales ante Ciceronem dicebantur, quas thesis vocabant. [...] controversias nos dicimus: Cicero causas vocabat.” cf. Kennedy (1994), 167.

²⁶ cf. Seneca the Elder, *Controversiae* I, pr. 12 and Cicero, *Ad Att.* 9.4, 1, where he speaks about exercises in *theseis* practiced by him in 49 BC.

²⁷ See *Controversiae* 1.1, 4, 6, 8; 2.9, 10, 12; 3.3; 4.3, 5; 5.2; 6.1, 2; 7.16 and 8.5.

²⁸ About topics of Roman declamations and their legal and juridical aspects see Lentano (2014).

Jakob Wisse remarks:

Intellectually, Cicero regarded virtually all rhetoricians, Greek and Roman, and wherever they worked, with equal contempt. This is clearest from *De oratore*, the work most concerned with his stance towards standard rhetoric; the hackneyed rules that they taught are constantly criticized, *inter alia*, as being totally divorced from the real life of an orator in the forum.²⁹

As much as the researcher's opinion on the general meaning of Cicero's dialogue is right, still the examples of legal cases of book I and numerous cited passages convergent with the progymnastic theory prove the other, equal important aim of *De oratore*, i.e. popularization of the Greek rhetoric amongst Roman elite or at least that part of them that was chosen by Cicero as a valuable auditory for a Roman orator – a lawyer and a politician. He both attempts to authenticate the Greek eloquence in the eyes of Roman *nobilitas* by introducing Crassus and Antonius as chief interlocutors of the dialogue and he spares them partly his own erudition, and to authenticate the exercises, inspired by the Greek *theseis*, in assessment of particular legal controversies by including them in the real reports on legal disputes of the second century BC and the 90-ties of the first century BC. "Anti-rhetorical" dialogue *De oratore* may therefore, paradoxically, be seen as an important stage of *progymnasmata* and *controversiae* development in the Roman world.

Bibliography

- Awianowicz, B. B., 2008, *Progymnasmata w teorii i praktyce szkoły humanistycznej od końca XV wieku do połowy XVIII wieku. Dzieje nowożytnej recepcji Aftoniosa od Rudolfa Agrikoli do Johanna Christopha Gottscheda*, Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika.
- Bonner, S. F., 1977, *Education in Ancient Rome. From the Elder Cato to the Younger Pliny*, Berkeley and Los Angeles: University of California Press.
- Fantham, E., 2004, *The Roman World of Cicero's "De Oratore,"* Oxford: Oxford University Press.
- Frazel, T. D., 2009, *The Rhetoric of Cicero's "In Verrem,"* Göttingen: Vandenhoeck & Ruprecht.

²⁹ Wisse (2002a), 346.

- Frier, B. W., 1985, *The Rise of the Roman Jurists. Studies in Cicero's "Pro Caecina"*, Princeton: Princeton University Press.
- Kennedy, G. A., 1994, *A New History of Classical Rhetoric*, Princeton, New Jersey: Princeton University Press.
- Kennedy, G. A., 1999, *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times* (2nd edition), revised and enlarged, Chapel Hill and London: The University of North Carolina Press.
- Kennedy, G. A., 2003, *Progymnasmata. Greek Textbooks of Prose Composition and Rhetoric*, Translated with Introductions and Notes, Atlanta: Society of Biblical Literature.
- Kraus, M., 2005, "Progymnasmata, Gymnasmata," in *Historisches Wörterbuch der Rhetorik*, hrsg. von G. Ueding, Tübingen: Max Niemeyer Verlag, 159-190.
- La Bua, G., 2006, "Diritto e retorica: Cicerone *Iure peritus* in Seneca Retore e Quintiliano," *Ciceroniana* 12, 182-203.
- Lentano, M. 2014, *Retorica e diritto. Per una lettura giuridica della declamazione latina*, Lecce: Edizioni Grifo.
- Leeman, A. D., H. Pinkster, H. L. Nelson, 1985, *M. Tullius Cicero: De oratore libri III*, vol. 2, Kommentar von A. D. Leeman, H. Pinkster, H. L. W. Nelson, Heidelberg: Carl Winter Universitätsverlag.
- May, J. M. and J. Wisse, 2001, *Cicero: On the Ideal Orator (De oratore)*, translated with introduction, notes, etc., New York, Oxford: Oxford University Press
- Patillon, M., 1997, *Aelius Théon: Progymnasmata*, texte établi et traduit par M. Patillon avec l'assistance, pour l'Arménien, de G. Bolognesi, Paris: Les Belles Lettres.
- Patillon, M., 2008, *Corpus rhetoricum. Anonyme, Préambule à rhétorique. Aphthonios, Progymnasmata, en annexe: Pseudo-Hermogène, Progymnasmata*, textes établis et traduits par Michel Patillon, Paris: Les Belles Lettres.
- Wisse, J. 2002a, *The Intellectual Background of Cicero's Rhetorical Works* in: *Brill's Companion to Cicero. Oratory and Rhetoric*, ed. by J. M. May, Leiden-Boston-Köln: Brill, 331-374.
- Wisse, J., 2002b, "De oratore: Rhetoric, Philosophy, and the Making of the Ideal Orator," in *Brill's Companion to Cicero. Oratory and Rhetoric*, ed. by J. M. May, Leiden-Boston-Köln: Brill, 375-400.

[Abstract]

Ten Legal Cases in Cicero's *De oratore* 1.175-184: Examples of Famous Historical Trials or of School *Theseis* and *Controversiae*?

Bartosz Awianowicz

In the first book of Cicero's *De oratore* (1.175-184) Crassus criticizes the shameless (*impudentia*) of those advocates who neglect the civil law and illustrates his argumentation with 10 legal cases. The aim of the paper is to discuss the function of all of them, arguing that they were not only famous cases well known to the interlocutors of the Cicero's dialogue, which have taken place in September 91 BC, but also could be regarded as *theseis*, *causae* or *controversiae* practiced in schools of rhetoric in the 50's of the first Century BC. when Cicero wrote *De oratore* and well known most of all from Seneca's *Controversiae*. e.g. the pronoun "ille" in the first case (1.175: *causa illius militis*) can suggest the well known real case (cf. Valerius Maximus, 7.7.1), but also a case known because similar topics were studied in schools of rhetoric, the examples concerns exiled foreigner "who had come to live in Rome, having the right to do so provided that he attach himself to someone who would act as a kind of *patronus*, subsequently died without leaving a will" (1.177) contains no detailed information on person, time and place of the law suit and as such can be regarded as *sui generis* example of *quaestio legalis* analysed by Cicero in *De inventione* (2.116-122), while famous *causa Curiana* (1.180) was already analyzed (without names of parties and advocates) by him in *De inventione* (2.122-127) as an example of *controversia ex scripto et sententia*.

The analysis of 10 legal cases / controversies shows that Cicero's goal is to authenticate the exercises, inspired by the Greek school *theseis*, in assessment of particular legal controversies by including them in the real reports on legal disputes of the second century BC. and the nineties of the first century BC.

[Key words] Cicero, *De oratore*, Seneca the Elder, ancient rhetoric, school exercises in rhetoric, progymnasmata, school controversies

Received: November 17, 2015

Reviewed: December 11, 2015

Accepted: December 11, 2015