

Principles of Civil Law

Module 11

Roman Law as the basis of our Civil Law

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Date: 05/10/2026



Diploma in Law (Malta)



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Welcome!

A few house rules:

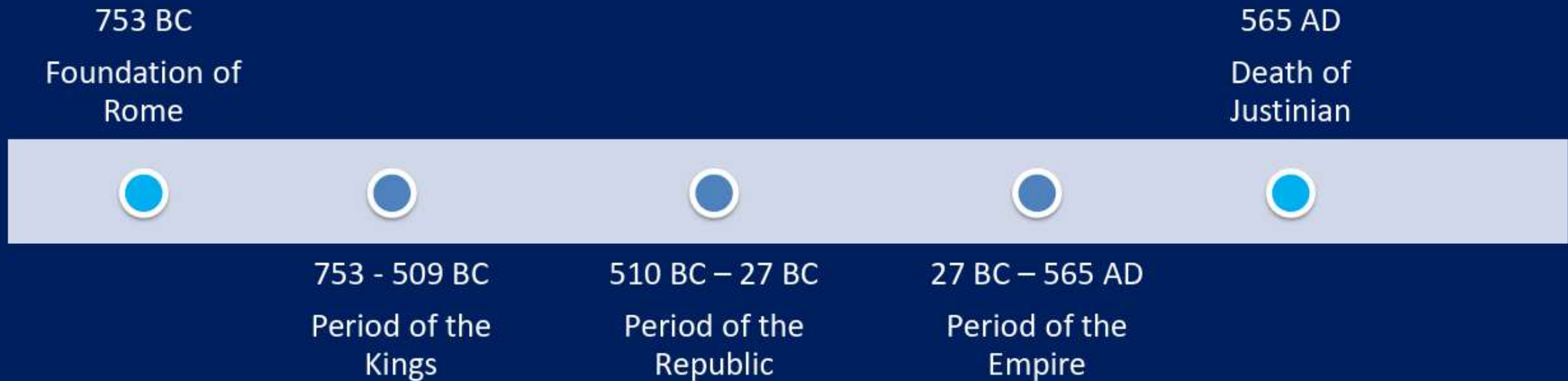
- Be respectful to your fellow classmates:
 - please be on time
 - stick to the topic when asking questions
 - stay on mute unless participating
 - interact politely
- Raise hand to ask questions / use the chat function – participation is highly encouraged!



Today's lecture:

- A brief history of Roman Law & its influence on Maltese law
- The Roman Law of Persons: *patria potestas; marriage; legitimatio; adoptio; tutela; cura*
- The Roman Law of Property: *acquisition; possession; servitudes*
- The Roman Law of Succession: *testate / intestate succession*
- The Roman Law of Obligations: *contract; quasi-contract; tort; quasi-tort*

A brief history of Roman Law



A brief history of Roman Law

The Republican Period

- Laws existed, but codification began in the early years of the Republic to avoid confusion
- Sources of law: deliberations of the assemblies; edicts by magistrates; Senate resolutions; jurist opinions; Emperor principles
- **The Law of the Twelve Tables:** compiled in the 5th century BC – an important first step towards codification of Roman law, stating the rights and duties of Roman citizens

A brief history of Roman Law

The Law of the Twelve Tables

- Consisted of 12 bronze tablets and were displayed in the Forum Romanum
- Covered matters such as civil procedure, family law, property law, and criminal law, all with their own separate chapter (table)
- Provided an important foundation for subsequent legal codes

A brief history of Roman Law

Codification

The **Corpus Juris Civilis / Code of Justinian** is a collection of fundamental works in jurisprudence.

It came about as a result of legal reform undertaken by Emperor Justinian who wanted a document which would prevail over all else that had been written about law.

The Corpus Juris Civilis consists of the **Codex**, a compilation of imperial enactments; the **Digest**, extracts from writings of jurists, and the Institutes, essentially the first law textbook for students.



A brief history of Roman Law

Codification

Through this body of work, we know that Roman Law established the rule of law: **the idea that one cannot take the law into his own hands and simply avenges himself, but he must go to the law courts. This is the idea that humans have to behave according to a code of laws and that when a dispute arises; one has to refer to an administration which would decide upon the solution.**

Rome's influence

- Roman law is the backbone of most European laws and beyond. Roman Law entered both in substance law and procedural law.
- Even when the Republic fell, the ideals and principles of Roman law remained alive.
- There is still the idea of referring back to Roman law when there is no written law on the subject, although, this idea has somewhat declined since the 1960s.



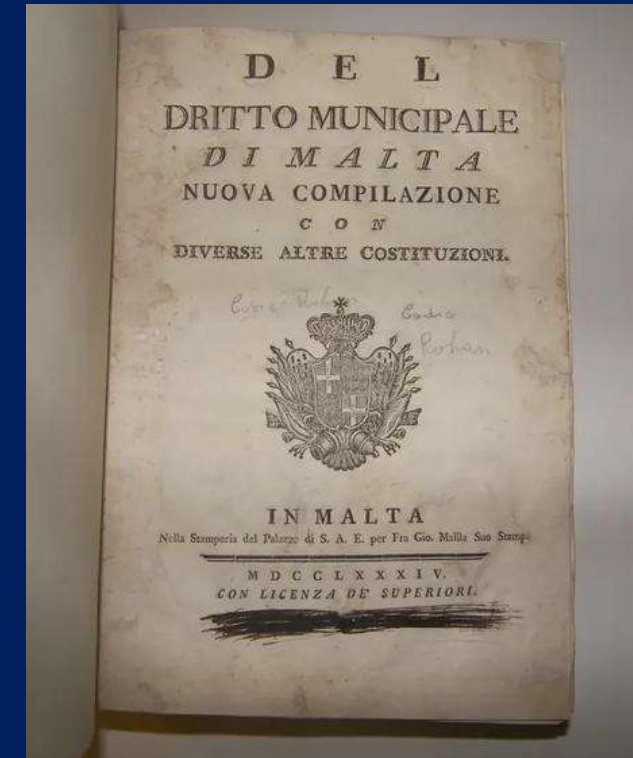
Roman law in Malta

- Malta was incorporated in the Roman Empire in 216BC
- By means of the edict of Caracalla (212AD), Roman citizenship was extended to Maltese inhabitants, who acquired the right to vote, hold public office, marry, own property, etc.
- Adopted the Roman legal system until the Arab conquest in 870AD – a **considerable 1,085 years of Roman rule and influence**
- Despite the change in regime, Roman law remained influential, especially as Muslim law could not be applied in Malta
- Roman law at this stage continued to be applied but it was through oral transmission, without codification – simple reliance on the Codex Juris Civilis



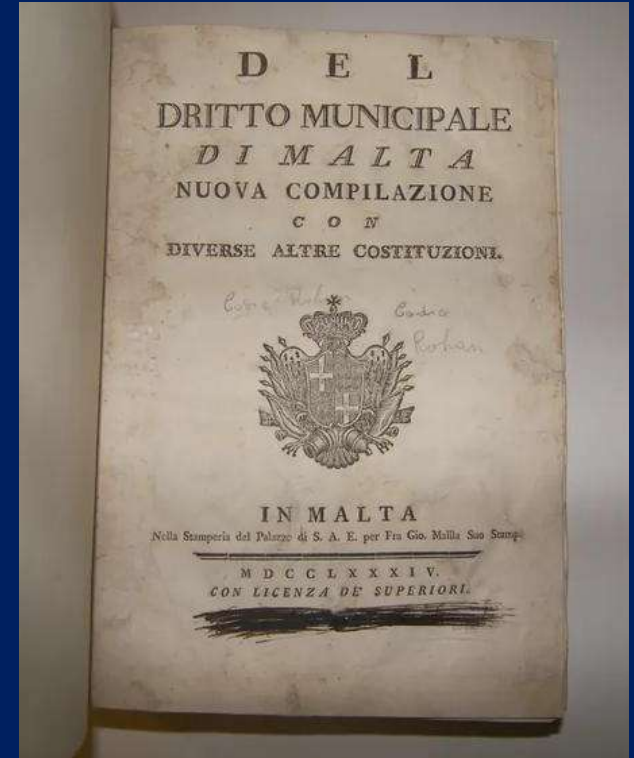
Roman law in Malta

- With the arrival of the Order of St John, codification began, however these laws were still modelled after Roman law
- At this point the *jus commune* – *common law* (those invariable legal principles) – was entrenched in Maltese society
- The **1776 Code de Rohan (Del Diritto Municipale di Malta)** is the main historical source of Maltese law and is directly inspired by Roman law



Roman law in Malta

- The Code de Rohan was a compilation of laws aimed at unifying the legal system in Malta
- It consolidated fragmented legal practices of previous Grandmasters
- Confirmed Roman law as the dominant legal system in Malta
- Where the Code was silent, courts were directed to consult the principles of jus commune
- Code served as a foundation for today's legal system



Roman law in Malta

- Later, the **French Code de Procedure Civile and the Code Civile** were introduced with Napoleon's arrival, and these were also heavily based on Roman law.
- With the British in Malta (1800-1974), the *jus commune* remained, and the new Codes (e.g. the Civil Code) still upheld the Code of Justinian.
- In 1831, 5 codes were prepared: Commercial, Criminal, Civil Procedure, Criminal Procedure, Obligations

The Law of Persons

Identifies the **status and role** of an individual in society, and therefore their rights. Roman Law considered 3 categories of persons:

- **Free Persons:** Roman citizens with full rights & protection of the law
- **Friends to Rome:** non-citizens but with some rights
- **Hostiles / Barbarians:** e.g. Slaves. No rights at all.

One's status could be lost / acquired, e.g. Through manumission (freedom) or legitimatio (of persons born out of wedlock).



The Law of Persons - Slavery

Legally structured by Rome. Slavery could come about through:

- **Unfree birth:** a child follows the mother's status (unless the mother was free during pregnancy)
- **Hostile capture:** enemies of Rome / foreigners within Rome unprotected by treaty / agreement
- **Rules of Civil law:** sale into slavery, cohabitation of a free woman with a slave, sale of insolvent debtors, criminal punishment, etc.

The Law of Persons - Slavery

Rights over slaves were personal and proprietary:

- Everything acquired by the slave belonged to the master
- **Jus Vitae Necisque:** right of life and death. The master could kill his own slave if he had just cause, and could send him to fight in the arena with the magistrate's approval

Slaves were both things (belonging to the master) as well as persons, with limited rights and obligations

The Law of Persons - Slavery

Slavery

Could be brought to an end by **manumission** – the process of freeing a slave from the bond of servitude.

Vindicta: master revokes his ownership before a praetor, who would touch the slave with his rod to symbolically change his status

Censu: master enrolls the slave in the Census, freeing him

Testamento: master frees the slave in his will

As a result, slaves became **libertini** – free but with limited legal rights.

The Law of Persons - Slavery

Slavery

A manumitted (freed) slave had 3 obligations towards his former master:

1. Respect and gratitude
2. Provision of certain services (e.g. guardian of his children)
3. Obligation to include the former master in his will and leave to him a portion of his estate

The Law of Persons – Patria Potestas

Patria Potestas – the paterfamilias

The power exercised by the paterfamilias (head of the family) over the rest of the family members.

Family was based on agnatic relations (paternal line) and included those who came into the family (e.g. Adoptees).

The paterfamilias enjoyed absolute power over the family – this ended only with his death.

The Law of Persons – Patria Potestas

Patria Potestas – the paterfamilias

The paterfamilias enjoyed:

- Power of life and death
- Sale of children into slavery
- Giving of children in adoption, marriage, or divorce
- Patrimonial powers over all that is acquired

The powers of the paterfamilias over the children are extremely evident in the issue of matrimony:

- The consent of the paterfamilias was needed for the child he powers of the Pater Familas over the son are extremely evident in the issue of matrimony and patrimony;
- **Matrimony:** the consent of the paterfamilias was needed for the son or daughter to be allowed to marry. Patria Potestas also extended in the right of terminating marriage through the mechanism of adopting the husband or wife of the child.

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The Law of Persons – Patria Potestas

Patria Potestas – the paterfamilias

There are two important issues relevant to the exercise of patria potestas:

- **Paternity:** it was decided that the husband of the mother is the father of the child and this presumption gave the father patria potestas over the children.
- **Wedlock:** the Romans established a time frame - if the child was born not before 82 days after the celebration of marriage and not after 300 days after the dissolution of marriage, the child was deemed to be born in wedlock and this gave the father patria potestas over the child.



The Law of Persons - Marriage

Marriage

Dictated by custom rather than law until Christianity infiltrated Rome.

There are two basic forms of marriage:

- **Manus Marriage:** the wife is passed into her husband's family, essentially giving her a status of daughter to her husband, who gained authority over her – eventually replaced by justum matrimonium.
- **Justum matrimonium:** marriage between Roman citizens in accordance with Roman law. The wife retains her independence, i.e. she remains sui juris, though in marriage.

The Law of Persons - Marriage

Manus marriage:

The wife, if she was *alieni juris* (i.e. subject to *Patria Familias*), ceases to be in the *Patria Potestas* of her father (or grand father if he was still alive) and moves under her husband's authority. If she was *sui juris* (i.e. free), she became *alieni juris* to her husband. This meant that her status was similar to the daughter of her husband, and sister to her own children.

The husband had the power of life and death over his wife. Although this was rarely practised, this was permitted in the case of adultery.

The husband acquired the property of the wife, even the dowry. Whatever the wife gained during marriage was automatically the property of the husband.

Any legal transactions or contracts, which the wife contracted before marriage were dissolved since marriage created a different legal personality.

The Law of Persons - Marriage

Justum matrimonium:

There is no change in the status of the wife; she remains sui juris or alieni juris under the Potesta of her father. The wife never comes under the patria potestas of her husband.

In marriage, the wife retains her patrimony. Whatever she acquires in marriage remains her. The wife could also file lawsuits, enter into contracts and sign business transactions. However, the dowry was to be shared with her husband.

The husband retained the power of life and death over his wife in free marriage, in the case of flagrant adultery to protect his honour.

The husband had no legal obligation to maintain his wife, since she retained her status.

The Law of Persons - Marriage

Roman law also identified certain impediments which prohibit one from marriage:

- Age: 14 for boys and 12 for girls
- Consent: required from the paterfamilias (unless sui juris)
- Castration in men
- already married persons
- those taking the vow of chastity (in the Christian era i.e. the Dominate)
- soldiers in the service

The Law of Persons - Marriage

5 requisites of a civil marriage under Roman law:

1. Jus Connubii – parties have a right to marry a Roman citizen
2. Parties of marriageable age
3. No legal impediments
4. Consent of the paterfamilias
5. Consent of both parties, freely given

The Law of Persons - Marriage

Termination of marriage:

- Death
- Prolonged absence
- Enslavement
- Loss of citizenship
- **Insestus Superviens:** The paterfamilias adopts the husband or wife of his child, and the married become brothers and sisters in the eyes of law. Therefore marriage was to be terminated since there was an incest. This was a defence mechanism.

The Law of Persons - Marriage

Termination of marriage – Divorce:

- **Divortium Bona Gratia:** both parties agree. This is the result of mutual consent to amicably terminate the marriage.
- **Repudium:** one party repudiates the other and unilaterally dissolves the marriage. Reasons varied from adultery to infertility.

In both cases procedures existed for the division of property and custody of children. E.g. dowry was to be returned to the wife, and children were to remain under the father's custody.

The Law of Persons

Legitimatio

The process by which the father gained Patria Potestas over the children and refers to how illegitimate children would be legitimated.

Legitimatio, like Adoptio, is a fictio juris, i.e. a legal fiction to legitimate natural children.

The Law of Persons

Legitimatio

There are three basic ways of legitimatio:

1. **Legitimatio per subsequens matrimonium**
If the parents later married each other and were legally capable of marriage when the child was conceived / born, the child could be legitimated
2. **Per oblationem curiae:** By making a son (or marrying a daughter to) a member of the Council of a Municipality.
3. **Per Rescriptum Principis:** by imperial rescript. The emperor issues a rescript to legitimise the child – a rare occurrence.

The effects of legitimatio were basically that of strengthening patria potestas over the 'new' legitimate children. Limited rights in terms of succession.

The Law of Persons

Adrogatio & Adoptio - 2 different means of establishing the patria potestas

1. Adrogatio: the adoption of a sui juris (free man) person not under someone else's patria potestas. This involved two main changes, that of blood relation and that of the change of status, that from sui juris to that of alieni juris under the Patria Potestas of the adoptive father – this was considered a demotion in status. Rare and required approval from the people, senate, and pontiffs. The adrogatus ceased to exist legally and all of their rights / obligations were transferred to the adrogator.

2. Adoptio: the adoption of an alieni juris (non-free man) person, allowing for the legal transfer of patria potestas to the adopter, with all legal rights and duties.

The Law of Persons

Tutela (guardianship)

Servius (late republic jurist) defined tutela as *a right and power exercised over free persons who on account of tender years or sex, cannot take care of himself, given and allowed by civil law.*

Came into existence through:

- Testamentary tutelage: appointed by a paterfamilias to underage descendants
- Statutory tutelage: when no testamentary tutor is appointed
- Dative tutelage: by a mother to manage property and leave it to her child



The Law of Persons

Tutela (guardianship) applied to:

- a child who has not yet reached puberty
- women who were sui juris (free)
- Slaves manumitted when underage

Tutelage of women - Perpetua Tutela Mulierum

Perpetual guardianship of women who were sui juris and unmarried. Scope was to preserve property and ensure it remained within the family.

Tutor's role was limited to **auctoritatem interponere** when entering into contracts. Eventually abolished when Emperor Justinian recognised the autonomy of women.



The Law of Persons

Tutela (could come to an end:

- When the pupillus reached the age of puberty (14/12years)
- Upon death of either tutor / pupillus
- Magisterial discharge of the tutor if duties are fulfilled / acted improperly
- If tutelage was appointed for a defined period of time
- Suspicion of misconduct / hostility towards the pupillus
- Either party suffering a decrease in legal status



The Law of Persons

The role of the Tutor

- Responsible for administering the ward's property with prudence and diligence
- Responsible for imposing authority over the ward's conduct and personal life, ensuring they were protected from harm and needs were attended to
- Responsible for the ward's education



The Law of Persons

Cura

Cura applied to:

- spendthrifts - *cura prodigi*
- lunatics - *cura furiosi*
- those between the age of puberty and 25, who were considered to be minors. When reaching the age of puberty, there was no need of tutor, however, these children were still considered in need of a person who guides them in their patrimony, and so the need of a curator arose. Therefore, as Tutela ended, Cura followed till the age of 25 - *cura minorum*

The Law of Persons

The role of the Curator

- Appointed by magistrate to protect the interests of the ward
- Administer the property of the ward
- Approve transactions that were beneficial
- Act as guardian and protector
- Ensure physical and emotional needs are met
- Represent ward in legal proceedings (with magisterial approval)
- Had no control over the ward

The Law of Persons

Curator v Tutor:

Curators primarily appointed to administer the property, not to control the person. The work of the curator is not **autoritas interponere** like that of the tutor, who had authority over both person and property.

No one was obliged to have a curator unless he was a party to litigation, where as in the case of the tutor for children and women, this was obligatory.

A curator could not, like a tutor be appointed by a will. If he was, he had to be confirmed by the magistrate.

A curator was expected to approve transactions of a reasonable nature which the minor wished to undertake.





Diploma in Law (Malta)



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The Law of Things

The second principal division of Roman Law is the Law of Things or **Res** - that is any unit of economic value, more particularly its acquisition and transfer.

It incorporates the Law of Property, the Law of Obligations and the Law of Succession.

Things were categorized according to their nature, such as public and private, corporeal or incorporeal and divine.



The Law of Things - Succession

Succession

As opposed to the modes of acquisition of single things, succession is a mode of acquisition **per universitatem**, that is the transfer of all the property of a given person to another including all transmittable rights and duties.

The law of Succession under Roman law began with the idea of intestate succession, where no wills were being made. Given that the *volontà* of the deceased is not expressed, patrimony would be divided by the state.

If one dies intestate or a will is not validly written or becomes invalid at the death of the deceased, one's succession would be regulated by the rules drawn by the state for the people who have not written a testament.



The Law of Things - Succession

Types of Testaments

- **Testaments made before the Comitia Curiata** (testamentum comitiis calatis): This Comitia met twice a year to approve these testaments.
- **Testaments made before the army (procintu)**: Procintu was a declaration made before a few comrades.
- **Testaments by bronze and balance (testamentum per aes et libram)**: if one had not made neither a testament before the comitia Curiata, nor in procintu, and he was overtaken by sudden menace of death, he would mancipate his patrimony to a friend and give instructions as to what he wanted given to each person after his death.
The testator commits his will to writing on tablets of wax in the presence of 5 witnesses who were Roman citizens and above the age of puberty.

The Law of Things - Succession

The Roman Testament

- A legal document determining the distribution of property, requiring elements to be validly recognised
- Valid ab initio – at the time of its creation
- Valid until the heirs enter upon the inheritance, i.e. cannot be revoked or altered in a way that affects its validity
- Heirs must enter into their inheritance, i.e. must accept it

The Law of Things - Succession

Valid ab initio

- Made in the proper form
- Heirs are duly instituted, with identities and shares made clear
- Testator, heirs, and witnesses must be competent
- Certain persons must either be instituted or disinherited, depending on the legal system in place

The Law of Things - Succession

Types of Testaments

- **The Praetorian Testament:** although this was not a testament because the Praetor could not make an heir, the Praetor could give possession of the estate through bonorum possessio. Seven witnesses were required for this kind of testament.
- **Nucupative:** this was a declaration in the presence of seven witnesses.
- **Abnormal or Irregular:** Accepted for soldiers in active service, a less rigid form of wills in the army. No limitations as to where and when it could be done and could be written or described orally.



The Law of Things - Succession

The testator

Had to be:

- **A citizen of Rome:** slaves cannot make a will, but a will made before being enslaved was recognised as valid.
- **Sui juris:** persons in patria potestas, owning nothing, cannot dispose of anything.
- **Of age**
- **Of sound mind**
- **Male:** unless a woman was sui juris and appointed a fiduciary tutor to make the will in her name

The Law of Things - Succession

The heir

- The Institution of an heir or heir was necessary as this was the essence and foundation of the whole testament.
- A testator may indicate a single heir or a plurality of heirs competent to receive under will as long as the dispositions referred to the whole inheritance.
- The institution may be absolute or conditional. A testator might even appoint a slave as his heir which indicated a gift of liberty unless the slave was the slave of another master, in which case liberty required that master's consent.
- The law also permitted the vulgar substitution of an heir who could not or would not accept the inheritance.

The Law of Things - Succession

The legatee vs the heir

- An heir succeeds to all legal rights and obligations of the testator
- A legatee is left a specific item / property
- A legatee does not acquire the legal position of the deceased
- A person can be simultaneously an heir and a legatee – in this case the person inherits all assets and liabilities as well as the specific item

The Law of Things - Succession

The witnesses

The disqualifications of witnesses were similar to those established for testators.

A person who had the legal capacity to write a testament, very often had the legal capacity to be a witness. However, since the idea was that a witness should be a male Roman citizen and above the age of puberty this excluded some persons nonetheless.

Women were not allowed to act as witnesses, even though through the authority of the tutor, they could write their own testaments.

Close family relationship with the principal parties to the will was a disqualification.

Interdicted, insane persons, deaf and dumb were excluded.

Slaves were excluded, however testimony given before enslavement remained valid.



The Law of Things - Succession

A will fails to take effect when:

- A new heir with a higher right to inherit enters into the family
- A new will supersedes it
- Testator undergoes a change of status affecting his legal capacity
- A Praetor allowed testator to burn / tear / deface a will or erase the institution of an heir
- If they failed to provide for certain close family members
- If no heir accepts it
- Later in imperial law, if 10 years lapse from its creation

The Law of Things - Succession

Intestate succession

A man dies intestate if he has made no will, if the will is deemed to be invalid, if the will is broken (ruptum) or when no heir accepts the inheritance.

By the law of Twelve Tables, the inheritance of intestates belong in the first instance to the **sui heredes**, i.e. those persons who upon the death of the deceased, become sui juris since formerly there were in power of the deceased paterfamilias.

It makes no difference whether the child was legitimate or illegitimate, or whether he was adopted or a natural child.



The Law of Things - Succession

Intestate succession

In the second instance, the nearest agnate (in the male's line), and in the third instance, gentiles or the community to which the deceased belonged.

By the time of Justinian succession devolved first upon descendants on a per capita basis in case of close descendants and per stirpes in case of more distant relations, then unto ascendants and siblings of whole blood, in default upon half blood siblings, and finally, unto collaterals on a per capita basis.



The Law of Things - Property

Rights over property

The Modes of Acquisition under Roman Law were **mancipation**, **in jure cessione**, **usucapio** and **donation**.

The first two modes fell into disuse by the time of Justinian.

Usucapio or acquisitive prescription refers to the legal acquisition of ownership by a person in possession who, despite lacking legal title, continues in possession for a time defined by law and satisfies other necessary conditions.



The Law of Things - Property

Usucapio

The conditions were the following:

- (i) that the thing was susceptible to ownership – hence all things extra commercium, free men, and res furtiva were not capable of acquisition
- (ii) (ii) Title– an antecedent or contemporaneous event where acquisition of possession takes effect as acquisition of ownership – eg. Sale by a person without title to convey or the title is otherwise defective;
- (iii) good faith - the acquirer must honestly believe that the transaction has made him owner
- (iv) possession – that is the physical control and intention to possess as owner as opposed to mere detention;
- (v) lapse of time which must continue uninterrupted



The Law of Things - Property

Longi Temporis Praescriptio was a mechanism similar to usucapio.

The main difference was that Longi Temporis Praescriptio was a mechanism of the Jus Gentium, and therefore unlike usucapion it was applicable to all, i.e. Roman and non-roman citizens.

There were some different conditions:

- Land should be possessed for ten years if the land and its owner were in the same district or province.
- Land/other form of property should be possessed for twenty years, if the land and the owner were in different district.



The Law of Things - Servitudes

Servitudes are rights in rem that one person holds over the property of another.

Praedial servitudes are rights over immovable property (e.g. profits), while **personal servitudes** are rights similar to a life interest in movable / immovable property (e.g. right of use).

Affirmative servitudes require the owner of the servient tenement to allow certain actions by the dominant tenement. **Negative Servitudes** require the servient tenement to refrain from certain actions.

Servitudes may be established through agreement, prescription, or will, and are enforceable against the servient tenement.

The Law of Things - Servitudes

Praedial Servitudes are divided into **rustic** and **urban** servitudes:

Rustic:

- The right to go over another man's land through walking
- The right of passage for a vehicle
- The right of sailing in a lake
- The right to put one's cattle on another's land in order to graze

Urban:

- The right to have a drain through adjacent land serving one's house
- The right to stop one from building which interferes with one's access of light
- The right to discharge rainwater by drop from the eaves or from a spout on the neighbouring land
- The right to space over the neighbour's land, e.g. a projecting balcony

The Law of Things - Servitudes

Personal Servitudes include:

- **Usufructs:** the right to use and take fruits of another man's property, the substance remaining unpaired
- **Usus:** the right to exclusively use a property to satisfy the usuary's and his family's needs. A usuary could not receive the fruits of the property or thing over which there was the right of usus (e.g. No lease)
- **Habitatio:** the right to use a house
- **Operae Servorum:** the right to use a slave under a contract



The Law of Things - Servitudes

Praedial Servitudes were created in ways with which we are not familiar with, such as mancipatio or deduction, but also by testament and by prescription.

Praedial Servitudes were extinguished:

- By surrender or renunciation
- By merger of confusion
- By non-use for the statutory period
- By term or condition

The Law of Things - Servitudes

Personal Servitudes were created in the same manner as Praedial Servitudes, including their creation by testament and by prescription but also by statute (such as the right which the paterfamilias enjoyed over property acquired by the filius).

Personal Servitudes were extinguished in the same manner as Praedial Servitudes and also by death.

The Law of Things - Emphyteusis

A unique legal institution of Roman law – a contract by which a landowner grants use of that land to the emphyteuta for a long period of time, often in perpetuity, in exchange for annual rent and the obligation to cultivate and improve the land.

The emphyteuta was not the owner of the land, but in course of time came to be treated very much as if he were.

The law protected his interest by giving him an action in the nature of a vindication to get possession of the property from the owner or any third party – effectively, the emphyteuta enjoyed rights related to ownership.



The Law of Things - Obligations

Obligations under Roman Law are classified as:

- **Civil and Praetorian or honorary:** distinguishes obligations emanating from the authority of the praetor's edict and those from law
- **Ex contractu / quasi ex contractu:** arising from a legal relationship / contract
- **Ex delicto / quasi ex delicto:** arising from delict and tort
- **Civil-natural:** a civil obligation arising where a natural obligation is imperfectly protected by law

The Law of Things - Obligations

- **Contractum:**

The creation of legal relationship in virtue of which a person freely undertook a duty intended to create a right in favour of another person.

- **Quasi Contractum:**

Imposed by law on equitable grounds or because of public policy and which did not arise from any agreement between the parties. E.g. *Indebiti Solutio* - the obligation to repay money received from another erroneously.



The Law of Things - Obligations

- Delicts:

Obligations arising from wrongful acts, e.g. Violation of freedom, safety, and reputation, or wrongful damage to property.

- Quasi Delicts:

Arising from law, despite the defendant not necessarily being to blame.

E.g. The occupier of a house's responsibility for anything thrown from that house.

The Law of Things - Obligations

The Contract of Commodatum – loan for use

- One of four real contracts in Roman law
- A contract of loan for use of movable / immovable property
- Gave rise to mutual obligations and rights
- Borrower was obliged to take good care of the property and compensate for any loss or damage

The Law of Things - Obligations

The Contract of Mutuum – loan for consumption

- One of four real contracts in Roman law
- A contract of loan for consumption of fungible things
- E.g. the transfer of ownership of money from the lender to the borrower
- Borrower was obliged to repay the same quantity back or a value equivalent to it
- Borrower acquired full ownership and the obligation to repay was monetary

The Law of Things - Obligations

The Contract of Depositum

- One of four real contracts in Roman law
- A depositor has the duty to hand over a specified thing to the depositee for safekeeping
- Depositor responsible for any expenses related to the custody of the thing
- Depositee responsible for its safekeeping and return upon demand

The Law of Things - Obligations

The Contract of Sale

- Buyer obliged to pay the price for the goods purchased if the seller fulfils all obligations
- Buyer must take delivery of the goods as soon as the seller provides it
- Costs incurred by the seller between the contract date and delivery date are borne by the buyer
- Seller must exercise the highest level of diligence over the item (res) until it is delivered to the buyer
- Seller must guarantee exclusive and vacant possession of the item

The Law of Things - Obligations

Extinguishing of obligations

1. Through death (capitis deminutio) – where the obligation could not be transferred to an heir
2. Confusio / merger – where the creditor became the debtor's heir or vice versa
3. Novation – the old obligation was dissolved in favour of a new one, by substituting one or more of the original parties or terms. All parties involved must consent to this





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