

# Roman Law

L.B. Curzon



M&E HANDBOOKS

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# ROMAN LAW

L. B. CURZON, B.Com.

*Barrister*

*Omnes legum servi sumus ut liberi esse possimus*  
(Cicero)

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## AUTHOR'S PREFACE

THIS HANDBOOK has been designed as a study guide to the elements of Roman Private Law and is intended specifically for students preparing for first examinations in this subject. Its pattern is a series of study notes and Progress Tests.

The following plan of work is suggested for the student:

(a) *Read through the book swiftly*, omitting the Progress Tests and those sections not included in the syllabus of your particular examination. (London University, for example, does not include the Law of Wills in its Intermediate syllabus.) The object of this preliminary reading is to acquire a general view of the subject matter.

(b) *Next comes the main study of the text.* Read the chapters slowly and carefully. The study of a chapter should culminate in the Progress Test which follows at the end of the chapter. *You should not pass from one chapter to the next without having completed to your satisfaction the appropriate Progress Test.* Memorise principles, important dates and facts.

(c) *The third reading should be for revision purposes.* At this stage concentrate on the revision of broad outlines.

(d) *The fourth, and final reading* should concentrate on a revision of details of the text.

(e) *Finally, attempt, at three separate sittings*, and under examination conditions, the three *Test Papers* in Appendix III.

The student beginning his work on Roman Private Law usually asks three questions: Is a knowledge of Latin essential? Should I learn all the dates? How much of the material should I memorise?

(a) *Knowledge of Latin.* Undoubtedly this is an advantage. But unless your particular examination syllabus specifically includes the translation of passages from the Institutes, a lack of Latin should not be a handicap. In this HANDBOOK most of the important Latin phrases and words are followed by a translation. You are advised, however, to have a good Latin-English dictionary available for reference purposes. An occasional search of the dictionary can be valuable, since the language of Roman Law is heavy with historical overtones. The

dictionary's explanation, for example, of the word *Quirites*, from which the term *quiritary ownership* (see X, 2) is derived, illumines the significance of the term in an extraordinary way.

(b) *Dates*. The most important dates must be known. The dates of the Monarchy, the Republic, the Empire, the important Emperors, must be committed to memory. Important *Senatusconsulta*, *Leges*, must also be known. Examiners expect this knowledge and often set questions which assume it (see for example, Appendix III, Paper 3, Question No. 3). Where only approximate dates can be given they are preceded in the text by "c" (as in the date attributed to the *Codex Hermogenianus*—see III, 6).

(c) *Memorisation*. The student should memorise important dates, outlines and details of important legislation, principles, rules and exceptions to those rules.

Although these study notes are self-contained, the student will wish to read more widely. The following books are recommended for the beginner.

*Background reading*: *The Romans* (ed. by J. V. Balsdon, published by Watts & Co, 1965): an interesting series of essays on the historical and social background of Rome.

*Daily Life in Ancient Rome* (J. Carcopino, published by Penguin Books): a vivid account of the daily life of Romans in the second century A.D.

*Elements of Roman Private Law*:

*An Introduction to Roman Law* (J. K. Nicholas, published by Oxford University Press, 1962): an extensive introduction to some of the problems of Roman Law.

*The Elements of Roman Law* (R. W. Lee, published by Sweet and Maxwell, 1956): one of the outstanding books of its kind, containing a translation of the Institutes.

*Reference*:

*Textbook of Roman Law from Augustus to Justinian* (W. W. Buckland, published by Cambridge University Press,

3rd edition, 1963): a standard reference book in this subject.

*Roman Private Law* (M. Kaser, published by Butterworths, 1965): a scholarly and detailed treatment of the principal topics of Roman Law.

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I should like to acknowledge the help I have received from Mr L. Arridge, B.A., Librarian of the Chester College of Further Education and from Mr P. Pocklington, F.L.A., City Librarian of Chester.

August, 1966

L. B. C.

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**PART ONE**  
**BACKGROUND AND SOURCES**



## CHAPTER I

# HISTORICAL BACKGROUND

### PERIODS IN THE HISTORY OF ROMAN LAW

**1. General.** Rome was founded in 753 B.C., and that part of its history which is relevant to this study of Roman Law ends with the death of Justinian in A.D. 565. It is possible to consider the history of Roman Law, in a very general manner, from a number of viewpoints:

- (a) from the point of view of its general political background;
- (b) from the point of view which sees its culmination in the classical period;
- (c) from the point of view which considers it in relation to its constitutional background.

**2. Political background.** The development of Roman Law may be considered in relation to the background of general political changes in Roman society. It is possible to discern five important periods:

- (a) *Prior to the XII Tables (see III, 1-3).* In this period the law was based on custom and was linked with religious practices.
- (b) *From the XII Tables to the subjugation of Italy (c. 266 B.C.).* During this era the law was rigid and was based largely on the XII Tables and their interpretation by the College of Pontiffs.
- (c) *From the subjugation of Italy to the commencement of the Principate under Augustus (27 B.C.).* The outstanding accomplishments of this period were the development of the law by the Praetors (see 12-14 below) and the growth of *jus gentium* (see II, 8-9) which embraced citizens and non-citizens.
- (d) *From Augustus to Diocletian (A.D. 284).* This era included the classical period of Roman Law (see 3 below) and

witnessed an evolution of law based, in part, on scientific interpretation and reasoning.

- (e) *From Diocletian to the conclusion of Justinian's reign* (A.D. 565). Legislation by Imperial Decree and the development of the law, together with its codification, dominated this epoch.

NOTE: A more general interpretation of the political background of Roman Law sees its two main epochs as:

- (i) *The epoch of local law*—"rigid, formalistic and national," characterised by the old *jus civile* (see II, 10-11), beginning with the XII Tables and continuing until the end of the Republic, and
- (ii) *the epoch of universal law*—"equitable and no longer highly formalistic," leading to the growth of *jus gentium* (see II, 8), and continuing throughout the Empire.

**3. The classical, and related periods.** The development of Roman Law may be considered from another viewpoint as falling into three periods:

- (a) *The pre-classical period*, prior to the Principate. In this period the most significant feature is taken to be the beginnings of legal science in the third to the first century B.C., born from the influence of Greek philosophy and methods of thought applied to Roman legal concepts.
- (b) *The classical period*. This vital period may be considered to have approximated to the epoch of the Principate. In a more restricted sense it is usually held to cover the period from Hadrian (A.D. 117) to the death of Alexander Severus (A.D. 235). During this period Roman legal thought made great advances, characterised by the work of the jurists, such as Gaius, Papinian, Ulpian and Paulus.
- (c) *The post-classical period* from, approximately, the third century A.D. During this period the growth of legislation by imperial decree, and the prevalence of absolutism created an atmosphere in which the advance of legal philosophy was slowed down. In the Eastern Empire under Justinian classical tendencies reasserted themselves briefly, culminating in his vast work of codification (see III, 11-17).

**4. General constitutional background.** Yet another interpretation of the development of Roman Law sees it in relation

to the three major constitutional epochs in Roman political history:

- (a) The period of the Kings;
- (b) The period of the Republic;
- (c) The period of the Empire.

This general view is the basis of the remainder of this chapter.

### *THE PERIOD OF THE KINGS, 753-509 B.C.*

**5. The King.** From its foundation, Rome was ruled by its Kings until c. 510 B.C. The King's powers were very extensive. He was supreme commander in time of war, and had supreme civil and criminal jurisdiction. He held the office of High Priest and his powers over his subjects included *jus vitae aut necis* (power of life or death).

**6. The People.** In the very early days the inhabitants of Rome were divided into three tribes: the Luceres, Tities and Ramnes. Each occupied one part of Roman territory. The tribes were divided into *curiae*, each consisting of patricians with a common name and common blood ties. By 241 B.C. there were 35 tribes. The inhabitants of Rome in the time of the Kings consisted of:

- (a) *Patricians*: the nobility who were, for a long period, alone eligible to occupy the State's high offices.
- (b) *Plebeians*: originally the poorer, non-privileged citizens.
- (c) *Clients*: who enjoyed a status between patricians and plebeians and attached themselves to a patrician house.
- (d) *Slaves*: conquered by the Roman Army and brought back in slavery to Rome.

### **7. The Assemblies of the People.**

- (a) *Comitia Curiata*. This was an assembly of patricians held in the Comitium in the centre of Rome. It consisted of about 30 *curiae*, each curia casting one vote according to the wishes of its majority. It was convoked by the King and his magistrates. Its duties included the choice of a King and other high officers, and the enacting of the *lex curiata de imperio*, which conferred *imperium* (full authority). With the exception of this *lex*, all its decrees needed

confirmation by the Senate. Under the name of *Comitia Calata* it sanctioned wills (see XII, 11), and dealt with adrogation (see V, 8), meeting in March and May of each year under the Head of the College of Pontiffs (*Pontifex Maximus*).

- (b) *Comitia Centuriata*. Introduced by Servius Tullus (578–535 B.C.), this assembly of the armed force of Rome became very important with the establishment of the Republic (see 9(c) below).
- (c) *The Senate*. The Senate acted as a consultative body to the Kings. In 580 B.C. it consisted of 300 patricians, chosen because of age and experience (see also 17 below).

### THE PERIOD OF THE REPUBLIC, 509–27 B.C.

**8. The Kings replaced.** Following the expulsion of Tarquinius Superbus in 509 B.C., supreme powers were vested in two magistrates elected annually by the *Comitia Centuriata*, known first as Praetors. They were endowed with *imperium*, subject to a veto which each could exercise over the other. Increased powers were given to the Senate (see 9 below).

#### 9. The Assemblies.

- (a) *The Senate*. The Senators were chosen by Consuls, later by Censors. They were summoned by a magistrate (see note below) whom they advised on matters of peace and war. They were also required to approve decrees of the *Comitia Centuriata*. By the end of the third century B.C. the Senate had become the State's policy making executive. A *senatusconsultum* (see II, 18) had the force of law. Sulla (81–79 B.C.) increased the number of Senators to 600. Senators held office for life, unless expelled for serious misconduct. They controlled the Treasury and nominated Dictators (high officials invested with dictatorial powers during an emergency). They were able to remove a citizen from the operation of the law, but *Lex Cornelia* (67 B.C.) enacted that at least 200 Senators were to be present when such a resolution was passed.

NOTE: The Roman magistrate was a high state official who possessed extensive political and judicial powers. His title and office should not be confused in any way with those of the modern Justice of the Peace.