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**Level: 1st year**

**Module: History of Law**

**Lecture 4: The ancient Roman legal system**

**1. Roman law: an overview**

[Roman civilization](https://study.com/academy/lesson/roman-civilization-timeline-facts-contributions.html) took root as early as 1000 BCE, and tradition maintains that the [Roman Republic](https://study.com/learn/lesson/formation-roman-republic-offices-institutions-history.html) was born in 509 BCE. Ancient Roman law, however, existed long before the founding of the Republic. Roman law was cumulative and consisted of principles handed down and cultivated by hundreds of years of customary dealing. The principles in the resulting codes have remained the bedrock of modern legal systems, covering everything from crime and property ownership to agriculture and citizenship.

**2. Development of the jus civile and jus gentium**

In the great span of time during which the [Roman Republic](https://www.britannica.com/place/Roman-Republic) and Empire existed, there were many phases of legalistic development. During the period of the republic (753–31 BC), the [*jus civile*](https://www.britannica.com/topic/jus-civile) (civil law) developed. Based on custom or legislation, it applied exclusively to Roman citizens. By the middle of the 3rd century BC, however, another type of law, [*jus gentium*](https://www.britannica.com/topic/jus-gentium-Roman-law) (law of nations), was developed by the Romans to be applied both to themselves and to foreigners.

Roman law, like other ancient systems, originally adopted the [principle of personality](https://www.britannica.com/topic/principle-of-personality) that is, that the law of the state applied only to its citizens. Foreigners had no rights and, unless protected by some [treaty](https://www.britannica.com/topic/treaty) between their state and [Rome](https://www.britannica.com/place/Rome).

**3. Written and unwritten law**

The Romans divided their law into *jus scriptum* (written law) and *jus non scriptum* (unwritten law). By “unwritten law” they meant custom; by “written law” they meant not only the laws [derived](https://www.britannica.com/dictionary/derived) from legislation but, literally, laws based on any written source. There were various types of written law :

**3.1. The Twelve Tables**

The citizens of Rome were divided into two classes: patricians, the elite class who ruled Roman society, and plebeians, the common people. Over time, plebeians came to see that because of the disparity between their positions, patricians tended to have some advantage in the legal decisions. The plebeians pressed for the law to be written down, so that they might better anticipate the decisions made by the patrician .Thus a committee of ten men called the *decemvirs* was established in 451 bc to write down the law forthe first time. The work they produced in 449 bc, theTwelve Tables, documented the centuries-old customarylaws and became the foundation of Roman law.

Law of the Twelve Tables, the earliest written legislation of ancient [Roman law](https://www.britannica.com/topic/Roman-law), traditionally dated 451–450 BC. The codifying of laws into the [Twelve Tables of Rome](https://study.com/academy/lesson/twelve-tables-definition-laws.html) marked a change in Roman law from an arbitrary system based on customary law to a transparent system of lasting prestige.

**3.2. The law of**[**Justinian**](https://www.britannica.com/topic/Code-of-Justinian)

When the [Byzantine](https://www.merriam-webster.com/dictionary/Byzantine) emperor [Justinian I](https://www.britannica.com/biography/Justinian-I) assumed rule in 527 BC, he found the [law](https://www.britannica.com/topic/law) of the Roman Empire in a state of great confusion. It consisted of two masses that were usually distinguished as old law and new law.

The old law [comprised](https://www.merriam-webster.com/dictionary/comprised) all of the statutes passed under the republic and early empire that had not become obsolete; the decrees of the Senate passed at the end of the republic and during the first two centuries of the empire; and the writings of jurists and, more particularly, of those jurists to whom the emperors had given the right of declaring the law with their authority. The new law, which consisted of the ordinances of the emperors [promulgated](https://www.merriam-webster.com/dictionary/promulgated) during the middle and later stages of the empire. Between 534 and his death in 565, Justinian himself issued a great number of ordinances that dealt with many subjects and seriously altered the law on many points.

**4. Categories of Roman law**

**4.1.[Family](https://www.britannica.com/topic/family-law)**

The chief characteristic of the Roman family was the [*patria potestas*](https://www.britannica.com/topic/patria-potestas) (paternal power in the form of absolute authority), which the elder father exercised over his children and over his more remote descendants in the male line, whatever their age might be, as well as over those who were brought into the family by adoption a common practice at Rome.

**4.2. The law of**[**property**](https://www.britannica.com/topic/property-law)**and**[**possession**](https://www.britannica.com/topic/possession-property-law)

In Roman law, both land and movable property could be owned absolutely by individuals. The former[transfer of property](https://www.britannica.com/topic/sale-law), involved a [ceremonial](https://www.britannica.com/topic/ritual) [conveyance](https://www.merriam-webster.com/dictionary/conveyance) needing for its accomplishment the presence of the transferor and transferee. The transferee grasped the object being transferred and said, “I assert that this thing is mine by Roman law; and let it have been bought by me with this piece of copper and these copper scales.

**4.3.[Delict](https://www.britannica.com/topic/delict) and**[**contract**](https://www.britannica.com/topic/contract-law)

Obligations were classified by classical jurists into two main categories, according to whether they arose from delict or contract. The contracts of classical law were divided into four classes: literal, verbal, real, and [consensual](https://www.merriam-webster.com/dictionary/consensual). The literal contract was a type of fictitious loan formed by an entry in the creditor’s account book. The verbal contract required set words or patterns of words to be spoken.

**4.4. The law of**[**succession**](https://www.britannica.com/topic/inheritance-law)

The [law of succession](https://www.britannica.com/topic/probate) is one of the most complex areas of Roman law. Any Roman citizen who was of age could make a will, but several very formal requirements had to be met for the will to be valid. The first requirement was the appointment of one or more [heirs](https://www.britannica.com/topic/heir).. On acceptance, the heir became owner if the deceased was owner, Justinian also gave a “poor” widow a right to one-quarter of her husband’s estate unless there were more than three children, in which case she shared equally with them.

**5. The influence of ancient Rome on European law**

Roman law has affected the development of law in most of Western civilization as well as in parts of the East. It forms the basis for the law codes of most countries of continental [Europe](https://www.britannica.com/place/Europe)  and derivative systems elsewhere.

The Roman Empire has left countless marks on the Western world. But its greatest contribution is its law, which still has a direct influence today. The Romans were the first to develop a real science of law. Roman law also offers specificity and a power: its ability to reduce a problem to one or two sentences and from that comes up with a rule. That is very similar to Anglo-Saxon law.

**Glossary**

**Civil law (*ius civile*)** : in the Roman Republic/Empire, the body of law that applied to citizens.

**Code**: Part of the compilation of Justinian, or *Corpus* that outlined the actual laws of theempire, citing imperial constitutions and legislation.

**Law of Justinian**: The multi-part compilation of Roman law ordered by Byzantine Emperor Justinian I in the sixth century CE.

**Decemvirs** : A committee of ten Roman citizens formed in 451 bc to write down Roman law for the first time in what was called the Twelve Tables

**Jurists :** A professional class of legal experts who interpreted the law and wrote scholarly opinions and treatises on law and justice in Ancient Rome.

**Justinian I**: Emperor who ruled the Eastern Roman Empire, or Byzantine Empire, from 527–565 bc and ordered all Roman law compiled into a multi-part work referred to as the compilation of Justinian.

**Law of nations (*ius gentium*)** : The body of laws that applied all people and was based upon the common principles and reasoning that civilized societies and humankind were understood to live by and share. In the Roman Empire, the *ius gentium* were the laws that applied to non-citizens and foreigners as well as Roman

**Patricians:** An elite class of citizens in Ancient Rome who in its early days were exclusively eligible to hold the principle positions of power, such as senator or magistrate.

**Plebeians**: Non-patrician citizens of Rome who made up the greater part of the population. Plebeians did not enjoy privileged status and were unable to hold positions of power in early Rome.

**Twelve Tables:** The first written compilation of Roman laws. Produced in 449 bc by the *decemvirs* . The Twelve Tables and their legacy formed a foundation upon which the Roman legal system developed.

**References:**

<https://www.britannica.com/topic/hypothec>

<https://study.com/learn/lesson/roman-law-and-the-pax-romana-legal-system-history.html>

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