Principles of Civil Law

Lecture Title: Roman Law as the basis of our Civil Law

Diploma in Law (Malta)

Lecturer: Dr. Carina Nagiah

Date: 3rd October, 2022

CAMILLERI PREZIOSI

- Lee looks at what we call 'The Institutes' which are simple notes for law students found in the *Corpus Juris Civiles*; a document that was prepared and brought into force by the Emperor Justinian in the year 550AD. Emperor Justinian instructed lawyers to gather all Roman Law material which had been going throughout the years.

- This led to the The Institute; a document which is part of the *Corpus Juris Civiles* in which instructions are given to those students who study law.

- Roman law includes the whole corpus of legislation which was made during the four main periods of Rome. There were four main periods in Rome: the Monarchy, the establishment of the Republic, the Principate and the Dominate. After the decline of the Roman monarchy a republic was established.

In the Maltese context, Roman law is the basis of civil law and one cannot understand other branches of law without understanding Roman Law.

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 is the backbone of most European legislations and others throughout the world. Roman Law entered both in substance law and procedural law.

In C. 1000AD, in the University of Bologna, a copy of the Corpus Juris Civilis was found. Those who studied it became known as the glossators (and later the post-glossators) because they wrote notes (glosse) in the margins.

The so called *Corpus Juris Civilis* was sometimes the only source of proof of what the Romans had. Emperor Justinian wanted to have a document which would prevail over all else that had been written about law.

The *Corpus Juris Civilis* is an indication of what Roman Law is. When reading through its lines one would also understand the importance that was given to law by the Roman state. Roman Law established the rule of law. It founded 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.

Malta had been dominated by Carthage, however, Malta changed sides. Therefore, Malta was never really conquered by Rome. Instead the Maltese accepted the Romans; in return the Romans gave the Maltese the title of soci, (later, they would become Roman citizens).

Ultimately, Rome was taken over by the Barbarians. However, the Barbarians recognized the superiority of Roman law and so they accepted it as their own. Around 550 AD Justinian felt the need to retake Rome. Together with the general Ballisarius, they invaded and retained Italy, Sicily and Malta for a while but the effort soon died out. However, the *Corpus Juris Civilis* was left in Malta.

In Roman law there is the important distinction between enacted law and pretorial law. Pretorial law was formulated by the official of the state called the 'pretor'. Therefore pretorial law is different from statutes. In the time of Justinian, pretorial law and usual law, that is, the Lex and the Plebiscita became the same despite the fact that they started off as two distinct forms of law.

The history of Roman law presents a succession of various sources of written law, gradually, superseding one another, according to the balance of power of the different classes of people and to the form of government prevailing in different times. Different remedies and organs were needed in different times and therefore the sources of law do vary. The *Corpus Juris Civiles* is the only written source of what constituted Roman law.

Elements of Roman Law

Law of Persons

The Law of Persons identifies the status of the persons i.e. one's status and one's role in society. This is important because it establishes the distinction between the Roman citizens and the non-Roman citizens since the Romans enjoyed rights, where as the latter did not have rights. Therefore it is the status that defines one's rights.

Under Roman law there are three categories of people:

- Free persons i.e. Roman citizens, either born Roman citizens or else became Roman citizens. These were given the full rights
- Friends to Rome i.e. these were given some of the Roman rights. These were non-Roman citizens.
- Hostiles/Barbarians i.e. these had no rights e.g. slaves

This distinction of people is based on the possession of rights. The Romans established a link between the status and the citizenship of the person. These two defined the rights which a person was entitled to. A Roman citizen was protected by law, where as a slave was subject to law. The status of a slave defined his rights i.e. no rights.

The status of a person could be changed in two ways;

- Adoption
- A question of status, ex. through marriage the illegitimate child would be considered as a legitimate child. This mechanism is known as Legitimatio.

Besides the identification of the status, there was also the identification of whether a person was a human being, e.g. disabled people were not considered as human beings, in fact the father acting under the powers derived from the power of Patria Potestas had the right to kill his deformed baby. Roman law legislated that for a child to be considered a human being, he must be:

- Of human form
- Vital : he can live independently of his mother
- Born alive

This was also important for the issue of testamentary succession, whether the child was born death or died after being born.

The notion of *Cura*

Cura refers to situations where young children, who were not protected through the patria potestas of their father needed a curator to protect their legal personality. Spend rifts and people of unsound mind also were in need of a curator. This curator would enter into contracts on the behalf of the other person as well as protecting one's inheritance and testamentary succession.

The patria potestas of the father gave him unlimited power, extending to the right of even killing one's child.

Marriage meant that the wife was also under the Potestas of the father and she is considered as a daughter of her husband.

Elements of Roman Law: Persons

1. Slavery
2. Patria Familias
3. Marriage
4. Legitimatio
5. Adoptio
6. Tutel and Cura

A. Slavery

- Although the Romans did not invent slavery, the Romans granted slavery a legal structure to be defined by law.
- In Roman society not all the slaves were considered to be in the same level. The Romans established 14 categories of slaves, depending for instance on the health, mental capabilities and strength of the slave. These would affect the price of the slave in the Roman market.
- The Romans developed the concept of someone being born a slave but become a freed person. These persons would be given part of roman rights.
- Roman law had two types of slavery:

(a) slavery to the master

(b) slavery to a punishment: condemnation to death or the labour in the mines were two punishments which led to the loss of freedom.

- How are free men transformed into slaves?

- Unfree Birth : the idea was that the child follows the status of his mother i.e. if the mother during the time of birth, is a slave the child automatically would become a slave. This meant that the child to be free should be conceived and given birth in freedom. However this was changed by an imperial legislation; it was decided that if the mother during the time of conception or even during some time during the pregnancy was free, the child should be considered as being free.

  Even if the mother is free, or was free during any time of pregnancy or at the time of conception, and the father is slave, the child is said to be a free child.

- Hostile Capture : i.e. persons of enemies of Rome captured during a way or after the war. This applies only to wars between nations and does not extend to civil wars within Roman states. It was established that a Roman citizen who is captured and dies in the battle is considered as a free person and so he does not die as a slave but dies as a free person.

- The rights of the master over the slave included;

- Complete right over the slave's property. Whatever, the slave acquired became automatically the property of the master.

- The Right of life and death (the Jus Vitae Necsique). The master who kills his slave was not criminally charged for a murder.

- However, the influence of Christianity altered this abusive situation. There were two legislations;
- the Lex Petronia: a master could not send his slave in the arena to fight with beasts without the consent of a decree by the magistrate.
- the Lex Cornea Lex Sigaif: if a master killed his own slave without cause, he was to be punished as if he has killed another master's slave. This was established by Emperor Antonius Pius.

B. Patria Familias

The power of the Pater Familias was in perpetuity, i.e. it ended only with the death of the father.

A son could be relieved from the powers of the Pater familias either through his death or through emancipation. On the death of the paterfamilias all the descendants in the first degree, who are males and females became sui juris.

Women who were mothers could never enjoy the powers of the Pater familias, this was only reserved to fathers.

The powers of the Pater Familias include:

- the power of life and death (jus vitae necisque)
- the power of selling his children into slavery
- the right to give the children in marriage and divorce them at pleasure i.e. complete powers over matrimony
- the right to give them in adoption and to emancipate them
- powers over the patrimony of the son

The 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.

- Patrimony: what was acquired by the son was and became the property of the Paterfamilias. Like the slave, the property of the son, was the property of the father.

However the position of the son, though still under the patria Potestas of his father started to develop in 4 main changes;

- Peculium Castrense : the spoils of war which the son acquired in war, were to become the property of the son. However, after death the father would retain them.
- Peculium Qausi- Castrense : the son could bequeath at death
- Bona Materna : the mother could leave patrimony to her son in the testament. Although the father could use this property, the son was the owner of this property.
- Peculium Profecticium: the father could pass his property to his son and although it is still enjoyed by the father, the son becomes the owner of the property.

There are two important issues relevant to the exercise of patria Potestas;

- The issue of 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.
- The issue of whether the child was born in 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, it was agreed that the child was born in wedlock and this gave the father Patria Potestas over the child. This time frame indicates that the Romans closed their eyes for the first two months, i.e. if the child was conceived two months or less before marriage, it is considered to be conceived in wedlock nonetheless.

- How Patria Potestas ended?

  - The death of the Paterfamilias but on the death of the grandfather, the unemancipated grandchildren did not become sui juris, but only the son became sui juris. Only first degree relatives became sui juris.
  - Any change of status in father or son involving loss of freedom, or citizenship or family, e.g. through slavery or adoption.
  - Emancipation which at the time of Gaius was affected by a similar process to that of adoption (i.e. the fictious law suit of Coentio). The only difference being that in the final stage the person concerned was claimed as free and not as the son of the adopting father.
  - Adoption of an alieni juris

C. Marriage

There are two basic forms of marriage:

- Manus Marriage: the wife becomes the daughter of her husband. This was the basis of parental authority in the family.
- Free Marriage: the wife retains her independence, i.e. she remains sui juris, though in marriage.

Impediments of Marriage

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

- castrated males
- already married persons
- those taking the vow of chastity (in the Christian era i.e. the Dominate)
- soldiers in the service

- there was also various disallowances for inter-marriages:
  - marriage between a Patrician and a Plebeian
  - curators, tutors and their sons could not marry their wands, until they hand in the account books
  - between provincial governments and ladies in the Province
  - in the Dominate, between Christians and Jews
  - marriage was not allowed between descendants and ascendants by blood or marriage
- widows were advised not to marry within one year of the death of the husband. If the widow remarried within a year, she was condemned by infamia.
- those committing adultery were not permitted to marry.

The effects of manus marriage

- The wife, if she was alieni juris (i.e. subject to Patria Familias), seizes to be in the Patria Potesta of her father (or grand father if he was still alive) and becomes under the patria Potesta of her husband. 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. This is provided in the Law of the Twelve Tables. However, it was developed in certain ways: this right was to be practised before a gathering of family of friends. Failure of this would be homicide.
- 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 contacts, which the wife contracted before marriage were dissolved since marriage created a a different legal personality

The effects of free marriage

- 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.

Termination of Marriage

- The most used was divorzium. There are two forms of divorce:

1.Divortium Bona Gratia : both parties agree. This is the result of a mutual consent.

2. Repudium : one party repudiates the other. Repudium in the case of adultery had to be proven before 7 witnesses.

- 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.

- Loss of Citizenship

- Death of the spouses or enslavement jure civile.

4. Legitimatio

- Legitimatio was another way, by which the father gained Patria Potestas over the children. Legitimatio refers to the ways how illegitimate children would become legitimate and this granted the father power to exercise patria Potesta over them. Legitimatio, like Adoptio, is a fictio juris, i.e. children who are born out of wedlock, through legitimatio become considered in the eyes of law as legitimate children.

- There are three basic ways of legitimatio:
- *Legitimatio per subsequens matrimonium* i.e by subsequent marriage: this was introduced by Constantine to encourage marriage between existing concubines. The influence of Christianity led to the idea that children born out of wedlock were the result of a sinful relation. However, through legitimatio, if the couple united through marriage, the child would be considered as legitimate as if he has been born in wedlock. Justinian introduced certain conditions applicable to this type of legitimatio:
  - The parents must have legally been capable of marriage at the time when the child was either conceived or born.
  - A Marriage contract must be established
  - The child should consent

- By making a son a member of the council of a municipality. This is known as Per Oblatione curie. If the illegitimate son became a member in the curia, he became a legitimate son.

- Per Rescriptum Principis i.e. by imperial rescript. This was adopted when the concubine either was already dead or marriage was out of question. Through imperial rescript the non-Roman citizen acquires Roman citizenship, and it is this citizenship that grants one Patria Potesta since this was only reserved for Roman citizens.

The effects of legitimatio were basically that of strengthening patria Potestas over the 'new' legitimate children. Although the status of the son improved by the recognition of becoming a legitimate child, this gave the father the right to exercise patria Potestas.

Diploma in Law (Malta)

CAMILLERI PREZIOSI

5. Adoptio

This is another way how patria Potestas came into being. There were two types of adoption:

- Adrogatio : the adoption of a sui juris (free man). This involved in 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.
- Adoptio: the adoption of an alieni juris (non-free man).

- The benefits of adoption for the adopting father are mainly two:

It was a guarantee that the family name would be retained

For religious purposes: the Romans wanted people to pray for them once they are death. Therefore a childless man had no one to pray for him, when he died.

6. Tutela and Cura

Tutela applied;

- a child who has not yet reached puberty age
- women who were sui juris (free)

Tutela was the guardianship for underage persons of both sexes, who were in power. He continues by saying that women were in need of a permanent tutor. By Roman Law Tutela is obligatory.

There are two important factors in Tutela:

- the appointment of the tutor
- the tutor is a minor official of the state. The state grants power, similar to that of Patria Potestas where there is no natural or adoptive connection.

- In Tutela there are two forms of roles; that of taking care of the child's personal needs and his patrimony and wealth.

The latter is divided in two:

- To interpose his authority, this is Autoritas Inter Ponere: the tutor supplemented his ward's want of capacity and enabled him to contract in his own name. Unaided, the child could not accept an inheritance, nor alienate property, nor binding himself in a contact involving reciprocal rights and duties. However in this case the contracts were done in the name of the son, after being supplemented by the authority of the tutor. The authority of the tutor is evident in the fact that if the child entered in a business transaction without the presence of a tutor, this was declared null and void because it was a necessity that the guardian be present at the moment that the contract was being made.
- to administer property : administration of property was conducted in the name of the tutor. The tutor had the power of buying and selling on the behalf of the son.

- Tutela of women

- Tutela was not only restricted to tutelage of children who are sui juris but under the age of puberty. There was Perpetua Tutela Mulierum, i.e. guardianship of women. Women, who were sui juris and beyond the age of maturity also needed a tutor. This was intended to protect the property of the family, since women were considered not to be knowledgeable about property.
- However, unlike in the case of children, the tutor need not to present at the time of the contract. What was important, was the presence of the woman, where as in the case of children, what was important was the presence of the tutor. In fact in the case of Tutela with respect to children under the age of puberty, the tutor could administer property and enter into contracts on behalf of the child.

Removal of the tutor from office:

- when the woman marries, because then the property of wife would be administered by the husband
- By the granting of the Jus Liberorium to the woman from the Emperor
- When the child attained the age of puberty. Then Cura followed.

- Cura

Cura applied to:

- spendthrifts
- lunatics
- 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.

The differences between a curator and a tutor:

- curators were appointed to administer the property, and not to control the person. The work of the curator is not autoritas interponere like that of the tutor.
- 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.

Law of Things:

1. Succession
2. Law of Property
3. Rights over Property
4. Law of Obligations

1. Succession

The law of Succession, under Roman law, started off with the idea of intestate succession, where no wills were being made. In the case of intestate succession, since the volonata 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 formal requirements of a Roman will:

A. 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, there was the presence of 5 witnesses who were Roman citizens and above the age of puberty.

- 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 will: this was a declaration in the presence of seven witnesses.

- Abnormal or Irregular wills: Similar to the wills made before an army, however this was less rigid, since it had no limitations where and when it could be done as long as the soldier is in service. A soldier might make his will as he pleased and as he could. This might be of any form, either written or oral. This flexibility was only reserved to soldiers. Soldiers can make valid testaments without the proper number of witnesses or without any observance of formal rules. However, when the soldier is not in active service, he cannot apply this privilege.

- Two public declarations: these were accepted in the Empire, a testament executed before a magistrate and the other presented to the Emperor.

- A testator may indicate a single heir or a plurality of heirs. If several heirs are indicated, they might be instituted to equal shares or to different shares whatever the testator wishes. It had been obligatory that the testator should not indicate more than twelve heirs, however this later been repealed. In the case of a vacant share, that share would be equally divided amongst the indicated heirs. A testator may also institute heirs whom he never met or have never seen.

- A testator might indicate as his heir either a free man or a slave. The latter indicated that it is a gift of liberty. If a slave of another master was indicated, that slave was to accept this inheritance, which in effect also granted him his liberty, only if his master consented. The slave became a significant heir, known as the “necessary heir” because the fact that he could not refuse the inheritance meant that it could not be lost

Who could dispose by a will?

The testators should be:

- a Roman citizen

Slaves could not make a will. A citizen taken by captive, was in the same position as a slave. However, a will made before taken in captivity was still applicable, and thus it was not rendered void.

- The testator should be a sui juris.

Persons in Patria Potestas owned nothing and thus could bequeath nothing. However this started to change through the introduction of the Peculium and the Peculium Quasi-Castrense.

- The testator should be above the age of puberty, of sound mind.

Insane persons and prodigals could not make a testament. Insanity was a factor which had to be present not just at the writing of the will but it had to be maintained till the death of the testator.

- Women could not appear in the Comitia Curiata, therefore this meant that woman could not conduct a will. However, through the appointment of the fiduciary tutor, the woman could make a will through the tutor's authority.

- 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. In fact, 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 if a slave at the time of the testament was not a slave, his later transformation into a slave, his witness remained valid.

- *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 death Pater Familias. It makes no difference whether the child was legitimate or illegitimate, or whether he was adopted or a natural child.

Ways of acquiring property rights under Roman Law

- Usu Capio is a mode of acquiring ownership through the Jus Civile, therefore it was only applicable to Roman citizens. If a person possessed an object or property, without a legal title, i.e. he was a mere possessor and lacked ownership, if he continues to posses it for the period defined by law and satisfies other conditions, he would acquire ownership of that property. This type of ownership is referred to as Usu Capio. Some of the conditions were:
- There must be good faith, i.e. the property was not possessed through theft or fraud. It was enough that possession originated in good faith, but there was no need for this good faith to remain present throughout the period of possession.
- The possession must continue uninterrupted for the period defined by law: two years for immovable objects and one year for other things. Any interruption cancelled the previous possession.

Longi Tempoiris Praescriptio was a mechanism similar to Usu Capio i.e. acquiring a property through a possession of that property for a period of time.

However, the main difference was that Longi Temporis Praescriptio was a mechanism of the Jus Gentium, and therefore unlike Usu Capio it was applicable to all, i.e. Roman and non-roman citizens. Usu Capio was only available to Roman citizens and only in respect of things susceptible of Roman Ownership. There were some different conditions, in longi temporis Praescriptio:

- 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 districts.

Servitudes

- Some rustic servitudes include the following:

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

Some urban servitudes include the following:

- 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

Personal Servitudes include:

- Usufructs
- Usus
- Habitatio
- Operae Servorum

Usufruct: the right to use and take fruits of another man's property, the substance remaining unpaired.

A usufruct could not be alienated, that is to say a usufructuary could not convert his right and liability to a third party, but there was nothing to prevent his contracting with another person to allow him to enjoy the benefit of the usufruct while it lasted, whether by a gift, hire or sale.

Usus: The usuary could only use the property to satisfy the personal wants of himself and his family. The usuary of a house might occupy it with his wife, family and servants and receive guests. However the usuary was not eligible to receive the fruits of the property or thing over which there was the right of usus. Therefore the usuary could not rent the property, in fact he could not even lend it without receiving rent, because the usuary was bind to use the property for himself or for the needs of his family.

Habitatio: This was the right to use a house.

Operae Servorum: This was a right to use the services of a slave scarcely distinguishable from usus. Like habitatio and unlike usus and usufruct, it was not lost by non-user. This is due to the fact that the right was merely contractual and governed by the rule of contract.

Emphythuesis

Under the early Empire it was the practise of municipal authorities to grant leases of agricultural land in perpetuity or for a long term of years conditionally on the payment of an annual rent. The grantee 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 of the owner of from any third party. In Emphyteusis one had full rights of ownership either in perpetuity or for a long period of time.

Law of Obligations

Obligations under Roman Law are classified:

- Civil and Praetorian or honary: It distinguishes obligations emanating from the authority of the praetor's edict.
- Ex delicto: arising from delict and tort
- Civil-natural: a civil obligation is one which is fully protected by law and enforceable by action and results from a contract/agreement. Natural obligations result from the contracts of slaves, or between persons subject to the same Potestas.

Roman law even tackled particular contracts, two of which being:

1. Mutuum: This is a loan for consumption of money or other things which are weighted, numbered or measured The contract of Mutuum is unilateral i.e. it gives rise to a duty on one side only i.e. the duty of the transferee (borrower) to make over to the transferor (lender) at the time expressly or impliedly agreed, or at reasonable time after demand.

Interest on money lent: the parties might agree that the loan was to bear interest, however this was not binding if not agreed by parties. The permitted rate of interest was variously defined at different times. In the time of Cicero, the highest interest was 1% per month. Justinian standardized this as 12% p.a. He also enacted that the capital might not in any circumstances yield in the interest a sum greater than itself. Justinian forbade the fact that the parties can agree that interest is to be compounded.

2. Sale

The essential elements in a contract of sale are three:

- Consent
- Thing
- Price
- If the parties do not reduce their contract to writing, it is complete as soon as the price and the thing are ascertained.
- If the contract is reduced to writing, the contract is fulfilled until it has being written accordingly. The required formalities should be observed, if not the contract is null.

- Other contracts regulated by Roman Law were: the contract of deposit and the contract of pignus (security/pledge)

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI