Principles of Civil Law

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

Lecturer: Dr. Marco A. Ciliberti LL.D.

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Diploma in Law (Malta)

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Introduction

753 BC

Foundation of Rome

565 AD

Death of Justinian

753 - 509 BC

Period of the Kings

510 BC – 27 BC

Period of the Republic

27 BC – 565 AD

Period of the Empire

Introduction

The Regal Period

- **Kings**, who held the office of High Priest, enjoyed extensive powers and had supreme civil and criminal jurisdiction over their subjects including *jus vitae aut necis*, that is power of life or death.

- The inhabitants of Rome consisted of **Patricians, Plebeians, Clients and Slaves**

- The **Assemblies** of the people consisted of the:

  Comitia Curiata made up of 30 curiae which gave assent to measures proposed by the King

  Comitia Centuriata or an assembly of the armed forces

  Senate which acted as a consultative body to the King

Introduction

The Period of the Republic

During this period supreme powers were vested in **Praetors** elected by the Comitia Centuriata

The **Assemblies** of the people were:

Senate made up of Senators chosen by the Praetors and which became the policy making executive passing resolutions known as *senatusconsulta.* In later years it included Plebeians

Comitia Curiata which possessed electoral, legislative and judicial powers

Comitia Centuriata or the assembly of the armed forces

Comitia Tributa, composed of both Patricians and Plebeians, whose enactments had the force of *leges* or law

Concilium Plebis or the assembly of the Plebeians which enacted Plebiscitum, laws which originally bound only Plebeians

Introduction

The Period of the Empire

Initially known as the Principiate on account of Emperors ruling as Monarchs, Rome was ruled on the basis of an absolute monarchy onward from A.D. 284

The following changes to the legal system could be observed:

Senatusconsulta became a mere expression of imperial will to the extent that the Emperor's power became the real force of legislative authority

Imperial Decrees, edicts and other pronouncements made by the Emperor had the effect of Imperial Legislation

Praetorian Edicts were consolidated but they were no longer a source of fresh law

Lex Plebiscitum became obsolete

Responsa Prudentium or the opinion of jurists grew in importance

Introduction

Sources of Roman Law

The sources of Roman Law are identified as being:

- **Leges** resulting from deliberations in the assemblies and the **Lex Regiae** or enactment of Kings including the 12 Tables
- **Lex Plebiscitum** enacted by the Concilium Plebis and which in virtue of the Lex Hortensia came to bind both all Roman subjects
- **Edicta Magistratuum** or rules published by the magistrates vested with the power to issue edicts
- **Senatusconsulta** or resolutions made by the Senate
- **Responsia Prudentium** or the opinion of jurists which thus became to be treated as authoritative statements of law. This contributed to a large extent to the development of Roman Law.
- **Constitutiones Principum** made by Emperors who in the later stages poss[illegible] unrestricted legislative powers

Introduction

Codification of Roman Law

The Twelve Tables were enacted during the early years of the Republic as a result of the uncertainty of the law, at which time judgements were more often handed down on the basis of custom. Whilst not forming a complete code, and whilst not including any new laws but a declaration of existing customary law, the twelve tables addressed matters such as civil procedure, patria potestas, guardianship, inheritance and property amongst others.

Various other attempts at codification were made such as the Codex Gregorianus, the Codex Hermagenianus and the Codex Theodosianus, but none of these were considered to be a complete or comprehensive work.

Corpus Juris Civilis is a consequence of a process of legal reform undertaken during the reign of Emperor Justinian

Introduction

Roman Law as a Source of Law in Malta

- The Corpus Iuris Civilis was never in itself the law of Malta but influenced the development of law
- The first codification for Malta was during the time of Knights in the form of the Code de Rohan of 1784 which marries the principles found in the Corpus Juris Civilis with the enactments of the Grand Masters made between 1530 and 1784
- The Code Napoleon retained Roman Law as its basis but introduced other provisions

Introduction

Corpus Juris Civilis

The Corpus Juris Civilis is composed of the:

Codex Vetus codified imperial consitutions, doing away in the process with those which were no longer considered relevant or which had otherwise fallen into disuse

Digesta or Pandectae which codified the works of eminent jurists who had given *jus rispondendi*

Quinquaginta Decisiones or fifty decisions relating to issues of interpretation which arose during the compilation of the digest

Institutiones or a legal textbook for students compliled by Tribonian, Dorotheus and Theophilius based on the Institutes of Gaius

Codex Repetitae Praelectionis, a second edition of the code incorporating the Quinquagiinta Decisiones

Novellae Constitutiones incorporating 165 constitutions enacted after second code

Introduction

- The Law of Persons
- The Law of Things
    - The Law of Property
    - The Law of Succession
    - The Law of Obligations

The Law of Persons

- **The First Division of Persons – Free Men & Slaves**
- **The Second Division of Persons – Independent and Dependant Status**
- **The Third Division of Persons – Tutorship & Curatorship**
- **Juristic Persons**

We shall consider be considering:

Slavery (First Division), **Patria Potestas, Marriage, Legitimatio & Adoptio** (Second Division) and **Tutela and Cura** (Third Division)

The Law of Persons

The Law of Persons identifies the status and role of a given individual in society and therefore the rights which attached to the individual. Justinian said the law of persons is *"concerned with a description only of the principal among those different classes of persons who distinctive characteristics are legally important"*

This was particularly important on account of the the distinction between Roman citizens and non-Roman citizens. Whereas Romans enjoyed rights, non-Roman citizens did not enjoy rights.

Under Roman law there are three categories of people:

- **Free persons -** were Roman citizens (either born Roman citizens or who became Roman citizens) who enjoyed full rights and protection of the law
- **Friends to Rome -** enjoyed some of the rights enjoyed by Roman citizens even though considered to be non-Roman citizens
- **Hostiles/Barbarians** who enjoyed no rights whatsoever, such as slaves who were considered to be subjects of the law

The Law of Persons

The status of an individual could be acquired or lost, such as for example by:

- **Manumission** – the process by means of which an individual is freed from slavery
- **Legitimatio** – the legitimation by marriage of a person born out of wedlock

Elements of Roman Law: Persons

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

Slavery

- Though slavery existed before the foundation of Rome, the Romans gave slavery a legal structure.

- **Unfree Birth :** the general rule of the *jus gentium* was for the child to follow the status of his mother, so if the mother was a slave, the newborn was considered a slave

- **Hostile Capture :** enemies of Rome or any foreigner found within the territory of the Empire unprotected by treaty or other amicable arrangement

- **Rules of Civil Law**: there were numerous ways throughout time as a consequence of which free men became slave, such as by sale into slavery, cohabitation of a free woman with a slave, by the sale of insolvent debtors

- The rights of the masters over their slaves were personal and proprietary:

Proprietary: everything acquired by the slave was acquired for the master

Personal: the master enjoyed the right of life and death (**the Jus Vitae Necsique**) subject to later developments, such as:

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.

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.

Patria Potestas

Patria potestas means the power exercised by the paterfamilias or the head of the family over members of the family.

The ‘family’ was initially based on agnatic relations (paternal line) and included those who came into the family (such as by adoption), though cognate (blood line) relations became more important as law developed

The Patefamilias enjoyed absolute powers until his death.

Patria Potestas

The powers of the Paterfamilias included:

- the power of life and death
- the power of selling his children into slavery
- the right to give the children in adoption, marriage and divorce despite being freemen
- patrimonial powers

Patria Potestas

Creation

Legitimate Birth – that is a child born in wedlock to Roman citizens or to a form father who possessed conubium as long as the marriage was a valid one under the jus civile

Marriage – in virtue of marriage under civil law, the wife passed into the power of the husband's paterfamilias.

Legitimation – such as by subsequent marriage

Adoption – of persons sui juris (adrogatio - which also had the effect of transferring property, later only usufruct, of the subject to the paterfamilias and even extinguished the debts of the adrogatus but gave rise to action against the adrogator) or persons alieni juris (adoption – whereby the adopted person left his family and joined the family of the adopter

.... amongst of forms such as Imperial Rescript or Erroris Causae Probatio

Patria Potestas

- **How Patria Potestas ended?**

  - **Death** of the Paterfamilias as a consequence of which first degree relatives became sui juris
  - **Change in Status** such as reduction to slavery, marriage of a female, adrogation or emancipation
  - **Dignitary Status** such as Priests of Jupiter, Vestal Virgins, Consulship and Bishops

Marriage

The nature of the relationship was dictated by custom rather than law until Christian beliefs changed this

There were two basic forms of marriage:

Manus Marriage: the wife becomes a member of her husband's family

Free Marriage: the wife retains her independence, i.e. she remains sui juris, though in marriage.

- The Law contemplated various requirement for a lawful marriage, which included:

  Age: 14 for males and 12 for females

  Consent : of the paterfamilias required unless sui juris

  Conubium: the legal capacity to marry was reserved to Roman citizens and peregrines with the right to contract marriage

  Intention to Marry: or affectio maritalis since no ceremony was necessary, later by bringing the wife to the husband's house (and thus differentiated from concubinage) or also by means of a written contract

Marriage

Impediments of Marriage

Roman law also identified certain impediments which prohibit one from marriage, amongst which

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

Marriage

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 comes under the Patria Potestaof 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, and although this was rarely practised, it was permitted by the Twelve Tables in the case of adultery. The law developed to the extent that this was to be executed before a gathering of family or friends and in default considered homicide.

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

Any legal transactions or contacts, which the wife contracted before marriage wer
dissolved since marriage created a different legal personality

Marriage

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

Marriage

Termination of Marriage

- Other than death, marriage was dissolved by prolonged absence, enslavement, *incestus superveniens,* loss of citizenship and divorce. There are two forms of divorce:

  Divortium Bona Gratia : that is divorce by mutual consent

  Repudium : where one party repudiated the other, in which case certain formalities had to be met, such as proof of adultery before seven witnesses if this was alleged or by means of libellus.

Legitimatio

Legitimatio was another way, through which the paterfamilias acquired Patria Potestas over a child

Illegitimate children were born sui juris and had a cognate relationship with their mother. They could be legitimated in various ways, amongst which:

- *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 to avoid doubts as to the passage from concubinage to marriage
  - 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 child improved by the recognition of becoming a legitimate child, this gave the father the right to exercise patria potestas which otherwise he could not exercise.

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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 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.

Tutela and Cura

Servius defined Tutela as *"a right and power exercised over free persons (that is a person sui juris) who on account of tender years (or sex), cannot take care of himself, given and allowed by civil law"*

In essence tutela was obligatory with respect of sui juris individuals who had not reached the age of puberty (*tutela impuberum*) and to women (*tutela perpetua mulieris*)

Tutela and Cura

Tutela Impuberus came into being in various ways:

- Tutor Testimentarius – hence by will with respect to sons in potestas who had not reached the age of puberty on the death of the paterfamilias
- Tutor Legitimis – hence by operation of law in cases eg. Where no tutor was nominated by will or where a master manumitted a slave below the age of puberty
- Tutor Fiduciarius – such as in cases where the father emancipated a child before the age of puberty
- Tutor Dativus – appointed by decree

It terminated

- on the pupillus reaching the age of puberty
- on the death of the tutor or pupillus
- on the discharge or removal of the tutor;
- where either tutor or pupil had suffered *capitis deminutio* that is loss of citizensh

Functions of the Tutor

- **Auctoritate Interponere** or the interposition of his authority for that of the ward or *pupillus* who lacked capacity. It was not a matter of mere consent to the extent that authority had to be given by the tutor in person at the time of the act to be authorised. This also included the responsibility of the tutor to provide for the education of the ward of out his estate

- **Negotia Gerere** or the administration of the ward's property **as a** trustee

- The law provided further measures to protect the *pupillus* such as a inquiry into their suitability, the obligation ot draw up an inventory and actions for removal and damages against the tuto

- **Tutela of women**

- Whilst initially this applied to free woman including those beyond the age of puberty, under Justianian tutorship of women was limited to women under the age of puberty.

- The functions of the tutor was limited to auctoritatem interponere exercised when the woman desired to contract a legal obligation or sell a res mancipi

- They came into being by will, by operation of law or by decree

- **Cura**

- **Cura (cura minorum)** succeeded tutelage as minors who had attained puberty could not be considered capable of the administration of their property. A request to a magistrate for the appointment of a curator thus become common to assist an individual under 25 years of age in a transaction or a series of transactions

- It also applied to spendthrifts (cura prodigi) and lunatics (cura furiosi) on the demand of a relative

The differences between a curator and a tutor:

- curators were appointed to administer the property, and not to control the person

- 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 a the magistrate

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

Law of Things

The second principal division of Roman is the Law of Things or *'Res'*, that is any unit of economic value, more particularly their acquisition and transfer. It incorporates the Law of Property, the Law of Obligations and the Law of Success

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

Succession
Law of Property
Rights over Property
Law of Obligations

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 of the property of a given person to another including all transmittable rights and duties

In earlier days, testamentary succession was not common albeit not inexistent, such as it was recognized in the Twelve Tables. Roman Law thus had provisions regarding both intestate and testate succession.

Testamentary Succession

One of the requisites was that there must be a valid will *ab initio*, and hence a will had to made in its proper form

A. Types of Testaments

- **Testaments made before the Comitia Curiata** (Testamentum Comitiis Calatis), which met twice a year to approve these testaments.

- **Testaments made before the army (Testamentum in Procintu)**: Procintu was a declaration made before a few comrades when the army was ready for battle.

- **Testaments by bronze and balance (testamentum per aes et libram)**: overtaken by the sudden menace of death, the testator, in the presence of 5 witnesses who were Roman citizens and above the age of puberty, mancipated his patrimony to friend and give instructions as to its distribution following death

- **The Praetorian Testament:** although not strictly speaking a testament, the Praetor could give hand over possession of the estate through **bonorum possessio. The instrument was execute before s**even witnesses to which a seal was affixed

- **Testamentum Tripertium:** this form had three sources, that is (a) it must be made at the same time in the presence of witnesses, (b) the witnesses must be seven and must seal the instrument and (c) the testator must subscribe the will

- **Nucupative will:** a declaration in the presence of seven witnesses.

- **Abnormal or Irregular wills:** these will were applicable only to special classes of persons or in special circumanstances such a military will executed not only when arming for battle but that any time and remained valid for a year after discharge from service.

- 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 as no one can die party testate and partly intestate. The institution may be absolute or conditional. A testator might even **a slave as his heir** which indicated a **gift of liberty unless the slave was the** slave of another master in which case he was obliged to accept this inheritance, provided that he was granted liberty only if his own master consented.

- The law also permitted the vulgar substitution of an heir who could not or did not accept the inheritance.

Competence

Testators had to be competent to make a will, heirs to be instituted and witnesses to witness it.

Heirs

- This aspect is much wider than the capacity of a testator or a witness and included sons in power and slaves, young children and insane persons, this however that peregrines and uncertain persons were disqualified

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Testators

- **Testators had to be Roman citizens.** Slaves, not being citizens, could thus not make a will though a will made by a slave before taken into captivity was valid

- **Testator should be a sui juris** as persons in patria potestas owned nothing and thus could bequeath nothing albeit male descendants were competent to dispose of the p eculium and peculium quasi-castrene which they were entitled to during war

- **The testator should be above the age of puberty and of sound mind and hence insane individuals and interdicted prodigals were not competent.**

- **Women** could not appear in the Comitia Curiata, and hence could not make testamentum comitiis calatis though they could make a mancipatory will provided they were sui juris and had assets of their own

- **Witnesses**

The disqualifications of witnesses were similar to those established for testators and hence a person considered to have the legal capacity to make a will was very often considered to have the legal capacity to witness a will. The following exceptions applied:

- **Woman**, since the principle was that a witness should be a male Roman citizen above the age of puberty

- **Close family relationship**

- **Interdicted, insane persons, deaf and dumb**
- **Slaves** were excluded, this however that the later transformation of a freeman into a slave did not affect the validity of the will

Intestate Succession

- A man dies intestate if (i) he has made no will; (ii) if the will is invalid; (iii) if the will was not made in the proper form (ruptum); or (iv)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 under patria potestas who, upon the death of the deceased, become sui juris; 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 but the time of Justinian succession devolved first upon descendants on a per capita basis in case of close descendants and pers stipes in case of more distant relations, then unto ascendants and brother and sisters of whole blood, in default upon brothers and sistes or half blood and finally unto collaterals on a per capita basis

Rights over Property

The Modes of Acquisition under Roman Law were mancipation, in jure cession, usucapio and donation. The first two modes fell into disuse by the time of Justinian.

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

Rights over Property

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) 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

Longi Tempoiris Praescriptio was a mechanism similar to Usucapio which unlike the latter was not only available to Roman citizens. Thus, an individual holding land for ten years or twenty year, depending on the domicile of the true owner, was allowed an action to recover possession. This mode of acquisition, originally available only as a defence, was subject to the same conditions as usucapio

Rights Over Property

Servitudes

Servitudes may be defined as a real rights which exist over the property of another for the benefit of a thing or of a person and are categories as:

Real or Praedial Servitues

Personal Servitudes

Rights Over Property

Praedial Servitudes may be further subdivided into **Rustic** and **Urban** Servitudes

- Examples of **Rustic Servitudes** include the following:
  - The right to go over another man's land on foot or horseback
  - The right of passage for a vehicle, draught animals and cattle
  - The right to lead water over another's land

- Examples of **Urban servitudes** include the following:
  - The right to have a drain through neighbouring land serving one's house
  - The right or limitation from building higher
  - The right or limitation to discharge rainwater over another's land

Rights Over Property

Praedial Servitudes were created in ways with which we are not familiar, such as manciptio or deduction but also by testament and by prescription even, being incorporeal, were not capable of physical possession

Praedial Servitues were extinguished:

- by surrender or renunciation;
- by merger of confusio;
- by non use for the statutory period;
- by term or condition, such as one established vitae durante

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Rights Over Property

- Usufruct
- Usus
- Habitatio
- Operae Servorum

Usufruct the right to use and take fruits of another man's property, the substance remaining unimpaired. For these reasons a a usufruct over fungible goods was not possible though in later years the concept of quasi-usufruct was recognised.

The owner was free to exercise any right not inconsistent with the usfruct (such as to alienate or hypothecate) but the usufructuary could not alienate his rights in favour of a third party.

Rights of Property

Usus: the right to use but not to take the fruits. 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 bound to use the property for himself and for the needs of his family.

Habitatio: The right to use a house.

Operae Servorum: This was a right to use the services of a slave scarcely distinguishable from usus.

Rights Over Property

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 in the *bona adventicia* or property acquired by the *filius familia*).

Personal Servitudes were extinguished in the same same manner as Praedial Servitudes and also by death or *capitis deminutio*

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Rights Over Property

Rules Relating to Servitudes

- No one can have a servitude over his own property
- Cannot consist in doing, except the duty of an owner to keep the wall in good repair
- There cannot be a servitude of a servitude
- Must be exercised in the way least burdensome
- It must have a perpetual cause and though it may be exercised during certain times and seasons, it could not be for a fixed period

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Rights over Property

Emphytheusis

Under the early Empire it was the practice of municipal authorities to grant agricultural land on lease in perpetuity or for a long term conditionally on the payment of an annual rent. The grantee did not become the owner of the land but he came to be treated very much as if he were. The law protected his interest by allowing an action in the nature of a vindication not only against third party but also against the owner. The emphyteuta in effect enjoyed ownership rights in perpetuity or for a long period of time.

Law of Obligations

Obligations under Roman Law are classified:

- **Civil and Praetorian or honary:** peculiar to Roman Law, it distinguishes obligations emanating from the authority of the praetor's edict as against those arising from civil law.

- **Ex Contactum, quasi ex contractu, ex delicto or quasi ex delicto**

- **Civil-natural:** a civil obligation is one which is fully protected by law and enforceable by action where a natural obligations is one which is only imperfectly protect by law

Law of 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. These are classified in the institute as Real (arising from the delivery a thing), Literal (arising from a particular type of writing), Verbal (arising from a particular form of words), Consensual (arising from mere agreement), Innominate and Pacts.

Quasi Contractum: were those which were imposed by law on equitable grounds or because of public policy and which did not arise from any agreement between the parties. Examples are **Indebiti Solutio** that the obligation which arose on the part of an individual to repay money received from another under a mistake of fact and the **Negotiorum Gesto** or the obligation which arose when one party rendered services to another with an agreement or mandate so to do

Law of 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. These are classified in the institute as:

Real, or arising from the delivery a thing. Roman Law recognized four real contracts that is **Mutuum** or a gratuitous loan for consumption; **Commodatum** or gratuitious loan for use, **Depositum** or deposit of a thing without consideration and **Pignus** or pledge of thing as security for a debt

Literal or arising from a particular type of writing;

Verbal or arising from a particular form of words;

Consensual or arising from mere agreement, the four consensual cont being sale, hire, societas and mandate;

Law of Obligations

Delicts

The institutes define these obligations as those arising from a wrongful act such as theft, robbery, damage or injuria. Two of the more important delicts were:

Injuria or the wilful and unjustifiable violationo of the rights of freeman to freedom, safety and reputation an included the action injuriam for damages suffered, such as bodily harm and defamation

Damnum Injuria Datum or the wrongful damage to property resulting in a pecuniary loss. This was created by the Lex Aquilina

Law of Obligations

Quasi -Delicts

A liability arising by statute despite the fact that the defendant may not in fact be to blame. The Institute discusses four such obligations such as the the responsibility of the occupier of a house for injury caused by anything thrown or poured from a window of a house by any person or the damage caused by the fraud of servants of ship-owners, inn-keepers or stable keepers.

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