

“Help! My slave has committed a delict. What should I do?”

AN INTRODUCTION TO ROMAN LAW

WITH

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THE SCENARIO

The year is AD 120 – the cusp of the High Classical Period. You, Marcus, are a wealthy land and slave owner. You are a busy man, and you cannot be everywhere at once. You entrust Stichus, one of your most loyal slaves, to put part of your funds to work by running a stall at the local market. It proves a profitable venture. Stichus is an entrepreneurial slave who is eager to curry favour with you in the hope of earning his freedom.

But one morning there is an accident. Carting his wares to the marketplace in the dim light of morning, Stichus runs over and kills Lucius. As it so happens, Lucius too was a slave – a most talented lyre player. Marcellus, who was the owner of Lucius, is furious. You know Marcellus to be a most litigious type, and you expect this matter will end up in court...

WELCOME

Welcome and thank you for joining me for this Introduction to Roman Law. Through the prism of the above scenario, we will explore some fundamental principles of the law of Ancient Rome as that law applied to those who once lived in that most extraordinary civilisation.

Barry Nicholas, the author of the seminal introductory textbook on the subject, describes the law of the Romans as “the most original product of the Roman mind” and observes that “in law they were, and knew themselves to be, the masters”: *An Introduction to Roman Law* (Oxford University Press, 1962) at page 1. Through learning the law of the Romans, we can gain insight into how they lived; the problems they faced in their daily lives; and how they sought to resolve them.

The body of Roman Law endures and continues to influence the development of the law to this day. Justice James Edelman (a judge of the High Court of Australia) together with Australian academic Elise Bant have referred to the fact that writings of the Roman jurists were relied upon by the House of Lords (the UK’s highest court) in three relatively recent and important private law decisions. Edelman & Bant have observed: “To put the influence of these Roman scholars in perspective, it would be as if something that one of us had written today on a single point of law, and published extrajudicially, was relied upon as an important authority by a court in the year 3800”: *Unjust Enrichment* (Hart, 2016, 2nd ed) at page 19.

The point bears repeating – the writings of Roman jurists from some 1,800 years ago are *still* influencing the law today. How is that possible? Due to the quality of, and intellectual achievement that is, Roman Law.

CONTEXTUAL COMMENTS ON THE PRESENTATION

The presentation will be pitched at an introductory level. No prior knowledge of Roman Law will be assumed. Apart from reading this two page document, no prior work is required.

It is important to appreciate, however, that what is commonly called the “first life” of Roman Law spanned from the birth of Ancient Rome in circa 753 BC through to the end of the reign of the Emperor Justinian in AD 565. That is a period of some 1,300 years. As you might expect, the law did

not remain static throughout that period. The law evolved, and the Romans reformed their laws to adapt with the changing needs of the time. It is, therefore, impossible to even attempt to summarise the law for the entirety of that period. Accordingly, for the purposes of this presentation we will be focussing on the law as it stood around the period AD 120 to AD 225. That is a period known as the “High Classical Period”, which was a particularly fertile time for the development of Roman Law.

SOME INFORMATION

Here is some basic information to which reference may be had during the presentation.

Chronology

- **753 BC – Monarchy** (Rome founded & ruled by series of Kings)
- **510 BC – Republic** (Constitution = Magistrates e.g. Consuls & Praetors; Senate; Assemblies of *comitia*)
 - 451 BC – XII Tables (foundational statute of Roman Law)
 - 150 BC – formulary process of civil procedure (replacing *legis actiones*)
- **27 BC – Empire Principate** (Octavian “restored” Constitution, but power shifted away from people)
 - AD 120 to AD 225 – High Classical Period (jurists Gaius, Papinian, Ulpian and Paul)
 - AD 125 – Perpetual Edict (no more yearly amendments)
 - AD 161 – Gaius’ Institutes (elementary law textbook)
- **AD 284 – Empire Dominate** (Emperor openly accepted as master)
 - AD 527 – Justinian takes throne as Emperor
 - AD 533 – Justinian’s Digest (compilation of works from classical jurists)
 - AD 533 – Justinian’s Institutes (elementary law textbook)
 - AD 534 – *Codex* (collection of *constitutiones* of past Emperors)
 - AD 565 – Justinian dies

Sources of law

1. Statutes
 - *lex* = enactment of the *comitia* (but enactment of wholly Plebeian assembly = *plebiscitum* or *leges*)
 - XII Tables = stone tables set up in marketplace
 - *senatusconsulta* = resolutions of Senate (mere advice to Magistrates, or force of law?)
 - *constitutiones* = pronouncements of Emperor (e.g. *edicta, mandata, decreta, rescripta*)
2. Edicts of Magistrates (e.g. Praetor)
3. *Interpretatio* and *responsa* of jurists (legal scholars, writers, teachers, advisers)
 - Jurists advised the Praetor; the *iudex*; and wrote books and commentaries

CONCLUSION

We only live one life, and we cannot choose the epoch in which that life is lived. We are, therefore, unable to experience first-hand the charming world of Ancient Rome. But we can do the next best thing. By contemplating the various legal puzzles of Ancient Rome, we can enter into the *minds* of the Ancient Romans, notwithstanding that their bodies no longer walk the earth.

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