CVL1019
ROMAN LAW 2

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History of Roman Law

Describe briefly what we understand by the words “the Senate, by virtue of its authority, passed Senatusconsulta.”

The Senatusconsulta played a crucial role in the Roman legal system. These were resolutions passed by the Senate which held significant authority in matters of governance and lawmaking. The primary function of Senatusconsulta was to address pressing issues that required urgent attention or to provide exemptions to existing laws in favour of specific individuals or groups.

It is worth noting that while the Senatusconsulta did not have the force of law in themselves, they could be incorporated into the Praetor's edict. The Praetor was a judicial officer who had the power to issue edicts, which were the primary sources of law in ancient Rome. Therefore, the Senatusconsulta could effectively become a source of civil law through their inclusion in the edict.

In conclusion, the Senatusconsulta provided a flexible and dynamic means for addressing legal challenges that could not be addressed through existing laws. Their role in Roman law highlights the importance of the Senate as a powerful institution with significant authority over legal matters

Explain what we understand when we say that the Praetor Urbanus could not, properly speaking, make law.

The Praetor Urbanus held a vital role in the Roman legal system as an administrator of justice. However, it is crucial to note that the Praetor Urbanus did not possess the authority to make laws. This is a significant distinction as the legislative function was reserved for the elected magistrates in Rome.

Instead, the role of the Praetor Urbanus was to oversee the administration of justice, particularly in urban areas. While the Praetor Urbanus did not have the power to legislate they did have control over legal procedures, which allowed them to make significant changes to the legal system. This meant that the Praetor Urbanus could shape the application of the law and ensure that it was applied fairly and justly.

It is important to note that the Roman legal system evolved over time, and the role of the Praetor Urbanus changed as a result. As the Roman civilisation and empire grew, the demands on the legal system increased, and the Praetor Urbanus played a vital role in adapting the legal system to meet these new challenges.

In conclusion, while the Praetor Urbanus could not make laws, they played a crucial role in shaping the administration of justice and adapting the legal system to meet the changing needs of a growing civilisation and expanding empire.

Explain what we understand by the Praetor Urbanus’ edicts?

The Praetor Urbanus held a critical role in the administration of justice in urban areas of Rome. One of the most important tools at their disposal was the edict, which was essentially an administrative order that set out the Praetor's rules and procedures for the year.

The edict issued by the Praetor Urbanus was a crucial source of law in the Roman legal system, and it was designed to ensure that justice was administered fairly and efficiently. At the beginning of each term, the Praetor Urbanus would issue their edict, which would set out the rules of procedure that would govern their administration of justice for the year.

The edict typically covered a wide range of legal matters, including civil and criminal procedure, debt collection, and property disputes. It was designed to provide clarity and consistency in the administration of justice, and it ensured that individuals knew what to expect when they appeared before the Praetor Urbanus. It is worth noting that the edict was not static and could change from year to year. The Praetor Urbanus had the power to update and modify the edict throughout their term, as they saw fit. This allowed the Praetor Urbanus to adapt to new legal challenges and to ensure that the legal system remained effective and efficient.

In conclusion, the Praetor Urbanus' edicts were crucial administrative orders that set out the rules and procedures for the administration of justice in urban areas of Rome. They provided clarity and consistency in the legal system and allowed the Praetor Urbanus to adapt to new legal challenges as they arose.

Describe the Emperor's powers of *edicta, decreta, mandata and rescripta.*

The Emperor held immense power in the Roman legal system, and one of the most important sources of that power was their ability to issue various types of legal orders, known as Constitutiones. These orders were crucial in shaping the administration of justice and ensuring that the law was applied consistently and fairly throughout the empire.

There were four types of Constitutiones that the Emperor could issue: edicta, decreta, mandata, and rescripta.
Edicta were orders that the Emperor issued in his capacity as Chief Justice, and they had the force of law. These orders could modify or clarify existing laws or create new ones altogether.

Decreta were judgments that the Emperor handed down in legal disputes. These judgments had the force of law and were binding on all parties involved in the dispute.

Mandata were instructions that the Emperor gave to officials, such as governors or magistrates, directing them on how to perform their duties.

Finally, rescripta were answers that the Emperor gave to questions submitted to them. These answers had the force of law and were binding on all parties involved. The Emperor would typically provide these answers to officials or private citizens who had questions about legal matters.

It is worth noting that the Emperor also had the power to issue two other types of Constitutiones: Epistolae and Subscriptiones. Epistolae were answers that the Emperor gave to magistrates who had questions about legal matters, while Subscriptiones were answers that the Emperor gave to private citizens who had legal questions.

In conclusion, the Emperor held immense power in the Roman legal system, and their ability to issue Constitutiones was a crucial tool in shaping the administration of justice throughout the empire. The four types of Constitutiones that the Emperor could issue were edicta, decreta, mandata, and rescripta, and they played a significant role in ensuring that the law was applied consistently and fairly throughout the empire.

What forms of codification preceded the *Corpus Juris Civilis?*

The Codex Juris Civilis, compiled in the 6th century AD, is one of the most significant legal codes in history. However, it is worth noting that several other forms of codification preceded it, shaping the development of Roman law over time.

One of the earliest codifications was the Law of the Twelve Tables, which was compiled in the 5th century BC. This code represented an important step towards the codification of Roman law and was instrumental in shaping the legal system for centuries to come.

In subsequent centuries, several other codes were compiled, including the Codex Gregorianus and the Codex Hermogenianus, both of which were issued in the 4th century AD. These codes provided further updates to the existing legal system and helped to clarify certain areas of law.
Perhaps the most significant code before the Codex Juris Civilis was the official code of Theodosius II, which was issued in 438 AD. This code represented a major effort to consolidate the various sources of law that had accumulated over time and to create a comprehensive legal system.

In addition to these codes, there were also other significant works that contributed to the development of Roman law. The Institutiones of Justinian, for example, were a set of introductory textbooks on law that were used in legal education throughout the empire. The Leges Barbarorum, meanwhile, were a set of laws that were adopted by the various barbarian tribes that had come under Roman rule.

In conclusion, while the Codex Juris Civilis is one of the most famous legal codes in history, it is important to remember that it built upon a long tradition of legal codification that had developed over centuries. From the Law of the Twelve Tables to the Theodosian Code, these various codes and works helped to shape the legal system of ancient Rome and contributed to its enduring legacy.

What is meant by Responsa Prudentium?

The Responsa Prudentium were the legal opinions given by expert jurists in ancient Rome. During the Republic, these opinions were not considered authoritative and were merely considered as moral guidance. However, during the reign of Augustus, the Roman Emperor, he conferred upon these opinions the force of law, making them binding on judges and other legal officials.

To ensure the quality and consistency of these opinions, Augustus decreed that only a limited number of jurists who were deemed to be of exceptional skill and knowledge would be authorised to provide these opinions. These jurists were granted the jus respondendi, which gave them the right to give legal opinions with the backing of the Emperor's authority and under seal.

Over time, the opinions of these expert jurists became increasingly important in the development of Roman law. As they provided guidance on complex legal issues and helped to clarify the meaning of existing laws, the Responsa Prudentium became an important source of legal precedent and were often cited in court cases.

In conclusion, the Responsa Prudentium were the legal opinions given by expert jurists in ancient Rome, which gained the force of law during the reign of Augustus. These opinions were only given by a select few jurists with the backing of the Emperor's authority and were an important source of legal guidance and precedent in the Roman legal system.

Explain the contents of the twelve tables.

The Twelve Tables were the earliest attempt at codifying Roman law, and are considered to be the foundation of Roman law. They were created in 451 BC and were inscribed on twelve bronze tablets and displayed in the Forum Romanum. They covered a wide range of legal matters, including civil procedure, family law, property law, and criminal law and were organised into twelve chapters, with each chapter addressing a different legal topic.

The first four chapters dealt with civil procedure, tribal law, and the execution of judgments. Chapter five dealt with family law, specifically with the rights and responsibilities of fathers and guardians. Chapter six addressed inheritance law, while chapter seven dealt with property law. Chapter eight dealt with criminal law, setting out the penalties for various offences. Chapter nine dealt with public law, including the rights and duties of public officials. Chapter ten addressed sacred law and religious matters. The final two chapters were appendices that contained miscellaneous provisions.

While the Twelve Tables have been praised for their influence on the development of Roman law, they have also been criticised for their harshness and lack of flexibility. Some modern commentators have argued that they reflect a primitive society in which the law had not yet been disentangled from religion and self-help.

In conclusion, the Twelve Tables were the earliest attempt at codifying Roman law and covered a wide range of legal matters. They were organised into twelve chapters and were inscribed on twelve bronze tablets displayed in the Forum Romanum. Despite their limitations, they were an important step in the development of Roman law and provided a foundation for subsequent legal codes.

Explain what is meant when we say that "the Law of the Twelve Tables is usually spoken of as a code but it was far from being a codification of the whole law"?

This is argued considered the Law of the Twelve Tables did not cover all areas of the law, such as contracts and delicts, which were later developed by the praetors. Furthermore, the Twelve Tables were not organised into a systematic code, but rather consisted of individual provisions that were not always logically connected. As such, the Twelve Tables cannot be considered a comprehensive and organised codification of Roman law.

Therefore, despite being described by Livy as *"the fountain of all public and private law"*, the Twelve Tables cannot be considered as a codification of the whole law because it is believed to have dealt with matters of current controversy and left untouched principles which had not been called into question.

How and why were the Twelve Tables enacted?

The Law of the Twelve Tables was enacted in 449 BC in response to complaints from the Plebeians that the law was arbitrary and that the consuls had a monopoly on legal knowledge. In response to these complaints, a committee of ten men known as the Decemvirs was appointed to draw up a code of laws that would be binding on all citizens.

The Decemvirs based their work on the laws of Greece and other Italian cities, but also incorporated some of the existing Roman customs and traditions. The resulting code consisted of ten tables and was approved by the Comitia Centuriata, the popular assembly of Roman citizens.

However, the Plebeians were not satisfied with the ten tables and demanded two additional tables to address their specific concerns. These tables were added by a new commission of ten men, including Plebeians, and completed the Law of the Twelve Tables as we know it today. The Law of the Twelve Tables was thus the first written code of law in Rome and served as the foundation of Roman law for centuries to come.

In 426 the Emperors Theodosius II and Valentinian III attempted a comprehensive reform by the so-called Law of Citations." Explain.

The Law of Citations, enacted in 426 by the Emperors Theodosius II and Valentinian III, aimed to bring clarity and consistency to the Roman legal system by establishing a hierarchy of legal authorities. The law included the writings of prominent jurists such as Papinian, Paul, Gaius, Ulpan, and Modestinus, and allowed for citations of earlier writers as well.

In cases where conflicting opinions were presented, the majority opinion was to prevail, with Papinian's opinion taking precedence if opinions were equally divided. If Papinian did not have an opinion on the matter, then the judge was to make the final decision. Notably, the notes of Ulpan and Paul on Papinian were deemed inadmissible in the Law of Citations.

In conclusion, this law was an attempt to simplify the legal system by establishing a clear hierarchy of legal authorities and reducing confusion over conflicting legal opinions.

Can custom be considered as part of the sources of Roman Law?

Yes, custom can be considered as a part of the sources of Roman Law. Initially, during the Regal Period, Roman law was largely based on custom. However, even after the codification of customary law, the Romans had their system of customary law embedded in the Law of the Twelve Tables. 'Custom', in the same manner as usage, was the basis of Jus Non-Scriptum, which as Justinian observed, imitates a statute.

Justinian distinguishes between Jus Scriptum and Jus Non-Scriptum. Explain, giving examples of their sources.

Justinian's distinction between Jus Scriptum and Jus Non-Scriptum is fundamental to understanding the sources of Roman law. Jus Scriptum refers to written law, which includes any authoritative statement or exposition of law expressed in writing. The sources of Jus Scriptum are varied and include the Lex (legis actio), which is the most ancient form of written law and refers to the procedures by which a person could obtain his rights before a magistrate; Plebiscitum, which were resolutions passed by the Plebeian Assembly that became binding on the entire Roman people; Senatusconsultum, which were decrees passed by the Senate that became law; Edicta, which were proclamations by magistrates, especially praetors, that explained and supplemented existing law; Magistratum, which were legal opinions given by officials; Responsa Prudentium, which were the opinions of professional jurists; and Principium Placita, which were the first decisions made by the Praetor as a guide to future decisions.

On the other hand, Jus Non-Scriptum refers to unwritten law, the source of which is customary law. This type of law was not codified but instead based on long-standing customs and traditions. The Romans regarded custom as an essential part of their legal system, and it was embedded in the Law of the Twelve Tables. Jus Non-Scriptum provided a framework for interpreting written law and was important in filling in gaps in the written law. Examples of Jus Non-Scriptum include the customary law relating to the family, the law of succession, and the law relating to obligations.

Describe briefly the nature and role of the assemblies.

The assemblies played a significant role in the Roman Republic, serving as the primary form of political participation for Roman citizens. With the end of the monarchy, the assemblies became an essential part of the Roman political system. The assemblies were divided into two categories: the comitia curiata and the comitia centuriata. The comitia curiata was the earliest form of the assembly and primarily dealt with religious matters. The comitia centuriata was more significant in terms of political power and served as a military assembly.

The assemblies' functions were threefold: electoral, legislative, and juridical. Citizens would vote in these assemblies to elect the magistrates, including the consuls and praetors, who would serve in the various governmental roles. The assemblies also passed laws of general application, serving as the legislative body of the Republic. They would also hear appeals from capital sentences passed on citizens in criminal cases, serving as the court of last resort.

The role of the assemblies was essential to the functioning of the Roman Republic. They served as a means of political participation for citizens, allowing them to have a voice in the government and the direction of the state. The assemblies were a cornerstone of Roman political culture, and their importance cannot be overstated.

Mention and explain the three kinds of Comitia that were created.

The Comitia Curiata was one of the oldest Roman assemblies, dating back to the time of the Roman Kingdom. It was originally composed of 30 curiae, or local groups of citizens, and its main function was to perform religious and legal functions. In later times, it lost most of its political power and was mostly involved in symbolic acts, such as the confirmation of the appointment of magistrates.

The Comitia Centuriata was an assembly of the Roman people that represented the Roman army under a different name. It was made up of 10 centuries of cavalry, rich Patricians, and the main body of infantry. The assembly's system of voting was dependent on the ownership of land and property, and it was calculated to give a large advantage and influence to the wealthy citizens of the first class. The Comitia Centuriata had the power to elect consuls, praetors, and censors, and to enact laws. It was also responsible for trying capital offences, serving as the highest court of appeal in cases where a Roman citizen was sentenced to death.

The Comitia Tributa was another type of assembly created during the Roman Republic. It was organized on the basis of tribes and local divisions. Unlike the Comitia Centuriata, the Comitia Tributa allowed for a more democratic voting system since each citizen had an equal vote regardless of their wealth or social class. This assembly had the power to elect officials and pass laws.

Roman Law in Malta

Discuss how Roman Law was introduced and how it affected the Maltese legal system.

Malta was incorporated into the Roman Empire in 216 BC, and its legal system was thus replaced by Roman law, which lasted for over a millennium until the Arab conquest of Malta in 870 AD. Despite the Arab occupation, Roman law continued to hold sway in Malta, owing to the island's predominantly Christian population, which made Arab Muslim laws inapplicable to the Maltese. The Maltese continued to be governed by Roman Byzantine Law, which was transmitted orally from one generation to the next and evolved into a maimed and debased form of custom without any texts or codes.

The Order of St. John's arrival in Malta did not change the dominance of Roman law, and even when the Grand Masters began to legislate, they modelled their laws after Roman law. The jus commune (common law) had become so firmly entrenched that its continued dominance was considered unquestionable. In 1798, Napoleon Bonaparte took over Malta from the Order of St. John and abolished all forms of slavery. His commissioners also enacted various civil laws relating to marriage and legitimacy, but they did not interfere with Malta's legal system.

Napoleon published his Code Civile in 1804, which served as a model for civil codes throughout Europe, including Malta's own. However, the British takeover of Malta did not alter the observance of jus commune. Prior to the enactment of the current Code of Malta in the 1860s, the Code de Rohan remained in effect. In various matters, such as prescription and contract laws, the Code of Justinian was still upheld.

The need for a codification of Malta's laws was recognised, and in 1831, commissioners appointed by His Majesty were tasked with preparing five codes: a Commercial Code, a Criminal Code, a Code of Civil Procedure, a Code of Criminal Procedure, and a Code of Obligations. Another commission was established in 1834, consisting entirely of Maltese delegates.

It is important to note that jus commune, the Roman law practiced in the Middle Ages, was not the proper Roman law but rather the Roman law of the Corpus Juris of Justinian, as interpreted by successive commentators and applied to meet the practical needs of the courts of the Middle Ages.

What is the importance of the Code de Rohan?

The Codice de Rohan was a compilation of laws that aimed to unify the legal system in Malta. It was composed of several codes, including Civil, Criminal, Maritime, Commercial, Organization of the Courts, Procedure, and Miscellaneous. This code was significant because it emphasised the use of Roman law in Malta's legal system. In cases where the code did not provide clear guidance, the jurists were directed to consult the principles of Jus Commune, which referred to the Roman law as predicted and practiced during the Middle Ages.

The Code de Rohan played a crucial role in the development of Malta's legal system by consolidating the fragmented legal practices of previous Grandmasters. It also helped establish Roman law as the dominant legal system in Malta. This code served as a foundation for the present-day legal system in Malta and provided valuable insights into the historical and cultural context of Maltese law. Overall, the Code de Rohan's significance stems from its role in establishing legal uniformity and the continued use of Roman law principles in Malta.

Explain what the Code de Rohan was and whether it was a consolidation of Roman Law?

The Code De Rohan was a legal code enacted under the rule of the Knights of Malta in the eighteenth century. It was named after the Grandmaster Emmanuel de Rohan-Polduc who commissioned the code. The code consisted of various laws relating to civil, criminal, maritime, commercial, organization of the courts, procedure, and miscellaneous matters.

One of the key aspects of the Code De Rohan was its reliance on Roman law. The code consolidated the position of Roman law in Malta and provided that when a matter was not regulated by municipal law, judges were to apply the Jus Commune. Jus Commune, also known as common law, was the Roman law of the Corpus Juris of Justinian, as interpreted by successive schools of commentators and as understood and applied to meet the practical needs of the courts of the Middle Ages.

Therefore, while the Code De Rohan was not a direct consolidation of Roman law, it did reinforce the position of Roman law in Malta's legal system. The Code directed the jurist towards Jus Commune in case of a lacuna or absence of law, and this approach continued to be observed in Malta even after the code was replaced by the present Code of Malta in the 1860s.

Describe what we understand by the principle of the personality of the law as against the territoriality during and after the Norman period.

During the Norman period, there was a conflict between the principle of the personality of the law and the principle of territoriality. The principle of the personality of the law is a legal principle that states that a person's legal status is determined by the law of the state to which they belong, rather than the territory in which they are physically present. In contrast, the principle of territoriality holds that a person's legal status is determined by the law of the territory in which they are physically present.

During the Norman period, the principle of the personality of the law was in conflict with the principle of territoriality because the Normans were conquering and ruling over people who were not of their own nationality or culture. As a result, the Normans had to reconcile their own laws with the existing laws of the conquered territories. This led to the development of a hybrid legal system, where different laws applied to different people based on their nationality or culture. When distinct races living side by side amalgamated through the passage of time, the system of territoriality gradually established itself. There was one law for one territory which was mostly derived from Roman law.

The feudal system introduced by the Normans was favourable to Roman Law. Explain.

The feudal system introduced by the Normans in Malta was favourable to the application of Roman Law. Feudal law was not a body of law in itself but rather a set of legal principles and practices that regulated relationships between lords and vassals. Many of these principles had their roots in Roman law, such as the concept of ownership, the notion of dominium, and the idea of property rights. As such, Roman law was a useful tool for the Normans in organising and regulating the feudal relationships that existed in Malta. In particular, Roman law provided a framework for the regulation of land ownership and transfer, which was central to the feudal system. Thus, the Normans saw the value of Roman law in facilitating their administration of the feudal system in Malta, and as a result, Roman law continued to be applicable in the island.

The quality of Socii given, (as Cicero testifies) to Maltese, must necessarily have entailed a certain degree of participation in the rights of Roman citizenship. Explain.

During the Roman period, the Maltese were recognised as Socii, a status granted to those who voluntarily surrendered to Rome without resistance. This resulted in Malta becoming a Roman province under the same Praetor as Sicily. As Socii, the Maltese were granted certain legal rights and privileges, including the right to marry (jus connubi) and the right to engage in trade (jus negoziones). Furthermore, according to Cicero, the Maltese were immediately granted the privileges of municipium, which conferred a degree of participation in the rights of Roman citizenship. As such, the Maltese enjoyed a certain level of political, legal and social rights that were granted to Roman citizens, though they did not enjoy full Roman citizenship.

The Maltese became Roman citizens. Explain when this happened and what rights they acquired.

The edict of Caracalla issued in 212AD extended Roman citizenship to the inhabitants of Malta as well. As Roman citizens, the Maltese acquired the right to vote, hold public office, and receive legal protections under Roman law. They also gained the right to marry and have children, the right to own property and conduct business, and the right to access Roman courts for legal disputes. All free women were also given the same rights as Roman women.

To what extent, if at all, can one state that the Codex Juris Civilis was part of the Maltese legal system?

The Codex Juris Civilis, also known as the Justinian Code, is widely recognized as one of the most significant legal documents in the history of Roman law. In terms of its influence on the Maltese legal system, it can be said that it played a vital role in shaping it throughout its development.

The Knights used the Codex Juris Civilis when legislating for Malta, especially in the field of private law. The influence of the Codex Juris Civilis can also be seen in the Civil Code of Malta, which was heavily influenced by Roman law. Furthermore, even after the establishment of Malta's Civil Code, the Courts looked to the Codex Juris Civilis when there was a lacuna or gap in the law. This highlights the continued relevance and importance of the Codex Juris Civilis in the Maltese legal system.

Therefore, it can be stated with confidence that the Codex Juris Civilis was indeed a significant part of the Maltese legal system, and its influence can still be felt to this day.

To what extent did the Corpus Juris Civilis influence the development of the Maltese legal system?

The Corpus Juris Civilis, also known as the Justinian Code, had a profound influence on the development of the Maltese legal system. According to historical records, the Corpus Juris Civilis began to apply in Malta when Justinian's general Bellisarius won the islands back from the Barbarians. This Code played a significant role in the legal system of the Knights of Malta who used it as a basis for legislation, particularly in the field of private law.

Moreover, even after the establishment of Malta's Civil Code, the Corpus Juris Civilis continued to have a significant impact on the Maltese legal system. The courts referred to it as a source of inspiration when faced with a lacuna in Maltese law. This demonstrates the importance and continuing relevance of the Codex Juris Civilis in shaping the legal system of Malta. Therefore, it is clear that the Codex Juris Civilis was indeed an integral part of the Maltese legal system throughout its development.

What made the Maltese accept Roman law?

It is believed that the Maltese accepted Roman law due to various factors. Firstly, the inadequacy of all former Carthaginian laws made it necessary for a new system of law to be introduced. Additionally, Malta was heavily influenced by the Roman government and culture, which made it easier for the locals to accept Roman law. Moreover, the wide administrative discretion that the Roman governors enjoyed in creating laws also played a crucial role in introducing Roman law in Malta. The increasing number of laws being made more applicable to provinces also contributed to the acceptance of Roman law. Overall, a combination of cultural, legal, and administrative factors led to the acceptance of Roman law in Malta.

Law of Persons

Was a Roman slave a thing or a person?

Under Roman law, a slave was considered to be both a thing and a person. While they were considered to be the property (res) of their owner, they were also human beings and therefore considered to be persons. This duality is evident in the legal system where slaves were subject to criminal law and bound by delict, but during slavery, the liability attached to their master.

Despite being considered property, slaves did have some limited legal rights. For example, they had the right to enter into certain types of contracts, such as peculium, which allowed them to keep a portion of their earnings. Additionally, slaves could be manumitted (freed) by their owner or through the testamentary disposition of a deceased owner. There were also ways for slaves to obtain their freedom through self-purchase, which allowed them to buy their freedom from their owner, or by claiming their freedom through a legal process known as vindicatio.

Explain the rights masters had over their slaves.

The rights that masters had over their slaves under Roman law were extensive. They had the power of life and death (Jus Vitae Necisque), meaning that they could decide whether a slave should live or die. In addition, everything acquired by a slave, whether through work or other means, was acquired for the master. This principle was known as the principle of the "fruit of the forbidden tree." Furthermore, masters had the right to punish their slaves physically, including through the use of instruments such as rods, whips, and chains. Slaves were considered the property of their masters and were therefore subject to their complete control. This included the right to sell or transfer ownership of their slaves to others. However, there were some limitations on the power of masters over their slaves. For example, a master could not force a slave to commit a crime or engage in sexual acts against their will.

Slaves are born so or become so. Explain.

During the Roman period, slavery was considered an accepted and widespread practice. Children born to a slave mother were automatically considered slaves themselves, unless the mother was free at the time of conception or at any time during the pregnancy. On the other hand, individuals could become slaves through a variety of ways, such as hostile capture, debt, and criminal punishment. The five rules of civil law also governed the acquisition of slaves, and two of these rules were abolished by Justinian. The rules that remained in force included the enslavement of a free person who knowingly offered himself as security for another's debt and the enslavement of a person who fraudulently claimed to be a free man. Slaves in Roman times were considered as property, and the master had the power of life and death (jus vitae necisque) over them. However, slaves could also gain their freedom through manumission, which was the act of the master releasing them from their servitude.

The statutes of slavery might be brought to an end by manumission. Explain.

In Roman law, manumission was the process of freeing a slave from the bond of servitude. This could be accomplished through various methods, including three main regular modes: Vindicta, Censu, and Testamento. In the Vindicta mode, the slave would be brought before a praetor who would hear the claim of freedom and then a fictitious lawsuit would be conducted. In the Censu mode, the master would enroll the slave in the Census, and this would result in the slave becoming free. Finally, in the Testamento mode, the master would free the slave in his will.
Irregular modes of manumission were also available, such as Inter amicos, where the slave was freed in front of friends; Per epistolam, where the slave was freed by means of a letter sent to him; and Convivii adhibitione, where the slave was freed in the presence of guests at a banquet. It is important to note that not all manumissions were recognised by law, and certain forms could be invalidated if not performed correctly.

Nonetheless, manumission provided a way for slaves to gain their freedom and potentially even become Roman citizens.

A freedman's relation to his patron is summed up on three duties. Which were they?

When a slave was manumitted, he became a freedman and his relationship with his former master was defined by three obligations known as the tria nomina. Firstly, the freedman had to show respect and gratitude to his former master as he had been granted his freedom. Secondly, the freedman had to provide certain services to his master such as acting as a business agent or guardian of his children. Thirdly, the freedman was obligated to include his former master in his will and leave a portion of his estate to him upon his death, known as the jus patronatus. Moreover, under the principle of jura in bonis, if the freedman died without a will or an heir, his former master would inherit his property.

Explain divorce under Roman law.

Under Roman law, there were two ways to terminate a marriage - by mutual consent or by the will of one party. Divorce by mutual consent, also known as "divortium bona gratia," was an amicable way to end a marriage, where both spouses agreed to separate without any wrongdoing.

On the other hand, "repudium" allowed either spouse to dissolve the marriage unilaterally, without the other's consent, by simply declaring that they no longer wished to be married. The reasons for repudiation could be varied, ranging from adultery to infertility, and there was no need to prove any fault or wrongdoing.

In the case of divorce, the parties had to follow certain procedures for the division of property and custody of children. For example, the dowry had to be returned to the wife, and any children born during the marriage would remain under the father's custody unless the mother could prove him unfit to care for them. Overall, divorce was a relatively common occurrence under Roman law and was seen as a private matter between the spouses rather than a matter for the state or the public.

What is meant when we say that the parties to marriage must be united according to law?

When we say that the parties to marriage must be united according to law, we mean that both spouses must meet certain legal requirements before entering into marriage. First, they must be qualified to contract a civil law marriage, which means they must not already be married and must be of the appropriate age. Second, there must be no rule of law forbidding them from marrying, such as consanguinity or affinity. Third, if either spouse is a child under the power of a parent or guardian, that person must give their consent. Finally, both husband and wife must give their free and informed consent to the marriage, without coercion or duress. Meeting all of these legal requirements ensures that the marriage is valid and recognised under Roman law.

Mention the five requisites of a civil marriage under Roman law.

Marriage in Roman law was a solemn contract that required the meeting of certain requirements to be valid. The five requisites of a civil marriage under Roman law were essential to the formation of a legally binding marriage.

Firstly, the parties had to have the Jus Connubii, which meant they had the right to have a lawful marriage with a Roman citizen. This right also granted the parties the legal rights of the paterfamilias over the family, and any children born of such a marriage would be counted as Roman citizens.

Secondly, the parties had to be of a marriageable age. The age requirement varied depending on gender and social class, but typically men had to be at least 14 years old, and women had to be at least 12 years old.

Thirdly, the marriage had to be lawful. This meant that there must be no legal impediments to the marriage, such as a prior existing marriage, close blood relation, or certain social and economic distinctions.

Fourthly, the consent of the Paterfamilias, or the head of the family, was necessary for the marriage to be valid. This was particularly important for women, who were typically under the patria potestas, or the power of their father or nearest male relative.

Finally, the consent of both the man and woman must be given for the marriage to be valid. This consent had to be freely given and not obtained by force, fraud, or duress. The parties had to intend to enter into the marriage voluntarily and with a genuine commitment to a life together as husband and wife.

In conclusion, the requirements for a civil marriage under Roman law were strict, and all the requisites had to be met for the marriage to be legally binding. These requirements ensured that the marriage was entered into voluntarily and with a genuine commitment, and that it would be recognised as such by Roman society.

Explain which forms of marriage were present under Roman Law?

There were two primary forms of marriage under Roman law.
The first was civil law marriage (justum matrimonium), which was contracted by Roman citizens who were united according to law. This meant that both parties must meet the legal requirements for marriage, such as being of a marriageable age, having the necessary consents, and not being prohibited from marrying by law. A marriage between peregrines, or non-Roman citizens, was considered to be a matrimonium but not a justum matrimonium.

The second form of marriage was manus marriage, which was an ancient custom by which a wife passed into the hands of her husband with the consequence that she was like a daughter to him, and like a granddaughter to his father. In this type of marriage, the wife was subject to the husband's authority, much like a daughter would be to her father's authority. This form of marriage was not as common as the justum matrimonium and was gradually replaced by it.

Which are the various ways in which natural children could be legitimated?

Legitimation refers to the process of making a child born out of wedlock legitimate, meaning that the child would have the same legal status as if they were born within a marriage. Under Roman law, there were various ways in which natural children could be legitimated:

1. By subsequent marriage (per subsequens matrimonium): If the parents of the child later married each other and were legally capable of inter-marriage at the time when the child was conceived or born, then the child would become legitimated.
2. By making the son (or marrying the daughter to) a member of the Council of Municipality: If a natural son was made a member of the Council of Municipality, then he would become legitimate. Similarly, if a natural daughter was married to a member of the Council of Municipality, then any children born to them would be legitimate.
3. By imperial rescript: The emperor could also legitimise a natural child by issuing a rescript, which was a formal decree or order. However, this was a rare occurrence and required special circumstances.

It is important to note that legitimisation did not automatically grant the child the same rights as a legitimate child. The legitimated child would still have certain limitations and restrictions, especially when it came to inheritance and succession rights.

Explain the difference between Adrogatio and Adoptio.

Adrogatio and Adoptio are two different concepts under Roman law related to the process of adoption. Adrogatio is the adoption of a person who is sui juris, meaning he or she is not under the patria potestas (authority) of someone else. The process of Adrogatio had the legal effect of demoting the person from a higher position of sui juris to an inferior position of alieni juris, placing the person under the patria potestas of the adrogator. This process was rare and required the approval of the people, senate and pontiffs.

On the other hand, Adoptio was the adoption of a person who was alieni juris, meaning they were under the patria potestas of someone else. The process of Adoptio allowed for the person to be legally transferred to the patria potestas of the adopter, with the legal effect of severing ties with their biological family and creating a new family bond. The person being adopted was considered to be the natural child of the adopter, with all legal rights and duties that came with it.

In summary, while both Adrogatio and Adoptio involved the creation of a new familial bond, the key difference between them is that Adrogatio involved the adoption of a person who was sui juris, while Adoptio involved the adoption of a person who was alieni juris.

What were the legal effect of adrogatio?

When adrogatio occurred, the adrogatus, who was a person sui juris, along with any children in their power, passed from the power of their current pater familias to the adrogator. This transfer of power was considered a demotion for the adrogatus, as they were moving from a position of being sui juris to being under the patria potestas of someone else.

In addition to the transfer of power, adrogatio also had significant effects on property and debts. All property of the adrogatus, as well as any debts owed to them, passed to the adrogator. Conversely, any debts owed by the adrogatus were extinguished due to the extinction of their old persona. Essentially, the adrogatus ceased to exist in a legal sense, and all of their rights and obligations were transferred to the adrogator.

The adrogation of impuberes was once prohibited, but later permitted. Explain.

Antonius Pius was a Roman Emperor who permitted the adrogation of impuberes, which were children who had not yet reached the age of puberty, subject to strict conditions. One of these conditions was that the child could not be emancipated, except for a just cause that was investigated beforehand. This condition ensured that the child was not taken away from their family without a valid reason.

Another condition was that the adrogator, the person adopting the child, had to provide security to ensure that the child's property would be restored to them in case of the adrogator's death or the child's emancipation while still impubes. If the adrogator died first, the adrogatus, the person being adopted, was entitled to have their property returned to them. Additionally, if the adrogatus was disinherited without a just cause, they were entitled to a quarter of the adrogator's estate, which was known as the "Quarta Antonia."

These conditions set by Antonius Pius were stringent to ensure that the adrogation of impuberes was not being abused, and that the interests of the child were protected.

Explain the duties of the curator.

The curator was a person appointed by the magistrate to protect the interests of a minor or an individual who was legally incapable of managing their own affairs due to mental incapacity. The curator's primary duty was to administer the property of the individual, but he had no control over their person. He was responsible for ensuring that the minor's property was properly managed and that any transactions were in the minor's best interest. This involved providing approval (consensus) to transactions that were reasonable and beneficial for the minor, and preventing any transactions that would be harmful or disadvantageous.

In addition to his role as administrator, the curator also had a duty to act as a guardian and protector for the minor. He was responsible for ensuring that the minor's physical and emotional needs were met, and that they were not subjected to any abuse or exploitation. The curator could also represent the minor in legal proceedings, but only with the approval of the magistrate.

It's worth noting that there were different types of curators, each with their own specific duties. For example, a curator ad litem was appointed to represent the interests of a minor in a particular legal case, while a curator bonorum was appointed to manage the affairs of an individual who had been declared bankrupt.

Explain the duties and functions of the tutors.

The tutor in Roman law had several important duties and functions. First and foremost, the tutor was responsible for administering the ward's property, ensuring that it was properly managed and used for the ward's benefit. In doing so, the tutor was required to act with prudence and diligence, taking all necessary steps to protect and preserve the ward's property.

In addition to his role as property manager, the tutor was also responsible for imposing authority over the minor, acting as a guardian and supervisor in matters related to the ward's personal life and conduct. This included ensuring that the ward was properly cared for and protected from harm, and that his or her personal needs and interests were properly attended to.

Another key duty of the tutor was to provide for the ward's education, ensuring that the ward received the necessary instruction and training to prepare him or her for adult life. This could include arranging for the ward to receive instruction in reading, writing, and other basic skills, as well as training in more advanced subjects such as rhetoric, philosophy, and law.

Overall, the tutor played a vital role in the lives of Roman minors, serving as both a protector and guide during their formative years. Through his careful management of the ward's property, his exercise of authority over the ward's personal life, and his provision of education and guidance, the tutor helped to ensure that the ward was prepared for a successful and productive future.

Explain in which manner curators different from tutors.

In Roman law, the roles of curators and tutors were distinct, and their duties and functions differed in several important ways. Curators were primarily responsible for the administration of a minor's property, whereas tutors had authority over both the person and the property of the minor.

Unlike tutors, curators were not obligated to be appointed unless a minor was involved in litigation. Additionally, while a tutor could be appointed by will, a curator had to be confirmed by a magistrate.

The relationship between a minor and their curator was also different from that of a minor and their tutor. While a minor with a tutor was comparable to a pupil with a teacher, a minor with a curator simply required the curator's approval (consensus) for transactions, which could be indicated in several ways and did not require the curator's physical presence. In summary, the curator's role was limited to property administration, whereas the tutor had broader authority over the minor's person and property.

Explain in which manner tutela came into existence.

In Roman law, tutela, or guardianship, could come into existence through several ways. Testamentary tutelage was when a paterfamilias could appoint a tutor to descendents in power beneath the age of puberty who would become sui juris on his death. On the other hand, statutory tutelage applied when there was no testamentary tutor appointed, and it went to the nearest agnate (related from father's side), or under Justinian, cognates (related by birth). Patrons exercised tutelage over persons manumitted from slavery while under age. A parent who emancipated his child while under age stood to him in the position of patron. Fiduciary tutelage applied if the emancipating parent died, and tutelage passed to the nearest agnate of the deceased.

Lastly, a mother could appoint a tutor to manage the property and leave it to her child, which was called a dative tutelage. These different ways of tutelage ensured that minors were protected and guided by responsible individuals until they reached the age of majority.

Explain the perpetua tutela mulierum

Perpetua tutela mulierum was a concept in Roman law that refers to the perpetual guardianship of women who were unmarried and not under the power of a father or grandfather. The purpose of this guardianship was to ensure that the property of women remained within the family and was not lost through mismanagement or poor decisions. Women were considered vulnerable to manipulation and were therefore subject to this perpetual guardianship.

Over time, the role of the perpetual tutor became more ceremonial, and women were able to manage their own affairs. However, the tutor still had the authority to intervene in certain situations, especially if he believed that the ward was making decisions that would harm her financially or otherwise.

The perpetua tutela mulierum was eventually abolished during the reign of Emperor Justinian, who recognized the autonomy of women and allowed them to manage their own property without the need for a guardian.

Explain in which manner tutela could come to an end.

Tutelage could come to an end through various means in Roman law. The most common way was when the pupillus (minor) reached the age of puberty, which was 14 years for males and 12 years for females. At this point, the minor became sui juris, meaning he or she was legally capable of managing their own affairs.

Tutelage could also end upon the death of either the tutor or the pupillus. Additionally, a tutor could be discharged by a magistrate if he had fulfilled his duties or had been found to have acted improperly.

If a tutor had been appointed for a certain period of time or until a condition was fulfilled, tutelage would end when the time expired or the condition was met. Tutelage could also end if the tutor was removed due to suspected or actual misconduct or hostility toward the ward. Finally, either party suffering capitis deminutio (a decrease in legal status, such as losing citizenship) could also bring an end to tutelage.

Explain what a Capitis Deminutio is.

Capitis Deminutio was a legal term used in Roman law to describe the reduction of a person's legal status. There were three types of Capitis Deminutio:

1. Capitis Deminutio Maxima: This was the most severe form of Capitis Deminutio, and it resulted in the complete loss of a person's freedom, citizenship, and family rights. It occurred when a person was sentenced to death or declared an outlaw.
2. Capitis Deminutio Media: This was a partial loss of status, which affected a person's family rights but not their freedom or citizenship. This could occur in cases of adoption, where the person being adopted lost their rights in their natural family.
3. Capitis Deminutio Minima: This was the least severe form of Capitis Deminutio, and it only affected a person's citizenship. It could occur when a person moved from one jurisdiction to another or when they were granted citizenship in a different jurisdiction.

It's important to note that Capitis Deminutio was a legal concept in Roman law and did not necessarily reflect a person's social standing or reputation.

By degrees the principles came to be admitted that a filiusfamilias might have a peculium not merely on sufferance. Explain.

Initially, a filiusfamilias (son under the power of patriapotesta) could only have a peculium (a sum of money or property) on sufferance, which meant that it was granted to him by his father and could be taken away at any time. However, over time, this principle was expanded. Soldiers, for instance, were allowed to keep whatever they acquired during their military service, and this idea was extended to sons who were engaged in civil employment. Later emperors, including Constantine, also reduced the father's interest in property that was inherited from the mother to a usufruct, which gave the son more control over the inheritance. By these degrees, the principle was established that a filiusfamilias could have a peculium that was not merely on sufferance, but that he could have greater control over his own earnings and property.

Law of Property

Indicate and explain briefly four ways how a servitude could be extinguished.

It is important to note that there are actually five ways in which a servitude may be extinguished. The first is by death, where either the servient or dominant owner passes away. The second way is through confusion or merger, which occurs when one person becomes the owner of both the servient and dominant properties. The third is through surrender or renunciation, where the dominant owner voluntarily gives up their rights to the servitude. The fourth is by non-usage for a statutory period, which means that if the servitude is not used for a certain amount of time, it may be considered extinct. Finally, the fifth way a servitude may be extinguished is by impossibility to take benefits, meaning that if the dominant owner is unable to make use of the servitude due to circumstances beyond their control, such as a natural disaster, the servitude may be considered extinguished. It is important to understand each of these ways in order to determine whether or not a servitude is still valid.

What is meant by praedial servitudes? Name the two types of praedial servitudes and give an example of each.

Praedial servitudes were one of the most common types of servitudes in Roman law. They were rights granted over immovable properties, and their existence depended on the dominant estate and the servient estate.

Rural servitudes were rights over agricultural land, such as the right to use a water source or the right of way over another person's land. For example, a farmer could have a servitude over his neighbour's land to access a water source for irrigation purposes.

Urban servitudes, on the other hand, were rights over buildings or other structures on the land. They could include the right to light, the right to support, or the right to a view. For instance, if a building was constructed near a neighbouring property and blocked the view, the owner of the neighbouring property could claim a servitude of light to ensure that the obstruction was removed.

Both types of praedial servitudes were attached to the land and ran with the land, meaning they would pass to subsequent owners of the dominant estate. They could also be extinguished by certain events, such as merger or non-usage for a statutory period.

Define the term *servitudes* and differentiate between the following (i) praedial and personal servitudes; (ii) affirmative and negative servitudes.

A servitude is a right in rem that one person holds over the property of another person. Praedial servitudes are rights over the immovable property of another, while personal servitudes are similar to a life interest in movable or immovable property. Examples of praedial servitudes include easements and profits. Personal servitudes include the right of use, habitation, and usufruct.

Affirmative servitudes, or jus facendi, require the owner of the servient tenement to allow certain actions by the owner of the dominant tenement. Negative servitudes, or jus prohibendi, require the owner of the servient tenement to refrain from performing certain acts, such as building a structure that would obstruct a right of way. It is important to note that servitudes are enforceable against subsequent owners of the servient tenement, and may be established through agreement, prescription, or through a will.

Both personal and real servitudes have certain points in common. Explain.

To begin with, both personal and real servitudes in Roman law allowed a person to have rights over another's property. Personal servitudes did not require ownership of property, while real servitudes did. The rights that could be created by personal servitudes included usufructus (the right to use and enjoy someone else's property), usus (the right to use someone else's property), operae servorum vel animalum (the right to use the services of someone else's slaves or animals), and habitando (the right to reside in someone else's property). Real servitudes, on the other hand, were divided into two categories: rustic and urban. The main rustic servitudes included iter (the right to pass through someone else's property), actus (the right to drive animals or vehicles through someone else's property), via (the right to use a path or road through someone else's property), and aquaeductus (the right to use someone else's water supply).

Explain the personal servitude of Usus.

In Roman law, the personal servitude of Usus is a right granted to a person (usuarius) to use and enjoy a property, but without the right to take its fruits, meaning the usuarius cannot collect the natural products of the property such as crops or timber. The usus is limited to the personal needs of the usuarius and his family.

The usus holder had to contribute to the cost of repairs and maintenance of the property and was not allowed to make any structural changes or modifications to the property. Additionally, the usus was not transferable by the usuarius to another person, nor could it be acquired through prescription, meaning the right to use the property would come to an end once the usuarius dies or loses the right to use the property for any other reason.

Define usufruct and indicate three duties of a usufructuary.

The usufruct is a real right of use and enjoyment over someone else's property. This means that the usufructuary has the right to use the property and enjoy its fruits, but they must not damage or consume the substance of the property itself. In addition to these basic characteristics, there are three primary duties that a usufructuary owes to the owner of the property:

1. Duty of Preservation: The usufructuary must maintain the property and take reasonable care of it. They cannot do anything that would cause damage or deterioration to the property, nor can they make any changes or modifications to it without the owner's consent.
2. Duty to Pay Expenses: The usufructuary must bear the costs associated with the ordinary maintenance and upkeep of the property, such as repairs and taxes.
3. Duty of Restitution: The usufructuary must return the property to the owner in the same condition as it was when they received it, subject to normal wear and tear. This includes any improvements or modifications that the usufructuary made with the owner's consent, but not those made without the owner's permission.

Define emphyteusis. Indicate three grounds on account of which an emphyteutical grant could be forfeited.

Emphyteusis is a unique legal institution of Roman law, which is a contract through which the owner of land grants the use of that land to someone else, known as the emphyteuta, for a long period of time, often perpetually, in exchange for annual rent and the obligation to improve and cultivate the land. An emphyteutical grant could be forfeited on various grounds, including the failure of the emphyteuta to pay the annual rent, evidence that the emphyteuta has allowed the property to fall into disrepair, or if there was an irregular attempt to transfer the emphyteusis. Additionally, if the emphyteuta fails to perform their obligations to cultivate and improve the land, or violates the conditions of the grant, the grantor may be able to cancel the contract and resume possession of the land.

Distinguish between (i) possessio and detentio, and (ii) res sancta, and res religiose.

Possessio refers to legal possession of property, whereas detentio refers to physical control of property without legal possession. Possessio confers certain rights on the possessor, while detentio confers no rights.

Res sanctae were things considered sacred and protected by the gods, such as city walls. Res sacrae were things consecrated to the gods above, such as temples and altars. Res religiosae were things dedicated to the gods of the underworld, such as family graves. The distinction between these categories was important, as the violation of a res sancta or res sacra was considered sacrilege, while the violation of a res religiosa was merely a civil wrong.

What is meant by dominium? Indicate and give a brief definition of the three important rights that were competent to the person having dominium.

Dominium is the Roman law term for full ownership or absolute ownership of property. The owner of the property with dominium has the right to use it, enjoy its fruits and profits, and dispose of it as they see fit.

In addition to these broad rights, the owner also had more specific rights under dominium, including:

- Jus utendi - This is the right to use the property as the owner sees fit, such as by residing in a house or using a piece of land for farming.
- Jus fruendi - This is the right to enjoy the fruits and profits of the property, such as by harvesting crops or collecting rent.
- Jus abutendi - This is the right to consume or destroy the property. However, this right was limited and did not extend to wanton destruction or waste.

These three rights were considered essential to full ownership, and they gave the owner complete control over their property.

Define the following terms, giving example of each (i) res nullius, (ii) res mancipi and res nec mancipi, (iii) res quae usu consumatur.

- Res Nullius referred to things that were not owned by anyone and were considered free to be appropriated by anyone who discovered them, such as wild animals or unclaimed lands. Examples include fish in the ocean or game in a forest that were not owned by anyone.

- Res Mancipi were things that were considered of special importance in Roman law, such as land, slaves, and livestock. These were items that could be transferred only by specific formalities like mancipatio, a formal ceremony in which the seller transferred ownership of the res mancipi to the buyer. On the other hand, res nec mancipi were things that were not subject to formal transfer ceremonies and included items such as clothing, furniture, and jewellery.

- Res Quae Usu Consumatur referred to items that were consumed through use, such as food, drink, and fuel. These were items that could not be reused, like a loaf of bread or a tank of gasoline. On the other hand, res quae usu non consumatur referred to items that could be used repeatedly, such as clothing, furniture, and land. These were items that were not consumed through use and could be used multiple times without diminishing their value.

Distinguish between *rights in rem* and *rights in personam*

Rights in rem and rights in personam are two types of legal rights recognized in Roman law. A right in rem is a right that is available against the whole world, and not just one person. It is a right that attaches to a specific thing or property, and can be exercised against anyone who interferes with that right. Examples of rights in rem include ownership, servitudes, and security interests. On the other hand, a right in personam is a right that is available only against a specific person. It is a right that creates a personal obligation on someone to do

or not do something, rather than giving the right to control or dispose of a specific thing or property. Examples of rights in personam include contracts and torts.

Define: (i) tradition, (ii) occupatio, (iii) specificatio, (iv) accessio.

Tradition – Tradition was the legal mechanism through which ownership of a thing was transferred by the transfer of possession. In other words, it refers to the physical handing over of the object from one person to another, with the effect that ownership of the thing transferred vests in the transferee. The transferor must have the capacity to dispose of the property, the thing transferred must be present and the intention of the transferor must be to transfer ownership.

Occupatio - Occupatio was a way of acquiring ownership of a thing that was previously ownerless. This could occur with the discovery of a thing that had never belonged to anyone (res nullius), such as an abandoned property, or by removing something from its original location (res derelictae), such as a wild animal. To become the owner of the thing, the person had to take possession of it with the intention of becoming its owner.

Specificatio - Specificatio was the process of creating something new from existing material. The new thing was considered to be the property of the person who had produced it, provided that they had used their own material. However, if the new article could be reduced to its original form, the ownership of the material would prevail. For example, if a person used someone else's wood to create a table, the table would belong to the maker. But if the wood could be returned to its original form, then the wood would still belong to its original owner.

Accessio – Accessio was the legal principle by which an accessory became the property of the owner of the principal thing. For example, if a person added new parts to an existing machine, the machine and the new parts would belong to the owner of the original machine. The owner of the accessory would lose ownership of it, and it would become an integral part of the principal thing.

Which are the essential conditions of tradition?

Tradition refers to the transfer of possession that results in the ownership of the thing transferred vesting in the transferee. It is important to note that the transfer of a res mancipi by tradition did not automatically confer Quiritary ownership. However, an informal acquisition of ownership was protected by the praetor.

In order to recover a res mancipi that had been transferred by traditio through an action, the praetor allowed the person presently in possession to plead exceptio rei venditae et traditae, which means that the person in possession can assert that the thing was bought and paid for, and that he had received it in good faith. The ownership that was thus acquired by the person in possession was known as bonitary ownership.

Therefore, the essential conditions of tradition include the transfer of possession, the intention to transfer ownership, and the acceptance of the thing being transferred by the transferee. It is important to note that tradition is not an appropriate method of transferring ownership of immovable property.

Explain the difference between the concept of mixing solids and liquids and that of specificatio.

It's important to note that the concept of mixing solids and liquids is not the same as specificatio. While both involve the creation of a new thing, they differ in the way they involve pre-existing materials. Mixing, which is a form of accessio, occurs when two things, such as solids and liquids, combine physically and cannot be separated or restored to their original condition. In such cases, there is a common ownership of the resulting mixture.

In contrast, specificatio is a process that involves transforming or modifying existing materials to create something new. Under this concept, the new product is considered the property of the person who performed the work, as they have added their own skill and labor to the existing materials.

It's worth noting that in cases where the original materials can be easily separated and returned to their original state, the original owners retain their ownership over their respective materials. However, if the new product cannot be easily separated from the original materials, the owner of the materials and the person who performed the work both have ownership rights over the new thing, in proportion to their respective contributions.

How is the ownership of an island which has come into existence in a river determined?

In Roman law, the emergence of an island in a river bed was a rare occurrence that required a specific determination of ownership. The principle of accessio applied in this case, but the determination of ownership was based on the riparian owners' length of the river banks that they owned. In other words, the ownership of the newly formed island was proportionally divided among the riparian owners based on the length of their respective river banks. This rule ensured that the ownership of the island was justly distributed among the riparian owners and prevented disputes over ownership from arising.

Indicate seven ways of acquiring ownership under jus civile, giving a brief definition of each.

There are several ways to acquire ownership under jus civile in Roman law. The first method is mancipatio, which involved a fictitious sale. In jure cessio, a transfer involved the fiction of vindication, and it was only possible if the property was capable of acquisition ex Jure Quiritium. The transfer of corporeal property could be affected in this mode, as well as the treatment and extinguishment of usufructs and praedial servitudes.

Another method was through lege, which involved the vesting of property in a person by title derived from a Lex. Adjudicatio or judicial award was a method in actions for the division of property, where the judge could divide the property among the parties. Litis aestimatio or estimate of liability in a matter in issue was a method where a judge in an action for the restoration of property could order the possessor to restore it to the plaintiff. The plaintiff might then estimate its value, and the defendant might be allowed to keep the property on payment of its value.

Donatio or gifting was another way of acquiring ownership, and lastly, usucapio was the process of acquiring ownership of property or confirming a defective title by lapse of time. Roman citizens could acquire ownership of property or be confirmed in their title by usucapio under certain circumstances. These seven methods of acquiring ownership under jus civile were crucial in Roman law and played a significant role in the transfer of ownership of various forms of property.

Explain what we understand by perception and separation of fruits in the natural model of acquiring property.

Perception of fruits refers to the process by which the owner of a property acquires ownership of the fruits produced by it. This includes everything from the natural growth of trees and crops to rents and profits derived from property. The owner of a property is entitled to the fruits it produces because they are an extension of the land itself, and ownership of the land includes ownership of the fruits produced by it.

Separation of fruits refers to the act of detaching the fruits from the property in which they are produced. Once the fruits are separated from the land, ownership of the fruits is transferred to the person who performed the act of separation. For example, if an apple falls from a tree and is picked up by someone who

did not own the tree, that person acquires ownership of the apple. However, if the apple was still attached to the tree, ownership of the apple would belong to the owner of the tree.

It's important to note that ownership of fruits can be transferred independently from ownership of the property itself. This means that the owner of the property can grant someone else the right to collect and enjoy the fruits produced by it, even if they do not own the property itself. This is known as a usufruct, and it is one of the natural modes of acquiring property in Roman law.

Define Usucapio.

Usucapio was a legal method of acquiring ownership of property in Roman law through the passage of time. This was applicable to movable and immovable property and was achieved through uninterrupted possession of the property for a specific period stipulated by law. In general, for immovables, the period was two years, while for other things, it was one year. However, certain conditions had to be met for usucapio to be effective. For instance, the property in question must be capable of ownership and transfer between Roman citizens. The acquirer must have had commercium, a legal term referring to the right to engage in legal transactions, at the time of possession. Good faith, actual possession, and the lapse of time were other necessary conditions.

Describe the element of good faith in Usucapio.

To acquire ownership of property through usucapio, one of the necessary conditions is good faith. The principle of good faith requires that the acquirer of the property honestly believes that the transaction has made them the rightful owner. They must believe that the person from whom they received the property was either the rightful owner or had the authority to transfer ownership.

Good faith is not limited to the start of possession but must exist throughout the period of possession. If the possessor realizes at any point that their possession was obtained through illegal means, their good faith is destroyed, and the usucapio cannot be completed. Furthermore, if the possessor knows that the true owner of the property has not abandoned it, then they cannot claim ownership through usucapio, regardless of how long they have possessed it.

What are the essential elements of Usucapio.

Usucapio is a method of acquiring ownership of property through uninterrupted possession for a specific period of time as defined by the law. There are five essential elements of Usucapio that must be met in order for ownership to be acquired. Firstly, the object of the possession must be a thing capable of transactions, known as "Res Habilia." Secondly, there must be a just cause or title for the acquisition, referred to as "Titulusque." Thirdly, the acquirer must have an honest belief that they are now the owner of the property, which is known as "Fides." Fourthly, there must be juristic possession, not just mere detention, referred to as "Possessio." Finally, possession must continue uninterrupted for a specific period of time, which is two years for immovable property and one year for movable property, known as "Tempo." Meeting these essential elements will allow the acquirer to gain ownership of the property through Usucapio.

Explain the concept of possession.

Possession is a fundamental concept in Roman law, which is distinct from ownership. It refers to the physical control over a thing and the exclusion of adverse possessors. It is possible for someone to own something without possessing it, such as when an owner rents out a property, and for someone to possess something without owning it, such as when a person holds onto a lost item.

There are two essential elements of possession in Roman law, namely corpus and animus. Corpus refers to the physical element of possession, which means the actual control and custody of the thing. On the other

hand, animus refers to the mental element of possession, which means the intention to exercise control over the thing as an owner would. A person must have both corpus and animus to have possession.

The concept of possession is critical because it is a prerequisite for other legal rights and remedies, such as Usucapio, which is the acquisition of ownership by the lapse of time. The possession must be peaceful, public, uninterrupted, and continuous for a certain period of time to gain ownership. Therefore, the concept of possession is central to Roman law, and it is crucial to understand the difference between ownership and possession to navigate the legal system successfully.

R.W. Lee says "*things are distinguished between corporeal and incorporeal.*" Explain.

The concept of "things" in Roman law includes both objects and rights in objects that have economic value. These "things" are further distinguished between corporeal and incorporeal. Res corporalis refers to tangible objects such as land, buildings, or slaves, while res incorporealis refers to intangible rights such as a right to inherit property or a right to collect rent. The distinction between corporeal and incorporeal "things" is important because the rules of ownership and possession can vary depending on the type of "thing" involved. For example, ownership of a tangible object like a chair requires physical control, whereas ownership of an incorporeal right like the right to collect rent requires the exercise of that right through legal means.

Define thesaurus and explain who the possible claimants could be. (Explain why it is not a res derelicta).

In Roman law, thesaurus refers to an old deposit of money or valuable items that have been lost or forgotten, and no one knows the identity of the original owner. While thesaurus is a type of res nullius, it is not a res derelicta because it has not been abandoned by its owner but rather its ownership has been lost due to the passage of time.

When a thesaurus is discovered, three possible claimants can arise. Firstly, the owner of the land where the treasure was found may claim it as part of their ownership of the soil. Secondly, the finder of the treasure could potentially claim ownership if they have a good title to the discovery. Finally, the fiscus (public treasury) may have a claim to the thesaurus if it cannot be proven that the treasure belongs to any other person or if the treasure is found on state-owned land. It is important to note that the finder's right to the treasure is not absolute, as the owner of the soil or the fiscus may have a superior claim depending on the circumstances of the discovery.

Explain what we understand by (i) actio communi dividundo (ii) actio familae ercisundae, and (iii) actio finium regundorum.

Adjudicatio was a legal procedure in Roman law used to resolve disputes between co-owners of property. The procedure involved a judge awarding ownership of the property to one or more of the co-owners. There were several specific actions that could be taken under adjudicatio, including actio communi dividundo, actio familae ercisundae, and actio finium regundorum.

The actio communi dividundo was used to divide property that was co-owned, with the court ordering the property to be divided amongst the co-owners. The actio familae ercisundae was used to divide an estate that was vested in co-heirs, with the court determining the share of each heir. Finally, the actio finium regundorum was used to determine the boundaries of property.

These legal procedures were important in Roman law as they provided a mechanism for resolving disputes between co-owners and ensuring the fair distribution of property. They also demonstrate the importance placed on property rights and the legal protections afforded to property owners in Roman law.

Law of Succession

Which are the three main requirements for the validity of a Roman will.

A Roman will is a legal document that enables a person to determine how their property should be distributed after their death. For a Roman will to be valid, it must satisfy three principal requisites. Firstly, it must be valid ab initio, meaning it must be valid from the beginning. This means that the will must comply with all the legal requirements at the time of its creation, including the formalities for making a will. Secondly, the will must remain valid until the heirs enter upon their inheritance. This means that the will must not be revoked or altered in any way that would affect the validity of its provisions. Finally, the heirs must actually enter upon their inheritance. This means that the inheritance must be accepted by the heirs, as a will does not create any rights until it has been accepted by the heirs. If any of these three requisites are not satisfied, the Roman will may be declared invalid.

What is required to constitute a valid will ab initio?

To constitute a valid will ab initio, four essential elements must be fulfilled. Firstly, the will must be made in the proper form, which involves the use of prescribed legal formulae and witnesses. Secondly, heirs must be duly instituted in the will, and their identity and shares must be clear. Thirdly, both the testator and the heirs, as well as any witnesses, must have testamentary competence, which means they must meet certain legal requirements, such as being of sound mind and legal age. Finally, certain persons must either be instituted or disinherited in the will, such as descendants or ascendants, depending on the legal system in question. Failing to meet any of these requirements will render the will invalid ab initio.

Explain who can make a will. Could women make a will under Roman law?

In Roman law, the capacity to make a will was not limited to a certain class of people, but rather extended to all Roman citizens who were above the age of puberty and competent to express and form a sound judgment. However, women were excluded from the comitia, and thus could not make a will comitis calatis. Instead, they could make a mancipatory will, provided that they were sui juris and had property to dispose of.

To make a mancipatory will, a woman had to break away from her agnatic family by means of a fictitious coemption, which involved the transfer of ownership of the woman to a fiduciary tutor. This tutor would hold the property in trust for the woman and have the authority to allow her to make a will. The woman would also need to meet the requirements of testamentary capacity, including being of sound mind and not acting under duress or coercion.

How do wills fail to take effect?

In Roman law, there are several ways in which a will may be nullified, leading to the invalidity of the document. These include:

1. The subsequent introduction of a new suus heres into the family, who has a higher right to inherit.
2. The making of a subsequent will, which supersedes the previous will.
3. If the testator underwent a change of status subsequent to the will, such as losing citizenship or being freed from slavery, which would affect their legal capacity to make a valid will.
4. If the Praetor allowed the testator to burn, tear or deface a will, or erase the institution of an heir, which was considered an intentional act of revocation.
5. Later imperial law made a will void after a lapse of 10 years from its execution, to prevent outdated and possibly inaccurate instructions from being followed.
6. Wills may be set aside as inofficiosi, if they do not provide for certain close family members or if they are deemed to be against public policy or morals.
7. If no heir accepted the inheritance, the will is considered null and void.

What is exactly the difference between a legatee and an heir

To understand the difference between a legatee and an heir, it is important to know that an heir is a person who succeeds to all the legal rights and obligations of the testator. This means that the heir acquires not only the assets but also the liabilities of the deceased. On the other hand, a legatee is a person who is left a specific item or property in the will of the deceased. The legatee does not acquire the legal position of the deceased, but only has a right to the specific item or property left to him or her.

In some cases, a legatee may be left assets that do not belong to the testator, but to another person. In such cases, the legatee has a right to receive the asset from the person who owns it, and if the heir fails to procure it, the heir must compensate the legatee for the value of the asset.

It is important to note that a person can be both an heir and a legatee in the same will. In such cases, the person will inherit all the assets and liabilities of the testator as an heir, and also receive a specific item or property as a legatee.

Explain what we understand by (i) necessarii heredes, (ii) sui et necessarii heredes and (iii) extranei heredes.

In Roman law, there are three types of heirs: necessarii heredes, sui et necessarii heredes, and extranei heredes.

- Necessarii heredes were slaves who were granted the gift of freedom by the testator through the institution of heirs. They were called "necessary heirs" because they were obligated to accept the inheritance and could not refuse it. However, the Praetor gave them the right of separation (beneficium separationis) which allowed them to separate their share of the inheritance from the rest of the estate.
- Sui et necessarii heredes were descendants of the testator who were still under his power at the time of his death. Upon the testator's death, they became sui juris (legally independent) and were entitled to inherit along with other heirs.
- Extranei heredes were individuals who were not subject to the testator's power, such as friends or strangers. They had the right to accept or refuse the inheritance and could take their time when deciding. Once they made a decision to accept or refuse, it could not be revoked, except in the case of minors or soldiers.

Explain what we understand when we say that a testamentary institution might absolute or conditional.

In Roman law, a testamentary institution refers to the appointment of an heir or legatee in a will. Such an institution can be either absolute or conditional.

An absolute institution of an heir means that the inheritance will go through under all circumstances, without any conditions or requirements needing to be met. In contrast, a conditional institution of an heir means that the inheritance will only go through if certain conditions or requirements are met.

Conditional institutions can be further divided into two types: suspensive conditions and resolutive conditions. A suspensive condition means that the fulfillment of the institution is delayed until the condition is met. For example, a testator might institute an heir with the condition that they first graduate from university. The institution will not be fulfilled until the heir graduates from university.

On the other hand, a resolutive condition means that the institution is immediately binding and will remain binding unless the condition is met. For example, a testator might institute an heir with the condition that they remain unmarried. If the heir gets married, the institution is no longer valid, and the inheritance will not go to them.

Explain what we understand when we say “an heir or heirs must be duly instituted.”

When we say "an heir or heirs must be duly instituted," we mean that the testator must clearly designate who will inherit his or her assets and liabilities. This is an essential requirement for a valid will. The designation of heirs must be specific and unambiguous, so as to avoid any disputes or confusion. The law requires that the testator institute one or more heirs, failing which the will would be considered void ab initio.

However, not everyone can be instituted as an heir. For example, a peregrine, or a foreigner, could not be instituted as an heir in Roman law. Also, postumi or unborn children at the time of the making of the will could not be instituted as heirs. The testator must have a clear intention and understanding of the persons he or she is instituting as heirs. The capacity to be instituted heir is wider than the capacity to make a will, as it includes sons in power, slaves, young children, and insane persons. However, the acceptance of the question raised difficulties in the case of young children and insane persons. Therefore, it is important that the testator properly institute one or more heirs to avoid any legal complications after his or her death.

Explain what the Querela Inofficiosi Testamenti was.

The Querela Inofficiosi Testamenti was a legal remedy available under Roman law for challenging a testamentary disposition that disinherited or inadequately provided for certain close family members, such as the testator's spouse, children or parents. This legal action could be taken by any aggrieved party, including a potential heir or someone who would have had a legitimate expectation to inherit from the testator. The claimant had to show that the will was not made freely and voluntarily or that it went against the testator's moral and legal obligations to provide for certain family members. If successful, the will could be set aside, and the inheritance could be redistributed in accordance with the intestacy rules. However, the challenge had to be brought within five years of the heir taking possession of the inheritance, and the defendant was typically the testamentary heir who stood to lose the most.

Explain what changes Justinian made to the Querela Inofficiosi Testamenti

During his reign, Justinian made significant changes to the Querela Inofficiosi Testamenti. One of the major changes was that a Querela could only be brought where the plaintiff had received nothing under the will. This means that only those who were completely left out of the will could challenge it, and not those who received less than they expected. Additionally, Justinian introduced new rules about how a testator with children should divide his estate. For example, a testator with up to four children had to leave them equal shares of up to a third of his estate, while a testator with more than four children had to make half of his estate available. Furthermore, a testator had to institute as an heir those of his descendants who were entitled to succeed him on intestacy. Finally, Justinian laid out detailed legal grounds in case of disinheriting a child, one's parents, or one's siblings, thus providing greater clarity and protection for potential heirs.

Under what circumstances might the Querela Inofficiosi Testamenti

The Querela Inofficiosi Testamenti was a legal procedure that allowed certain close relatives to challenge the validity of a will on the grounds that they had not received a fair share of the testator's estate. The party bringing the Querela was required to show that they had received less than a fair share, and that they had no other legal recourse to address the issue. However, if the party had been disinherited for just reasons, they could not bring the Querela.

Additionally, Justinian's reforms introduced new restrictions to the Querela. For instance, a person could only bring the Querela if they had received nothing under the will. Moreover, the reform stipulated that a testator with up to four children had to leave them equal shares of up to a third of his estate, while a testator with more than four children had to make half of his estate available. A testator was also required to institute as heir those of his descendants who were entitled to succeed him on intestacy. Lastly, the Querela was barred by a lapse of 5 years from the time when the heir entered on the inheritance.

Under Justininan, legislation legacies were of four kinds. Distintinguish.

Under Justinian, the legislation of legacies expanded into four types, each with its own unique characteristics. First, there is Per Vindicationem, which entitled the legatee to demand and claim the specific property identified in the legacy. This type of legacy would allow the legatee to vindicate the subject of the legacy and receive it as his or her own property.

The second type is Per Damnationem, which allowed the testator to give anything whatsoever, regardless of whether it belonged to himself, his heir, or a third person. This type of legacy was known as a general legacy and provided a great deal of flexibility for the testator in deciding what to leave to the legatee.

The third type of legacy is Per Sinendi Modo, which imposed a negative duty of sufferance on the heir. Instead of giving the legatee a specific item, this type of legacy gave the legatee the right to enjoy a specific benefit or right, such as the right to live in a particular house. The heir was then required to tolerate or suffer the legatee's use of the item.

Finally, there is Per Praeceptionem, which directed the legatee to take something out of the estate before it was distributed amongst the heirs. This type of legacy was a preferred legacy and gave the legatee the right to receive a specific item or sum of money before the distribution of the rest of the estate to the heirs.

Explain legatum per Damnationem.

Legatum per Damnationem was a type of legacy in Roman law that allowed the testator to give anything he wanted, whether it was his own property, his heir's property, or even a third party's property. This type of legacy was different from others because it allowed the testator to give things that did not yet exist, such as unborn slaves or next year's harvest.

The term "damnatio" referred to the fact that the legacy was not a specific thing, but rather an obligation on the part of the heir to provide the legatee with whatever the testator intended. The legatee had no right to demand a specific item, but rather had the right to demand that the heir fulfill the obligation imposed on him by the testator.

It is important to note that the heir was not obligated to pay for the legacy out of his own pocket. Instead, the legacy was paid out of the estate, which meant that the other heirs might receive less than they would have otherwise. Because of this, legatum per damnationem was sometimes viewed with suspicion, and was subject to certain limitations and restrictions in Roman law.

Explain Legatum per Vindicationem.

Legatum per Vindicationem was a type of legacy in Roman law that allowed the legatee to vindicate the subject of the legacy from the heir or anyone else by a real action called action confessaria. This type of legacy was only applicable if the testator had quiritary title over the thing given. The legatee became the owner of the property by quiritary title from the moment of acceptance of the legacy. Legatum per Vindicationem was a powerful legal mechanism because it allowed the legatee to assert his or her ownership rights over the legacy against anyone who challenged them. This type of legacy was often used to give specific items of property, such as a house, a slave, or a piece of land, to a particular person.

Explain Legatum per Sinendi Modo

Legatum per Sinendi Modo was a type of legacy where the duty imposed upon the heir was negative. It was a duty of sufferance, meaning the heir was not required to actively transfer the subject of the legacy to the legatee. However, the heir was required to permit the legatee to take possession of the subject of the legacy, by any appropriate method. This type of legacy could only be used to dispose of what belonged to the testator or his heir at the time of death and not what belonged to a third person. It was typically used to give a specific thing, such as a house or a piece of land, to a legatee without the need for a formal transfer of

ownership. It was important for the testator to ensure that the subject of the legacy was clearly identified to avoid disputes between the legatee and the heir.

Explain Legatum per Praeceptionem

Legatum per Praeceptionem was a type of legacy where the testator directed the legatee to take something out of the estate before it was distributed among the heirs. This type of legacy was controversial as some argued that it could only be left to a co-heir, while others believed that it could be left to anyone. In any case, the legatee had to take possession of the thing bequeathed before the heirs took possession of the estate. If the legacy was left to a co-heir, the legatee had to pay the other co-heirs their share of the value of the thing bequeathed. The Praetor had jurisdiction over disputes arising from legacies of this type.

Explain what we understand by fideicommissa.

Fideicommissa were a type of testamentary disposition in Roman law. It involved a request by the testator to the heir (fiduciarius) to transfer or hand over property or some part of it to a person not qualified to take as an heir or legatee at civil law, such as a peregrinus. The fiduciarius, who had legal ownership of the property, was required to carry out the wishes of the testator and transfer the property to the fideicommissarius. This was often used as a way to bypass legal restrictions on inheritance and ensure that certain individuals would receive the testator's property. The fideicommissum was often created by informal expressions of the testator's wishes, rather than by formal legal language, which could lead to disputes over the exact terms of the disposition.

Explain what we understand by papillary substitution.

Pupillary substitution was a mechanism in Roman law that allowed a paterfamilias to ensure the continuity of his family line by appointing a child in his power as the primary heir, and providing a substitute for the event of the child's death or rejection of the inheritance. The substitute heir would only come into play if the primary heir did not accept or predeceased the paterfamilias before reaching puberty. This type of substitution could not be postponed beyond puberty, and was not possible for an emancipated child. This mechanism was aimed at preventing the family line from dying out and was used extensively in Roman succession planning.

Could unascertained persons be instituted as heirs?

In Roman law, it was not possible to institute unascertained persons as heirs. The term "incertae personae" referred to persons whose identity or personality was not precisely determined in the mind of the testator at the time of making the will. For example, if the testator bequeathed a share of his estate to "the first person who comes to my funeral," such a person could not be precisely determined. This rule was also applied to postumi or persons who were not born on the date of the will, as well as to corporate bodies. Therefore, in order to be valid, an heir must be specifically identified and clearly determined at the time of making the will.

Explain the order of succession in intestacy under the Twelve Tables.

The order of succession in intestacy under the Twelve Tables was a crucial aspect of Roman law. It determined the order of priority for inheritance when someone died without leaving a valid will. According to the Twelve Tables, the first in line to inherit were the sui heredes (proper heirs), who were all the persons that would become sui juris (of legal age and independent) upon the death of the deceased. The Twelve Tables did not discriminate based on gender, so both male and female sui heredes had an equal right to inherit.

If there were no proper heirs, then the next in line were the proximus adgnatus (next agnates). These were the persons who would be in the deceased's potestas (power or control) if they were still alive. The Twelve

Tables gave preference to the closest agnates, which meant that those more closely related to the deceased had a greater chance of inheriting.

If there were no proper heirs or next agnates, then the gentiles, who were the members of the deceased's clan, became entitled to the inheritance. The Twelve Tables viewed the gentiles as a last resort since they were not related by blood, but rather by association. The order of succession under the Twelve Tables was significant because it aimed to preserve the family and clan structure while also ensuring that the property did not escheat to the state.

A testator had to be competent." Who could or could not make a will?

In Roman law, a testator had to meet certain requirements to be considered competent to make a will. Firstly, the testator had to be a Roman citizen or a colonial Latin. The Junian Latins were an exception to this rule and were disabled from making a will. Additionally, peregrines, who were foreigners residing in Rome, and slaves were also barred from making a will.

Furthermore, the testator had to be sui juris, meaning they must have legal capacity and not be subject to any legal incapacity, such as insanity or mental incompetence. The testator also had to be above the age of puberty, which was set at 14 for males and 12 for females. This age requirement was necessary to ensure that the testator was capable of forming a valid judgment.

Finally, women had some limitations regarding the types of wills they could make. They were not allowed to make a will comitis calatis, which was a public will declared before a magistrate. However, they were allowed to make a mancipatory will provided that they were sui juris.

Explain briefly the changes made by the Praetor to intestate succession.

The Praetor made significant changes to intestate succession in Roman law through the introduction of the Bonorum Possessio, which allowed certain persons who were not entitled by civil law to inherit to succeed. The Praetor created four classes of potential heirs who could take the Bonorum Possessio:

1. Emancipated sons and sons in adoption who were later emancipated by the adoptor were allowed to share with civil law heirs.
2. The nearest agnates or persons failing to claim in the first class were admitted.
3. Blood relations up to the sixth degree were admitted.
4. The husband was admitted to the succession of his wife, and vice versa.

These changes expanded the scope of possible heirs beyond the rigid rules of civil law, allowing for a broader range of relatives and relationships to inherit. The introduction of the Bonorum Possessio provided a means for the Praetor to intervene in cases where civil law did not provide a clear or fair distribution of the estate.

Explain what is understood by a testament by bronze and balance.

A testament by bronze and balance, also known as a testament per aes et libram, was a form of will in which the testator executed a transfer of ownership of his estate in a formal ceremony before a libripens, who was a person responsible for weighing and measuring the assets involved in the transaction. The ceremony involved the testator handing over a balance and bronze ingots to the libripens and stating his intentions in front of five witnesses. The testator conveyed his estate to the person he had designated as his heir, subject to a trust that allowed him a life interest in the estate. This form of will could also be executed on wax tablets, and in later law, it was permissible to seal the tablets on which the will was written, with their contents not disclosed at the ceremony. The will had to be made in Latin and, later, Greek. This form of will was recognised by the Twelve Tables and remained valid until the end of the classical period.

Law of Obligations

Explain the real contract of commodatum.

Commodatum, a contract of loan for use, was considered one of the four real contracts in Roman law. It involved the gratuitous loan of movable or immovable property, which could also extend to fungible things that were to be returned in the same form. For instance, it was applicable when a person lent their goods to another to dress up their shop window. This contract gave rise to bilateral obligations and rights for both parties. The borrower was obliged to take good care of the property and return it in the same condition it was received, while the lender had the right to claim the property at any time. Additionally, the borrower was responsible for any damage or loss caused to the property, unless it resulted from normal wear and tear. Overall, Commodatum was an essential contract that facilitated the temporary transfer of property for specific purposes, ensuring that the interests of both parties were protected.

Explain the real contract of mutuum.

The real contract of Mutuum was a gratuitous loan from the consumption of a res quae usu consummator. It involves the transfer of ownership of money, or other fungible things through a unilateral contract.

The term "Mutuum" means "borrowing" in Latin, and this type of contract involved a transfer of ownership of a fungible item, such as money, grains or wine, from the lender to the borrower. The borrower was obligated to repay the same quantity of the item borrowed, or an equivalent value of it.

Unlike Commodatum, Mutuum did not require the borrowed item to be returned in specie, and the lender did not retain any rights or interests in the borrowed item. Instead, the borrower acquired full ownership of the item, and the obligation to repay was purely monetary.

Mutuum was an important contract in Roman law, and it was used extensively in commercial transactions. It gave rise to a legal obligation for the borrower to repay the borrowed sum, and the lender had the right to sue for recovery of the debt if it was not repaid. In this way, Mutuum played a vital role in facilitating trade and commerce in ancient Rome.

What are the duties of the parties in the real contract of Depositum?

In the real contract of Depositum, the depositor has the duty to hand over a specific thing to the depositee for safekeeping. The depositor is also responsible for paying the expenses related to the custody of the thing and is liable for any damage caused to it while in the possession of the depositee. On the other hand, the depositee has a duty to keep the thing safely and not to use it for their own purposes. They are also obligated to return the thing to the depositor upon demand, without any charges. In addition, the depositee must hand over any produce or profits generated from the thing to the depositor. Furthermore, the depositee is required to provide the depositor with any rights of action they may have against a third party who caused any loss or damage to the thing while it was in their possession.

What are the duties of the buyer in the consensual contract of sale?

In the consensual contract of sale, the buyer is subject to several duties. Firstly, the buyer is obliged to pay the price for the goods purchased, but only if the seller has fulfilled their obligations under the contract. Secondly, the buyer must take delivery of the goods as soon as the seller tenders it, or at the time agreed upon in the contract. Finally, any costs that were properly incurred by the seller between the date of the contract and delivery, such as storage or transportation costs, are charged on the buyer. It is important to note that these duties may vary depending on the specific terms of the contract, and that failure to fulfill these duties may result in a breach of contract.

What are the duties of the seller in the consensual contract of sale.

In the consensual contract of sale, the seller has several important duties to fulfill. Firstly, the seller is obligated to deliver the res (the thing being sold) at the agreed-upon time. In addition to timely delivery, the seller must exercise exacta diligentia, or the highest level of care, while the res is pending delivery. This means that the seller must take all necessary measures to ensure the safekeeping of the res until it is delivered to the buyer.

Moreover, the seller must provide the buyer with exclusive and vacant possession of the res, which means that the buyer must be protected against any eviction from the res by order of the court. In case the res has any undisclosed defects that interfere with its enjoyment, the seller must either suffer rescission or offer compensation to the buyer.

In summary, the seller's duties in the consensual contract of sale include timely delivery, exercising the highest level of care, providing exclusive and vacant possession, and guaranteeing against eviction by order of the court.

Which are the essential elements of a contract of sale?

The contract of sale in Roman law has three essential elements: consent, subject matter, and price. Firstly, the parties must have a mutual understanding and agreement about the sale, and if they don't intend to reduce it to writing, the contract is completed as soon as the thing and the price are determined. Secondly, the subject matter must exist or be capable of existing, be capable of being owned, and be something in which the buyer acquires an interest under the contract. Lastly, the price must be in money, be certain, genuine, and in certain cases, reasonable. It is worth noting that the parties can agree to additional terms, but these essential elements must be present for the contract of sale to be valid.

Explain what we understand by Area in the consensual contract of sale.

In the consensual contract of sale, Arra refers to the practice of handing over a coin or object by one party to another in order to "bind the contract." This practice was later extended to include a deposit on the sale, such as an installment of the purchase price. The purpose of Arra was to give a guarantee of performance by both parties, and it was seen as a sign of good faith. If the sale did not proceed, the party receiving the Arra was entitled to keep it as compensation for their trouble. However, if the sale was completed, the Arra was returned or applied to the purchase price. This practice was an important part of Roman commercial law, and it helped to ensure that transactions were conducted fairly and honestly.

Explain the element of the price in the consensual contract of sale.

The element of the price in the consensual contract of sale is a crucial factor in determining the validity of the contract. Firstly, it must consist of money, meaning that any other form of payment, such as a barter system, will not suffice. Secondly, it must be certain, which means that the price must be determined or ascertainable. If the price is left to the discretion of one of the parties, the contract will fail. However, if the price is to be fixed by a third person, then the contract will be valid as long as the third person fixes the price.

In addition to being certain, the price must also be genuine, meaning that the price must not be fraudulent or simulated. Finally, in certain cases, the price must be reasonable. For example, if a vendor received less than half of the fair price, he may recover what he sold by returning the money paid for it. However, the purchaser has the option to supplement what he paid to make up the fair price. Overall, the element of the price is an important aspect of the consensual contract of sale, as it ensures that the price is certain, genuine, and reasonable.

It is said that in a contract of sale the thing must either be in existence or capable of existing. Explain.

In a contract of sale, the subject matter of the contract must either exist at the time of the contract or be capable of coming into existence. For example, if a person sells a car, the car must exist at the time of the contract. On the other hand, if a person sells next year's harvest, it is considered capable of existing because it is a future product that will come into existence in due course. It is important to note that the thing sold must also be capable of being owned by the buyer under the contract, and the seller must have the right to transfer ownership of the thing to the buyer. In cases where the subject matter is not capable of existing or being owned, the contract is not valid.

Explain the duty to guarantee against eviction in sale.

In a contract of sale, the seller has the duty to guarantee against eviction by order of the court. This means that the seller must provide exclusive and vacant possession of the property to the buyer to ensure that the buyer is protected from any legal claims by third parties regarding the property.

In the earliest period of Roman law, if a purchaser lost their property due to eviction, they had an action for double the price. However, at a later date, stipulations were implied in the sale, and if the property was of considerable value, express stipulations for double the price were made. This meant that the seller had to pay double the price to the buyer if the buyer suffered eviction. This duty to guarantee against eviction was a crucial element in ensuring that the buyer could have peaceable enjoyment of the property they had purchased.

Explain what we understand by the guarantee against undisclosed defects in the consensual contract of sale.

In the consensual contract of sale, the guarantee against undisclosed defects meant that if the seller failed to declare any defects in the property which they were aware of, or if they had guaranteed that the property was free from defects, then they would be liable for general damages. This liability could be enforced through an actio empti, which was an action available to the buyer for breach of warranty or for defects in the quality of the property sold. The seller was obligated to provide a warranty against any latent or hidden defects, and the buyer had the right to demand rescission of the contract or compensation if such defects were discovered. This was a significant protection for buyers in ensuring that they were not deceived or misled in the purchase of property.

Explain the real contract of pignus.

The real contract of Pignus was a type of security in Roman law, used to secure a debt. It was different from other types of security, such as Mancipatio cum fiducia or hypotheca, in that it did not involve the transfer of ownership but rather the transfer of possession of an object as security.

Under the Pignus contract, the debtor would transfer possession of a movable object, such as a piece of jewelry or a valuable piece of art, to the creditor as collateral for a debt. The creditor would hold onto the object until the debt was repaid, and if the debtor failed to repay the debt, the creditor would have the right to sell the object to satisfy the debt.

In addition to the transfer of possession, the Pignus contract required a formal agreement between the parties, as well as the delivery of the object in question. The creditor was also required to take care of the object while in their possession, and could be held liable for any damage or loss that occurred due to their negligence.

The Pignus contract was a useful tool for creditors who needed to secure a debt, as it allowed them to take possession of an object of value without having to take ownership of it. For debtors, it provided a way to secure a loan without having to sell or transfer ownership of valuable assets.

Explain the duties of the parties in the contract of pignus.

The contract of Pignus, also known as pledge, creates a real security interest over a movable or immovable property. The duties of the parties in this contract are as follows:

Duties of the creditor/pledgee:
• To restore the thing when the debt is paid off or the obligation secured by the pledge is extinguished.
• If the pledged property is sold, to restore the surplus, if any, to the pledgor after satisfying the debt.
• To exercise exact diligence in preserving and taking care of the thing pledged.
• In an ordinary pledge of a movable, not to use the thing unless expressly authorised by the contract.

Duties of the debtor/pledgor:
• To deliver the thing pledged to the creditor or an authorised third party.
• To indemnify the creditor for any damages caused by the pledged property if he knew or ought to have known about its harmful or mischievous quality.
• To pay any damages caused by the res.
• To compensate the pledgee for any expenses incurred by the thing pledged, such as storage fees or transportation costs.
It is important to note that the creditor's duty to preserve the pledged property is not absolute, and he is not responsible for loss or damage caused by events beyond his control. Furthermore, if the debtor fails to fulfil his obligations under the contract, the creditor may have the right to sell the property to satisfy the debt, but only after giving the debtor notice and an opportunity to cure the default.

Which are the essential elements of the contract of mandate?

The contract of mandate is a type of consensual contract in Roman law where one party, themandator, entrusts another party, the mandatary, with the performance of a specific task or obligation on the mandator's behalf. The essential elements of this contract are:

1. Mandate: There must be a mandate or commission, which is the obligation or task entrusted by the mandator to the mandatary. The mandate must be specific and cannot be open-ended or vague.
2. Mandator: The mandator is the person who entrusts the obligation to the mandatary. The mandator must have the legal capacity to enter into the contract of mandate.
3. Mandatary: The mandatary is the person who is entrusted with the obligation or task by the mandator. The mandatary must have the legal capacity to perform the task or obligation.
4. Consent: The contract of mandate requires the mutual consent of the parties involved, which can be expressed or implied. The consent must be free, voluntary, and not obtained through coercion, fraud, or mistake.
5. No remuneration: Unlike other contracts, the contract of mandate does not require any remuneration or compensation for the mandatary's performance of the task or obligation. However, if the mandatary incurs expenses while carrying out the mandate, the mandator may be required to reimburse those expenses.
6. No formalities: The contract of mandate does not require any formalities or specific form to be valid. The consent of the parties is sufficient to establish the mandate.

How can the contract of mandate be dissolved?

The contract of mandate, which involves one party undertaking to carry out a task or provide a service for another party, can be dissolved in several ways under Roman law. Firstly, revocation of the mandate by the

mandator, i.e., the person who made the request, will terminate the contract if it occurs before the mandatory, i.e., the person who accepted the request, has acted upon it. Secondly, the death of either party automatically ends the contract of mandate. Furthermore, if the mandatory becomes unable to fulfill the mandate due to illness, incapacity, or any other reason, the mandate will also be dissolved. It is important to note that if the mandate involves a third party, their consent is necessary for the mandate to be dissolved. Lastly, the completion of the task or service required by the mandate will also bring the contract of mandate to an end.

What are the essential elements of a contract of hire?

The contract of hire, also known as the contract of lease, requires the presence of three essential elements for its validity. The first one is consent, which means that the parties involved must agree to the essential terms of the contract. The form of the contract is not essential, and it can be concluded orally, in writing, or by messenger.

The second element is the subject matter, which can take one of three forms: the hire of a thing, the hire of services, or the hire of a piece of work. The thing or service must be clearly defined in the contract and must be capable of being leased.

The third essential element is payment. Payment must be in money and must be certain and genuine, meaning that the amount of payment must be specific and definite, and it must be capable of being paid. However, the payment need not be fair, and the parties are free to negotiate the amount of payment as they see fit.

Additionally, the contract of hire can also contain other terms such as the duration of the lease, the obligations of the parties, and the conditions for termination of the lease. These terms are not essential but can be included to clarify the rights and obligations of the parties.

What are the duties of the parties in a contract of locatio conductio operis?

The contract of locatio conductio operis is a contract of work, in which one party (locator) undertakes to have work done by another party (conductor) in return for payment. The following are the duties of the parties in a contract of locatio conductio operis:

Duties of the Locator:
- To provide the necessary resources (res) to the conductor, including tools, equipment, and materials, to enable the conductor to perform the work.
- To pay for any repairs that may be needed for the res during the term of the contract. To reimburse the conductor for any necessary or useful expenses incurred while performing the work, such as transportation costs or the cost of materials.

Duties of the Conductor:
- To take possession of the res for the agreed-upon term and to perform the work with the level of diligence required by the contract.
- To exercise diligentia quam suis rebus, meaning that the conductor must exercise the same level of care and skill that he would use in his own affairs.
- To complete the work within the agreed-upon time frame and according to the agreed-upon specifications.
- To maintain the res in good condition while it is in his possession.
- To receive payment for the work upon completion of the contract, unless otherwise agreed upon.
- To pay rent if he uses the res of the locator in the course of performing the work.

Explain the contract of hire of services (Locatio Conductio Operarum).

The contract of hire of services (Locatio Conductio Operarum) is an important type of contract in Roman law, which involves one party agreeing to provide services to another party in exchange for a fixed sum of

money. The parties to the contract are known as the locator (employer) and conductor (employee). The contract of hire of services was relatively simple to form, as it required no formalities and was complete as soon as the parties agreed on the essential terms of the contract.

Under this contract, the locator was obligated to provide the necessary tools and materials for the conductor to perform the service. The locator was also responsible for any repairs needed to complete the service and for reimbursing the conductor for any necessary or useful expenses incurred in the course of performing the service.

On the other hand, the conductor was obliged to provide his services to the locator for the agreed-upon period of time, to exercise diligence in the performance of his work, and to complete the task within the time frame agreed upon. The conductor was also required to pay rent to the locator for the use of any equipment or materials necessary to complete the task.

It is important to note that the contract of hire of services was distinct from the contract of hire of work (Locatio Conductio Operis), which involved the hiring of a worker to perform a specific task or produce a specific product. Overall, the contract of hire of services played an essential role in the economy of ancient Rome, as it facilitated the provision of services and the production of goods.

Explain what we understand by the verbal contract of stipulatio.

The verbal contract of stipulatio was a fundamental part of Roman law and was used extensively in legal transactions. It involved a very specific form of communication, in which one person (the stipulator) asked a question to another person (the promisor), and the latter responded with a specific answer that was considered binding. The question and answer had to be precise and match exactly, and both parties had to be present in the same location for the contract to be valid.

Stipulatio could be used for a wide variety of agreements, from simple promises to complex financial arrangements. The formal nature of the contract made it highly adaptable and allowed it to be used in a variety of situations. Additionally, stipulatio was a highly flexible contract in terms of the consideration that could be given. It could be either conditional or unconditional, and the promise could be anything of value or nothing at all.

Overall, stipulatio was a critical part of Roman law and played a significant role in the legal and economic systems of the time. Its importance can be seen in the fact that it survived for centuries and was still in use in some legal contexts until the 19th century.

Define the consensual contract of partnership.

The consensual contract of partnership was a fundamental legal concept in Roman law. It was an agreement between two or more individuals who shared a common purpose and combined their property, skills or resources to achieve it. The partnership could be established without any formalities, and was based on mutual trust and cooperation.

Each partner had a duty to make a contribution to the partnership, whether it was in the form of property or services. In return, they would share in the profits and losses of the venture. The partnership could be dissolved by any partner at any time, but only with the consent of the other partners. The object of the partnership had to be legal, and any agreements made in violation of the law were void.

Partnership was an important aspect of Roman commercial life, and played a crucial role in the development of trade and commerce in the Roman Empire. The partnership was a flexible and adaptable legal instrument that allowed individuals to pool their resources and expertise to undertake joint ventures and pursue common goals.

Explain how a partnership is dissolved.

A partnership can be dissolved in several ways. One method is through an "ex actionae" action, which is a legal procedure where a partner declares their intention to dissolve the partnership. Another way is through an "ex rebus" dissolution, which occurs when the partnership's objective has been achieved or becomes impossible to achieve. A dissolution can also occur "ex voluntate" when the partners express a desire to dissolve the partnership or when the agreed period of time expires. Lastly, a partnership can be dissolved "ex persona" due to the death, bankruptcy, or confiscation of goods of a partner. It is important to note that the partnership can only be dissolved with the mutual consent of all the partners and according to the terms and conditions agreed upon in the partnership agreement.

Explain the duties of the partners between themselves.

Partners have a fiduciary relationship with each other, meaning that they owe each other the highest degree of good faith and loyalty. In addition to the duties listed, partners must act in good faith towards each other, refrain from engaging in any activities that would be harmful to the partnership, and share information regarding the partnership's affairs. Partners are also prohibited from competing with the partnership, and must seek the consent of the other partners before entering into any transactions that could impact the partnership. Overall, partners are required to act in the best interest of the partnership and each other at all times.

Which are the essential elements of the contract of partnership?

The contract of partnership is a consensual agreement between two or more individuals who have the intention of combining their resources and skills to achieve a common goal. There are four essential elements of a partnership contract, namely:

1. Contribution by each partner - Each partner must contribute something of value to the partnership, whether it is property, skills, labor, or money.
2. Common interest - The partners must have a shared interest and common purpose in forming the partnership, such as a business venture or a joint project.
3. Intention to form a partnership - The partners must have the intention to form a partnership, which can be expressed or implied by their actions and conduct.
4. Lawful object - The object or purpose of the partnership must be lawful and not against public policy or morals. Any partnership agreement that seeks to promote illegal activities or contravenes public policy is considered void and unenforceable.

It is important to note that the partnership agreement need not be in writing, but it is advisable to have a written agreement outlining the terms and conditions of the partnership. In addition, the partnership is a fiduciary relationship, which means that the partners owe each other a duty of loyalty, good faith, and fair dealing. Each partner is responsible for the actions of the other partners, and any breach of this duty can result in legal action.

Outline three examples of quasi-delicts.

Quasi-delicts, also known as Aquilian actions, are actions based on fault or negligence that give rise to liability even in the absence of a contractual relationship. Here are three examples of quasi-delicts in Roman law:

1. Damage caused by fire or other dangerous items: If someone negligently or recklessly started a fire or threw something dangerous out of a window, and the fire or item caused injury or damage to another person, the person who caused the damage could be held liable for the resulting harm.
2. Damage caused by animals: If someone's animal, whether domesticated or wild, caused harm to another person, the owner could be held liable for the damage. This liability extended to situations where the animal was not under the owner's control, but where the owner should have known that the animal was likely to cause harm.

3. Damage caused by employees: Employers were held responsible for the actions of their employees, even if the employer was not personally at fault. For example, if a slave or free person in the employ of an innkeeper or stable keeper caused harm to a customer, the innkeeper or stable keeper could be held liable for the resulting damage. Similarly, ship owners were responsible for the actions of their crew members.

The Senatus consultum macedonianum controlled loads of money to sons in power. Explain.

The Senatus consultum Macedonianum was a Roman legal provision enacted during the Republic to regulate the practice of loaning money to sons in power. It provided a set of conditions that needed to be met for such loans to be allowed. Specifically, the provision prohibited the lending of money to sons in power unless certain requirements were satisfied. First, the son had to be legally capable of managing his own affairs (sui juris). Second, the father had to either consent or ratify the loan, or have benefited from it. Third, the son had to have his own peculium, a form of property or allowance that belonged to him separately from his father's property. Fourth, the son had to have waived the right to the exception on attaining legal majority. Finally, if the son was studying away from home, he was allowed to borrow a sum not exceeding his regular allowance. These conditions were designed to prevent abuse of power and financial exploitation of sons in power, while at the same time allowing for legitimate lending practices under specific circumstances.

The Senatus consultum macedonianum controlled loads of money to sons in power. Explain its effects.

The Senatus consultum Macedonianum was a Roman legal measure that aimed to control the influence of powerful sons by forbidding loans of money to them. This regulation had far-reaching effects, as it ensured that the lender would not be able to recover the loan even after the father's death. As a result, it served as a safeguard against any possible abuse of power by the sons, who were often in a position to exert undue influence over their fathers. The regulation provided exceptions in certain cases where the son was sui juris, had his own peculium, or had renounced the benefit of the exception. It also allowed for borrowing within limits if the son was away from home on studies. Overall, the Senatus consultum Macedonianum played a significant role in curbing the power of sons in Roman society and ensuring financial stability for lenders.

Describe three modes of extinguishing an obligation.

In Roman law, there were various modes of extinguishing an obligation. One of the ways was through death or Capitis Deminutio, where the obligation of either party couldn't be transmitted to an heir on the death of either party. Capitis Deminution as a result of adrogation also extinguished certain debts. Another way was through Comfusio or merger, where the creditor became the heir of its debtor or vice versa. Finally, obligations could also be extinguished through Novation, which involved the dissolution of an old obligation by the creation of a new one. For the substitution of a creditor, the consent of all parties was needed, but it was possible to substitute a new debtor without the old debtor's consent. These modes of extinguishing an obligation were essential in Roman law as they provided legal mechanisms for ending obligations in various situations.

Explain novatio as a means of determining obligations.

Novatio is a legal concept in Roman law that allows the parties involved in an existing obligation to terminate it by creating a new one. This is done by substituting one or more of the original parties or terms of the obligation with new ones. The creation of the new obligation must be explicit and accepted by all parties involved.

Novatio can occur in two ways: expromissio or delegatio. In expromissio, a new debtor replaces the original debtor with the consent of the creditor. In delegatio, the original debtor delegates his obligation to a third party with the consent of the creditor, who agrees to release the original debtor from liability.

One important aspect of novatio is that it extinguishes the original obligation and replaces it with a new one. This means that any securities or guarantees attached to the original obligation will be extinguished as well. It is also important to note that novatio can only be used to substitute parties or terms in an existing obligation, and cannot be used to create a new obligation from scratch.

Law of Actions

What is meant by proceedings in jure and in judicio? What was the function of the magistrate and of the judge appointed to preside in each type of proceedings?

In Roman law, the legal process consisted of two main stages: "in jure" and "in judicio." "In jure" was the preliminary stage where the Praetor presided over the proceedings, considered certain matters, and decided whether the case was worthy of litigation. If the Praetor granted the action, a judge was nominated, and a formula was drafted. The Praetor's function was to determine whether the parties had the legal capacity to sue and be sued, whether the case fell within his jurisdiction, and whether the case was fit for trial.

"On the other hand, "in judicio" or "judicio" was the second stage of the proceedings of legis actiones. At this stage, the judge appointed to preside over the case was obliged to hear evidence from both parties. This stage was not arbitrary and was strictly based on the formula. The judge had to pronounce the final judgment in the presence of both parties. The judge's function was to determine the facts of the case and apply the law to those facts. The judge was expected to be impartial and to follow the law strictly.

It is important to note that the formula played a crucial role in both stages of the proceedings. The formula was a written document that set out the issues in dispute, the relief sought, and the legal basis for the action. The formula was essential in ensuring that the trial was conducted in an orderly and predictable manner.

Indicates in their proper order, the 5 main clauses of the formula (under the formulary system) defining each clause briefly.

Under the formulary system, the formula was the written statement of claim submitted by the parties and provided the basis of the judge's decision. It consisted of five main clauses, which were ordered as follows:

1. Nominatio - The first clause identified the judge or judges who would preside over the case. The judge was typically chosen by mutual agreement between the parties, but could also be appointed by the praetor.
2. Demonstratio - The second clause set out the facts of the case that formed the basis of the plaintiff's claim. This included a detailed description of the events that led to the dispute.
3. Intentio - The third clause stated the specific question that the judges had to decide upon. This was the crux of the matter and formed the focus of the litigation.
4. Adjudicatio - The fourth clause directed the magistrate to determine the shares of the parties in the case. This was important in cases where there were multiple parties involved, as it allowed the magistrate to apportion responsibility and damages accordingly.
5. Condemnatio - The fifth and final clause directed the judge to either accept the plaintiff's claim or reject it. If the claim was accepted, the defendant was condemned to pay damages or perform some other action as directed by the formula. If the claim was rejected, the plaintiff was not entitled to any relief.

Distinguish between praescriptio, exceptio and replicatio. At which point were they introduced in the formula?

In the formulary system, three important concepts are praescriptio, exceptio, and replicatio. The praescriptio was introduced before the formula, and it aimed to limit the scope of the action to prevent future claims arising out of the same transaction from being consumed by litis contestatio. The exceptio, on the other hand, was a defense to the plaintiff's claim, which did not deny the plaintiff's right but rather denied their right to enforce it. It was inserted in the intentio as a negative condition of the condemnation. The exceptio could be challenged by a counter-plea called replicatio, which was inserted in the same way as the exceptio. The replicatio aimed to rebut the defences raised by the exceptio, and if necessary, the defendant could

introduce a triplicatio, quadruplicatio, and so on. The exceptio and replicatio played important roles in the system of formulas by providing defendants with an opportunity to raise defences and challenge the plaintiff's claims.

Define the actions in rem and actions in personam.

Actions in rem and actions in personam are two types of legal actions recognized in Roman law. An action in rem is a legal action brought against a specific thing or property. The purpose of an action in rem is to assert ownership of the property or to assert or deny a servitude or easement over the property. These actions were considered to be binding on the whole world and not just the parties involved. Examples of actions in rem include vindicatio, confessoria, and negatoria.

On the other hand, an action in personam is a legal action brought to enforce an obligation or a duty owed by one person to another. The purpose of an action in personam is to obtain a judgment against a specific person, ordering them to perform or refrain from performing a specific act. These actions were considered to be binding only on the parties involved. Examples of actions in personam include condictio and actio ex stipulatu.

What is meant by: vindex, proletarius, and assiduus? Who could act as a vindex for (i) a proletarius, (ii) an assiduus?

In Roman law, a vindex was a person who could contest the validity of a judgment in a separate suit. The vindex could act as a guarantor for the defendant and offer a defense in the case.

A proletarius was a person who did not have enough property to qualify as an assiduus or a farmer. They were often unskilled laborers, and their status as a proletarius made them ineligible to serve as a vindex for anyone. However, anyone could act as a vindex for a proletarius.

An assiduus, on the other hand, was a landowner who met certain qualifications, such as owning a minimum amount of land. Only an assiduus could be a vindex for another assiduus. This meant that if an assiduus was being sued and needed a vindex, only another assiduus who met the qualifications could act in that role.

Explain briefly the role of the defendant during proceedings in jure under the formulary system.

During proceedings in jure under the formulary system, the defendant had several options available to him. First, he could admit the claim, which would then be used as the basis for subsequent execution of the claim. Second, he could deny the plaintiff's facts or rights in the matter, which would be construed as his willingness to defend the action. Third, he could accept the plaintiff's statement of rights and actions but assert other matters that would bar the action. Finally, the defendant had the right to remain silent. Each of these options had different consequences for the proceedings, and the defendant had to choose carefully based on his specific situation.

There was no systemised form of reference to legal precedent in Roman law, however, imperial rescripts were binding. Explain, with reference to Justinian's Constitutions.

In Roman law, there was no formal system of reference to legal precedent. Instead, decisions of individual judges were not considered binding on future judges, and the use of analogy was relied upon to reason from existing cases to new ones. However, imperial rescripts were binding, and they formed an important part of the law.

Justinian's Constitutions are a collection of laws, issued by the emperor Justinian I in the 6th century. The constitutions were a codification of Roman law, which aimed to unify the law and simplify it for the purpose of administration. The constitutions contained imperial edicts, decrees, and rescripts, which were binding on judges.

Rescripts were responses to requests for legal guidance, made by private individuals, magistrates, or judges. The emperor's response was considered binding law, and judges were required to follow it in future cases. Rescripts were particularly important in areas where the law was unclear or where new legal issues had arisen.

Justinian's constitutions included a number of rescripts, which were incorporated into the law as binding precedent. The Digest, one of the four parts of Justinian's codification, contained extracts from these rescripts, alongside other legal sources.

Overall, while there was no systemised form of reference to legal precedent in Roman law, imperial rescripts were considered binding and formed an important part of the law, as evidenced by their inclusion in Justinian's Constitutions.

Differentiate between intercession and appellation. Was there any right of appeal in civil actions during the Republic?

Civil actions were those that originated from the Twelve Tables, the basic legislation of early Roman law, or were created by subsequent legislation. These actions were strictly defined and their scope was limited by the text of the law. Praetorian actions, on the other hand, were introduced by the praetor in his annual edict, which set out the guidelines for the administration of justice during his term of office. These actions were more flexible and could be adapted to suit new situations that were not covered by the existing laws.

In terms of the distinction between actionis stricti juris and bona fidei, stricti juris actions were those where the judge was required to decide solely on the basis of the law and the facts presented to him, without taking into account equitable considerations or the circumstances of the case. Bona fidei actions, on the other hand, allowed the judge to consider the good faith of the parties and the circumstances of the case in reaching his decision. This made it possible for the judge to take into account factors such as mistake, fraud, or undue influence, which might not be apparent from the strict application of the law. The distinction between these two types of actions became increasingly blurred over time, as the principles of equity and good faith were gradually incorporated into the Roman legal system.

Differentiate between intercession and appellation. Was there any right of appeal in civil actions during the Republic?

In the Roman Republic, there was no right of appeal in civil actions. However, a party could use the remedy of intercession or intercessio. This remedy allowed magistrates of equal or higher standing to veto a judgment made by a lower magistrate. Furthermore, it was possible for a private individual to make a formal demand for the exercise of intercession, known as appelatio. During the Republic, the appeal process was not yet established, and the final decision on a case rested with the magistrate who heard the case in the first instance. The introduction of the appeal process under the Empire allowed for higher judicial review, which increased the level of certainty and consistency in the legal system.

What is meant by restitution in integrum? In which instance and on which grounds was this remedy granted and by whom? What was the purpose behind this remedy?

Restitutio in integrum was a legal remedy under Roman law that aimed to restore a party to their original position before suffering prejudice from some act or event which had legal consequences. This remedy was

typically granted by the praetor after an inquiry into the circumstances of the case, and it was based on equitable principles that recognized the injured party's entitlement to relief.

Restitution in integrum was granted for various reasons, including fear, fraud, change of status, just error, necessary absence, and minority, as enumerated by Paul. For instance, if a party had been compelled to enter into a transaction through fear, they could seek restitution in integrum to be restored to their original position before the transaction. Similarly, if a party had been defrauded, they could seek this remedy to be put back in their original position before the fraudulent act. The purpose of this remedy was to provide an equitable and just solution to parties who had suffered harm, and to restore them to their rightful position before the occurrence of the event or act that caused them prejudice.

When was a regular system of appeals introduced in Rome? Account for the various steps that an appeal from the decision of a magistrate in Rome progressively followed.

During the Roman Republic, there was no regular system of appeals, but intercession and appellation were available in certain circumstances. However, during the Empire, a more structured system of appeals was introduced.

Under this system, if a magistrate in Rome made a decision that was unfavourable to one party, that party could appeal to the Prefect of the City. If the appeal was unsuccessful, the case could be taken to the Praetorian Prefect or even to the Emperor himself, depending on the circumstances.

For cases arising in municipal magistrates in Italy and the provinces, the appeal process was slightly different. In this instance, appeals would first go to the governor of the province where the case originated. If the governor upheld the original decision, the case could then be taken to the Praetorian Prefect for further consideration.

Overall, the introduction of a regular system of appeals helped to ensure that decisions made by magistrates were subject to review and could be corrected if necessary. It also helped to create a more consistent and predictable legal system, which in turn helped to promote stability and justice in Roman society.

To what extent was a judge bound to follow (i) previous decision; (ii) imperial rescripts?

While there was no formal doctrine of stare decisis in Roman law, meaning no formal legal precedent, previous decisions could still be persuasive and influential in subsequent cases. Judges were expected to consider the principles of law and equity and to exercise their own discretion in deciding cases. However, the opinions and rulings of respected jurists and previous judicial decisions could be influential in guiding the judge's decision.

On the other hand, imperial rescripts, which were decrees issued by the emperor in response to legal questions, were considered to have the force of law and were binding on all judges. Judges were required to follow imperial rescripts without question, even if they conflicted with their own opinions or previous decisions. This reflected the emperor's role as the ultimate source of law in the Roman legal system.