



INTRODUCTION TO ROMAN LAW



Fall 2023

Introduction and Tentative Syllabus Professor Charles Donahue

This is the basic website for this course. In addition to this syllabus, the website contains class outlines, PDFs of the class assignments, and links to the recorded lectures and their slides (all under 'Lectures'). We will be using the Canvas site for the course for email, the discussion board, and storage of complete copies of the course readings.

There are several separate documents that are connected with this syllabus, most of which are referred to in it:

[Sign-up Sheet](#) (let me know what your background and interests are so that I can form the small groups and fix the topics for the last quarter of the course). **Please return this sheet by [email](#) by 9:00am on Mon., 11 Sep.**

[Suggested Paper Topics](#) (a list of possible topics for the 5-page paper with the dates when they will be taken up in class, and hence when your first draft will be due).

[Select Bibliography](#) (used to be quite elaborate but this year simply a list of online resources; does, however, contain some advice on what online sources to use for your paper).

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Meeting times

The course meets officially from 10:30 to 12:00 on Mondays and Wednesdays. (Monday and Wednesday rather than Monday and Tuesday, because I am trying to encourage a couple of brave souls to cross-register from the FAS.) I say ‘officially’ because we will not necessarily run the formal class for a full hour and a half every day. We learned during Covid that hour-and-a-half classes are rough. Rather, what I have done for the first half of the course is record lectures, which I am asking you to watch before the class. There is a discussion board on Canvas where you can post your reactions to and questions about the recorded lectures. We’ll begin each class with a general discussion about the lecture. Then, on many days, we’ll break up into two smaller groups for more specific discussion of the texts on which the lecture was based. The division between the groups will probably be based on those who know some Latin and those who do not. Each group will report what it learned in the small group either at the end of the class or at the beginning of the next class. This is something of an experiment, derived from what we did during Covid. I tried it once post-Covid, and it seemed to work well.

Course content

In the thousand years between, roughly, 500 BC and 500 AD, the Romans developed the most elaborate and comprehensive secular legal system that was known in the ancient world. This system was revived in the high middle ages and became an important (some would say the most important) influence on the development of modern western legal systems. This course introduces that system: (1) the political and social context in which it arose and flourished, (2) the categories of private law which it applied in its ‘classical’ period (roughly the first 250 years of our era), (3) its speculative origins in the distant past (the XII Tables of 450 BC), and (4) the mechanisms by which it was developed by a group of lawyers called ‘jurists’ in the classical period. Each of these four topics account for approximately three weeks in the course.

The course raises important substantive, comparative, and methodological issues, issues that are of concern to all lawyers, whether or not they happen to be interested in Rome. We will focus particularly on the relationship between legal doctrine, of which Roman law has a lot, and Roman society. We will ask the question – to which there is no firm answer – whether the seeming autonomy of Roman private law over the long period of its development is real or just apparent.

The specific topics for the first three-quarters of the course are relatively well fixed, but there is some flexibility at the end, depending on your interests. The focus will be largely on private law. We will spend some time on the Roman ‘constitutions’ at the beginning of the course. We will say relatively little about Roman criminal law.

Prerequisites

None. See below under [Background](#).

Requirements

(1) Post some sort of reaction to the materials for the class on the discussion board before each class (particularly important in the first half of the course). (2) A short paper (no more than 5 double-spaced pages exclusive of notes), a first draft rewritten in response to my comments. (3) A take-home exam. For further details, see below under [Discussion, Papers, Exam](#).

Workload

You could spend a lot more time on this course than you do in a regular three-hour course. Some of the primary sources in the *Materials* are quite long, and there is secondary reading that goes with each section of the course. You *could* spend a lot of time, but you don't have to. One of the reasons that the primary sources are sometimes long is that I wanted to include what you would need to write a paper, and you won't be writing a paper on every part of the course. In the past, I have asked students who did well in the course what they did. Most of them said that they looked at the lecture outlines before the class and tried to read the primary sources that were cited in the outlines. They only looked at the secondary sources for their papers and when they were reviewing for the exam. Converting that to how we are operating this semester suggests that if you listen to the recorded lectures, perhaps having a copy of the outline with you, take some notes, look up the primary sources that are cited in the lectures (all of which are in the *Materials*), and come to class, you'll do just fine. This is likely to be a small course, and it does not have to be graded on a 'curve'.

Background

This course assumes that you have had the first year of law school and nothing else. The readings are all in translation, and no prior knowledge of Latin, ancient history (etc., etc.) is required. I will ask you to learn about a hundred Latin words and to be able to recognize about a hundred more, because I believe that one should not speak of a foreign legal system without using the technical vocabulary of that system. Even here, there are transliterations into English. I don't care whether you say 'usufruct' (believe it or not, an English word) or *usus fructus*. What I don't want you to say is 'life estate' when you mean usufruct. The Roman usufruct is like a life estate, but it is also unlike, and the point of using the Roman technical term is that it reminds us of the fact that we are not dealing with the same thing.

Traditionally about half the people who take this course have some background in classical languages and/or ancient history, and about half don't. We will probably divide the small groups on that basis. A prior exposure changes somewhat the kind of paper that you can write, but everyone who has taken the course has found something to write about intelligently. Those who are unencumbered with prior knowledge frequently see things that

those who have some prior knowledge assume away. This is a small course. Don't be scared away.

Assignments

With only 24 classes, preparation for, and attendance at, each class is critical. If you can't make it to class (illness, attendance at court), send me an [email](#), and we'll figure out how you can make it up.

Each class has an assignment that is posted under [Lectures](#) on the website. All the classes have reading assignments in the *Materials*, which are posted in the same place. Every class also has an outline which you can download and print. (The ones for the last quarter of the course will be made up after you have decided what we are going to cover.) The outlines have been made up in advance and cover material both in the recorded lectures and in the class. The first half of the course has recorded lectures that are linked in the same place. The recorded lectures have accompanying PowerPoint slides that can also be downloaded from the same place. How you balance these various pieces is up to you. Do what works for you. As noted above, however, I would like you to watch the recorded lectures before the class and post some kind of reaction (comments, questions, a few sentences, no more than a couple of paragraphs) on the discussion board before 9:00 a.m. on the morning of the class, because the discussion in class will be based on the recorded lectures and your reaction to them.

Discussion, papers, exam

Posting something on the discussion board is particularly important in the first half of the course when the class discussion is dependent on what you have to say. There are, however, discussion topics for more than three-quarters of the course, and I will add topics for the last quarter when we get a clearer idea of what we are going to do. I'd like to get reactions (as above, comments, questions, a few sentences, no more than a couple of paragraphs) from all of you for all the classes before 9:00 a.m. on the morning of the class (earlier is better), but the requirement is that you do it for more than half of the 24 classes. I grade them but on a pass-fail basis. If you make a good faith effort to say something intelligent, you pass.

In addition to preparation for and attendance at class, you will be required to submit a paper and to take a take-home final exam (described in the course description as two 'take-home' papers). If you have kept up with the reading and lectures, the exam should not take you more than a day to complete, but it will be distributed in the last class and may be turned in at any time during the examination period. It will pose a problem, a traditional law-school 'issue-spotter' ("Gaius lent Julius his lawn mower, which the latter left out in the rain . . ." – you get the idea) to be answered in traditional law-school fashion. It will also require a general essay, maximum five pages, on some aspect of the relationship between Roman private law and Roman society. The take-home exam should be [emailed](#) to me not later than Fri., 15 Dec. (You do not turn it into the registrar's office.)

The paper should be no more than five pages exclusive of notes. It should analyze a piece or a couple of pieces of primary source material (the original or in translation as you prefer) and lead to a general idea. It may deal with any of the topics covered in Parts III and IV of the course, or with a topic of your choosing. You should let us know your choice of topic *not later than* Tue., 10 Oct. (earlier is better). A draft of the paper should be [emailed](#) to me no later than the day on which we cover your topic in class (preferably before the class). You will be asked to do a brief presentation of your paper to the class. I will return the draft to you with comments. On the basis of the comments and of the class discussion of your topic, you are to rewrite the paper, [emailing](#) the final draft to me no later than Fri., 15 Dec. There is more about the papers in [Papers and Paper Topics](#) and the [Select Bibliography](#) contains at the beginning some advice on how to proceed..

The submissions on the discussion board count for 10% of your final grade, the paper for 30%, and each of the take-home exam questions for 30%. Ties will be broken on the basis of the paper.

Office hours

My office hours are currently scheduled from 1:30-3:30 on Tuesdays , or by appointment. I was not a great fan of Zoom classes, but I thought that Zoom office hours worked well. Send me an [email](#), and I'll send you back a Zoom link. If that starts getting awkward, we'll try something else. I'm also available by email at other times. My assistant, Ms. Chaudhry-Muffuletto ([email](#)), will be handling some of the course administration. Feel free to get in touch with her if you can't raise me.

Tentative Syllabus: Assignments

[Abbreviations](#)

[Part I \(weeks 1–3\)](#)

[Part II \(weeks 4–6\)](#)

[Part III \(weeks 7–9\)](#)

[Part IV \(weeks 10–12\)](#)

In what follows: *Materials* = C. Donahue, ed., *Materials on Roman Law* (unpublished ed., 2023); Nicholas = B. Nicholas, *An Introduction to Roman Law* (Oxford, 2008); Wolff = H. J. Wolff, *Roman Law: An Historical Introduction* (Norman, 1951); Watson = A. Watson, *Rome of the Twelve Tables* (Princeton, 1975). Basically, Wolff is the secondary reading for the first part of the course, Nicholas for the second, and Watson for the third. The secondary readings for the fourth part of the course will be included in the *Materials* for that part of the course when they are issued. Complete copies of the *Materials* and all of the secondary readings are available online in Canvas under the 'Files' tab.

I. THE EXTERNAL HISTORY OF ROMAN LAW

- Wed., 6 Sep. Introduction, Chronology, Survey of Roman Constitutional History to the end of the Republic.
Recorded Lecture01
Materials, p. vii, Section 1A, Section 1E (paragraphs pr–32 [in boldface]; Wolff, 7–48; Nicholas, 1–14.
- Mon., 11 Sep. Survey of Roman Constitutional History in the Principate; Outline of Roman Procedural Systems.
Recorded Lecture02 (includes material [on the Dominate] that will not be covered in class until Mon., 18 Sep.)
Recorded Lecture03 (includes material [on the formulary procedural system] that will not be covered in class until Wed., 13 Sep.)
Materials, Sections 1B–C, 2A1–2 (2A2 is long; focus on paragraphs 1–34 [boldface]), 2B1–3 (secondary material that you do not have to read unless you are interested).
- Wed., 13 Sep. The Formulary Procedural System; Overview of Sources of Law.
Recorded Lecture04 (includes material on the jurists that will not be covered in class until Mon., 18 Sep. and material on imperial constitutions that will not be covered in class until Wed., 20 Sep.)
Materials, Sections 2A1, 2A2 (2A2 is long; review what is at the beginning [paragraphs 1–9 (boldface)]; then focus on paragraphs 32–52; they explain the chart in 2A1), 3A1 (short but critical for sources of law), 3C (first page only but also critical for sources of law); Wolff, 49–126; Nicholas, 14–37.
- Mon., 18 Sep. The Jurists; Constitutional History of the Dominate.
Material in Recorded Lectures 02 and 04 are relevant to this class.
Materials, Sections 1D, 1E (particularly relevant here are paragraphs 35 and following), 2A3 (only if you are interested in what Justinian did with the corresponding passages in Gaius).
- Wed., 20 Sep. Imperial Constitutions; Codification; the Making of the *Corpus Iuris Civilis*.
Recorded Lecture 04 is relevant to this class.
Recorded Lecture05
Materials, Sections 1F–G (this is two whole titles from the *Digest* and the *Code*; you don't need to get into the details; try to get some sense for the types of material that they contain and the structure); Wolff, 127–75; Nicholas, 38–45.
- Mon., 25 Sep. The Contents of the *Corpus Iuris Civilis*; the Second Life of Roman Law.
Recorded Lecture06
Review *Materials*, Sections 1F–G (we will focus particularly on D.23.2.1–7 and the notes that come at the end of Section 1F); Nicholas, 45–54; Wolff, 177–225.

II. CATEGORIES: A SURVEY OF ROMAN PRIVATE LAW

- Wed., 27 Sep. General Categories; Persons.
Recorded Lecture07
Recorded Lecture08 (This lecture contains material that we will not reach in class until Mon., 2 Oct.)
Materials, Sections 3A1–4, 3B1, 3C (this last is relevant to all the classes in this Part); Nicholas, 54–97.
- Mon., 2 Oct. Persons (cont'd).
Review Recorded Lecture08
Review *Materials*, Sections 3A1–4, 3B1, 3C; Nicholas, 54–97.
- Wed., 4 Oct. Property.
Recorded Lecture09
Materials, Sections 3A5, 3B2; Nicholas, 98–157.
- Mon., 9 Oct. Holiday
- Tue., 10 Oct. Succession.
Recorded Lecture10
Materials, Sections 3A6–8; Nicholas, 234–70.
- Wed., 11 Oct. Obligations.
Recorded Lecture11 (We will probably not reach the material on delicts in class until Mon., 16 Oct.)
Materials, Sections 3A9–10; 3B3 (contractual obligations) 3B4 (delicts); Nicholas, 158–233.
- Mon., 16 Oct. Obligations (cont'd), Actions, Introduction to the XII Tables.
Recorded Lecture12 (The lecture includes both actions [which is quite short] and an introduction to the XII Tables.)
Review *Materials*, Sections 2A2–3.
PAPER TOPICS MUST BE CHOSEN BY THIS DATE.

III. HOW DID IT ALL START?

- Wed., 18 Oct. Archaic Procedure.
Read Watson 125–33; *Materials*, Section 4A1 (for this and every other assignment in this Topic; Tables I–III are particularly relevant here); review *Materials*, Sections 2A2 (*Gaius* 4.10–31), 2B1, 4A4.
- Mon., 23 Oct. Archaic Family, Succession & Guardianship.
Materials, Sections 3A2–4, 2A2 (*Gaius* 1.108–15, 48–51, 55–57, 116–31, 136–137a, 142–200, 4.79); Watson 3–51; 166–86. *Materials*, Sections 3A, 2A (*Gaius* 2.224, 101–04, 191–245, 4.17a, 3.154–154b, 1.141–200, 2.64); Watson 52–80.
- Wed., 25 Oct. Archaic Slavery, Patronage & Nexum.
Materials, Sections 3A, 2A (*Gaius* 1.124–41, 4.21–25); Watson 81–124.
- Mon., 30 Oct. Archaic Property.

Materials, Sections 2A, 3A, 3B (*Gaius* 4.16, 1.116–23; 2.1–27; *Justinian* 2.1.41; *Gaius* 2.42–61, 204). Review Watson 125–33; read Watson 134–65.

Wed., 1 Nov. Archaic Delict, the Greek Comparison, and Summary.
Read Watson 1–3; review Watson 166–86; read *Materials*, Sections 4A2–3, 4B.

IV. SOCIAL FORCES AND JURISTIC METHOD: TOWARD A THEORY OF LEGAL DEVELOPMENT

Mon., 6 Nov. Classical Marriage and Family Property.
Materials, Section 5.

Wed., 8 Nov. Classical Delict (the *lex Aquilia*).
Materials, Section 6.

Mon., 13 Nov. Social Aspects of Classical Procedure and the *actio iniuriarum*.
Materials, Section 7.

Wed., 15 Nov. Contract and Commerce: *mutuum* and *societas*.
Materials, Section 8.

Mon., 20 Nov. Property and Society: servitudes and landlord/tenant.
Materials, Section 9.

Mon., 27 Nov. General Juristic Ideas (*iusticia, ius gentium, ius naturale, regulae iuris*).
Materials, Section 10.

Wed., 29 Nov. Roman Jurists and Roman Orators. Final lecture. Take-home exams distributed.
Materials, Section 11.

Wed., 2 Dec. to
Fri., 15 Dec. Reading and Exam period.

Fri., 15 Dec. Exams and papers due by [email](#) by 4:30 p.m.

[\[Home\]](#) [\[Lectures\]](#)

URL: <http://www.law.harvard.edu/faculty/cdonahue/courses/rlaw/syll/index.html>

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