

Preface

Roman law, as transmitted through the sixth century codification of Emperor Justinian, forms an important part of the intellectual background of many legal systems currently in force in Europe, Latin America, Asia and other parts of the world. Justinian sought to produce, on the basis of the legal heritage of ancient Rome, an authoritative statement of the law of his own day. During the Middle Ages and the Renaissance, however, his system (*Corpus Iuris Civilis*) was adopted through a process known as 'Reception' and applied as the basis of the common law (*ius commune*) of Continental Europe. The growth of the modern nation-state and the unification of national law through codification in the eighteenth and nineteenth centuries engendered the eventual displacement of the *ius commune*, and thus Roman law ceased to exist as a direct source of law. But as the drafters of the codes greatly relied on the *ius commune*, elements of Roman law were incorporated in different ways and to varying degrees into the national laws of Continental Europe and thereby into the legal systems of many countries around the world. But why was Roman law adopted? The medieval reception of Roman law was partly due to the lack of centralized governments and developed formal legal systems and partly due to the fact that the lands formerly governed by the Romans were accustomed to this style of thought, and accorded it wisdom and authority. A third feature, deriving almost completely from the model of the *Corpus Iuris Civilis*, was the desire of most countries to codify their law and the aspirations of later jurists for their studies to conform to this model. But Roman law was adopted not merely because it was admired, nor because its norms were particularly suitable for the social conditions in the early European nation-states (in fact, many norms of Roman law were entirely antiquated). Foremost, it was the perceived superiority of Roman law as a logical, coherent and complete system that led to the adoption of its norms. Thus, the conceptual and normative framework of Roman law furnished the foundation of the legally organized relationships of life and an important common denominator of most Western legal thinking. Knowledge of this framework therefore constitutes an essential component of a sound legal education, for without such knowledge one cannot fully understand the evolution and functioning of contemporary legal systems and institutions rooted in Roman law. To common law

students and lawyers, in particular, such knowledge can provide a key to the common language of almost every other system of law that traces its origins to the European *ius commune*.

The present book begins with a historical introduction, which traces the evolution of Roman law from the earliest period of Roman history up to and including Justinian's codification. This chapter examines the nature and development of the sources of law in their social and political context, the mechanisms by which the various sources were made effective and the ways in which each source influenced the progress of the law. The last part of this chapter outlines the history of Roman law from the early Middle Ages to modern times and illustrates the way in which Roman law furnished the basis of modern European legal systems. Then follows an exposition of the principal institutions of Roman private law: the body of rules and principles relating to individuals in Roman society and regulating their personal and proprietary relationships. Private law greatly overshadowed public law in both its intrinsic merit and subsequent influence. This is because private law had a dominant role in the development of legal norms and was the chief interest of the Roman jurists, the most creative element in Roman legal life. In this part of the book special attention is given to the Roman law of things, which forged the foundations for much of the modern law of property and obligations in European legal systems. Furthermore, since the Romans tended to shape their legal rules in terms of procedural techniques rather than in terms of general and abstract norms, this part of the book also explores the main features of the law of actions and elucidates the implementation of legal judgements. Throughout the work care has been taken to present the major features of Roman private law as a logically interconnected whole. At the same time, emphasis has been laid on those aspects of Roman law that have particular importance to today's lawyer.

This introductory book has been written primarily for students whose course of studies includes Roman law, European legal history and comparative law. It can also prove of value to students and scholars interested in the fields of ancient history and classics. The book endeavours to present the basic principles of Roman private law as clearly and systematically as possible. Each chapter contains a large number of explanatory notes and references to Roman juridical sources, designed to assist the student who wishes to delve deeper into one or more of the topics mentioned. Since readers may not necessarily possess the expertise to study the original ancient texts, all the Latin words and phrases are translated and explained in clear and simple but precise terms. The end of the book lists the bibliographical references for further reading, together with the titles of the studies and research that formed the basis of this work. As long as it is remembered that the book is not devised as a thorough elaboration of all the complexities of Roman private law, and is therefore likely to be used in conjunction with other more detailed materials, it has a place in rendering Roman law more accessible to readers in many diverse fields of legal and historical learning.

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