



# **An Introduction to Roman Law**

## **and**

# **its Contribution to the World**

**By**

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## Introduction

Roman law was the law of the city of Rome and subsequently of the Roman Empire. The influence of Roman law on modern legal systems has been immense: legal systems of the world have been shaped significantly - directly or indirectly - by concepts of Roman law.

The development of Roman law comprises more than a thousand years of jurisprudence which developed in different phases. A high-watermark in Roman jurisprudence was the *Corpus Juris Civilis* (529-34 AD) drafted under the direct guidance of Emperor Justinian 1. The *Corpus Iuris Civilis* is a remarkable legacy from a remarkable era in legal history.

Five and a half centuries after the emperor Justinian and centuries after the decline of the Roman Empire, the 'jurisprudence' of Rome was 'revived' - partly by being studied in the universities of Northern Italy from the eleventh century onwards. Nicholas, in his book, *An Introduction to Roman Law*, noted that this phase of Roman law

'gave to almost the whole of Europe a common stock of legal ideas, a common grammar of legal thought and, to a varying but considerable extent, a common mass of legal rules.'<sup>1</sup>

Although many have argued that England stood out against the 'reception' or 'revival' of Roman law and retained its own Common law – it is accepted now that the Common law too has been, to a considerable extent, influenced by Roman law.

Today, there are two great legal systems in the world of European origin – the Common law of England (influenced to a certain extent only by Roman law) and the Civil law of continental Europe shaped largely by the 'revived' Roman law. The Common law is the basis of the legal systems of most English-speaking nations. The Civil law is the basis of the legal systems of countries on the continent of Europe and countries in South America and elsewhere. The other great non-European legal systems, the Hindu and the Mohammedan, are largely religious based but have 'imported' aspects of the Common law and Civil law into commercial transactions.

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<sup>1</sup> Barry Nicholas, *An Introduction to Roman Law*, Oxford, (1961), p..2

Students of law will be familiar with the concepts of, and distinctions between, public law and private law. Public law relates to the regulation of the state: constitutional law is described as a branch of public law. Private law regulates legal relationships among individuals and the greatest influence of Roman law has been in the sphere of private law and this paper is confined to this aspect of law.

### Phases of Roman History

From around 510 BC, the Roman Republic developed as a small city-state. By 272 BC, following a period of territorial expansion, Rome's control over Italy was almost complete. In two wars (264-241 BC, 218-201 BC) Carthage, a rival for the Central Western Mediterranean, was eventually defeated. Subsequently Rome was at war with the East. Territorial expansion in the second century BC changed the face of Italy from small farming holdings to large estates with slave labour. Over a period of time, a professional army became mobilised. This enhanced the power of ambitious generals and set a pattern.

After much strife, a period of peace and stability commenced c. 27 BC and Octavian, known as Augustus, restored constitutional government and the Empire took shape. Around this time, all the territory surrounding the Mediterranean and territory far beyond the Mediterranean was part of the Roman Empire. By the first century AD, the Roman Empire extended to Britain and Dacia – equivalent to modern Romania. However, Rome failed to hold north of the Danube, the territory occupied by the Germanic peoples. In later times, the Germanic peoples were to overthrow the Roman Empire.

### Sources and Forms of Roman Law

In terms of sources of written law, the *Twelve Tables* (c. 451 BC) were both a 'statute' (*lex*) and a code – an early example of the codification of Roman Law. The law of contract - deposit and sale, elements of what is termed the law of obligation – whereby private agreements are recognised by the State and legally enforceable - can be traced back to the *Twelve Tables*. The concept of the consensual contract of sale *emptio venditio* was one of the great Roman 'inventions'.

'Magisterial' law developed from the edicts of the magistrates and above all from the Urban Praetor. The day-to-day functions of the praetor were to grant

remedies in individual cases. Professor Kelly has noted that the praetor was ‘the absolute uncontrolled master of civil legal process.’<sup>2</sup> All civil actions were initiated before the praetor and it was he who decided if a matter would go before a judge (*iudex*). There was no appeal from the praetor’s decision. Subsequently in the Roman era, the praetor would hear the whole case in person or appoint a delegate to do so. This aspect of the law of Rome has no modern equivalent as democracies have adopted the doctrine of the separation of powers – with a ‘separation’ between the executive, legislative and judicial departments of state – which was not a feature of Roman law.

The Praetor also presided over criminal proceedings. The Praetor could appoint judges (who acted as modern day jurors) and decided on the guilt or innocence of the party charged.

However, the legacy of this aspect of court procedure is that the Romans developed the procedure of referring a legal claim to a *iudex* (judge). The judge listened to the evidence and the submissions of the *oratores* (the advocates) and made a binding decision. If the claim was successful, the claimant could seize the person or property of the debtor. So, the concept of plaintiff, defendant and impartial judge (and indeed jury) may be stated to be reinforced by Roman law.

Jurists in the Roman era left a significant legacy by their writings in the form of commentaries and treatises on law. The jurists gave legal opinions at the request of clients and advised the praetors. Some also held judicial and administrative positions. The jurists were practical persons concentrating on individual cases upon which they had been consulted – hence the name *iuris consulti*, ‘persons consulted about the law’.

*The jus (ius) civile* was originally the body of law that applied to the citizens of Rome; *ius (ius) gentium* was the body of law that applied to ‘foreigners’ in their engagement with the citizens of Rome; *ius commune* was the ordinary law which gave its name to the ‘common law’.

The *tabelliones*, sometimes translated into English as ‘notaries’, drafted Roman legal documents. Following the edict of Emperor Antonius Pius (86 AD - 161AD) the *tabelliones* became entitled to a *salarium*. Justinian introduced new regulations for the *Corpus Iuris* aimed at giving the profession of *tabellio* a systematic sense of organisation. In another evolution, the *notarii* became secretaries to the authorities – including the Emperor. With the reign of

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<sup>2</sup> Kelly, *A Short History of Western Legal Theory*, (1992) p.55

Charlemagne (reigning from 768 to 814) the instruments drafted by the notaries acquired the same force and effect as a conclusive judgment. The profession of notary flourished during the Renaissance and it was Napoleon in a law of March 1803 that gave the institution of notary a status with functions and duties that survive largely today on the continent of Europe and countries around the world with a Civil law inheritance.

### *The Digest; Justinian's Institutes and the Codex*

Justin, an elderly soldier, born of a peasant family in what became Yugoslavia, became emperor in 518 AD. His nephew and adopted son was Justinian who received the best education available in Constantinople - the capital city of the Eastern Roman or Byzantine Empire.

Justinian became emperor in 527 AD and incidentally was reputed to be the last Roman Emperor to speak Latin as a first language. Justinian I's ambition was to revive the Empire's greatness '*renovatio imperii*' and re-conquer certain territories of the Western Roman Empire. He ordered his chief jurists to extract the best and most reliable sections of the earlier Roman texts for inclusion under appropriate headings in a *Digest*. All prior texts were to be destroyed throughout the Empire with the purpose of eliminating error. The *Digest* was ready by 533 AD.

Justinian also directed his jurists to prepare a textbook for law students called *Justinian's Institutes* which was completed by 533 AD. The following year Justinian's jurists completed a final version of all the Imperial statutes known as the *Codex*. The texts known as the *Digest*, the *Institutes* and the *Codex* became generally known as the *Corpus Juris Civilis*, the 'body of law'.<sup>3</sup> Subsequently the law of Justinian became the bedrock of the law of the continent of Europe. I set down here an extract from the *Institutes* translated by Thomas C. Sandars<sup>4</sup> which demonstrates a remarkable elegance of expression and nobility of legal thought pertaining to the science of the law - jurisprudence. The opening words of '*Liber Primus*' - the first book - with the definition of 'justice' or some might describe it as the ideal law - were remarkable and stand the test of time.

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<sup>3</sup> See generally Daniel R. Coquillette, Chapter 1, 'The Glory that was Rome' in *The Anglo-American Legal Heritage: Introductory Materials*, 2<sup>nd</sup> ed. North Carolina, (2004,) pp. 1-35 and J.M. Kelly, *A Short History of Western Legal Theory*, Oxford, (1992), chapter 2, 'The Romans', pp. 39-78.

<sup>4</sup> T.C. Sandars, *The Institutes of Justinian*, 7<sup>th</sup> ed., 1883, quoted in part by Daniel R Coquillette, note 3 above.

*'Liber Primus: Tit.1. De Justitia et Jure*

Justice is the constant and perpetual wish to render everyone his due.

1. Jurisprudence is the knowledge of things divine and human: the science of the just and the unjust.
2. Having explained these general terms, we think we shall commence our exposition of the law of the Roman people most advantageously if our explanation is at first plain and easy, and is then carried on into details with the utmost care and exactness. For, if at the outset we overload the mind of the student, while yet new to the subject and unable to bear much, with a multitude and variety of topics, one of two things will happen – we shall either cause him wholly to abandon his studies, or, after great toil, and often after great distrust of himself (the most frequent stumbling block in the way of youth), we shall at least conduct him to the point, to which, if he had been led by a smoother road, he might, without great labour, and without any distrust of his own powers, have been sooner conducted.
3. The maxims of the laws are these: to live honestly, to hurt no one, to give everyone his due.
4. The study of law is divided into two branches; that of public and that of private law. Public law is that which regards the government of the Roman Empire; private law, that which concerns the individuals. We are now to treat of the latter, which is composed of three elements, and consists of precepts belonging to natural law, to the law of nations and to the civil law.'

[Leaving aside the noble ideas expressed in the *Institutes*, the paternal care of the Emperor for law students is noble and most appealing.]

In Roman jurisprudence, there were three different kinds of law (*ius* or *jus*) *Ius naturale* was the law of nature. It included everything beyond the power of human law-making. The idea of 'natural law' (as we know it to-day) was influenced by and developed from the *ius naturale* which in time included the concept of fundamental human rights inherent in man which cannot be taken away by human law. The writings of Cicero (106-43 BC), (court advocate and

politician before the Christian era) influenced the development of the *ius naturale*. As stated, the expression of this law in turn influenced the natural-law doctrines of the medieval Roman Catholic Church and what have been described as ‘secularised’ natural-law theories. In his *De Legibus*, Cicero wrote:

‘True law is right reason in agreement with nature, diffused among all men; constant and unchanging, it should call men to their duties by its precepts, and deter them from wrongdoing by its prohibitions....’

To curtail this law is unholy, to amend it illicit, to repeal it impossible; nor can we be dispensed from it by the order either of the senate or of popular assembly; nor need we look for anyone to clarify or interpret it; nor will it be one law at Rome and a different law at Athens, nor otherwise tomorrow than it is today; but one and the same law, eternal and unchangeable, will bind all peoples and all ages; and God its designer, expounder and enacter, will be as it were the sole and universal ruler and governor of all things;....’

Another *ius* was the *ius civile*, the body of laws that applied originally to Roman citizens and the *Praetores Urbani* – those who had jurisdiction over cases involving citizens. The term ‘civil law’ in the sense of Roman-based legal doctrine comes from *ius civile*. This is what we would designate as ‘positive law’ today. In the context of the civil law, the *Institutes*, state:

‘Every community governed by laws and customs uses partly its own law, (the civil law – the law of the particular state) and partly laws common to all mankind’.<sup>5</sup>

There were further distinctions between ‘written’ laws referred to as *leges* or *lex* and the Roman concept of *equitas* from where (in a general sense) the term ‘equity’ is derived – the doing of justice in a given factual circumstance ameliorating perhaps the harsh effect of a written law.

*Ius gentium* referred to the law of nations and also the laws common to all mankind. These were human-made laws but, as stated, ‘common to all mankind’. Today we would designate *ius gentium* as (in part) ‘international law’. Rules of diplomacy and state relations were governed by the *ius gentium*. Laws relating to commercial trade and commercial practices were also comprised in the *ius gentium* – what we call ‘private international law’ today.

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<sup>5</sup> Liber 1. Tit 11, *De Jure Naturali, Gentium et Civili*.

Modern international law including the ‘law merchant’ - ‘*lex mercatoria*’ and admiralty law has been significantly influenced by this aspect of Roman law.

The Roman law of ‘things’ (*res*) - economic assets - was divided into the law of property (‘things’ in a restricted sense), the law of succession and the law of obligations. Today, this division of the law is a cardinal feature of the modern Civil law.

The law of sale is set out in *Justinian’s Institutes* (*Tit. XX11 De Consensu Obligatione*). The Romans became great merchants – men of business - and built a business empire which required law to regulate their transactions. This extract below from the *Institutes* refers to the law of obligations:

‘Obligations are formed by the mere consent of the parties in the contracts for sale, of letting to hire, of partnership, and of mandate. An obligation is, in these cases, said to be made by the mere consent of the parties; because there is no necessity for any writing, nor even for the presence of the parties; nor is it requisite that anything should be given to make the contract binding, but the mere consent of those between who the transaction is carried on suffices.’

### ‘Reception’ or ‘Revival’ of Roman law

Roman law enjoyed a renewal during the renaissance of learning in Europe from about the eleventh century onward. This is sometimes described as the ‘reception’ of Roman law. Paul Vinogradoff, in his celebrated work *Roman Law in Medieval Europe*, posed the question why the so-called ‘reception’ of Roman law became so significant in the period from the eleventh to the eighteenth centuries in the following terms:

‘Within the whole range of history there is no more momentous and puzzling problem than that concerned with the fate of Roman law after the downfall of the Roman State. How is it that a system shaped to meet certain conditions not only survived those conditions but has retained its vitality even to the present day, when political and social surroundings are entirely altered. Why is it still deemed necessary for the beginner in jurisprudence to read manuals compiled for Roman students who lived more than 1500 years ago? How did it come about that the Germans instead of working out their legal system in accordance with national precedents and with the requirements of their own country broke away

from their historical jurisprudence to submit to the yoke of bygone doctrines of a foreign empire?’<sup>6</sup>

One explanation for the ‘reception’ of Roman law, according to Professor Alan Watson, is related to the concept of ‘legal borrowing’ – the ‘legal transplant’.<sup>7</sup> When lawyers and courts seek a solution and none is available within their own system, the thinking lawyer can find a precedent elsewhere. There were also the law teachers initially at the renowned universities of Northern Italy who studied the legal writings of the Roman era and imbued generations of lawyers and high-ranking administrators with a respect for Roman law. This facilitated the gradual assimilation of Roman law into local customary law.

The great teacher Irnerius (c.1055- c.1130) who taught at Bologna expounded the *Corpus Juris Civilis* clause by clause. Irnerius, his peers and his successors became known as the ‘Glossators’. Roman law became a popular subject of study at the universities of Italy.

### Roman Law and the Common Law

Julius Caesar arrived in Britain in 53 BC. Britain was a Roman province for three and a half centuries. Many thousands of Roman soldiers were garrisoned in Britain over that time. The Roman soldiers were withdrawn c. 410 AD – not expelled - because they were required to defend bases in Italy against invasions.

Roman law was not ‘received’ in England – the home of the common law - to the extent that it was on the continent of Europe. Nevertheless, it would be totally wrong to argue that that Roman law did not play a significant influence in the development of the common law. It has been argued by legal scholars that far more important than the reception of Roman ‘rules’ by the English law was ‘the influence of the Roman law on the English way of looking at the law, on English jurisprudence and on English law writing.’<sup>8</sup>

Latin, for a time, was the language of official documents in England and in the courts. It would only be natural that there would have been a Roman law influence on any local law. Dr Winfield has acknowledged that in the context

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<sup>6</sup> P. Vinogradoff, *Roman Law in Medieval Europe*, 3rd, Oxford, (1961), p.11

<sup>7</sup> A. Watson, *The Evolution of Law*, Baltimore, (1985), p.73.

<sup>8</sup> See Smith, *Elements of Law*, p. 171,341, (2<sup>nd</sup> ed) 1955 and a thoughtful article by Edward D Re ‘The Roman Contribution to the Common Law’, *Fordham Law Review*, vol. 29, issue 3, pp 447-494 (1961) at 448.

of land law, the grants of land to private individuals ‘unclogged’ by the native ‘folkwright’ can be linked to the Roman conception of ownership.<sup>9</sup> It has also been argued that the law of wills probably had a Roman origin by way of ecclesiastical law.<sup>10</sup>

Legal scholars now have come to the conclusion that the concept of trial by jury long regarded as of Anglo-Saxon origin is in fact of Roman origin.<sup>11</sup>

The Common law that shaped American law and what are described as other Common law jurisdictions contains many principles that have a Roman origin. The statement ‘by natural law all men are equal’ is from the pen of Ulpian - a noted jurist whose major legal texts date from c. 211 to 222 AD; another notable principle from Ulpian is the celebrated concept expressed in the words ‘justice is the constant and perpetual wish to render everyone his due’. The maxim and legal concept of *volenti non fit injuria* (known as the voluntary assumption of risk) is again another principle of law direct from Ulpian. A significant amount of the writings of Ulpian were ‘codified’ in the *Institutes of Justinian* referred to earlier in this paper.

Again, I refer to some more specific contributions that Roman law made to English law – the home of the Common law. The principles enshrined in what is termed *Habeas Corpus* – (a remedy where a person is detained unlawfully) and several principles of the law of torts are of Roman origin. The fundamental right encapsulated in the expression ‘every man’s house is his castle’ although claimed to be of Anglo-Saxon origin is of Roman origin. The *Digest* prohibits forcing a man from his house compelling him to court – without lawful justification – a principle articulated by Cicero.<sup>12</sup>

There is considerable evidence that the advent of Christianity and the influence of the new religion with its association with Rome and the Canon Law had a significant impact on the development of native ‘law’ in Britain. Pope St Gregory the Great, as he was called, ‘a Roman of the Romans’ sent St Augustine to Britain in 595 where he established his Episcopal seat at Canterbury (597). St Augustine and his monks were familiar with the Justinian law. For the clergy, the law was the Canon law – influenced and intertwined with Roman law. The law was frequently committed to paper by the regal authorities in the pre-Norman period by those familiar with the Roman codifications.

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<sup>9</sup> See Winfield, *The Chief Sources of English Legal History*, 54 (1925) and Edward D Re cited above, p.457.

<sup>10</sup> See Edward D Re cited above, p 457.

<sup>11</sup> Pollock and Maitland and other historians.

<sup>12</sup> See generally Charles P Sherman, ‘Salient Features of the Reception of Roman Law into the Common Law of England and America’ 8 *B.U.L.Rev* 183 (1928) at p.186.

The Norman conquest eventually brought a system of law and order to Britain. William the Conqueror's victory at the Battle of Hastings in 1066 led to systematic administration. William was ably assisted by Lanfranc - the lawyer who had studied and taught Roman law at Pavia in his native Italy – sometimes described as William the Conqueror's prime minister. Lanfranc had previously opened and lectured at a school in Normandy. Lanfranc became Archbishop of Canterbury in 1070. Pollock and Maitland, the noted English legal historians noted the significance of Lanfranc and continued:

‘The Norman Conquest takes place just at a moment when in the general history of law in Europe new forces are coming into play. Roman law is being studied, for men are mastering the *Institutes* at Pavia and will soon be expounding the *Digest* at Bologna; Canon law is being evolved, and both claim a cosmopolitan dominion.’<sup>13</sup>

Roman law authorities according to legal historians ‘were habitually cited in the common law courts of Britain and relied upon by legal writers, not as illustrative and secondary testimonies, but as primary and practically conclusive’.<sup>14</sup>

There developed in England a dislike to the study of Civil law – with its Roman influence.<sup>15</sup> The Church too became concerned with the development of secular jurisprudence. The Church, for its own purely theological reasons, appeared to become lukewarm on the development of Roman law in Britain.

So although Roman law fell into some disfavour by the authorities and this was long before the Reformation, the great writers of law in Britain such as Ranulf de Glanvill (1130-1190) Chief Justiciar of England and Henry de Bracton (c.1210-1268) a member of the clergy and a royal judge were steeped in the principles of Roman law and not only influenced successive legal writers but were often cited in court and thus indirectly shaped judge-made law.

Pope Innocent III (Pope 1198-1216) compelled King John (1166-1216) to accept Cardinal Stephen Langton, a Doctor of Laws from the University of Bologna as Archbishop of Canterbury (1207). John then attempted to seize Church property as a form of retaliation. It is accepted that Langton joined with the Barons in drafting the celebrated Charter of Magna Carta (1215). However, many scholars believe that Stephen Langton was the principal

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<sup>13</sup> 1 Pollock & Maitland, *The History of English Law* (1893), p.78

<sup>14</sup> See, for example, Amos, *The History of the Principles of Civil Law* (1883) at p.450 and Edward D Re, cited above p.468.

<sup>15</sup> See generally, Edward D Re cited above.

draftsman and that the charter's source and inspiration were not the English feudalistic institutions – but the universality of the law proclaimed by the Roman legal tradition.<sup>16</sup> This concept of universality of the law – a law common to all – was a feature of the Canon law - which was one of the sources of the Common law.

As stated earlier in this paper, it is considered that the principles of 'equity' in the Common law were inspired by Roman law. The Chancellors of England were up to the time of St Thomas More (Lord Chancellor 1529-1532) 'ecclesiastics' or 'churchmen'. The equitable jurisdiction of the court resembled what the Romans termed *aequitas* meaning what is fair or conscionable. Professor John Kelly has argued that a 'theory of equity' 'formed part of the Romans' intellectual armoury' and equitable values were in fact introduced into Roman law via the jurisdiction of the praetor.<sup>17</sup> The influences of the civil and canon law (canon law being influenced by Roman law) on the English doctrines of equity are manifest. Equity was a canonical concept to alleviate the rigour of the law.<sup>18</sup> The doctrines of uses, trusts and the equity of redemption in the law of mortgages may be traced to canonical and Roman concepts. The same principles applied to the constructions of legacies.<sup>19</sup>

Coke (1531-1634), a Chief Justice of the King's Bench, a noted jurist and writer stated that the law merchant (*lex mercatoria*) was to be held as part of the law of England.<sup>20</sup> Blackstone (1723-1780) judge, jurist and Vinerian professor of English law at Oxford in his celebrated *Commentaries* stated 'the custom of merchants or *lex mercatoria* which, however different from the general rules of the common law, is yet ingrafted into, and made a part of it'.<sup>21</sup> Re has noted that the *ius gentium* of merchants ultimately governed all commercial transactions in Britain.<sup>22</sup>

Lord Mansfield (Lord Chief Justice of the King's Bench 1756-1788) described as the 'father of modern Mercantile law' who had studied Roman law at the University of Leyden and who served for such a long period as Chief Justice of the King's Bench developed a system of commercial law based on Roman

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<sup>16</sup> See Edward D Re, 'The Roman Contribution to the Common Law' 29 Fordham Law Review (1961) p 447 at p.477; Morris, *The History of the Development of Law*, (1909) p.255

<sup>17</sup> J. M. Kelly, *A Short History of Western Legal Theory*, Oxford, (1992), p.54

<sup>18</sup> See Edward D Re, cited above, p.581.

<sup>19</sup> See above, p 482.

<sup>20</sup> Coke, *Institutes of the Laws of England*, Lib 1 (1774 ed)

<sup>21</sup> 1 Blackstone, *Commentaries*, 273.

<sup>22</sup> Edward D Re, cited above pp.488-489.

law.<sup>23</sup> The law of Admiralty in Britain was closely aligned with *lex mercatoria*; thus, the principles of principles of Roman law equally applied to this branch of the law.

Palmer noted that many basic principles of American law (like English law) have Roman origins such as the law of ‘adverse possession, baliments, carriers and innkeepers, contracts, the descent of property, easements, legacies and wills, guardianship, limitation of actions, marriage, ownership and possession, conveyances, sales trusts, warranties, partnerships, and mortgages’<sup>24</sup>

The Acts of Union 1800 united the Kingdom of Great Britain with the Kingdom of Ireland to create the United Kingdom of Great Britain and Ireland. Article 73 of the 1922 Constitution of Ireland provided for the continuance in the new Irish Free State (subject to the 1922 Constitution) of laws immediately in force prior to the enactment of the 1922 Constitution. Article 50 of the Constitution of Ireland 1937 provided similarly and thus the law in force in the United Kingdom of Great Britain and Ireland immediately before the enactment of the 1922 Constitution – with all its Roman law influences – became part of the law of Ireland.

Professor W.N. Osborough in his article ‘Roman Law in Ireland’<sup>25</sup> wrote that it is noteworthy that the rules of Roman Law have been prayed in aid by the Irish judicial bench in so diverse a range of contexts - ‘rights affecting rivers and lakes; domicile; subrogation; ‘possession’ in larceny; donations *mortis causa*; alluvion; military wills; proprietary rights in domesticated animals and captive fish; *specificatio*; and title by occupancy’. Professor Osborough also noted that that in a number of cases in Ireland judges resorted to the texts of Roman Law considered in the foregoing paragraphs.

## Conclusion

Charles P Sherman of the Faculty of Law, Yale University, in perceptive article, “The Romanization of English Law”, (1914)<sup>26</sup> summed up the contribution of Roman Law to English law. As stated above, Article 73 of the Free State Constitution (1922) ordained that the whole corpus of the existing

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<sup>23</sup> See Edward D Re, cited above, p.489

<sup>24</sup> Palmer, ‘An Imperishable System: What the World Owes to Roman Law,’ 45 *A.B.A. J.* 1149, 1152, 1220 (1959).

<sup>25</sup> W.N.Osborough, ‘Roman Law in Ireland’ in *Essays in Honour of John M Kelly* edited by W.N. Osborough, *The Irish Jurist*, Vols XXV-XXVII, *Liber Memorialis John M Kelly*.

<sup>26</sup> 28 *Yale Law Journal* (1914) 318.

(English) law was carried over from the former regime, and continued in force in the new Free State of Ireland except to the extent that inconsistencies between the former law and the new Constitution might emerge. Accordingly, we may interpret what the author has stated as being applicable also to Irish law. The following was Sherman's conclusions in 1914:

‘But the Romanization of English law has not been small; a summary of specific contributions from Roman to English law [and hence Irish law] reveals the great indebtedness of our law to the law of Rome. Most of the basic principles of the English law of Admiralty, Wills, Successions, Obligations, Contracts, Easements, Liens, Mortgages, Adverse Possessions, Corporations, Judgments, Evidence, come from the survival of the revival of Roman law in English law. The fundamental conceptions of *Habeas Corpus* and Trial by Jury as well as many principles of the law of Torts are of Roman origin. That dearly cherished principle and familiar palladium of English liberty, - ‘every man's house is his castle’ – is not of Anglo-Saxon origin, but of Roman origin. It is first found in the era of the Roman Republic, when the barbarians in Britain or Germany had no houses worthy of the name: *Digest* 2, 4, 18 expressly forbids forcing a man from his house to drag him to court, thus re-affirming Cicero's statement of the same prohibition. Finally .... our statutes resemble somewhat in form the Constitutions of the Roman Emperors, and our reported cases the *Responsa Prudentium* as contained in the *Digest*.’

Roman law – not obviously confined to the City of Rome or to a peninsula – but the genius of minds from many lands - has left many legacies on the legal systems of the world. The Emperor Justinian, building on earlier jurists, codified in a structured written form a sophisticated system of law by means of the *Digest*, *Codex* and the *Institutes*. This codified system of law has influenced most of the Civil law world. The concepts inherent in the legal order comprised in the *ius naturale* and *ius gentium*, intended to extend beyond national borders, are today the cornerstones of human rights law and international law throughout the world. The influence of Roman law on the Common law has also been significant.

*End.*

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