NEW OUTLINE OF THE ROMAN CIVIL TRIAL pdf

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Roman litigation has long been a difficult subject for study, hampered by a lack of information concerning the practical operation of the civil courts. Using newly discovered evidence, this book presents a new interpretation of how civil trials in Classical Rome were commenced and brought to judgement.

Post-classical law[edit] By the middle of the 3rd century, the conditions for the flourishing of a refined legal culture had become less favourable. The general political and economic situation deteriorated as the emperors assumed more direct control of all aspects of political life. The political system of the principate , which had retained some features of the republican constitution, began to transform itself into the absolute monarchy of the dominate. The existence of a legal science and of jurists who regarded law as a science, not as an instrument to achieve the political goals set by the absolute monarch, did not fit well into the new order of things. The literary production all but ended. Few jurists after the mid-3rd century are known by name. While legal science and legal education persisted to some extent in the eastern part of the Empire, most of the subtleties of classical law came to be disregarded and finally forgotten in the west. Classical law was replaced by so-called vulgar law. Substance[edit] Concept of laws[edit] ius civile , ius gentium , and ius naturale â€" the ius civile "citizen law", originally ius civile Quiritium was the body of common laws that applied to Roman citizens and the Praetores Urbani , the individuals who had jurisdiction over cases involving citizens. The ius gentium "law of peoples" was the body of common laws that applied to foreigners, and their dealings with Roman citizens. The Praetores Peregrini were the individuals who had jurisdiction over cases involving citizens and foreigners. Jus naturale was a concept the jurists developed to explain why all people seemed to obey some laws. Their answer was that a " natural law " instilled in all beings a common sense. In practice, the two differed by the means of their creation and not necessarily whether or not they were written down. The ius scriptum was the body of statute laws made by the legislature. The laws were known as leges lit. Roman lawyers would also include in the ius scriptum the edicts of magistrates magistratuum edicta , the advice of the Senate Senatus consulta , the responses and thoughts of jurists responsa prudentium , and the proclamations and beliefs of the emperor principum placita. Ius non scriptum was the body of common laws that arose from customary practice and had become binding over time. An example of this is the law about wills written by people in the military during a campaign, which are exempt of the solemnities generally required for citizens when writing wills in normal circumstances. In the Roman law ius privatum included personal, property, civil and criminal law; judicial proceeding was private process iudicium privatum ; and crimes were private except the most severe ones that were prosecuted by the state. Public law will only include some areas of private law close to the end of the Roman state. Ius publicum was also used to describe obligatory legal regulations today called ius cogensâ€"this term is applied in modern international law to indicate peremptory norms that cannot be derogated from. These are regulations that cannot be changed or excluded by party agreement. Those regulations that can be changed are called today ius dispositivum, and they are not used when party shares something and are in contrary. Concepts that originated in the Roman constitution live on in constitutions to this day. Examples include checks and balances , the separation of powers , vetoes , filibusters , quorum requirements, term limits , impeachments , the powers of the purse , and regularly scheduled elections. Even some lesser used modern constitutional concepts, such as the block voting found in the electoral college of the United States , originate from ideas found in the Roman constitution. The constitution of the Roman Republic was not formal or even official. Its constitution was largely unwritten, and was constantly evolving throughout the life of the Republic. Throughout the 1st century BC, the power and legitimacy of the Roman constitution was progressively eroding. Even Roman constitutionalists, such as the senator Cicero , lost a willingness to remain faithful to it towards the end of the republic. The belief in a surviving constitution lasted well into the life of the Roman Empire. Ius privatum , Stipulatio , and Rei vindicatio Stipulatio was the basic form of contract in Roman law. It was made in the format of question and answer. The precise nature of the contract was disputed, as can be seen below. Rei vindicatio is a legal action by which the plaintiff demands that the defendant return a thing that belongs to the plaintiff. The plaintiff could also institute an actio furti a personal

action to punish the defendant. If the thing could not be recovered, the plaintiff could claim damages from the defendant with the aid of the condictio furtiva a personal action. With the aid of the actio legis Aquiliae a personal action , the plaintiff could claim damages from the defendant. Rei vindicatio was derived from the ius civile , therefore was only available to Roman citizens. The individual could have been a Roman citizen status civitatis unlike foreigners, or he could have been free status libertatis unlike slaves, or he could have had a certain position in a Roman family status familiae either as the head of the family pater familias , or some lower member. Two status types were senator and emperor. Roman litigation The history of Roman Law can be divided into three systems of procedure: The periods in which these systems were in use overlapped one another and did not have definitive breaks, but it can be stated that the legis actio system prevailed from the time of the XII Tables c. AD , and that of cognitio extra ordinem was in use in post-classical times. Again, these dates are meant as a tool to help understand the types of procedure in use, not as a rigid boundary where one system stopped and another began. He had to be a Roman male citizen. The parties could agree on a judge, or they could appoint one from a list, called album iudicum. They went down the list until they found a judge agreeable to both parties, or if none could be found they had to take the last one on the list. No one had a legal obligation to judge a case. The judge had great latitude in the way he conducted the litigation. He considered all the evidence and ruled in the way that seemed just. Also, there was a maximum time to issue a judgment, which depended on some technical issues type of action, etc. Later on, with the bureaucratization, this procedure disappeared, and was substituted by the so-called "extra ordinem" procedure, also known as cognitory. The whole case was reviewed before a magistrate, in a single phase. The magistrate had obligation to judge and to issue a decision, and the decision could be appealed to a higher magistrate.

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Legis Actiones[edit] The remarkable aspect of a trial of an action under the legis actio procedure and also later under the formulary system was characterized by the division of the proceedings into two stages, the first of which took place before a magistrate, under whose supervision all the preliminaries were arranged, the second, in which the issue was actually decided, was held before a judge. The magistrate in question taking part in the preliminary stage was typically the consul or military tribune, almost exclusively the praetor upon the creation of this office. The judge was neither a magistrate nor a private lawyer, but an individual agreed upon by both parties. The plaintiff would request, with reasons, that the defendant come to court. If he failed to appear, the plaintiff could call reasons and have him dragged to court. If the defendant could not be brought to court, he would be regarded as indefensus, and the plaintiff could, with the authorization of the praetor, seize his property. The defendant may elect a representative to appear in his place, or seek a vadimonium - a promise to appear on a certain day with a threat of pecuniary penalty if he failed to appear. Preliminary hearing[edit] At the first stage of the case, a hearing took place before the praetor, in order to agree the issue and appoint a judge. This was conducted through exchanges of ritual words, the two different types being known as the declarative which were the legis actio sacramento which could be in rem or in personam , legis actio per iudicis arbitrive postulationem and legis actio per condictionem and the executive type legis actio per pignoris capionem and legis actio per manus iniectionem. Then, a judge was appointed who was agreeable to both parties, the praetor making a decision in the event of a disagreement. Judges were chosen from a list called the album iudicum, consisting of senators , and in the later Republic , men of equestrian rank. Full trial[edit] Once the judge had been appointed, the full trial could begin. This was fairly informal compared to the preliminary hearing, and was supposed under the Twelve Tables to take place in public the Forum Romanum was frequently used. While the witnesses could not be subpoenaed , the dishonorable status of intestabilis would be conferred on a witness who refused to appear. There were few rules of evidence and both oral and written evidence were permitted, although the former was preferred aside from the plaintiff having the burden of proof. The trial consisted of alternating speeches by the two advocates , after which the judge gave his decision. Execution[edit] Unlike in the modern legal systems, victorious parties had to enforce the verdict of the court themselves. However, they were entitled to seize the debtor and imprison him until he repaid the debt. After sixty days of imprisonment, the creditor was entitled to dismember the debtor or sell him into slavery , although after the Lex Poetelia of BC, the creditor could take no action other than continued imprisonment of the debtor. Formulary system[edit] Due to the faults of the legis actiones system, namely its excessive formality, archaic nature, and limited effectiveness, a new system was introduced. This was known as the formulary system. The formula was a written document by which in a civil trial authorization was given to a judge to condemn the defendant if certain factual or legal circumstances appeared proved, or to absolve him if this was not the case. This allowed the use of formulae, standardized written pleadings, to speed up cases. This was soon, by popular demand, adopted by the urban praetor for use by all Roman citizens. The lex Aebutia , of an uncertain date but somewhere between BC and BC, is connected with the reform of civil procedure, and it can be stated that it abolished the legis actiones and introduced the formulary procedure. The reform was completed by two statutes of Augustus under the name of leges Iuliae iudiciariae. The defendant was still summoned orally, but had an extra option; rather than immediately going to court, he could make a vadimonium, or promise, to appear in court on a certain day, on pain of a pecuniary forfeit. Although the plaintiff could still physically drag his opponent to court, this was scarcely used. Preliminary hearing[edit] Just like in the old legis actiones system, this took place before the praetor. During the hearing, a formula was agreed on. It consisted of up to six parts: Nominatio[edit] This part appointed a judge, in a similar matter to before, with the plaintiff suggesting names from the official list until the defendant agreed. If there was no

agreement, the praetor would decide. An example of an intentio could be, "If it appears that the property which is disputed belongs to Aulus Agerius at civil law,". Condemnatio[edit] The condemnatio gave the judge authority to condemn the defendant to a certain sum or to absolve him. An example of a condemnatio could be, "[If it appears that he is guilty], Condemn Numerius Negidius to Aulus Agerius for denarii ; otherwise absolve him. Exceptio and replicatio[edit] If the defendant wished to raise a specific defense such as self-defence , he would do so in an exceptio. However, if the plaintiff was desirous of refuting the defence, he could file a replicatio, explaining why the defence was not valid. The defendant could then file another exceptio, and so on. The last of these to be proved on the facts "won". Praescriptio[edit] This somewhat legalistic clause limited the issue to the matter in hand, avoiding litis contestatio, where the plaintiff was prevented from bringing another case against the same defendant on a similar issue. Oath-taking[edit] The case could sometimes be settled entirely through the preliminary hearing. The plaintiff could challenge the defendant to take an oath supporting his case. If the defendant was willing to swear the oath, he won, and, if not, lost. However, he had a third option - he could tender the oath back to the plaintiff, who similarly won if he took the oath and lost if he did not he could not return the oath to the defendant. Justinian had this to say about the taking of oaths: Digesta of Justinian , Book 12, Title 2.

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