# Principles of Roman Law

## Francesca Silvia Scotti

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

* ***Course Aims***

The course aim is to teach students the private law basics of the Roman legal system by means of the direct reading of legal Roman law sources (specially Justinian’s Institutes and some fragments belonging to Justian’s Digest), so that pupils will be able to correctly master the legal terminology and learn how to approach and solve concrete cases using the methods employed by Roman jurists.

In particular the reading of the Justinian’s Institutes will be based on a constant comparison with the previous and often parallel private law institutions of the monarchic, republican and classical era, in order to offer students a general overview of the evolution of Roman private law from the monarchic to the Justinian age.

In cases where this is possible, this course also aims at helping students to see certain institutions of private Roman law as the starting point of an evolution that has developed over the centuries and resulted in corresponding institutions of modern private law.

* ***Intended Learning Outcomes***
* *Knowledge and Understanding*

At the end of the course students:

* will have acquired the perception of the historical nature of every legal phenomenon along with the awareness of the diachronic evolution of every single institution;
* will be able to understand the general structure of the private law system of Roman law.
* *Ability to Apply both Knowledge and Understanding*

At the end of the course students:

* will be able to apply the argumentative method of the Roman jurists in solving problematic concrete cases founded on a series of logical steps – 1) identification of the concrete case; 2) identification of the problem; 3) ascertainment of the reason why the problem arises (the so called ‘*ratio dubitandi*’); 4) identification of the solution offered by the jurist; 5) identification of the justification the solution is based on (the so called ‘*ratio decidendi*’) – knowing that this method is still valid and currently used by each modern European jurist who is aware of the historical roots of the legal system in which he lives and works;
* will acquire synthesis skills in expressing even complex legal concepts without indulging in useless digressions aimed only at weighing down legal arguments.
* *Independency of Judgment, Communication Skills and Learning Ability*

At the end of the course students:

* will be able to collect and interpret the information useful for determining autonomous judgments, including the reflection on the relationships between Roman law, Roman law studies and current private law;
* will be able to clearly express information, concepts, problems and solutions to legal and non-legal interlocutors;
* • will have developed both reasoning and learning skills that will allow them to undertake subsequent studies with a high degree of autonomy.

The acquisition of these skills will be facilitated by the attendance of this course. Attendance, however, will not be compulsory: non-attending students will be able to prepare themselves on an alternative program (see below).

***COURSE CONTENT***

After a wide introduction to Roman Law sources (from monarchy to Justinian’s dominate) and in particular to the Justinian’s *Corpus Iuris Civilis*, the course will deal with the Roman law fundamental principles following the scheme adopted by Justinian in his Institutes that are the elementary textbook used in the Constantinople Faculty of Law during the 6th century AD. Being a model of simplicity and academic rigour, this textbook will be, for the students, the very first approach to Roman private law facilitating the learning of both concepts and technical language used by Roman jurists. Roman case law will also be studied.

***READING LIST***

For *attending* students

First part:

L. Maganzani, *Formazione e vicende di un’opera illustre. Il Corpus Iuris nella cultura del giurista europeo,* G. Giappichelli Editore, Torino 2007, (pp. 3-99).

Second part:

L. Maganzani, *Formazione e vicenda di un’opera illustre. Il Corpus Iuris nella cultura del giurista europeo*, G. Giappichelli Editore, Torino 2007, p. 173 ff. (*Iustiniani Institutiones*: only the parts that will be explained during courses; selected passages taken from the juristic writings belonging to the Justian’s Digest). Both notes taken during lessons and additional teaching materials that will be available during the semester of the course.

Plus one of the following textbooks at students’ choice:

 P. Giunti - F. Lamberti - P. Lambrini - L. Maganzani - C. Masi Doria - I. Piro, Il diritto nell’esperienza di Roma antica. Per una introduzione alla scienza giuridica, Torino 2021, (except pp. 1-78; 235-280);

B. Biondi, *Istituzioni di diritto romano.* Ristampa inalterata della quarta edizione ampliata ed aggiornata, Dott. A. Giuffrè Editore, Milano 1972, (except pp. 1-107).

For *non-attending* students

P. Giunti - F. Lamberti - P. Lambrini - L. Maganzani - C. Masi Doria - I. Piro, Il diritto nell’esperienza di Roma antica. Per una introduzione alla scienza giuridica, G. Giappichelli Editore, Torino 2021 (to be studied in its entirety);

F. Scotti (a cura di), *Antologia del Digesto di Giustiniano. Testi tradotti e annotati ad uso degli studenti*, I.S.U. Università Cattolica, Milano 2006, (it is compulsory to study only pp. 1-69, 81-96, 108-110, 115-116, 121-130, 132-143, 151-173, 176-177, 180-202, 207-213).

***TEACHING METHOD***

Frontal lectures that will give ample space to:

* direct reading and exegesis of ancient sources;
* to students, who will be often asked to express their ideas on salient points that will be the matter of discussions elicited by the professor.

During the first half of the semester frontal lessons will be focused on:

* the introduction to the sources of the late republican and classical law;
* the proceedings *per legis actiones*;
* the proceedings *per formulas*;
* the *cognitio extra ordinem*;
* the analysis of some texts belonging to the juristic writings that can be found in the Justinian’s Digest.

During the second half of the semester the frontal lessons will be based on:

* the analysis of the Justinian’s Institutes;
* the exegesis of some texts belonging to the Justinian’s Digest.

Lectures might be be supplemented by:

• extraordinary lessons held by authoritative colleagues at the invitation of the professor;

• optional educational visits (even lasting several days) to places of significance for Roman legal history.

***ASSESSMENT METHOD AND CRITERIA***

* ***Assessment Method***

*Attending* *students*:

* can take a written mid-term exam in the middle of the semester on the part of the program explained up to that moment, consisting of several open questions. If the written test is passed, the final exam will consist of an oral interview on the topics covered in the second part of the semester and will take place starting from the beginning of the session of examinations following the conclusion of the semester itself.
* will alternatively have the opportunity to directly take the final oral exam on the entire program starting from the beginning of the session of examinations following the conclusion of the semester.

The open questions of the written test will be of equal weight, evaluated with a score from 18/31 (in the event of a sufficient result which will not necessarily imply the answer to all the questions) to 31/31 (in the case of an impeccable answer to all the questions). Below the sufficiency, the test will be evaluated negatively.

For *attending students* who will have passed the intermediate test, the final grade will be unique and based on:

* the assessment of the written test (40%);
* the active participation in the classroom during the discussions guided by the professor on different topics (10%);
* the assessment of the oral interview (50%).

For those *attending students* who have not taken or passed the intermediate test:

* the final grade is unique and takes into account both active participation in the classroom during the discussions guided by the professor on different topics (10%) and oral interview (90%).

For *non-attending students* there is a final oral exam on the specific program indicated in the ‘Bibliography’.

For *non-attending students*, the final grade will only take into account the oral exam (100%).

* ***Assessment Criteria***

Through the written test, *attending students* will have to prove:

* they have learned information and understood distinctions and criteria concerning the Roman law sources and the legal proceedings;
* they have understood the profound meaning of the problems underlying the jurisprudential cases explained during classes.

Through the oral exam, *attending students* who will have passed the intermediate test will have to demonstrate their knowledge of the Roman law institutes as they emerge from the Justinian’s Institutes and from the Roman juristic writings with the support of the explanations given by the professor during classes.

Through the oral exam, *attending students* who have *neither* taken *nor* passed the intermediate test will have to prove:

* they have learned information and understood distinctions and criteria concerning the Roman law sources and the legal proceedings;
* they have understood the profound meaning of the problems underlying the jurisprudential cases explained during classes;
* their knowledge of the Roman law institutes as they emerge from the Justinian’s Institutes and from the Roman juristic writings with the support of the explanations given by the professor during classes.

Evaluation will be based on:

* the relevance of the answers given by the students to the questions posed by the professor;
* the appropriate use of technical-legal terminology;
* the reasoned and coherent structuring of the discourse;
* the ability to identify both the links between the various institutes and the legal problems examined during the reading of the problematic legal cases.

Through the oral exam, *non-attending students* will have to demonstrate:

* their knowledge of the institutes of Roman law explained in the textbook;
* to be able to illustrate one of the jurisprudential cases of the ‘Antologia’ among those to be studied.

Evaluation will be based on the relevance of the answers given by the students to the questions posed by the professor, the appropriate use of technical-legal terminology, the reasoned and coherent structuring of the discourse, the ability to identify the links between the various institutes and the connected legal problems.

For *non attending students* the final grade will be exclusively based (100%) on the performance of the oral exam.

***NOTES AND PREREQUISITES***

* ***Notes***

Attendance, although not compulsory, is strongly recommended.

All students, both *attending* and *not-attending*, are strongly advised to avoid adopting the method of summarizing the content of the textbooks in order to study for the exams: the only way to pass the exams is to study directly the textbook and the notes for *attending students*, the textbook and the ‘Antologia’ for *non-attending students*.

In class, further information will be provided on:

* the preparation method;
* both program and bibliography for attending students.
* ***Prerequisites***

Being introductory, the course does not require prerequisites related to the contents.

However, interest and intellectual curiosity are required to think over the legal institutes and it is advisable to prepare a basic background on Roman history.

Since the professor will always translate any Latin term or sentence, the knowledge of the Latin language, even though useful, is nevertheless not essential to follow the lessons and to achieve the expected learning outcomes.

***OFFICE HOURS AND LOCATION***

In the first semester office hours will be on Wednesday at 4.30 p.m. in Professor Scotti’s room, unless otherwise indicated on the professor’s web page, which can be consulted at <http://docenti.unicatt.it/web/searchByName.do?language=ENG>

In the second semester office hours will take place on the Teams platform upon previous request for an appointment via e-mail at francescasilvia.scotti@unicatt.it