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## Pledges of Faith: The Development of Ancient Roman Business Law and Contemporary Applications

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**Pledges of Faith:  
The Development of Ancient Roman Business Law  
and Contemporary Applications**

**by  
Devon Guanci  
HIS 490 History Honors Thesis**

**Department of History  
Providence College  
Fall 2018**



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## INTRODUCTION

It is no secret that the legacy of both the Roman Republic and Empire continue to influence Western culture and lifestyle today. For example, the ancient Romans developed roads, sewers, and concrete. Aside from infrastructure, another major area that was developed by the Romans was their legal system. Ancient Romans began developing a codified system of law in the republic, and it continued to be used far into the empire and beyond. Early laws governed a wide variety of actions, from everyday behavior, to trials, and transactions. In this thesis, I will specifically consider the development of Roman commercial and contract law.<sup>1</sup> As Rome experienced continued expansion into the imperial age, commerce, use of contracts, and global trade worked to establish a robust economy in the empire. Thus, the established system of commercial law created a stable backbone that was necessary for the longevity of ancient Rome.

This paper is divided into four chapters. In chapter 1, I explain the early development of law at the start of the Roman Republic, and describe the changes that took place as Rome expanded. I consider the Twelve Tables, Rome's first set of laws that laid a foundation for their legal system, the concept of *bona fides*, and the early uses of contracts. In chapter 2, I describe the continued expansion of commercial law in the empire, as most of the western world quickly

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<sup>1</sup> I will use the terms 'commercial' or 'business law' when referring to laws about trade, transportation, and banking. I will use the term 'contract law' when discussing a type of commercial law that specifically involves the development of a contract between two or more parties.

came under the control of Rome. In chapter 3, I discuss the Roman legal system after the collapse of the Roman Empire. I consider how the division of Rome into smaller areas of control influenced trade in the former empire. Further, I discuss how the new code of laws developed by the Byzantine Emperor, Justinian, influenced the commercial laws that had existed for the next almost thousand years. Last, in chapter 4, I compare the ancient Roman corporate legal system to modern American corporate law. I consider contemporary challenges such as corporate personhood and constant international trade. While the modern United States is unlike Rome in many ways, many of the laws, as well as the systems of contracts that were developed by the Romans, remain relevant to corporate law today. Throughout the course of the paper, I aim to address the following topics during each time period: the role of lawyers, the evolution of trade and the legal system, and the development of contracts.

There are several texts that I will use to explain the development of commercial law, from the start of the Roman Republic in 509 BC, until the rule of the Emperor Justinian, that concluded in 565 AD. While this is an extensive period of time, much of the Roman legal system was based on the foundational elements that were included in the Twelve Tables. Although business law changed and developed as Rome gained power, these changes were rooted in the principles set forth long before the empire. The first text that specifically discusses laws of commerce in the early republic is *The Cambridge Companion to Roman Law*, which was edited by David Johnston. This book contains several contributions from scholars who specialize in ancient legal systems. I specifically will reference the chapters on commerce, property, and the Justinian legal code.

Likewise, *The Evolution of Law: The Roman System of Contracts* by Alan Watson provides more specific information about contracts. This text is grounded in historical evidence

as Watson seeks to outline the development of this type of law. Watson's work directly intersects with some of the scholarly work included in the Johnston book. Both texts provide ample information regarding the evolution of Roman business law, as well as highlighting important moments in history that impacted this development.

I will also be looking to ancient lawyers and thinkers, like Cicero, for primary source information. As an ancient Roman lawyer, Cicero provides insight to the practice of law, as opposed to considering it from a historical perspective. Primary sources will be supplemented with the work of modern scholars such as Harold Berman's "The Religious Sources of General Contract Law: An Historical Perspective" and Reinhard Zimmerman and Simon Whittaker's *Good Faith in European Contract Law*. Aside from these sources, my argument will be supported by various other scholarly articles and primary texts. Many of these sources are in direct conversation with each other. Thus, I will seek to find unique details in each in order to explain how and why commercial law developed in the manner that it did.

In order to provide an accurate and holistic understanding of the expansion of contract law, I will be aiming to describe the social, political, and economic context of each of the periods I will be considering. Since contract law is directly connected to Roman commerce and trade, I will specifically be focusing on how the economy of Rome expanded and changed as the empire grew and later fell. In each chapter, I will discuss the technological developments of the era and consider how different leaders impacted commerce and the economy. While the timeline of leaders and emperors is important in the larger context of ancient Roman history, the development of Roman law was only significantly impacted by a few of these men. I will highlight these important figures and explain how their leadership, decisions, and reforms changed the trajectory of the practice of business law.

In the discipline of Political Science, there is a subfield called American Political Development. In this field, political scientists study the history of the United States in order to explain the current political landscape. They consider institutions and how they have changed in order to explain how American politics are affected today.<sup>2</sup> In this analysis, I aim to do the same. I will be seeking answers to the following: What happened in the Roman Republic and Empire that prompted changes to occur in the legal system? What institutions impacted the development of law? How did changes in commerce and trade impact business law? The changes that occurred throughout the history of Roman business law did not happen in a vacuum, but rather shifted how this type of law would be practiced. Every reform, improvement, and modification to contracts, legal systems, and the Roman system of governance in general had a lasting impact on the future. As a result, I am interested drawing connections between business law of the ancient world and corporate law today. Considering the widespread use of contracts today, it is evident that the Romans offered significant contributions to our own legal system. I will be drawing on the Roman experience to seek out areas and similarities in which modern lawyers and legal scholars can relate. Likewise, I will be applying my findings from history to the field of modern corporate law.

Throughout, I will be arguing that political developments, technological advancements, and the growth of Rome enhanced the development of business law. The field of business law has always been inherently dependent on trade, transactions, and the economy. As particular leaders rose to power, Rome expanded its control, and commerce increased, the practices of business law were required to keep up with the increasing and more complex demands. I will

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<sup>2</sup> Cal Jillson and David Brian Roberston, *Perspectives on American Government: Readings in Political Development and Institutional Change* (New York: Routledge, 2014), 17.



then argue that many of these practices remain relevant in the field of modern corporate law.

Although the ancient world and the modern age are separated by thousands of years of developments, including a global economy and the internet, the practice of contract law remains similar.

## **DEVELOPMENT OF BUSINESS LAW DURING THE REPUBLIC**

### **EARLY ROMAN LAW**

Under the long centuries of the Roman Republic, which lasted from 500 BC until 27 BC, a codified legal system began to form. New technological developments, a growing population, and increased trade created a need for a legal protocol to govern transactions across Europe and beyond. In this chapter, I will trace how contracts in Rome transformed from simple verbal agreements to more complex written documents. Further, I will explain how these contracts were used in daily life, as well as how business law changed as the Republic grew in size and power. I will also consider the technological developments that occurred during the Republic and the role of lawyers in business law.

### **THE TWELVE TABLES**

While my analysis is primarily focused on the history of Roman business and contract law, it would be impossible to explain this subset of law without first considering the Twelve Tables. The Twelve Tables, which date to about 451-450 BC, developed in the early stages of the Republic and were simply a “list of important legal rules.”<sup>3</sup> While no text of the [Twelve]

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<sup>3</sup> David Johnston, *Roman Law in Context* (Cambridge: Cambridge University Press, 2004), 14.

Tables survives its provisions have been reworked from references in later texts.<sup>4</sup> The Tables included rules that governed the proceedings before trials, guidelines for a trial itself, expectations for how to repay debts, laws for inheritance, property mandates, and many other rules. They were oddly specific in some instances. For example, there was a law stating “[if] a person breaks a bone of a freeman with hand or by club, he shall undergo a penalty of 300 asses.”<sup>5</sup> On the other hand, there were several laws that could apply to a variety of situations, such as “[no] person shall hold nocturnal meetings in the city.”<sup>6</sup> For example, this may prevent meetings aimed at political conspiracy. In general, the Twelve Tables were the “source of all public and private law” for the Republic.<sup>7</sup> As Cicero notes, “that single little book of the Twelve Tables, if any one look to the fountains and sources of laws, seems to me, assuredly, to surpass the libraries of all the philosophers, both in weight of authority, and in plenitude of utility.”<sup>8</sup> The versatility of these laws proved to withstand changes as Rome progressed, as well as provide a solid foundation for the future development of official laws of all kinds.

Despite the Twelve Tables consisting of mandates that were either incredibly specific or exceedingly broad, this list of rules created clear precedents for legal transactions for generations to come. They created the expectation that Romans were either to abide by the rules that were set forth or face pre-determined consequences. While the development of punitive laws that resulted in capital punishment occurred long after the Twelve Tables were written, it is clear that a formalized system of punishment as well as a societal agreement regarding the concepts of right

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<sup>4</sup> Ibid., 26.

<sup>5</sup> Yale Law School, “The Twelve Tables.”

<sup>6</sup> Ibid.

<sup>7</sup> Johnston, *Roman Law in Context*, 2.

<sup>8</sup> Cicero, *De Oratore*, trans. J.S. Watson, 195.

and wrong were beginning to develop in Rome during this time. Further, I would argue that the Twelve Tables specifically impacted transactions and business law beginning in the Republic, as they created the concept of legal precedent that governed transactions. As Johnston notes, Roman law was, from the beginning, “seriously concerned with preservation of the status quo and keeping the peace.”<sup>9</sup> This attitude about the purpose of laws prevailed in the following centuries throughout the republic and into the age of the Empire. As Rome expanded and its laws and procedures changed to reflect the growing population, its citizens recognized that legal restrictions and guidelines created consistency in their rapidly changing society.

### ***BONA FIDES: THE PROMISE OF GOOD FAITH***

An analysis of ancient Roman business law cannot be conducted without also acknowledging the concept of *bona fides*, or the “absence of all fraud and unfair dealing or acting.”<sup>10</sup> There are several different ways to explain the concept of *bona fides*. First, it implied that agreements were binding. Simply put, this meant that any agreement between two individuals or parties, either written or verbal, was final. Similarly, this “[faithfulness] to one’s word [was] a precondition of any legal intercourse.”<sup>11</sup> As a result, there was a cultural expectation that individuals entering into an agreement were inherently aware that the agreement was dependent on their sincerity. Likewise, there was also a notion that “promises [were] enforceable only between those who have consented to be bound,” meaning that all parties in an agreement had to be fully aware of their obligations in order for the agreement to be legitimate.<sup>12</sup>

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<sup>9</sup> Johnston, *Roman Law in Context*, 60.

<sup>10</sup> William Smith, “Bona Fides” (Chicago: University of Chicago, 2006).

<sup>11</sup> Reinhard Zimmermann and Simon Whittaker, *Good Faith in European Contract Law* (Cambridge: Cambridge University Press, 2000) 78.

<sup>12</sup> David Bederman, *International Law in Antiquity* (Cambridge: Cambridge University Press, 2004), 52.

This legal development also required the Romans to develop a system of punishment for those who did not maintain a promise or agreement. For example, there are records of sanctions being levied for actions that violated international behavior.<sup>13</sup> This meant that the Romans actively penalized people who did uphold their promise of good faith. Further, cultural norms like *bona fides* and religion were often closely tied in the ancient world. There are tales that discuss fraudulent people that were punished by the gods, and faced plagues or other severe misfortunes as a result of breaching a contract or agreement.<sup>14</sup> For instance, there is a story of a plague that depopulated an area of Hittite people; after, an oracle traced this punishment to the breach of a contract by the king's father.<sup>15</sup> These stories also emphasize the importance of honesty in every kind of agreement. While this concept provided a basis for every contractual agreement made in Rome, it also provided a basis for the Roman legal system moving forward. Not only was believed that maintaining promises was an expectation, but it was also understood that neglecting to fulfill one's obligations was subject to punishment by higher powers.

### **EARLY CONTRACTS**

The Twelve Tables and the notion of *bona fides* laid the foundation for early Roman contract law. In the early days of the republic, there were limited possibilities for transactions that would require a contract. As population gradually increased and trade became more complex, however, the need for a more systemized approach to commercial law became apparent. Thus, a more formalized and sophisticated system of agreements arose during the

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<sup>13</sup> Ibid., 54.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

middle era of the Roman Republic, around 200 BC. As Aubert notes, early commercial law was “mostly maritime law, with an emphasis on contracts related to sales, transportation, and money-lending”.<sup>16</sup> There were two distinct types of contracts that developed as a result, and both reflect the importance in *bona fides* of keeping one’s word. The first, more formal type of contract was called a *stipulatio*. This type of oral agreement consisted of a series of questions and answers by the two parties that resulted in “an obligation binding on the promisor” or, more simply, a promise to do or give something to the other.<sup>17</sup> A legitimate agreement between both parties was created when this series of questions was completed. Likewise, early contracts may have involved a libation, an oath, or a sacrifice.<sup>18</sup> For example, the Roman historian Livy describes the Romans in the early Republic killing a pig and pouring out its blood to honor an agreement between the Roman and Alban people.<sup>19</sup> Regardless of the rituals that may have been included in early agreements, there was an understanding that Romans engaging in this type of verbal agreement were required to keep their promise and could expect the same from the other party.

On the other hand, the second type of contract was more informal. An informal, but enforceable contract (frequently referred to as “consensual contracts” in modern writing), instead relied on “the essentials” laid out by the law.<sup>20</sup> For example, this meant that aspects of a sale,

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<sup>16</sup> Aubert, *The Cambridge Companion to Roman Law*, ed. David Johnston, (Cambridge: Cambridge University Press, 2015) 214.

<sup>17</sup> Johnston, *Roman Law in Context*, 77.

<sup>18</sup> Alan Watson, “The Evolution of Law: The Roman System of Contracts” *Law and History Review* Vol 2, No. 1 (1984), 4.

<sup>19</sup> Livy, *History of Rome*, Book I, Section 24, as discussed by George Sellett, Shih C. Ho, and Shih M. Ho, “Methods of Validating a Contract: The “Blow” and the “Libation” *Michigan Law Review*, Vol 21, No. 1 (1922), 82.

<sup>20</sup> Johnston, *Roman Law in Context*, 78.

such as implied warranties, did not need to be explicitly stated in a transaction between two people.<sup>21</sup> Both of these types of contracts were used in everyday life to legitimize commercial transactions. Interestingly, the concept of a *stipulatio* was actually developed before the time of the Twelve Tables.<sup>22</sup> As a result, every subsequent contract type is a “derogation from *stipulatio*.”<sup>23</sup> I would argue, however, that the Twelve Tables helped to create the legal precedent that was needed for more complex contracts. While formal oral contracts existed before codified law, the Twelve Tables transformed the Roman legal system by creating systematized laws. Before the Twelve Tables and other codified law that followed, the Romans had a “general theory of contract, not a law of individual contracts.”<sup>24</sup> This change meant that, as Watson notes, “[in] consensual contracts” Romans could rely on law that “already set out the essentials which applied to a contract.”<sup>25</sup> On the other hand, in *stipulatio*, “a promise or series of promises were made” and “specifically adapted to the contractual situation.”<sup>26</sup> This allowed Romans to engage in more methodical agreements, while also unifying the overall body of contract law.

This more unified approach to contractual agreements proved to be a major development, as legal agreements were now largely governed by rules rather than cultural tendencies. Similarly, the Twelve Tables only marked the start of Roman business laws. Some of the laws relating to commerce in the Twelve Tables included the following: foreigners could “only

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<sup>21</sup> Ibid.

<sup>22</sup> Watson, “The Evolution of Law: The Roman System of Contracts” 4.

<sup>23</sup> Ibid.

<sup>24</sup> Watson, “The Evolution of Law: The Roman System of Contracts” 3.

<sup>25</sup> Johnston, *Roman Law in Context*, 78.

<sup>26</sup> Ibid., 78.

acquire ownership through formal conveyance” and foreigners could “have their day in court” with “respect to international treaties.”<sup>27</sup> The inclusion of laws about foreign trade further exemplifies the changing economy and culture of the republic. Thus, the Twelve Tables set the precedent for the legal system. However, further developments based upon these laws demonstrate that the Romans recognized the need to develop a legal system that could govern transactions that extended across borders. As foreign trade and transactions increased, the code of laws would begin to reflect the need for a uniform system of contracts.

### **EARLY USES OF CONTRACTS IN SALE AND COMMERCE**

Both *stipulatio* and informal verbal contracts would be used for a variety of exchanges in the republic. Wolf notes that the most common commercial contracts were contracts of sale, contracts of loan and for security, and building contracts.<sup>28</sup> While contracts of sale were widely used in the republic and empire, it took some time for them to develop. There was no contract of sale until about 200 B.C.<sup>29</sup> In explaining the development of contracts of sale, it is significant to note that “consensual sale as a separate contract arose in part because of the inadequacy of *stipulatio* for the task.”<sup>30</sup> *Stipulatio* agreements lacked two important aspects: a warranty of title and a warranty against defects in purchased goods.<sup>31</sup> Given the Roman desire for warranties on products that were traded, the immediate contract of sale developed.<sup>32</sup> Under contracts of sale,

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<sup>27</sup>Aubert, *The Cambridge Companion to Roman Law*, 218.

<sup>28</sup> Johnston, *Roman Law in Context*, 77.

<sup>29</sup> Watson, “The Evolution of Law: The Roman System of Contracts” 3.

<sup>30</sup> *Ibid.*, 8.

<sup>31</sup> *Ibid.*, 9.

<sup>32</sup> *Ibid.*



the exchange of money for goods occurred at the point of sale.<sup>33</sup> This is in contrast to *stipulatio* agreements, in which “there would be an action to give the buyer or seller an action against the other for an amount equal to what ought to be given or done in accordance with good faith.”<sup>34</sup> The Roman idea of a contract of sale is clearly related to the modern practice of buying and selling. The Romans recognized the inefficiency of *stipulatio* and thus developed a more streamlined procedure for the purchase of goods. Today, most goods and services are exchanged only when there is an exchange of money that occurs simultaneously. Likewise, warranties are still a common feature on products. Eventually, contracts of sale would also be applied to broader “land-based trade” as transactions in markets and fairs across the empire increased.<sup>35</sup> This meant that contracts were now being used to govern transactions at these fairs, instead of solely transactions in ports. This newfound ability to use contractual agreements while buying and selling goods in a marketplace proved especially beneficial for the economy of the republic. At the same time, the Romans developed a standard unit of currency, the denarius.”<sup>36</sup> Trade boomed across Europe in the 3rd century BC as the exchange of goods became more mobile. Also, I would argue that the new use of contracts of sale greatly contributed to the growth of the soon-to-be Roman empire. Now, Roman traders could engage regularly and reliably with others, thus creating a widespread network across Europe. As Rome experienced continued expansion across Europe, the Roman practice of welcoming outsiders into their society proved to be beneficial for their economy. Further, the ability to enter into early commercial contracts with

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<sup>33</sup> Ibid., 10.

<sup>34</sup> Ibid.

<sup>35</sup> Aubert, *The Cambridge Companion to Roman Law*, 214.

<sup>36</sup> Khan Academy, “The Roman Republic” *Rise of Rome*, <https://www.khanacademy.org/humanities/world-history/ancient-medieval/roman-empire/a/roman-republic>

non-Romans opened up trade that was guaranteed by the state. For example, the exchange of goods between Romans and Carthaginians shared the same legal validity and protections as domestic exchanges.<sup>37</sup> As the Republic came to a close, Rome's edges stretched far beyond those of modern Italy. The rapid growth of Rome during this period created a society that was highly conducive to extensive trade. In turn, the Romans applied and adapted their approach to law to successfully engage the international market.

### WRITTEN CONTRACTS

Another notable development of business law during the age of the republic was written contracts, or *contractus litteris*.<sup>38</sup> While there are unfortunately “no real indications of how or when or to what end the literal contract arose,” there is evidence that, during the early Republic, a Roman head of the family would devise a literal contract, or printed note, in his account book when he would transfer debt payments to loans in his records.<sup>39</sup> Thus, this was less of a written contract and more of a way to keep financial records. Despite the ambiguity of the origins of written contracts for commercial purposes, records have proven that two-party written contracts developed and were “in existence by around the beginning of the first century BC.”<sup>40</sup> Nonetheless, it is possible that they were developed many years prior. Written contracts proved to be practical during the Republic. Now, business agreements, debts, and other transactions could be permanently recorded for future use and reference. Written contracts are especially

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<sup>37</sup> Aubert, *The Cambridge Companion to Roman Law*, 217.

<sup>38</sup> Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991) 415.

<sup>39</sup> Watson, “The Evolution of Law: The Roman System of Contracts” 14.

<sup>40</sup> *Ibid.*

significant because they contained clearly documented information that was specific to the parties involved. For example, written contracts often contained the imprint of a signet ring to authorize and seal the agreement. The signet ring “has been around since the days of the Old Testament, when it was used as a personal signature or symbol of family heritage”.<sup>41</sup> The addition of personalization highlights the level of commitment that was expected in Roman written agreements between two parties. When a Roman added a seal, there was the implication that a promise was to be maintained. For example, when Roman senators were sent as foreign ambassadors to other states, they would take a gold ring that would serve as the state-seal (example pictured below).<sup>42</sup> Further, I would argue that the use of Roman signet rings is an advanced practice of *bona fides*. In order to ensure the legitimacy of a sale or agreement, the Romans held each other accountable by attaching their names and agreeing to keep their word. Today, we continue to abide by this practice and require signatures on various different types of written contracts. The belief that a contract is only legitimate when both parties physically acknowledge their agreement is the backbone of modern contract law. While Romans continued to use verbal agreements in business into the imperial age, the use of two-party written contracts constitutes a significant advancement.

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<sup>41</sup> Nic Screws, “Everything You Need to Know About Wearing a Signet Ring,” *Bloomberg* (August 24, 2015), <https://www.bloomberg.com/news/articles/2015-08-24/everything-you-need-to-know-about-wearing-a-signet-ring>.

<sup>42</sup> Leonhard Schmitz, “Annulus,” University of Chicago, (April 1, 2018), [http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA\\*/Annulus.html](http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Annulus.html).

Signet Ring:<sup>43</sup>

### TECHNOLOGY: A DRIVING FORCE

Technological advances, specifically advances in construction and building, also contributed to the development of the legal system. First, the Romans began to connect with other cities across Europe by building systems of roads. Specifically, the Via Appia was a major road built during the second and third centuries, that connected Rome to areas in southern Italy.<sup>44</sup> The Via Appia and other roads created a vast network across Europe that encouraged trade and transactions. Also, roads allowed for the influence of Rome to spread. As the Romans developed roads and different points of access across Italy, it became increasingly clear that “[road] building and town foundation went together”.<sup>45</sup> If a settlement was touched by a new road, then it was exposed to Roman trade by default. However, the roads also “created an uneven geography of development with towns and cities being concentrated on these lines of communication”.<sup>46</sup> In chapter 2, I will discuss how this pattern changed in the empire. Another technological advancement that enabled widespread trade were port facilities. Maritime

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<sup>43</sup> PicClick, *Roman Republic Silver Seal Ring*, <https://picclick.com/Perfect-Roman-Republic-Silver-Seal-Ring-Circa-202551209358.html>

<sup>44</sup> Jane Derose Evans, *A Companion to the Archeology of the Roman Republic*, (West Sussex: Wiley-Blackwell, 2013), 300.

<sup>45</sup> *Ibid.*, 298.

<sup>46</sup> *Ibid.*, 299.

development proved to be especially beneficial for the growth of Rome as a city on a navigable river, since the construction of ports “provided spaces for ships to dock...to be constructed and maintained, and for the bulk commodities to be offloaded, stored and sold”.<sup>47</sup> Thus, the construction of ports created increased communication with maritime traders, creating an explicit use for contracts of sale. New Roman trade routes and ports are deeply connected to the use of contracts. As the Romans increasingly interacted with merchants and buyers across Europe, there was a need for uniform contractual agreements. Next, I will consider how lawyers assisted in developing a systematic method of contract law that was conducive to the fast-paced trade environment in the republic.

### **THE ROLE OF BUSINESS LAWYERS**

For many, when thinking about Roman lawyers in the republic, the famous lawyer, orator, and politician Cicero comes to mind. Trial lawyers like Cicero were highly educated, specialized individuals that were well-respected members of society. Similarly, early business lawyers shared these characteristics and played an integral role in development of Roman business law. In the early years of the republic, jurists and lawyers were the state priests “in whose hands rested the development, application, and interpretation, first of the sacral law, later also of the secular law”.<sup>48</sup> Lawyers were considered to be some of the most technical and professional experts in society. While these pontiff-lawyers would not participate in disputes in court, they would help clients devise a legal actions.<sup>49</sup> For example, they could assist with

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<sup>47</sup> Ibid., 323.

<sup>48</sup> Anton-Hermann Chroust, "Legal Profession in Ancient Republic Rome," *Notre Dame Law Review* Volume 30 Issue 1 (1954), 100.

<sup>49</sup> Ibid., 104.

appointment of heirs, marriage contracts, and parole contracts, among other actions.<sup>50</sup> This role would eventually be shifted from priests to laymen during the middle period of the Roman Republic because of an increasing need for legal assistance.<sup>51</sup> Nonetheless, the prestige of lawyers remained despite the shift that occurred around 200 BC. Laymen who worked as lawyers were unpaid aristocrats that were considered to be professional men who “maintained the highest professional standards.”<sup>52</sup> One of the most common tasks for Roman lawyers was drawing up legal documents.<sup>53</sup> Thus, legal contracts became more uniform, as professionals were composing these two-party written contracts and agreements. Likewise, as Rome continued to expand in power and influence, the laws that governed society and business transactions expanded as well. As a result, the need for professional and well-educated lawyers increased. In order to ensure that contracts were in compliance with the standards of the time, Romans turned to lawyers to represent their needs in contractual agreements.

### **A CHANGING ROME: BUSINESS LAW AT THE END OF THE REPUBLIC**

While the Roman legal system experienced sweeping changes during the republic, business and contract law developed especially quickly as Rome grew. Society was forced to create more efficient ways to trade and make agreements. Since the legal system was able to evolve from simple verbal promises to more complex and standardized written agreements, the Roman economy prospered. Likewise, Rome’s power and influence in Europe increased greatly as the city began to acquire control across Europe and beyond. As Rome entered into the

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid., 105.

<sup>52</sup> Ibid., 109.

<sup>53</sup> Ibid., 109.

imperial age, business law would continue to change and develop in accordance with the needs of its inhabitants and trade partners.

## **COMMERCIAL LAW IN THE EMPIRE**

### **EMERGENCE OF AN EMPIRE**

Rome shifted from Republic to Empire beginning with the rise of Caesar Augustus in 27 BC. The Roman Empire would continue to expand and would remain the hub of civilization in the Western world for the next several centuries. This change from Republic to Empire was accompanied by several other political and social developments. These changes included widespread acquisitions of land throughout Europe, Asia, and Africa, which increased and diversified the population under Rome's control. For the purposes of tracing legal history, as well as trying to uncover how business law reflected commerce of specific time periods, the most important aspect of these changes was the expansion of Rome that resulted in more land and more people. During Augustus's rule, the Roman Empire included all territories from the Iberian Peninsula, to Asia minor, to most of northern Africa. By the time of the so-called "Five Good Emperors" (AD 96-180), under whose rule Rome particularly flourished, the Empire had been expanding for more than 300 years. Several factors contributed to the success of the early Roman Empire, such as amassing incredible wealth as they conquered their neighbors. As a result, massive amounts of wealth began pouring into the empire, thus expanding Roman influence and strengthening the economy. Rapid expansion, however, did not come without challenges. The



trend which saw powerful Romans claiming land previously owned by communities and developing *ager publicas*, or large commercial farms, became even more pronounced.<sup>54</sup> Subsequently, the poor were forced to move to urban centers, particularly Rome. Further, the centers for trade and commerce followed this movement and Rome further cemented its position as the center of the Mediterranean economy. Roman laws were forced to keep pace with the constant social, political, and economic changes that resulted from ongoing expansion.

### **ROLE OF EMPERORS IN LEGAL DEVELOPMENT**

Law during the Empire was “a moving target, its doctrines and procedures undergoing constant revision and change”.<sup>55</sup> In addition to the population shift from rural areas to cities, the role of emperor shifted and evolved during the rule of each of the 71 emperors of the unified Empire. This was significant for commercial law specifically because some emperors chose to exert power over trade and the legal system. This is significant because it indicated direct state involvement with the laws. During the Republic, agreements were devised and kept between private individuals and trade occurred with relatively minimal government oversight. Now, the government—especially the emperor—was interested in involving themselves with issues related to contractual agreements or trade. This power would expand as the empire progressed.

For example, the emperor Nero, who ruled from AD 54-68, implemented government regulations on commerce. He “banned the sale of Tyrian purple,” which was a dye that was often

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<sup>54</sup> Peter A. J. Attema, Gert-Jan L.M. Burgers, P. Martijn van Leusen, *Regional Pathways to Complexity: Settlement and Land-Use Dynamics in Early Italy from the Bronze Age to the Republican Period* (Amsterdam: Amsterdam University Press, 2010), 147.

<sup>55</sup> Clifford Ando, *Law, Language, and Empire in the Roman Tradition* (Philadelphia: University of Pennsylvania Press), 20.

associated with the emperor.<sup>56</sup> This specific regulation over a material good exemplifies the expanding control of the state over trade. These regulations, however, typically positively affected Roman commerce and the economy. Hollander explains that “[the] gradual (if uneven) spread of Roman law and legal institutions, for example, would tend to reduce transaction costs.”<sup>57</sup> The regulation of trade and transactions created a more systemized and organized economic structure. Further, as Ando notes, “[homogeneity] had to be produced out of heterogeneity, unity out of plurality, without disruption to the preexisting social and economic relations.”<sup>58</sup> At this point, the Empire was comprised of many different groups of people, so creating a uniform system helped to establish an economy that was more conducive to widespread trade. While there were problems and abuses that resulted from the absolute role of the emperor, this increasing state management of trade benefited the Roman economy.

### CHANGES IN COMMERCE

Aside from increasing government regulation over commerce, the trade of commodities also evolved. While grain had been an important food source during the Republic, the distribution of grain, as well as legislation dictating this distribution, changed during the Empire. During both the Republic and the Empire, grain was distributed to Rome and other urban areas from provinces in more remote areas.<sup>59</sup> During the Empire, however, this market in particular benefitted from the standardizations of the legal system. As Temin notes, “relations between

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<sup>56</sup> David Hollander, “The Roman Economy in an Early Empire: An Overview” in *Paul and Economics*, ed. Raymond Pickett and Thomas R. Blanton IV (Minneapolis: Augsburg Fortress Publishers, 2017), 10.

<sup>57</sup> Ibid.

<sup>58</sup> Ando, *Law, Language, and Empire in the Roman Tradition*, 21.

<sup>59</sup> Peter Temin, *The Roman Market Economy* (Princeton: Princeton University Press, 2012), 91.

merchants and agents are simplified greatly if they have contractual relations that are enforceable in a court of law.”<sup>60</sup> This meant that grain producers were held to a particular standard. If they did not hold up their end of the bargain in a trade deal, they could be punished in the courts. Also, this allowed the agents who conducted the trade to be held to legal standards if they maintained the contract. For example, Rome’s legal framework allowed the state to enforce fines against agents who were proven to be untrustworthy.<sup>61</sup> The use of contracts for trade was not necessary, but it “[facilitated] that expansion of economic activity.”<sup>62</sup> Today, contractual agreements between merchants and buyers assure that there will be a standard for a purchased product. Similarly, grain consumers, such as senators and wealthy freedmen, could expect a particular level of grain.<sup>63</sup> For example, in order to protect consumers from agents who would “cut” their grain with other materials such as barley or dirt, grain merchants would send sealed pots with a sample of the grain on ships.<sup>64</sup> Then, the pots were signed by a grain official, a merchant, and a witness.<sup>65</sup> This would ensure that both the buyer and seller could trust the product that was being traded. On a large scale, these regulations legitimized trade deals and helped to create an interconnected economy across the Empire.

One problem that existed regarding imperial Roman trading contracts was the lack of a law of agency.<sup>66</sup> A law of agency is what promotes accountability for actors who perform an

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid., 94.

<sup>62</sup> Ibid., 91.

<sup>63</sup> Ibid., 93.

<sup>64</sup> Ibid., 98-99.

<sup>65</sup> Geoffrey Rickman, *The Corn Supply of Ancient Rome* (Oxford: Clarendon Press, 1980), 122.

<sup>66</sup> Ibid., 95.

action on behalf of another in a binding agreement. This was problematic for the Romans because if an agent acted on behalf of a merchant or seller, they were not technically bound to the agreement.<sup>67</sup> Of course, these agents often remained loyal to their party, because of fear of punishment, such as a fine. However, there are historical examples of agents breaching their contracts, such as one who agreed to “carry goods using donkeys” for a local merchant, but later broke the contract and killed the donkeys.<sup>68</sup> The merchant was then responsible for filing suit following this action, and could not be held responsible for the actions of his agent.

When a contractual conflict arose, private judges heard the cases.<sup>69</sup> Unlike public judges who heard cases that involved that state in public courts, private judges settled disputes over contracts that did not involve the state as one of the parties. This is significant because it displays the importance of the public and private formal institutions that were responsible for protecting agreements that were bound by the law.<sup>70</sup> This is a unique aspect of the ancient Roman legal practices. The use of both private and public judges in legal proceedings emphasizes the interaction between the public and private sectors of Roman commerce. For example, commodities like wheat were traded and maintained by both private and public businesses and people.<sup>71</sup> This further highlights the increasing role of the government in the economy. The state had the ability to enforce commercial contracts with individuals, resulting in direct regulation of trade. Also, this explains how the expansion of the Empire affected trade, as there were private

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<sup>67</sup> Ibid.

<sup>68</sup> Ethyle R. Wolfe, “Transportation in Augustan Egypt,” *Transactions and Proceedings of the American Philological Association* Vol. 83 (1952): 80-82, <https://www.jstor.org/stable/283376>.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., 97.

and public markets for the same products. Therefore, it was not unusual that a dispute over a contract would be handled outside of public legal system. Many of these agreements were made between two private parties, and private judges helped to ensure that each actor in a contractual agreement would maintain their promise. As Temin notes, “other formal institutions, while not codified under law, increased the ability of merchants to monitor agent activity.”<sup>72</sup> Thus, private courts worked in tandem with public laws and institutions to ensure that commerce was monitored.

### **LAWYERS: AN EVOLVING ROLE**

Rome’s growth had an impact on the legal profession as well. As their powers expanded, some emperors decided to regulate the role of lawyers. First, Emperor Claudius, who ruled from AD 41-54, formalized the profession and allowed them to charge a limited fee for their services.<sup>73</sup> Previous to this, anyone could claim to be a legal expert and could not be compensated.<sup>74</sup> This change thus transformed the legitimacy of practicing lawyers. During this middle period of the first century, law schools began to develop in the Empire.<sup>75</sup> These schools, which were separate from rhetoric schools that other legal experts attended, attracted many skilled jurists who had previously worked to develop laws.<sup>76</sup> During the Late Republic, those who practiced law tended to be part of the patrician class and were active in politics; an example

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<sup>72</sup> Ibid., 96.

<sup>73</sup> Josh Taylor, “A Brief Guide to the History of Lawyers,” *Smokeball*, <https://www.smokeball.com/blog/brief-guide-to-the-history-of-lawyers/>.

<sup>74</sup> Ibid.

<sup>75</sup> Chroust, “Legal Profession in Ancient Republic Rome,” 515.

<sup>76</sup> Ibid.

of this was Cicero. However, under the Empire, many of the men who attended these schools sought to avoid politics and preferred to teach law or write treatises.<sup>77</sup> It was, nonetheless, “high salaried” men who practiced law during this period.<sup>78</sup> As a result, lawyers became an increasingly specialized sect of society, since they were now able to receive a unique legal education. With regard to commercial law, this new class of highly-educated lawyers were able to provide advice to fellow Romans about contracts and business arrangements, as well as help them draft legal documents.<sup>79</sup>

Claudius’ nephew, the Emperor Nero, also implemented some changes that impacted the role of lawyers. During the early years of his reign, he took several actions that that benefitted the poor.<sup>80</sup> For example, Nero “fixed rates for lawyers.”<sup>81</sup> He made this decision to ensure that members of the lower classes could be represented in court.<sup>82</sup> While this regulation restricted the freedom of lawyers, this incorporated plebeians into the legal system in a new way by granting them access to legal aid. Further, the role of lawyers continued to become increasingly professionalized during this era. Ultimately, regulations of legal practice were necessary in order to ensure that lawyers were charging clients appropriately for their work.

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid., 516.

<sup>79</sup> Ibid.

<sup>80</sup> Martin Armstrong, “Nero—54-68 AD,” *Armstrong Economics*, [https://www.armstrongeconomics.com/research/monetary-history-of-the-world/roman-empire/chronology\\_-by\\_-emperor/imperial-rome-julio-claudian-age/nero-54-68-ad/](https://www.armstrongeconomics.com/research/monetary-history-of-the-world/roman-empire/chronology_-by_-emperor/imperial-rome-julio-claudian-age/nero-54-68-ad/).

<sup>81</sup> Hollander, “The Roman Economy in an Early Empire: An Overview,” 10.

<sup>82</sup> Armstrong, “Nero—54-68 AD.”

## LEGAL DOCUMENTATION

Tracing the development of commercial law and the legal field during the Empire is possible primarily because of the ample amount of concrete evidence of legal documentation from the Imperial age. This is a result of the use of wax tablets, or *tabulae cerae*, during this time. Wax tablets enabled Romans to permanently record notes, transactions, and other legal matters. This was a result of increased usage of wax tablets. However, wax tablets were normally heated and smoothed over once they were no longer needed, thus erasing the writing. Fortunately, the eruption of Mount Vesuvius preserved over four hundred legal and financial tablets dating between AD 15 and AD 79.<sup>83</sup> The preservation of tablets from an extended period of time displayed how legal documentation changed throughout the years of the Empire. For example, there was an emphasis on sealing the tablets with a third layer, to ensure that they lasted longer.<sup>84</sup> This reflects the concept of *bona fides* in legal agreements; there was a belief that what was written in a contract was going to be fulfilled. Legal contracts were sealed by different members of the agreement and further sealed by the author to show adherence to the promise set forth.<sup>85</sup> Having written documentation from this time period provides concrete evidence about the elements of commercial contracts during the height of the Empire. For example, the wax tablet pictured below documents the use of credit for a transaction and translates to the following: “The sum of 38,079 sesterces was given in obligation to Lucius Caecilius Iucundus for the auction of the property of Marcus Lucretius Lero, which includes a 2% premium. Marcus Lucretius Lero assented to have it collected by Lucio Cecilio Giocondo.

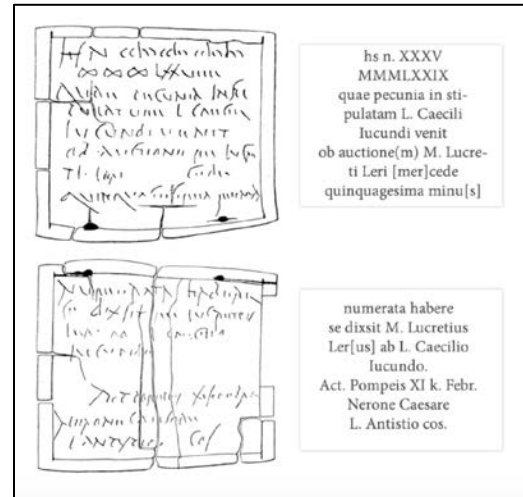
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<sup>83</sup> Hollander, “The Roman Economy,” 10.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

Deed signed in Pompeii on January 22 in the consulship of Nero Caesar and Lucius Antistius (55 AD).”<sup>86</sup>



### PRESERVING THE STATUS QUO

Although Rome experienced many changes during the Empire, the Romans maintained many of the traditions that were developed during the Republic. As mentioned, the concept of *bona fides* remained important in contractual agreements. Ando notes that “Romans believed that sustaining local traditions, including legal relations, conduced social order in some fundamental and probably profitable sense.”<sup>87</sup> Thus, using legal precedents to govern transactions and other business was accepted as the norm in their society. Although powerful emperors and increasing government regulations had become the new norm, there were traditional legal practices that survived. Nonetheless, the legal field, specifically commercial law, experienced dramatic improvements during this period. Lawyers had been legitimized by Rome, and were able to play

<sup>86</sup> “The House of Cecilio Giocondo,” *Istituzioni e Patrimonio: Pompeii N. 12 The World of Money at Pompeii* <http://www.pompei.numismaticadellostato.it/tappa05.html?lang=en>.

<sup>87</sup> Ando, *Law, Language, and Empire in the Roman Tradition*, 23.



a more concrete role in legal proceedings and contracts. Also, trade contracts were also more difficult to breach as a result of closer monitoring of trade activity and the actions of agents.

The final collapse of the Roman Empire occurred around the end of the fifth century. However, these legal precedents would survive sweeping legal reforms under the Eastern Roman Emperor Justinian as Rome moved into a new age. The continued use of the legal foundations that were solidified during the Roman Empire will continue to be discussed in Chapter Three.

## **LAW AFTER THE FINAL COLLAPSE OF ROME**

### **THE COLLAPSE AND DIVISION OF ROME**

In AD 476, Romulus Augustulus, considered by many the last Roman emperor, was overthrown, barbarian tribes invaded the Italian peninsula from the north, and the Empire collapsed.<sup>88</sup> These changes had several immediate effects on the day-to-day lives and practices of the people that were previously under the control of the Roman emperor. New leaders would rise to power in the coming centuries, but would be unable to regain much of their lost territory. When Romulus Augustulus was overthrown, two new, smaller empires would emerge in the coming centuries. The Western Roman Empire would exist from the third to the fifth centuries. The Eastern Roman Empire would begin to progress and expand in the fourth century under the leadership of powerful rulers like Constantine. The Western Empire was unable to regain its full strength, but the Eastern Empire would remain strong for centuries to come. The founding of Constantinople in AD 330 a new political center in the East provided a political and cultural epicenter for the series of rulers of what came to be known as the Byzantine Empire in the east. There was one leader, however, who singlehandedly transformed and modernized legal practices

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<sup>88</sup> Edward Gibbon, *Decline and Fall of the Roman Empire, Volume IV* (London: Electric Book Company, 2000), 18.

in the Middle Ages: Justinian I, who was the Eastern Roman Emperor from AD 527-565.

Throughout his life, he contributed “three great legislative projects” which today are referred to as the *Corpus iuris civilis* or the body of civil law.<sup>89</sup> Although Justinian was reforming laws in the Eastern Roman Empire, the laws he was considering were, as Kaiser observes, “Roman law in Greek dress.”<sup>90</sup> Thus, the laws and legal practices that were used following the collapse relied on the precedents set during the Empire. Justinian was not the first to aim to codify the laws. Emperor Theodosius II (402-450) created the *Codex Theodosianus* in an attempt to record all of the laws in a central location in Constantinople. While Justinian initially used this code as an example, he later chose to issue a complete reform.<sup>91</sup> Sirks describes these codes as a type of “constitution,” which outlined the prescribed legal behaviors and expectations in particular situations and arrangements. In general, Justinian sought to execute a complete revision of Roman laws, as well as modernize their legal system.

Justinian I was also responsible for gaining new territory and military achievements.<sup>92</sup> Naturally, these territorial gains impacted trade and commerce. For example, silks, spices, and incense were among the most desired items along trade routes in the east. This represents a stark contrast to trade that occurred during the Empire, which was centered more on commodities like grain. As a result, Justinian sought to offer solutions to legal challenges that surrounded the new realities of the market, as well as property rights.

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<sup>89</sup> Kaiser, *Cambridge Companion to Roman Law*, 123.

<sup>90</sup> *Ibid.*, 365.

<sup>91</sup> A. J. B. Sirks, “The Colonate in Justinian's Reign” *The Journal of Roman Studies*, Vol. 98 (2008): 120, <http://www.jstor.org/stable/20430668>.

<sup>92</sup> Sarah Brooks, “The Byzantine State under Justinian I (Justinian the Great)” *Heilbrunn Timeline of Art History*. (New York: The Metropolitan Museum of Art, 2008). [http://www.metmuseum.org/toah/hd/just/hd\\_just.htm](http://www.metmuseum.org/toah/hd/just/hd_just.htm).

## JUSTINIAN'S LEGAL REVOLUTION

Justinian had a “vision of the empire as integrated by law.”<sup>93</sup> Consequently, he sought to reform the existing legal system in order to modernize laws and practices, and make legal proceedings more efficient; the *Corpus iuris civilis* was the result. This code was developed in AD 529 and 529 and contains three parts: the Digest, the Code, and the Institutes.<sup>94</sup> Justinian was aided by jurists and prior legal opinions throughout his reforms. He selected a committee of ten jurists, which included teachers of law and senior officials in the government.<sup>95</sup> Before Justinian, jurists played an important role in the development of the Roman legal code as they completed research about laws. During Justinian’s rule, however, the role of jurists was even more significant. They worked to collect existing laws to revise or rewrite them if they were still relevant, or eliminate them if they were obsolete.<sup>96</sup>

Some areas of law that were reformed were property law, estate law, and commercial law.<sup>97</sup> Since records of the laws that predate Justinian survive, scholars are able to track the changes that were made. One example of a new property law is as follows: if someone sets fire to another person’s property, the victim would now be protected under the *lex aquilia*, which compensated property owners who experienced injury from someone else.<sup>98</sup> The inclusion of this specific law was a change from the past, since people were now directly protected by a particular

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<sup>93</sup> Ando, *Law, Language, and Empire in the Roman Tradition*, 27.

<sup>94</sup> James Skyrms, “Commentators on the Roman Law” (Iowa: University of Iowa Press, 1980), 3.

<sup>95</sup> Edgar Shumway, “Justinian’s Redaction,” *The American Law Register*, Vol. 49, No. 4 (1901): 203, <https://www.jstor.org/stable/pdf/3306333.pdf?refreqid=excelsior%3A3c2e90be421fa1121a66d13bfa73903b>.

<sup>96</sup> “Roman Law Research,” *GW Law Research Guides*, <https://law.gwu.libguides.com/romanlaw>.

<sup>97</sup> Kaiser, *The Cambridge Companion to Roman Law*, 128-135.

<sup>98</sup> *Ibid.*, 129.

state law and not just “the law” in general. So, this change meant that there was a clear law to protect people, rather than just an understanding of what was right. Another example of a new estate law was that someone could demand the return of their estate if the price paid by the buyer was lower than “one-half of the actual value of the estate.”<sup>99</sup> This change to estate law marked a change in legal precedent. Previously, emperors like Theodosius had refused to allow sellers to demand that buyers pay the difference in the price that was agreed on and the value of the property.<sup>100</sup> Now, however, sellers were allowed to question the agreement if the buyer did not fully pay for the value of the estate.

Also, contract law was reformed. Justinian established an elaborate classification of categories of contracts, such as a category of contracts for sales and leases.<sup>101</sup> This streamlined contractual agreements by formalizing the process and creating recognizable standards for written contracts. For example, written contracts either had to be signed by both parties to be considered valid, or they had to be devised by a notary and delivered to both parties.<sup>102</sup> In the eleventh and twelfth centuries, scholars called *glossators* compiled existing Roman laws into one concise body at the University of Bologna; this is how the *Corpus iuris civilis* was recorded and preserved in a central location.<sup>103</sup> These scholars focused on the following: “interpretation of individual legal terms, on the linking up of legal rules dispersed throughout Justinian’s law books, and on the reconciliation of contradictory statements on the part of the Roman jurists.”<sup>104</sup>

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<sup>99</sup> Ibid., 135.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid, 128.

<sup>102</sup> Ernest Metzger, *A Companion to Justinian’s Institutes*, (Ithaca: Cornell University Press, 1998), 151.

<sup>103</sup> “Roman Law Research,” *GW Law Research Guides*, <https://law.gwu.libguides.com/romanlaw>.

<sup>104</sup> Skyrms, “Commentators on the Roman Law,” 6.

The work of the *glossators* is significant because it allowed Justinian's reforms to have a lasting impact on modern law. It is especially significant to my study because many modern legal systems developed as a result of the *glossators'* findings. While British and American law incorporate some of these laws and precedents, other systems of law in Western Europe and Latin America, such as those of France and Brazil, are closely linked to Justinian's code.<sup>105</sup>

### NEW TYPES OF TRADE

After the collapse of the Empire, luxury goods featured more prominently than ever before. While grain was still traded throughout Europe and Asia, prices rose as a result of decreasing agricultural production. A more robust trade network based on luxury goods, however, developed because prices of these goods became more reasonable.<sup>106</sup> Justinian supported the expansion of luxury trade networks by encouraging people to make trade investments. In particular, loans made to merchants to travel to the Indian Ocean and retrieve goods were high-risk and high-interest.<sup>107</sup> As a result, loan benefactors would achieve large financial gains after successful voyages. However, in AD 528, Justinian fixed these loans at 12 percent each year.<sup>108</sup> This change was helpful to merchants, since their loan repayments would be consistent. Eventually petitions for overturning the law were made by loan benefactors, who warned that they would be unable to continue making high-risk loans if Justinian maintained the fixed rate. In the end, lenders preferred to make high-risk investments with the possibility of

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<sup>105</sup> "Roman Law Research," *GW Law Research Guides*, <https://law.gwu.libguides.com/romanlaw>.

<sup>106</sup> Steven Sidebotham, *Berenike and the Ancient Maritime Spice Route*. (Berkeley: University of California Press, 2011), 250.

<sup>107</sup> *Ibid.*, 219.

<sup>108</sup> *Ibid.*

earning a large sum of interest after a successful voyage. While fixed rates temporarily protected merchants in their trade and proved that large scale regulation of commerce was possible, trade would have suffered if those willing to make loans decreased and Justinian ultimately overturned the law.

Another change that affected commerce was the addition of controls that guaranteed the protection of a goods in a sale. Justinian ensured that a contract could be voided if an item was sold for “less than half of its true value.”<sup>109</sup> This was called ‘voiding on excessive damage.’ While previous commercial laws often protected the seller and their ability to make legal agreements, this law protected the buyer. Further, I would argue that the modern idea of quality control of goods is connected to Justinian’s protections of the seller. He recognized that merchants had the ability to abuse the system if they were not answerable to standards. In general, Justinian’s response to contemporary trade developments was effective, and influenced future trade regulation.

## LAWYERS

Standardization for legal education had already started to be implemented long before Justinian’s reforms. As mentioned in Chapter 2, Claudius sought to professionalize the role of lawyers, and thus ensured that lawyers had studied the law before receiving compensation for completing legal services. Other leaders had even established law schools.<sup>110</sup> Diocletian created state-controlled law schools at the end of the third century in Rome and Berytus.<sup>111</sup> In the fifth

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<sup>109</sup> Hegel, *Elements of the Philosophy of Right*, 414.

<sup>110</sup> Kaiser, *The Cambridge Companion to Roman Law*, 122.

<sup>111</sup> Charles P. Sherman, “The Study of Law in Roman Law Schools,” *The Yale Law Journal* 17, no. 7 (1908): 499-512.

century, Theodosius established a new university in Constantinople, which staffed professors of law and was modeled after the schools started by Theodosius. Justinian, however, introduced new features to legal education after determining that the existing system was inadequate. Previously, students studying the law would only read selected legal works and imperial constitutions.<sup>112</sup> However, Justinian implemented a new legal education that was based on his legal code. So, instead of relying on legal texts, teachers would now teach Justinian's three works of codification: the Digest, the Code, and the Institutes.<sup>113</sup> Classes changed from being taught in Latin to being taught in Greek. This was significant because it reflected the language shift that was occurring in the Byzantine Empire. Previously, Latin was the primary language; however, the Byzantine Empire increasingly adopted Greek by the middle of the sixth century. This is also significant because, the Romans had previously "insisted on the use of Latin for suits and contracts."<sup>114</sup> Thus, this represents a shift in legal norms and practices. Justinian transformed legal education by changing the curriculum to ensure that students understood the standards of the time and could practice law in accordance with the current legal code.

### **ROLE OF CHRISTIANITY**

Although Christians were found in Rome as early as the 40s AD, it was not until Constantine made Christianity the official religion of Rome in AD 380. While religion and business are typically not connected in the modern age, the presence of a state religion impacted business in the centuries beyond those of the empire. The belief that God supported binding

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<sup>112</sup> Kaiser, *The Cambridge Companion to Roman Law*, 122.

<sup>113</sup> Ibid, 126.

<sup>114</sup> Ramsay MacMullen, "Provincial Languages in the Roman Empire." *The American Journal of Philology* 87, no. 1 (1966): 1-17.



agreements developed after the introduction of Christianity. As Berman notes, the “obligation that was enforced was not the mutual obligation of the parties but the oath, that is, the obligation to God.”<sup>115</sup> As a result, a breach of an agreement could be “punished as a sin.”<sup>116</sup> Politics and religion remained interwoven for centuries after the collapse of the Roman Empire. Although a new religion took hold in Europe, the belief in a faithful promise punishable by a higher power remained a central concept in their society.

### **TRANSITION TO THE MODERN ERA**

Despite the division of the Roman Empire, business and commercial law continued to evolve as a widespread trade network developed across Europe and Asia. Similarly, leaders like Justinian called for a more organized legal system. The collapse of the Empire ushered in a period of positive changes for legal training and practices in Europe and beyond. In particular, Justinian’s reforms are often considered to be his greatest contribution to the development of the West.<sup>117</sup> New types of commerce also pressured Justinian to regulate trade within his control and protect buyers and sellers. In Chapter 4, I will highlight how Justinian’s work connects to legal practices today. I will also consider how commercial law is used in our contemporary global economy and highlight similarities and differences between modern commerce and widespread commerce after the empire.

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<sup>115</sup> Harold Berman, "The Religious Sources of General Contract Law: An Historical Perspective," *Journal of Law and Religion* 4, no. 1 (1986): 107

<sup>116</sup> Ibid.

<sup>117</sup> “Roman Law Research,” *GW Law Research Guides*, <https://law.gwu.libguides.com/romanlaw>.

## **CONTEMPORARY APPLICATIONS OF ANCIENT BUSINESS LAW**

### **CORPORATE LAW TODAY**

While modern business law is immensely different from business law in ancient Rome, Roman law undeniably “left an enduring mark on contemporary Europe and beyond.”<sup>118</sup> Today, the global economy influences many business decisions. The interconnectedness of the world creates a network of business transactions and agreements that occur constantly. Nonetheless, the center of these corporate negotiations are principles that were developed and practiced in ancient Rome. In this chapter, I will make connections between Roman business law and corporate law in the modern era. I will also outline the contemporary practice of corporate law (specifically in the United States), as well as highlight the challenges surrounding this legal field.

### **LEGAL SYSTEMS TODAY**

Justinian’s codifications had a direct influence on other modern legal systems. In fact, most developed countries have used the Romans as an example and have chosen to codify their legal system.<sup>119</sup> The two exceptions to this are the United States and Great Britain. This is

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<sup>118</sup> Richardson, *The Cambridge Companion to Roman Law*, 452.

largely because these two legal systems are based on common law, and not civil law. Common law systems rely on case law, or “published judicial opinions,” whereas civil law relies on existing statutes.<sup>120</sup> This means that in common law systems, legal precedents and previously-decided cases are used as standards. The only exception to this standard in the United States is Louisiana, which uses a civil law system modeled after France. Civil law systems are based on the Justinian’s codified system.<sup>121</sup> So, legal decisions are dictated by pre-existing statutes.

Although common law is different from civil law, early common law was nonetheless “nurtured in an atmosphere of Roman intellectuality—ethical, philosophical, and judicial.”<sup>122</sup> So, the development of common law was not isolated, but rather affected by a variety of different roots, including Roman law. The United States maintains a codified system of permanent, federal laws in the *United States Code*. Thus, the codification performed by Justinian, and later the *glossators* was used as an example of a legal code in future nations. Aspects of Roman law are applicable in other ways, as well. For example, lawyers in areas with civil law, like Louisiana and Quebec, are best suited to practice law in these areas if they have a basic understanding of Roman law.

Although the vast majority of legal systems in United States, as well as the federal system, are rooted in common law, studying Roman law provides “an introduction to the Study of the Science of Law” or jurisprudence.<sup>123</sup> For example, some law schools, like Harvard Law school,

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<sup>119</sup> Charles Sherman, “The Value of the Roman Lawyer to the American Lawyer of Today,” *The University of Pennsylvania Law Review* (1911): 201.

<sup>120</sup> Edward D. Re, “The Roman Contribution to the Common Law,” *Fordham Law Review* Vol. 29 Issue 3 (1961): 448, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1673&context=flr>.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, 493.

<sup>123</sup> Re, “The Roman Contribution to the Common Law,” 493.

offer Roman law classes. Thus, this shows that “intellectual value of Roman law is rapidly being recognized by American law schools.”<sup>124</sup> Although it is only indirectly related to our own system, the Roman legal system and the precedents it set are nonetheless valued in American society. Despite the differences between Roman, or civil, law and common law, corporate lawyers today emulate many of practices used in the ancient world. This is because “the fundamental doctrines of our law of Persons (including Corporations), and of Property (especially Obligations, Contracts, and Successions)” came from Roman law.<sup>125</sup> This means that the basis for these areas in our legal system, as well as the practices that govern these doctrines today, were derived from the work of the Romans.

### MODERN LEGAL LANGUAGE

The Roman legal system also influenced the language used in the American legal system today. There are several examples of words and phrases used in modern legal agreements or proceedings that remain in Latin. In business law, for example, the phrase *ultra vires* is used when discussing something that is beyond the power or control of a corporation. For instance, an act can be deemed *ultra vires* if it goes beyond what is granted in a corporation’s charter.<sup>126</sup> Likewise, *animus contrahendi* means intention to contract, and occurs when two or more parties agree that a contract should be devised.<sup>127</sup> More generally, phrases like *quid pro quo* (something for something), *ad hoc* (for a specific purpose), *ipso facto* (by the fact) are used regularly, both in everyday life and legal actions.

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<sup>124</sup> Sherman, “The Value of the Roman Lawyer to the American Lawyer of Today,” 201.

<sup>125</sup> Ibid.

<sup>126</sup> Cornell Law School, *Legal Information Institute*, [https://www.law.cornell.edu/wex/ultra\\_vires](https://www.law.cornell.edu/wex/ultra_vires).

<sup>127</sup> Duhaime’s Law Dictionary, <http://www.duhaime.org/LegalDictionary/A/AnimusContrahendi.aspx>.

Roman law has also influenced modern legal writing. The style of Roman jurists was “simple, clear, brief, tense, nervous, and precise.”<sup>128</sup> For example, Roman legal writing contained clear phrases such as “[no] one can hold or be bound by servitude unless he has an estate.”<sup>129</sup> Today, legal writing, especially legal writing relating to business agreements or transactions, continues to maintain many of these qualities. According to the Georgetown University Law Center, pithy writing is key in the legal field. They note that “concise and readable legal writing is expected from lawyers.”<sup>130</sup> Although many older legal documents and opinions contain long-winded and technical language, law schools today encourage more clear and succinct writing. As an example, a modern contract may state that an agreement was signed and agreed upon by two different parties, or may state that an agreement was made on a specific day between two groups for the purpose of employment or another cause.

## CONTRACTS

Contract law is a major area of corporate law today. Contracts continue to have many purposes, but are frequently used to do the following: create legitimate business agreements, hold buyers and sellers accountable, outline debt payments, transfer property, and explain services between a company and a customer. Just as in ancient Rome, business agreements are often determined by written contracts. Today, the statute of frauds determine which types of contracts must be in writing in order to be enforceable.<sup>131</sup> While these statutes vary from state to

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<sup>128</sup> Sherman, “The Value of the Roman Lawyer to the American Lawyer of Today,” 201.

<sup>129</sup> Kaiser, *The Cambridge Companion to Roman Law*, 132.

<sup>130</sup> “Ten Tips for Transitioning to Legal Writing,” *Georgetown University Law Center Writing Center*, <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Ten-Tips-for-Transitioning-to-Legal-Writing-Final.pdf>.

<sup>131</sup> Cornell Law School, *Legal Information Institute*.

state, common examples of mandated written contracts are large sales of goods, agreements to pay debts, and marriage agreements.

Contemporary contract law connects directly to Justinian's reforms. As Berman notes, modern contract law originated in the late eleventh and early twelfth centuries after "the *glossators* of Roman law began to construct out of Justinian's massive texts...a coherent *corpus juris*", as mentioned in Chapter Three.<sup>132</sup> Justinian's reforms laid the foundation for efficient use of contracts. Justinian's legal code also determined that there are certain elements that would establish a legitimate contract. For example, some legal agreements followed a "prescribed verbal formula."<sup>133</sup> These elements and rules, however, were not organized in a more systematic manner until the *glossators* highlighted the general concepts and principles that they found in recorded legal agreements.<sup>134</sup> For instance, the *glossators* determined that agreements may result in civil action if they included a symbolic action, such as a handshake.<sup>135</sup> Today, the elements required for legitimate agreements are more uniform. There are four elements that must be present in all contracts in order to establish their legitimacy. They are as follows: there must be two or more parties, the parties must have the capacity to maintain an agreement (capacity may be determined by age, for example), there must be a manifestation of assent, or a willingness to be bound by a contract, and there must be consideration, which is the value given by each party for the benefit they expect to receive in return.

The Roman concept of good faith, or *bona fides*, is still the backbone of contractual agreements. Today, good faith is defined as a duty of both parties in a contractual agreement to

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<sup>132</sup> Berman, "The Religious Sources of General Contract Law: An Historical Perspective," 106.

<sup>133</sup> *Ibid.*, 109.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*, 107-109.

protect the right of the other party to enjoy the benefits of the contract.<sup>136</sup> Further, as Bix explains, the modern concept of good faith in contract law is “an intermediate obligation that reflects the fact that contracting parties in a cooperative venture are at various points particularly vulnerable to each other.”<sup>137</sup> The Uniform Commercial Code (UCC), which was designed to establish uniformity in commercial agreements across the United States, has sought to protect good faith in agreements.<sup>138</sup> For example, the UCC “restricts the occasions on which one can seek a modification of an existing contract” on the basis of good faith.<sup>139</sup> While good faith cannot “override clear language” in contracts today, it is, for instance, used to determine the validity of some agreements with mentally incompetent parties, whose incompetence may not have been known at the time an agreement was made.<sup>140</sup> Thus, good faith remains an important aspect of contractual agreements, despite the evolution of contract law since Rome.

## COMMERCE AND THE GLOBAL ECONOMY

Large transnational corporations are a modern concept; however, Roman law influenced transactions between early corporations. For example, during the 12th century there was an expansion of commerce, which included a rise in “economic transactions between ecclesiastical corporations.”<sup>141</sup> Roman legal standards and practices have been used to govern more complex

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<sup>136</sup>Catherine Pastrikos Kelly, “What You Should Know about the Implied Duty of Good Faith and Fair Dealing,” *American Bar Association* (2016), <https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2016/duty-of-good-faith-fair-dealing/>.

<sup>137</sup> Brian H. Bix, *Contract Law: Rules, Theory, and Context*, (New York: Cambridge University Press, 2012), 83.

<sup>138</sup> *Ibid.*, 12.

<sup>139</sup> *Ibid.*, 84

<sup>140</sup> *Ibid.*, 84-85.

<sup>141</sup> Berman, *The Religious Sources of General Contract Law*, 109.

transactions since their emergence. Since then, transnational corporations have grown and expanded. The earliest historical records of transnational corporations are from Western Europe in the 16th century.<sup>142</sup> Berman explains that while the role of religion throughout the world, as well as the “political, economic, and social situation” changed from the 12<sup>th</sup> century to the 16<sup>th</sup> century and beyond, “the terms of the debates concerning law and government have remained remarkably stable.”<sup>143</sup> Further, as Tierney notes, “the works of the Roman and canon lawyers...formed a kind of seedbed” for the future of constitutional theory, criminal law, and civil law (including business law.)<sup>144</sup>

The modern global economy has created an environment that is conducive to cross-national transactions and agreements. Since many corporations maintain offices and conduct regular business in several countries, a merger, acquisition, or transaction could require working with a team of several lawyers from different areas of the world. This creates three challenges. First, law remains national, meaning that lawyers are taught to work within the context of their own countries.<sup>145</sup> While other professions, like accounting, have tailored their training to function in a global context, lawyers continue to focus on practicing domestic law. As a result, they are likely unfamiliar with laws and regulations of other countries. Second, legal education varies from country to country.<sup>146</sup> On one hand, this makes sense because lawyers play different

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<sup>142</sup>Jed Greer and Kavaljit Singh, “A Brief History of Transnational Corporations,” *Global Policy Forum*, <https://www.globalpolicy.org/empire/47068-a-brief-history-of-transnational-corporations.html>.

<sup>143</sup> Berman, *The Religious Sources of General Contract Law*, 112.

<sup>144</sup> Brian Tierney, *Religion, Law and the Growth of Constitutional Thought* (Cambridge: Cambridge University Press, 1982), 1.

<sup>145</sup> Carole Silver, “Educating Lawyers for the Global Economy,” *Kyung Hee University Law Review* (2010), 1.

<sup>146</sup> *Ibid.*, 2.



roles in different societies. On the other hand, qualifications of lawyers from different countries may not align. For example, lawyers in the United States must attend law school and pass the bar exam. In Korea, however, law was taught as an undergraduate course of study until recently.<sup>147</sup> Last, since lawyers play different roles in each society, lawyers may not always “assume a central role in terms of politics and governance.”<sup>148</sup> This means that lawyers may not have the same role in each legal system. Although these challenges interfere with the work of corporate lawyers, Silver argues that technology and transportation have provided them with the tools needed to forge international relationships.<sup>149</sup> Further, one way to limit the effects of globalization is to establish offices in other countries. Silver explains how many of the largest U.S.-based law firms have extended their practice around the world by opening more offices.

### **CORPORATE PERSONHOOD**

While business lawyers and legal scholars are able to reference Roman law for various precedents or solutions, there are also contemporary challenges that could not be predicted by developers of Roman law. In particular, transnational companies present a contemporary challenge to existing laws. Given the immense power amassed by several corporations around the world, legislation that determines their power in the court system, specifically in the United States, are outdated. Over the years, companies have acquired the ability to engage in legal agreements and act in court as if they were an individual. As a result, the term “corporate personhood” has been developed. Torres-Spellicy explains how corporate personhood “allows

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<sup>147</sup> Ibid., 3.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid., 4.

companies to hold property, enter contracts, and to sue and be sued just like a human being.”<sup>150</sup> While this provides companies with many opportunities for growth, this has created controversy. Specifically, controversy arose after the Supreme Court declared corporations had “full rights to spend money as they wish in candidate elections — federal, state and local” in *Citizens United v. Federal Election Commission* (2010).<sup>151</sup> This case was significant because it overturned the precedent that corporations could not contribute to political campaigns. Now, corporations can wield their power and influence politics at every level. Although corporations cannot financially support political candidates directly, they can support independent expenditures, who can use this money to support a candidate’s advertising campaign. While some people argue that this is simply an act of individuals who are united in support of a certain cause, others believe that only individual people should be able to contribute to campaigns. The future of corporate influence on campaigns remains unclear. The Supreme Court has yet to legislate against corporate power. However, corporate influence on politics continues to be a point of controversy in the American political landscape

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<sup>150</sup> Ciara Torres-Spelliscy, “The History of Corporate Personhood,” *Brennan Center for Justice* (2014), <https://www.brennancenter.org/blog/hobby-lobby-argument>.

<sup>151</sup> Nina Totenberg, “When Did Companies Become People? Excavating The Legal Evolution” *NPR* (2014), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>.

## **CONCLUSION**

In conclusion, the development of Roman law has had many implications on the modern world. While the legal system in America is not an exact replica of the Roman legal system, there are clear similarities between the two. The Romans were not the first to emphasize the importance of law and order in their society; laws had existed in other ancient civilizations. Nonetheless, the Romans were especially successful in tailoring their legal system to fit the needs of each era. Further, they recognized the importance of using laws to create efficiency and organization in their society.

The legal systems in the United States and other countries continue to evolve as changes develop over time. Although the exact future of our legal system cannot be predicted, history suggests that tradition and firm legal methods are essential in successful nations. The Romans proved that traditions can be maintained over centuries. They also proved that traditions and practices can evolve and improve as needed. In the fast-paced legal world today, the work of the Romans is still highly relevant. Their attention to detail in legal proceedings, as well as their willingness to maintain promises in agreements is admirable. Further, their work laid the foundation for many contemporary nations, who replicated some or many aspects of their

system. Thus, the legal evolution that occurred in ancient Rome was a major development that affected future legal systems and encouraged global support for consistent business laws and practices.

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