

Contents

| | | |
|----------|---|----|
| 1 | The Historical and Constitutional Context of Roman Law: A Brief Overview | 1 |
| 1.1 | Divisions of Roman Constitutional and Legal History | 1 |
| 1.2 | The Archaic Period (Monarchy and Early Republic) | 4 |
| 1.2.1 | General Historical Background | 4 |
| 1.2.2 | The Constitutional Framework | 5 |
| 1.3 | The Pre-classical Period (Late Republic) | 11 |
| 1.3.1 | General Historical Background | 11 |
| 1.3.2 | The Constitutional Framework | 13 |
| 1.4 | The Classical Period (Early Empire or Principate) | 14 |
| 1.4.1 | General Historical Background | 14 |
| 1.4.2 | The Constitutional Framework | 16 |
| 1.5 | The Post-classical Period (Late Empire or Dominate) | 20 |
| 1.5.1 | General Historical Background | 20 |
| 1.5.2 | The Constitutional Framework | 23 |
| 1.6 | The Reign of Justinian (AD 527–565) | 25 |
| 1.6.1 | General Historical Background | 25 |
| 1.6.2 | The Constitutional Framework | 26 |
| 2 | The Sources of Roman Law | 27 |
| 2.1 | Introductory | 27 |
| 2.2 | Sources of Law in the Archaic Age | 29 |
| 2.2.1 | Customary Law and the <i>Leges Regiae</i> | 29 |
| 2.2.2 | The Law of the Twelve Tables and the Growth of Statutory Law | 32 |
| 2.2.3 | The Pontiffs and the Beginnings of Jurisprudence | 40 |
| 2.3 | Sources of Law in the Late Republic | 43 |
| 2.3.1 | Legislation | 43 |
| 2.3.2 | The Rise of Magisterial Law | 45 |
| 2.3.3 | The Jurists of the Late Republic | 55 |
| 2.3.4 | The Role of Custom | 61 |

| | | |
|----------|--|------------|
| 2.4 | Sources of Law in the Principate Era | 61 |
| 2.4.1 | The Decline of Popular Law-Making | 61 |
| 2.4.2 | The Consolidation of Magisterial Law | 63 |
| 2.4.3 | The Senatorial Resolutions as a Source of Law | 64 |
| 2.4.4 | The <i>Princeps</i> as a Lawmaker | 65 |
| 2.4.5 | The Culmination of Roman Jurisprudence | 70 |
| 2.4.6 | The Influence of Customary Law | 83 |
| 2.5 | Sources of Law in the Later Imperial Era | 84 |
| 2.5.1 | The Development of Imperial Law-Making | 84 |
| 2.5.2 | The Law of the Jurists | 86 |
| 2.5.3 | Custom and the Growth of ‘Vulgar Law’ | 92 |
| 3 | The Private Law | 95 |
| 3.1 | Introduction | 95 |
| 3.2 | The Law of Persons | 97 |
| 3.2.1 | Status Libertatis | 98 |
| 3.2.2 | Status Civitatis | 101 |
| 3.2.3 | Status Familiae | 102 |
| 3.2.4 | Capitis Deminutio | 105 |
| 3.2.5 | Marriage | 105 |
| 3.2.6 | Guardianship and Curatorship | 110 |
| 3.3 | The Law of Property | 113 |
| 3.3.1 | Classification of Things | 114 |
| 3.3.2 | Ownership | 115 |
| 3.3.3 | Possession | 124 |
| 3.4 | The Law of Obligations | 126 |
| 3.4.1 | The Law of Contracts | 128 |
| 3.4.2 | The Law of Delicts | 143 |
| 3.5 | The Law of Succession | 149 |
| 3.5.1 | Intestate Succession | 150 |
| 3.5.2 | Testamentary Succession | 151 |
| 3.6 | The Law of Actions | 154 |
| 3.6.1 | The <i>Legis Actio</i> Procedure | 155 |
| 3.6.2 | The Formulary Procedure | 155 |
| 3.6.3 | The <i>Cognitio</i> Procedure | 157 |
| 4 | Criminal Law and Criminal Justice | 159 |
| 4.1 | Introduction | 159 |
| 4.2 | Crime and Criminal Justice in the Archaic Era | 160 |
| 4.3 | The Development of Criminal Justice in the Late Republic | 164 |
| 4.3.1 | The Permanent Jury Courts | 166 |
| 4.4 | The Administration of Criminal Justice in the Principate Age | 173 |
| 4.4.1 | The Criminal Jurisdiction of the Senate | 175 |
| 4.4.2 | Imperial Jurisdiction | 175 |
| 4.4.3 | Criminal Offences, Responsibility and Punishment | 178 |

| | | |
|----------|---|------------|
| 4.5 | Crime and Criminal Justice in the Dominate Period | 182 |
| 4.5.1 | The Court System | 183 |
| 4.5.2 | The Criminal Justice Process | 185 |
| 4.5.3 | Judicial Protection of the Lower Classes | 190 |
| 5 | The Codification of Roman Law | 193 |
| 5.1 | Introduction | 193 |
| 5.1.1 | Early Codifications | 193 |
| 5.2 | The Theodosian Code | 195 |
| 5.3 | The Germanic Codes of Roman Law | 196 |
| 5.4 | The Codification of Justinian | 198 |
| 5.4.1 | Introductory | 198 |
| 5.4.2 | The First Code | 199 |
| 5.4.3 | The Digest or Pandects | 200 |
| 5.4.4 | The Institutes | 205 |
| 5.4.5 | The Second Code | 207 |
| 5.4.6 | The Novels | 208 |
| 5.4.7 | The <i>Corpus Iuris Civilis</i> | 210 |
| 5.4.8 | Concluding Note | 210 |
| 6 | Roman Law and Byzantine Imperial Legislation | 213 |
| 6.1 | The Historical Context of Byzantine Law | 213 |
| 6.2 | Sources of Byzantine Law | 215 |
| 6.2.1 | Legal Development from the End of Justinian's Reign to the Accession of Basil I the Macedonian | 217 |
| 6.2.2 | Legal Development Under the Macedonian Dynasty | 222 |
| 6.2.3 | Legal Development in the Late Byzantine Age | 227 |
| 6.3 | The Influence of Byzantine Law | 230 |
| 7 | The Survival and Resurgence of Roman Law in Western Europe | 233 |
| 7.1 | The Historical Background | 233 |
| 7.2 | Roman Law the Early Middle Ages | 240 |
| 7.3 | The Revival of Roman Law | 243 |
| 7.3.1 | The Glossators | 246 |
| 7.3.2 | The Commentators | 250 |
| 7.4 | The Development of Canon Law | 254 |
| 7.5 | The Growth of Commercial Law | 257 |
| 7.6 | Feudal Law | 258 |
| 7.7 | The Reception of Roman Law | 260 |
| 7.7.1 | The Reception of Roman Law in France | 262 |
| 7.7.2 | The Reception of Roman Law in Germany | 265 |
| 7.7.3 | The <i>Ius Commune</i> in Italy, the Iberian Peninsula and the Netherlands | 268 |
| 7.7.4 | The Influence of Roman Law in Britain | 272 |
| 7.8 | The Humanist Movement | 277 |
| 7.9 | The School of Natural Law | 280 |

| | |
|--|-----|
| 8 Codification and the Rise of Modern Civil Law | 287 |
| 8.1 The Codification Movement | 287 |
| 8.1.1 The Codification of Civil Law in France | 288 |
| 8.1.2 The Codification of Civil Law in Germany | 290 |
| 8.2 The Civil Law Tradition | 296 |
| 8.2.1 Geographic Distribution of the Civil Law | 297 |
| 8.2.2 Defining Characteristics of Civil Law Systems | 302 |
| 8.2.3 Concluding Remarks | 308 |
| Select Bibliography | 311 |
| Index | 315 |