

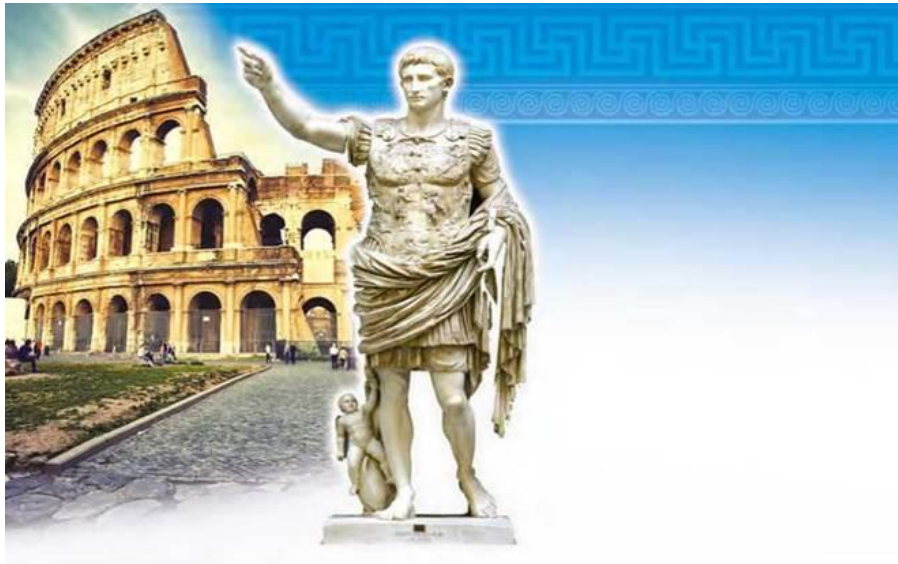


**NATIONAL UNIVERSITY OF LIFE
AND ENVIRONMENTAL SCIENCES
OF UKRAINE**



Faculty of Law

Department of Civil and Commercial Law



**METHODOLOGICAL RECOMMENDATIONS
FOR LECTURES AND SEMINARS
IN THE DISCIPLINE «ROMAN PRIVATE LAW»
FOR STUDENTS OF THE BACHELOR'S DEGREE
PROGRAM OF SPECIALTY 081 «LAW»**

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Author:

Kanaryk Y. S. Associate Professor of the Department of Civil and Commercial Law, PhD, Associate Professor / Methodological recommendations for lectures and seminars in the discipline «Roman private Law» for students of the bachelor's degree program of specialty 081 «Law»»

Reviewers:

Yara O.S. - Dean of the Law Faculty of the National University of Life and Environmental Sciences of Ukraine, PhD in Law, Professor.

Piddubnyi O.Y.- Head of the Department of Civil and Commercial Law of the National University of Life and Environmental Sciences of Ukraine, Doctor of Law, Professor.

Methodological recommendations for lectures and seminars in the discipline «Roman private Law» for students of the bachelor's degree program of specialty 081 «Law» were considered and approved at the meeting of the Department of Civil and Commercial Law **Minutes of the meeting No. 2 of 16.09.2024**

Methodological recommendations for lectures and seminars in the discipline «Roman private Law» for students of the bachelor's degree program of specialty 081 «Law» were considered and approved at a meeting of the Educational and Methodological Commission of the Faculty of Law **Minutes of the meeting No. 3 of 19.09.2024**

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INTRODUCTION

Roman private law is of great historical significance not only as the law of one of the largest, albeit ancient, states in the world, but also represents a model of high achievement in the field of legal technique: the accuracy and clarity of definitions, logicity and consistency of legal thought, combined with the vitality and clarity of conclusions, testify to the high professionalism and skill of Roman lawyers who played a huge role in the development of legal thought and legal thinking. Roman private law currently represents the basis of the social structure of European and world civilization, basic concepts and concepts, and Latin terminology is actively used in international circulation, conventions, and diplomatic protocol.

The purpose of studying the discipline “Roman Private Law” is to form legal thinking, professional legal understanding and legal culture of the future lawyer by mastering the norms of the legal heritage of Ancient Rome. The discipline “Roman Private Law” is a discipline that lays not only the foundations of legal culture, but also jurisprudence in general, provides knowledge of the history of the formation and development of many institutions of modern law.

The main objectives of the discipline “Roman Private Law” are to form future specialists' knowledge of:

- the history of the formation and patterns of development of Roman law, the periodization of the development of Roman law and the development of students' respect for legal monuments of the past and the acquisition of skills to use them for the development of legal thinking;

- legal vocabulary and terminology developed by Roman lawyers;
- the subject, method and system of Roman private law;
- the concept and main types of sources of Roman private law;
- basic provisions of family, property, obligation, inheritance and procedural law of the classical period of development of ancient Rome;

The subject of the discipline is the private (civil) law of ancient Rome. The main attention is paid to the legal institutions that were most developed by the lawyers of ancient Rome and led to the further development of private (civil) law in almost all states of continental Europe and most countries of the world, including modern Ukraine.

As a result of studying the discipline “Roman Private Law”, the student should **know:**

- historical stages of formation and development of Roman law and its importance for modern jurisprudence;
- the main sources of Roman law;
- the concept of the subject of civil legal relations;
- the concept of the exercise of civil rights and their forms of protection;
- peculiarities of legal regulation of family relations;
- peculiarities of legal regulation of property relations;
- peculiarities of legal regulation of relations of obligation;

- peculiarities of ancient Roman inheritance law.

The student should **be able to**:

- analyse legal phenomena using concepts and other legal tools developed by lawyers of ancient Rome;

- carry out a comparative analysis of Roman law (its individual institutions) and modern civil law;

- interpret the rules of Roman private law, work with the sources of Roman civil law, creatively use legal structures borrowed from Roman private law on the basis of the rules of Roman law to solve various specific legal cases;

- use the acquired knowledge in the process of studying civil and family law in force in Ukraine;

- apply the acquired knowledge and skills in solving professional problems

After mastering the discipline ‘Roman Private Law’, law students should develop the following acquired competences:

General competences (GC):

GC1. Ability to think abstractly, analyse and synthesise sources of Roman private law and the results of scientific research on private law relations in ancient Rome.

GC2. Ability to apply knowledge in practical situations, in particular, to use the achievements of the science of Roman civil law to solve practical problems and to argue their own point of view about the decision taken on a specific task.

GC8. The ability to be critical and self-critical, in particular to freely formulate their thoughts on the peculiarities of civil law regulation of property, obligations, protection of civil rights in ancient Rome.

GC9. Ability to work in a team, to work in a group, forming their own contribution to the tasks of the group.

GC13. Ability to preserve and enhance the moral, cultural, scientific values and achievements of society based on an understanding of the history and patterns of development of Roman private law, its place in the general system of knowledge about society and in the development of society, technology and technology.

Professional (special) competences (PC):

SC1. Ability to apply knowledge of the basics of Roman private law, knowledge and understanding of the structure of the legal profession and its role in society.

SC2. Knowledge and understanding of the retrospective of the formation of the main civil law institutions of Roman private law.

SC7. Ability to apply knowledge of the tasks, principles and doctrines of national law, as well as the content of legal institutions in such areas of law as civil and civil procedure law.

SC13. Ability to synthesise and summarise, freely formulate their thoughts on the peculiarities of civil law regulation of property, obligations, protection of rights in ancient Rome and apply the acquired knowledge in professional activities.

SC16. Ability to logically, critically and systematically analyse documents, the ability to conduct business correspondence, work with international documents - to analyse their nature and legal status.

Programme Learning Outcomes:

PLO1. Determine the persuasiveness of arguments in the process of evaluating previously unknown conditions and circumstances, in particular, understand the historical and economic contexts of the development of civil law in Ukraine.

PLO2. Analyse social processes in the context of the problem under analysis and demonstrate their own vision of ways to solve it, for example, organise cultural dialogue at the level necessary for effective professional activity.

PLO3. Collect the necessary information about Roman private law from various sources, analyse and evaluate it.

PLO4. Formulate and test hypotheses, argue conclusions about Roman private law.

PLO8. Search for information on Roman private law in available sources to fully and comprehensively establish the necessary circumstances.

PLO14. Appropriately use statistical information obtained from primary sources of Roman private law for their professional activities.

PLO17. To work in a group, forming their own contribution to the tasks of the group.

PLO19. Demonstrate the necessary knowledge and understanding of the essence and content of the main legal institutions of Roman private law.

ELO20. Explain the nature and content of basic legal phenomena and processes, understand legal vocabulary and terminology developed by Roman lawyers.

PROGRAMME AND STRUCTURE OF THE DISCIPLINE FOR FULL-TIME AND PART-TIME STUDY

Content module No. 1. General part of Roman law

Topic 1. The concept of Roman law: subject matter and system (9 hours).

The subject, subject and method of Roman civil law. Definition of Roman civil law and its correlation with modern civil law of Ukraine. Correlation of private law and civil law of ancient Rome and modern Europe. Genesis of Roman private law. Institutions of Roman civil law.

The division of Roman law into private and public. The main systems of Roman private law. The relationship between civil law and the law of nations.

The subject of Roman private law as an academic discipline. Purpose and objectives of studying Roman private law. Methods of studying Roman private law.

Topic 2. Sources of Roman private law (7 hours).

The concept of sources of Roman law and modern law of Ukraine. Types of sources of Roman civil law (sources of origin and content, cognition and law-making).

Customs. Laws of the XII Tables as a collection of customary law. Laws in ancient Rome. Resolutions of the national assembly. Senate consultants. Imperial constitutions. Edicts of the emperors. Rescripts. Mandates. Decrees. Codification of imperial constitutions.

Edicts of magistrates (praetor, smoking aedile, provincial governor) as a specific form of law-making. Codification of edicts.

Activities of lawyers. Forms of activity of lawyers in ancient Rome. Consultations of lawyers. Works of Roman lawyers. Institutions of Gaius. Digests. Works of Roman historians. Works of Roman orators, writers, satirists, philosophers, etc.

Codification of Roman law. Codification of Justinian. The Code of Justinian. Digests. Interpolations. Novels. Code of Civil Law.

Topic 3. Persons in Roman Law (7 hours).

The concept of person and subject of law in ancient Rome.

Civil legal capacity. Occurrence and termination of civil legal capacity. The content of civil legal capacity. The scope of civil legal capacity.

Capacity to act. Factors that influenced legal capacity in ancient Rome. Types of legal capacity. Guardianship and trusteeship.

The main division of the population of the Roman state into free and slaves. Roman citizenship (emergence, acquisition, termination). Legal status of Roman citizens. Legal status of the Latins. Legal status of Peregrines. Legal status of freedmen. Legal status of colonies. Legal status of slaves.

Legal entities (universitas). Features of a legal entity. Types of legal entities. The emergence and termination of legal entities in ancient Rome.

Representation and its types in ancient Rome. The activity of the prosecutor as a type of voluntary representation. Activities on the basis of a contract of mandate.

Topic 4. Marital status of an individual (8 hours).

Peculiarities of regulation of family relations at different stages of the history of Ancient Rome. The Roman family. Kinship. The concepts of agnatic and cognate families. Persons of their own right and persons of another's right. The head of the family (pater familias). Lines and degrees of kinship. The brother-in-law.

Marriage and its types. Legal Roman marriage. Marriage with male authority. Marriage without male authority. Concubinate. Contubernium. The conclusion of marriage. Forms of marriage ceremonies. Conditions of marriage. Grounds for termination of marriage. Divorce.

Legal relations of spouses. Personal and property relations of spouses in a marriage with male authority. Personal and property relations of spouses in a marriage without male authority. Dowry (dowry). Pre-marital donation.

Relationships between parents and children. Parental authority. Grounds for establishing parental authority over children. Legitimation. Adoption. Arogation. Adoption. Grounds for termination of parental authority. Relationship between mother and children.

Topic 5. Protection of civil rights. Lawsuits (8 hours).

Forms of protection of violated rights in ancient Rome.

The concept and types of private vigilante justice. Self-defence. Restrictions on private vigilante justice. Establishment of a system of ransoms. Termination of private vigilante justice.

The concept of litigation. Types of judicial process. Legislative process, its stages. Formal process. Forms of claim.

Intention. Demonstration. Condemnation. Adjudication. Procedural representation. Extraordinary process.

Concept and types of claims. Action in rem (actio in rem). Personal or personal claim (actio in personam). Actio stricti juris and actio bonae fidei (action of -strict law). Actio directa and actio contraria. Actio utilis (action by analogy). Actio fictia (action by fiction). Actions of conditionality. Penalty and re-execution claims. Actio noxales (noxious action).

Statute of limitations. Start, interruption and suspension of the limitation period. Difference between statutory periods and limitation periods.

Special remedies of praetorian defence. Interdictus. Stimulation.
Restitution. Introduction into possession

Content module № 2. Things and rights in rem in Roman law

Topic 6. Things and rights in rem: general provisions (8 hours).

The concept of things in Roman law. Classification of things. The concept of property.

Things of divine law (*res divini iuris*) and things of human law (*res humani iuris*). Private and public things. Things of natural origin and things artificially created. Corporeal things (*res corporales*) and incorporeal things (*res incorporales*). Things admitted to circulation (*res in commercio*) and things withdrawn from circulation (*res extra commercium*). Correlation of the concepts of goods and things.

Things mancipable and non-mancipable (*res Mancipi* and *res nec Mancipi*). The ritual of mancipation. Movable things (*res mobiles*) and immovable things (*res immobiles*).

Individual things (*species*) and generic things (*genera*). Consumptive things (*res quae usu consumuntur*) and non-consumptive things (*res quae usu non consumuntur*). Divisible and indivisible things. Simple, complex and compound things. Fruits and revenues. Services of dependent persons (*mercedes*). Rent from land (*pensiones*). Interest on capital (*usure*).

The concepts of real and obligatory law. Types of rights in rem

Topic 7. Possession (7 hours).

The concept of possession in Roman law. Possession (occupation) and the right of possession. Historical conditions for the emergence of the institute of possession in ancient Rome. The actual composition of possession relations (*animus possidendi* and *corpus possessionis*). The relationship between possession and ownership.

Conditions for the establishment of possession (actual dominion over the thing and the owner's will). Methods and legal consequences of acquiring legal and illegal (*bona fide* and unfair) possession. Termination of possession.

Primary and derivative possession. Natural and civil (interdictive) possession. Possession by a creditor of a thing that has been transferred as a real pledge. Possession by way of sequestration. Precarious possession.

Possessory and petitioner protection of possession. Types of possessory interdicts.

Topic 8. Property rights (9 hours).

Formation of the concept of property rights in ancient Rome. Characteristic features of property relations.

The concept and content of property rights. The right of possession. The right to use and the right to harvest (the right to profit). The right of disposal. The right of protection. Restrictions on property rights.

Types of property rights. Quiritic property. Provincial property.

Praetorian or bonitarian property. Joint ownership.

The method of acquisition of property rights (*modus acquirendi*) and the title of acquisition (*titulus acquirendi*). Primary methods of acquisition of ownership. Seizure of an ownerless thing (*occupatio*). Processing of a thing (*specificatio*). Merging (*confusio*) and mixing (*commixtio*) of things. Connection of things (*accessio*). Acquisitive limitation (*usucapio*). Legal methods of derivative acquisition of property rights (*mancipatio*, assignment, tradition). Termination of property rights.

Protection of property rights. Vindication action (*res vindicatio*). Negative action (*actio negatoria*). Prohibitory action (*actio prohibitoria*). Public action (*actio in rem Publiciana*)

Topic 9. Rights to other people's things (8 hours).

Historical conditions for the emergence of rights to other people's things in ancient Rome. The concept and features of rights to other people's things. Types of rights to other people's things.

Easements: concept and types. Legal, contractual, testamentary and praetorian easements. Ways to establish easement rights. Termination of easement rights. Protection of easements. Land (*predial*) easements, their features. Urban and rural easements. Private and public easements. Personal (*personal*) easements. Usufruct. Usufruct. The right to use someone else's housing (for living). The right to use someone else's labour force (slaves) or animals (cattle).

Emphyteusis (the right to use someone else's agricultural land). Grounds for establishing emphyteusis. Rights and obligations of the emphyteus and the owner of the land plot. Protection of emphyteusis. Termination of emphyteusis

Superficies (the right to use someone else's land plot for construction within the settlement). Grounds for establishing superficies. Rights and obligations of the superficies and the owner of the land plot. Termination of superficies.

The right of pledge (security interest). The concept of pledge. Forms of pledge. Fiduciary agreement. *Pignus*. Mortgage: concept, types, grounds for occurrence and termination

Content module № 3. General provisions on obligations in Roman law

Topic 10. General provisions on obligations (9 hours)

The concept of obligation and its role in the economic life of society. The content of the obligation. The difference between real and obligation law. Types of obligations. Civil (*civiles*), praetorian (*honorariae*) and natural (*naturales*)

obligations. Divisible (*obligatio dividue*) and indivisible (*obligatio individue*) obligations. Alternative obligations. Optional obligations. Unilateral and bilateral obligations. Parties to an obligation. Plurality of persons in an obligation. Partial and joint and several obligations. Substitution of persons in an obligation. Novation. Assignment. Transfer of debt.

Grounds for obligations. Concept and types of legal facts.

Fulfilment of obligations. Requirements for proper performance of obligations. Ensuring the fulfilment of obligations. Surety (*adpromissio*). Deposit (*arra*). Penalty (*stipulatio poenae*). Pledge.

The concept of non-fulfilment or improper fulfilment of obligations. Fault. Form of fault (intent and negligence). Property damage (losses). Consequences of non-fulfilment of obligations. Grounds for exemption of the debtor from liability for non-performance or improper performance of obligations. Case (*casus*). Force majeure (*vis major*). Termination of obligations other than performance.

Novation. Set-off.

Combination of creditor and debtor in one person. Impossibility of performance (*impossibilium*). Release from debt (*remissio debiti*)

Topic 11. Contracts: general provisions (11 hours).

Concept and types of contracts. Unilateral and bilateral contracts. Contracts of 'strict law' and contracts of 'good faith'. Consensual, real, verbal and literal contracts. Covenants.

Content of the contract and its elements (essential, ordinary, incidental). Terms and conditions in the contract. The purpose of the contract. Conditions for the validity of contracts. Legality of the contract.

Free will of the parties. Mistake. Deception. Legal capacity and capacity of the parties to the contract. Definiteness of the content of the contract. The form of the contract. Real possibility of contract performance.

Conclusion of the contract. The offer. Acceptance of the contract.

Topic 12. Certain types of contractual obligations. Part 1 (11 hours).

Verbal contracts (*verbis*). Stipulation (*stipulatio*). Oath promise of a freedman (*jusjurandum liberti*). Establishment of dowry (*dotis dictio*).

Literal (written) contracts (*litteris*), ways of their conclusion. Journal (*adversaria*). Book of income and expenditure (*codex accepti et expensi*). Syngraph (*syngrapha*). Chirograph (*chirographum*).

Consensual contracts, their types. Contract of sale (*emptio-venditio*). Contract of hire of things (*locatio rei*). Contract of hire of services (*locatio conductio operarum*). Contract of hire of work (*locatio conductio operis*). Contract of mandate (*mandatum*). Joint venture agreement or partnership agreement (*societas*).

Topic number 13. Certain types of contractual obligations. Ch.2 (11 h).

Real contracts. Loan (*mutuum*). Loan (*commodatum*). Storage, *skhov* (*depositum*). Pledge agreement (*contractus pignoratitius*).

Concepts and types of nameless (*innominal*) contracts. Contract mines (*permutatio*). Evaluation contract (*aestimatum*). Precarium (*precarium*).

Pacts (*pactum*). Additional (attached) pacts. Praetor pacts.

Legal (imperial) pacts

Topic number 14. Non-contractual obligations (9 hours).

Obligations as if from contracts (*quasi-contracts*). Concepts and signs of conducting other people's affairs without instructions. The rights and obligations of the *gestor* (*negotiorum gestor*) and the owner (*dominus negotii*).

Obligations arising from unjust enrichment (*condicti sine causa*). Claim for recovery of paid non-existent debt (*conditio indebiti*). Claim for the return of the provided, the purpose of which was not fulfilled (*conditio causa data causa non secuta*). Claim for the return of received from theft (*condictio ex causa furtiva*). Claim for acquisition on unfair grounds (*condictio ex causa injusta*).

Tort liabilities. Personal insult (*injuria*). Theft (*furtum*). Robbery (*rapina*). Unlawful destruction or damage to another's property (*damnum injuria datum*). Threat (*metus*). Deception (*dolus malus*).

Quasidelict (*quasi ex delicto*). The responsibility of the judge for the improper implementation of judicial proceedings. Responsibility for thrown or poured from the apartment on the street. Responsibility for dangerous for the environment exhibited, suspended or posted property

Topic number 15. Inheritance law (9 hours).

The concept of hereditary law. Inheritance (*hereditas*). Hereditary property (*hereditary mass, inheritance*). Testator and heir. Types of inheritance. Died legacy (*bona vacantia*).

The main stages of the development of Roman hereditary law. Inheritance by *jus civile*. Inheritance by the praetor edict. Inheritance according to imperial laws. Inheritance by right of Justinian.

Stages of the inheritance process. Discovery of heritage. "Recumbent" (*hereditas jacens*) heritage. Acceptance of inheritance (*hereditas aditio*). Hereditary transmission. Protection of hereditary rights.

Inheritance by will. The concept of *zapovit* (*testamentum*). Testamentary capacity. Private and public wills. Oral and written wills. Structure of the will. Appointment of the heir. Restrictions on testamentary freedom in Roman law. Mandatory share in the inheritance. Loss of will power.

Inheritance by law. Queues of heirs.

Singular succession. Legate (*legatum*), the order of its receipt. Limitations of legates in Roman law. Quarter *Falcidia*. *Fideicomis* (*fideicommissum*).

**COURSE OF LECTURES ON DISCIPLINE
"ROMAN PRIVATE LAW" FOR FULL-TIME AND PART-TIME
STUDENTS**

Lecture №. 1. The concept of Roman law: subject and system

Plan

1. Subject of Roman civil law.
2. Method of Roman civil law.
3. The concept of Roman civil law.
4. Roman law system.
5. Genesis of Roman private law.

1.Subject of Roman civil law

The study of the history of the state and the law of each people is impossible in isolation from the history of the development of society itself - the development of production, political events, culture, religion, etc. All aspects of the history of the people are closely intertwined with each other and in order to deeply study the subject, it is necessary to cover all these connections and mediations.

Roman law in the history of mankind occupies an exceptional place. It survived the people who created it, went far beyond Rome and the era in which it was created, and originated in the distant depths of time, when Rome was still a small community, which did not differ in any way among many similar communities in Italy.

Like the entire simple way of life of the Roman people of that time, Roman law was an undeveloped, in many cases archaic system, permeated with a patriarchal and narrow-national character. And if it remained at this stage, then, undoubtedly, a long time ago would have been lost in the archives of history.

However, fate led Rome to a different future. Fighting for its existence, the small Roman community gradually grows, absorbing neighboring communities, becoming stronger in its internal organization. The territory of the Roman state is increasing, spreading to all of Italy, and later - Greece, Spain and other countries. The Roman state became, according to the then ideas, a world state, uniting under its authority almost the entire then cultural world. At the same time, the internal organization of the Roman state and society is significantly changing. Gradually destroyed the old patriarchal system, primitive subsistence economy is replaced by more complex economic relations.

We should not assume that praetor law arose from scratch. It arose, developed and reached the heights of perfection on the basis of civil law and the law of peoples, was their brainchild, absorbed everything positive that they had. At the same time,

Roman civil law became world famous largely due to the activities of the praetors and the praetor law created by them.

So, in the modern sense of civil law in ancient Rome corresponded to a set of these three systems. The most successful single term for this whole set of systems is **jus privatum - private law**, which is the subject of our study.

Roman private law was the right of a highly organized slave society, which in its development went through the following stages: the royal, the period of the republic, the principate and the period of absolute monarchy. Consider the development of Roman private law for these periods

The *classical distinction between public and private law* was given by the famous Roman lawyer **Ulpian** (late II - early III century AD), which passed into subsequent centuries.

He notes: "Public law is that which concerns the provisions of the state; **private law** - concerns the benefit of individuals. "

Since the number of branches in this division is reduced to only two, each of them thereby becomes very wide and combines several branches and institutions of law. In particular, the Romans attributed to public law the norms that determine the structure of the state, its bodies, the competence of institutions and officials, acts expressing the power character of the state, for example, acts providing for the punishment of criminals, the collection of taxes, etc. **Ulpian** also points out that the composition of public law includes norms that relate to shrines, priests, magistrates. This list, of course, is not exhaustive. In many cases, public law was understood by Roman lawyers as generally binding norms that could not be changed by agreement of private individuals.

Private law included the norms of real, hereditary, family, binding law (all of them for the most part are a branch of civil law). In the Roman state, **private law included norms that enshrined property rights and the legal status of certain categories of persons.** The norms of private law are actually not categorical, but dispositive. This means that private law provides a certain autonomy, a certain space for the parties entering into legal relations. A person can defend his rights or refuse protection. She may or may not sue. This means that the content of the contract is determined by the free reasoning of the parties. Even in the **laws of the XII tables** it was noted: *"If a person makes a loan agreement or acquires some thing in his property, then his verbal instructions should be a right."* However, this private autonomy had its limits defined by the same norms of civil law. For example, a Roman citizen was given the right to draw up a will and indicate in it whom he wants to have as his heir, but if this citizen did not use this right, the dispositive norm indicates who is called for inheritance.

So, the criterion for distinguishing between public and private law, according to Ulpian, is the nature of interests. A law that protects the interests of the state is a public law, and if it protects the interests of private individuals, then this right is private.

It should be noted that,

firstly, the criterion for this distribution is rather conditional, clearly undefined;

secondly, the line of division into private and public law is not constant at different stages of the development of a public-state organization.

In the early stages of state organization, the sphere of private legal relations was wider and covered most of those relations that eventually became indisputably part of public law.

In the history of ancient Rome, this can be traced on the example of certain types of offenses. In the ancient era, the state did not interfere in the sphere that now constitutes criminal law, as a result of which in ancient Roman law theft did not refer to public, but to private law. Revenge was carried out by the victim himself or his relatives. The fine was established and levied on the victim's own initiative and according to the procedure of an ordinary civil lawsuit through the court. Gradually, the state begins to partially regulate these relations in a compulsory manner, to remove private will, and subsequently all these cases are referred to the exclusive jurisdiction of the state.

This state remained for the most part at the feudal stage of social and state development. For example, when a baron, knight or boyar had the functions of a state ruler in his estate (tax collection, trial of peasants, etc.), it is clear that the relationship between the public and private spheres was completely different than in later times. And the sphere of state, judicial and financial law in this case largely refers not to public, but to private law relations.

It is important to remember that the line of division into private and public law depends on the principles of building a society, and therefore is mobile. And in our time it does not stand still, having in many states the tendency to further expand the sphere of public law at the expense of private law. The social organization of the former Soviet Union and other socialist countries can serve as a convincing example in this. So, in the sphere of public law, the norms that regulate the relations of hiring and using labor, etc. pass.

Having ascertained in general the question of the distinction between public and private law and having determined its characteristic features in different epochs, it must be borne in mind that the norms of private law relate primarily to individual citizens and their interests, while the norms of public law primarily determine the structure of the public organization itself.

Difficulties in determining the exact boundary between private law and public law are caused both by the fact that each individual citizen is a member of a public organization, acts within the limits defined by this organization, and by the fact that the public organization itself consists of individual citizens, is closely interrelated with them, and exists to satisfy and protect their interests. And the legal norms themselves express the interests of a certain class, social group or the whole people, and even more so the norms that relate to the right of ownership and inheritance, in which public interest is expressed more clearly than in the norms governing the use of shrines, public roads and rivers.

Despite all the difficulties, the division of Roman law into public and private was so successful that even now it has been preserved in many countries of the world.

Subsequently, the fate of these two branches of Roman law was not the same. Roman public law did not survive the Roman state, only some terms remained from it. Conversely, Roman private law, as already noted, survived the era of its creation and went far beyond Rome. It played a significant role in the development of civil law in the Middle Ages and in modern times and formed the basis of the legislation of many Western European countries by direct borrowing or adoption of its principles, which will be discussed in subsequent sections.

The original and oldest law of Rome was civil law - **jus civile**. This is a system of national-Roman legal norms that applied only to Roman citizens (**civis**). Since the Ukrainian language retained Roman terminology, hence the name of the industry - civil law.

The subject of regulation of civil law from the very beginning of its emergence and in subsequent eras is property relations, which develop in the field of material production, further turnover of goods, the construction of various objects, their repair, in the sphere of life and service, etc. It is in these areas of production and life that a significant part of people is employed. And when you take into account the contract of sale, which is carried out by each person daily and repeatedly, it becomes clear what great importance in the life of each person, each organization and society as a whole has civil law. It is the legal basis for the material support of human life. It is this circumstance that explains the great attention to civil law since ancient times. Therefore, a lawyer who does not possess perfectly civil law, wherever he works, cannot be considered a qualified specialist.

However, it is worth warning that the concept of modern civil law does not correspond to the concept of civil law (**jus civile**) in ancient Rome. Modern civil law can be defined as a system of legal norms governing all property and related non-property relations between people by methods of equality of parties. This understanding of modern civil law in Rome corresponded to **three existing (existing) systems**:

jus civile - civil law;

jus gentium - the law of peoples;

jus praetorium - praetor law.

The term **jus civile**, as already noted, primarily denoted the original national ancient Roman law, which extended its effect only to Roman citizens - **quirits**. Therefore, this right is also called **Quirite law**. It is clear that it could not for a long time meet the needs of the then rapidly developing society. **Jus civile** was unable to regulate property relations between Roman citizens, on the one hand, and foreigners (the so-called **peregrines**) who came to Rome, on the other. Meanwhile, the need for this grew, as the Romans conducted lively trade with their neighbors.

However, the granting of rights to **peregrines** was not achieved by extending to them the norms that originally regulated the private rights of Roman citizens. This happened by creating a new system of law that regulated the relations of the Romans

and non-Romans, the so-called *jus gentium* - the rights of peoples. A great merit in its creation belongs to the Peregrine praetor, who in his practical activities relied on the local law of peregrines, that is, neighboring peoples conquered by Rome. Often the *jus gentium* was superior to Roman civil law and it proved to be vital and suitable for regulating turnover in new conditions. It can be argued that the *jus gentium* contained everything significant and progressive that developed the ancient world in the field of legal institutions related to trade. And therefore, it differed favorably from *jus civile* in greater mobility, the absence of burdensome formalism and national limitations inherent in Roman civil law. Perceiving all the best from the legal culture of neighboring states, the right of peoples was more progressive and accessible to ordinary people, it met the requirements of the time and reacted sensitively to changes in society.

These two **systems (*jus civile* and *jus gentium*)** existed and developed in parallel, penetrating into each other and mutually enriched. However, gradually they began to approach, and eventually lag behind the rapid development of civil turnover. There was a need for more effective means of regulation.

So gradually, along with civil law and the law of peoples, there is another system of legal norms that regulated property relations, called *jus praetorium* - praetor law.

Praetor law arose as a result of the practical activities of praetors and other magistrates. It regulated property relations both between Roman citizens and peregrines, but was applied mainly in cases where the norms of the above two systems were unable to regulate the new relationship.

Since praetor law arose and developed in the process of practical activity of praetors and other magistrates, due to the specifics of its occurrence, it had many advantages over civil law and the law of peoples. It more fully reflected the latest social changes in Roman society, provided for the simplification of many procedures, contained clarity and clarity of legal regulations, was a flexible and reliable means of protecting the interests of the population.

2. Method of Roman Civil Law

The legal regulation of social relations does not occur spontaneously, but with the help of certain methods and measures that affect the formation of the behavior of the subjects of relations. The totality of such methods and measures is called the method of law.

The RPP method is characterized, first of all, by the legal equality of the parties, the autonomy of their will and property independence; dispositivity (the right of the parties to independently determine the nature of their relations); a special way of resolving disputes between participants in civil legal relations; availability of property liability of the parties.

Legal equality of participants in relations is manifested in the fact that the parties are recognized by law as independent, independent persons from each other.

In other words, the meaning of legal equality is that each of the parties has its own set of rights and obligations and is not subordinate to the other. The basis of such equality of subjects is their right to dispose of property owned by them. The RPP is aimed at regulating relations between the parties in case of disputes between them, protecting them from any unlawful encroachments, and limiting them from external interference.

Dispositivity is possible only when the transaction is based on the free will of the parties. It gives the parties the right to determine the nature of their relationship within the limits established by law, as well as, in appropriate cases, to form their rights and obligations. Dispositive principles are found in dispositive legal norms that give subjects the opportunity within certain limits, at their own will, at their discretion to regulate certain rights and obligations assigned to them.

The presence of dispositive principles in the RPP does not mean the absence of imperative norms in it. But they were not decisive. Private-legal relations were formed mainly under the influence of dispositive norms.

Based on the principles of equality and independence of participants in private legal relations, the law provided an opportunity to resolve disputes that arose between them, either directly to participants in specific relations on the basis of a mutual agreement, or a body specially created to consider such disputes.

Since the participants in private law relations were connected, as a rule, only by a transaction, it was established that one of the parties that voluntarily assumed obligations and did not fulfill them should compensate the other party for the losses suffered by this party as a result of non-fulfillment of the transaction. In other words, a party that failed to fulfill an obligation or performed it improperly had a liability that was property in nature.

3.The concept of Roman civil law

Roman law is an original legal system that originated in the VIII century. BC and reached its greatest development in the I century. jurisprudence. Roman law included Roman public and Roman private law. Public law (*ius publicum*) is that which refers to the position of the Roman state, private (*ius privatum*) - which refers to individuals; is useful in public relations and in private.

Public law included the regulation of shrines, the ministry of priests, the position of magistrates, etc. Ulpian's statement gives reason to believe that the separation of public and private is based primarily on those interests that are protected by the norms of law. Thus, public law protects public interests, that is, interests affecting the entire state, the whole society, and not the interests of individual subjects. This applies to issues of state security, public security, issues of economic management, issues of criminal punishment, tax collection, issues of war and peace, the position of state officials. Private law protected the private interests of an individual in relations with other people. The scope of legal regulation of private law includes ownership, obligations, contract, law aimed at protecting individual interest, private initiative.

The difference between the norms of public and the norms of private law also lies in the fact that the first by their nature are imperative, that is, imperative, universally binding. As Roman lawyers said, "Private transactions cannot change the prescriptions of public law." While the norms of private law are dispositive, that is, permissive. **Private law: "Everything that is not expressly prohibited by law is allowed."**

Private law is characterized by independence and autonomy of the will of the parties to the legal relationship. The parties are free to choose the type and nature of the legal relationship. Within the framework of legal relations, participants can determine their behavior at their own discretion, there is no autonomy of will in public law.

There are other criteria that distinguish public law from private: the parties to the legal relationship, the grounds for the emergence and termination of legal relations, methods of protection, etc. However, it should be borne in mind that it is often difficult to draw a clear line between the norms of public and private law. In particular, many concepts of Roman criminal law, traditionally related today to the public field of law. The division of Roman law into public and private was of fundamental importance for many countries that adopted the so-called pandect system of building legal norms, since it is for these countries that the division of the system of law into public and private is characteristic.

Roman private law (RPP) is a historically established system of law that regulates property and personal non-property relations in the sphere of private interest.

Thus, the basis of Roman private law was the relations of persons who defended their private, individual interests. Based on the definition, the subject of RPP can be distinguished:

- **Property relations.** We are talking about relations, the object of which was the material good (Property), that is, the good, physically tangible, having a material shell - a house, grain, cow, land, etc. Moreover, this material good should have a certain value, have a certain price and only then it can be the subject of property relations.

- **Personal non-property relations.** This is a relationship associated with spiritual, intangible benefits, such as honor, dignity, honest name.

- **Procedural relations.** All that now belongs to the field of civil process in Rome belonged to the category of private law. Roman private law regulated relations that concerned the judicial protection of the rights of a person in private law disputes, namely: the process of filing a lawsuit, the procedure of trial, the procedure for issuing a court decision, etc.

- **Relations in the field of private law violations.** The peculiarity of Roman criminal law was that there were two categories of torts

- **Public torts,** prosecution of which was carried out by state bodies and private torts, prosecution of which was carried out at the initiative of the victim. It was the latter that were included in the subject of regulation of Roman private law. The RPP was a universal system of law that united civil, criminal law, civil

procedure, family law, but due to the specifics of the RPP was not divided into separate branches, but was a single, unified system of law governing any relations in the sphere of private interest.

4. Roman law system

The Romans believed that private law is divided into **three groups**, from the laws of **natural law** (*ius naturale*), **national** (*ius gentium*), **civil** (*ius civile*).

The Romans interpreted natural law in a very peculiar way: this right is what nature inspired all living beings. This is how natural law is defined in the elementary textbook of Roman law - **the Justinian Institutions**. This right is inherent not only in the human race, but in general to all beings who are born either in airspace, or on earth, or at sea. The union of man and woman (marriage), the birth and upbringing of children are all institutions of natural law. According to natural law, all people were born free.

Civil law. All peoples, according to the Romans, who are governed by laws and customs, enjoy part - their own right, part - the right common to all. The law established in itself by each people itself is its own right, civil law, as a right inherent in the society of citizens.

The right enjoyed by the Roman people is the civil law of the Romans (or Quirite law, from Quirinus, the name of the deified Rex - king Romulus, VIII BC). The beginning of civil law was laid by the famous unified code of laws - the Laws of the XII Tables.

They were compiled by a college of **decemvirs (ten scientists)**, approved by the people's assembly in the middle *of the 5th century. BC (451-450)* And exhibited on twelve tables. The code did not reach our days and was reconstructed according to quotes from Roman sources. Its content covered all areas of legal regulation known at that time: ownership and possession, family and inheritance law, obligations under contracts and damage, crimes and punishment. The study of the Laws of the XII Tables remained in Rome a prerequisite for teaching law.

Civil law was composed of all those laws that were adopted by the people's assembly, and from the beginning of the III century. BC (Hortense Law) - plebeian assembly (plebescita).

Plebeians (lat. Plebs - commoners) - the noble free population of Ancient Rome, which was not part of the tribal communities and did not have the right to land, as well as political rights, unlike the patricians.

Among such laws can be called Petelia's Law (326 BC), who were forbidden to execute or sell into slavery (abroad) unpaid debtors. Compare with the Laws of the XII Tables. The third table reads: " Meanwhile (that is, while the debtor was in custody) he had the right to reconcile (with the plaintiff), but if (the parties) did not reconcile, then (such debtors) remained in custody for **60 days**. During this period, they were brought to the praetor three times in a row on market days for a komitsium (national assembly) and the amount of money awarded from them was announced. On the third market day, they were given the death penalty or went on sale abroad (for the Tiber). "

The law of Licinius-Sextius (IV century BC) limited the private land ownership of **500 yugers (125 hectares)** and determined the maximum number of cattle in one farm. **Law of Aquilius (289 BC)** established monetary liability for the murder of someone else's slave or animal, as well as damage to other people's things.

Civil law is the oldest system of law in Rome. It extended its effect only to the citizens of Rome (Quirites). Foreigners did not enjoy any legal protection and were called enemies (hostis- hostis).

The right of nations. According to the definition of the Romans, "the right that a natural mind has established between all people is protected among all peoples at all times and is called national as the right enjoyed by all peoples. National law is common to the entire human race. Under the influence of human needs and necessities, some peoples have established known orders: wars, capture and slavery; on the basis of the same national law, almost all contracts were introduced: purchase and sale, employment contract, partnership, etc. " In the Roman state, the right of peoples extended to the entire population, including peregrines (*as the inhabitants of the Roman provinces were called*). It regulated relations between peregrines, as well as between them and Roman citizens, and therefore constituted one of the branches of Roman law. With the development of production and exchange, the need arose to protect the rights of foreigners inhabiting the Roman state. Initially, this protection was carried out according to the laws of the country from which the foreigner arrived, and then according to Roman laws. As a result of the activities of the Peregrine praetor (*the top leadership of the judiciary*), the right of peoples was formed. In the Middle Ages, this term began to denote international law. The right of peoples is distinguished by greater freedom, deliverance from formalism, simplification of form. One of the most respected **Roman jurists, Papinian, wrote: "What matters is not what is said, but what is meant."** The differences between civil law and the law of peoples due to the activities of praetors and Roman lawyers are gradually smoothed out.

Roman law is gradually losing its original national features, imbued with the principles of universalism, which are based on the concept of justice, good conscience, natural law.

In the republican period of the Roman state, law developed in the form of parallel systems: civil law and the law of peoples. These systems were in interaction and had a mutual influence on each other. At the same time, the influence of the law of peoples turned out to be more significant. One of the channels of such influence was the activities of the praetors (the so-called **praetor law**).

In the classical period, the differences between civil law and the law of peoples still remain. **In 212 AD the edict of Caracalla** granted all free inhabitants of the Roman Empire the rights of Roman citizenship, which nullified these differences.

(in the Roman Republic, an edict was called a written or oral order (power statement))

In the 1st century AD, local law (Egyptian, Greek, most often subsidiary (additionally)) is applied in individual provinces. Greek and Oriental law, in turn,

had some influence on Roman law. Such, for example, institutions of Roman law of Greek origin: Syngraph and chirographs (IOUs); mortgage (form of collateral).

Under **Emperor Justinian (mid-6th century AD)**, civil law and the law of peoples constituted a single system of private law. It is this only right that is private law in its classical expression.

Thus, in the republican period of Roman history, Roman private law developed in the form of parallel systems: civil law and the law of peoples. The concept of natural law, the category of justice, good conscience became the criterion for the convergence of these systems.

Over time, civil law and the law of peoples through the activities of lawyers and praetors (*the activities of the praetors amounted to the so-called praetor law*) converge and **under Justinian (mid-VI century. AD) already constitute a unified system of law.**

5. Genesis of Roman Private Law

If we take into account the emergence, change and formation of the sources of Roman law, then its development can be divided into **five main periods**:

- **the oldest, archaic (753-367 pp. BC)** - *the formation of the main types of sources of Roman law, the transition from customs, customary law to state legislation and the constant judicial practice based on it;*

- **Preclassic (367-17 pp. BC)** - *the consolidation of all institutions of Roman statehood and the judicial system is carried out.;*

- **classical (17p. BC e. - 284r. n is.)** - *the formation of the principles of public law as a law expressing the sovereignty of the Roman people is carried out;*

- **post-classical (284-476 pp. n.)** - *Since the time of dominance, the simplification and unification of various classical law and order has been carried out. Law-making activity was completely concentrated in the hands of the emperor as a single and unlimited legislator.;*

- **Justinian (527-565 pp. AD)** - *Thanks to the legal policy of Emperor Justinian and the codification of all Roman law performed under him, the invaluable texts of Roman classical lawyers and imperial constitutions were preserved for legal culture.*

Since the formation and development of Roman law took place for almost a millennium, it is advisable to distinguish the stages of development of the Roman state and law.

Determining the periodization of the development of Rome as a state, one can observe the widespread division of the history of Rome into three periods:

1. *Archaic (Rex period) - 753-509 pp. BC e.*

2. *Republican - 509-30 pp. BC e.*

3. *The period of the empire - 30 BC e. - 476 n e.*

However, the latter period, in turn, is often divided into an **early empire (principate) - 30. BC e. - 285 g. n e.** - and the **late empire (dominat) - 285-476 pp.** Therefore, we can also talk about four periods of the development of Roman history.

Since the criterion for the periodization of the history of Rome here is the form of state structure, then certain stages of the development of the Roman state correspond to the mentioned three (four) periods of Roman history:

- 1) *Rome of the Rex era; (the so-called king)*
- 2) *republic;*
- 3) *principal;*
- 4) *dominate.*

However, taking as a basis such a division of the development of the Roman state, it should be borne in mind that the periodization of the development of Roman law has certain nuances, depending on whether it is Roman law as a whole, or the development of Roman private and Roman public law.

The views that exist on this issue can be generalized by singling out two main approaches, which can be conditionally designated as "progressive-chronological" and "dominant."

In the first case, the stages of the development of Roman law in the system of the natural course of time are determined (chronological version). In the second, periodization is based on taking into account the dominant, the priority of the nature of the right in a certain segment of time (dominant version).

Considering these approaches, you should pay attention to such circumstances.

In the early stages of the development of the Roman state, relations between the inhabitants of Rome were regulated by the norms (**jus Quiritium jus quiritium**) (**jus civile jus civile**) - the rights of quirites (**civil rights**), that is, national Roman law. The norms of **jus gentium** were later added to it. The division of the right to public and private has not yet been. However, there is a predominance of public law norms that determine the foundations of public law and order, the structure and activities of state institutions, the relationship between the state (community) and the citizen. We can say that already at this time there is and is developing public law as a continuation of public power. As for private law as an industry, a set of principles, rules and norms that determine the status of a private person, his idea is still being formed.

Only in the period of the late republic and the principle is comprehension of the nature of the relationship between the citizen and the state, citizens among themselves, a significant number of unnecessary restrictions on the rights of individuals are eliminated, the ideology of private and public law is formed.

At the beginning, private and public law, as industries subject to study and analysis, were actually formed - then the process of finalizing norms, updating legislation, codification, etc.

Given these circumstances, it should be recognized that it is impossible to talk about the existence of private and public law as branches throughout the history of Rome's existence, therefore the use of the "chronological concept" for its periodization is incorrect.

The latter arose as an approach to the periodization of Roman law as a whole. Regarding it, in fact, it is possible to distinguish archaic, preclassical, classical and postclassical periods.

Extrapolation of this approach to the law of private or public can lead to distortion of understanding of the essence and specifics of the latter. Therefore, when it comes to the regulation of relations between individuals, that is, private law, or the regulation of relations between a citizen and the state, that is, public law, the "dominant" system is obviously more acceptable.

Taking into account these provisions, the following periods of development of Roman law can be distinguished:

1. The action of the norms **jus civile (VII-IV centuries. BC e.)**.
2. Improvement of **jus civile**, the formation of specific principles of private law and public law (**IV - I centuries BC**).
3. Completion of the formation of the idea of distinguishing between **private and public law (I century BC e. - II century AD e.)**.
4. Improvement of the solutions found, codification (**II - V centuries**).

For convenience, these periods can be grouped as follows:

- a) **I - II centuries. - the period of dominance of jus civile;**
- b) **III - IV centuries. - the period of the formation of private and public law of Ancient Rome, as branches of knowledge about law.**

Consequently, it can be considered that private law, as a set of ideas, principles and legal norms governing relations between legally equal subjects, and public law, as a set of norms regulating relations between a citizen and a state, were formed only during the time of the principal.

Since that time (**jus privatum**) exists as a kind of ideological antithesis (**jus publicum**), the category, the appearance of which is associated with the need to regulate relations between individuals within society, despite the fact that (**jus publicum**) strengthens its importance as an industry that determines the foundations of law and order in the state.

Lecture № 2. Sources of Roman Law

Plan

1. Concepts and types of sources of Roman law
2. Sources of law-making in ancient Rome
3. Sources of knowledge of Roman private law

1. The concept of sources of Roman law

In the legal literature of many countries of the world on Roman law, accumulated more than two and a half thousand years since the founding of the Roman state, various definitions of the term "source of law" are given.

For the first time, the term "source of law" is used by the famous Roman historian and philosopher Titus Livy, who in his "History from the Founding of the City" calls the Laws of the XII tables "the source of all public and private law"

This concept has far from unambiguous meaning.

So, *in one sense it is the source of the content of legal norms, in the second - it is a way, a form of formation of norms of law, and in the third - the source of knowledge of law as a phenomenon.*

Let us consider in more detail each of these understandings of the term "source of law"

1. The content of legal norms depends on the socio-economic system prevailing in a particular country. Ancient Rome was a slave state. In view of this, the legal norms of those times clearly show a tendency to protect the interests of the ruling class and the oppression of slaves. The slave-owning method of production by means of law assigned tools and labor results to the slave owner. The slave, as a direct producer, had no rights to the products he produced. Of course, the dissatisfaction of slaves was constantly growing, and therefore, slave owners ensured their domination through legal norms that deprived slaves of all rights and, on the contrary, protected the rights of the ruling class by various means. Consequently, the content of the legal norms of that time was the desire of slave owners to preserve their condition, ensure further domination and develop effective mechanisms for the oppression of slaves, and the source of the content of law was the socio-economic system of Ancient Rome.

2. The second meaning of the term "source of law" (method, form of formation of norms of law) makes it clear how a certain rule of behavior becomes a legal norm. Such sources are called **sources of law-making**.

Throughout the existence of the Roman state, the sources of law-making were:

a) customs (in the archaic period);

b) the law (in the republican period - the decisions of the people's assembly; during the period of the principate - the decisions of the senate, expressing the will of the princeps; in the era of absolute monarchy, imperial constitutions). At the beginning of the development of Roman society, the laws of the XII tables were recognized as the main source of law. So the ancient Roman historian Titus Livy

called the laws of the XII tables "fons omnis publici privatique iuris" the source of all public and private law;

c) edicts of magistrates;

d) activity of lawyers (jurisprudence).

3. The third meaning of the concept of "sources of law" is the sources of knowledge of ancient Roman law. That is, those sources from where romance (the science of ancient Rome) draws information about the presence of certain legal norms.

The sources of knowledge include:

- *legal monuments, for example, the codification of Emperor Justinian;*
- *works of Roman lawyers; works of Roman historians, Roman orators, writers, satirists, philosophers, etc.*
- *inscriptions on bronze, stone, wood, walls of houses, etc.* (for example, the Heracleian table is a bronze table that contained a law on municipal structure). In the second half of the 19th century, these inscriptions began to be published in a special edition of the **Corpus inscriptionum latinarum** (Set of Latin inscriptions). The study of inscriptions is engaged in the science of epigraphy. A valuable source of knowledge are papyri. From papyri it is possible to understand the operation of the rules of law in practice, since papyri quite often contain treaties drawn up between individuals and trace the local features of law in the individual provinces of Rome.

2. Sources of law-making in ancient Rome

Throughout the existence of the Roman state, the sources of law-making were:

1. Custom is a rule of behavior resulting from actual application for a long time. It was the main form of regulation of behavior in a pre-state society under the conditions of the clan system. Observance of customs was provided by means of public influence on the offender. Custom becomes a form of law with the emergence of the state.

It is believed that *the Laws of the XII tables are the first systematic record of customs that were in force even before their compilation as legally binding rules.* The laws got their name because they were carved on twelve copper boards. The laws of the XII tables had a huge impact on the further development of Roman society and law. Referring to the content of the Laws of the XII tables, it should be borne in mind that tradition relates their compilation by a college of decemvirs only to 451-450. BC e.

The collection consists of twelve tables, which include the following provisions:

Tables I - III - procedural law (I - invitation to the process, II - types of claims and complaints, III - executive law).

Table IV - family law (recognition of paternity, purchase and sale of children).

Table V - inheritance law (will, heredity by law, determination of the legal order of heirs).

Table VI - obligatory law (contract, purchase and sale, loan, credit and credit rates, purchase and loss of movable and immovable property).

Table VII - neighbor's right.

Tables VIII - IX - criminal law (harmful witchcraft; intentional bodily harm, theft, deception of customers, treason).

Table X - sacred law.

As for the eleventh and twelfth tables, they were compiled later, and therefore each contains only additional provisions to these ten.

Tables XI-XII - different (for example, the prohibition of marriage between patricians and plebeians, securing debt, theft, forgery of things).

The publication of this collection turned the collection of customs and new orders into a collection of civil law laws, which became the starting point for the further development of Roman law.

2. Understanding the law, that is, an act of the highest legal force, as a form of law, has undergone significant transformations during the existence of Roman law. Laws in Rome have several varieties, sometimes coexisting side by side, sometimes displacing each other, and sometimes, keeping the name, changing the essence.

In the republican period, the laws of written law included:

a. resolutions of the National Assembly;

b. in the era of the principal - the decisions of the Senate (Senate Consulates);

3. during the period of absolute monarchy - imperial constitutions.

The Popular Assembly (populus) of ancient Rome is the highest state body that adopted and **abolished laws (leges)**, although it did not have an independent legislative initiative.

There were three types of **national assemblies (comitia)**:

curiate - associations of patricians;

centuriate - associations of patricians and plebeians (after the IV century. BC e.)

tributes - associations in territorial districts, first only plebeians, and later patricians.

The functions of these types of national assemblies were not clearly delineated. For the adoption of the law, a certain procedure was established, in which the magistrate, the people gathered in the comitia, and the Senate participated.

The right to collect comitia belonged to the magistrate (consul, dictator, praetor), who had to develop a draft law (**rogatio leges**) in advance in writing, and then submit the latter for consideration by the comitia. The people who were part of the comitia did not participate in the direct discussion of the law, but only spoke out either for the adoption of the law or for its rejection. The law, which was adopted by the commission, was to be ratified by the Senate and only after that acquired the force of law - **leges rogation**.

During the early principled period (at the end of the 1st century), the national assembly almost did not carry out laws, although officially it still remained the legislative branch. During the period of the republic and the principate, the highest state, including legislative, power belonged to the Senate. Since the IV century. BC. Its composition is replenished by magistrates who have served their term and after the resignation were automatically included in the Senate list. Starting with Octavian Augustus, the composition of the senate completely formed the princeps. At the same time, formally, the Senate became the sole legislative body. The decisions of the epoch of the principate were called *senatus consulta* and were considered the main form of legislation, although they often contained only general provisions, and the praetor in the edict indicated measures for their practical implementation. The Senate, like the people's assembly, had no legislative initiative, and therefore the Senate consuls were usually named after the one who entered with the proposal to adopt the law.

Thus, at the end of the 1st century AD, *senatus consulta (Sc. Macedonianum)* was decreed to unconditionally invalidate loans made by persons under parental authority. This law got its name from the name of Macedo, who, being under parental authority, took money in a loan, could not give it and, in order to obtain inheritance and give money, killed his father. Starting from the second half of the 3rd century AD, the Senate began to lose its position, returning them only in times of political crises, and in the era of dominate actually turned into the city council of Rome.

The strengthening of imperial power led to the emergence of a new form of legislation - imperial decrees (constitutions principum) of four types:

- *edicts*
- *rescripts*
- *mandates*
- *decrees.*

Moreover, during the period of the dominant constitution of the emperor, in its certain forms, all other forms of law-making were replaced.

Edicts (edicta) of emperors represented orders, as a rule, on issues of public law, which were mandatory for those persons to whom they were addressed. The edicts remained in force throughout the reign of the emperor and acted after his death until they were canceled by the next emperor.

Rescripts (rescriptum) - written conclusions of the emperor, given as a response to any personal appeal by one of the parties to the dispute or to a letter from the relevant authority. Initially, the rescript did not have the power of a court decision and reflected the legal views of the emperor, but already from the II century. AD acquired the power of law in a specific case.

Mandates (mandatum) - instructions given by the emperor to officials in administrative and judicial matters. During the period of domination, this type of constitution lost its purpose.

Decrees (decretum) - personal decisions of the imperial court on the basis of oral consideration both in the first instance (in special cases, the emperor decided

them personally) and in the court of appeal. The emperor made decisions on the basis of the rules of law, but could retreat from them if he considered it fair. Initially, the decree of the emperor had legal force only for a specific case, then gained the force of precedent, and from the II century. AD e., like the rescript, - the power of the law.

During the period of the republic, edicts of magistrates, primarily praetors, become a common form of Roman law. One way or another, the edicts of consuls, praetors, kurul aediles, rulers of provinces and other magistrates concerned law-making activities. However, the most noticeable was the law-making activity of the praetors (both the city praetor and the praetor of peregrines)

The task of the praetors was to assist the consuls, and in the absence of the latter, the praetors performed their duties. Gradually, the judiciary is concentrated in their hands and their functions change accordingly. The city praetor administered justice in Rome. The praetor of peregrines resolved property disputes arising between peregrines or peregrines - on the one hand, and Roman citizens - on the other. The position of praetor was very honorable (honor). As deputy consul, he was subordinate to the same affairs as the consul. However, perhaps the main thing was his right to proclaim edicts in **court cases (jus dière)**, which played a significant role in the development of Roman law.

To exercise his functions and within his competence, the praetor before assuming office issued an edict in which he set out the rules of justice, mandatory for the entire population and the praetor himself for a year. At the end of his powers, these rules lost their force. Before assuming office, the newly elected praetor announced his own edict, having studied the edicts of his predecessors. The rules that proved their effectiveness in the practice of their application and proved to be suitable for the protection of emerging relations were used in the new edict. Unsuccessful, unviable rules died off without getting application in subsequent edicts. Consequently, each newly elected praetor published his edict, which was the result of the work of not only its author, but also the collective creation of many predecessors, which absorbed their practical experience.

The need for the development and proclamation of new rules of justice and justice was due to the inability of jus civile to reliably protect the relations that developed in the new socio-economic conditions. Formally, the praetor did not have the authority to abolish outdated norms jus civile and create his own - this went beyond his power. On the other hand, the rules created by the praetor because they met the requirements of the time began to be applied in the edicts of subsequent praetors, they passed from generation to generation, gradually turning into legal norms - praetor law. Guided by the principle of justice (aequitas), the praetor had the right to refuse protection where, in accordance with the norms of jus civile, it was supposed to be granted, and to protect new relations in cases where, according to the norms of jus civile, this was not provided. In fact, the praetor's activities not only received recognition from society, but also became a fairly progressive form of updating, improving and improving the legal regulation of relations in republican Rome. Efficiency in solving urgent legal problems, the ability to quickly and carefully check the compliance of the solution found with the needs of practice and,

in case of unfitness, replace others, made the law-making activity of praetors the most perfect means of law-making republican Rome. It was thanks to the praetor activity that the Romans managed to achieve an unsurpassed improvement in legal culture, while the praetors were called the living voice of private law (*viva vox juris civilis*).

During the time of the principate, the law-making activities of the praetors noticeably decline, since they are not consistent with new forms of the state system. Under Adrian, lawyer Salvius Julian (about 125-126 pp.) carries out the final edition of the permanent praetor edict, codifies praetor law. On the proposal of Adrian by a special Senate The edict was approved and recognized as unchanged. Only the emperor had the right to supplement the edict. The codification of the praetor edict is the first major codification after the creation of Laws XII tables. It was from this time that the law-making activities of the praetor and other magistrates ceased, and the contradictions between civil and praetor law began to lose their significance.

Activities of lawyers. Lawyers in the ancient era were priests who made up a special caste, whose representatives could interpret the law. These interpretations were secret and were not provided to the general public. Later, the first plebeian consul, Tiberius Coruncanius, made his consultations public. From that moment, jurisprudence ceased to be a monopoly of priests.

Most Roman lawyers belonged to the ruling class and therefore occupied a rather high official position. Despite the fact that lawyers did not have the right to legislate, they provided their own authority with due legal force by their interpretations, which became almost mandatory. The activity of lawyers, whose task was to help in the application of law, actually became an independent form of law-making.

During the period of the principle, the position of lawyers is further strengthened, given that princeps through them implement their policies. In order to make lawyers an instrument of this policy, some lawyers are given the right to provide official advice (*ius publice respondendi*). These consultations were mandatory for judges and thus the activities of lawyers became law-making.

The professional activities of lawyers (*prudentes*) had three main types: *cavere* (make new claims and agreements), *agere* (conduct the case in court), *respondere* (give answers).

Cavere. provided for the authority to enter into claims, agreements and wills. In the exercise of their powers, lawyers provided names to new remedies, the creation of which was a response to non-standard situations that arose in legal practice.

Agere. refers to the conduct of a case in court, where the lawyer assumes the powers of the party in the process, while acting as a lawyer. The most typical function of lawyers was **respondere** - to express their opinion on various questions asked by private individuals. Authenticity of authorship was provided either by a seal, or a personal letter from a lawyer to a judge, or by evidence of persons who attended the consultation.

The interpretation of existing laws by lawyers and the works of lawyers devoted to legislation were called **comments**. Lawyers also compiled collections of incidents, while expressing their opinion about some legal events. Roman jurists also compiled textbooks on Roman law (institutions) and taught law.

The works of Roman lawyers were closely related to legal practice. The analysis of legal relations carried out by lawyers was distinguished by accuracy, depth, logical consistency and reasonableness of decisions. Therefore, many legal maxims (statements) turned out to be how successful that they were quoted both at that time and until now. For example: "The good of the people is the highest law" (Cicero), "No one can transfer more rights to another than he has himself" (Ulpian), "Law is the art of good and justice" (Celsus), "In judicial cases, haste is criminal" (Publius Syr), "Conscientiousness does not allow that twice punished for the same thing" (Guy) and others.

Prominent republican lawyers include Mark Manilius, Junius Brutus, Publius Scevola (II century BC). Representatives of classical Roman jurisprudence were Labeon and Capiton (I century BC). Their names are associated with the creation of two schools of Roman lawyers: pro-Julian (on behalf of Prokul, a student of Labeon) and Sabinian (on behalf of Sabin, a student of Capiton). During the "golden age" of Rome's jurisprudence (2nd century - early 3rd century AD), a galaxy of Roman jurists was replenished with the names of Paul, Papinian, Ulpian, Modestine, Guy and others.

From the end of the 3rd century AD, the activity of lawyers slowed down due to the restriction of legal freedom by Roman emperors. In 426 Emperor Valentinian III issued the Law of Citation, according to which legal force was recognized only by the works of five lawyers: Guy, Paul, Papinian, Modestine and Ulpian

3. Sources of knowledge of Roman private law

The sources of knowledge of Roman law include monuments of Roman literature, historians (Titus Livy, Tacitus, Aulus Helius, etc.), Roman speakers (the famous Cicero, I century AD), the philosopher Seneca.

An important source of knowledge of Roman law is the surviving inscriptions on wood, stone, bronze (for example, the Heracleian Table, a bronze plaque on which the law on municipal structure was laid out), on the walls of buildings (for example, inscriptions found during excavations of the river. Pompeii, covered with lava during the eruption of Vesuvius in 79 AD), etc. In modern times (starting from the second half of the 19th century), inscriptions began to be published in a special edition of **the Corpus inscriptionum latinarum (Code of Latin inscriptions)**; Historians Mommsen, Dessau, Gübner, Hirschfeld, etc. worked especially hard on this edition. The most important inscriptions from the legal side are given in 7 ed. (1909) of **Bruns's book "Sources of Roman Law" (Bruns. Fontes iuris romani)**. The study of inscriptions is devoted to a special branch of historical science - the epigraph.

A valuable source of knowledge of Roman law are papyri, the study of which is devoted to a special branch of historical science - Papyrology. For Roman civil (private) law, papyri are important, firstly, in that they allow us to judge how the norms of law are refracted into real life (since in papyri we have the statement of various treaties not as general types, but specific treaties between certain persons, as well as other legal acts, etc.), secondly, papyri contain rich material for the knowledge of local features in the law of individual provinces of the Roman state. There are papyri that contain documents of general imperial significance; for example, the edict of **Antonin Caracalla (212 AD, the so-called Constitutio Antonina)** on the granting of Roman citizenship rights to provincials.

Literary sources of knowledge of Roman classical law, created by lawyers, are:

***institutions (institutio)** - textbooks of Roman law for students, in particular the Institution of Guy (II century);*

***comments (commentarius)** - interpretation of the law or works of other lawyers;*

***digests (digesta)** - collections of statements of lawyers of past times;*

***regulae** - collections of briefly formulated legal rules, aphorisms and proverbs;*

collections of incidents; monographic works of Roman lawyers who covered a certain institution of law.

As noted above, Roman private law was repeatedly codified. The most important codification in Roman history is associated with the name of Emperor Justinian (527-565), who sought to create a unified legal system, that is, to organize the laws that have accumulated over many centuries, and the works of Roman lawyers. To this end, a revision of the provisions contained in the sources of Roman law was introduced, the selection of those that would meet the needs of the time, the elimination of contradictions between them.

It is believed that the emperor Justinian, trying to restore the greatness of the Roman Empire, decided to unite it with the right. Therefore, the preparation of the Justinian Code should have taken place in the shortest possible time. First of all, it was necessary to systematize the constitutions that appeared after the publication of the Code of Theodosius. But subsequently, Justinian set the commission an even more ambitious task - to update the existing codes (Gregorian, Hermogenian and Theodosius) and combine them in one collection. To fulfill this task, a commission of 10 people was created, headed by the famous lawyer Tribonian. The work of the commission, which lasted more than a year (from 528 to 529), ended with the conclusion of the Codex Justinianus. In general, the codification activity continued for more than 30 years (528-565), and its consequence was the publication of special collections:

in 529 Codex Justinian (Codex vetus);

In 533 Digesta, or Pandectae, and Institutio;

in 534 - an updated version of the Code of Justinian (Codex repetitae praelectionis);

in 565 - Novellae.

Initially, the structure of the Code of Laws of Emperor Justinian included three parts:

Code

Digests (or Pandects)

Institutions.

However, after the publication of the codification for the period from 535 to 565 Justinian issued a significant number of imperial constitutions that were not included in the Code. They were published after his death and were called Novels. All four parts of the Justinian codification had (as Justinian wanted) to unite together in "**Corpus**" rights. And only from the XII century the Justinian Code began to be called "**Corpus juris civilis.**"

The first part - the Code of Justinian - appeared in 529, included a collection of imperial constitutions from Hadrian to Justinian. The Code was devoted to issues of civil, criminal and state law. It consisted of 12 books, which were divided into 98 titles, and titles into fragments. Constitutions (4600 in total) were arranged in chronological order. At the beginning of each constitution, the name of the emperor who issued it, the name of the person to whom it concerned, and the date of publication were noted.

The second part - Digests or Pandects - is published in 533. The commission used more than 2 thousand fragments from the works of 39 the most famous Roman lawyers. Digests consist of 50 books. Books (except 30 and 32) are divided into titles (432 in total).

Titles - for fragments (total 9123). Fragments in the latest editions Digest - in paragraphs. The largest number of passages is borrowed from the works of Ulpian - up to 1/3 and Paul - about 1/6 of the entire Digest volume. In addition, the works of Papinian amounted to 1/18 part, Julian - 1/20, Pomponius and Servius Scaevola - 1/25, Guy - 1/30, Modestine - 1/45, Marcellus - 1/60. The compilers used the works of those lawyers who owned *jus respondendi*.

Digest's main content is fragments that relate to private law, but many of them relate to public law.

Institutions became the third part of the Code. In 533 professors-lawyers Theophilus and Dorotheus, under the leadership of Tribonian, compiled an elementary textbook of civil law - **Institutions (institutiones)**. The institutions were published for educational purposes for novice lawyers, but later became official. The basis was laid by Guy's institutions, which also consisted of four books.

The first book contained general provisions on the system of Roman law, sources, provisions on the legal status of persons, as well as family law institutions.

The second book was devoted to real law, property and possession rights, usufructs and easements, wills.

The third - contained provisions on hereditary and binding law.

The fourth was devoted to tort obligations, the system of claims, praetor interdicts, extraordinary litigation and state crimes.

The fourth part of the Code were short stories prepared by lawyer Julian. In his Novellas, Justinian primarily gave the force of law to those real changes in law that directly related to post-reform judicial practice.

Justinian's novels made significant changes to marriage law, to the issue of inheritance rights, especially in the absence of a will. Also interesting are innovations concerning the position of slaves, columns, freedmen and curials (formerly called decurions). In their content, the short stories were considered laws and generally dealt with the problems of church and public law.

Thus, the Code of Laws of Justinian included the most important achievements of Roman classical jurisprudence, as well as valuable achievements of post-classical Roman law. Justinian legislation focused on serving the then and future generations

Lecture №. 3. Persons (subjects) of law

Plan

1. Concepts and types of persons (subjects of law) in ancient Rome.
2. The concept of legal capacity of individuals. Content of legal capacity. The emergence and termination of legal capacity. Limitation of legal capacity.
3. The concept of legal capacity of individuals.
4. The legal status of certain segments of the population of Rome.
5. Concepts, types and characteristics of legal entities in Rome.

1. Concepts and types of persons (subjects of law) in ancient Rome

"All right," said the Romans, "refers either to persons, or to things (objects), or claims" (Guy, 1.8).

The law relating to persons was divided into **status and family law**.

The status was a collection of *legal institutions regulating the legal status of individuals (persona) and entire categories of the population of the Roman state*.

Status law is a system of powers (rights and obligations in action) that regulated the issues of legal capacity and capacity of subjects of law.

Persons (persona) were considered participants in legal relations, which could be carriers of rights and obligations. Not every person in ancient Rome was considered a subject of law. In Roman slave society, they recognized only free people.

Slaves belonged to the type of things, and therefore were considered objects of law.

Subjects of Roman private law are individuals, individual categories of the population (Roman citizens, Latin, peregrines, libertines, columns), as well as legal entities.

Roman law distinguished several categories of persons.

Persona is a property that indicated the status of an individual in accordance with the law, or the nature of his relations with other persons. Individuals could either be independent in power or subject to authority.

Persons of their right (persona sui juris) are not subject to anyone. In the earliest period, they were the heads of **patriarchal families (pater familias)**.

Only the head of the family was the owner of the family property, he could dispose of it at his discretion. He owned full power over the children, as well as property that they acquired in war, in public service or otherwise. He had full civil capacity, which consisted of three statuses -

status libertatis, status civitatis, status familiae. Deprivation of one of these statuses led to a diminution of **legal capacity (capitis deminutio)**. With the maximum loss of legal capacity, freedom was lost, with the average - citizenship, and with the minimum - family status changed.

Persons of foreign law (persona alieni juris) included dependent persons, that is, those who were ruled by homeowners (children, wife, households, slaves). They could not be owners of property, conclude transactions on their own behalf and for themselves without the permission of the head of the family.

With the development of productive forces, this state could not remain unchanged. In some cases, praetors began to recognize ownership as subject. If the property passed to the children by inheritance after the death of the mother, it remained the property of the children. Property acquired by sons in war or in public service also became recognized as the property of the one who acquired it. From under parental authority, the son who was elected to any public office was dismissed.

Subjects of law (persona) are primarily individuals (people).

Nevertheless, Roman law recognized subjects of law and legal entities - organizationally decorated collectives of people.

The legal status of different categories of persons was different depending on the status that these persons had in society. Three statuses were known to Roman law:

1. Status libertatis

2. citizenship status (status civitatis)

3. family status (status familias).

In terms of the status of freedom, all people were divided into free and slaves. The Romans considered this division in law to be the main one. Slaves, not possessing the status of freedom, were not recognized as a subject of law, but were its object, *"they say an instrument."* From the point of view of the laws of nature, all people are free. These laws they justified another institution **ins gentium - manumissio (liberation from slavery).**

Of the free people, some are **freeborn**, others are **freedmen**. The latter, even in the right of Justinian, did not fully equal in rights with **the freeborn**.

In terms of citizenship status, the subjects of Rome were divided into Roman citizens and non-citizens. By volume, *only Roman citizens possessed the fullness of rights*. Some non-Germans approached them in terms of their rights and easily became Roman citizens - **these are Latin**.

The last free population of the Roman state - **the peregrines** - was at first deprived of all rights, and only gradually its legal position began to approach the position of Roman citizens. Caracalla Law 212 all subjects of the Roman Empire were given Roman citizenship, and although an abstract person with an equal amount of rights appeared in law, the legal status of the Roman population was never equal. Moreover, *the period of dominate strengthened the status difference*, a new category of *semi-orthodox persons appeared - columns, the prototype of the serfs of feudal Europe*.

In terms of family status, in the Roman family there was one father of the family (**head, homeowner - paterfamilias**) and his subjects. Only the father of the family had all the fullness of rights, he was a person independent (**sui iuris**), and the rest of the family members were subject to, persons of another's right (**alieni iuris**) had a very limited range of rights, were completely dependent on the **paterfamilias**.

Thus, in Roman society, free, *independent Roman citizens could have full power*. To challenge or establish status, status courts were established and special lawsuits were given.

Any **position (status)** of a person can be challenged. Therefore, in connection with the need to resolve issues, a person is free or a slave, a person of his right or a stranger, status courts were created, that is, courts in which issues of the legal status of individuals were resolved.

There were three types of courts in which the status of a person was considered in a procedural manner:

1) a court in which it was necessary to prove that a certain person living as a slave is actually free;

2) a court where it was necessary to prove that a certain person living as a free person is inherently a slave;

3) a court in which it was necessary to prove that a certain person is free from birth or freedman.

2. The concept of legal capacity of individuals. Content of legal capacity. The emergence and termination of legal capacity. Limitation of legal capacity

In Rome, only free people were recognized as a subject of law. However, the free had not the same rights. *The scope of rights depended on many factors (which will be discussed later). The ability to be a subject of law, that is, legal personality (caput), in slave-owning Rome was determined by three states (statuses): freedom, citizenship and marital status.*

According to the status of freedom, the population of Rome was divided into free and slaves;

according to the status of citizenship, the free formed five groups:

1. Roman citizens,

2. latin,

3. Superheats,

4. Freedmen and columns;

5. by marital status - heads of families and other family members.

States could change (a Roman citizen could be turned into slavery or overheated to receive the status of a Roman citizen, etc.) and then legal personality changed accordingly. The change of status was called **capitis deminutio**.

1. the state of freedom (status libertatis) is the main of the legal states: there is freedom - there is a certain minimum of rights, there is no freedom - there are absolutely no rights.

Therefore, the most significant changes in the state of freedom could lead to one of the following consequences: the acquisition of freedom (a slave released to freedom); loss of freedom (a free man sold into slavery).

Such changes were called **capitis deminutio maxima**, that is, the largest changes that led to the acquisition of the status of a subject of law (person) or to its complete loss.

2) The state of citizenship (status civitatis) attributed a free person to one of the above groups. Changing this status only led to a change in citizenship: Latin, peregrines could be Roman citizens and, conversely, a Roman citizen could be a freedman (through slavery). These changes in legal status were called **average (capitis deminutio media)**, they only affected the scope of rights; overheating, which became a Roman citizen, acquired greater rights, and a Roman citizen who lost this status (but not freedom), to a certain extent, was limited in rights. However, changes in this status did not lead to a complete loss of legal personality.

3) Marital status (status familiae) divided the free into **two groups: persons of their right (persona sui juris) - heads of the family (pater familias) and persons of another's right (persona alieni juris)**. The latter included all other family members - the so-called subject, since they were ruled by **pater familias**.

The ability of a person to be a carrier of certain rights is called legal capacity. Roman jurists did not have a corresponding modern definition of legal capacity, although they used this concept.

Legal capacity as the ability of a free person to be a carrier of rights arose from the moment of his birth. However, as Roman jurists believed, in some cases legal capacity may arise before the birth of a child. The lawyer Paul noted: "Whoever is in the womb of the mother is protected, as if he is among people, since it is about the benefits of the fetus itself" (D. 1.5.7). So, if the father of a child who has not yet been born dies, then the share of those who have not yet been born should be taken into account when distributing the inheritance.

The moment of birth, Roman lawyers recognized the separation of the child from the mother's womb and her cries. The dead child did not have legal capacity. Of course, legal capacity could arise only among those born free. From the moment of birth, the child is the bearer of rights; she could be the owner, the heir. On her behalf, legal representatives defended her rights, etc.

Legal capacity ceased with the death of a person. Roman law equated to death the sale into slavery, captivity, conviction to severe types of punishment (life imprisonment). If a person in any way received freedom again, his legal capacity was restored, although not always in the previous volume.

Since the beginning of III century all free population of Rome used all fullness of legal capacity in spheres of political, property and family life. In this case, it is important to find out the content of civil capacity, of which specific civil rights it consists.

The civil capacity of a Roman citizen consists of two main elements:

1) jus connubii - *the right to marry, in which children acquire the status of Roman citizens;*

2) jus commercii - *the right to trade, which covers the right to be the owner of all property, to carry out any civil law transactions, in particular to give, change, the right to be the heir, to conduct civil law disputes in court.*

Complete loss of legal capacity - capitis dominutio maxima. *It came whenever a person lost his freedom.*

The average loss of legal capacity - *capitis dominutio media* came when a person retained freedom, but lost the right of a Roman citizen.

For example, a Roman citizen becomes peregrine or Latin in order to obtain land on the periphery. In the imperial period, citizenship was lost in the case of exile. A person subjected to *capitis dominutio media* lost their civil rights but retained a *ius gentium* relationship.

Minimal loss of legal capacity - *capitis dominutio minima* occurred with a change in the marital status of a person, which happened in the following cases:

- a) the person of his own rights turned into a person of other people's rights;
- b) a family independent person was adopted by another person;
- c) a woman who was not under anyone's authority marries, etc.

The result of *capitis dominutio minima* is a complete rupture of previous family ties with all the rights that followed from them (inheritance, etc.). All of these factors are closely related to the legal capacity of a person in the Roman state.

The presence of legal capacity is only one side of legal personality. In order to fully enjoy the benefits of law, one legal capacity is not enough. **After all, legal capacity is only the presence of rights, and a person can use them independently only if he has legal capacity.**

According to the age qualification, the legal capacity of citizens was divided into three groups.

The first group included children under the age of 7 years who were completely incapacitated.

The second group is partially capable. These included girls under 12 and boys under 14. Such persons could only make small transactions: make minor purchases, accept small gifts, conduct a small exchange of things, etc.

The third group included female persons aged 12 and male from 14 to 25 years, who were recognized as minors, but capable. Such persons had the right to conclude various kinds of civil law agreements, however, having concluded a clearly unprofitable agreement for themselves, they could ask the praetor to invalidate it and return the parties to the state before concluding the agreement, that is, to restitution.

The capacity of a person in Rome was influenced by his physical condition. In particular, the deaf-mute could not conclude such agreements as stipulation, speak in court during the operation of the legal process, in which it was necessary to declare formulas, etc. Mentally ill and underdeveloped during the illness were recognized as completely incapacitated. Limited in capacity were wasteful - persons who are unable to reasonably dispose of their property. Such persons were appointed trustees who were obliged to take care of their property status. After the appointment of a trustee, the wasteful person independently carried out only such transactions that were aimed at acquiring property, and not alienation, and bore personal responsibility for the offenses committed. Some limitations of legal capacity depended on permanent residence.

In addition to the above factors, the completeness of civil capacity and legal capacity implies a state of civil honor. Complete deprivation of honor as a result of

punishment by the court associated with the loss of citizenship. Humiliation of chestnavals in the form of **infamia (shame) or turpitude (immorality)**.

3. The concept of legal capacity of individuals

The sources of Roman law do not contain a category similar to the concept of legal capacity in the modern sense. However, it seems that in order to participate in legal relations, it was not enough for a person to have only *legal capacity*, he must be able to perform certain actions that have legal consequences. The Romans recognized legal capacity in the field of private law for individuals, regardless of whether they have legal capacity or not. That is why contracts could be concluded by persons who did not have full legal capacity or did not have it at all, for example, a son or slave subject to the father. The peculiarity of these agreements was that everything received from them belonged to a legally capable person, that is, **pater familias**.

The volume of *capacity* depended on several factors, in particular: age; sex; diseases; unworthy behavior of a person, etc.

The capacity of a person did not come from birth, but from the moment he reached a certain age.

According to the age criterion, persons were divided into completely incapacitated (infates - children under 7 years old); limited capacity (impuberes - boys aged 7 to 14 years and girls - from 7 to 12 years); capable (men aged 14, and women - from 12 years).

Impuberes had the right to independently carry out such transactions, which led only to the acquisition of certain benefits by them without any cost or establishment of duties. To perform other actions, it is necessary to obtain the permission of the guardian at the time of committing the right to rank.

The acquisition of *full legal capacity* was associated in Roman law with the person reaching **the age of puberty**. In the Justinian period, the rule was fixed that **puberes, and therefore capable, are men from 14 years old, and women from 12 years old**. These persons had the right to independently exercise any right of rank, perform other legal actions and bear responsibility. In the last years of the republic, *the praetor*, at the request of these persons, gave them the opportunity to abandon the transaction, if it was clearly unprofitable for them. At the same time, restitution (**restitutio**) was used as a legal consequence, that is, the parties returned to their original property status. Since the II century. AD persons under the age of 25 could ask to appoint a curator (**trustee**).

In ancient Rome, there were restrictions on the scope of legal capacity on the basis of gender. The woman was recognized as partially incapacitated and fell under the guardianship of her father, her husband, his pater familias, another male relative, as the Roman lawyer Guy noted, due to her natural "legitimacy" (G. 1.144). Only in Justinian law were restrictions on the legal capacity of women abolished.

Human illness or physical disabilities could also affect the scope of his capacity. As a general rule, a person's physical shortcomings did not affect his ability

to enter into private legal relations. However, deaf, dumb, deaf-mute persons could not commit deeds by stimulation (**stihulatio**), that is, orally. A much greater impact on the volume of capacity had a mental illness. So, mentally ill (**furiosi, dementes**) and feeble-minded (**mente capti. fatui**) were recognized as incapacitated. They could not make any transactions during the illness. They were appointed a trustee. However, no legal act regarding the recognition of them as completely incapacitated was issued. At the time of enlightenment, these persons were considered capable.

In Rome, the so-called **extravagants**, that is, persons who were not able to observe the necessary measure in spending their property, were significantly limited in capacity. By their unworthy behavior, these persons pose a threat of complete ruin and deprivation of their family and descendants of their livelihood.

Separately, it is necessary to mention the humiliation of honor, as a circumstance that affected the legal capacity and capacity.

**There were the following types of humiliation of honor:
infamia ra turpitud.**

Infamia came in case of conviction of a person for a crime, for a serious private offense, considered unworthy, dishonest behavior. It could also be a consequence of the award of a fiduciary transaction in a **lawsuit (surety agreements, partnership, luggage, guardianship relations, etc.)**. Persons recognized as dishonest could not represent other persons in the process, enter into a legitimate Roman marriage, were limited in the right to receive an inheritance, etc.

Infamia was assigned to the person in the following cases

- 1) when convicted of certain offenses related to dishonest behavior (false bankruptcy, unfair guardianship);
- 2) as a result of violation of contracts that provided for exceptional honesty (assignments, partnerships);
- 3) in violation of marriage and family law (bigamy, marriage with a widow before 1 year after the death of her husband).

Persons found dishonest on these grounds could not be guardians and represent someone's interests in court.

Turpitud took place in the case of recognition by public opinion of a person dishonest in the general nature of his behavior, for example, in the case of marriage before the end of 1 year from the moment of the death of his husband, in the case of engaging in shameful professions, etc. The most significant limitations in this case concerned inheritance rights.

The diminution of civil honor came by decision of the judiciary and other state bodies. It could be lifelong or temporary. The decision to restore the legal position of a person, as a rule, was made by the body that imposed dishonor. Restoration could also be carried out by the supreme power (for example, imperial) on behalf of the Roman people

Guardianship (tutela) and guardianship (cura). In the case when a person cannot independently exercise his rights, a guardian or guardian was appointed to him. The Romans did not have a fundamental difference between these two concepts.

The guardian, as a rule, confessed over minors and women, and **the guardian** - over the mentally ill, wasteful and minors.

Guardians and trustees were treated with rather strict requirements. They must be provided with property, cause confidence in their honesty, decency, selflessness, care and be respected in society.

Their main duty was to take care of the property interests of their wards, that is, about safety, increment and reasonable use of property. **Guardians and trustees** also cared about the person of the ward, his health, development, upbringing. Abuse of a **guardian or trustee** was considered an dishonest act and led to dishonor.

4. Legal status of certain segments of the population of Rome

Roman citizens.

Roman citizenship is the legal status of the inhabitants of the Roman state, which means the ability to use the fullness of legal rights granted by Roman law. The position of Roman citizens was different depending on the social situation and in different periods of history. The Romans considered themselves children of the god Quirinus, and therefore were **called Quirites**.

The content of Roman citizenship found its expression in the public and private sphere of legal relations.

In public legal relations, citizens had the right to:

own name (it consisted of five parts: the name, the name of the family or clan, the name of the father in the genitive case, the name of the tribe in which he votes, and nicknames);

wearing toga;

participation in national assemblies;

active and passive suffrage;

participation in public holidays;

appeal of the judgment.

In addition to rights, they had civil duties:

Pay taxes on state needs and bear military service.

In private legal relations, they had the right:

enter into a legal marriage and create a Roman family (**jus conubii**);

be subject to material and binding rights (**jus commercii**);

bequeath and inherit property.

The grounds for acquiring Roman citizenship were:

1. Birth from Roman citizens (the child received Roman citizenship if he was born in a legitimate Roman marriage or born out of wedlock a Roman woman.

There was a rule "a child born in marriage followed the state of the father, and outside marriage - the state of the mother." However, from the 1st century AD there was a departure from the last rule. It was found that a child born out of wedlock as a Roman citizen was not recognized as a citizen unless his father had Roman citizenship. Free-born Roman citizens had full legal capacity.

2. Adoption by a Roman citizen of a foreigner (foreigners adopted by full Roman citizens in accordance with a procedure specially enshrined in private law acquired full legal capacity. According to their legal status, they were equated with freeborn Roman citizens).

3. Emancipation from slavery (persons released from slavery were considered free people, but they had restrictions in the field of private law. Their legal status differed from that of freeborn Roman citizens.

4. Granting citizenship to individuals, communities, cities or provinces (this was due to the requirements of public law).

The restriction of the legal position of Roman citizens occurred for various reasons:

- in case of loss of certain statuses (freedom status, citizenship status or family status);

- when diminishing civil honor;

- for other reasons.

The loss of Roman citizenship occurred in the following cases:

- natural death of a person;

- capture, capture by the enemy;

- sale into slavery for committing an offense;

- renunciation of citizenship.

Latin. The legal status of the Latin was not the same. By its condition to the Roman citizens approached so-called ancient Latin (*latini veteres*) - free population of communities of Latium which once together with Rome constituted a *Latin union* which has ceased to exist in the 4th century BC. *Ancient Latin* enjoyed limited rights in public-legal sphere. They enjoyed only the right to vote, but could not hold elected posts of magistrates. However, they had the same **jus commercii and jus connubii** as Roman citizens.

Latin colonial owned only **jus commercii, and jus connubii** - only if it was specially granted to individuals or the population of the whole community. The right to appeal to the court for the resolution of property disputes, as well as the procedure of legal proceedings, was the same for all *Latins* as for Roman citizens.

The legal status of the Latins was acquired:

a) by birth (there was a rule similar to Roman citizenship: a child born in marriage follows the state

father; a child born to an unmarried woman inherits the condition of the mother);

b) assignment of Latin status by an act of state power;

c) as a result of the voluntary transfer of a Roman citizen to the number of Latins in order to acquire land distributed to the population of the colonies;

d) liberation from slavery by a Roman citizen or Latin.

Peregrines. Among free people, but not citizens of Rome, the lowest step of social position in ancient Rome was occupied by peregrines. The question of their historical origin is still unresolved today. Most researchers consider them citizens of

foreign states that somehow fell into the territory of Rome, or citizens of states capitulated to Rome (the so-called **capitulated peregrines**).

In ancient times, *peregrines* did not use any rights. With the development of commodity-money relations, this state came into conflict with the economic needs of the Roman ruling class - because the development of trade relations is possible only on the basis of equality of all participants. It is no coincidence that from the most ancient times in Rome appears the institution of clientele. The power of the homeowner extended to the client, and in case of disobedience, the client could be returned to slavery by a court decision. In turn, the patron was obliged to worry about the fate of the client, to protect his interests before third parties, since the client did not have civil legal capacity; he could not acquire property, enter into contracts, etc. Thus, *the peregrines* at first did not enjoy the political or civil rights of Roman citizens. And this greatly impeded the normal development of civil turnover between them and Roman citizens.

Peregrine status was acquired by a child born in a *family of peregrines* or *peregrine out of wedlock*. For some criminal offenses, a Roman citizen was deprived of his status and sent to the places of *residence of peregrines*, where he received their status. At the same time, some peregrines were granted the status of a Roman citizen for special services to Rome.

Slaves. The legal status of *slaves* was not always the same. In the early period of history, their legal status stemmed from the presence of the so-called domestic *patriarchal slavery*. *Slavery* at this time was not yet the direct basis of production. *A slave* as a junior member was part of a large patriarchal family. The power of the homeowner over *the slave* was sanctified by religion. Killing a slave was considered unworthy. For causing bodily harm to *a slave*, as well as a free one, a fine was imposed, the difference was only in size. True, the owner could *give the slave* for hire, lay, sell. The homeowner had the same right in relation to other family members - women, children. A feature of *early slavery* was that the power of the homeowner over *the slave* was lifelong.

At the end of the republican period and with the beginning of the principate, *a slave* from a member of a large patriarchal family, albeit limited in rights, turns into simple property, shrinks to the inventory, property of *the slave* owner. Its legal status is determined by the formula: "**slaves are things**" - **servi res sunt**. Since then, the slave is no longer a subject, but an object of law, his actions have no legal significance. Now the slave could not of his own free will have a family, property, the right to go to court, serve in the army. In fact, the situation of *slaves* was extremely difficult. The Senate Consul, adopted under Augustus (10 g. AD), according to which *all slaves* who were at a distance at the time of the murder of their master, which makes it possible to hear a cry, and did not come to his aid, were tortured and executed. *The power of slave* owners over slaves was unlimited and was characterized by complete arbitrariness.

Ways to establish slavery:

1. The main way to establish slavery was captivity, the capture of a stranger in a war with the state to which he belonged.

2. Birth from a slave mother: marriage with a slave was not allowed, and a child born out of wedlock followed the mother's condition.

3. The source of slavery was debt bondage: slaves became citizens who turned out to be unpaid debtors.

4. Sale into slavery sentenced to death or indefinite hard labor.

5. Marriage of a free woman to a slave

The cruel exploitation of slaves led to uprisings that shook the economic foundations of the Roman slave society. This forced the state, especially in the post-classical period, under the influence of the philosophy of the Stoics, as well as the Christian religion, to take measures to recognize slaves at least some semblance of rule.

The state establishes a certain framework for relations between slave owners and slaves, in particular:

1) for the unjustified murder of his own slave, the slave owner bore the same punishment as for the murder of someone else's slave;

2) the slave owner could give the slave to gladiators only with the permission of the magistrate;

3) the slave, who left the owner because of old age or illness, acquired freedom;

4) from the unbearable cruelty of the slave owner, the slave could find refuge in the temple, and if such cruelty was confirmed, the owner was forced to sell the slave to another owner.

Speaking about the spread of the legal capacity of slaves, it is important to take into account the fact that the attitude of some slaves to the means of production is gradually changing. Already in the II - I century. BC in the environment of urban slaves there *is differentiation*. Slaves of 83 valuable professions are in a privileged position, educated slaves, for example, highly qualified cooks, teachers, jewelers, poets, artists, lawyers, etc. These professions were almost completely monopolized by the Greeks. The owners of these slaves protected them, since their value was very high.

The desire of slave owners to raise the interest of slaves in the results of labor led, as already noted, to the allocation of **peculia**. However, the rights of the owner of **peculia** were already expanded. In the III century. AD it was found that the slave does not answer for his peculiar debts of the owner. In addition, the slave was endowed with the right of alienation of **Pekulia**, the transfer of inheritance, he was fully responsible for his obligations, including filing a lawsuit against his master.

In Rome, various ways of turning into slavery are known, among which the oldest was the capture of soldiers of the enemy state of Rome. In slavery could be turned and foreigners who were on the territory of Rome and did not enjoy any rights or privileges. A child born a slave became a slave, even if the father was free. Under certain conditions, slavery could be converted and a free man, subject of the Roman state. So in ancient times, the head of the family could sell into slavery a subject son or daughter for disobedience. The debtor could be sold into slavery by the creditor. The victim with the thief could do the same.

Persons sentenced to life hard labor, as well as free women who entered into contact with slaves contrary to the prohibition of the owner, turned into slavery.

Freedmen. A slave released to freedom was called a **freedman (libertini)**. As a general rule, a freedman acquired the legal status of a person who granted him freedom, that is, depending on who was his previous owner. If it was a peregrine, Latin or Roman citizen, then the freedman acquired a status that corresponded to the position of a peregrine, Latin or Roman citizen.

Freedmen were free, but limited in their legal capacity. Freedman was obliged to respect the patron, and the manifestation of disrespect could lead to the loss of freedom and return to slavery. If necessary, the freedman was further obliged to provide the patron with various services, as well as material assistance. He also did not have the right to appeal to his patron with a fine.

In the sphere of public legal relations, freedmen were limited in the right to serve in the Roman legions, and in the 1st century they lost the right to participate in the work of the national assembly and vote.

There were such forms of scapegoating slaves:

- a) **manumissio vindicta** or scapegoating by judicial procedure;
- b) **manumissio censu** - scapegoating took place on the basis of the censor's inclusion of a slave in the list of citizens;
- c) **manumissio testamento** - probate.

Scapegoating without the above forms or with their violation was considered invalid.

Columns. During the period of the principate, along with the slave economy, the farm also develops. As a result of the uprisings of slaves and mass executions, as well as the cessation of the influx as military booty, their number is significantly reduced, and the owners of latifundia begin to understand that it is more profitable to surrender their lands in small plots to free tenants - the so-called columns.

Bases of the colonate installation:

- a) birth from parents, of whom at least one is a column;
- b) an agreement by virtue of which a free person settles as a column on a foreign land;
- c) living for 30 years on foreign land on the terms, on which columns usually live;
- d) begging.

Roman law knows two categories of columns:

tenants under the contract, among whom were large tenants who used the labor of slaves, and tenants who from generation to generation sat on the lands of large owners.

So the law of 357 prohibits the landowner from selling land without a column sitting on it.

As a result, columns from free (**albeit formally or legally**) people turn into serfs, slaves of the earth. Sometimes the use of peculia on the part of slaves, which in such cases were attached to the land, grew into colonates. These circumstances

further erased the difference between a slave and a serf column. **Consequently, another form of exploitation comes to replace slavery - the colonates, which is destined to become the main form of exploitation in feudal society. Termination of the colonate occurred due to:**

- a) acquisition of a land plot processed by the column;
- b) the elevation of the column to the episcopal rank.

Consequently, another form of exploitation comes to replace slavery - the colonates, which is destined to become the main form of exploitation in feudal society.

5. Concepts, types and characteristics of legal entities in Rome

The creation of the idea of a legal entity as an independent subject of civil law, an independent center of economic life is an undoubted merit of Roman law.

In addition to individuals, Roman law subjects could be organizations - **legal entities.**

Marcian noted: "Belong to the whole, and not to individuals, for example, theaters located in the municipality, as well as stadiums" (D. 1.8.6.1). Another lawyer, Alfen, cites the following statement: if in the legion over time the composition of the soldiers is completely updated, then the legion still remains the same. The same applies to the ship, on which, due to repairs, all parts are completely replaced. It remains the same. **Ulpian notes: "With regard to decurions or other aggregates, it does not matter whether all remain, whether part remains, or whether the whole composition has changed. Even if this totality was reduced to one person, it is generally recognized that it is possible to make claims against him in court and he can make claims in court, because the right of all concentrated in one and remains the name of the population. If there is a debt in favor of the aggregate, then this is not a debt to an individual "(D. 3.4.1 - 2).**

In general, it can be noted that Roman law did not have a detailed concept and theory of a legal entity. But the idea of this institute was clearly defined enough: the recognition of legal capacity for an organization separated from the legal capacity of individuals included in its composition. In addition, the means of realizing artificial capacity were developed and the types of legal entities were determined.

The legal capacity of a legal entity in Rome was limited only by property rights, but these rights were not the same for all legal entities; not every legal entity could receive an inheritance, such a right belongs only to the state treasury.

Legal entities exist independently and regardless of the change of their personnel. The subject of law and obligations is a legal entity, therefore, according to the transaction, it obtains rights and is responsible for itself; the corporation is not responsible for the personal debts of its members, and the members of the corporation are not responsible for its debts. The highest governing body of corporations was the general meeting, cases were decided by a majority vote.

Legal entities in Rome did not have their own legal capacity. This inability to independently exercise their rights and obligations was compensated by the representation of individuals, whose actions the right attached the same importance as the actions of the legal person itself. The functions of economic activity could be distributed among several or one person.

In order for a corporation association to be considered created, it was necessary to have at least three members in it - tris faciunt collegium. In the ancient era, no preconditions were provided for the organization of associations of citizens, but their goal should not have been harmful to "public affairs." Later, associations could be created "only with the permission of the law, or the senate of the consultant, or the decree of the princeps." In this way, the permitting procedure for the formation of corporations inherent in Roman law as a whole was formed. However, such permission could be granted in a general form by a common (unified) permission for the activities of certain organizations with relevant tasks and rights.

The corporation could have its own special charter, but this was not mandatory. *Necessary were:* the presence of the property of the corporation, the cash desk (or treasury) and the trustee acting on behalf of the corporation. **The highest body was the general meeting of all members of the association, at which decisions were made by a simple majority of votes.**

The corporation-association was an abstract community: it retained its quality regardless of changes in the personal composition of its members. The corporation had property separated from the property of its members, and its members could not have any claim to this property. However, the corporation was not responsible for the obligations or offenses of its members. Responsibility came only if the corporation was enriched as a result of the misconduct of its member found guilty and only within the size of this illegal enrichment.

The legal entity (corporation) did not have legal capacity. To perform actions, a legal representative was needed - actor. Only he had the right to speak on behalf of the corporation, make claims, make transactions, and his rights were identical to the rights of a private person.

Roman law knew three types of main legal entities:

1. Corporations are associations, unions created to meet certain public needs.

Features of the corporation appeared in the following signs:

- they were created on a religious or professional principle;
- full freedom to create corporations was allowed, so that their charter would not contradict the laws (during the period of dominance, corporations began to arouse suspicion from the authorities, and therefore a law was issued that significantly complicated the creation of new corporations, and for their creation special permission from the Senate or the emperor was required;
- the activities of the corporation were to be subordinated to the purpose of its creation;

- the number of members of the corporation was not clearly defined, but in practice there should have been at least three;
- to achieve the goal, a suitable team of people was selected;
- the property of the corporation belonged to itself, and therefore its retiring members did not have the right to demand the allocation of any share. Only in the event of the termination of the corporation's activities was its property divided between the last composition of its members.

2. Municipalities were called municipalities of a city or a certain area.

Features of the municipality:

- they had a wider scope of legal capacity compared to corporations;
- they could receive property according to testamentary orders, unlike corporations that received such a right only from the 2nd century;
- they could be appointed heirs, while corporations only with a special privilege.

3. The state treasury had a special status (erarius (city cash desk, which was under the control of the Senate, under the dominate - fisk (imperial treasury)). So, the fiscal property was not subject to the statute of limitations, the claims of the fisk had an advantage for satisfaction in comparison with other requirements, there were restrictions on the liability of the fisk itself to third parties.

After the adoption of Christianity as the official state religion in ancient Rome, a new, special kind of legal entity appeared - **institutions**. This status was given to churches, and in the future - all charitable unions.

Roman jurists developed principles that characterize a legal entity:

- 1) the independence of the existence of a legal entity from the change or retirement of its individual members (withdrawal from the association, as well as the entry of new persons, up to its complete renewal, does not affect its legal status);
- 2) the presence of its own name, under which the affairs of the legal entity are conducted;
- 3) the presence of personal property that is owned by a legal entity, and not owned by its individual members. The property of a legal entity exists as a separate property, and not as a joint property of individuals;
- 4) the existence of independent rights and obligations;
- 5) the possibility of a legal entity and its individual members to enter into civil legal relations as equal subjects;
- 6) belonging to everything that a legal entity receives from its clients, to itself, and not to its individual founders;
- 7) the ability of a legal entity to independently conduct business and respond in court.

Corporations associations ceased:

- 1) with the death or removal of a person from a legal entity;
- 2) if the state authorities deprived her of the character of a legal entity for illegal actions;

- 3) in case of liquidation of property;
- 4) at the general meeting of the founders when deciding on the termination of activities;
- 5) provided that the goal for which the legal entity was created is achieved;
- 6) in case of expiration of the period for which the legal entity was created.

Lecture №. 4 Family status of an individual.

Plan

1. The concept of the Roman family.
2. Agnatic and cognatic family.
3. concepts and types of marriage.
4. Conditions of marriage and the procedure for its conclusion.
5. Terms and procedure for divorce.
6. The situation of children in relation to the father

1. The concept of the Roman family.

Family law was an integral part of Roman private law, bearing the distinct imprints of the Roman social system. Lawyers considered the legal structure of the Roman family to be specific Roman legal constructions.

The family is understood as a union of persons based on marriage or blood relationship, connected by the community of everyday life, mutual help and moral responsibility.

The Roman family was built on the absolute power of the head of the family (**pater familias**) and the subordination of all family members to his will. The family, in addition to pater familias, included his wife, children and their descendants, wives of sons, other relatives, enslaved, slaves. All family members directly subject to the head were called **sui** - "their own," while **pater familias himself - sui juris** - "his own master," "full-fledged."

Thus, in the Roman family there were two categories of persons: the person of his right - pater familias (**persona sui juris**) - with full legal capacity and the person of another's right - subject (**persona alieni juris**) with very limited private rights. From the power of the homeowner did not release the sons and grandchildren even their respected social position - the post of magistrate.

The concept of family law covers three groups of issues:

- first, the issue of relations between husband and wife (**marriage law**);
- secondly, the question of the relationship between parents as the bearer of parental power (**pater potestas**) and children (**parental power**);
- thirdly, issues related to care and representation for people who cannot properly take care of their identity and property (**the right of guardianship and guardianship**).

The establishment of marriage law, parental authority, the right of guardianship and guardianship was the content of the presentation of Roman lawyers on the study of the legal state of the phenomenon of persons in terms of their position in the family. According to the requirements of Roman law, the status of persons in the family was important for the approval of the legal and legal capacity of Roman citizens.

Family law, therefore, is a collection of legal provisions that govern relations in the Roman family, namely: the relationship of spouses between parents and

children, as well as the relationship between the guardian or guardian and their wards.

2. Agnatic and cognatic family.

The legal position of the subject changed under the conditions of the onset of one of two grounds - the death of the pater familias or, at his will, when his son was freed from his power, his daughter was married, and the slave was freed. After the death of pater familias, his adult sons were the bearers of power in the family, and wives and children fell under their authority. Thus, the Roman family at the first stages of its development was an association of persons not on the basis of blood kinship, but on the basis of the general legal subordination of all members of the pater familias family. Such a family structure was called agnatic, and persons who lived together in a family - **agnats** (this meant "relative on the father").

Daughters (sisters), given to someone else's family, ceased to be agnats of their father, brothers, sisters. Children born to a daughter fell under the rule of her new pater familias, and thus the bill was kept along the male line. Legal kinship was not considered a blood relationship, but a relationship based on power and submission.

The kinship of agnats differed in lines and degrees. Agnates of one common ancestor were considered relatives in a side line, and those born sequentially from each other - relatives in a straight line. The degree of agnatic kinship was determined by the number of births that removed a particular person from his pater familias. Kinship by side line was determined by the total number of births, which removed two specific persons from their common ancestor to the second relative.

A feature of the Roman family of that time was that the concept of "**familia**" encompassed not only agnata, but also everything that was in the house of pater familias: slaves, cattle and inanimate things, that is, the totality of certain property values.

So, kinship in ancient Roman law was established not by blood and origin, but by the fact of cohabitation and was based on submission to the power of the homeowner. It was the so-called Agnatus kinship (**agnatus - born after**), in which everyone obeyed the authority of one homeowner and was considered relatives, that is, agnates. The blood relationship had no legal significance. Agnath kinship was recognized only in the male line, since it was about subordination to the power of the father of the family. The kinship of agnats differed in lines and degrees.

The dependence of the pater familias subject also negatively affected economic relations in Roman society. Gradually, the state begins to interfere in internal family relations. Without abolishing the principle of parental power itself, the emperors, starting with Augustus, gradually expand the private legal independence of adult "**sons of the family**" (**not only their own sons "pater familias" fall under this category, but also his grandchildren, great-grandchildren, and other male family members subject to it**).

A new structure of the Roman family is formed, the basis of which is the relationship between blood relatives. Maternal relatives were called cognates - blood relatives, and the blood relationship that bound them together was called **cognatio**. Cognates included persons connected by blood.

Cognate kinship is also defined by lines and degrees. Two lines of blood relationship were distinguished - direct and lateral. The line was divided into ascending and descending. Relatives of the wife, on the one hand, and relatives of the husband - on the other, are considered relatives. Brothers and sisters who have a common father and mother are full-family. Brothers and sisters who come from a common mother, but have different fathers - are single. If children have a common father, but different mothers - they are half-blooded. The first and second are considered incomplete brothers and sisters. If children have different fathers and different mothers, they are not blood relatives and are called stepfathers.

Cognate (blood) kinship is a natural kinship, that is, the direct origin of one from the other - a common father or progenitor. The Cognate family, regardless of the fact of cohabitation and labor, was a union of blood relatives descended from a common ancestor. Agnatic kinship was a legal relationship and could vary, but Cognatic kinship is a natural and permanent kinship. It is also determined by the lines and degrees of kinship. There are two lines - straight and side. The line is divided into ascending and descending. Relatives in a straight line, from whom a particular person derives, are called relatives in a straight ascending line (father, grandfather, great-grandfather, etc.). Relatives descended from this particular person constitute a direct descending line (children, grandchildren, great-grandchildren). Relatives who come from one common ancestor are relatives on the sideline (brother - sister, uncle - tribe).

3. Concepts and types of marriage.

The family as an element of the social organization of society is manifested in legal regulation in two aspects: it is the union of a man and a woman and the presence of children in the family.

Not every family, not every relationship between a man and a woman was recognized by Roman law as a marriage, which gives rise to legal consequences in the relationship between the participants in this union.

Marriage (matrimonium) - "the union of man and woman, the combination of all life, the community of God and human law" (D.23.2.1).

The family arises from marriage. In the history of Roman family law, there are two types of marriage: legal Roman marriage (**matrimonium iustum**) and marriage between peregrines and other free (**matrimonium iuris gentium**), who did not have the right to conclude Roman legal marriage. Legal Roman marriage was concluded only between Roman citizens who had the right to do so. Marriages between Roman citizens and peregrines (Latin, freedmen, columns) were prohibited. Certain restrictions on marriage remained even after all the free Roman Empire was proclaimed Roman citizens.

Peregrines married among themselves in accordance with the norms of *jus gentium*, Latin, freedmen, columns - in accordance with their legal status, but marriages did not give rise to legal consequences of Roman legal marriage. A child born in such a marriage did not acquire the status of a Roman citizen.

In turn, Roman legal marriage was divided into marriage with male authority (**cum manu**) and marriage without male authority (**sine manu**).

Marriage with male authority (**cum manu**) resulted in the establishment of the power of the husband over the wife (**manus mariti**). A woman was subject entirely or dependent on her husband or *pater familias* if the man himself was under the authority of his father. She had the position of the daughter of the parents of her husband, losing agnatic ties with her close relatives. The power of a man was initially unlimited, but gradually in the process of developing economic life and on its basis the power of a man was in some way limited.

The laws of the XII tables enabled the wife to avoid the complete power of her husband over herself. A woman who married without certain formalities could prevent the emergence of her husband's full power, leaving the house for three days at the end of each marriage year. With this, she maintained her independence and interrupted the course of the old life together with her husband.

Subsequently, the man's power over his wife is weakened. This is due to the development of private property and the acquisition by the wife of certain rights to family property, which entailed her personal independence from her husband. As a result, there is a marriage without male power (**sine manu**). It does not give rise to the power of the husband over the wife and initially has no legal connection between the wife and husband: legally alien to the husband and his children, the wife is in the same marital status as she was before marriage. The woman retained all the rights associated with her belonging to her native family.

Along with legal Roman marriage, the law allowed the permanent (**not accidental**) cohabitation of a man and a woman with the intention of forming a family, which was called **concubinatus**. The concubinate had no legal effect. Children born in the concubinate did not acquire the name and status of their father, the status of marriage children, they were not subject to parental authority, did not have the right to alimony. But later the procedure for legalizing such children was established. Initially, a woman in such a relationship did not acquire the position and social status of her actual husband, but subsequently a number of rights were recognized for the concubine. A child born to such a woman could, at the request of her father, be legalized and acquire the rights of a child born in marriage. It should be noted that the concubinate could take place only in the absence of the right to a legitimate Roman marriage. *Contubernium* should be distinguished from concubinate - marriage relations between slaves.

4. Conditions of marriage and the procedure for its conclusion.

Ways of marriage:

1) **Coemptio (coemptio)** - a husband's purchase of his wife.

2) **confareatio (confareatio)** - a religious form used by patricians, according to which, in the presence of witnesses and priests, with a certain ceremonial and uttering certain solemn words, they sacrificed to Jupiter.

3) **usus - marriage due to the woman's direct residence in the man's house for a year.**

Marriage was usually preceded by an **engagement (sponsalia)**. In ancient times, the engagement of non-conventional persons was carried out by their pater familias without the participation of the brides themselves. Later, the engagement was performed by the bride and groom with the consent of the pater familias of both. The engagement took place in the form of two stools: one - pater familias of the bride pledged to transfer her to the groom, and the second - pledged to take the bride for his wife. And in even more ancient times, the engagement was carried out by unilateral stipulation, according to which only the pater familias of the bride undertook to transfer it to the groom, who did not assume any obligations and then had the right to terminate the marriage by unilateral will.

To carry out a marriage with appropriate legal consequences, it was required that the brides observe certain conditions. Some of these conditions were absolute, had to be available for the conclusion of any Roman marriage; others - played the role of relative conditions, the presence of which was necessary for marriage between persons belonging to different social groups.

There were the following conditions for marriage:

1) achievement by brides of marriageable age (for men - 14 years, for women - 12 years);

2) the free expression of the bride's consent to marriage (in ancient times, consent was granted only to pater familias);

3) the bride has the right to enter into a Roman marriage (jus conubii);

4) lack of close kinship (both agnatic and cognatic kinship were an obstacle to marriage: in a straight line without limiting degrees, in lateral lines - up to the sixth degree);

5) the absence of an broken marriage in any of the brides at the time of marriage.

In Roman law, there were three forms of marriage ceremonies, or three ways of establishing male power over the wife, his "hands" (manus), strength:

a) performing a religious ceremony;

b) by mancipation;

c) due to acquisition limitation.

The first form of marriage ceremony was considered only patrician by Roman jurists and was never available to plebeians. It was a religious rite that was used mainly in the family of priests, if they wanted a son born in such a marriage to inherit the dignity of his father. This ceremony was called "eating cakes," the remainder of

which the brides sacrificed to Jupiter. In addition to the priests, the ceremony was held in the presence of 10 witnesses

The second form of marriage ceremony was considered secular and was originally plebeian. It was carried out with the help of "copper and scales" and was an "imaginary" purchase of his wife by a man. In the same forms, the acquisition of the most valuable things took place - land, slaves and the establishment of rights to certain persons, that is, in the form of mancipation. This ceremony was held in the presence of five witnesses, a librarian, brides, parents of brides (if the groom remained under the authority of his father).

The third form was informal and the marriage was in a simple form without any ceremonies. The woman remained impervious to her husband and could easily divorce him. But on one condition: she "had to leave her house for three days every year and thereby interrupt the period of limitation of her possession." If under any circumstances the wife ignored this rule, she was subjected to the power of her husband and the marriage from "wrong" turned into "right." Both in the first and in the second case, the marriage concluded by simple agreement was legal, and children born in marriage without male power were given the same rights as children born in families formed from "correct marriages."

Gradually, the old forms of marriage die and the informal form of creating a family is approved by simple informal consent of the brides with the solemn introduction of the wife into the husband's house. The agreement was concluded solemnly in the presence of close relatives of the brides.

5. Terms and procedure for divorce.

The marriage was terminated due to:

- 1) the death of one of the spouses;
- 2) loss of freedom or citizenship;
- 3) Divorce

The loss of freedom with the conversion of one of the spouses into slavery had the consequence of ending the marriage in specific cases. If a person captured and turned into slavery then returned to Rome, on the basis of a special legal fiction, he was considered as such that he never lost either freedom, citizenship, or his individual rights. It was believed that the power of such a person over his wife in marriage cum manu never ceased. Marriage sine manu as an actual rather than legal relationship was considered terminated. But the marriage was considered to last all the time if the spouses were held captive together.

The loss of Roman citizenship occurred most often with the loss of freedom, which, in turn, caused a loss of legal capacity. Lack of legal capacity made it impossible to marry or preserve the existing.

A change in the marital status of one of the spouses was also grounds for termination marriage, when installed such the degree of agnatic kinship between him and another of the spouses, under which marriage would be impossible. For example, pater familias adopted the husband of his daughter, without freeing

him from the subject. In Roman family law, the principle of wide freedom of divorce for the entire existence of the Roman Empire operated. There are various grounds and procedure for divorce in marriage *cum manu* and *sine manu*. In the *cum manu* marriage, where the legal personality of the wife was absorbed by the personality of the husband, the divorce was carried out only at the will of the husband or his *pater familias*. The marriage of *sine manu* was terminated not only at the request of the spouses (**divortium**), but also unilaterally by the will of both the husband and wife (**repudium**).

The relationship of the spouses had a personal and property character. They differed significantly in marriage with male authority (**cum manu**) and in marriage without male authority (**sine manu**).

In marriage, the *cum manu* wife was completely under the power of her husband on the same conditions as his children. She had no legal independence and was completely deprived of legal capacity. The wife was considered a thing: she was allowed to be sold (**into slavery**), demanded from any place of residence in the same way as the thing (**vindictio**), finally, there were no obstacles to the punishment of the wife, up to the execution. The punishment of the wife was determined by the family court, to which the blood relatives of the wife were also invited, but the sentence was passed by the *pater familia*

In the property sphere, the wife was also completely powerless. Her property became the property of her husband. She had no right to enter into any civil law transactions. Even in the event of the termination of the marriage, the property brought by the wife was not returned to her. The disenfranchised position of the wife was mitigated only by the fact that as the *in loco* of her husband she was considered his heir and shared the social position of her husband.

In the marriage **of sine manu**, the wife remains under the rule of her father and the *in loco* of his subordinate family members. Her husband's power did not extend to her. However, in some internal family relationships, the supremacy of a man remained (for example, the decision to choose the place of residence of the family, methods and methods of raising children, etc.). Her husband had no physical influence on her life and her body, so she could divorce him for any reason.

The property of the spouses also remained separate. The property that belonged to the wife before marriage was her property. She had the right to conclude any property transactions with her husband, except for donation.

Spouses were responsible for each other's actions only in cases where one of them improperly took care of the property of the other. Prohibited claims of spouses to each other, dishonoring one of them. Violation of marital fidelity made it possible to dissolve the marriage unilaterally and resulted in a positive decision on the return of the dowry. But the consequences of breaking the fidelity were much more difficult for the wife than for the husband.

At the stage of engagement, the heads of families decided on the dowry, that is, the property that the wife brought to her husband's house and which, as a general rule, became the property of the latter. The dowry was called *res* or other property values that were given to the husband by the wife, her *pater familias* or a third

person to facilitate the material conditions of family life. The dowry must be distinguished from the wife's own property, which could be obtained by her both at marriage and in her later life - inheritance, donation and on other grounds.

In the early era, when there was only a marriage cum manu, there was no special legal consolidation of the dowry. In the absence of an agreement on this issue, the dowry was not allocated from other property that the wife brought, that is, it completely became the property of the husband. When they began to marry sine manu, the dowry as property that was transferred to the husband had a special regime.

6. The situation of children in relation to the father

The position of the children in relation to the father was the same both in marriage cum manu and in sine manu. Children were always under the authority of the father (in patria potestate).

There were the following grounds for establishing parental authority over children:

- 1) birth in a Roman legal marriage;
- 2) legalization,
- 3) adoption.

Children born in concubination, illegal marriage, in the actual cohabitation of their parents, did not fall under parental authority. They were considered strangers to their father.

The mother of the child was always known, despite the presence or absence of marriage. The father of a child born in marriage was considered the husband of the mother. This legal presumption needed no evidence.

Legitimatio is the legal recognition of one's own children born out of wedlock and the establishment of parental authority over them. Legalization took place: by marriage between the parents of an illegitimate child; granting imperial permission - a rescript for legitimatio; enrollment of a son in the members of **the municipal senate (curia)** or the publication of a daughter in marriage to a member of the municipal senate. Legalization began to be applied only during the empire.

Adoption is the establishment of parental authority over other people's children. In Rome, there were two forms of adoption:

1) arogation (arrogatio) -for adults and persons with full legal capacity, that is, for the adoption of persons of their right;

2) adoption (adoptio) - for the adoption of persons of another's right, that is, those who were ruled by pater familias.

To carry out the arogation, a curiate meeting was convened, and the high priest made a proposal to the co-relatives to decide on the establishment of the parental authority of one person over another. Thus, a free person turned into a subject.

Parental power was terminated due to:

- the death of a pater familias or subject;
- loss of liberty or citizenship pater familias or subject;

- depriving pater familias of parental authority for leaving the subject without help;
- acquisition of certain honorary titles;
- release from parental authority at the will of the pater familias (emancipatio).

Emancipation (emancipatio) is the liberation of the subject son by the will of the pater familias. This institution arose as the antipode of **mancipation (mancipatio)**, through which Roman citizens made transactions with things and persons. In the implementation of mancipatio, a person fell under power, and in emancipatio, he was freed from parental authority.

There were various forms of emancipation. In the Justinian period, emancipation was carried out: on the basis of the imperial rescript, which was included in the court record; pater familias statement, which was also included in the court record; the actual provision for a long time of an independent position to the subject.

As a result of emancipation, the son became the face of his right, acquired full legal capacity, although he lost hereditary rights **in the former family** (this restriction quickly disappeared). However, the father's power did not stop completely even after emancipation. The father retained the right to use half of the son's property.

In ancient times, parental power over children was unlimited. In archaic times, he had the right to life and death of children from the moment of their birth: he could save the life of a newborn or throw it away, sell it into slavery, apply any punishment. However, subsequently arbitrariness is limited.

In the property relationship of father and children, the father also reigned supreme. Pater familias is the sole and indivisible owner of the family property. Property acquired by children automatically became the property of the father. Property dependence of children did not weaken with their age. Children did not have the right on their own behalf to carry out civil legal transactions, to be owners of property and in this they approached the position of slaves. For farming, they could be endowed with a certain property - **peculium**. In connection with business activities under

account peculia children made some transactions. However, everything received under these transactions passed into the ownership of the father. Father was also responsible for these transactions.

Over time, his father's power is limited. Under Octavian Augustus, it was established that the property that the warrior son acquires in the war remains in his property. Later, the same rule is introduced regarding the property acquired by the son in the public service. Subsequently, some imperial decrees attributed to leave the property of children (and not just sons) inherited after the death of the mother or other relatives on her line. This limited the father's property power over the children, but did not completely eliminate it. On certain property acquired by children, the father retained the right to life use. However, the property independence of children becomes generally recognized.

The legal relationship between the mother and her children also existed (although she had no power over the children) and completely depended on the form of marriage. When married to men, the mother shared the condition of her children, was (like her children) under the authority of her husband or his pater familias. Along with the children, she inherited after the death of her husband, the children - after the death of her mother. As agnats, adult sons carried out custody of their mother after the death of her husband.

In the early republican period, when married without male power, the mother was practically not connected with the children. She remained the lamb of her blood relatives - parents, brothers, sisters and was not from the point of view of the right a member of her husband's family. Hence the different rules of inheritance - the wife had no right to be heiress after the death of her husband and her children, as they did after her.

The approval of the blood family more clearly defines the rights of the mother. Subsequently, she gets the right to live together with her minor children as a result of a divorce from their father, for child support. Children were forbidden to file lawsuits against their mother, defaming her, etc. Opportunities for mutual inheritance of children and mother are expanding

Lecture № 5. Protection of civil rights. claims

Plan

1. Forms of protection of rights.
2. Types of Roman civil process.
3. Concepts and types of claims.
4. Limitation period.
5. Interruption and suspension of limitation

1. Forms of protection of rights.

In case of violation of the subjective right of a person, which is recognized and protected by the state, it can be protected by self-defense or through a court with the application of coercive measures of influence to the offender.

Before the advent of the state court, the original form of protection of violated rights was *self-settlement*. Conflicts of private interests were resolved by their participants on their own. The victim or his family applied to the offender means of influence or punishment at its discretion. But later, with the development of society, statehood and law, there is a transition from private violence to the judicial form of protection of rights. Researchers of ancient Roman law believe that state intervention in the private process of self-defense occurred gradually. Initially, private violence was limited to a certain order of use of force against the offender, and thus self-defense was introduced into legal forms. At an early stage of the legal regulation of self-law, the laws of the XII tables were allowed to inflict on the offender the same evil that he inflicted on **the victim (lat. talio - retribution, private revenge)**. Such an idea of equivalent retribution was an intermediate link in the transition from the right to kill the criminal to the right

accept a fine from him. Later, a system of redemptions was introduced, and the final stage was the formation of a state court.

2. Types of Roman civil process.

The set of legal actions that form a certain order, the procedure for protecting rights in court, is called **a process**. The legal norms that regulate the procedure for the activities of the participants in the process and the judiciary constitute procedural law.

In ancient Roman practice, two types of process have developed that were aimed at protecting different interests. In **the criminal process**, the interests of the whole society were protected and punishments were imposed for actions that violate them. It began at the initiative of state bodies or individual citizens, who in this case represented society as a whole. Another type of process - **civil** - was intended to protect the private interests of individuals. It was initiated by interested persons who sought to protect their legal right. In ancient Rome, it existed in its three forms, historically changing each other: 1) *the legis actiones*; 2) *formulary process (per formulas)*, 3) *extraordinary process (cognitiones extra ordinem)*.

In addition to the judicial, there were also purely administrative forms of protecting rights from offenses based on the power granted to **magistrates (imperium)**. Among them, intersections, stipulations, introduction into possession and restoration in their original state were distinguished.

For the Roman Civil the process is characterized by the principle of **dispositivity**. The protection of law is due to the independent active behavior of the governed party wishing to implement it through the court. In the event of a dispute about the right, the person could formulate his claims against the other party in the form of a lawsuit and go to court with him. **The claim (actio)** Roman lawyers called the right of a person to exercise in court the claim due to him.

Researchers of ancient Roman law believe that it can be reduced to a "system of claims." Under the conditions of the existence of contradictory and uncoordinated sources of law (Quirite and Praetorian), a person could be confident in the exercise and protection of his right only when it was officially allowed to file a lawsuit of a certain type to protect a particular right.

The legal process (legis actiones) historically developed first and existed dominantly until 126. The characteristic features of this process were rigid formalism and solemnity. It was a complex rite, consisting of actions of a ritual nature. All words and gestures of the parties in the dispute had to exactly comply with the statutory requirements and were crucial. Any deviation from the statutory phrases meant defeat in the case.

The process of legis actiones took place in two stages (stages) - **1) ius** and **2) iudicium**. The first stage was held in the presence of the magistrate, who was endowed with judicial power. At the beginning of the republican era, these were consuls, and after the introduction in 367 BC new *magistrate - praetors*. The function of the magistrate was to prepare the case for consideration. He had to determine whether the plaintiff's claim was subject to defense, make the correct legal qualification of a particular dispute and appoint a judge.

According to the rules of general jurisdiction applied in Rome and the Roman provinces, cases between citizens were considered by the magistrates of Rome or other cities, depending on the place of citizenship and residence of the defendant. In the 3rd century BC, disputes between Roman citizens and peregrines, as well as between peregrines, were attributed to the peregrine praetor. Smoking aediles, who oversaw the markets, considered trade disputes. There was a special jurisdiction for some categories of cases, for example, jurisdiction at the place of execution of the contract, at the place of commission of a civil offense. It was allowed that the parties could agree on a change of jurisdiction and establish a court competent for a particular case.

Stage ius began with the call of the defendant to the magistrate. Since the trial required the presence of both parties, the plaintiff demanded that the defendant come to court, and if necessary could bring him by force.

Before the magistrate, the parties proclaimed the solemn words of their demands and objections, and the magistrate monitored the accuracy and legality of the wording. If at the first stage the defendant recognized the validity of the plaintiff's

claims, the case was discontinued and did not proceed to the second stage. Stage *ius* ended with the testimony of the dispute by the witnesses present, who at the next stage had to confirm everything that happened. Such a declaration of dispute extinguished the claim, therefore, after the completion of the *ius* stage, the identical claim, that is, the claim between the same parties and with the same requirements, could not be re-declared. Further, a judge or several judges and a court day were appointed for this particular case. Legally, a jury judge was allowed to be any adult citizen with an unblemished reputation, with the exception of women, mentally ill persons and the deaf. However, the practice has developed in such a way that for centuries judges were elected from specially compiled and approved by the Senate lists with the names of senators and horsemen. When electing a judge, the opinion of the participants in the dispute was taken into account. The defendant had the right to challenge the judge if he considered him biased.

The second stage of the *iudicium* took place before a judge who heard the speeches of the parties, checked the circumstances of the case, studied the evidence and made a decision that was not subject to appeal.

From the sources of ancient Roman law, several types of legal process are known: *through the oath (legis actio sacramento)*; *a request for the appointment of a judge or arbitrator (legis actio arbitrive postulationem)*; *by applying a hand (legis actio per manus iniectioem)*. Other authors believe that the legal process could begin in one of five forms: by establishment; applying a hand; taking bail; the requirement to appoint a judge; inviting the defendant to court.

The second type of civil process is **the process according to the formula (per formulas)**. Its appearance was due to the new socio-economic conditions that developed at the end of the existence of the republic. The reform of the judicial process began in the second half of the second century. BC with the adoption of the law of Ebutius (**lex Aebutia**), which introduced a new form of the process - **per formulas** as an additional to the *legis actiones*. For some time, these two forms existed in parallel, and after adoption in 17. BC the law of Julius on legal proceedings (**legis Juliae iudicariae**) the process of formula became mandatory. Production according to the formula was not associated with the implementation of solemn rites. Praetor was able to interfere in the development of law by introducing new types of claims to protect new relations or expand the scope of existing claims.

Just like the legal process, the formulary process had two stages *ius* and *iudicium*. The *ius* stage took place before the praetor. The parties set out their claims and objections in free form, and the praetor, in accordance with the specific circumstances of the dispute, chose the necessary claims from the formulas specified in his edict. Such a formula had the meaning of the praetor's order to the judge, in which he urged the judge to make a decision taking into account the principles and conditions specified in the formula. In addition, the formula was intended to give the judge (who was a private person) competence in this case.

The formula was inherently a very flexible procedural tool. In advance established praetor protection formula entered specific data on a particular conflict of persons and thus the formula of the claim was individualized. It contained a description of

the specific conditions that the court should have established in order to satisfy the claim or deny it. Therefore, the content of the formula and its structure could be different depending on the specific circumstances of the case. **The most common were formulas with the following components:**

1) *intention (lat. intentio - pretense) - consisted in a statement, an assertion by the plaintiff that a certain right belonged to him;*

2) *demonstration (lat. demonstratio - description) - described the basis of the claim, those legal facts that gave rise to the plaintiff's right and duty of the defendant;*

3) *kondemnatsiya (lat. condemnatio - condemnation) - gave the judge the right to condemn or acquit the defendant if the plaintiff's arguments are confirmed or not confirmed;*

4) *adjudication (adiudicatio - award) - gave the judge the authority to award each of the parties separate things or rights. This part is typical only for cases of division of property or boundaries of land.*

Parts of the formula could be entered into the formula in different combinations depending on the circumstances of the particular case. In addition to these components, the formula could contain additional parts characteristic of individual cases. For example, **exception (lat. exceptio - withdrawal, negation)** was included in the formula if the defendant cited facts that turned the plaintiff's claims into unfair.

In the interests of the plaintiff, prescription could be introduced into the formula (**lat. praescriptio pro actore - an order in favor of the plaintiff**). It was used to separate the subject of claims. Most often this concerned cases of collecting part of the debt under the obligation, which provided for periodic payments.

Before the start of the process according to the formula, the defendant was summoned to court. The plaintiff was obliged to notify him of his claims and urged him to come to court. The Respondent shall was immediately to appear before the praetor or provide a guarantor (**vindex**), who guaranteed his arrival in court. In the classical era, the defendant paid a fine for evading the court. The guarantor in case of absence of the defendant corresponded to the amount of the claim.

The magistrate could accept the claim or refuse to accept it, depending on the fairness of the case. In resolving this issue, the subject of the dispute and the grounds for the claims were established. For this, the defendant was interrogated. If the latter recognized the claims of the plaintiff, the process was completed. The plaintiff could offer the defendant to take the oath, that is, to confirm the oath of absence of debt. If the defendant did not swear an oath, it was believed that he refused protection, if he swore, he justified himself. That is, in the case of a call to oath, the defendant had to either pay or swear. However, he could return the appeal to the plaintiff and offer him an oath of duty. The plaintiff, who refused, lost the case, and then the process was completed at the first stage.

After establishing the subject of the dispute, the parties and the praetor agreed on the private person of the judge. If consent was not reached, the judge was elected by lot from special lists. In some cases, when particularly important cases were

considered (on freedom, on serious offenses, on the damage caused by international agreements), a panel of three judges - recuperators was appointed. Unlike the single person, the recuperation court had the right to impose criminal punishment if it turned out that the person was guilty of committing a crime.

After that, the praetor in writing issued a formula individualized by the specific circumstances of the case. It was transferred by the plaintiff to the defendant. This act of acceptance of the formula by the defendant determined the certification of the dispute and the exhaustion of the claim. Such consequences arose according to the principle: a lawsuit over the same case is not allowed twice. Consequently, after the confirmation of the dispute, the plaintiff could not file an identical claim in the future. In addition, this act fixed the essence of the dispute at the moment and further consideration of the case took place without taking into account future changes in the relations of persons.

After certification of the dispute, the second stage of proceedings began - **judicium**, which took place before the judge. The parties provided evidence of the facts to which they referred. The court accepted written evidence and oral - testimony of witnesses. However, it was the latter that had the advantage, since they could be guaranteed by the oath. The judge evaluated the evidence provided and decided the case taking into account the instructions of the praetor, which were indicated in the formula. He issued a judgment that was final because no appeal was allowed. However, the person who lost the case could prove the insignificance of the court decision, referring to the violation of the procedure for considering the case. In this case, a new process was initiated to confirm this violation. If it was established that the respondent challenged the validity of the decision without sufficient grounds, he was awarded for execution in double size.

The judgment (iudicatum) was the basis for enforcement and the possibility to file a claim for enforcement **of the judgment (actio iudicati)**. If, as a result of this claim, the person who was awarded for execution still did not comply with the court decision, he was transferred by the magistrate to the authority of the creditor.

Enforcement proceedings in the ancient Roman legal system were directed either to the identity of the debtor, or to his property. The law provided for the opportunity, by order of the praetor, to impose shackles on an unpaid debtor and force him to repay the debt. Personal reprisal against the debtor was also supposed to contribute to the fact that the relatives of the debtor paid for him. Subsequently, a more common way of executing a court decision was to foreclose on the debtor's property.

So, a characteristic feature of the formulary process was the replacement of ritual actions in the first stage with the formula that was the basis of the process – the purpose of the proceedings at the first stage and the legal basis for the proceedings at the second. However, the most significant point in the formulary process was that the praetor ceased to be a simple fixer of ritual actions, as it was earlier in the legal process. Gradually, he begins to formulate the foundations of legal policy in the country.

Ancient Roman jurists, describing the process "according to the formula," attributed it to **the usual (ordinary)** form of legal proceedings, which was used to consider disputes between private individuals in the classical era. In contrast to this usual form, the sources mention an extraordinary, **extraordinary process** with a **special procedure - extra ordinem cognitio (lat. - investigation, investigation of the case)**.

The emergence of an extraordinary process is associated with an intensification of the absolute power of the emperor, when he received judicial power as the highest court of appeal in cases considered by magistrates. With the establishment of absolute monarchy, the institution of praetorship as a democratic entity of republican Rome dies out.

Initially, an extraordinary form is used for some categories of disputes that certain imperial officials considered disputes

– consuls, special praetors, prefects. All other disputes between individuals continued to be resolved in a formulary process throughout the classical era. However, gradually civil cases pass to the competence of extraordinary courts, which at the end of the 3rd century AD almost completely replace ordinary proceedings.

A feature of the extraordinary process was the lack of its division into two stages *ius* and *iudicium*. Proceedings were conducted not by private judges, but by imperial officials and were considered a function of the state. But in the post-classical era, they were all built as a hierarchical system that determined the appeal procedure that took place in this process. The appeal stopped the entry into force of the court decision, and the new decision of the court of appeal replaced the previous lower court.

The case was heard in state court from beginning to end and involved hearings, examination of evidence and adjudication. The process was accompanied by fixing it in the protocol. The summons to the court was carried out, although at the initiative of the plaintiff, but by the court. In case of absence of the defendant, the process took place in *absentia*: the plaintiff proved his right and the decision was made on the basis of available evidence. The absence of the plaintiff in court terminated the proceedings, and the case was not considered.

Since praetorian practice and their edicts were codified, the boundary between praetorian and civil law disappears, which in turn unified civil and praetorian claims.

The decision of the state court was supported by enforcement by state officials at the expense of the defendant. A feature of the enforcement proceedings was that foreclosure on property concerned only certain things, the cost of which covered the debt. A full competitive sale was possible only if the amount of debt exceeded the value of the debtor's assets.

In the post-classical period, the principle of the hierarchy of evidence was clearly formed in *sognitiones*. When evaluating them, the judge had to rely not on his own understanding and understanding of justice (which is characteristic of the formulary process), but on normative acts. Indisputable evidence was considered a

confession of guilt or oath, written evidence had an advantage over oral, and the testimony of one witness was not considered sufficient.

Judgments of individual lawyers regarding specific legal situations acquired the character of a stable authoritative and indisputable basis for a decision. Thus, the judiciary sought to create a uniform consideration of certain legal situations. In this regard, characteristic of the classical period, the free development of legal science and the creative approach of lawyers ceased.

3. Concept and types of claims

Lawsuits, which served as the main legal tool in all forms of civil process, in ancient Roman law constituted a complex system. Each claim was assigned to a specific category of disputes. Depending on what rights the claim was **aimed at protecting (material or binding)**, material and personal claims are distinguished.

A **property claim (actio in rem)** was filed in order to protect the right of ownership or other property rights (easement, pledge, etc.). It could be asserted against any person who encroaches on a property right - illegally takes possession of a thing, creates obstacles to the owner for its normal use, or otherwise violates the right to a thing. Since it is not known in advance who may violate the right, any person could be a defendant in this lawsuit. Therefore, this lawsuit is absolute.

A **personal action (actio in person)** was brought against a person bound in favour of the claimant by contract or tort. This claim stemmed from a personal relationship between two or more individuals. These persons are known in advance, and therefore only the debtor of this creditor can answer this lawsuit. That is why such a claim is relative.

Depending on the grounds of the claim, **civil claims (civiles)** based on *ius civile* are distinguished, and **claims of magistrates (honorariae)** introduced by the praetor to protect new relations that did not fit into Quirite law.

The division of claims into **claims of strict law (actio stricti iuris)** and **claims of good conscience (actio bonae fidei)** was carried out depending on what was the basis of the court decision. The claims of strict law provided that the decision should be based on the letter of the law and the contract. The claims of good conscience made it possible for the judge to take into account the moral assessment of the behavior of the parties (the presence of malice, deception, violent actions) without including appropriate exception in the formula. That is, when considering *actio bonae fidei*, the judge found out the true will of the parties - first of all, what the parties sought, at the conclusion of the contract, and not what was expressed in the letter statement or law. Thus, when making a decision, the judge was guided by generally accepted ideas about justice and good faith.

It is also known about the existence: **actio directa ("direct claim")**, containing the main requirement in this relationship, and **actio contraria ("reverse claim")**, designed to protect rights derived from the main; **a claim with a fiction (actio fictio)**, which was used when it was necessary to bring new relations under existing types of claims; **a claim by analogy (actio utilis)**, which provided for the

application of statutory consequences to relations similar in certain respects. There was a division into **property claims (actio reipersecutoriae)**, which were aimed at restoring the violated property rights by compensation for damage or return of the thing, and **punitive claims (actio poenales)**, according to which a fine was levied in favor of the victim from a person who committed a tort of a certain kind. A **noxial lawsuit (actio noxales)** was applied, which was filed against pater familias, who had the offender under authority, and claims of other types.

4. Limitation period

In Roman law, the institution of limitation was gradually developed. Limitation period in the understanding of modern law is a period within which a person can apply to the court with a request to protect his violated right or interest. The special purpose of this term in the process is to encourage a person whose right is violated to take active action to restore it with the help of the judiciary.

In the archaic era, there was no limitation period in ancient Roman law, all claims were considered eternal, that is, they could be declared and considered regardless of the time that passed after the violation of the law. The first mention of the limitation of the term for filing a claim was found in the praetor edicts. These were one-year terms associated with the time of the praetor's tenure.

In 424 Emperor Theodosius II legislatively introduced a statute of limitations of 30 years, which repaid the right to claim. Later, the term was extended to 40 years for some claims to protect relations related to the church and the state treasury.

In the field of protecting violated rights at the disposal of the praetor, in addition to the system of claims, there were also **other procedural means** in the form of **acts of administrative power - interdicts (interdicta)**. They had the form of an order or prohibition that was binding.

The praetor issued interdicts if, at the request of the person concerned, it was necessary to immediately respond to a violation of the law or to warn him. All the interdicts that the praetor used in his practice were included in his edict.

Depending on the purpose, the interdicts were divided into:

- 1) interdictions on presentation (exhibitoria)**, which contained an order to provide things or a person;
- 2) interdicts on the return (restitutoria)**, ordering the return of a certain thing;
- 3) prohibitive interdicts (prohibitoria)**, which were attributed to refrain from certain behavior.

The interdict was issued after a brief investigation of the complaint and had to be immediately carried out by the persons to whom it was addressed. However, if it turned out that he was unfounded, the person had the right to appeal the interdict to the court. In this case, the interdict proceedings passed into judicial proceedings. If the court satisfied the claim, the interdict terminated. And in case of confirmation of the grounds of the interdict in court, the person who challenged it paid a fine.

Another means of quick influence on the conflicting parties was the order of the praetor to one of them to give a promise in **a solemn atmosphere - steepulation (stipulatio praetoria)**, which would guarantee the existing right.

A separate method of protection in administrative order was the introduction into possession of any thing of the person concerned at his request. This could happen either for the purpose of enforcing a court decision, or for the protection of property, or for the purpose of allowing an actual heir to own, whose right could not be based on *ius civile*

5.Interruption and suspension of limitation

The limitation period began its course from the moment the contract expired or from the moment of violation of non-contractual law. **If the expiration date of the contract is not established, then the course of the claim period began after 7 days with the request of the creditor.** In real disputes, the flow begins from the moment when the owner became aware of who his thing was. Suspension of limitation period only for a while stops its surfacing. It took place in cases of hostilities, epidemics, natural disasters, as well as when a person is a minor and is not able to sue. After eliminating the circumstances that stopped the statute of limitations, it continues to emerge. A new term that has expired after the suspension is attached to the term that has expired before the suspension. However, in total it should not exceed the general period of limitation.

The consequence of the omission of the limitation period was the repayment of the right to a claim, although the right to a thing did not cease to exist, continued to exist, and the fulfillment of the obligation after the expiration of the limitation period (*in particular, the repayment of the debt*) was considered proper execution, since the right itself exists, although deprived of protection by the claim. Such obligations are called **natural**.

Content module №. 2. Things and property rights in Roman law

Lecture №. 6. Things and property rights: general provisions

Plan

1. The Concept of Thing in Roman Law
2. The concept of property in Roman law
3. Classification of things in Roman law
4. Familia ra pecunia
5. Types of rights to things

1. The Concept of Thing in Roman Law

The category of "**things**" (**res**) was quite common among Roman jurists. Given that things occupied one of the most important places in the daily life of the Romans, and in the legal relations that arose between them, this category was given considerable importance. A large number of works of ancient Roman lawyers and the rich law-making practice of magistrates make it possible to understand the essence of this phenomenon.

Given this, we can give the following definition - things were considered objects of the material or intangible world that could satisfy the interests of a person.

Things could be both of natural origin (slave, animal, land, water), and artificially created (house, jewelry, money). Everything that surrounded a person with Roman law was considered things, and therefore it did not matter whether it was of natural origin or not. Moreover, the understanding of things in Roman law went beyond the objects of the ordinary material world. The Romans distinguished another category, which was called disembodied things. Such things were those that objectively existed in the world, despite the lack of material shell.

The entire world surrounding the Romans from a legal point of view was understood as a set (or even a system) of certain things. Moreover, these things were so different that to ensure proper legal relations, each of them requires a certain legal regime. To this end, throughout the existence of ancient Roman society, attempts have always been made to distinguish between things and classify them according to certain homogeneous features.

2. The concept of property in Roman law

A combination of different things, united by economic appointment, Roman lawyers considered as one whole - property.

Property they considered everything that belongs to a certain person. In the Praetorian period, the property included everything that remained after the deduction of creditors' debts. So gradually, in \neg , the nanny of property began to be interpreted as a set of rights and obligations of the owner. So the property consisted of **asset and liability, of claims and debts**, and therefore the property included debts, which

sometimes amounted to a significant, or even most of it. Particular attention should have been paid to this during inheritance in order to prevent payment for other people's debts. The considered division of things in ancient Rome, as a result of its high abstractness, revealed such vitality that in general and in our time has not lost practical significance.

3. Classification of things in Roman civil law

The division of things into certain groups led to their different legal regime, which is important. Some kinds of things remained purely Roman, other groups for a long time survived Roman law and the era in which this division was carried out. An important, exclusively Roman division of things into separate types was the division into things that were subject to a complex transfer procedure, and things that were not subject to such a procedure. To the things that were subject to a complex transfer procedure - mancipation, the Romans attributed land, buildings, slaves, working cattle, land easements and other valuables that formed the economic basis of the Roman slave society. Taking into account their special value, a complex order of their alienation was established. What was this complex process of transferring things? To implement, for example, a contract of sale of a thing, $\bar{\nu}$ invited at least 5-7 witnesses and a weight weight. The transfer of ownership of this thing by the seller to the buyer was accompanied by a series of ritual actions in a solemn atmosphere. The performance of such ritual actions was called mancipation, and the things that were subject to mancipation "were called *res Mancipi*. All other things got the name **res Mancipi**. In ancient times, the purchase and sale of such important things happened occasionally and the performance of solemn rites did not burden the turnover at all. However, with the development of economic life, trade, the rite of **mancipation** became their brake. **What was the legal significance of dividing things into res Mancipi and res Mancipi?** First of all, if the mancipatio rite did not take place, then the ownership did not pass to the acquirer, the buyer. The owner formally remained a seller who could at any time demand the return of the thing, and the republican courts very often satisfied such requirements. Mancipation also had some positive features. She witnessed the fact of transfer of ownership of important things from the seller to the buyer. And if there were doubts about this fact, the witnesses who were present at the same time could confirm its validity. The next purely Roman division of things was the division of things by their substance (essence, matter).

Things that had material substance were called bodily, and those that had no material substance were called disembodied things. Under bodily things understood such things that can be perceived by touch, and under disembodied such that are perceived only by thought. Rather, these are not things, but rights, for example, the right to inheritance, which may not be realized and still remains a right, like what belongs to an unrealized easement, including usufruct. The disembodied thing, adds the Roman jurist Gaius, exists in the form of a legal representation of some material good, which may not have a bodily essence. Often, disembodied things were

understood as the actions of persons representing a monetary interest. However, other divisions of things that have passed into subsequent systems of law are legally important. Let's focus on such species.

1. Things are moving and stationary. The original division of things into movable and immovable in early Roman law was of little importance, for both the first and second things were subject to almost the same legal regime. However, over time, the legal regime of moving things began to differ from the legal regime of immovable things. So Cicero, referring to the Laws of the XII tables, wrote that even then, that is, in the middle of the V century. BC, different terms were established for the acquisition by antiquity of ownership of land and other things. In order to become the owner of a land plot by antiquity, it was necessary to last two years, for other things - one year. At the time of the dominate, there were different rules for the transfer of rights to real estate and mobility (for example, manipulation for stationary and some moving things).

Moving were considered such things that could be moved in space, these are, in particular, animals, slaves, small household items.

First of all, land, houses, roads, city walls were attributed to **immovable** things. Immovable things were considered not only the earth and the bowels of the earth, but also everything created by someone else's labor on the land of the owner. The fundamental principle was this: created on the surface follows the surface. According to this principle, a house built, regardless of who built it and at whose expense, always belonged to the owner of the land on which it stands. All objects connected with the earth or functionally fastened to its surface, such as crops, plantations, were its components. Separate ownership of the house and land was considered impossible. Even the airspace over a piece of land was also considered as part of the surface: For stationary things (**res mobiles**), changing the place without damage is impossible. All other things that could be carried from one place to another without damage were considered movable.

Things are simple and complicated. The classical definition of such a distinction was given by the lawyer Pomponius.

Simple things are declared, all parts of which create something physically connected and homogeneous, created from a single material (precious stones, slave, horse, etc.). They do not decompose into parts, and if they are decomposed, then the parts themselves lose their value and do not have an independent meaning.

Complex things consist of artificially connected heterogeneous things that have a material connection and bear a common name (ship, cabinet). Separate parts of such a complex thing cannot belong to different persons. A separate group consists of collections of separate things, materially unrelated to each other. This set of things was united only by one common name or name, for example, herd, legion, library. In such cases, the subject of legal relations could be individual things that were part of one.

Things are divided and indivisible. According to Ulpian's definition, such a thing should be considered **divisible**, which does not change its kind, nor its quality, nor its value. Each individual part remains the same as it was, smaller in volume.

The divisible things were primarily the land and all that it brings, bread cut in half, etc.

So, **indivisible** are those things that in the case of division are destroyed or lose their value. The division of indivisible things could only be imaginary. The parts that are formed by such a division are called ideal parts, or ideal destinies. In this case, it is not the thing itself that is divided (it is indivisible), but only its value. When it is necessary to divide an indivisible thing, it remains in the ownership of one person, while others receive monetary compensation.

Things are consumer and unproductive. In this case, the division is made of the fact that some things (land, buildings, tools, precious stones, etc.) are not consumed or consumed unnoticed during use, and others (wine, bread, meat, etc.), according to their purpose, are reduced or destroyed at all. These features of things can not be ignored, producing legal rules, if you have to deal with them. So for hire, only uninhabited things seem, and consumer things are provided in the loan. Money was also recognized as consumer things, since they can be used only by spending.

Things endowed with generic characteristics, and things are individually defined.

This classification is based on a peculiar phenomenon noticed by the Romans, when legal rules have to be built in different ways - depending on how the brood started this or that thing in specific conditions of turnover. These conditions can be built so that the thing associated with them will be highlighted in one way or another (for example, the acquisition of a famous painting, sculpture, a golden vase). Such a thing is called **individually determined**. But if under the conditions of turnover the thing is not particularly allocated, but is characterized by a general way, then it is considered already defined **by generic characteristics**. Such things did not have individuality in circulation, their exchange value was determined by parameters such as weight, measure, number. Sources of Roman law used the term **species** to refer to things individually defined, and **genus** for genetically defined ones. The division of things into generic and individually defined is associated with a different solution to the issue of the legal status of these things. The physical death of generic things (from fire, theft) is quite possible, but for the law, for the creditor, they did not die, because they could always be replaced by other things. Money give on credit number and number receive from the debtor. Hence the rule **-the rod does not die**. However, if a neighbor borrowed a gold vase from a neighbor, then he was already dealing with an individually defined thing and had to return not any thing, at least gold, but only the one that he borrowed. If an individually determined thing accidentally died, then the contract was terminated, although the obliged person was liable in the amount of the value of the lost thing.

Things are main and side (subordinate).

The main thing was called the thing that gave the name to the whole, or the thing without which the other cannot be used.

Side things in a certain way depended on the main one and obeyed its legal position. Side things included: parts of the thing, belonging, fruits and expenses.

a) Parts of things were not the object of legally independent existence. When a thing as a whole was the object of a legal transaction, the consequences of this transaction extended to all parts of the thing. The object of independent transactions part of the thing could be only in the case of its separation from the whole.

b) Affiliation. Belonging was called a thing associated with another (main) thing not physically, but economically. The main thing was considered unfinished if belonging was separated from it. Of course, belonging can exist separately from the main thing, but only in the process of sharing an economic result is achieved (for example, a key and a lock, a boat and an oar). Due to the fact that ownership can exist independently, it can be the subject of independent rights to it. However, if there are no special reservations of interested persons, all legal relations established on the main thing apply to belonging.

c) Fruits.

The fruit is called such an organic or physical production of a thing, which is separated from it without violating its essence and constitutes an ordinary profit in the economy. The fruits are natural and civil, or profitable. **Natural fruits** were considered primarily organic production of such things that regularly and constantly received from the exploitation of things that bore fruit without changing their economic purpose. Sources of Roman private law attributed animals, sheep's wool, bread, vegetables, fruits, etc. to natural fruits. The fruits also include values acquired through economic – economic activities, for example, interest on capital, rent.

Such fruits are called **civil or profitable**.

Fruits are divided into those that **are separated from the thing** that produces them, and **not separated: the fruits are available in kind and consumed by others**. These cancellations in the concept of fruits are of great importance if the question of ownership and the obligation to return the fruits is raised. In particular, if a thing is returned on the basis **of a vindication claim**, the available fruits are always subject to return to the owner along with the thing. For the fruits consumed, the conscientious owner did not bear responsibility.

d) Costs. Any expenses made on this or that thing are called expenses. Roman private law knew the costs **necessary**, without which the thing could not exist, useful, which improve the thing, increasing its value, and **the costs for the sake** of whim, personal tastes. This cost sharing also has legal value, especially in claims for the return of things.

Things in circulation and withdrawn from circulation. Roman jurists distinguished between things in circulation and things withdrawn from circulation.

The first category - **in turnover** - included things that constituted objects of private property and turnover between individuals. These are, in particular, land, slaves, working cattle, easements, first rural, and then urban.

Withdrawn from circulation were those things that could not be the object of personal property due to their specific purpose, and not by nature. Removed from circulation were: a) things dedicated to the gods (temples, altars); things that are under the auspices of the gods (city walls of the city of Rome, cemeteries, etc.); b)

things of common use that directly served all people (roads, squares, large rivers and seas, etc.).

4. **Familia** та **pecunia**

The opposition "**familia**" - "**pecunia**" refers to the oldest period of Roman law. "**Familia**" indicates the entire family complex (property and non-property under the authority of the homeowner, which is therefore called "**pater familias**," "**pan familia**." In opposition to Pecunia, familia is distinguished by a static state. So, free people included in its composition are not objects of turnover ("**nullius sunt**," "**do not belong to anyone**"), not being res. "Familia" includes cemeteries and family shrines - **res extra commercium**. This complex characterizes the status of a person: homeowners as the head of familia, subject - as persons belonging to a family group. This term is therefore used when describing relationships related to **status familiae**: inheritance without a will and guardianship.

"**Pecunia**" (from "**pecus**" - **cattle**) refers to things that have become the object of legal acts. In other words, "pecunia" is property (from familia), involved in a system of volitional relations with other persons, members of other family groups. So, a slave is called "pecunia," when he acts as the object of his master's agreement with another homeowner, while abas employed in the household are called "familia." This example of the multifunctionality of an object, which is both familia and pecunia, but in different respects (as a subject person and as an object of an agreement), is the most indicative. Excluding shrines that are not subject to circulation, any items of the family complex can be familia and pecunia. It is important that the thing for which the administrative act has already been carried out retains the definitions associated with familia - as an object that determines personal status. In practice, this means that objects of the family complex in the archaic era remain part of the **family (familia)**, even if they are alienated on the basis of individual will as pecunia. As familia, the family complex characterizes the position of the homeowner in the structure of the family, as pecunia - indicates his administrative powers to solve the economic issues of family life. If the homeowner is recognized as devoid of the volitional basis of personality - **furiosus (Mad)**, such **powers (auctoritas)** pass to the overseer (**Curator furiosi**), which is expressed as "**potestas in pecunia eius**" - "**Power over his negotiable property**," while the madman remains pater familias. Subsequently, as the role of the homeowner in terms of law is formalized and the economic interpretation of relations about things is approved, "familia" loses its certainty of meaning and becomes part of the binomial "**familia pecuniaque**," which denotes in the pre-classical era all property of homeowners. The typical meaning of the term "**pecunia**" becomes "**money**" as a universal means of exchange, although relics of the previous emblematic interpretation are preserved, when "**Pecunia**" through an indication of an object expresses individualized administrative authority in opposition to the static subordination of a thing to a social unit (family or the whole community). (Familia) was retained in Roman law by persons in the form of the privileged status of a

homeowner, who was the only full-fledged person, and affected the originality of the legal forms that recorded the assertion of individual will in the process of mastering the outside world.

5. Types of rights to things

Of the rights to things, possession took shape before all, behind which stands the right of private property. Both were understood by classical lawyers as direct domination over the thing, aimed directly at the thing, without anyone's mediation - *ius in re*. When the thing did not belong to the person concerned, but he claimed to use the thing that belonged to **another person (res aliena)**, then rights arose, called later lawyers *iura in re aliena*, rights to someone else's thing. In the following we will consider:

- a) **possession,**
- b) **property**
- c) **rights to other people's things.**

Lecture №. 7. Possession

Plan

1. Concepts and elements of possession. Basic theories of possession
2. Types of ownership
3. Possession and maintenance
4. Derivative owners
5. Subjects and objects of ownership
6. Acquisition and termination of ownership
7. Defending possession.

1. Concepts and elements of ownership

Possession in the sense of actual possession of things is the relationship on the basis of which historically the institution of property law was formed.

Without forgetting this historical connection between "**possession**" and "**property rights**" (which left its mark on colloquial speech, often identifying these two concepts), it must be borne in mind that in more developed Roman law, "possession" and "property rights" are different categories that could coincide in the same person, but could belong to different persons.

Possession - was the actual possession, but associated with legal consequences, primarily provided with legal protection. The legal protection of ownership is characterized by the fact that it was given regardless of whether a given owner of a thing has ownership of it or not.

However, not every actual possession of a person by a thing was recognized in Roman law by possession. A distinction was made between possession in the exact sense (**possessio, possessio civilis**) and simple holding (detentio, sometimes called possessio naturalis).

To have **possession (possessio)**, two elements were needed:

a) **corpus possessionis** (literally "body" of possession, that is, actual possession itself);

b) **animus possessionis** (intention, will to possess).

However, not every will to actually own a thing was recognized by the owner's will. A person who has in his actual possession a thing on the basis of an agreement with the owner (for example, received it from the owner for use, storage, etc.) was not recognized as the owner, but was the owner in a strange name (**detentor alieo nomine**).

Meanwhile, it cannot be said that the user or keeper of a thing does not have the will to own the thing, he has the will, but the will to own on behalf of another. For possession, in the legal sense, it was necessary to have the will to own a thing independently, not recognizing the power of another person over oneself, the will to treat a thing as one's own (**animus domini**). Such a will is the true owner, a person who, due to a good faith mistake, considers himself to be the owner, although in fact he is not (**the so-called conscientious owner**), finally, the illegal invader of someone

else's thing, knows perfectly well that he does not have ownership of this thing, and still shows the will to own the thing as his own.

Thus, **possession (possessio)** can be defined as the actual possession of a person by a thing, combined with the intention to treat the thing as one's own (to own, regardless of the will of another person, independently).

As for **corpus possessionis**, in a more distant era in the underdeveloped right, this element of possession was understood in the rough physical sense of possession (in the hands, in the house, in the yard). In the future, corpus possessionis began to be understood not so roughly, but more gracefully: they began to recognize that corpus possessionis exists in all cases when, under normal conditions, the person is provided with the possibility of a long unimpeded manifestation of his dominance over the thing. Such a general formulation allows us to give numerous specific examples available in the sources of Roman law. So, Roman lawyers believed that wild animals and birds only remain in our possession until they are under our protection (in a cage, etc.) and have not returned to the natural state of freedom; a domesticated (domestic) animal does not leave our possession, even if it leaves the yard, so that it does not lose the habit of returning back; if the transferred goods are in the pantry, then it is enough to simply hand over the keys to this pantry to get the corpus possessionis in relation to the transferred goods, etc.

The theory of dominant thought. The prevailing opinion since the time of Savigny, which defines possession as the actual domination of a person over a thing, combined with the desire to consider the thing as its own, and not to recognize anyone else as the owner of it (the so-called. **Animus domini**). Therefore, animus domini is a necessary constituent element of legal possession, where there is only an actual connection between the person and the thing, where there is no **animus domini**, there is no possession, but there is only a simple holding of the thing, **detentio**.

Therefore, **possession corresponds to the right of ownership: just as property is the legal domination of a person over a thing, possession is the actual domination of a person over it. Representatives of this theory are forced, however, to admit that the principle exposed by them does not cover all cases of legal possession:**

a) on the one hand, the actual domination of the person over the thing is sometimes absent (these are the so-called. cases of possession through representatives;

b) on the other hand, and animus domini may sometimes be absent, for example, from the creditor on the pledge (these are the so-called. cases of derivative possession).

The theory of prevailing opinion considers these cases as exceptional. The theory of dominant thought leads to the undesirable dogmatization of a simple historical phenomenon at all, the sharp difference that Roman law makes between **possessio and detentio** - otherwise, it explains this phenomenon not historically, but dogmatically, derives it not from the special conditions of Roman life, but from the nature of things

Theories of Dernburg and Iering.

Dernburg in his Pandects notes that the difference between legal possession and detail cannot be explained by the internal difference of both relations, but is explained by the historical conditions of Roman life and circulation, namely the humiliated position of tenants and tenants who made up the main contingent. He lists individual cases in which Roman law recognized a person as a legal owner, such as: possession of suo nomine, possession of a creditor by pledge, etc.

Jering goes even further in his study "*Der Besitzwille*." He does not list individual cases in which sources recognize this person as a legal owner, but says: if there is a necessary factual connection between a person and a thing, combined with a desire to keep this connection for the future, then legal possession always arises, unless one can point to a special indication of sources that gives such an attitude the nature of a simple detail (as, for example, done in relation to tenants and tenants). Roman jurists themselves, with the exception of Paul alone, did not attach the decisive importance **to animus domini** that Savigny and his followers recognize; Paul's theory is based on the same false aspiration as Savigny's theory, precisely on the desire to dogmatize what is explained solely by historical considerations.

Unfortunately, both Jering and Dernburg do not sufficiently shade the distinction between possession in the economic and legal sense, and at the same time do not take into account the cases of **quasi possessio** personal easements, not bringing them into connection with their teachings.

2. Types of ownership

Title, which was preceded by a **legal basis (civil possession)**. The presence of the title of ownership determined the legality of acquiring ownership of property, subsequently it could happen either by **antiquity (usucapio)**, or when the acquisition of ownership and ownership coincided;

titular - a situation where the owner has no intention to acquire a thing in property. It is the possession of the creditor thing; the possession of the person to whom the thing was deposited for the duration of the process of ownership by agreement of the parties, so that it was issued to the winner of the process; possession of the hereditary tenant, when the contract could not be terminated by the landlord as long as the rent is paid;

precarious possession - possession of a person who owned a thing before the first claim of the owner. This type of ownership is sometimes called intermediary, since the listed persons own "for others." In the above cases, ownership coincides with holding, and owners are given protection. The praetor could, before the statute of limitations expired, provide the owner with interdict protection. Such protection was granted to anyone who exercised actual domination over a thing with both elements of possession.

Paul singled out the types of possession:

legal - if there is a legal basis;

illegal - deprived of legal grounds, as well as carried out unlawfully, maliciously or falsely, contrary to the will of the previous owner, when the possession was taken away from the previous owner secretly or withheld, despite the demand for return;

dishonest - if the owner knew or should have known about the illegality of his possession, but behaved as if the thing belonged to him. For this case, the acquisition of ownership by antiquity did not work and more stringent requirements were made to compensate the real owner after the trial for the cost of the fruit or the deterioration of the condition of the thing;

conscientious - if the owner did not know and should not have known about the illegality of owning the thing.

3. Possession and maintenance

Roman law distinguished between possession and possession of things.

Possession is the actual possession of a thing, combined with treating the thing as one's property.

To have ownership, two conditions must be met:

1) actual possession of the thing;

2) the intention to treat things as their property.

Holding is the actual possession of a thing with no intention of treating it as one's own. The holding arose on the basis of an agreement with the owner of the thing.

Legal distinction between possession and possession:

a) the owners could independently protect the thing from public attacks on it on their behalf;

b) the owner of the thing was forced to apply for protection to the owner, since he could not independently file a lawsuit.

The practical significance of the difference between possession and holding was expressed in the fact that while the owners (**possessores**) defended themselves against any illegal encroachments on the thing themselves, the tenant, as a "holder on behalf of another," could receive protection only through the mediation of the owner from whom the thing was obtained. This reveals the social significance of such a construction: the absence of the tenant's own property protection, the need for him to seek help from the owner allowed the owner to exploit the tenant more strongly, who usually belonged to the poor.

4. Derivative owners

Distinguished by Roman private law so-called. **derivative possession**. For example, when pledged, the owners hold the thing as a stranger in order to return it after paying the debt. If such a pledgee is qualified as a holder, then thereby he is deprived of the right to bring forward claims against the illegal seizure of the pledged thing (the pledger or his patron without paying the current or already overdue debt

"took away" the pledged thing, etc.). As an exception, such a holder received a claim protection, and his holding thereby received the status of derivative possession.

The primary way of acquiring possession (**property**) is that the rights to a thing are acquired for the first time or against the will of the previous owner: the appropriation of a drawn thing, the processing of things, the acquisition of possession by antiquity, and the seizure of military booty. Derivative possession is acquired by the new owner from the previous one by concluding an appropriate contract: purchase and sale, inheritance, donation, loan, etc.

5. Subjects and objects of ownership

Subjects of possession can only be persons using property legal capacity. Persons deprived of property legal capacity cannot be subjects of possession; in Roman law, slaves belonged here. On the other hand, they can be subjects of possession and persons are incapacitated, since they enjoy property legal capacity, namely: children, crazy and legal entities. Such persons, of course, cannot acquire possession themselves, because they cannot act consciously, but their representatives can acquire possession for them.

Objects of legal possession can serve not all things, but only things that have not been withdrawn from civil circulation. As for complex things, the object of legal possession is only a complex thing as such, and not its individual constituent parts, although from an economic point of view the one who owns the whole obviously owns parts of the whole. As for the totality of things (for example, a herd or library, etc.), legally the object of possession is not the very totality of things, but only the individual things of which it consists. Therefore, for example, a person cannot acquire a herd, but only individual animals that are part of it, or, otherwise, for each animal, an outflow of acquisition time is required.

Several persons cannot simultaneously own the same thing so that each of them is considered the owner of the whole thing (**compossessio plurium in solidum esse non potest**). But several persons can possess an inseparably common thing so that everyone is considered the owner of the ideal part of the thing (the so-called. **compossessio plurium pro partibus indivisis**). The first rule is certainly correct in relation to the possession of a thing in the economic sense: it is really impossible to simultaneously own the whole thing from several people. But Roman jurists extended the force of this rule to possession in a legal sense. Several persons cannot simultaneously present possessory interdicts independently of each other.

Finally, in the application to real estate and possibly ownership of individual real parts in the sense that each part belongs to another owner. When applied to moving things, this is not allowed.

6. Acquisition and termination of ownership

"We acquire possession both in spirit and in body," wrote Roman lawyers (Paul, "Five maxims to the son," that is, not only material acquisition of the thing is

needed, but also the intention, the will to possess it as one's own. The original way of acquiring a thing was considered her hobby (**accupatio**). The normal way of derivative acquisition of a thing from another person was the transfer of a thing (**traditio**).

The seizure of a thing was considered not a simple touch to the thing, but as the final acquisition of it, the actual domination, that is, the usual position of the owner in relation to the thing in accordance with the purpose of this thing. So, if a wild animal wounded by a hunter is finally caught by another, then it is the last hunter who will become its owner.

With the help of passion, they mastered nobody's things.

The Romans allowed the acquisition of possession through other persons. For example, the purchase by the owner through a slave, homeowners through the subject. In classical law, the acquisition of possession through third free persons was recognized - manager, prosecutor, guardian.

Unauthorized seizure of another's possession in the absence and without the knowledge of the owner finally acquired the status of ownership only if the former owner, having learned about such a seizure, did not dispute it. The possession of the former owner of the land did not stop if his subjects remained on this site.

When transferring possession, it is not always possible to pass the thing from hand to hand. In developed law, the Romans moved from material transmission to an imaginary, abstract tradition.

Symbolic transfer takes place when transferring keys to the warehouse (it is necessary that the keys were transferred near the warehouse), branding logs, cattle, documents for slaves, changing the guard, etc.

Transmission with a long hand - traditio longa manu. "If the money that you owe me or another thing I order you to put in my eyes, then what happens is that you immediately free yourself and the thing becomes mine: the thing then, since no one holds bodily possession of this thing, it is considered that it was acquired by me and given to me as if with a long hand." For such a transfer, it is necessary that the thing be abandoned in front of the acquirer. Celsus gives an example about the transfer of a field visible from the tower.

Short-handed transfer (traditio brevi manu) takes place when the owner, with the consent of the former owner, becomes the owner himself (for example, the employer buys the thing from the landlord). The thing was already with the owner, and the material act of transferring ownership from the landlord to the employer does not occur. As the Romans write, "sometimes even one naked will of the owner is enough without transferring possession to transfer possession of the thing."

Another case of establishing possession only by the naked will of the owner was called **constituutum possessorium in the Middle Ages (from constituere - to install)**. This is the case when the owner, having sold the thing, leaves it at home, for example, on a rental basis. Here the former owner-seller becomes the owner, and the buyer becomes the new owner, although there was no material act of transfer, since the thing remained with the former owner, now the owner.

Termination of possession. Possession ceased in the event of the death of the owner, loss of dominance over the thing, when the thing was withdrawn from circulation and its death. If a representative lost possession of a thing that he owned for the master, then the owner of the thing lost possession, unless the possibility of influencing the thing was excluded for him. It is necessary to distinguish between forgotten and lost, domestic and wild animals. So, accidentally forgotten things in a certain place or room, wandering livestock around the neighborhood did not entail loss of possession, as they could be eliminated by search. Leaving the estate by the owner without processing and in neglect led to the loss of ownership. "Everyone can, without violence, acquire possession of another's estate, which is empty, either as a result of the negligence of the owner, or because the owner will die, or will be absent for a long time."

7. Protection of possession

In a civilized society, the actual division of things as such is protected from any violence and attacks by individuals. In Rome, there was a fairly simple order of defense of possession. In order to obtain protection of possession, the praetor established only the fact of possession and the fact of violation of possession. Explanations for this phenomenon may be different.

Firstly, the provision of such simplified legal protection to the actual owner of the thing is due to the fact that in the vast majority of cases the owners were the owners. In this case, there was a legal presumption: the one who owns the thing has the right to it. In view of this presumption, the State has, in order to facilitate the protection of the owner against encroachment by third parties, given him a simplified and facilitated protection.

Secondly, the simplified order was introduced in order to prevent arbitrariness. The Romans argued that it is necessary to adhere to the established procedure for the protection of rights and categorically forbade the protection of their rights on their own, that is, arbitrarily. Of course, the fact of ownership may sometimes not correspond to the law, even contradict it, but to restore the right in such cases, existing legal ways are used - going to court. This requires a developed legal awareness, the ever-growing respect of one person for another.

However, in history, this principle of protecting possession as such did not immediately appear. This principle was largely explained to the new world only by Roman law, and in Rome itself it was proclaimed only a praetor and stemmed from its original purely police functions - from the duty to protect civil peace and order. Naturally, this principle of protection, the idea of civil peace in the field of material relations, was to lead the praetor to the need to protect the fact of possession from any encroachment. Any manifestations of arbitrariness that came from a person who even has the right to a thing gave rise to social disorder. The very first task of the praetor was to ensure civil order. So there were possessory interdicts, a possessory way of protecting possession.

Of course, proving your right to the thing was not easy. The easiest way to prove the fact of possession and the fact of violation of possession. Therefore, the owners in case of violation of their rights often resorted to possessory protection as more affordable. However, possessory possession defense was only a preliminary defense. The owner of the thing who lost possession of it and who presented an interdict to the actual owner, but lost the possessor process, could sue the owner (vindication) and regain the thing on the basis of his ownership. As you can see, the simple and light possessory protection was not stable and not durable compared to the petitor protection.

A feature of the protection of possession in Rome was that it was protected not by lawsuits, but by praetor interdicts. It was not judicial protection, but administrative and legal, which the praetor exercised by means of his power. With the help of an interdict, the praetor ordered to cease arbitrariness to a certain person, and if his order was not fulfilled, then he had enough rights to apply coercion.

In the possessional process, neither the one who defended the right of possession, nor the one who challenged it, could cite the legal grounds for their claims. It was necessary to prove only the fact of possession and the fact of violation of possession. Therefore, the protection of possession, built on the clarification of the facts of possession alone and its violation without clarifying the question of the right to own this thing; called possessory.

In cases where someone doubted this or knew that this thing is not the property of the actual owner, it was necessary to prove the opposite, that is, that the right to this thing does not belong to the owner, but to him. The protection of rights, which required evidence that this person had rights to this thing, was called a petitioner.

Possessory interdicts were divided into separate groups. The purpose of some interdicts was to protect the possession from encroachments, to maintain possession.

The task of other interdicts is to restore the already violated, selected possession.

Another, third, category is the so-called **interdicts for establishing a new possession**. They no longer belong to possessory means in the literal sense, since the plaintiff here relies not on the fact of possession, but on this or that (albeit praetorian) law. This interdict was applied when one of the heirs did not want to divide the inheritance between the other two same heirs.

The interdicts aimed at protecting and preserving the existing possession included:

- a) **uti possidentis** - for protection of immovable things;
- b) **utrubi** -to protect moving things.

The interdicts uti possidentis are so named after the original words of the praetor formulation of the interdict: As you now possess, so it should remain, I (**praetor**) will not allow the use of violence in order to change the existing possession. **Interdict utrubi** also got its name from the original word interdict: where, which side of the thing.

Both interdicts were aimed at:

- a) **recognition of ownership by one of the parties;**
- b) **award to remedy violations of possession;**
- c) **indemnification.**

The claim for damages was terminated after the expiration of the established statute of limitations. In case of repeated violation of possession, the guilty party was punished with a fine. In Justinian's right, **the difference between uti possidentis and utrobi has disappeared.** To protect both movable and immovable property, an interdict uti possidentis was used.

The second group of means of protection of possession was made up of interdicts aimed at returning the lost possession - the so-called recuperator interdicts. These include **unde vi, or simply vi.** The interdict unde vi was given to someone who lost possession of real estate due to violence. It was an order addressed to only one party - the defendant. The order contained an order to the offender, who forcefully took the thing, to return it to the victim. Responsibility for this interdict was punitive, tort in nature, because the defendant had to compensate the plaintiff for all the losses that he suffered. To make a claim for damage, a one-year statute of limitations was established. Under Justinian, the interdict unde vi was extended to cases of secret seizure of real estate in the absence of the owner.

Among the interdicts aimed at restoring possession, there is also known interdictum de precario, which was directed against someone who, having received possession from another person at his own request for use before the request, despite the requirement, did not return it.

It is known that in Rome there were cases of the so-called derivative possession, which also received independent interdict protection. This, in particular, the possession of the creditor of the thing pledged to him, the possession of the sextarian who received the thing for preservation, emphytetic and super-official possession.

As you can see, for the protection of possession used mainly praetor interdicts. However, to protect bona fide possession, it was possible to use a special tool - the publican lawsuit. It was given to a person whose possession met the requirements for acquiring a thing according to the antiquity of possession, the term of which had not yet expired. In this case, a fiction was allowed, as if the plaintiff owned a thing of a long-standing statutory term and, therefore, acquired ownership rights to it

Finally, the question of ownership arose in cases where someone actually fulfilled the requirements of some easement. Is it possible, in the event of a violation by someone of such actual use, to claim an interdict protection? And Roman jurists responded approvingly, recognizing that in such cases we have "as if possession of law." In fact, this is not "as if possession of the right," but the true possession of the thing, only possession is not comprehensive, but limited in its content. However, this theoretically incorrect construction played a large role in the jurisprudence of the new peoples, which extended the concept of "as if possession of the right" far beyond Roman borders - to binding, family, even public rights.

All this testifies to the fact that the institution of possession as a de facto domination, independent of the right to it, approved by the Praetorian edict and

developed by classical lawyers, has since become a lasting property of any developed civil law.

Lecture №. 8. Ownership.

Plan

1. Concept and content of property rights
2. Limitation of ownership
3. Ways to acquire and terminate ownership
4. Protection of property rights

1. Concept and content of property rights

Ownership in any system of law (including Roman) is the central legal institution that determines the nature of all other institutions of private law (contracts, family, inheritance, etc.). Not surprisingly, both Roman and subsequent generations of jurists so deeply and thoroughly explored the social relations of property. And although their studies bear the imprint of their time, many of the theoretical provisions of private property law have survived to our times and have practical application. This is explained by the fact that property rights in Roman law are expressed in the most vivid form, namely Roman law is the most perfect form of law, which is based on private property. Roman law is such a classic manifestation of the living conditions and conflicts of a society in which pure private property prevails that all subsequent legislation could not make any significant improvements to it.

Ownership, like property, is a social phenomenon.

If property is an economic relationship, then the right of property, thanks to the consolidation of the relevant economic ties in the law, gives them the necessary legal expression.

It is clear that ownership is possible only as a relationship between people, groups of people or other social entities. The Romans, however, instead of relations between people, saw in property rights only the attitude of a person to a thing, which had a decisive influence on the legal definition of property rights.

The institution of private property with all its features is already known in the old civil law, and Roman lawyers consider it as an original institution. But in ancient history there are some scattered phenomena (**the division of things into res mancipi and res ne mancipi**), which suggest that in Rome private property did not arise immediately, that its formation was preceded by a long period of preparation and development of this concept.

Historically, the individual property of an individual citizen was preceded by common property - people, tribe, clan, family. But already in the Laws of the XII tables we find a mention of property rights, which was designated by the term dominium, to which **the jure Quiritum** was added - property by right of Quirites. This appendix meant that the right of ownership (**mainly land**) primarily belonged to the Roman people, and later, in the form of private property rights, to Roman citizens, to Quirites. The right of Quirite property was inaccessible to peregrines and did not apply to provincial lands.

Justinian's institutions define the right of ownership as the total power of the individual over the thing.

However, **the main property of property rights**, of course, *is the combination of the unlimited domination of a person over a thing with the right to dispose of it, the right to determine its fate (sell, exchange, pledge, destroy, etc.).*

Ownership does not allow interference by unauthorized persons in the sphere of domination of a private owner. That is why the right of ownership was defined as the direct and immediate, exclusive and absolute domination of a person over a bodily thing. However, the essence of the concept of ownership is not in the term itself.

In the development of Roman law, land ownership was of particular importance. During the primitive communal system, the land was owned by a tribe, clan, family. Subsequently, the ownership of the state is established on the land. The right of an individual to state property is limited to simple possession.

It is known that Rome, through constant aggressive wars, acquired a lot of land and slaves. The conquered territories were considered state land - *ager publicus*. In an effort to obtain part of these lands, plebeians, who were in a difficult financial situation, enter into a long struggle for land, which dragged on for several centuries and became an important factor in the history of Rome during the republic. The whole 'history of Rome III - I century BC is characterized by the struggle for land between the plebeians and patricians, who owned all the fullness of power. The ancestral aristocracy of Rome fought in every possible way against the equality of the plebeians regarding land rights and still had to make some concessions. Of the conquered lands, plebeians were allocated small plots - in 2 yugers (about 2 hectares) to each homeowner, and only later they were given plots the size of 7 yugers. The endowment of *ager publicus* property was the exclusive privilege of the plebeians.

The largest part of the **ager publicus** was in the hands of the patricians, who retained the right to use the land. Naturally, the patrician elite got the largest plots of land, which contributed to the formation of large estates, which were cultivated by the labor of slaves. Gradually, part of the *ager publicus*, transferred to the top of Roman society, begins to lose the character of state property and becomes private property.

Plebeians could not be satisfied with the small allotments that were provided to them, and continued to fight for the expansion of land rights. The state provided plebeians with private property, but deprived them of state property.

Since in the conditions of the agrarian economic structure land was the main value, during acute political clashes it was distributed, given and taken away. That is why already in 367 BC a law was issued that established that no one can capture more than 500 yugers (about 125 hectares) from state lands. This is seen as a victory for the plebeians.

However, subsequent events showed that this law was not actually implemented, and therefore the struggle of small landowners against large ones continued. The bright page of this struggle was the reforms of the Gracchi brothers - Tiberius and Guy, which forbade further seizure of state land and set the limit of

private land ownership - 500 yugers with the addition of 250 yugers per adult son. Surpluses must be distributed among the proletarians. The reforms of the Gracchi brothers caused fierce resistance of the Senate nobility and indicate that in the II century. BC concentration of land than increased. The reforms of the Gracchi brothers failed, and they themselves became victims of the reaction. However, thanks to these reforms, some part of the Roman peasantry received small land plots. The reaction that followed the death of the Gracchi finally secured private ownership of the land. Land owned by individuals was assigned to them as their private property. It could be sold and pledged; no limits were set for the concentration of land wealth in individuals. All this meant at the same time the victory of the slave economy over the peasant.

The main property right is the right of ownership, the volume and boundaries of which the Romans determined by the powers of the owner. The totality of these entitlements was the content of property rights. The owner had the right to own a thing (**jus possidenti**), use it at his own discretion (**jus utendi**) and dispose of it (**jus abutendi**), sell, mortgage, give, etc. The owner's rights sometimes include the right to receive fruits (**jus fruendi**), the right to regain the thing from someone else's actual owner (**jus vindicandi**) Of course, this list of individual powers of the owner is not and cannot be exhaustive. The fundamental view of Roman lawyers on the right of ownership is such that the owner has the right to do with the thing itself everything that is not forbidden to him. Therefore, the right of ownership is considered the most complete right in terms of volume, since all other rights to a thing are inferior to it in this.

Right of possession (jus possidenti). *This right means that the owner can actually own the thing, that is, the thing must actually be in the owner's household and fulfill its economic purpose.*

The owner can exercise the right of ownership both personally and by transferring it to other persons (for example, under a contract), while maintaining the ownership of this thing.

2.Limitation of ownership

As you know, Roman private property was an unlimited and exclusive right. Property opened the bearer of this right a comprehensive opportunity to use and dispose of the thing and did not allow interference by unauthorized persons in the sphere of domination of the owner. However, such unlimited and exclusive domination of the person-owner over the thing sometimes came into conflict with the interests of the owners themselves. Therefore, as an exception, in the interests of the owners of individual powers (for example, possession or use) could not be, and in some cases they. limited.

Restrictions arose along with the appearance of the property itself or subsequently appeared in connection with a special legal act. The grounds for the emergence of restrictions on property rights were law and transactions.

I. Law (lex). On the basis of the law, restrictions on property rights arose simultaneously with the appearance of property itself for reasons of public interest or in the interests of neighbors under the so-called **neighbor law**.

1. Limitation of ownership for reasons of public interest:

a) the owner of the site located on the bank of the public river is obliged to give the opportunity to use the coastal strip;

b) the owner of the site located near the public road, in case of destruction of the road, is obliged to provide part of his land for use;

c) the owner of the site should allow excavations on his site, but for the damage caused he was entitled to a reward in the amount of one tenth of the profit.

2. Restriction of property rights in the interests of neighbors:

a) the holder below the located section must tolerate water runoff from the higher section;

b) the owner could not build a building on his site that would prevent air flow to the neighbor's site;

c) the owner had no right to prohibit a neighbor from collecting fruits that fell from a tree to a neighbor's plot.

These cases, of course, are not exhaustive.

II. Transactions. Sometimes restrictions on property rights did not arise together with the emergence of property itself, but due to a special legal act. These restrictions consisted in the fact that a number of the owner's powers were granted to the non-owner through a transaction: the non-owner was granted property rights to someone else's thing. In Roman law, there were four such rights: easements, emphyteusis, superficies and liens.

Among the restrictions on property rights are **prohibitions on alienation**.

These restrictions consisted in the fact that the owner was deprived of the right to alienate his thing. Such prohibitions were established in different ways: by law, court decision, will and contract.

According to the law, alienation of the dowry (**dos**), premarital gift (**donatio**) was prohibited.

The right of alienation could be prohibited by a court decision in the interests of the plaintiff, for example, a ban on the defendant's real estate.

A special type of restriction of ownership is joint ownership, which arises on the basis of a contract or will. Given that the thing as a whole and in all its parts belongs to all owners together, then this follows an irremediable rule: you can dispose of, own and use the thing with the consent of all owners, while everyone uses the same voice, regardless of what part of the right he owns. The disagreement of one terminates the order of the other. In this case, the right of everyone is limited to the right of others. There is a mutual restriction.

But each of the owners at its discretion can dispose of its share of the right of joint ownership. However, the pre-emptive right to acquire one of the owners of their share of rights in joint ownership belongs to other co-owners and only if they refuse, the owner-alienator had the right to sell his share to a third party. Each of the co-owners had the right to demand the division of common property at any time and

other co-owners could not refuse him this, if such a division did not harm the thing itself. Persons to whom the owner transferred the right of possession, exercise it not on their own behalf, but on behalf of the owner who transferred the thing to them on the basis of the contract. For example, the owner transferred the thing into the possession of the precarist, the pledgee. However, not every agreement on the transfer of things for temporary use to another person transfers possession to it. So under the contract of employment, the owner transfers the thing to the tenant only in possession, and not in possession. In this case, we have the actual possession of the thing, but there is no will directed at it as its own. Therefore, such owners, as already mentioned, enjoy protection only through the owner, which made them even more dependent on him.

Right of use (jus utendi). This right is the most important right of the owner. It contains the opportunity to satisfy his personal, household, economic and other needs. Exercising this authority, the owner has the right to extract from the thing its useful qualities. You can use a thing in various forms: borrow a thing, rent it, consume it, etc., without harming other people, or use a thing contrary to the law.

The owner could also cede the right to use the thing to another person, retaining the right of ownership. This can happen, for example, under a loan agreement, when the owner transfers the thing to another person for temporary free use.

The right to dispose of a thing (jus abutendi). This right lies in the fact that the owner could decide the legal fate of the thing in all permitted ways: sell, bequeath, establish an easement in favor of another person, etc. The right to dispose of a thing can be exercised in various forms, but with one condition - it should not contradict the law. The owner can dispose of the thing himself, or he can entrust another person if he himself is deprived of such an opportunity, for example, he can give the thing to a commission.

In its totality, all three elements of the owner's eligibility make up the content of the right of ownership, its essence. All this also convincingly indicates that the right of ownership is the exclusive right of a person to own, use and dispose of a thing in his own interests. Exclusive right because it is indivisible, that is, it belongs only to the owner, who does not share it with anyone.

3. Ways to acquire and terminate ownership

In Roman law, the main division of ways of acquiring property is dividing them into primary and derivative.

The method of acquisition is called primary - *acquisitio originaria*, if the ownership of the acquirer is not based on the right of another person;

the method of acquisition is called a derivative - *acquisitio derivativa* - when the acquirer's ownership is based on the right of the previous owner, so that the acquirer is the successor of the former owner.

In pre-Justinian law, it was important to distinguish between natural and civil ways of acquiring property - acquisitiones naturales or juris gentium and acquisitionis civiles.

The acquisitiones civiles were **mancipatio, in jure cessio, adjudatio and usucapio**, they were available only to Roman citizens and were not applied to **praedia provincialia**.

The acquisitiones naturales counted among the traditio and occupatio. They were available and peregrines and applied to praedia provincialia. Justinian abolished this distinction.

The main initial ways of acquiring ownership:

1 The right to dispose of the thing (occupatio). According to Roman law, a thing that is not withdrawn from circulation, but which has no owner, comes into the property of the one who first captures it (**primo occupanti**) in order to appropriate it. It could be both moving and stationary things. This method of acquiring property rights arose, obviously, when the lands, forests, etc. were not yet developed. The owner was the one who first began to cultivate them. In the same way acquired the right to collect berries, killed wild animals, caught fish, etc. Therefore, objects of property rights in this way could be things that before their seizure were not someone's property. Legally, in a similar position was the enemy's property in the war, regardless of whether it belonged to the state or to the population of the conquered territory, as well as things abandoned by the owner.

From the things abandoned it is necessary to distinguish the things lost when only the actual possession is lost, and not the right of ownership, and whoever found the thing did not become the owner. He must find its owner and return the thing to him. If the person who found the thing appropriated it to himself, then, according to Roman law, this was equated with theft. If the owner makes a demand for the return of the thing, the one who found the thing has the right to demand the return of only the costs of its protection. However, he had no right to demand remuneration for the return of the found thing.

A special legal status was determined for the treasure, which in the legal sense was considered any value hidden in the ground so long ago that its owner could not be known. In ancient Roman law, a treasure was considered as a component of the thing in which it is hidden (usually land), and therefore belonged to its owner. However, in order to encourage the search for treasures by order of Emperor Hadrian, it was found that half of the treasure belonged to the owner of the land, and the other half to the one who found it.

2. Ancient possession (usucapio). The institution of acquiring antiquity was introduced in the interests of the fullest possible security of property. Its essence lies in the fact that one who owns a thing as his own for a certain period of time, with cash known conditions, acquires ownership of it. Such possession, which can pass into ownership, is called **possessio ad usucapionem** and is opposed by **possessio ad interdicta**. The recognition of this beginning **eliminates a number** of doubts and disputes, and in this sense, acquired antiquity is established in the interests of the owner. Already ancient Roman law has developed an institution of **acquiring**

antiquity, the so-called. **usucapio**. Who owned **iusto titulo** and bona fide for one year moving thing and two years immovable, he, as a general rule, became the owner of it; an important inconvenience was that **usucapio** as a civil method of acquiring property was not applied to peregrines and did not apply to **agri provinciales**. Due to the limited scope of the **ancient usucapio**, a later time produced an additional institute, the so-called., **Longi temporis praescriptio**, which was applied to provincial sites and was accessible by peregrines. It was the praetor who decreed that whoever **justo titulo** and bona fide owned a plot of 10 years inter praesentes and 20 years inter absentes, could oppose the vindication of the owner **longi temporis praescriptio or exceptio**, in other words, the owner did not acquire the right of ownership that was retained by the former owner, but only vindication of the owner was extinguished by antiquity. In this state of things remained, however, the inconvenience that if the prescribing agent, after the expiration of the statute of **limitations**, why-lost possession of the thing and the thing came back into the possession of the owner, the prescribing agent could not demand its return from him. Later, however, this was allowed, that is, the prescribing agent and in case of loss of possession could demand the return of the thing not only from third parties, but also from the former owner. This eliminated the most important difference between **usucapio and longi temporis psaecriptio**, but some other differences remained: for example, **longi temporis praescriptio never delivered Quirian property rights**. So, in later law, two institutions of **acquisition antiquity existed in parallel - usucapio and longi temporis praescriptio**; the idea underlying them was the same for both, but there were some differences in the assumptions and legal consequences. Justinian merged both of these institutions in 531, he associated with **lite assumptions longi temporis praescriptio** stronger legal consequences of usucapio, that is, a complete direct transfer of ownership. At the same time, he abolished the two-year usucapio of the Italian sections and determined that for all immovable things there is a 10-year old term inter praesentes and a 20-year **term inter absentes**, for movements there is an old term of 3 years. The whole institute is called **usucapio ordinaria** by the newest lawyers. Along with **usucapio ordinaria**, Justinian created another additional institute **usucapio extraordinaria**. It was he who held that whoever before him, at the end of a 30-year statute of limitations, could oppose the vindication of the proprietor of the **exceptio triginta or quádraginta annorum, or praescriptio longissimi temporis**, acquires, moreover, in case of loss of **possession actio in rem**, if only he in due time acquired the thing bona fide. In other words, Justinian, with assumptions of general limitation, combined, under **the condition of bona fides**, the owner, the **consequences of acquisition limitation**, that is, the transfer of ownership. An important difference between ordinary and extraordinary accruing antiquity is that at the last the owner is not obliged to indicate the **justus titulus** of possession, and since bona fides is assumed until the opposite is proved, the owner is solely obliged to prove that he owned the thing for at least 30 or 40 years.

According to the definition of Roman sources, ancient possession determines the acquisition of property rights by possession, which continued for a time

determined by law. The position on antiquity is already found in the Laws of the XII tables, according to which immovable things could be acquired after a two-year, and in some other cases - a one-year statute of limitations. Praetors extended the effect of this provision to peregrines. By law. Justinian, the terms of the acquired limitation were longer: three years for movable property and for real estate - a decade ago with its increase to twenty years, if there was no owner, his property is transferred to the property of another person according to the antiquity of ownership.

The conditions for acquiring ownership according to the antiquity of ownership were ultimately determined as follows:

a) possession should be based on a legal basis: purchase and sale, donation, dowry, etc.;

b) the good faith of the owner who purchased the thing, not knowing that it was stolen, and the seller impersonated the owner. Good faith was required only at the time of acquisition;

c) possession must be continuous within the prescribed time. By ancient ownership, ownership is acquired in full.

However, things stolen, seized by force, obtained by deception, disputed boundaries, etc. could not be acquired by antiquity. Justinian's conclusion also introduced an **extraordinary (extraordinary)** antiquity lasting thirty, and sometimes forty years.

3. Recycling things (specification). This term refers to the creation of a new thing from someone else's material for yourself, for example, making wine from someone else's grapes, a vase from someone else's metal, etc. The specification is considered feasible if the material takes a new form, a new thing is obtained. Does a new property arise in such a case and who will be the owner of such a thing? This issue was solved by Roman lawyers in different ways: representatives of the Sabinian school recognized the owner of the thing as whose material, and representatives of the prokulyanets school considered the owner of the thing the one who made it, but the specifier was obliged to pay the owner of the material its value.

In Justinian's legislation, this issue was resolved as follows: if the specifier did not act on malice and it is impossible to return the recycled material to its previous state, then the thing becomes the property of the specifier, who was obliged to reward the owner of the material. For this, the owner of the material was given the right to claim for enrichment at someone else's expense.

4. Acquisition of fruits. Fruits from the moment they are separated from the thing that produces them become independent things. their separation does not reduce the value of the fruiting thing. There is a new property, for example, offspring from animals, fruits in the garden. Ownership of such things belongs to the one who at the time of separation was the owner of the fruit-bearing thing.

Some exceptions are allowed from this rule; in some cases, the ownership of the fruit is acquired not by the owner of the main thing, but by other persons, namely:

a) emphyteuta - acquires fruits from the moment of their separation, separatio;

b) usufructuary - acquires fruits from the time of capture, perceptio them;

c) as for the tenant, he acquires fruits through perceptio, but only with the consent of the owner, in other words, if the owner forbids him to appropriate the fruits, the tenant does not acquire them in property;

d) according to the prevailing opinion and the bona fide owner, bonae fidei possessor, acquires ownership of the fruits from the moment they are separated, and however, if the owner of the main thing requires its issuance, the bona fide owner is also obliged to issue unpaired fruits (fructus exstantes), but he is not responsible for the consumed fruits - fructus consumptos suos facit).

5. Increment (accessio) - a combination of things that belong to different persons, and one of the things after the combination becomes the belonging of another thing, the property of the owner of the main thing. The increase can be natural or artificial, that is, the result of human actions.

Natural growth includes:

a) alluvial, gradual deposits of earth from the upper section to the lower one, from which one section gradually increases due to another;

b) surf - the flow of the river reflects sections of land from one bank and relates to another, in which case one section increases due to another;

c) abandoned riverbed, when the water changes its flow, becomes the property of the owners of coastal areas, etc.

Artificial growth include: *a) the construction of permanent buildings, planting trees, crops. The difference between the building, crops, plantations of trees is that the owner does not lose ownership of building materials, receives a faithful reward and compensation for damage; the plant, which took root in someone else's land, forever left the sphere of ownership of the previous owner; b) the fusion of things is such a combination of them, when it is impossible to determine which of the things absorbed the other, for example, an alloy of two metal objects. This merging of things leads to the establishment of the right of joint ownership of things that have been merged.*

Derivative ways of acquiring ownership. The number of such methods was quite large. With the passing of time, some of them completely left the scene, new ones appeared on the volume, still others, remaining in general, changed in their specific content. Some of them remained nothing more than contemporaries of the Roman state.

The main legal form of derivative acquisition is a contract, in particular a contract of sale, loans, mines, gifts, collateral. In all these cases, the transfer of ownership from one person to another occurs according to their will, the ownership of the acquirer is based on the ownership of the alienator.

However, to transfer ownership from the seller to the buyer one conclusion of the contract is not enough. This required the actual transfer of the thing itself in the form of mancipatio, **assignment of law (in jure cessio)** or **tradition (traditio)**. The specifically Roman way of acquiring property rights throughout the existence of the Roman state was primarily mancipation, which disappeared only under Justinian. Only the Romans resorted to it in cases of acquiring **res Mancipi**.

The complexity of this procedure forced the Romans to look for other ways to acquire property rights. The new method found was called **Concessions of Law**. As a facilitated substitute for manipulation, the assignment of law should also be considered as a specifically Roman way of acquiring property rights. The assignment of law was carried out in the form of a pretended lawsuit on the ownership of the thing. The buyer demanded the thing that he acquired, claiming that it belongs to him. The seller recognized the buyer's demand, and the praetor before whom this procedure took place recognized the ownership of the buyer.

However, both the first and second considered ways of acquiring property rights were rather cumbersome and significantly hampered civil turnover. There was a need for a new simple and accessible form of transfer of ownership from one person to another. This form existed in the law of peoples (**jus gentium**) and was called **tradition**. In Rome, the tradition was originally applied to non-danceable things, the purchasers of which did not have Roman citizenship. Subsequently, its effect spread to manipulated things, the acquirers of which were Roman citizens. The effect of this method is, however, to combine the two conditions.

First, we needed the very transfer of things. To transfer ownership of only one zgoThe parties are not enough. The transfer was considered both the actual delivery of the thing to the acquirer and the corresponding symbolic action (for example, the presentation of the keys to the sold house).

Secondly, it is necessary that the transfer of the thing to the acquirer be based on a sufficiently fair basis. Such a basis could be a contract of sale, donation, exchange or other act carried out for the purpose of alienation of property or thing. In the case of the transfer of a thing on an immoral basis, the alienator acquired the right to return it only if he himself was not accused of immoral acts. And only when both conditions were combined, and therefore, the actual transfer was based on a legally justified basis, the transfer of ownership from the alienator to the acquirer was carried out.

In Rome, there are still other primary ways of acquiring property rights, namely: a) *by a court decision, when it considered claims for the division of inheritance, common property or disputed boundary, etc.;* b) *by law - in the form of punishment for unauthorized arbitrariness, for non-payment of duties, etc.*

The most common **way to terminate the ownership of the Romans considered** the destruction of things, regardless of whether it was due to its death, consumption, or for some other reason. But destruction is not the only case when the right of ownership was terminated in one person and did not arise in another. The same is observed in the case of dereliction - the owner's refusal of the right to the thing that belongs to him. But in this case, the thing is not destroyed and it could be taken over by another person who, under certain conditions, had ownership.

The Romans believed that alienation is a way that terminates the ownership of a thing, and in a variety of forms, in particular in such as buying and selling, donating, mina, providing a dowry, etc. Since in the case of alienation, simultaneously with the termination of ownership of the alienator, the same right

arises from the acquirer. The Romans stated here not just the termination, but the transfer of property rights.

Known, another way to terminate the right of ownership is the withdrawal of things from circulation, for example, the inclusion of private land in the state. The peculiarity of this method was that here the property did not pass from one person to another, as in the case of alienation. The removal of things from circulation was the reason for the termination of the rights of the former owner.

4. Protection of property rights

The vindication claim was used to return to the owner a thing that was in the illegal possession of a third party. It could be used both against an unscrupulous (thief, violence \rightarrow nick) owner, and a bona fide (bought someone else's, not suspecting that he was dealing with a non-owner). At the same time, the burden of proof lies with the one who asserts, not the one who objects. In the event that the plaintiff received his ownership by a derivative method, it was necessary to prove the legal ownership of his rightholder. With the *actio* \rightarrow volition of the vindication claim, the defendant is obliged to return the thing with a profit from it. Moreover, a bona fide owner returns only the profit received after the lawsuit, bad faith \rightarrow it - all the profit from the moment of unlawful deprivation of his own \rightarrow the possibility of exercising his rights to the thing and even covers the owner's losses \rightarrow his actions (not the crop obtained as a result of theft of a plow or sowing grain). The thing itself returned, regardless of the good faith of the owner. But a bona fide owner could file a counterclaim to cover the costs - necessary (those without which the thing cannot exist, for example, for repairing damaged *boron* \rightarrow that ship) and useful (those that improve the thing, but without which it can exist, for example, for an additional sail).

The non-fatal claim was used to eliminate obstacles that prevent the normal exercise of their property rights (someone *nama-gai* illegally use someone else's thing, for example, driving cattle to a watering hole through a neighbor's plot). Non-fatal claim is absolute in nature, that is, directed against any violation of \rightarrow *ka* property rights (through this site try to drive cattle *kil* \rightarrow *ka* neighbors, the claim applies to all).

A prohibitor claim was applied if another person, by his behavior, prevented the owner from normally exercising his property right without encroaching on the thing itself (for example, a wall is being built that blocks the access of sunlight to the window of a neighboring house).

The Publician claim was used by the praetor in defense of the bonitar owner against the Quirite, such as vindication, to protect any bona fide possession.

Lecture №. 9 Rights to other people's things.

Plan

1. Concepts and types of rights to other people's things
2. Concepts and types of easements, their occurrence, termination and protection
3. Uzufukt. Installation, protection and termination of usufruct
4. Emphyteusis, superficies, liens

1. Concepts and types of rights to other people's things

Even in the ancient era, civil law in the field of property relations is not enough was only one property and was already known some rights to other people's things. The essence of the rights to other people's things was that the subject of this right was able to use someone else's thing, and in some cases even dispose of it. But since these were rights to other people's things that belonged to other persons, then, because of \neg ability, a person who had the right to another's thing could not have such broad powers as the owner. The subject of this right was able to \neg be used by someone else's thing only on a certain limited scale.

Roman civil law distinguished three types of rights to other people's things. The oldest of them were the so-called **easement rights, or easements (lat. servire -service)**. Easements were divided into material and personal.

Subsequently, praetor practice created new forms of the right to other people's things - **emphyteusis** (hereditary long-term right to use another's land) and **superficies** (long-term lease of land for development). The rights to other people's things also include a **collateral law**, which at that time was widely developed. These types of rights to other people's things in volume and content differed significantly, although they had much in common, which will be discussed further. Theoretical developments of rights to other people's things outlived their creators and went beyond Rome. They were perceived on the \neg by foot legal systems and were further developed.

2. The concept of easements and their types

Servitude is the right to someone else's bodily thing, according to which a thing, in addition to its own \neg nick, also serves another person in one or more respects. If the subject of the easement only to a certain extent uses someone else's thing, then such an easement is called **positive**. When the subject of easement to some extent removed from the use of the thing of others and even the owner, then this is a **negative easement**.

For example, if the owner granted the neighbor an easement right to graze a herd of up to 20 heads on his pasture, and this pasture could not feed more than 20 heads, then the preemptive right to use the pasture belongs to the subject of easement law.

The most ancient easement was the so-called **predial easements (lat. premium - estate, land)**. Since at that time land in Rome was community property,

land plots were provided to individual families for use. However, the land plots provided for use were not equivalent, in particular, there was water on one – them, it was not on the others. It is clear that the owner of the site with water had to allow neighbors to use it. With the emergence of private ownership of the land to satisfy the need of one Site for rahu – nok other became difficult, and sometimes impossible. Of course, it was possible to agree with a neighbor on the use of water, but such an agreement was private, personal – of that nature. If the owner of the site sold it, then the successor could refuse the neighbor to use water, and therefore it was necessary to find more stable means of a material nature. And such means were found - the Romans vsta – renewed the right of the owner of the land, deprived of water, to use it on neighboring land, regardless of the will of the owner. In addition, the owner of the dealers – ki, which provided water to another site, was obliged to tolerate the actions of the subject of easement law, and in some cases even to assist him.

The site in whose interests the easement was established was called the **dominant site**; the land plot, the use of which was the content of the easement, was **called the serving plot**. The owner of the site, which, as a general rule, cannot make claims to increase the income of the dominant site or, conversely, claims related to its unprofitability. However, both the right and the custom demanded that the owner of the dominant site become especially caring – laziness to the serving site.

So, from the very beginning, easements as a right to someone else's thing arose from land use relations. Subsequently, they spread to all other things, and therefore they were – divided into **material and personal easements**. This difference was established by the subject of the law: the personal easement belonged to a certain person personally; re – black easement also belonged to the person, but as the owner of a land plot or other thing.

The real easement can be demonstrated by this example. In connection with the inheritance of the land it must be divided between the two heirs. One of them has access to its site, as it is located near the road. The other has no such access. It is quite obvious that he would not have been able to bark – become a site if he did not have the right of passage or passage through the first site and this right is a material easement. Easement because it allows you to use someone else's land within the limits necessary for vlas – nick of the second site. Material because (no matter how the owners of both plots change) the second owner of the land plot in all cases will exist pev – not the right in relation to the first.

As already noted, easements in Rome extended not only to the earth, but to all other things. Depending on this, **rural and urban easements** were distinguished.

Of the village easements, four are known: three road easements - the right to – the passage through someone else's site; the right to pass and run cattle; the right of passage, run and travel in general (each subsequent easement included the previous one) and one easement of water - the right to conduct water from a foreign site. Evidence of their earliest appearance is the fact that these four easements refer – this to res mancipi - obviously, they arose in the era when the division of things into res taperi and res dog tapsiri had a certain vital value.

As time passes, other rural easements appear. The most important of them: the right to run cattle for watering, the right to graze cattle on someone else's pasture, easements were also developed that provided the right to take sand, clay, etc., on someone else's site.

Following these four easements, **urban easements** arose. It is believed that the development of cities, the construction of multi-storey buildings, closely adjacent to each other, called to life an extraordinary variety of such easements. The most common types of law is the right to rely on the structure or its parts – well, on the adjacent building of the neighbor, the right to insert a beam into the wall of the neighbor's house, the right to divert rainwater zidvir neighbor, the right to demand that the neighbor building does not obscure the nearby house light and landscape. However, the content of these easements often depended on various municipal building orders.

Subsequently, following the ancient material easements, **personal easements** arise. Easements for the right to use someone else's thing or property in the interests of a particular individual or legal entity were called **personal**. They were installed on movable and immovable property for life for individuals and for the duration of the existence of a legal entity. A **personal easement** can be demonstrated by a specific example. If the property was bequeathed to the son with the obligation to provide him with a dwelling house or a separate room in it for life use to the wife of the testator, she acquired a personal servitut in relation to the object that she moved to her son. Compared to real ones, personal easements had the feature that they were attached to a certain subject and were preserved indefinitely, and not longer than the life of the commissioner - **the usufructary**. They could not alienate themselves, pass by inheritance to the heirs of the usufructarium, which was supposed to use it for its economic purpose.

From the category of personal easements, four species are known to Roman law. The most important of them is **usufructus (usufructus)**., that is, the right to lifelong use of the thing and its fruits, and the lifelong owner - the usufructary - can use it not only personally, but also by renting, selling fruits, etc. The second, more limited form, the so-called **usus - is the right only to personal use of the thing, without the right to fruits**. The third kind - **habitatio** - the right to live in someone else's house and the fourth - the right of personal benefit – the work of someone else's slave or animal. The legal specificity of these personal easements was that when, in ordinary cases, as a result of prolonged non-use, the easement ceased, in this case this circumstance was not taken into account at all.

Norms regarding personal easements were developed by Roman lawyers mainly in connection with the interpretation of cherished orders and bore traces of the so-called freedom of testament.

Together with the division of easements into two groups - real and personal and the differentiation of their individual varieties in the middle of each of these groups, the Romans also established for easements in general some rules of general order.

Firstly, there could not be an easement on one's own thing, as a result of which, when changing the dominant section and the serving section, in one hand, at least for a short time, the easement is extinguished.

Secondly, given the very nature of easement as a limited right to someone else's thing, he, in turn, could not be burdened with his own easement. In other words, there could not be an easement to an easement, for example, the lifetime use of the right. Thirdly, there could not be an easement that obliged the owner to any positive actions: the essence of the easement is only the obligation to endure anything (in particular, travel) or the obligation not to do anything {for example, not to obscure the construction of the structure of light and landscape). These were the general rules to which easements obeyed in their action. However, there was a certain order of their establishment, termination and protection.

3. Installation, termination and protection of easements

Installation of easements. Under civil law, easements could be renewed both between living persons and in case of death. The first and most effective way to establish an easement between living persons was the same manipulation, and even more often - **a concession to the right - injure cessio**. In case of death, the easement was established in the will. The right to another's thing could be established - but by a court decision during the distribution of the land allotment between the two brothers, and during the early republic, the easement could be acquired according to the antiquity of possession (at least two years). Easement could also be established by contract and by law.

Civil law extended the same restrictions to easements as to Quirite property. They could not be established in favor of peregrine, in relation to non-danceable things, for example, provincial land, through a simple transmission (tradition). Since servitude is a disembodied thing, subsequently civil law did not allow its acquisition by antiquity of possession. The rules outlined were subjected to significant changes by the praetor, who also gave protection to servitude, established in favor of peregrines or in the form of tradition. The last form as the main is fixed in the Code of Justa-nian. Together with her, another method was laid out in the Code, which served the same purpose: *judicium* - the establishment of an easement by the court, which recognized that without this normal use of the land would be impossible.

Justinian legislation, creating for easements as if possession, extended to them an acquired antiquity: 10 years between those present and 20 years between those absent.

Cessation of easements. The simplest way to end the easement was to abandon it, the formal expression of which was, as Guy reports, **injure cessio - a concession to the right**. **Personal easements** ceased with the death of the usufructarian, the loss of his legal capacity, with the death of a thing as a result of a fire, with the destruction of a thing. **Clothing easements** ceased with the death of the subject of easement, the accession of the site that serves, to the dominant (on the basis of a contract of sale), etc. Clothing easements could be terminated by

prolonged non-use of the easement. In civil law, non-use was recognized as prolonged if it lasted a year in relation to movable and two years in relation to immovable property, starting from classical law, these terms were increased in accordance with three and ten years.

It was somewhat more complicated with urban easements. **The urban easement** in a number of respects is specific: it is more burdened than rural, is in direct connection with the state of buildings that require constant attention (in particular, repair), etc. The city easement was considered extinguished in the case when the owner of the serving site used it for two years so freely and in such a way that there was no need for real use of the easement. Such circumstances arose in the case when the servituary was passive about this - in fact, it self-eliminated.

The termination of the easement could also be served by the unlawful action of the easement, when, in violation of the contract, he allowed himself arbitrariness, which went against the interests of the serving site. The easement ceased not only as a result of the renunciation of the subject of law, but also of non-implementation (non-use) during and 20 years between the absent.

Protection of easement rights. The emergence of easements has necessitated new procedural tools, in particular in the following two areas.

To protect property from easement claims: someone claims to have the right to pass through someone else's land, while the owner of that land denies this right. In ancient civil law, the owner had a claim to deny such a claim to an easement, which was later called a negatorial claim. Along with the negator claim, some varieties of it are known in classical law - **the prohibition claim**. The purpose of the negator and prohibitionist claims was to secure freedom of property from the claiming easement and to protect it from further encroachments.

To protect the easement against both the owner and other persons, the old civil law created the so-called confessional claim, which was used when easements created under civil law were violated. A confessional claim could combine claims that would have required vindication, negation, or prohibition claims to enforce the property right. It served both to return the object of the easement from someone else's illegal possession (for example, to return a residential building under the right of life use) and to remove any obstacles (even if they came from the owner of the land plot), as well as to deny claims to someone else's easement (when the easement right of one person clashed with the personal rights to the same thing of another - the lessee).

In the process of *leges in rem*, the lawsuit was initiated by a statement of the person entitled to the easement. In the *formulae* process, a confessory claim was made with the help of a praetorian formula that expressed the claim of the plaintiff. If the owner objected to the claim, he was treated as a defendant. The plaintiff had to prove that he owned the easement and indicate the fact of its violation. The defendant, if the court found the plaintiff's claim to be substantiated, was ordered to recognize the easement, cease violations and compensate for damages, as well as to return the profit. The court's verdict could force the defendant to give a guarantee to cease violations.

While the claim in question was directly based on the rules of civil law and was **direct**, the praetor introduced a claim of the same content to protect his easements, which was called not direct, but **beneficial**. This claim had the same meaning for praetorian easements as the publician claim for praetorian property. In addition, each of the servitudes constructed by the praetor was protected by his interdict, similar to those aimed at protecting possession.

These differences between different easements based on their legal basis are eliminated only in the Justinian Code. There, a claim similar to a confiscatory claim acquires a general meaning and applies to the protection of easements of any kind.

4. Effeteusis and superficies and security interest

As already mentioned, in the second half of the Republic and during the period of classical Roman law, praetorian practice developed new forms of rights to other people's things that were unknown to the old civil law, namely **emphyteusis and superficies**. Their emergence was due to the emergence of large private land holdings, the owners of which were unable to cultivate them, which in turn led to the development of long-term leases, since ordinary leases did not provide adequate protection of the interests of tenants from encroachments by third parties and even the owner.

As early as the **third** century AD, landowners began to lease their land for cultivation under hereditary lease. The inherited lease was called **emphyteusis**. At the same time, the lease of rural land for construction, called **superficies**, was developing. Both emphyteusis and superficies are similar to servitudes in that they are rights to use someone else's property. The peculiar feature that distinguishes them from easements is their broad content and duration.

Emphyteusis. In classical law, the term **emphyteusis** (Greek: cultivation, planting) referred to a long-term (100 years or more) hereditary lease of land, which was widely practiced in the Roman state. Such a long hereditary lease, well protected from arbitrariness and for a relatively small land payment, attracted many landless and small-landed peasants. The beginning of emphyteusis land ownership was laid in large imperial estates that needed to be cultivated. Following the example of the emperors, the church, cities, and then private individuals - large landowners - began to lease their untilled land plots.

The difference between emphyteusis and ordinary lease, which was practiced since ancient times, was that it gave rise to the right to someone else's property, as it was enough to pay all taxes and fulfil duties in a timely manner, and the lessee and his heirs retained the land. The agreement on the establishment of emphyteusis use contained the following obligation of the owner: the lessee would not be deprived of the holding as long as he paid the fee in accordance with the agreement.

The second difference from the usual lease was that the lessee was granted the right to pledge and even alienate the emphyteusis - in full or temporarily - so long as the interests of the owner were not affected. The right to alienate the emphyteusis was limited to the obligation of the subject of emphyteusis to warn the landowner of

the possible alienation of the emphyteusis, but the owner was recognised as having a right of pre-emption, which he could exercise within two months. In case of alienation of the emphyteusis, the owner was entitled to receive two per cent of the purchase price.

In addition, emphyteutics were not prohibited from changing the original purpose of the land (without deteriorating it), transferring it to their heirs, assigning their right to another person, establishing servitudes, but they were not allowed to leave the land forever. The fruits of the land after their separation became the property of the emphyteut

The **emphyteusis arose** through a contract with the owner of the legate, which was established by the owner-heir, on the basis of a court decision during the division of joint property (emphyteusis could not be divided into parts, and therefore was awarded to one person). The rights of the emphyteus were terminated if the emphyteus acquired ownership of the leased land, if the land deteriorated, if the owner was a church, and if the owner failed to pay taxes for two years, and for three years in all other cases. The owner retained the right of vindication against the tenant in case of late payment. If the tenant paid taxes regularly and fulfilled his obligations to the owner in good faith, the land could not be taken away from him or his successors. In the event of a violation of his rights, given such a long-lasting right of the tenant, the praetor granted him both possessory interdict and a claim in rem - a claim similar to a vindication in rem against everyone, even against the owner. As a result, such a right acquired the character of a special right to another person's property.

Superficies literally means **what is on the surface of the earth**. Whereas emphyteusis transferred land for cultivation for agricultural production, superficies leased land for construction. Already in the early years of the republic, the state and individual urban communities often leased urban land for construction. Gradually, this method of land transfer was also used by private individuals. That is why superficies are often defined as a long-term, alienable, inherited right to use someone else's land for development.

Thus, superficies as a real right arise only as a result of the construction of a residential building or other structure on someone else's land. Legally, the relationship between the land and the building erected on it was the same as between the main and the accessory. Given that the appurtenant follows the main thing, whoever built the house could be recognised as its owner only by the person who owned the land.

Thus, the land transfer agreement for construction was initially treated as an ordinary lease agreement, as a result of which the lessee-superficies had only a binding claim against the owner, and not a right in rem. But later, the Praetor quite rightly distinguished him from ordinary short-term tenants by granting the superficies certain rights and special remedies. In addition to alienation, perpetuity and inheritance, these rights were protected from all third parties and from the owner himself by means of claims and interdictions similar in content to vindication, negator and prohibition claims, as well as proprietary interdictions. Both superficies

and emphyteusis, which were basically constructed by the praetor, were later included in the Justinian Code in a form purified from traces of legal dualism.

What prevents emphyteusis and superficies from being classified as servitudes? After all, here we are dealing with the right to someone else's property. Indeed, superficies and emphyteusis, like servitudes, are of a real nature, being limited to the right to another's property. However, emphyteusis and superficies differed from personal servitudes in that they were alienable and inherited, and from real servitudes in that they differed from real servitudes in the relationship not between the dominant and the servient plots, but between the rights to the same object (in particular, a built house) belonging to different entities - the owner and the superficies or emphyteusis. This circumstance was destined to play a rather prominent role in the history of civil law doctrine. It is believed that emphyteusis played a role in the formation of feudal relations in Western Europe.

The right of pledge. It is believed that the most important of the Praetorian innovations in the field of rights to other people's things is the creation of a pledge. However, a pledge is not a right to use another's thing. Historical forms of pledge in principle did not allow for the right to use its subject matter. The pledgee was only granted the right to dispose of the pledged item in the event of the debtor's default. Thus, the right to another's thing consists not only in the right to use, but also in the right to dispose of another's thing.

Nevertheless, the emergence of a security interest is primarily a desire to guarantee the debtor's performance of an obligation. The issue of a security interest is discussed in more detail in the next section.

Content module № 3. General provisions on obligations in Roman law

Lecture №. 10. Legal provisions about goiter

Plan.

1. The concept and content of an obligation.
2. Types of obligations.
3. Termination of the obligation.
4. Consequences of failure to fulfil an obligation.

1. Concept and content of an obligation

The law of obligations, like property rights, is a type of property law. However, these institutions differ from each other. The main difference between property and obligation rights is that a characteristic feature of property law is the direct connection of a person with a thing, while obligation law never directly subordinates a given thing to a given person, but always establishes a relationship between persons.

Therefore, an obligation usually involves two persons: a creditor and a debtor.

A creditor is a person who has the right to demand the performance of agreed actions or to refrain from performing them.

A debtor (debtor) is a person who is obliged to perform or refrain from performing an action stipulated in an obligation.

The triad of give, do or provide determines the content of the obligation, i.e. to perform or refrain from performing certain actions in favour of the creditor. The debtor's obligation to 'give' means to transfer to the creditor some things into ownership or possession, or to establish any right to his or her thing in the interests of the creditor; this binding action is closely related to the transfer of property rights from one entity to another. The obligation to 'do' imposed on the debtor to do something for the creditor (perform work, an assignment) or, conversely, not to do what he could have done if the obligation did not exist. In other words, an action that has a real physical content must be performed by one person in favour of another. The obligation to 'provide' imposed an obligation on the debtor to suffer something, to endure something (to compensate for losses). In other words, the debtor was obliged to produce a thing and hand it over to the creditor or to compensate, pay, or return what the debtor had unreasonably damaged or received.

Thus, an **obligation** is a legal relationship whereby one party (creditor) has the right to demand that the other party (debtor) give, do or provide something.

In the event of their violation, obligatory rights enjoy independent protection (personal action), which differs from the protection of property rights. An action in personam occurs when a claim is made that a certain person should give, do or provide something. In an action in rem, we claim our property from any person who may have it.

Under Roman civil law (*jus civile*), obligations were strictly personal relationships between the creditor and the debtor; the creditor could not assign his claim to another person.

However, it happened that the creditor wanted to transfer the right of claim to any third party. In such cases, the so-called novation (*novatio*) was applied, i.e. with the general consent of the creditor, the debtor and the third party to whom the creditor wished to assign its claim, this third party entered into an agreement with the debtor, the content of which was similar to the agreement between the debtor and the creditor. The innovation was not convenient, as the debtor did not always agree.

With the development of property circulation, the need for direct transfer of obligations became more necessary. This was required by both the interests of the debtor and the creditor. Roman lawyers found a legal way to transfer obligations through the so-called cession.

According to this method, the creditor entrusted his representative with the case instead of himself at the trial. The latter filed a lawsuit against the debtor on behalf of the creditor at his own expense on the basis of the agreement, such a representative was called a procurator.

Classical jurists believed that the prosecutor did not acquire the right of claim, but only the right of recovery. The procurator was not obliged to return to the creditor what he had received from the debtor, since he received the right to sue (*actio utilis*), similar to the creditor's claim. Thus, a new claim arose, in which no power of attorney was required.

Assignment is an independent transfer of a creditor's claim to another person without the debtor's consent. The person who assigned the right was called the cedent, and the person who acquired the right of action was called the assignee. Later, classical Roman law began to notify the debtor of the assignment, as the debtor who received the notice did not have to pay the debt to the assignor and remained indebted only to the assignee.

All obligations could be subject to an assignment. However, in the case of bilateral obligations, each party could assign only its own claim, the debt remained with it, and bilateral assignment agreements were not allowed.

Some of the obligations that could not be subject to assignment are as follows

- a) personal claims, such as alimony;
- b) claims based on imperial decrees;
- c) disputed claims;
- d) in some cases, assignment was not allowed only in respect of the relevant persons. Thus, for example, a creditor of a person under guardianship could not assign its claim to the guardian; a person who enjoyed great influence, in order not to put the debtor in a defenceless position.

2. Types of liabilities

In Roman law, obligations were classified according to the following criteria: obligations with and without a claim; obligations determined by the possibility of fulfilment; obligations differing in subject matter; obligations characterised by the number of persons, etc.

1. Civil and natural obligations.

Civil obligations are obligations whose fulfilment was enforceable by means of a lawsuit. The protection of such obligations could be based on both civil and praetorian law (obligations civiles or honorariae). Fulfilment of such obligations was enforced by state coercion.

Natural obligations were obligations that were not endowed with legal protection. However, this did not mean that such an obligation had no legal significance. If the debtor fulfilled a natural obligation, he could not demand the return of what he had done: the performance was not considered a gift or the performance of something he did not owe. An in-kind obligation could be secured by a pledge and was accepted as a set-off. An example of an in-kind obligation is an obligation that is liquidated by the statute of limitations.

Natural obligations were predominantly developed in the relations between family members and slaves. In the classical period of Roman law, subjects and slaves acquired various things for their masters, but could not oblige the latter. An exception was established by the so-called noxious actions (actions for damages for torts committed by persons of another's law or slaves without the knowledge of the pater familias).

2. Divisible and indivisible obligations. As a general rule, obligations are divisible, i.e. they may be fulfilled in parts, and if there are several creditors or debtors, they may be divided among them. This general rule is subject to exceptions where it is contrary to the economic purpose of the liability. The division of such an obligation would either completely prevent the achievement of its purpose or lead in practice to consequences that violate the interests of the creditor.

3. Separate or alternative obligations. An alternative or separate obligation is an obligation by virtue of which the debtor is obliged to perform one of several relevant actions at any time.

The features that characterise an alternative obligation are as follows:

- 1) the unity of the obligation;
- 2) only one of several actions constituting the subject matter of the obligation is to be performed;
- 3) the right of choice may belong to the debtor or the creditor, or even to a third party;
- 4) the right of choice belongs to the debtor, unless otherwise provided.

The creditor's delay in the right to choose allows the debtor to offer one of the items for payment. Accidental loss of one of the items does not relieve the debtor of payment to the other, who remained, since both items were indicated in the obligation.

4. Species and generic obligations. A species obligation was called such an obligation, the object of which was defined as an individual thing.

A generic liability is an obligation whose object is a thing defined by generic characteristics.

5. Partial, solidarity and coronal obligations. There were cases when the obligation bound not one creditor and one debtor, but a much larger number of persons. There could be one creditor and several debtors, or vice versa - several creditors and one debtor, or several creditors and several debtors. As a general rule, such obligations were divided into such a number of obligations that equal to the number of subjects. Therefore, each of the debtors was responsible for his part of the debt and each creditor could claim only that part of the debt that fell on his entire fate.

All these obligations followed from one basis and were called partial. Partial were those obligations that must be fulfilled by several debtors and the creditor could only demand the part of the debt that fell on the fate of each of the debtors.

Solidarity obligations also took place when each creditor could demand full satisfaction from each debtor.

By correlative obligations was meant a single obligation under several entities on the part of the creditor or debtor. The coronal obligation arose mainly from a contract or will. The most common form of this agreement among the Romans was the so-called stipulation, in which the creditor requested several debtors in a row, and the latter all answered together, or, for example, the will indicated that one of the heirs was obliged to do something in favor of a third party.

A solidarity obligation, in contrast to a correlation obligation, was a set of obligations equal to the number of participants.

The basis of the solidarity obligation was the law: for example, it could arise when committing any tort when several persons caused harm to someone.

With coronal obligations, suing one of the coronal debtors exempted others from debt and deprived other coronal creditors of the right to sue.

The joint and several obligations in the presence of one debt and gave the creditor the right to apply for recovery as many times as there were debtors, until he received satisfaction in full. Solidarity obligation was liquidated only by the fact of actual payment.

With coronal obligations, neither the creditor nor the debtor had the right to regress. With a joint obligation, the debtor had the right to recourse.

Relations between the creditor and the debtor, on the basis of which the creditor has the right to demand, and the debtor is obliged to do something or refrain from certain actions, were established by means that the right attributed. The means of establishing binding relations between the creditor and the debtor is the source of the obligation. Roman jurists considered contracts, torts, like contracts, like torts to be the source of obligations.

3. Termination of obligation

Obligations are urgent and are generated to fulfill them. From the moment of its occurrence, obligations are designed to terminate them. The main reason for termination of obligations is their fulfillment. Fulfillment of obligations entailed legal consequences, that is, obligations were terminated only if certain conditions existed.

Terms of performance of obligations relate to:

- place and time of fulfillment of obligations;
- the person of the performer and the person accepting the performance;
- content of obligations.

The place of performance of the obligation is determined by the consent of the parties. In the case where the place of fulfillment of obligations was established alternatively, this place was chosen by the debtor. In cases where the default occurred through the fault of the debtor, the choice of place of execution belonged to the plaintiff.

The time of performance of the obligation was determined by the contract. If the deadline was not set in the contract, then the moment of occurrence of the obligation and the deadline for its execution coincided. The creditor could demand the fulfillment of the obligation urgently, except in cases where it took a certain time to fulfill the obligation. Early execution (*representatio*) was not always allowed. Early execution of duties in the payment of alimony was prohibited. In the case when early execution was not prohibited by law, it was required that the interests of the creditor were not violated.

Termination required that it be performed and accepted by a certain person. Fulfillment of the obligation was carried out either by the debtor or by his representative. Personal performance was required when the contract was personal in nature. If the obligation was not of a personal nature, then it was allowed to be performed by a third party.

Content of the obligation. The performance should correspond to the content of the obligation. The debtor could not at its discretion replace the subject of the obligation. Replacement of the subject of the obligation was possible only with the consent of the creditor.

In addition to fulfilling the obligation, the binding relationship could also be terminated due to a change in the content or conditions of the obligation (*novatio*); offset of the counter needs of the creditor and the debtor (*compensatio*); release of the debtor from the creditor's debt (*remissio debiti*); the combination in one person of the creditor and the debtor (*confusio*); impossibility of execution; the death of one of the parties; expiration of the question time.

Novatio - a contract that repays a previous obligation through the establishment of a new one. Such a replacement occurs on the basis of an oral contract (*stipulatio*).

Offset (*compensatio*) could take place in cases of counterclaim, when the creditor and the debtor under one obligation are respectively the debtor and the creditor under the other.

The debt exemption was applied when the creditor voluntarily renounced his right to demand its payment.

Obligations were terminated in case of physical or legal impossibility of execution. Physical impossibility could occur when the object of obligation (for example, a thing) was physically destroyed without the fault of the debtor. The legal impossibility came when the subject of the obligation was excluded from civil circulation.

In the event of the death of the debtor, the obligation passed to the heirs. Exception: debts did not pass to the heirs for torts.

4. Consequences of default

In case of failure or improper performance of the obligation, the debtor was liable to the creditor. In different eras of the Roman state, the forms of responsibility were not the same. According to the laws of the XII tables, the debtor's responsibility was personal - there was personal execution: prison, sale into slavery, even deprivation of life.

Subsequently, personal execution according to the law of Petelia (lex Poetelia) was replaced by property (326 BC). Later, in law, the debtor's liability was limited to compensation to the creditor for losses incurred, and the debtor's liability was based on the principle of guilt.

The concept and types of guilt. Guilt (*culpa*) in the broadest sense is an unlawful state of will, when a person with intent and consciously performs an unlawful action, wanting to cause an effect (the so-called *dolus*, *dolus malus* - a refraction).

In the narrow sense, *culpa* is the lack of due care by which harm to others could be avoided (*culpa*). This fault lies in negligence, which can manifest itself in action or inaction.

Degrees of guilt. If there was any special legal relationship between the parties that obliged to a certain caution, then in the absence of such caution, the person was responsible for the fault (*culpa*). But not all cases required the same care, so determined different feet of guilt.

To determine the degree of guilt are obtained from:

a) the mode of action of an ordinary person. A person who does not follow the caution inherent in all people commits gross guilt (*culpa lata*), which by definition of sources is a misunderstanding of what everyone understands (*nimia negligentia*).

b) the mode of action of a good host. A person who does not follow the care inherent in a good master commits an easy fault - (*culpa levis*).

c) the mode of action of a certain person of his own affairs. A person who is not careful about his own affairs, as well as those entrusted to his care of other people's interests, commits the so-called *culpa in concreto* - a specific fault equated to malice (*dolus*)

If two persons caused each other damage as a result of *dolus* or *culpa*, then there was an offset of guilt, and their claims to each other were repaid.

Guard (custodia). The fault (culpa) lies in the lack of due care or caution, and not all relationships required their identical presence, so different types of guilt and different liability were established both in contractual and non-contractual relations.

Usually, each obliged person was responsible only for his fault (diligentia). But in some cases there is responsibility for someone else's fault; happened most often when the duty of care and care includes the duty of protecting things, that is custodia.

The basis for the occurrence of such liability may be: an independent contract, an additional agreement to the contract, finally, the consequences of negligence (diligentia) that follow directly from the contract. **Sources of Roman law indicate the following custodia cases:**

- 1) protection of things for an appropriate reward;
- 2) the responsibility of the owner of the hotel or inn, as well as the owner of the ship for the safety and integrity of the things of the guests or owners of the cargo;
- 3) conducting other people's affairs without a commission (negotiorum gestio), etc.

Case (casus). The case should be understood as events not caused by someone's intention or negligence. A special type of case is an irresistible force, an unusual case (vis maior, damnum fatale), that is, an event that the debtor could not foresee or prevent: for example, an earthquake, fire, flood, etc.

Compensation for damage. The debtor for failure to perform or for improper performance of the obligation had to pay damages (damnum praestare). Harm was understood as any change in the property condition that was disadvantageous for the injured person.

The obligation of compensation arose in violation of the agreement, as well as in the commission of unlawful actions - tort (damnum iniuria datum).

Compensation for damage caused by someone to the property of a certain person in the event of any positive or negative fact for which the person who performed was responsible for the interest of the creditor (id quod interest).

The following conditions are necessary for the right to indemnification:

- 1) a real (and not an attempt) violation of rights, and violations of the right should be illegal;
- 2) the presence of damage (damage);
- 3) a causal relationship with a fact for which another person is responsible, that is, between unlawful actions and harm;
- 4) the presence of guilt.

Lecture № 11. Treaties in Roman law: general provisions

Plan

1. Concepts and types of contracts in ancient Rome.
2. Content of the contract.
3. terms of validity of contracts
4. Conclusion of contracts.

1. Concepts and types of contracts in ancient Rome.

Treaties were the main legal form by which the huge economic turnover of Ancient Rome was carried out. Roman jurisprudence created an extensive system of treaties.

A contract (contractus) is an agreement (agreed expression of will) of two or more parties aimed at achieving a certain legal result, namely: the emergence, change or termination of rights and obligations.

In any contract, the will of, as a rule, two parties is expressed. There were also multilateral treaties, but in Roman law they were relatively rare. So, the contract is a strong-willed act and by legal nature a bilateral transaction.

Early on, Roman contract law was marked by onerous formalism, which diminished as society developed. However, even in developed Roman law, not every agreement was recognized as a treaty. To recognize the agreement, the agreement required compliance with the established formalities, without which legal consequences did not occur.

Three main types of contractual obligations were known to ancient republican Roman law:

nexum (nexum) - an obligation that mediates the personal subordination of the insolvent debtor to the creditor regarding his obligation to work out the debt, which was carried out in the form of a complex rite using ingots and weights;

stipulatio - verbal agreement in the form of a question and answer;

literal contract (litteris) - a written contract. A common, unifying feature of these types of contracts was their formalized nature, which complicated the process of their conclusion.

With the development of economic relations, the old forms of contracts hampered the development of economic life. Gradually dies the oldest form of contract - *nexum*. Stipulation and written contracts continue to be applied, but in relation to them there are significant changes towards weakening the rigid canons of their conclusion. At the same time, new types of contracts appear, devoid of burdensome formalism and the solemnity of their commission.

Thus, the development of Roman contract law was carried out in two directions:

1. the range of contracts that enjoyed legal protection expanded;
2. formalism was weakened when concluding contracts.

Contracts according to the criterion of distribution of rights and obligations between the parties were divided into the following types. When under the contract one party (creditor) acquires only rights, and the other (debtor) - only obligations, the contract was considered unilateral. An example of a unilateral contract is a loan (*mutuum*). Under this agreement, the lender has the right to demand the return of a sum of money or things of the same kind and quality, and under certain conditions, the payment of interest. The borrower, on the contrary, has only the obligation to repay the loan.

Those contracts in which each of the parties has rights and obligations, that is, at the same time is a creditor and a debtor, were called bilateral. Thus, under the contract of sale (*emptio-venditio*), the seller is obliged to transfer the goods to the buyer and has the right to require the latter to pay for this goods. Accordingly, the buyer is obliged to pay a certain amount of money for the goods and has the right to demand its transfer by the seller.

In turn, **bilateral agreements, depending on the scope of the rights and obligations of the parties, were divided into:**

bilateral with unequal obligations, in which each of the parties had both rights and obligations, but different in scope (for example, a loan agreement);

synalagmatic (synallagma), which established for the parties equivalent (equal in volume) rights and obligations (for example, a contract of sale).

Depending on the presence of counter-provision of goods, contracts were divided into:

reimbursable, that is, those for which property benefits were received by both parties (contract of sale);

free, that is, those that were concluded in favor of only one party (gift agreement, interest-free loan).

The degree of requirements for "formalization" differed agreements

1. *negotia stricti iuris* - transactions of strict law;

2. *negotia bonae fidei* - transactions of good conscience.

The former were peculiar to pre-classical law, the latter to classical right, when the interpretation of legal norms tends to take more into account the content, which gives it an advantage over the letter. Then this trend goes to contracts

More important is recognized not what is said - *id quod dictum est*, but what is done, what the parties really sought - *id quod actum est*.

Consequently, **the contracts were divided into**

strict law treaties (negotia stricti iuris)

treaties of good conscience (negotia bonae fides).

The very concept of "contract" in Roman law was not homogeneous and covered the **following two groups:**

contracts (contractus)

pacts (pactum).

Contracts (contractus) are formal contracts that were recognized by civil law (*ius civil*) and provided with legal protection. Contracts included only a certain, exhaustively defined range of contracts.

The Roman contract system originally consisted of four groups:

1) *consensual* - those that are considered concluded from the moment of reaching an agreement between the parties;

2) *real* - those that are considered prisoners from the moment of transfer of the thing;

3) *verbal* - those that fit orally;

4) *literal* - those that were in writing.

Each of these groups corresponded to an accurately defined list of contracts.

Meanwhile, the practice required the determination of legal force under other agreements that were not included in this list.

5) *contractus innominati* - innominal or nameless contracts. By their legal nature, they were approaching real contracts.

Pacts (pactum) are informal, different in content treaties that were not regulated by the rules of law and, as a rule, were not provided with legal protection. The lack of claim protection of pacts was precisely due to their informality. With the development of civil turnover, the pacts received praetor protection, since, despite their informal nature, they did not contradict the principle of justice. Subsequently, to strengthen business relations, some pacts, as an exception, received legal protection. Thus, two categories of pacts were determined:

1. "naked pacts" - those that are deprived of legal protection;

2. "dressed pacts" - those that are provided with legal protection.

Roman jurists defined the content of the obligation in general and the contractual obligation in particular in three terms: dates (*dare*); make (*facere*); provide (*praestare*)

2. Content of the contract.

The content of the contract are the elements that determine the rights and obligations of its parties. Due to the fact that the elements of the contract had different legal significance for individual types of contracts, **they were divided into three groups:**

essential (essentialia);

ordinary (naturalia);

random (accidentalialia).

Essential (essentialia) are those elements of the contract, without which it could not exist. For each type of contract, its own essential elements are determined, in particular, for a contract of sale (*emptio-venditio*), the subject of the contract (goods) and its price are essential. Agreement by the parties of essential elements and their inclusion in the content of the contract is sufficient to conclude the latter.

Ordinary (naturalia) elements are not mandatory, that is, their absence does not affect the validity of the contract. However, as a rule, these elements are included in contracts of a certain type. For example, the contract of employment (*locatio conductio*) usually specifies the period (frequency) of payment of the hire fee (*merces*).

In addition to these elements, the contract may contain **random (accidentalia)** elements that are not mandatory or usual for this type of contract, but are included in a specific contract at the request of its parties. Such elements included **conditions (condicio)** and **terms (dies)**, with which certain legal consequences were associated.

3. Terms of validity of contracts

The condition as a factor in the validity of the contract differs from the condition as a random element in the contract. In this case, the condition is considered in the latter sense. As a random element, a **condition (condicio)** is a clause in a contract by which the legal consequences of the contract become dependent on the occurrence (non-occurrence) in the future of a certain event for which it is not known whether it will occur or not. The condition of the contract cannot contradict the law and good customs, and must also be feasible

Depending on whether the legal consequences of the contract are associated with the onset or non-occurrence of a certain event, *positive and negative* conditions were distinguished accordingly. In addition, there were conditions for which it is not known exactly whether they will come or not in the future, but if they do, then it is known exactly when (for example, the majority of an individual); and conditions that are unknown - whether they will come or not in the future, as well as the moment of their possible occurrence (for example, marriage).

Similar to the concept of "condition" was the category of "term."

The term (dies) is an event that will inevitably come in the future. The term, for example, is considered the death of a person.

Roman jurists distinguished the following terms:

a certain period, that is, one in respect of which it is known when it comes (the term of the contract is 1 year);

an indefinite period, for which it is only known that it will certainly come in the future, but it is not known exactly when (death of an individual).

Depending on the legal consequences that were associated with the onset (non-occurrence) of a condition or term, the latter were divided into:

deferral, that is, those in which the occurrence of rights and obligations from the contract are associated with the occurrence of a certain event (condition or term);

cancellations, that is, those in which the termination of rights and obligations from the contract are associated with the occurrence of a certain event.

It should also be noted that the condition, the impossibility of which is already known at the time of conclusion of the contract, is considered an impossible condition. The inclusion of such a condition in the content of the contract leads to its invalidity.

A contract that was not complicated by a condition or term was called a pure contract.

The purpose of the contract (lat. causa - cause) is the immediate goal for which the contract is concluded; material basis for the conclusion of the contract.

As a rule, when concluding a contract, the parties strive to achieve a certain goal. The person who concludes the contract may also pursue not one goal, but several. For example, buying a thing, a person aims to give it. Legal significance has only the closest of several whole. In this example, the immediate goal is to acquire ownership of the thing.

Depending on the possibility of establishing causa and its legal significance for the validity of contracts, the latter were divided into *causal* and *abstract*.

Most contracts **are causal**, that is, those whose purpose is obvious.

Abstract are those contracts in respect of which it is impossible or difficult to establish the purpose of their conclusion. For such contracts *causa* has no legal significance, i.e. does not affect their validity. In Roman law, an example of abstract treaties was *stipulatio*.

The legal force of the contract (its validity) depends on the observance by the parties at its conclusion of certain requirements established by law. Such requirements of the law are called **the conditions of validity of the contract**.

In Roman law, the following conditions for the validity of the contract were determined:

Legality of the contract. The content of the concluded contract must comply with the requirements of the law. In particular, a contract cannot be concluded regarding actions that violate the rules of law. The requirement of legality of the contract was interpreted by Roman lawyers extensively, that is, they believed that the content of the contract should not contradict not only the norms of law, but also good customs and moral norms.

1. Free will of the parties. Will is the inner desire of a person to establish certain rights and obligations. The will of the parties is their consent to assume certain obligations under the contract. In the contract, the will of the parties should be mutual and aimed at achieving a certain goal. Given that the parties in the contract have opposite goals, their will is counter. To conclude a contract, the will of one person must be communicated to the other party. Will expression is an external objective form of revealing the will of a person. The will can be detected in different ways: orally, in writing, with the help of a gesture, a certain action, and in some cases silence. For the validity of the contract, it is necessary that the will and expression of will coincide.

If the will and will do not coincide, we are talking about an error (error). **Error (error)** is a misconception of one party to the contract about the outwardly revealed will of the other party, which prompted the latter to a certain will. The error was not connected with ignorance of the law, but with ignorance of the facts (circumstances of the case). The legal consequences of the error depended on whether this error was significant (an error regarding the nature of the contract, its subject matter, the identity of the counterparty) or insignificant (an error regarding the motive). Only a significant error could be the basis for declaring the contract invalid.

If the will of one of the parties was not freely expressed, but under the influence of another person, the expression of will was considered to have flaws (defects).

The influence of another person on the formation of the will of the counterparty and his will could be: **deception (dolus) or coercion**.

Deception (dolus) is a deliberate misrepresentation of a counterparty in order to induce him to express his will to the detriment of his own property interests. In the sources of Roman law, dolus was defined as any trick, deception, used in order to outwit, mislead other people (D. 4. 3. 1. 2).

Coercion could be expressed in physical violence or in a threat (metus) - mental violence. At the same time, only a real, carried out threat had legal significance for the validity of the contract. Thus, the rule was fixed in Roman law that fear must be justified: danger must really exist (D. 4. 2. 7. pr.). A contract concluded as a result of deception has always been considered completely invalid

2. *Legal capacity and capacity of the parties to the contract.* The will of a person had legal significance only if this person was legally capable of expressing his will, that is, he had civil legal capacity and legal capacity.

3. *Certainty of the content of the contract.* An agreement, the content of which is uncertain at all, has no legal force. Roman law divided contractual obligations into definite and indefinite. But such a division concerned only contracts with a certain content, that is, valid contracts. The subject of certain contracts was clearly defined (individually defined thing), and the subject of indefinite contract was outlined by common features (things defined by generic features).

4. *The form of the contract* is a form of expression of will. At different times, the forms of contracts were: manipulation, stipulation, writing. The form for certain types of contracts was established in the law. Non-compliance by the parties with the form of the contract led to its invalidity.

5. *The real possibility of fulfilling the contract.* For the validity of the contract, the legal significance was the feasibility of the debtor's obligations established by him. When deciding whether a particular contract has legal force, the fact was taken into account whether there is a real possibility of committing an action that is provided for in the contract. The inability to fulfill a contractual obligation can be physical (for example, to exhaust water from the sea) or legal (for example, to sell an item withdrawn from circulation). The inability of the debtor to perform his duty may occur during the existence of the contract. In this case, the contractual obligation is terminated due to the impossibility of its fulfillment. If it is established that already at the time of conclusion of the contract it was seen that it could not be executed, the contract is recognized as invalid.

4. Conclusion of contracts

The word contractus (contract) comes from lat. contrahere, literally - con + trahere - to pull, that is, to bring together the will of the parties. This combination of the will of the parties and predetermines **the conclusion of the contract**. Approval of the will was necessary when concluding any contract.

The process of concluding a contract may be more or less long, but it always consists of certain related legal actions of persons who, in the case of concluding a

contract, are called its parties. In ancient Rome, the procedure for concluding a contract varied depending on its type. However, for all contracts, certain joint actions were taken by future parties in the process of their conclusion.

The process of concluding the contract took place in several stages. So, the conclusion of the contract began with the identification of an initiative to this at least one of its future parties. This party proposed to conclude a certain type of contract to a specific person or an indefinite circle of persons. Such a proposal was called **an offer**. As a rule, the initiative to conclude an agreement could come from any of its parties - the creditor or debtor. However, in some cases, the law required that the conclusion of a contract be initiated by a particular party. For example, the conclusion of the stipulation (*stipulatio*), as one of the main types of verbal contracts (*verbis*), began with the question of the creditor to the debtor: "Do you promise to pay me so much?." This question was considered an offer. The form of the offer and the way it was expressed, as a rule, depended on the type of contract to which it was aimed.

In order for a proposal to be considered an offer, it must meet certain general requirements of the law, namely, to be defined, communicated to other persons (specific or indefinite circle) and correctly perceived by them. The certainty of the offer meant that it clearly saw the desire of the person (the offerer) to conclude a contract of a certain type. The proposal to conclude a contract should be expressed in such a way that it can be perceived by other persons, and it is as an offer.

The offer did not give rise to a contract, but "tied" the person who made this offer. This meant that the offerer could not refuse to conclude a contract if a certain person stuck to his proposal. For the emergence of the contract, it was necessary to express the will of another subject - the addressee of the offer. So, the second stage of the contract was to accept the proposal to conclude a contract by another person. Consent to the conclusion of the contract is called **acceptance**. Acceptance was to be unconditional, that is, the person agreed with everything that was proposed in the offer.

In consensus contracts, acceptance of an offer was considered to be the achievement of agreement (*agreement*) by the parties. Consequently, a consensual contract was considered concluded and the parties had rights and obligations to fulfill it. For the conclusion of a real contract (*re*), it was necessary that the parties reach an agreement on all the essential terms of the contract, as well as take a certain action to fulfill of this contract. For example, a loan agreement is considered concluded from the moment the creditor (lender) transfers money or things determined by generic characteristics (*genera*) to the debtor (borrower). For the conclusion of a literal contract (*litteris*), the will of the parties was required in writing, and therefore, the moment the literal contract was concluded coincided with the moment the parties agreed to the appropriate form.

For the conclusion of certain types of contracts, the actions of persons who were not parties to the contract, for example, the approval of the contract by witnesses, had legal significance.

In Roman law, even in the last stages of its development, the rule was recognized that contracts are concluded personally. The conclusion of the contract required the personal presence of the parties, since the obligation was interpreted as a strictly personal relationship between certain persons. The legal consequences arising from the obligation extended only to the persons involved in its establishment. Therefore, initially it was not allowed to establish an obligation through a representative. Only with the development of circulation began to practice the conclusion of contracts through a representative, which was facilitated by the loyal attitude of the praetors, who recognized the validity of such contracts.

Lecture. № 12. Certain types of contractual obligations (part 1)

Plan

1. Verbal contracts.
2. Literal contracts.
3. Consensual contracts.

1. Verbal contracts

Depending on the basis of origin, Roman law distinguished: **verbal (verbis), literal (litteris), consensual (consensu) and real (re) contracts.**

Before all, **verbal contracts** arose, which were considered concluded after the pronouncement of traditional verbal formulas, subject to a number of formalities. In this regard, the procedure for concluding these contracts was rather cumbersome.

Verbal contracts (verbis) are oral contracts, for the conclusion of which it is necessary to pronounce strictly defined words in the established sequence (lat. **verbum** - word).

The main feature of verbal contracts was the unconditional domination of the form. This was manifested, in particular, in the fact that, on the one hand - in the case of missing one word or changing the order of their declaration, the obligation did not arise, and on the other - subject to the form, the contract was considered concluded, even if it was committed under the influence of violence, threats, etc.

In Roman law, these contracts included three contracts: *stipulation, the oath promise of a freedman and the establishment of a dowry.*

Stipulation (lat. **stipulatio** - pronouncement, supplication (benefit)) *is an oral contract concluded by asking the future creditor and the debtor's answer, which coincides with the question.*

Under this name, the specified agreement appeared when it was considered by the creditor. On the part of the debtor, he spoke under the name promise (sponsio).

Even the Laws of the XII tables provided for the stipulation form of the contract.

Stipulation was the most important type of verbal contracts, as it was quite convenient for creditors.

The obligation arose in the case of pronouncing by counterparties certain established phrases in the form of a question and answer: "Do you undertake to solemnly give? I pledge to solemnly give, "" Promise? At the same time, the contract was considered concluded if, for example, the future creditor asked: "Do you promise to give 10?" And the answer immediately followed: "I promise." If in response a simple positive nod was made to the head, then in the absence of words this did not give rise to a verbal contract.

It is appropriate to note that the obligation arose only on the condition that there was complete and unconditional consent of the debtor. In this regard, if the question of a potential creditor "Promise to give 10?" Was answered "Promise to give 7," then contractual relations did not arise. However, over time, formal

requirements were relaxed, and therefore, in the event of a dispute between the parties regarding the amount, it was believed that the obligation arose for a smaller amount (in the example given - not for 10, but for 7).

In addition, if at first it was assumed that the obligation arose only when the answer was given by the same verb as the question was asked, then later they did not pay attention to it. So, the contract was considered concluded if the debtor answered the creditor's question "Do you promise to give 10?" Moreover, verbal formulas in different languages were allowed, provided that the parties understood each other. So, the question could be asked in Latin, and the answer is given in Greek.

The procedure for concluding a stipulation was carried out in the presence of a creditor, a debtor and witnesses who confirmed the reliability of the contract. Hence the unconditional requirement - the obligatory presence of the parties in one place. At the conclusion of the contract, representation was not allowed, since it was possible to acquire rights only for yourself. In this regard, the stipulation was inaccessible to the deaf, who could not directly perceive the question or answer by ear, as well as to the dumb, who could not pronounce the necessary verbal formulas.

Stipulation is a unilateral contract, since one side had only rights, and the other only duties. Accordingly, duties arose on the side of the person who made the promise. It was she who, from the moment the contract was concluded, was recognized as a debtor. The creditor was the person in whose favor the promise was made. Thus, under this agreement, the creditor did not undertake anything, but acquired the right to claim.

From other treaties, stipulation was distinguished by its formality and abstract character, since it did not matter for its reality, which prompted the debtor to assume the corresponding obligation. Legal consequences gave rise to compliance with the form, and the basis (*causa*) was not taken into account. This means that if the necessary requirements were met regarding the procedure for concluding stipulation, then the obligation arose regardless of what served as the basis for the conclusion of the contract and whether the goal that the parties pursued by entering into contractual relations was achieved. Consequently, it can be considered that as an abstract, and at the same time strictly formal agreement, stipulation was the legal predecessor of the future bill.

Since the stipulation generated obligations from the moment the creditor's question and the debtor's answer were oral, from that time the debtor was considered obliged and had to pay from the stipulation, despite the fact that he could not yet receive money from the creditor. To eliminate the existing injustice, the praetor began to give the debtor the right to object. Thus, the abstractness of the obligation itself did not deprive the debtor of the opportunity to prove that there was no basis on which he assumed the obligation. However, this was quite difficult and required a waste of time during which the creditor could already exercise his right from the existing obligation generated by the stipulation.

In addition, despite the abstract nature of the stipulation obligation, the parties could not only mention in the text of the question and answer the basis (*causa*) on

which the stipulation was carried out, but also make the power of stipulation dependent on the goal by including the corresponding condition.

In the classical period, stipulation was the main contractual form. To a certain extent, this was due to the presence of its advantages in connection with the abstract character. So, the lender had the opportunity to quite simply and quickly collect the debt. In addition, the steeple form could be given to any binding relationship.

If initially stipulation was used only for the emergence of a debt obligation, then in the future its scope has expanded significantly. Thus, by means of stipulation, liability was established in case of non-fulfillment or improper fulfillment of the obligation.

Due to the formal nature of the stipulation, its effect extended only to the parties, and therefore it was impossible either to assign duties to a third person who did not take part in the stipulation, or to stipulate benefits for her. However, it was possible to apply stipulation to attract third parties to the side of the creditor or debtor. In this case, there was a plurality of persons in the obligation.

Due to the distribution of written form in connection with contacts with the East at the end of the republican period, it became customary to compile a document (*instrumentum*), which testified to the availability of a question and answer. The presence of this document facilitated the proof of the fact of stimulation. Initially, this written document did not have an independent binding force, in connection with which, even if it was available, the debtor was able to prove the absence of oral stimulation. However, gradually the document acquires undeniable force, in connection with which, if it was available, the words "stipulation" were considered pronounced. This served as the basis for reducing the meaning of the steeple form, and it could already be concluded with any words expressing the essence of the transaction. The only formal requirement that was unshakable was the need for the personal presence of the parties at the time of the conclusion of the contract.

The promise of a freedman. The owner of the slave at will could let him go free. However, quite often he wanted to continue to use his services. Especially urgent was the need for a slave to have special talents or special skills. In this regard, the owner of the slave was interested in the emergence of an obligation according to which his former slave would not break ties with him in the future and, if necessary, would help him.

However, the problem was that the slave was not a subject of law, and therefore his promises in this status did not give rise to the desired consequences. This is precisely the reason in the practice of Ancient Rome for the two-link procedure for the emergence of an obligation between a patron (*patronus*) and a freedman (*libertinus*). So, while still in slavery, the slave made an oath to promise that even after his release, he would remain bound to his patron with certain duties. So the oath generated only a natural obligation (***obligatio naturalis***). Therefore, after his release, the freedman assumed the corresponding obligation already in the form of an oath promise, which was formalized by a verbal contract, in connection with which such an obligation was ensured by compulsory protection.

Thus, although the freedman had a duty of loyalty and service to his patron, this duty acquired a legal character and was provided with legal protection only if the freedman assumed such an obligation by proclaiming an oath.

The oath promise of a freedman (*jusjurandum liberti*) *is a kind of verbal contract that arose in the event of a freedman declaring an oath to provide services to the patron.*

The promise itself clearly stated what kind of services will need to be provided, as well as their content, quality, duration and frequency. However, these services did not necessarily have to consume the cartridge personally. He could order the freedman to fulfill a promise in favor of his comrades.

The establishment of a dowry (*dotis dictio*) *is a kind of verbal contract that arose if the groom gave his consent to the oral statement of the person who established the dowry.*

It is likely that the origins of this obligation come from the engagement procedure that preceded the marriage. And after the engagement contract ceased to enjoy legal protection, the promise to establish a dowry (*dos*) acquired the meaning of an independent oral contract.

If during the stipulation the initiative of the obligation came from the creditor ("Promise to give a thousand?"), Then when establishing the dowry - from the debtor ("Will you receive a thousand in the dowry?").

This obligation could be assumed by the future wife, any of her debtors or ascending relatives. The creditor in this case was the groom. It was he who owned the right to demand the transfer of a dowry, which could consist of money or things.

Under Justinian, this kind of verbal contract fell out of use

2. Literal contracts

The development of trade relations, the existence of more or less systematic relations on the transfer of things between the same participants led to the need for literal contracts.

Literal contracts (*litteris*) *are contracts that gave rise to obligations between the creditor and the debtor by virtue of compliance with the written form.*

Literal contracts were concluded by writing in special books or in the corresponding other acts (lat. ***littera*** - letter). It was customary that the citizens of Rome, who entered into business relations with other people, kept books. Two types of books are known: the journal (***adversaria***) and the book of profits and expenses (***codex accepti et expensi***). The *journal* (*adversaria*) had the meaning of a memorial book and was started for each month, after which it lost its meaning and could be destroyed. A variety of information was entered into it, which had a certain meaning and which did not need to be forgotten.

The permanent book in which cash receipts and expenses were recorded was the *book of profits and expenses* (***codex accepti et expensi***). It reflected every economic operation. The creditor recorded the same amount in his book in the column "Expenses," and the debtor in the column "Profits."

By themselves, the records in the books were not the original basis for the occurrence of contractual obligations, but only certified what was received or given to fulfill the concluded contracts (purchase and sale, hiring, etc.) or recorded the consequences of replacing the party in the obligation by transferring the debt. In both cases (both when writing to the person of his own debt, which arose for another reason, and when writing to the person of the debt of another person) there was a novation of obligations (*novatio*), carried out in the form of a literal contract.

Of course, the entries in the books were not in an unchanged state. In the process of loan and trade transactions between the same counterparties, there was both a change or termination of existing obligations, and the emergence of new ones. Therefore, at the end of a certain, for example, monthly period, in the books of their owners summed up and enrolled. These results were already detached from specific operations.

The obligation to make a payment arose due to these records themselves. The latter were literal contracts, not related to any foundation, but, like verbal contracts, were abstract in nature, since the debtor was obliged to write a book. However, even here there was no clarity, since the creditor could make an entry in the column "Expenses" unreasonably unilaterally or based on an existing contract concluded in another way, in connection with which he had the right to demand double performance from the debtor.

Since literal contracts made it possible to abuse their right, already at the beginning of the classical period they gradually lost their meaning.

Due to the fact that the above book transactions served as the basis for the emergence of contractual relations only between Roman citizens (**cives Quiritas**), peregrines (**peregrini**) used debt documents borrowed from Greek practice, the so-called **syngraphs and chirographs**, which eventually began to be used by Roman citizens.

Syngrapha (Greek. **syngrapha** - a written document) *is a document written in the presence of witnesses on behalf of a third party, which certified the fact of the creditor's transfer of a certain amount of money to the debtor, sealed with the signatures of the parties and witnesses.*

The recording of the syngraph was as follows: "Such and such a person owes such and such a person 100 sesters." In its purpose, it was an unconditional payment document, which was allowed not only to the Romans, but also to overheating (including their relationship with the Romans).

The procedure for concluding the contract was rather cumbersome and not very convenient due to the fact that witnesses must be present in the presence of which the contents of the contract were first read out and then signed.

Hirografa (Greek. **chirographa** - handwritten signature) is a unilateral document issued and signed by the debtor on his own behalf, which certified the fact that he received a certain amount of money from the creditor.

The record of the chirograph was as follows: "I owe such and such 100 sesterces."

Thus, instead of books of profits and expenses, literal contracts began to be issued with a simple receipt. There is no single position as to whether these were contracts, which, like literal contracts, gave rise to obligations in their very form regardless of their grounds, or whether they had only probative significance. However, it is safe to say that they served as prototypes of future written agreements.

Over time, literal contracts change. In the Justinian period, instead of books of profits and expenses, these contracts are issued with a simple receipt. The person who issued the receipt (debtor) had the right to challenge it in connection with a forgery or on the grounds of the lack of transfer of money by the creditor. This indicates a loss of abstractness characteristic of literal contracts.

However, if the receipt was not disputed within two years, no circumstances were taken into account, and therefore the receipt obliged to pay by itself. If the debtor failed to prove the invalidity of the receipt, then as a sanction for unreasonable contestation, the debt indicated in the receipt was charged in double amount.

3. Consensual contracts

The complexity of formal requirements for the conclusion of verbal and literal contracts led to the need for the existence of contracts that are not associated with a certain clearly defined form. So there were **consensual and real** contracts, the distinction between which was made by the moment from which obligations arose between the parties. The advantage of consensual contracts was the simple order of their conclusion. There was no need not only to observe formalities, but also to take actions to transfer things. They were based only on an agreement between the parties (consensus). If at the same time there was a transfer of the thing, then it was committed not for the purpose of concluding, but for the purpose of fulfilling an existing contract.

Consensual contracts *are contracts for which the consent of the parties was sufficient.*

Roman law distinguished four types of consensual contracts: *purchase and sale, hiring, assignment, partnership.*

The contract of sale (emptio-venditio) *is a contract under which the seller (vendor) undertakes to transfer to the buyer the thing (res) or the goods (merx), and the buyer (emptor) undertakes to accept the thing or goods and pay the agreed value (pretium).*

Due to its importance and simplicity of conclusion, the contract of sale has become most widespread among consensual contracts. With its help, the transfer of ownership of things was mediated.

Due to its importance and simplicity of conclusion, the contract of sale has become most widespread among consensual contracts. With its help, the transfer of ownership of things was mediated.

If under the contract non-lancipal things (**res nec mancipi**) were transferred, then as a result of the conclusion of the contract, the buyer acquired property rights. In order for the ownership of mancipal things (**res mancipi**) to arise, it was necessary

to perform the procedure in the form of mancipation. Otherwise, the seller remained a Quirite owner, and the buyer became a Bonitic (Praetorian) owner. The Quirite owner of Pokutz was recognized only after the expiration of the statute of limitations (**usucapio**)

In order for the contract of sale to be concluded, a simple agreement of the parties is sufficient on two mandatory conditions: *the thing being sold and the price paid for it*.

The contract could be concluded both in relation to existing things, and those that will be in the future. So, in the case of the sale of the expected future harvest, the contract of sale was considered concluded under a deferred condition, since the legal consequences were generated neither immediately at the conclusion of the contract, but only after the cultivation of the crop.

The subject of the contract could be both bodily and disembodied things (for example, the right to inheritance, easement). So, when buying an easement, the seller assumed the obligation to allow the emergence of an easement right on the side of the acquirer. As for bodily things, the main thing is that the thing is not excluded from circulation and is individually determined or specified by measure, weight or quantity, as well as quality.

The price (**pretium**) was considered agreed if it was, *firstly*, determined (**certum**); *secondly*, real (**verum**); *thirdly*, expressed in money (**in pecunia numerata**).

The price was considered to be determined even in the absence of agreement on its size, provided that the parties agreed on the mechanism for its establishment (for example, the parties entrusted it to a third party, assuming the obligation to obey its decision). However, the price was not considered determined if one of the parties was authorized for such a decision.

The reality of the price was required so that under the guise of a fake sale, donation was not carried out bypassing the form established for it, as well as certain restrictions and prohibitions.

The requirement for the expression of the price in cash served as the basis for delimitation with the contract of exchange, according to which the thing was exchanged for another thing.

In addition to these, Justinian's right introduced another mandatory condition - price fairness (**justum pretium**). If the seller received less than half the value of the thing, the seller could demand the renewal of the previous provision, that is, the return by each of the parties of the contract. However, in order to leave the contract in force, there was the possibility of an additional payment to the level of a fair price.

In law, Justinian distinguished between oral and written sale.

As a general rule, the contract of sale was considered concluded at the time of reaching agreement between the parties, and when they agreed - from the time of compliance with the written form.

Although the contract of sale was considered concluded at the time the parties reached agreement, there were two exceptions to this rule.

First, if at the time of conclusion of the contract the parties agreed to formalize their contract in the form of stipulation, the contract of sale entered into force only after the fulfillment of this condition.

Secondly, if the parties agreed on a deposit (*arrha*), then the contract of sale was considered concluded at the time of payment of the deposit.

The interests of the seller were ensured by the lawsuit granted to him about the sold (**actio venditi**), which consisted in the possibility of requiring the buyer to pay the purchase price. The buyer in order to protect their rights was given the right to sue the seller about the purchased (*actio empti*).

The seller had the following responsibilities:

- 1) *transfer of things to the buyer;*
- 2) *ensuring safety of the item before its transfer to the buyer.*

Since this is a paid contract, the seller undertook to exercise such a measure of care that is characteristic of a caring owner, and therefore was responsible even for simple negligence (**culpa**). However, the risk of accidental death of a thing was borne by the buyer, that is, in the event of such death of a thing, he was obliged to pay the purchase price to the seller;

3) *ensuring that there are no deficiencies in the item sold.* Violation of this obligation could be the basis for termination of the contract and usually entailed the seller's liability in the form of compensation for actual losses. However, if the subject was a slave - damages were levied in double amount. Therefore, at the conclusion of the contract, the seller had to inform, in particular, about the diseases of slaves or cattle that were the subject of the contract;

4) *protection of the buyer from eviction (lat. evictio - conviction, discovery).* The seller must act on the side of the buyer in order to protect him from attempts by a third party to sue the purchased item. If the seller did not do this and the thing was demanded, the seller was obliged by pre-Justinian law to pay double the cost of the seized property, and by Justinian's right to compensate for the losses incurred.

The buyer under the contract of sale was obliged,

first, take the purchased item and,

secondly, to pay the price stipulated by the contract, which was a necessary condition for the transfer of ownership of the purchased item to it.

The risk of accidental death of the thing was assigned to the buyer at the time of the conclusion of the contract of sale. This means that the buyer suffered losses as a result of the death of the thing even before the moment of transfer of the thing and the emergence of his property rights. Therefore, in case of accidental death of a thing, the buyer was obliged to pay its value to the seller, and if he paid it earlier, he could not demand the return of the amount paid. Such a rule "contract risk is borne by the buyer" (**periculum est emptoris**) violates the principle of reciprocity of provision.

The parties could conclude a special agreement (*pactum displicentiae*), according to which the buyer, if the purchased thing for some reason did not suit him, had the right to terminate the contract within the agreed period with the parties returning everything fulfilled to each other.

The parties could include in the contract an additional condition (*additio in diem*) on the seller's right to terminate the contract within the agreed period with the renewal of the previous provision if he managed to find a more profitable buyer.

A contract of employment (*locatio conductio*) is a contract under which the landlord undertakes to transfer the property for use, perform a certain job or provide a service, and the employer undertakes to pay for it.

As you can see, in Roman law, hiring covered a fairly wide range of relations on the paid use of things, the performance of work and the provision of services.

Three types of hiring were distinguished:

1) **hiring things (*locatio rei*)** is the provision of things (including housing) for retributive use;

2) **employment (*locatio conductio operis*)** is a type of employment contract under which the counterparty for the agreed work undertook not only to perform any work, but as a result of the execution of the received order to achieve the result agreed upon by the customer in advance. This is a prototype contract, which also included transportation;

3) **hiring labor (*locatio conductio operarum*)** or hiring services is a kind of employment contract under which the seller undertakes to provide the ability to work for certain purposes for a specified fee, and the employer (employer) undertakes to use it and pay for working hours. It is considered a prototype of an employment contract,.

The parties to the contract of employment were the **landlord (*locator*)** and the **employer (*conductor*)**.

A contract of employment was considered concluded if the parties reached an *agreement on the subject of employment and the most significant fee (*merces*)*.

The **most significant fee** should be expressed in cash with a clear indication of its size. However, a natural form of payment was allowed in the form of a stipulated part from the crop received in the event of leasing agricultural land.

Under this agreement, the landlord is obliged to transfer for use the thing or to ensure the performance of certain work or the achievement of the agreed result. In violation of his duties, he was obliged to pay damages. The performance of duties by the landlord was ensured by the right of claim granted to the employer about the hired (*actio conducti*).

In the event of a contract, the employer must:

First, take the rented thing or the work done and pay the most substantial fee; **secondly**, to ensure the safety of the property received for use, **thirdly**, to return it to the landlord on time.

The interests of the landlord were ensured by the lawsuit granted to him about the *actio locati*.

The employer is obliged to compensate the damage to the landlord in case of damage or destruction of property transferred for hire. However, the risk of accidental death of the thing was carried by the owner, that is, the landlord.

The change of the owner of the thing transferred for hire (for example, in the case of alienation or inheritance) did not affect the validity of the contract of employment in any way - it continued to operate on the same conditions.

Usually the contract was terminated due to the expiration of the term agreed by the parties. But if the actual use of the thing by the employer continued at the end of the term, the contract was considered renewed by the tacit consent of the parties.

The right to unilateral termination of the contract arose:

the employer, if the circumstances were such that the thing did not bring the stipulated effect (for example, the slave could not work due to illness);

the landlord, when he needed rented property, or the employer avoided making the most significant payment for two consecutive years.

An assignment agreement (mandatum) is an agreement according to which one party - the principal (**mandans**) instructed to do something in his own interests to another person - the attorney (**mandator**), who undertook to perform these actions free of charge.

A characteristic feature of the economic life of ancient Rome was that the owner personally conducted the affairs of managing his household, and only in some cases (for example, in the case of a trip to another locality) there was a need to ask a loved one to replace him. Such relations were formalized in the form of an assignment agreement.

The contract of assignment was designed as gratuitous. This is due to the fact that at its conclusion the participants proceeded from public duty and friendship, which, according to the Romans, are incompatible with reward. If for the committed actions the person received a reward (**merces**), then there was not a contract of assignment, but a contract of employment (**locatio conductio**). Therefore, the presence or absence of payment was one of the criteria for delimiting contracts of assignment and employment.

However, if the principal wanted to thank the attorney for the actions committed, then he paid him an honorary reward - a fee (**honorarium**). But these actions were committed at the principal's own request, humiliated the attorney and the social significance of the relationship, and were outside the scope of the execution of the assignment agreement. Only during the extraordinary process was it allowed to forcibly claim remuneration at the request of the attorney in the amount determined by the decision of the magistrate in the dispute.

To conclude the contract, it was enough to agree on the assignment itself. The range of lawful actions, the obligation of which was entrusted to the attorney, was quite wide. It could be as individual actions (purchase or sale of a particular thing), and management of the property of the principal (received inheritance, trading institution, etc.). Actions could be both factual (for example, to receive a thing purchased by the principal) and legal (for example, to perform transactions for the principal, to perform procedural actions).

Since direct representation was not allowed, then, entrusting the exercise of his rights, the principal previously ceded them to the attorney, and entrusting him with

acquiring new rights for himself, allowed their initial occurrence in the person of the attorney with subsequent transfer to the principal.

Despite the non-payment of the contract, the attorney was obliged to accurately, carefully and carefully carry out the assignment. He needed to strictly follow the instructions of the principal, and after performing his functions, transfer the acquired rights to the principal. This approach is explained by the fact that the attorney of his own free will decides to conclude this contract or not, but in the case of voluntary acceptance of the obligation to execute the assignment, these actions must be performed in full accordance with the content of the assignment. If the attorney deviated from the instructions of the principal, then he was responsible for this as for failure to fulfill the assignment assumed.

When it was impossible to accurately fulfill the obligation due to a change in circumstances or there was a need to retreat from the assignment in order to obtain additional benefits by the principal, the attorney did not have the right to act at his own discretion and was obliged to contact the principal for additional instructions. Only in the absence of the opportunity to coordinate these issues with the principal (for example, in connection with his absence), the attorney could act independently, but the decision he made had to correspond to the general content of the order. If the attorney exceeded the limits of the order, the principal is not obliged to recognize these actions and compensate for additional costs. So, if the attorney had to buy the land for 100, and bought for 120, then the principal was obliged to accept what was done only within the order (100), in connection with which the attorney incurred losses (20).

In case of impossibility to execute the assignment for some reason, the attorney was obliged to immediately notify the principal so that he could replace him with another person. If the attorney does not inform about the impossibility of fulfilling the obligation, he had to compensate for all the losses caused.

It should be borne in mind that the attorney is obliged to execute the order personally only when it was clearly stipulated at the conclusion of the contract or stemmed from the nature of the order. As a general rule, the principal was not interested in the process, but in the result. Therefore, the attorney could fulfill his obligations not only personally, but also with the involvement of other persons (deputies). In this case, the attorney was responsible for the actions of his deputies as for his own, and therefore was obliged to compensate the principal for the losses caused by them in full. However, if the contract provided for the right of the attorney to attract assistants, then he was responsible to the principal only for the careful and careful choice of the deputy, and not for his actions.

Although due to the non-payment of the assignment agreement, the attorney did not receive any benefits, he was responsible to the principal for any fault (including light), and therefore had to compensate for all losses caused by failure to fulfill or improper execution of the assignment.

At the end of the execution of the order, the attorney had to report to the principal and transfer everything received to him. In case of evasion of the attorney

from the transfer of the acquired principal, the principal had the right to file a direct claim from the order (*actio mandati directa*).

The principal is obliged to accept the result received by the attorney and, within the framework of this order, compensate for the costs incurred by him when executing the order.

As a general rule, the contract was terminated due to its proper execution. Similar consequences occurred in the event of the death of any party. In the event of the death of the principal, his heirs were obliged to recognize all the actions that the attorney committed before he knew about the death of the counterparty. When the attorney died, his heirs were obliged to continue to take urgent actions until the principal solves the necessary issues.

In addition, due to the trust nature of the relationship under the contract, each of the parties had the right to refuse it unilaterally. The principal could use this right, for example, in connection with the loss of confidence in the counterparty. At the same time, the attorney could refuse only on condition of advance notification of the principal and the continuation of the commission of the actions assigned to him until the principal is able to secure his interests in another way.

Contract of the company. If in the above-mentioned contractual constructions it is possible to clearly identify two parties whose interests do not coincide, then an unlimited number of persons could take part in the company who seek to achieve a common result for them.

A partnership contract (*societas*) is a contract in which several people combine their contributions to achieve a common goal (for example, build a house, jointly conduct trade, etc.).

Four types of societies were distinguished (and, accordingly, society contracts):

1) *society of all property (*societas omnium bonorum*)* - arose between family members who jointly received an inheritance and agreed to preserve the family community;

2) *income partnership (*societas quaestus*)* - arose between persons who combined part of their property in the form of contributions in order to obtain joint income in the future;

3) *society of any business (*societas alicujus negotiationis*)* - was created for the purpose of joint implementation of a certain type of activity by combining persons with the necessary property;

4) *society of one thing or one thing (*societas unius rei*)* - arose when combining persons for sharing one thing (land, slave) or for a one-time event (for example, a trade flight).

Since the contract of the company originally arose on the basis of family ties, it is characterized by the trusting nature of the relationship. Concluding it, the participants counted on mutual support and assistance in achieving a common goal. Therefore, Roman lawyers defined society as a kind of fraternal association of persons.

The contract was considered concluded from the moment of reaching agreement on the common goal and the amount of contributions of each of the participants. It goes without saying that it is inadmissible for a society to carry out an unauthorized or immoral goal, that is, there can be no society to achieve dishonest goals. Contributions could be equal or unequal; in the form of money, property or services of the depositor.

One of the characteristic features of society is the commonality of property. Depending on the agreement, it could apply to all the property of the participants or only to that which was necessary to achieve a common goal.

Although, as a general rule, income (**lucrum**) and losses (**damnum**) were distributed equally between the participants, something else could be established in the contract (for example, to determine the division of income and expenses in proportion to the amount of deposits made).

After the conclusion of the contract, individuals acquired equal rights and responsibilities for managing common affairs. However, they could entrust the conduct of business to one of their comrades.

Since the company is not an independent person, but a set of persons, in the event of a contract by any participant, even in the interests of the company, it was this participant who was responsible for its implementation. However, by agreement between the participants of the company in external relations, this responsibility could be distributed among all participants.

Each of the participants should worry about common affairs, as about their own and was endowed with the right to claim from society (*actio pro socio*). This claim was accompanied by dishonor (*infamia*) for the one who was awarded it.

The contract of the company was terminated for various reasons:

firstly, in the event of the death of one of the participants, unless the others have entered into a special agreement to extend the contract;

secondly, as a result of achieving a common goal, the impossibility of achieving it or the death of common property;

thirdly, in the absence of trust and consent of all participants to continue the joint business, in connection with which one of them requires the termination of the partnership; however, if such a refusal is unreasonable or unfair, then this is possible subject to compensation for losses caused by this to other persons; *fourthly*, at the suit of any of the comrades in case of refusal of other participants to terminate the contract.

Lecture №. 13. Certain types of contractual obligations (part 2)

Plan

1. Real contracts.
2. Nameless contracts.
3. Pacts.

1. Real contracts

In order for a real contract to generate legal consequences, only the consent of the parties was not enough. It was necessary to take well-defined actions.

Real contracts (re) *are contracts that are considered concluded at the time of transfer by one counterparty to another certain thing (res).*

Due to the fact that the obligation arose only if one of the parties fulfills the obligation to transfer the thing, the creditor's demand under the real contract is always aimed at returning the received.

Real contracts differ from the previous ones in the simplicity of the order of conclusion, since no formalities were required. It was enough housekeeping and simultaneous transfer of things by one person to another. However, until the transfer takes place, there is no obligation from the real contract. Since real contracts preferred content over form, they could not be abstract, and therefore generated obligations only if they had certain grounds (causa).

Roman law distinguished four types of real contracts: **loan (mutuum), loan (commodatum), deposit (depositum) and pledge (pignus).**

A loan agreement (matuum) *is a real agreement that arises from the transfer by one person (lender) of things determined by generic characteristics to another person (borrower) in property with the obligation of the latter to return them in the same quantity, of the same kind and quality in the established period or to the requirement.*

The loan agreement is one of the oldest types of real contract. This is explained by the fact that with the development of economic life, trade and craft there was a need for a contract, the conclusion of which would be quite simple and convenient. These requirements met the loan agreement. He was considered a prisoner from the moment of the transfer of money or things determined by weight, quantity or measure (oil, wine, bread, copper, silver, gold, etc.). These things were transferred to the other party in ownership (proprietas), and therefore she had the opportunity to freely dispose of them. In this regard, the recipient was obliged to return not the same things, but others of the same kind and quality. Hence the name of the loan (matuum) arose, since what I transferred to you becomes yours from mine (**meum + tuum = mutuum**).

Since the lent things passed into the ownership of the borrower, who undertook to return not them, but the same number of the same things, the subject of the loan agreement could not be individually determined things (**species**). This is explained by the fact that only things defined by generic characteristics (**genera**) can be replaced. Thus, the subject of the loan agreement is money or things defined by

generic characteristics, which were called the loan currency. Since the things transferred under the contract became the property of the debtor, it was he who carried the risk of their accidental death. At the same time, the Romans also proceeded from the fact that the clan cannot die, and therefore the debtor has the opportunity to replace the destroyed things with others.

The loan agreement is one-sided, since the lender has only rights (to demand repayment of the debt), and the borrower has only obligations. This is explained by the fact that at the time of concluding the contract, the lender fulfills all his duties to transfer the thing to the borrower.

The reality of the loan agreement is that in itself the promise to lend, for example, a certain amount of money does not generate any obligations. In the future, a potential lender may refuse to fulfill his promise without any negative consequences for himself.

However, even the reality of the loan agreement did not exclude the possibility of abuse, especially in the presence of written documents. So, sometimes in practice there were cases when the creditor received a receipt even before the transfer of money, and then refused to transfer money to the debtor. In this regard, there was a need to provide the debtor with legal means to prevent the collection of non-existent debt. He had two possible options for behavior: first, to raise objections to the claimed claim by the creditor due to the fact that the receipt of the receipt by the creditor was carried out by deception; or secondly, to file a claim for the return of the receipt, which was issued on the promise that the loan will be received.

By Justinian's right, the debtor's claim for the return of the receipt was limited to two years. If during this time the debtor did not file a claim, the receipt became indisputable and irrefutable evidence.

There were certain restrictions on the subjects of the obligation. In particular, in the case of concluding a loan agreement by subject persons (**persona alieni juris**), it was considered invalid. In order to circumvent this prohibition, the sons of wealthy individuals received amounts in debt on the condition that it be returned after the death of the homeowner and receive an inheritance. But at the beginning of the empire, an unfortunate incident occurred in Rome, which served as the reason for changing the existing practice. So, one of these sons Matsedo in order to pay off creditors killed his father. The Senate issued a resolution, called the Matsedonian, which deprived creditors of the claim under contracts concluded with subject persons without the consent of the homeowner even after the death of the latter. However, subject persons could voluntarily fulfill their obligations.

Separately allocated sea (ship) loan. Its essence was that the lender gave funds for certain purposes and under a certain condition. However, the borrower assumed the obligation to return the amount taken only on condition that the ship safely reaches its destination. Such a creditor's risk was compensated by paying him interest.

Although the loan agreement could be either interest-free or interest-free, as a general rule, the loan was considered interest-free. In order to receive interest, it was necessary to conclude a special agreement by *stipulatio* (interest stipulation). Since

it was not convenient to conclude two independent contracts, the interest loan was given a stipulation form (both in relation to interest and principal).

The ability to charge interest was limited. Their maximum size changed. In the Laws of the XII tables, their limit norm could not exceed 8% per annum. In 347 BC by law, this maximum was halved, and the next law generally forbade the collection of interest. However, this situation did not last long. In the time of Cicero, the amount of interest could not exceed 12% per year, and under Justinian, as a general rule, 6%, and for traders 8% per annum. If the borrower received a larger amount of interest, then he was obliged to return to the borrower a double amount of excess received under pre-Justinian law and a single amount under the right of Justinian.

A loan agreement (commodatum) is a real agreement under which one person (commodant) transfers to another person (commodatary) a certain thing for temporary and free use for a clearly specified period.

Unlike the loan agreement, the property under the loan agreement was provided for use for a certain period, and not for ownership. If the term was not established in the contract, in connection with which the thing had to be returned at the first request, another contract took place, which was called precarium and referred to nameless contracts (**contractus innominati**).

The subject of the loan agreement is individually determined non-surviving things that are subject to return to the owner. This is the main criterion for distinguishing between a loan agreement (**matuum**) and a loan (**commodatum**).

By the nature of the distribution of rights and obligations between the participants, the loan is a case of imperfect synalagma. Although usually the commodant (owner of the thing) performed his duties at the time of the conclusion of the contract, in connection with which he became a creditor, there was an exception to this rule. So, under certain circumstances, some duties arose on the side of the commodant: he was obliged to compensate for the expenses of the commodatary, due to the need that arose in the process of using the thing to carry out extraordinary expenses to maintain the thing.

The main duties were assigned to the commodatary, who was the debtor. He was obliged,

firstly, to use the thing for its intended purpose (otherwise it was regarded as theft (furtum));

secondly, to ensure the safety of the resulting thing;

thirdly, at the end of the contract, return the thing to the commodant (commodans) in the form in which it was transferred, taking into account the normal wear of the thing caused by the permitted use.

The deposit agreement (depositum) is a real agreement, according to which one person (the landlord) transfers to the second person (the depositor) for free storage of a moving thing with the right to return at the first request. The parties to the baggage agreement were the depositor (depository) - a person whose property was secured by this agreement; and the depositor (depository) - a person who undertook to ensure the safety of property.

Like a loan (**commodatum**), luggage (storage) is a real and free contract. According to him, things were transferred only to possession, and not to use. The subject of the contract could be both individually defined things (**species**) and things defined by generic characteristics (**genera**). Depending on this, respectively, and distinguished two types of contract luggage.

If the subject of the contract were individually defined things (species), then they had to be returned at the end of the contract. If things defined by generic characteristics (genera) were transferred for storage, then there was a special variety of this contract - irregular storage (depositum irregulare). At the end of such an agreement, not the same things returned, but the same number of homogeneous things (grains, vegetables, fruits, etc.).

Under this agreement, free of charge took place in the interests of the landlord (**depositary**), since he did not pay anything for the service provided. In this regard, the depositary was not responsible for any fault, but only for intent and gross negligence, as well as for a less caring attitude with other people's stored things than with his own.

From this rule, there is an exception that concerns forced storage (**depositum necessaria**), when, as a result of a fire or other natural disaster, the owner, in order to ensure the safety of his property, was forced to hand it to any depositary as soon as possible, without the possibility of choosing and checking its good faith. Under such conditions, the depositary was responsible for any fault and in case of death or damage to the stored item was obliged to compensate for its value in double amount.

The depositary is obliged at the request of the depositary to return the property.

If the depositary had storage costs or any losses, it was entitled to recover appropriate compensation from the depositary.

When the depositary (depositary), despite the fact that the thing was transferred to him for storage, that is, only in possession, used this thing, such actions were regarded as theft (**furtum**).

A pledge agreement (contractus pignoratitius) is a contract under which one person (pledgor) transfers to another (pledgee) a thing to secure a debt, but with the condition that the pledgee will return the same thing at the time of payment of the debt or termination of the pledge (pignus).

This is a real contract that performs a supporting role in relation to other contractual obligations. It was considered concluded only from the moment of transfer of property to the pledgee.

2. Nameless Contracts

In ancient Rome, there was a traditional division of all contracts into four groups, namely those that give rise to obligations:

- 1) word (*verbis*);
- 2) letter (*litteris*);
- 3) thing (*re contrahitur obligatio*) or
- 4) consent (*consensu*).

After the above classification firmly entered the legal tradition, new contracts began to appear that did not fall under the existing classification (went beyond it). For a long time they did not find legal recognition. In this regard, the party that fulfilled its obligations under one of these agreements, but did not receive counter satisfaction, could only demand the return of what was fulfilled.

This group of contracts was called **nameless contracts (contractus innominati)**.

Over time, these treaties began to be defended by the praetor, and Roman jurists classified them using the following verbal formulas:

- 1) *I give you to give (do ut des);*
- 2) *I give you to do (do ut facias);*
- 3) *I do that you give (facio ut des);*
- 4) *do that you did (facio ut facias).*

These formulas served as the basis for the formulation of a claim aimed at protecting nameless contracts (**actio praescriptis verbis**).

Nameless contracts found their footing in Justinian's law, but their name "nameless contracts" remained. Roman jurists, conservatively worshipping in front of everything that has been consecrated for centuries, left the existing classification in its previous form, and brought new treaties under the concept of nameless.

Such a name for this group arose not because the treaties that made up this group did not have their names, but because, to show that this group goes beyond the existing four-element classification.

The closest nameless contracts were to real contracts (re), since they were considered concluded only from the moment a certain action was performed (for example, transferring a thing). However, real contracts were built as unilateral or imperfectly synalagmatic. At the same time, nameless contracts were bilateral, that is, one person transferred property or performed a certain action in order to get counter pleasure.

Thus, there were two main criteria for referring to nameless contracts:

firstly, the contract was considered concluded from the moment of a certain real action,

and secondly, it generated a synalagmatic obligation (each party had both rights and obligations).

The most common were three types of nameless contracts: *mine, precarious and appraisal contract*.

A contract of exchange (permutatio) *is a contract under which one person transferred a thing to another person in order to receive another thing in return, equivalent in value.*

The mine contract fell under the formula I give you to give (do ut des). This served as the basis for attempts to combine it with a contract of sale. However, firstly, unlike the contract of sale under this contractual design, things were exchanged without raising funds, and secondly, the mine contract was considered concluded from the moment of the transfer of the thing, and for the emergence of obligations to purchase and sale, the consent of the parties was enough, thirdly, a

number of rules for sale could not be applied to the mine, as vice versa (for example, under a mine contract, it was impossible to file a claim for damages in connection with the non-equivalence of the exchange, and under a contract of sale - to demand the return of what was done).

Today, the aspirations of Roman lawyers are realized in the provisions of the Civil Code of Ukraine of 2003, which considers the mine as a kind of sale.

Precarium *is a contract under which one party transferred a thing for free use to another party, which, in turn, pledged to return it at the first request of the owner.*

Under this agreement, the owner granted another person the right to use the thing without charge without specifying the term. During this time, the risk of accidental death of the thing was carried by the owner. Roman jurists brought this treaty under the formula I do that you do (**facio ut facias**). This was explained by the fact that one person took actions to transfer property for use in order that, at his first request, another person took an action to return the property. Therefore, the precary was of a synalagmatic nature, which in our opinion is rather conditional.

An appraisal contract (aestimatum) *is a contract under which one party transfers to the second a certain thing for sale at a specified price, and the second party undertakes to transfer to the first the proceeds from the sale of the thing a sum of money or return the thing.*

With the help of this contract, a large merchant transferred a thing to a small merchant indicating its price for the purpose of subsequent sale to another person. The subject of this agreement could be any things not withdrawn from civil circulation.

The person who received the thing did not become its owner. Ownership was acquired by the buyer after the conclusion of the contract of sale. The risk of accidental death of the subject of the contract before the transfer of ownership lay with the owner, who transferred the thing for implementation.

The valuation contract was considered concluded from the moment the item was transferred for sale.

There were three possible options for the further development of relations after the conclusion of the contract:

1) if a small merchant could not sell the item at the specified price, it was returned back to the owner;

2) in case of sale at the amount stipulated in the contract, the latter was transferred to the former owner of the thing;

3) if the small merchant sold the thing at a higher price, then the resulting difference in price remained with the seller.

An evaluation contract is inherently close to an assignment contract (**mandatum**). However, unlike an evaluation contract, an assignment contract was designed as an unpaid contract and the attorney had less freedom to act.

Among Roman jurists, there was no single position on under what verbal formula to bring the valuation contract. However, due to the fact that the rights and

obligations arose from two parties since the transfer of the thing, it was attributed to nameless contracts.

3. Pacts

As already noted, in the contractual system of ancient Rome distinguished the following types of contracts: contracts (*contractus*) and pacts (*pactum*).

The pact (*pactum*) *is an informal agreement, the conclusion of which was not accompanied by formalism provided for by Roman civil law.*

That is why initially pacts were not provided with legal protection, in connection with which they were called naked pacts (*pacta nuda*). This is explained by the fact that in ancient Rome, naked consent did not give rise to obligations.

Over time, due to the expansion of business relations and the development of trade, the need for informal agreements grew. This is due to the fact that they were simple and accessible. However, the lack of their protection did not meet the interests of economic turnover. Therefore, given the needs of economic circulation, over time, Roman law provided legal protection to individual transactions that went beyond the recognized list of consensual contracts. Such agreements were recognized as the basis for the emergence of contractual obligations, which were called protected pacts (lat. *pacta vestita* - translated as "pact dressed").

There are three types of protected pacts: *additional, praetor and legal.*

Additional pacts (*pacta adjecta*) *are additional agreements to the main contract, which aim to make some modifications to the legal consequences of the main contract.*

The need for additional pacts is due, in particular, to the fact that over time the circumstances changed and it was necessary to adjust the terms of the concluded agreement.

Additional covenants could be attached to the main contract either at the time of its conclusion or later after a certain period of time. For example, when entering into a land sale and purchase agreement, it could be additionally agreed that the seller would continue to use the land for a certain period of time or that in the event of a subsequent sale of the land, the seller would have a preemptive right to purchase it.

By means of an additional covenant, a new condition was added to the agreement already concluded between the parties or an existing one was changed. However, since this covenant could be used to amend an existing contract, the terms of the covenant were subject to legal protection only if they improved the debtor's position (for example, by reducing the scope of his obligations or the amount of liability, by allowing him to fulfill his obligations in parts or over a longer period of time, or by exempting him from the debt altogether).

Praetorian covenants (*pacta praetoria*) *were so named because they were initially protected by the praetor.*

These covenants included:

1) *the pactum de jurejurando (oath agreement)*, which meant that in response to a creditor's demand to make a payment, a person who did not consider himself a

debtor agreed (to believe in the existence of a debt) to make it on condition that the creditor swore that a debt existed. If the creditor swore, this alone was sufficient for enforcement;

2) *an agreement on the establishment of a monetary debt (pactum de pecunia constituta)* arose if the defendant recognized the claim for payment of the debt brought against him, but requested a delay, and the plaintiff agreed to it. If the debtor subsequently evaded fulfillment of the obligation, the debt could be collected on the basis of this agreement with an increase in the amount from 1/3 to 1/2 at the discretion of the praetor;

3) *acceptance (receptum)*, which could take three forms: **first**, acceptance of payment (**receptum argentariorum**) is an agreement with a banker to pay a certain amount to a third party at the expense of the client. The conclusion of this covenant did not mean that the creditor had a new debtor, as the principal obligation continued to be in force in its previous form. The legal relationship under the covenant arose only between the banker and the client, and therefore, if the banker subsequently refused to pay the agreed amount to the creditor, the client could take advantage of a special claim under the covenant;

second, acceptance of property by courts, inns, stables (**receptum nautorum, cauponum, stabulariorum**) meant that the owners of these facilities, regardless of their fault, assumed responsibility for compensating for damage to property received by them from passengers, guests or other persons who were forced to hand over their belongings to the owners;

third: acceptance of arbitration (**receptum arbitriri**) meant that the parties who agreed to submit their dispute to an arbitrator of their choice and the arbitrator entered into a pact, by virtue of which the arbitrator was obliged to consider the dispute and render his decision. No one forced a person to take on the duties of an arbitrator, but if a person agreed to do so, he or she was obliged to see the case through. Failure to fulfill the obligation could result in a fine. Only valid reasons (e.g., illness) could be grounds for exemption from liability. In the absence of voluntary execution of the arbitrator's award, it was enforced by order of the praetor.

Lawful pacts (pacta legitima) were agreements whose protection was provided by legal norms adopted (established) by the emperor.

Thus, the Constitution of Theodosius provided legal protection for the dowry pact. Justinian enshrined in his constitutions the agreement on the provision of a gift and on arbitration. Therefore, sometimes these covenants are also called imperial covenants.

The following types of legal covenants were distinguished.

1) **A dowry pact (pactum dotis)** is an informal agreement under which the bride's father undertook to transfer certain property to his daughter's future husband as a dowry to facilitate their future family life.

2) **A pactum donationis** is an informal agreement under which one party (the donor), in order to show generosity, gratuitously transferred property to another person (the donee). The gift could be a transfer of ownership of a thing, payment of a sum of money, granting of an easement right, etc.

3) **Arbitration agreement (compromissum)** *is an agreement between two parties to refer their dispute to a person they trusted (arbitrator).*

This was, for example, appropriate when the parties wanted to avoid public disclosure of their relationship. Failure to comply with the arbitrator's decision was punishable by a fine.

Lecture session № 14. Non-contractual obligations

Plan

1. Quasi-contracts
2. Formation of the concept and general characteristics of obligations in tort.
3. Classification of obligations from torts.
4. Quasi-torts.

1. Quasi-contracts

Since life is quite diverse, it became clear over time that obligations between persons arise not only in the event of a contract or an offense, but also on other grounds. Among them, one could distinguish obligations that by their nature and content had certain common features with contracts and therefore resembled them. These obligations were separated into a separate group and called **quasi-contracts** (Latin **quasi ex contractu** - obligations as if from a contract). It is believed that the concept of quasi-contract was introduced only in the Institutes of Justinian (I. 3.27).

Their peculiarity in comparison with contracts was that in order for one person to be recognized as a creditor and the other as a debtor, no consent was required between them. Quasi-contracts were based on events or actions of one of the parties. The latter could be both lawful (conducting other people's affairs without a power of attorney) and not always lawful (unjust enrichment).

Although ancient Rome did not have a clear definition of the concept of quasi-contract, based on the analysis of the obligations attributed to it, the following definition can be offered:

Quasi-contracts (quasi ex contractu) are obligations arising from an event or action of one of the parties and having common features with certain contracts.

The inclusion of rather heterogeneous obligations in this group was due to the existence, in the opinion of the Romans, of similarities with existing contracts

This led to a practical conclusion: if disputes arose between the parties to a quasi-contract, they could be resolved in the same way as under a similar contract (for example, regarding the terms and limits of liability).

There are two main types of quasi-contracts:

1) *conducting other people's business without a commission* (although the term "**negotiorum gestio**" used by Roman lawyers for this type of quasi-contracts means "conducting other people's business, taking care of other people's business", for greater clarity in distinguishing it from contracts, the words "without a commission" were added to the existing term in the subsequent literature)

2) *unjust enrichment of one person at the expense of another* (**condicti sine causa**).

Conducting another's affairs without a power of attorney (negotiorum gestio) occurred when one person without authority on his or her own initiative, due to an urgent need, performed actions in the interests of another person free of charge, but at the expense of the latter.

Such actions could be both factual (e.g., repairing a roof damaged by a natural disaster in order to prevent the destruction of property in the building; managing the property of a deceased person until heirs appear, etc.) and legal (e.g., paying someone else's debt to avoid sanctions against the debtor).

This obligation is classified as a quasi-contract due to the similarity of these relations to a contract of assignment.

The said obligation arose between: an uninvited executor of a case in someone else's interest (the so-called unauthorized attorney) - the gestor (**negotiorum gestor**) and the person in whose favor the case was conducted - the master (**dominus negotii**).

It took place under the following conditions:

first, the case was conducted for someone else, not for the client's own benefit;

secondly, the gestor was not obliged to take care of the master's business either by contract (as an attorney) or by law (as a guardian), but performed these actions on his own initiative

thirdly, the conduct of another's business without a power of attorney was conditioned by

the need to take certain actions in the interests of another person, since the owner was absent or for some reason could not do so and did not explicitly prohibit external interference in his affairs by another person (there was an exception to this rule: the costs of burying the deceased were always subject to reimbursement);

fourthly, the care of someone else's business should be economically profitable and expedient from the owner's point of view (the gestor performed such actions that the owner himself would have performed if he had such an opportunity);

fifth, the conduct of business was free of charge, as the relationship between the gestor and the owner was based on mutual trust and respect;

sixth, the master made expenses in the course of conducting other people's business with the intention of charging them to the owner.

The mere fact of conducting other people's affairs, under certain conditions, gave rise to an obligation on the part of both the gestor and the owner. This rule was established, in particular, to ensure that absent owners were not left defenseless and did not suffer losses.

Since the host acts in the interests of another person, a number of requirements are imposed on the behavior of each party.

The host is obliged to:

first, to conduct the business as if it were his own with the greatest benefit to the principal;

secondly, upon completion of the case, to provide the principal with a detailed report on his activities;

third, upon completion of the case, to hand over to the owner everything received in the case;

fourth, if the owner does not approve the actions of the gestor and recognizes them as inappropriate, to return the property to its original state;

fifth, to be liable for any fault (however, the gestor was liable only for intentional fault in the case of voluntary assignment of duties to conduct other people's affairs under the influence of a special sense of responsibility for the interests of the owner in connection with the existing danger and the urgent need for immediate emergency action (for example, in case of fire)).

The owner is obliged to:

first, to accept the report;

secondly, to reimburse the costs of the case;

thirdly, to assume the obligations that arose in the course of the case and to appropriate the income received;

fourthly, if the gestor's actions are disapproved and recognized as inappropriate, return to the latter the money and things that he enriched from the conduct of the case.

The host's obligations arose only when the actions of the host were in his interests.

The owner's obligation to approve the actions of the host and reimburse the costs incurred was determined only by the nature of the economic action and the effect or result achieved. The question of the feasibility of the actions of the host did not arise in the case of their approval by the owner. By doing so, the owner recognized his obligation to reimburse the expenses incurred. In the event of subsequent approval of the actions of the host by the host, the entire relationship was considered as if the host had immediately acted as a mandator. Therefore, the rules of a commission agreement were applied to these relations.

Even if the owner disapproved of the actions of the gestor, if the court found them appropriate, the owner was obliged to compensate for the expenses incurred. It did not matter whether the expected result was actually achieved (for example, a person treated a sick slave, but the latter died).

Although, as a general rule, the gestor was liable only for fault, sometimes he was also liable for chance: for example, when the gestor started some new business, unusual for an absent person. In this case, if only expenses were incurred as a result of conducting someone else's business without a power of attorney, they were borne by the gestor, if income was incurred, it was transferred to the owner, and if both income and expenses were incurred, they were offset.

If the consignor did not have the right to reimbursement of incurred expenses, he could demand from the owner the return of those values that he enriched as a result of the consignor's actions (according to the rules on the return of unjust enrichment).

Separately, in Ancient Rome, conducting other people's affairs in one's own interest was singled out, which occurred when a person, without a mandate, purposefully takes actions in conducting other people's affairs, not in order to protect the interests of another person, but in order to obtain certain benefits for himself in the future (for example, by making demands on the host).

In this case, the owner enjoys the above-mentioned rights regarding the acquisition of the benefits made for him. However, the trustee had fewer rights than

when conducting business in the interests of others. In particular, he could not even receive what was actually invested in the case, since the owner was obliged to reimburse the expenses incurred by the manager only within the limits of the benefit received.

There could be the opposite situation. For example, a person in good faith considered the thing to be his own, sold it and kept the proceeds. However, if it later turned out that it was someone else's thing, the actual owner could demand the return of the received benefits of his choice on the basis of a claim for conducting business in someone else's interests or for the return of unjust enrichment.

Unjust enrichment of one person at the expense of another is an obligation that arose in one of the cases when without proper grounds

1) the property of one person increased due to the fact that another person transferred his money or property (for example, mistakenly paying a debt to the wrong creditor);

2) the property of one person remained unchanged, although it should have decreased if another person had not transferred his money or property to a third person instead of him (for example, another person mistakenly paid off the debt instead of the valid debtor).

The signs of this obligation were:

first, the enrichment of one person at the expense of another and,

secondly, the unjustified nature of such enrichment.

Unjust enrichment (*condicti sine causa*) occurred in cases where a person enriched himself without due cause at the expense of another. In this regard, he or she was obliged to compensate the person who had unjustifiably acquired the enrichment.

The presence of certain similarities between unjust enrichment and mutual relations served as the basis for classifying unjust enrichment of one person at the expense of another as a quasi-contract in Roman law.

Obligations for unjust enrichment were protected by a *condictio* action.

There are four main categories of conditional claims for unjust enrichment.

A claim for recovery of a paid non-existent debt (***conditio indebiti***). If a person made a payment without a proper basis (both the debt and the purpose of enrichment of the recipient are absent), the recipient is obliged to return what he received to the payer.

A claim for recovery of a paid non-existent debt could be filed under the following conditions:

first, the person made the payment with the intention of repaying a certain debt (this could be either a transfer of money or things or the termination of another obligation in connection with the offset of a mutual debt);

secondly, the absence of a debt to the recipient, the repayment of which was intended by the payer (this also includes cases of payment of a contingent debt before the contractual condition has been met);

third, payment of a non-existent debt was made by mistake.

By filing a claim for recovery of a paid non-existent debt, the payer demanded the return of the transferred money or things (or equivalent compensation for their value).

A claim for the return of something given for which the purpose was not realized (conditio causa data causa non secuta).

The following conditions are necessary for this type of obligation to arise:

first, one person has received a property benefit from another in any form (by transferring property, money or exemption from the obligation to pay a debt);

secondly, the provision of property benefits was made for a clearly defined specific purpose (for example, property was transferred as a dowry, but no marriage was concluded);

third, the expected purpose for which the property benefit was transferred was not realized.

A claim for the return of theft (**condictio ex causa furtiva**).

The things that the thief received as a result of the theft never became his property. In this regard, the owner could at any time demand their return on the basis of a vindication action (**res vindicatio**). However, this procedure was quite cumbersome and required considerable effort and time. Therefore, in order to promptly return their belongings, the owner could also use a **condictio** action. It could be filed only against the thief or his heirs. The thief had to return everything he had taken in full, with all the fruits and benefits, both actual and possible. In addition, the thief bore the risk of accidental destruction of the thing that occurred after the theft. This was manifested in the fact that even if the stolen thing was destroyed due to force majeure (**vis major**) (fire, natural disaster, etc.), the thief had to reimburse the owner for its full value.

Claim for acquisition on an unfair basis (condictio ex causa injusta). This claim was used, for example, to recover a pledged item after payment of a debt secured by the pledge, as well as profits received from the item after payment of the debt.

Along with these types of conditionalities, there was a **general conditionality (condictio sine causa)**, which was applied as a universal claim on the basis that any person who enriched himself without a sufficient legal basis was obliged to return what he received to the person at whose expense he enriched himself. The general condition applied, for example, to cases where a person was required to return things or money that he or she had on a certain basis that later disappeared. This claim, for example, was used to return a receipt that remained with the creditor despite the repayment of the debt.

2. Formation of the Concept and General Characteristics of Tort Liabilities

Another reason for non-contractual obligations was **tort**. The word "delict" (delictum) means wrongful act; dishonorable, immoral concession; crime. That is, the interpretation of delict in Rome was associated not only with an offense in the

literal sense of the word, but also with the immorality of a certain person's behavior. In the doctrine of Roman law, the category of delict was equated with an offense.

Delict (delictum) is an illegal act resulting in damage that is not related to the offender's failure to fulfill an obligation owed to him. Therefore, phrases such as "tort liability", "tort liability" or "tort liability" mean the same thing.

If contractual obligations are caused by legitimate actions, then obligations from torts are generated by illegal actions by which one of the participants in the relationship causes damage to the other. In accordance with this, rights and responsibilities are distributed between the subjects of tort liability: the victim is authorized to compensate for the damage caused to him, and the violator is obliged to provide appropriate compensation to the victim.

Obligations from torts in Roman law began their development as early as the Laws of the XII Tables. Even then, it was recognized that a private offense gives rise to the obligation of the offender to pay a fine to the victim. A private offense (delictum privatum), in contrast to a criminal offense, was considered to be an unlawful act that violates the interests of individual private individuals. It also included illegal actions that modern law classifies as serious criminal offenses, such as theft (furtum).

It is believed that initially, not contractual obligations arose, but obligations related to offenses. The state authorities generally did not interfere in contractual relations between people and gave preference to their own judgment in the formation of mutual relations. The emergence of obligations from offenses was determined by reasons of a social nature, the goals of balancing relations between people in society and ensuring the protection of the rights and interests of private individuals from offenses and any arbitrariness on the part of other persons.

Compared to contractual obligations, tort obligations had a number of peculiarities. For example, unlike contractual obligations, tort obligations were not always inherited. Heirs were not liable for the testator's torts unless they received some benefit from the tort. If several persons were involved in a contractual obligation, the amount of the claim or debt was either divided into shares among them or a joint and several obligation was established. In tort liabilities, penalty liability was often imposed on each of the offenders, not in proportion to their respective shares and not according to the rules of joint and several liability, but on the principle of cumulation, whereby the amount of the penalty was multiplied by the number of offenders. The legal capacity required to enter into a contractual obligation did not always coincide with the capacity to be liable for torts. If minors did not have the capacity to enter into contracts, they were liable for torts.

The general concept of "tort" covers certain types of offences that were quite specific in Roman law, each of which gave rise to a particular type of tort liability. Like the system of contracts, the system of torts had a closed nature and an exhaustive list of offences.

3. Classification of tort liabilities

Roman jurisprudence and written law divided torts into two groups: public torts (*delicta publica*) and private torts (*delicta privata*).

Public torts were offences that infringed on the public interest. These were, for example, crimes against the people and their security (D. 48. 4. 1. 1. 1); making false accusations or failure to report a crime that had actually been committed (D. 48. 16. 1. 1. 1), etc. The peculiarities of torts of this category were as follows. *Firstly*, sanctions for such offences were mainly directed against the person who violated public order. *Secondly*, in cases where property sanctions were imposed on the offender for a public tort, the relevant penalties were imposed for public needs or to the state treasury, and not in favour of the person who suffered from the offence. *Thirdly*, cases concerning public torts were subject to special, criminal courts and were considered under special rules of procedure.

The essence of *private torts* lies in their focus on protecting the interests of private individuals who suffered from the offence and for whose benefit the relevant property recoveries were made from the offender. This is how Roman law viewed torts of this category, and it was they that gave rise to civil tort obligations, with the offender acting as a debtor and the victim as a creditor. Claims for such torts were brought directly by the victims, i.e. private individuals.

The elements of private tort were recognised as: 1) objective damage caused by an unlawful act of one person to another; 2) any form of guilt of the person who committed the unlawful act; 3) recognition by objective law of this act as a tort, i.e. determination of private law consequences of such an act, which were applied in civil proceedings.

Having passed a certain historical path in its development, the Roman private law defined the following types of torts, and, consequently, the types of obligations arising from them

- 1) personal insult
- 2) theft
- 3) robbery
- 4) unlawful damage or destruction of another's property;
- 5) threat;
- 6) deception
- 7) deception of creditors.

Personal injury (*injuria*) was any moral harm caused to the victim, i.e. an offence committed against the personal non-property rights of a person. The concept of *injuria* also included such torts that resulted in, for example, mutilation. These unlawful acts did not cause property damage to the victim. Praetorian practice significantly expanded the scope of torts covered by the concept of *injuria*.

With the development of Roman jurisprudence, torts called *injuria* acquired the characteristics of public law torts, i.e., the characteristics of criminal offences for which imperial law established criminal liability.

Theft (*furtum*). In contrast to personal injury (*injuria*), Roman law considered theft as a tort related to the unlawful encroachment on another's property interest. It should be noted, however, that Roman law interpreted theft in a broader sense than in subsequent historical epochs.

According to the well-known definition of Paul, theft is the appropriation of a thing by fraudulent means for the purpose of enrichment or removal of the thing itself, use or possession of the thing (D. 47. 2. 1. 3). Theft occurs not only when someone secretly steals a thing, but also in general when someone appropriates a thing against the will of its owner (G.3. 195). Theft was also recognised as the use of a thing transferred for safekeeping. It was believed that if someone received a thing for a certain use and turned it to another use, he was liable as a thief (G.3. 196). In some cases, actions in relation to one's own property were recognised as theft, when, for example, a debtor steals a thing pledged as collateral or secretly takes his own property from its bona fide owner. Therefore, it was established that one who conceals the fact of returning to him a slave who was owned in good faith by another commits *furtum* (G. 3. 197).

As we can see, in Roman law, the tort of *furtum* covered theft in its literal sense, as well as any intentional misappropriation of another's right, regardless of whether it was accompanied by the taking of property in general or whether there was a misappropriation of another's property right in another way (for example, by fraud).

Roman lawyers pointed to several types of *furtum*. In particular, the Law of the XII Tables distinguished between overt and covert theft, depending on which the offender was subject to appropriate sanctions.

According to the criterion of its orientation, *furtum* was distinguished: theft of use; theft of possession; theft of property.

Liability for *furtum* was established by various legal means. Among the main ones was the vindication action (*res vindicatio*), under which the damage caused by the theft to the victim was compensated by reclaiming the stolen item from the offender and compensating for other losses related to the theft. However, its application was often impossible, for example, when the stolen item was a consumer item or an item characterised by genera. Therefore, more accessible were the legal means of protecting the property interest violated by the theft.

Furtum obligations meant that the offender was obliged to pay the victim a fine. In some cases, in the case of *furtum*, the offender could also be subject to means of, so to speak, personal influence on him, up to and including the deprivation of his life.

In general, two obligations arose from *furtum*. The first was based on the condition of *furtum*, under which the thief was ordered to return the thing with all its increase; the second was based on the action *furti*, under which a thief caught in the act was ordered to pay a fine of four times the value of the stolen thing, and a thief not caught in the act - up to its double value. The creditor (victim, plaintiff) in *furtum* obligations was usually the owner; but it could also be the possessor or holder of the thing.

Robbery (rapina). For a long time, Roman law did not distinguish it as a separate type, absorbing it into theft. However, historical circumstances changed, necessitating the improvement and strengthening of legal remedies for the protection of violated property rights in connection with the unlawful seizure of another's property by means of violence. Such phenomena became widespread in the first century BC, when riots and uprisings were not uncommon. Under such circumstances, and at the request of the ruling classes, the praetor M. Terentius Lucullus issued a special edict prosecuting robbery committed by a crowd of armed men. And already in the Institutes of Gaius, robbery was singled out as a separate type of tort.

The essence of the obligation from tort (*rapina*) was reduced to the fact that the violator was obliged to pay four times the value of the stolen property. However, such a sanction remained in force for one year from the moment of the offense. With the expiration of this term, the sanction could not exceed the limits of the actual damage.

Illegal destruction or damage to someone else's property (damnum injuria datum). This is a tort, which differs from personal insult, provided that the victim is not offended by it. If, as a result, the perpetrator does not acquire certain benefits, then this tort also goes beyond theft.

Liability for wrongful destruction or damage to someone else's property received an independent interpretation in the law proposed by the plebeian tribune Aquilius (about 286 BC), in which an attempt was made to systematize the torts of this category.

Certain conditions were necessary for the liability of *damnum injuria datum* delict to arise according to the law of Aquilius, namely: a) the presence of damage; b) the damage should have been the result of direct actions of the offender; c) presence of any fault of the offender. Only the owner of illegally destroyed or damaged property could act as a creditor under this obligation. And only later, in praetorian practice, they began to apply the law of Aquilius, granting the right to sue also to other interested parties (for example, creditors of the owner of the damaged or destroyed property, the owner of the property, etc.).

Threat (metus). In the early stages of the development of Roman law, this delict was not mentioned at all. Only approximately in the 1st century. to n. e. *metus as delictum privatum* began to be persecuted by praetorian law.

Usually, the threat included the facts of offenses, such as: extortion, coercion to commit a deed under the threat of unlawful damage, in connection with which the victim was forced to act against his will.

Proclaiming *metus delict*, the praetor decreed the same liability as for robbery - in the amount of four times the value acquired by the offender as a result of the threat of property gain. However, unlike robbery torts, menacing involved wrongful mental influence on the victim. In addition, if before the court decision was made, the offender returned the purchased item, then the matter was limited to that.

Fraud (dolus malus) did not cause a negative reaction from ancient Roman law for a long time. How the tort of *dolus malus* was formed due to the activity of the

praetor in the 1st century. to n. e. However, compensation for damage caused by deception was not equal to four times the amount of damage, but its actual amount.

Praetorian law also introduced a delict called *fraus creditorum* (deception of creditors, fraudulent intent, fraudulent intent to harm another person - the creditor). The appearance of the tort related to the deception of creditors was determined by the fact that when a debt was levied on his property, there was a danger that the debtor would alienate the property (for example, a gift) in order to reduce the amount of forced payments due to the original creditors. For the latter, in such cases, praetorian law provided an opportunity to liquidate the consequences of the actions of an unscrupulous debtor, disputing the validity of his actions. In such cases, the claim was brought simultaneously against the debtor and against his counterparties, with whom he concluded relevant contracts. If the counterparties acted in bad faith, they undertook to compensate all the damage caused by the creditor. *Bona fide* counterparties reimbursed creditors for damages only in the amount received from the debtor.

4. Quasi-delicts.

Quasi-delicts (*quasi ex delicto*) did not fall under the characteristics of a delict. But since there were cases of quasi-delict damages in praetorian practice, praetors assumed hypotheses of guilty behavior that was prosecuted by praetorian law.

Among the rather wide list of actions covered by the concept of "quasi-delict", the most common are the following: quasi-delict, for which the responsibility of the judge was established for the improper conduct of court proceedings. Such responsibility arose if the judge's decision contradicted the facts presented by the parties, as well as in the case of any intentional violation of the procedure of the trial, which harms the interests of the parties (D. 5. 1. 15. 1). For such violations, as well as for violations of other judicial duties (for example, the absence of a judge on the day appointed for hearing a case), the judge could be charged with a claim by the injured party to compensate for the damage caused. If the judge's actions were intentional, he reimbursed the full amount of the claim, and in other cases, the judge paid a fine in the amount determined by the court.

The second type was recognized as a quasi-delict, as a result of which *liability arose for what was thrown out or spilled out of the house onto the street*, as a result of which harm is caused to people who use this street. Any occupant of a dwelling from which something was thrown or spilled into a public area could be liable for damages caused by such a quasi-delict. For this, the presence of fault in the defendant's behavior was not required. Only temporary residents were exempted from liability.

Any citizen could file a lawsuit against the person responsible for the said tort. The amount of compensation was equal to twice the amount of the damage caused. Only the person who committed such actions in case of *force majeure* was released from responsibility for the damage caused.

A quasi-delict was also provided for, which covered cases of liability for dangerously displayed, hung or hung property, which in the event of its fall, threatened to cause damage to the surrounding environment. In such cases, the law stipulated a fine of 10,000 sesterces and removal of the danger. Liability arose regardless of the fault of the defendant or the presence of damage. Therefore, a fine for such a quasi-delict could be levied in favor of any plaintiff.

Among the quasi-delicts, a separate type was those that covered the liability of owners of *hotels, inns, and ship owners for damage caused to the property of guests or passengers*. They were obliged to compensate the damages caused by their employees in a double amount. In the event of the loss of stored items, the guests could file a conditional claim against the owners of inns, hotels and ships. For damage caused by employees of owners of inns, hotels and ships, to tenants and passengers, the victims could file a quasi-delict lawsuit directly against those who caused the damage, and in case of their incapacity - against their owners.

Damage caused by a slave or animal to someone else's property or person was recognized as a quasi-delict. And in this case, their master was responsible. The fault of the owner of the slave or animal that caused damage was considered to be the lack of proper supervision of animals and slaves. The owner of the slave or animal that caused the damage was obliged to compensate it or to hand over the animal or slave under a noxious lawsuit.

In addition to the specified quasi-delicts, less significant offenses were: a) the offense of the land surveyor, who made a miscalculation during the distribution of land plots; b) burial in someone else's grave; c) providing assistance to a slave during escape, etc.

Lecture session №. 15. Inheritance law

Plan

1. The concept of inheritance law.
2. Inheritance by law.
3. Inheritance by will.
4. Opening and acceptance of inheritance.
5. Singular succession.

1. The concept of inheritance law

Inheritance law is a set of legal rules that govern the transfer of property rights and obligations of a deceased person to his or her successors.

Roman inheritance law developed a whole set of legal provisions that regulated the transfer of an owner's property after his or her death to other persons. They included such categories and provisions as inheritance, legacy, testator, heir, universal and singular succession, discovery and acquisition of inheritance, legates, fideicommis and others.

Inheritance (hereditas) is the transfer of property after the death of its owner to other persons. Property is generally understood as a set of rights and obligations of the deceased.

Inheritance (hereditas) is a set of rights and obligations of the deceased, which is determined at the time of the testator's death.

A testator (defunctus) is a person who left property after his or her death. It can only be an individual.

Heir (heres) is a person to whom the property of the deceased is transferred in accordance with the established procedure. It can be either an individual or a legal entity.

The transfer of the deceased's property (succession) to other persons is possible on one of two legal grounds - by will or by law.

Roman inheritance law did not allow simultaneous inheritance by will and by law.

At the same time, succession in the rights and obligations of the deceased could be of two types - universal or singular. According to universal succession, the rights and obligations passed to the heirs as a whole, all in full. It was not possible to agree to succession only in rights, renouncing obligations (debts), or to entrust one heir with the debts of the testator, and to transfer only rights to another, so the heirs were responsible for the debts of the testator.

Along with universal succession, singular succession developed in Roman inheritance law, according to which only the rights of the testator, unencumbered by obligations, passed to individuals.

Roman citizens and legal entities could acquire inheritance, but not all, but only the treasury, municipalities, the church and charitable institutions.

According to Justinian's law, celibates could not acquire anything by will, although they could be legal heirs.

The childless (*orbi*) could acquire only half of the inheritance by will. Persons unworthy of the testator could not inherit; in the latter case, the inheritance passed to the *fisc*.

A certain period of time could pass from the moment the inheritance was opened to its acceptance. In such an uncertain state, the inheritance was called dormant, dormant (*hereditas iacens*).

In the course of the historical development of inheritance law, four stages can be traced: inheritance law according to *ius civile*, praetorian law (*bonorum possessio*), imperial legislation before Justinian and the reform of Emperor Justinian.

In the era of the Laws of the XII Tables, the concept of unlimited Quirite property was born. The principle of freedom of wills fights against the remnants of family, agnatic property. Blood relationship does not give the right of inheritance.

Praetorian law reflects the disintegration of the old family and the successive displacement of agnatic kinship by blood kinship. For the first time, the right of inheritance is acquired by blood relatives and one of the spouses who survived the other.

Under the imperial legislation before Justinian, the right of private property reaches its highest development. Generalization and consolidation of the main principles of the praetorian inheritance system is taking place.

According to the legislation of Justinian, a wide reform of inheritance law is carried out in his novels. Blood kinship finally replaces agnatic kinship.

2. Inheritance by law

Inheritance by law (*abintestatio*) arose before inheritance by will, but according to the Law of the XII Tables, the opening of inheritance by law is possible only when there is no will: *si intestatus moritur*, that is, when someone dies without a will.

Inheritance under *jus civile* was determined by the provision of the Law of the Twelfth Tables, **which distinguished three classes of heirs:**

I - *sui* or *sui heredes*, i.e. one's own heirs, which included one's subject children, grandchildren, great-grandchildren in the male line, spouse (*cum manu*), and adopted children: grandchildren were recognised as heirs only when their father died; they all received their father's share;

II - the closest agnates (*agnati proximi*), for example, brothers and sisters. They were called upon if there were no *sui heredes* (heirs);

III - the closest relatives (*gentiles proximi*); they were called if there were no agnates.

The legal heir was called to inherit once; therefore, if the nearest heir refused, the inheritance became extortionate.

Inheritance by *bonorum possession* (praetorian edict). According to the praetorian edict, four classes of heirs were established, who were called in the following order:

I - unde liberi. Along with subordinate children of the heir, emancipated children were also recognized in this class; along with agnates, cognates also inherit, that is, all children in general inherit.

II - unde legitimi. In this class, sui heredes were once again called upon to inherit, and in their absence, agnates and relatives;

III – unde cognate. All blood relatives up to and including the sixth degree of kinship were invited;

IV – unde vir auf uxor, i.e. one of the spouses surviving the other, provided there is a complete absence of relatives specified in the first three classes or in case of their refusal of inheritance. Successio ordinum (succession of classes) was introduced by the praetor, that is, if the closest heir refused to accept the inheritance, the next one from the family was called and the inheritance did not become extinct. The essence of bonorum possessio was that the praetor, without waiting for the final clarification of the question of who was the true heir in this case, gave these persons access to possession by issuing a special interdict - interdictum quorum bonorum. Entry into possession was sometimes given temporarily, until the arrival of the true heir; in other cases, possession was given definitively and irrevocably; such final owners of the land may be the heirs according to the law - ius civile, as well as third parties.

In both systems (civil and praetorian) one basis is laid: heirs are universal successors of the testator; testamentary inheritance plays a major role; by law, heirs are called only in the case when there is no will.

The foundations of praetorian law prevailed; the development of praetorian law as opposed to ius civile expanded the narrow boundaries, corrected and paved the way for the new law of the following centuries.

Justinian reorganized the law of inheritance according to novellas 118 and 127.

Four classes of heirs were established, which were invoked in the following order:

I - all descending relatives of the deceased. They (relatives of further degrees) were called together with closer degrees, if their father was absent; descendants received equal shares of the inheritance. The children of the previously deceased father all together acquired the share of the inheritance that he could have received during his lifetime.

II - ascending relatives - father, mother, grandfather, grandmother, as well as full brothers and sisters and their children, etc.

If only ascending relatives inherited, then the inheritance was distributed equally in linea, that is, one half - on the paternal line, and the other - on the maternal line.

Ascendants, brothers and sisters, inherited equally - in capita. Children of deceased brothers and sisters by right of representation all together received the deceased father's share - in stirpes;

III – non-consanguineous brothers and sisters (consanguineous and single-uterine), as well as their children. The inheritance was distributed equally - in capita. The children of the deceased father all together inherited his share - in stirpes;

IV - all other relatives. Nearest includes more distant degrees without limitation. The inheritance was divided into equal shares - in capita.

Therefore, according to the law of Justinian, the succession of classes and degrees (successio ordinum et graduum) was allowed.

Praetorian bonorum possessio remained valid for matrimonial inheritance. A poor wife received $\frac{1}{4}$ of the property of a deceased wealthy husband; in the presence of three or more children, she received an equal share with the children - in capita, and she only had the right of use, not the right of ownership.

Children of concubinage and their mother received $\frac{1}{6}$ of the property of the deceased father, if there were no legitimate children and a wife.

The last two types of inheritance are called extraordinary inheritance.

3. Inheritance by will

A will (testamentum) is a unilateral formal civil legal order of a person in the event of his death, which contains the appointment of an heir.

Designation of the heir is the most important part of the will. If the heir was not appointed, died or refused the inheritance, the will became invalid. In addition to the appointment of an heir, the will may contain provisions on property, upbringing of children, appointment of a guardian, etc. All these orders were only secondary parts, which the will could not have.

Orders in the event of death, in which the heir was not appointed, but only copies, were called codicils (codicillus) and were customarily an appendix to the will. The codicil could also contain appeals to the heirs by law.

Three conditions were necessary for the will to be valid:

1) legal capacity of the testator to make a will - testamenti factio active. Only Roman citizens and only persona sui iuris were legal persons. Subjects, slaves, peregrins, victims of capitis deminutio, apostates, and some heretics were ineligible to execute a will; minors (impuberes), prodigals, mentally ill, except for light intervals (lucida intervalla), deaf and dumb from birth, temporarily ill, unable to express their will.

2) the form of the will. Inheritance by will appeared later than inheritance by law. But since ancient times it was necessary to observe a certain form. The Roman jurist Gaius points out that ancient Roman law knew two types of wills that were executed publicly: at public meetings - testamentum calatiis comitiis by curiae under the chairmanship of the pontiff (commissions were convened for this purpose twice a year, on March 24 and May 24: in front of the front of the army (testamentum in procinctu), that is, before the same people.

In both cases, the testator addressed the congregation orally, pronouncing clearly defined words.

Many years after the publication of the Laws of the XII Tables, a private will appeared, which was carried out through mancipatio: the testator transferred all his property to a certain trustee (familiae emptor), who assumed the duty to carry out the instructions of the testator.

These oral orders were called nuncupations (nuncupationes) and were attached to mancipation. The relationship between the testator and a third party was based on trust and had the same character as fiducia. Later, nuncupations, in which individual provisions were explained in detail, were replaced by a general formula. These oral orders could be replaced by written ones, as a result of which the center of gravity of the content was shifted to them. The testator, after making the mancipatio, presented his written order to the familiae emptor'y and witnesses, pronouncing certain solemn words, after which it was signed by five witnesses, bound and sealed.

In the law of Justinian, according to their form, wills were divided into public and private.

Public wills were drawn up with the participation of state authorities and were divided into two types:

1) judicial will (testamentum iudiciale). The testator came to court and expressed his will, which was recorded in the protocol and kept in court;

2) testamentum principi oblatum (will entrusted to the ruler of the country for safekeeping). The testator conveyed his will to the emperor in writing. Public wills originated in the imperial period

Private wills were drawn up without the involvement of state authorities and could be both written and oral. For the validity of these wills, the following were required: the presence of seven witnesses, the unity of the place and time of execution of the testamentary act, i.e. the testamentary act must not be interrupted and violated by any external actions. Only adult male persons could be witnesses. The written will was signed by the testator; the eighth witness signed for the illiterate testator.

Separate types of wills were (extraordinary):

- 1) a will to the blind (the presence of eight witnesses was required);
- 2) a will drawn up in the village (five witnesses were required);
- 3) soldier's testament (there were no restrictions on forms);
- 4) a will during an epidemic (witnesses could be in different rooms with the testator).

The content of the will should have been the mandatory appointment of the heir; several heirs could be appointed; if the testator did not specifically determine the fate of each heir, each of the heirs received an equal share.

If one of the heirs dropped out, his share was distributed among the other heirs according to the right of accretion of shares (ius accrescendi).

A will may be invalid:

1) from the very beginning, if one of the three conditions is missing in it: legal capacity to execute wills, appointment of an heir and the appropriate form;

2) a) as a result of capitis deminutio (reduction of the legal capacity of a Roman citizen due to changes in his state (status)), b) if the heir loses the right or dies before the testator, c) if the will is destroyed by the testator himself through a statement in court or before three witnesses, d) if a new will is drawn up.

The will, made strictly according to the requirements of the law, could still be canceled or partially changed by the testator himself. He could make a new will, add

to it or change it. A later made will cancels the previously made one in the part that contradicts the earlier made one.

4. Discovery and acceptance of inheritance

Inheritance is succession in property rights and obligations of the testator. It had two stages: discovery and acceptance of inheritance.

The opening of the inheritance takes place at the time of the testator's death. At the moment of opening the inheritance, the heirs do not yet become its owners.

For this, the following legal actions should be taken:

1) take measures to fully identify the inherited property and protect it. For this purpose, an inventory description of the identified inherited property was conducted, which served as the legal basis for determining its composition (assets and liabilities);

2) identify and determine creditors and debtors, their location, amounts of claims and debts, etc.;

3) identify potential heirs. They could be located both at the place of discovery of the heritage and far from it - in the provinces, campaigns, etc. It was necessary to prepare the inheritance for acceptance by the heirs, which required a certain and sometimes long time. However, civil law did not establish special terms. Creditors of the testator, interested in satisfying their claims in the shortest possible time, could ask the heirs to answer whether they accept the inheritance or refuse it. In accordance with this, the heirs appealed to the court with a request to assign them a period for reflection. This period could be determined up to 9 months, and by the emperor - up to one year.

The following conditions were required to accept the inheritance: a) the ability of the called heirs to accept the inheritance; b) the will to accept the inheritance expressed in a certain way. If the heirs called to inherit are unable to accept the inheritance themselves due to their incapacity, their legal representatives (parents, guardians, custodians) accepted the inheritance instead.

The will to accept the inheritance could be expressed in one of two ways: a) a statement of intention to accept the inheritance; b) actual entry into the management of inherited property. In the law of Justinian, the declaration of the intention to accept the inheritance could be made in any form, as well as entering into the actual management of the inheritance could be done in any way that testified to the entry into the inheritance, its acceptance. For example, the heir continues to live in the house that is to be inherited, repairs it, demands payment of debts from the testator's debtors. All these and other actions will testify to the entry into the heritage management.

Entry into the management of the inheritance indicates that the heir not only became the successor of the deceased in his rights and obligations, that is, the owner of the active part of the inheritance, but also is obliged to pay the debts of the testator.

The right to inherit was a strictly personal right that did not pass to the heirs of the person called to inherit. But in some cases, such heirs were given the right to

accept the inheritance that was opened. Such a transfer to the inheritance of the right to call for inheritance is called transmission (transmissio).

Such cases of transmission are possible.

1. Transmission ex capite in integrum restitutio, i.e. if the heir called to inherit did not have time to accept the inheritance and died himself, then the heirs were given the opportunity to enter the rights of the inheritance that was opened instead of him. Such a right was granted to praetors with the help of...

2. During the imperial period, Emperor Theodosius II (450 AD) decreed that when a descending heir is appointed as an heir under a will, then in the event of his death before the will is sealed, the right to inherit must pass to his descendants.

3. Justinian generally introduced the transmission of summons in the event that the summoner dies before the end of the one-year period from the moment he became aware of the opening of the inheritance for him. This right was transferred to his heirs within the specified period (transmissio Iustineanae).

There were cases when the heir called to inherit died before accepting the inheritance or refused it, and such a deceased heir had no heirs. The question arises: to whom should his share of the inheritance go?

When inheriting by law, it was considered that the deceased heir did not exist, and his share passed to other heirs by law. In the event of the death of a testamentary heir, the shares of other testamentary heirs were increased in proportion to their share, and in the absence of such heirs, inheritance by law followed.

These cases of increasing the share of heirs were called the right of accretion - ius accrescendi.

In order to recognize his rights to inheritance and to claim certain objects of inheritance, the heir had one general suit hereditas petitio actio in rem, which was significantly different from suits of this kind. In its purpose, this action is similar to an indicative action, and the right to it belonged to any heir. **For this lawsuit:**

1) the plaintiff was an heir to whom someone did not return something from the inheritance;

2) the defendant was the one who owned the inherited objects, considering himself the heir or the owner;

3) When filing a claim, the heir had to prove:

a) that the testator died;

b) that he is an heir by law or by will;

c) that he has accepted the inheritance, if the acceptance of the inheritance must be carried out in a certain form and within a certain period;

d) that the defendant withholds something from the inheritance, denying his right and that the defendant is subject to liability as a fictus possessor. According to the rule of senatus consultum Iuventianum (119 AD) about responsibility, his good faith or bad faith was taken into account; the moment of filing a claim against the defendant.

5. Singular succession

In Roman inheritance law, a singular succession also developed, according to which only certain property benefits passed to individuals without encumbering them with any obligations. These were so-called write-offs.

A **write-off** is a type of inheritance that was not carried out by appointing an heir, but by entering into some right or obligation of the deceased.

In Roman law, the copy had two forms: legate (legatum) and fideicommissum (fideicommissum).

Legatees existed in ancient law, were distinguished by their strict nature, characteristic of all institutions of civil law, and gave the legatee the right to sue. **Therefore, according to the nature of the claim, four types of them were distinguished:**

1. Legatum per vindicationem (legacy through vindication). According to this form of legate, a certain thing was given to a certain person: do - lego. The testator - the owner of the thing - the legatee received the right of ownership from the moment the heir took possession of the inheritance or from the moment the inheritance was opened. If the heir was suus (his own), he could demand the return of the thing by means of an action rei vindication lawsuit, the name of which is also given to the legate himself.

2. Legatum per damnationem (legacy through award). According to this form, the heir was obliged to give some thing to the legatee - dare damnasesto. The testator could write off his or someone else's thing, for example: I oblige my heir to buy a house and transfer it to the legatee. The legatee had only a personal claim against the heir - actio in personam.

3. Legatum per praeceptionem (legacy through the mediation of receiving a thing in advance). The testator wrote off some of his things to the heir himself in addition to the inheritance share. This legate defended himself with a suit for the division of the inheritance - action familiae herciscundae.

4. Legatum sidnendi modo (legacy in the form of permission or consent). This is a legate of the latest origin. A thing belonging to the testator or the heir was written off for him.

The installation of legates was accompanied by a highly formalized procedure. The testator could freely neither establish nor revoke a legatee (for example, before death) without following a complex rite. Legacies could only be imposed on heirs under a will. Therefore, next to formal legates, there are so-called fideicomis - mandates of conscience. They could be imposed without too much formalism both before and after making a will.

Trusteeships could also be imposed on legal heirs. Initially, for the heir, fideikomis was rather a moral obligation - the testator appealed to fides, that is, the honor of the heir, but from the time of Augustus (27 BC - 14 AD) he received the protection of the law.

The so-called fideicommissum hereditas - a universal fideicomis was used to oblige the heir to transfer all or a greater part of the property to a third party.

In the 1st century not. (according to other data - in 40 BC) the law of Falcidius was adopted according to which the fiduciary heir in case of acceptance of the inheritance gets the right to its fourth part - quatra. In case of refusal to accept the fiduciary inheritance (for example, as a sign of protest, so that the fideicommissary also does not receive anything), he is forced to accept it according to the law and fulfill the testator's demand, but without allocating the proper fourth share.

In the legislation of Justinian (decree of 529), legates and fideicomis were united in substance and form: it was established that any legate or fideicomis creates for the person for whose benefit it is established a mandatory claim to the heir, secured legal mortgage on inherited property.

Another decree of Justinian in 531 finally confirmed the merger of legates and fideicomis.

SEMINAR TASKS ON THE DISCIPLINE "ROMAN PRIVATE LAW" FOR FULL-TIME AND PART-TIME STUDENTS

Seminar №. 1. Concept of Roman private law, subject, method and system

Goal. to give students the concept of Roman private law as the civil legislation of a highly organized slave society, which in its development went through several stages and was constantly improved depending on the requirements of its time; determine its historical role in the formation of civil law of European states, including in our country; draw students' attention to the importance of Roman private law for a modern lawyer.

Methodological recommendations:

To prepare for the seminar, you should know: Subject, subject and method of Roman civil law. Definition of Roman civil law and its correlation with modern civil law of Ukraine. Correlation of private law and civil law of Ancient Rome and modern Europe. The genesis of Roman private law. Institutes of Roman civil law.

Division of Roman law into private and public. The main systems of Roman private law. The relationship between civil law and the law of nations. The subject of Roman private law as an academic discipline. The purpose and task of studying Roman private law. Methods of studying Roman private law.

The subject of study of the course "Roman Private Law" is the system of legal norms of Ancient Rome, which regulated social relations between private individuals, namely: a set of personal rights, the legal position of subjects in property relations, the ability of subjects to make property agreements; issues of legal protection of private rights; marital and family relations; relations related to property and other rights to things; obligations of subjects arising from contracts, offenses, allegedly from contracts and allegedly from offences; the range of questions regarding the inheritance of the property of the deceased.

Roman law is a complex legal phenomenon that consisted of three legal systems: *jus civile* - civil or civil law; *jus gentium* – the law of nations; *jus praetorium* – praetorian law. These legal systems did not arise simultaneously, but were formed successively, mutually enriching and complementing each other and, as a result, became so close that they lost their differences, becoming the basis of Roman private (*jus privatum*) and Roman public law (*jus publicum*).

The development and formation of Roman law has almost a thousand-year history, therefore, in order to systematize the material, it is logical to distinguish the stages (periods) of the development of the Roman state and Roman law. Thus, the development of the state and the political system of Rome allows us to distinguish three periods: royal; republican; period of empire. The period of the empire, in turn, is divided into the principality and the dominion.

Taking into account the origin, change and formation of the sources of Roman law, its development can be divided into five main periods: the most ancient or archaic; pre-classical; classic; post-classical; Justinian.

The fall of the Roman Empire in 476 did not mean the decline of Roman private law, but on the contrary, its development continued in the eastern part of the Roman state - Byzantium. Roman private law through direct or indirect reception (from receptio - perception, borrowing, assimilation) formed the basis of the legal systems of many countries. In Ukraine, the reception of Roman private law is of great importance for the development and formation of civil legislation, science and practice, as it contains the necessary initial guarantees and principles for the regulation of private law relations.

PROCESS OF WORK

1. Theoretical basis of the seminar (prepared orally for an answer at the seminar)

1. Search in sources and educational literature for aphorisms, sayings and maxims of famous Roman lawyers about law. Write a few in your practice notebook.
2. What principle is the basis of the division of the right to private and public?
3. Analyze the origin and characteristic features of jus civile. Correlate it with the concept of "civil law". Is it possible to use the term "civil law" - public law..
4. Why, in your opinion, is the formation of a modern lawyer unthinkable without knowledge of the basics of Roman private law? .
5. The importance of studying Roman private law for modern lawyers.

2. Practical tasks (performed by students on the Elearn platform and sent to the teacher for verification)

Compile and fill in the table "Periodization of the development of Roman private law", taking into account the stages of development of the political system of the Roman state and the stages of formation of the sources of Roman law

Seminar №. 2. Sources of Roman law

The purpose of the work. to form the ability to classify the sources of the study of Roman law by groups (primary sources, various scientific, educational and auxiliary literature); systematize students' knowledge of the sources (forms) of Roman law; specify and expand knowledge about certain types of sources (forms) of Roman law; to classify the sources of the study of Roman law by groups (primary sources, various scientific, educational and auxiliary literature); systematize students' knowledge of the sources (forms) of Roman law; specify and expand knowledge about certain types of sources (forms) of Roman law.

Methodical recommendations

To prepare for the seminar, you should know: Concepts of sources of Roman law and modern law of Ukraine. Types of sources of Roman civil law (sources of origin and content, knowledge and law-making).

Manners. Laws of the XII Tables as a collection of customary law. Laws in Ancient Rome. Resolutions of the People's Assembly. Senate advisers. Imperial

constitutions. Edicts of emperors. Rescripts. mandates Decrees. Codification of imperial constitutions.

Edicts of magistrates (praetor, smoking aedile, governor of a province) as a specific form of law-making. Codification of edicts.

Activities of lawyers. Forms of activity of lawyers in ancient Rome. Consultations of legal experts. Works of Roman lawyers. Institutions of Guy. Digests. Works of Roman historians. Works of Roman orators, writers, satirists, philosophers, etc.

Codification of Roman law. Codification of Justinian. Codex Justinian. Digests. Interpolations. Novels Collection of civil law

PROCESS OF WORK

1. The theoretical basis of the seminar (performed on the Elearn platform) - to prepare oral answers to questions):

1. Roman customs: concepts and types.
2. Laws of the XII Tables - the main source of the ancient Roman law.
3. Edicts of magistrates and praetorian practice.
4. Activity of Roman lawyers and its forms.
5. Codification of Emperor Justinian: purpose, content, significance for the formation of the law of European states.

2. Terminological task: decrees (decretum), digests (digesta), edicts (edicta) of emperors, laws, laws of the XII tables, custom, ideal (ideological, ideological) sources of law, imperial constitutions, institutions (institutio), codification of Justinian, commentaries (commentarius), mandates (mandatum), material sources of law, regulations (regulae), rescripts (rescriptum) of the emperor, senatus consulta (senatus consulta), formal sources of law, jurisprudence.

3. Practical task

1. Solve the case: Olympias was arrested for stealing fruit from Claudius' garden. What punishment awaited him according to the Laws of the XII Tables? (justify the answer with reference to the Laws of Table XII).

2. Correct the semantic error in the sentence (write the correct answer in a notebook for practical exercises)

1. A custom is a rule of behavior that has developed as a result of a one-time application.
2. Observance of customs was ensured by means of state influence.
3. The laws of the XII tables are the first customs sanctioned by the Roman state.
4. Custom was the main form of behavior regulation in the state society in the conditions of the clan system.
5. The custom must be in writing.
6. Custom has a higher legal force than the law.
7. Translated from Latin, "commission" means "commission".

8. Before taking office, the praetor pronounced an oath.
9. After the end of the praetor's mandate, his edicts did not lose their validity strength
10. The edicts of magistrates and praetors were the source of the formation of the Quirite rights
11. In the most ancient times, lawyers were students who studied at the Bologna school.
12. The decrees of the emperor were called orders.
13. During the time of the Principate, constitutions of four types were adopted: edicts, orders, rescripts, resolutions.
14. The content of the emperor's edicts did not differ from the praetor's.
15. The imperial edict contained a program of magistrates' activities.
16. Decrees are decisions of emperors on specific court cases.
17. Rescripts are written responses to requests received by the emperor on various issues.
18. Mandates are instructions for administrative and judicial officials affairs
19. The first official collection of constitutions was the Flavian Codex.
20. Justinian's Codex is a collection of edicts of praetors and magistrates.
21. Incorporation is the replacement of outdated concepts and terms with new ones.
22. Justinian's Digests and Pandects are different codified acts.
23. Digests were divided into: titles, books, paragraphs, fragments.

Seminar № 3. Persons (legal entities)

Goal. determine the factors that influenced the legal status of individuals in Roman society; systematize students' knowledge of the concept of civil legal personality and the types of civil legal capacity; trace the evolution of the legal status of legal entities and indicate their types.

Methodical recommendations

To prepare for the seminar, you should know: Concepts of person and subject of law in Ancient Rome.

Civil legal capacity. The emergence and termination of civil legal capacity. Content of civil legal capacity. Scope of civil legal capacity.

Capacity. Factors affecting legal capacity in ancient Rome. Types of legal capacity. Custody and care. The main division of the population of the Roman state into free and slaves. Roman citizenship (origin, acquisition, termination). Legal status of Roman citizens. Legal status of Latins. Legal status of peregrins. Legal status of freedmen. Legal status of columns. Legal status of slaves.

Legal entities (universitas). Signs of a legal entity. Types of legal entities. The emergence and termination of legal entities in ancient Rome. Representation and its types in ancient Rome. Activities of the prosecutor as a type of voluntary representation. Activities on the basis of an assignment agreement.

PROCESS OF WORK

1. The theoretical basis of the seminar (performed on the Elearn platform) - prepare an oral answer to the following questions)

1. Concepts and types of persons (legal entities) in Rome. Roman citizenship (origin, grounds for acquisition and termination).

2. Social division of the population and the legal status of certain categories (Latins, peregrines, libertines). Sources of slavery and methods of liberation from it. Slave peculium. Colonnade

3. Legal capacity (caput). Three states of legal capacity. Elements of legal capacity in the civil legal sphere.

4. Capacity: concepts, types and factors that influenced its scope.

5. Legal entities: characteristics, order of creation, activity and termination.

Prepare to create an imaginary situation at the seminar (choose a topic from the list of students in the journal):

1. "I am a slave"

2. "I am the emperor. what amendments to the laws on the status of persons in Rome would I introduce)"

3. "I am a Roman citizen"

4. "I am Latin"

5. "I am a peregrin"

6. "I am released"

2. Terminological task: freedmen, citizens, delict capacity, legal capacity, householder, elements of legal capacity, querites, columns, Latins, Latins Juniani, persons of one's own right, persons of another's right, peregrins, legal capacity, legal personality, humiliation of honor, slaves, slave peculium , state of public honor, subject of law, natural persons, legal entity.

3. Situational tasks (send through the Elearn system.)

1. Why was it said about Junian's Latins that they "live as free and die as slaves"?

2. During the reign of the emperor Andrian, the slaves of Marcianus, who were severely punished by their master for the slightest offense, ran to the statue of the emperor, begging for help. Will this have any consequences for the slave owner?

3. During a military campaign, Longinus was captured. Two years later, he was released from captivity and returned to Rome. Does this mean that his two sons will once again become his subjects?

Seminar №. 4. Family status of an individual.

Goal. to establish internal laws, according to which the norms of family law of Ancient Rome developed; trace the evolutionary changes that took place in the traditional Roman family; identify the peculiarities of property and personal non-property rights and obligations of spouses; describe the legal nature of parental

authority; find out the importance of the institution of guardianship and care for Roman society.

Methodical recommendations

To prepare for the seminar, you should know: Peculiarities of the regulation of family relations at different stages of the history of Ancient Rome. Roman family. Kinship Concept of agnatic and cognatic family. Persons under their own law and persons under someone else's law. Head of the family (pater familias). Lines and degrees of kinship. A relative Marriage and its types. Legal Roman marriage. Marriage with male authority. Marriage without male authority. Concubinage Contubernium. Getting married.

Forms of marriage ceremonies. Conditions for marriage. Grounds for termination of marriage. Divorce. Legal relations of spouses. Personal and property relations of spouses in a marriage with male authority. Personal and property relations of spouses in a marriage without male authority. Dowry (dowry). Premarital gift. The relationship between father and children. Parental authority. Grounds for establishing parental authority over children. Legalization. Adoption. Arrogation adoption Grounds for termination of parental authority. Relations between mother and children.

PROCESS OF WORK

1. The theoretical basis of the seminar is to prepare an oral answer to the following questions):

1. The Roman family: general characteristics. Agnatic and cognate families. Lines and degrees of kinship, their meaning.
2. Roman marriage and its forms. Concubine and contubernium.
3. Personal non-property and property relations of spouses in cum manu and sine manu marriages.
4. Parental authority and grounds for its establishment. Legal relations of parents and children.
5. Adoption and legalization under Roman private law.
6. Guardianship and guardianship in Roman private law.

Situational tasks (orally, to tell in the seminar class).

A Roman historian tells of a case where the father of a family, having caught his daughter in the act of adultery, killed her, believing that he, as a father, had the right of "life and death" over his children.

Is such an act legal?

Does it entail responsibility?

What would happen if there was a man in the father's place?

2. Terminological task: agnatic kinship, parental authority, betrothal, cognatic kinship, family (familia), pater familias, agnates, adoption (adoptio), arrogation (arrogatio), emancipation (emancipatio), legal Roman marriage (matrimonium iustum), cognates, concubinage (concubinatus), contubernium, dowry (dos), family,

legitimation (legitimatio) of children, adoption, marriage without male authority (sine manu), marriage with male authority (cum manu).

3. Practical tasks (completed and sent through the Elearn system all in one file).

Make a diagram of the "Institutes of Roman family law" and give a brief description of each of them.

Seminar №. 5. Protection of civil rights. Lawsuits

Goal. to consolidate the general ideas of students about the peculiarities of the judiciary in Ancient Rome; to expand knowledge about the types of court proceedings and their characteristic features; find out the peculiarities of legal proceedings in Roman law and the means of ensuring the execution of court decisions.

Methodical recommendations

To prepare for the seminar, you should know: Concepts and types of private self-incrimination. Self-defense. Restrictions on private self-incrimination. Installation of a buyback system. Termination of private self-execution.

Concept of judicial process. Types of court proceedings. Legislative process, its stages. Form process. Summons application forms. Intention. Demonstration. Condemnation Adjudication. Procedural representation. Extraordinary process.

Concepts and types of lawsuits. Action in rem (actio in rem). Personal or personal action (actio in personam). Actio stricti juris (action of —strict law) and actio bonae fidei (action of —good conscience). Actio directa (—direct action) and actio contraria (—reverse action). Actio utilis (suit by analogy). Actio fictia (suit with fiction). Condition lawsuit. Penalty and re-persecutory lawsuits. Actio noxales (noxal lawsuit). Limitation of action. Beginning, interruption and suspension of the limitation period. The difference between the legal terms and the statute of limitations. Special means of praetorian protection. Interdicts Stimulation. Restitution. Entry into possession

Theoretical task (prepared orally for an answer in a seminar session)

1. Pre-trial forms of protection of civil rights. Emergence of courts.
2. General concept of legislative, formulary and extraordinary processes.
3. Special means of praetorian protection.
4. Lawsuit protection: concept and types of lawsuits (actio).
5. Court decision. Appeal and execution of court decision.
6. Terms in Roman law. Legal terms and their meaning.
7. Statute of limitations. Interruption and suspension of the statute of limitations, consequences of its termination.
8. Determine which lawsuits may be involved:
 - a) the hunter bought a dog, but did not immediately pay for it; or sent money with a messenger, but the dog was not delivered to him; or he did not receive a dog that did not belong to the seller, and now the owner claims the dog from the current owner;

b) on the specified day, apprentice painters did not show up for work. The Master wants to bring them to justice.

Practical task (performed on the Elearn system and sent to the teacher for verification)

Determine which elements (parts) of the praetorian formula are contained in it (nomination, intention, demonstration, condemnation, exception). Write the answer and send it for checking

Let Octavius be the judge. Avgel Antony demands from Numerius Negidius the strict fulfillment of the rights under the agreement concluded between them, to which Numerius Negidius responds by saying that both in concluding the agreement and in demanding the agreement itself, Avgel Antony allowed and allows deception, and if this is so, although the agreement and the claim arising from it are allowed and protected by the civil law, I propose to you, judge, having discovered the fraud, to dismiss the claim as contrary to justice.

Seminar № 6. Things and property rights: general provisions

The purpose of the study: to show that civil-law relations arise mainly over things, property, therefore the issue of property division, redistribution, as well as the protection of property rights was the main goal of civil society; to pay attention to the fact that property law protected the property rights of slave owners.

The main problem: a claim in rem was used to protect rights to things, property. Others are obliged to respect the rights, observe and not violate them.

Theoretical questions

1. The concept of a thing in Roman law
2. The concept of property in Roman law
3. Classification of things in Roman law
4. Familia and pecunia
5. Types of rights to things
6. Correlation of property and obligation law

Practical task (performed on the Elearn system and sent to the teacher for verification)

Solve situational problems

1. During a heavy storm, to raise. Stability of the ship, part of the cargo was thrown overboard from the hold (the cargo was packed in bags). After some time, the weather improved and the ship's passengers began to catch things that did not sink. But the fishermen who were nearby refused to return the bags they had caught, insisting that the items were abandoned and therefore did not belong to anyone. Answer the question: to whom will the bags with things that were thrown into the sea still belong?

2. Maximus had the right to draw water (30 buckets daily) from the river that flowed through the neighbor's plot from the river that flowed through the neighbor's plot. After his death, his three sons became heirs. Will the sons retain the right to draw water? If so, what material expression will this have?

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Get acquainted with methodical recommendations and an example for solving
3. Work out the conditions of the problem;
4. Analyze theoretical and regulatory material related to the conditions of the task;
5. Issue a solution to the problem according to the requirements;
6. Attach the file to the ELEARN system

Methodical recommendations for problem solving

Tasks from this discipline are not as difficult as tasks from civil and criminal law. This is primarily due to the fact that Roman law uses two legal documents. Nevertheless, the student will later be able to analyze more complex codes based on the analysis of the laws of Roman law. Therefore, the laws of the "12 Tables" and the "Code of Justinian" are necessary to solve the problems.

Start reading the assignment. As you can see, the task of Roman law is a situation that is quite commonplace in ancient Rome. Usually this is some domestic situation. Also pay attention to the era of Rome, if there is a footnote in the problem. After all, applying the Justinian Code before its appearance is pointless. Also remember that the code covers virtually all areas of activity of a Roman and most comprehensively explains the law. In the laws of "12 tables" it is much more difficult to find the necessary norm. In addition, they have historical gaps.

Capture the essence needed to solve. Define the parties to the law and its subject as precisely as possible. After finding out what type of law the case is related to (civil, family, criminal), start looking for the norm in the laws. Finding such a norm is not always easy because the writings of the laws of ancient Rome differ from modern laws. Therefore, read and understand the essence of the norm as carefully as possible. The "Code of Justinian" has an advantage over the laws of the "12 Tables" as it is divided into branches of law.

Apply the norm found in the laws to your task. Remember that when solving problems, sometimes it is necessary to evaluate several aspects. For example, the punishment for committing a crime can be different depending on the status of a Roman. A slave and a free man will be judged differently. Also take into account all the circumstances of the case, such as the commission of the crime, due to blood feud. By compiling all the circumstances of the case, and carefully studying the laws of Roman law, you will be able to easily solve the problem.

Seminar №. 7. Ownership

Purpose: to give students an idea of the actual possession of a thing, regardless of the existence of the right to it. To study the Digests of Justinian in the part concerning possession

Theoretical questions

1. The general doctrine of ownership in Ancient Rome.

2. Occurrence and termination of ownership (possession)
3. Types of ownership.
4. Protection of ownership.

Practical task

1. Study the texts of Roman sources (the Digests of Justinian) and find out the legal nature of the institution of ownership - write a maximum of 3-5 pages, no more

The progress of the task that is set before the student

1. Familiarize yourself with the lecture material "Ownership"
2. Find the text of Justinian's Digests using the link.
3. To process the Digests of Justinian
4. Analyze the processed material related to ownership;
5. Form your answer in the form of a 3-5 page report, including your own thoughts;
6. Attach the file to the ELEARN system

Seminar №. 8. Property rights in Roman law

Purpose: Creating an imaginary situation to consolidate practical knowledge on the topic "Property Law"

Plan for the seminar

1. The concept and content of property rights.
2. Types of ownership.
3. Ways of acquiring and terminating ownership.
4. Protection of property rights.

Methodical recommendations

The right of ownership is the exclusive right of a person to own, use and dispose of a thing in accordance with his interests. It is the totality of these three powers that constitutes the content of the right of ownership.

The right of ownership arises on the basis of legal norms, as it belongs to such subjective rights that can arise only in the presence of a specific legal fact or set of legal facts. The legal facts upon which a person acquires the right of ownership are called the legitimate way of acquiring the right of ownership. The methods of acquiring the right of ownership can be primary, in which the right to ownership of a thing arises for the first time, since the thing was not previously owned by anyone, and derivative, in which the right of ownership arises as a result of the transfer of ownership from another owner, that is, the right of the acquirer is based on the right of the previous owner .

The original ways of acquiring property rights include: seizure of nobody's property (occupatio res nullius); processing of things (specificatio); accretion (accessio); acquisitive prescription (usucapio); treasure (thesaurus); mixing things up. Derivative ways of acquiring the right of ownership are: mancipation (mancipatio), concession by right (in jure cessio), transfer (traditio), award, demand of the law, acquisition of ownership by inheritance.

The right of ownership of the thing could be terminated due to natural causes of an objective nature (natural disasters and other force majeure circumstances); at the will of the owner of the thing (destruction of the thing, voluntary refusal of the thing, termination of contracts); by decision of state bodies (expropriation, confiscation, requisition); as a result of delictual or quasi-delict actions of third parties; with the death of the owner; with the inclusion of the item among items of religious worship.

In case of violation of ownership rights, the owner could file one of the following legal claims: vindication; negative; prohibitive; publicist; personal.

Basic concepts: legal possession, illegal possession, adverse possession, statute of limitations, right of ownership, right of possession, right of use, right of disposition, mancipation

Practical task

Imagine the situation "I acquire ownership of a slave through mancipation". Describe up to 2 pages how it happened from the 1st person

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Get acquainted with methodical recommendations
3. Develop additional literature;
4. Analyze theoretical and normative material related to the imaginary situation;
5. Draw up an imaginary situation according to the requirements;
6. Attach the file to the ELEARN system

Seminar №. 9. Rights to other people's things

Goal. elucidation of the main provisions on rights to other people's things in Roman law.

Methodical recommendations

To prepare for the seminar, you should know: concepts and types of rights to other people's things, easement (the right to limited use of someone else's property), emphytheusis (the right to use someone else's land for agricultural purposes), superficies (the right to use someone else's land for development within settlement), about the right of lien

Practical task

1. Prepare an essay on one of the following questions:
2. Concept and classification of things in Roman law
3. Possession: concept and general characteristics
4. Types of ownership
5. Protection of ownership
6. The concept and general characteristics of property rights
7. Types of ownership
8. Ways of acquiring ownership

9. Limitation and termination of ownership
10. Protection of property rights
11. Quiritian, praetorian (bonitary) and provincial property
12. Joint property in Roman law
13. Peculiarities of emergence, concepts and types of rights to other people's things
14. Ea sement: concepts and types
15. Emphytheus: general characteristics
16. Surface: concepts and features
17. Pledge right
18. Types of property rights.
19. Difference between possessory protection and petitionary protection.
20. Possession and holding.
21. Contents of ownership.
22. Concepts and types of easements.
23. The concept of the right to other people's things.
24. Difference between ownership and ownership.
25. The concept of mancipation in Roman law
26. Usufruct. Establishment, protection and termination of usufruct
27. Vindicatory action as a way of protecting property rights in Roman law
28. Prohibitory action as a way of protecting property rights in Roman law
29. Negative claim as a way of protecting property rights in Roman law

Requirements for writing an essay:

According to the structure, the essay should consist of an introduction, main part, conclusion, list of used literature.

The length of the abstract should be at least 9 pages and no more than 11 pages of typewritten text with a line spacing of 1.5 point -14 standard density (Times New Roman font). At the same time, indents must be made: 2 cm from the top and bottom, 3 cm from the left, 1 cm from the right. The pages of the abstract must be numbered. The numbering starts from the second sheet with the Arabic numeral 2 in the middle of the upper edge at a distance of at least 10 mm from the edge. No marks or symbols are written near the numbers.

The title page (the first page of the essay) indicates the name of the ministry, educational institution, faculty, department, subject of the essay, surname and initials, academic group of the performing student, surname and initials, academic degree of the teacher, city and year of writing. When indicating the topic of the abstract, you must write ABSTRACT in the middle of the line, and below this word - topic, at the same time, you should not use a colon and put the name of the topic in quotation marks.

The presented understanding of the essay as a complete author's text determines the criteria for its evaluation: novelty of the content; reasonableness of the choice of sources; degree of disclosure of the essence of the issue; compliance with registration requirements.

New content:

- a) relevance of the research topic;
- b) novelty and independence in setting the problem, formulating a new aspect of a known problem in establishing new connections (intersubject, intrasubject, integration);
- c) ability to work with research, analytical literature, systematize and structure material;
- d) availability of the author's position, independence of assessments and judgments;
- e) stylistic unity of the text.

The degree of disclosure of the essence of the question:

- a) compliance with the outline of the abstract;
- b) correspondence of the content and plan of the essay;
- c) completeness and depth of knowledge on the topic;
- d) reasonableness of methods and methods of working with the material;
- e) the ability to generalize, draw conclusions, compare different points of view on the same issue (problem).

Justification of the choice of sources:

- a) assessment of the used literature: whether the most famous works on the topic of the study were considered (including journal publications of recent years, the latest statistical data, references, etc.).

Compliance with registration requirements:

- a) the correctness of the reference to the used literature, the list of references;
- b) assessment of fluency and presentation culture (including orthographic, punctuation, stylistic culture), mastery of terminology;
- c) compliance with the requirements for the scope of the essay.

Seminar № 10. General provisions on obligations

Purpose: Creation of situational problems to consolidate practical knowledge of the topic

Methodical recommendations

The creation of situational tasks should be preceded by a deep study of recommended sources, special mandatory and additional literature, legislative and by-laws, summaries of judicial, prosecutorial and managerial practice of applying legislation in the field of intellectual property law. The immediate solution of problems should be started with a careful and careful study and assimilation of the factual circumstances of the plot of the presented case, which have legal significance, which are set out in the relevant conditions of the problem. It is important to take into account that a clear understanding of the circumstances of the case makes it possible to determine the scope of social relations in the field under consideration and other related legal relations and to apply the relevant legal norms of a regulatory or security direction. On the basis of theoretical knowledge, analysis of current legislation, it is necessary to carefully determine the peculiarities of legal

relations, their nature, types, classes and internal structural elements, the grounds for their occurrence, subject and object compositions, characterize the content of these legal relations, that is, the rights and obligations of sub entities, if necessary, indicate the grounds for their change or termination. This approach allows the most clear and accurate.

Practical task

1 Make 2 situational tasks (tasks) on the topic "General Provisions on Obligations". Be sure to write their solution!

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Get acquainted with methodical recommendations
3. Analyze theoretical and normative material related to the topic;
4. Work out court practice;
5. Prepare situational tasks according to requirements;
6. Attach the file to the ELEARN system

Seminar № 11. Contracts in Roman law: general provisions

Purpose: To provide a description of the content of a contract under Roman law in order to consolidate practical knowledge on the topic "Contracts: general provisions"

Methodical recommendations

A contract (*contractus*) is one of the most common sources of obligations in Rome. Roman jurists noted that the basis of the contract is the mutual agreement of several persons. Roman law brought the entire set of contracts into a certain system, distinguishing two types of contracts - contracts and pacts. These terms were and are commonly used in the sense of "obligation" and "agreement".

A distinction was made between unilateral and bilateral contracts, as well as the obligations arising from them. Contracts in which one party has only rights and the other has obligations are called unilateral, and contracts in which each of the parties has both rights and obligations are called bilateral.

The system of contracts in Ancient Rome was significantly branched. Among the most common, the following should be distinguished: synalagmatic contracts, risky or aleatory contracts, strict and free contracts, paid and unpaid contracts, formal and informal contracts, abstract and casual contracts.

For the contract to be valid, it is necessary to comply with certain conditions, which include: the presence of a will, the expression of which must be permitted; the expression of will must come from a person with legal capacity; the expression of will must come from a person interested in changing specific rights; the contract must be concluded in the appropriate form; the parties to the contract must have a correct idea of the result they wish to achieve.

Contract law considered such a concept as "mistake", which was the result of a wrong representation of one party in the contract about the outwardly revealed will of the other party, which prompted the latter to a certain manifestation of will.

Questions about the legal consequences of a mistake were decided depending on the fault of the person who incorrectly expressed his will. A distinction was made between an error in law or ignorance of the law and an error regarding factual circumstances.

Sometimes the conclusion of the contract took place under the influence of coercion or by deception. In these cases, under praetorian law, persons who were coerced or deceived were given the opportunity to defend themselves against the consequences of an unfavorably concluded agreement.

The content of the contract must be defined, and its subject cannot be illegal or impossible actions. Three components were distinguished in the content of the contract: essential (necessary) content, which determines the nature of the agreement and without which the contract cannot exist; ordinary content, which does not constitute its essence; accidental content of the contract, the composition of which not only does not determine the essence of the contract, but even the content is not assumed, therefore the accidental content must always be reserved by the parties, as well as such accidental elements as condition (*conditio*), term (*dies*), order (*modus*) are taken into account.

Roman law knew obligations as if from contracts (quasi-contracts), which did not arise from contracts or other agreements, namely from the unilateral action of a person, but in their nature and content these relations are similar to contracts. A characteristic feature of such obligations is the receipt of a certain reward by one party at the will and expense of the other, but without the intention of giving the first party a gift.

Practical task

Make a table describing the content of the contract (ordinary content, essential content, incidental content).

PROCESS OF WORK

1. Familiarize yourself with the lecture material
 2. Get acquainted with methodical recommendations
 3. Analyze theoretical and normative material related to the conditions of the assignment;
 4. Complete tasks according to requirements;
 5. Attach the file to the ELEARN system
2. Practical tasks (performed by students in seminar classes, according to the schedule)

Seminar № 12-13. Certain types of contractual obligations (part 1-2)

1. Verbal contracts.
2. Literal contracts.
3. Consensual contracts.

Questions and tasks for self-checking and control of knowledge acquisition:

Define the concept of "verbal contract (*verbis*)". Name the types of this contract.

Describe a stipulation as a type of verbal contract.

Define the concept of "literal contract (litteris)" and outline the general directions of development of this legal institution in Ancient Rome.

Describe syngraph and chirograph and prove their advantages over other forms of literal contracts.

Define the term "consensual contract". What types of consensual contracts did Roman law distinguish?

Give a detailed legal description of the contract of purchase and sale (emptio-venditio).

Define the concept of "real contract". What types of real contracts were known to Roman law?

State the common and distinctive features of a loan agreement (matuum) and a loan agreement (commodatum).

What explains the existence of a group of nameless contracts (contractus innominati) in Roman law? What treaties formed this group?

Name the characteristic features of a pact (pactum) as a type of contract

Practical task

Make an extended comparative table "Types of consensual contracts: common and different".

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Get acquainted with methodical recommendations
3. Draw up a table, characterizing as much as possible all consensual contracts;

Seminar № 14. Non-contractual obligations

Purpose: Solving situational problems to consolidate practical knowledge on the topic "Non-contractual obligations"

Methodical recommendations

Solving problems should be preceded by a deep study of recommended sources, special mandatory and additional literature, legislative and by-laws, summaries of judicial, prosecutorial and administrative practice of applying legislation in the field of intellectual property law. The immediate solution of problems should be started with a careful and careful study and assimilation of the factual circumstances of the plot of the presented case, which have legal significance, which are set out in the relevant conditions of the problem. It is important to take into account that a clear understanding of the circumstances of the case makes it possible to determine the scope of social relations in the field under consideration and other related legal relations and to apply the relevant legal norms of a regulatory or security direction. On the basis of theoretical knowledge, analysis of current legislation, it is necessary to carefully determine the peculiarities of legal relations, their nature, types, classes and internal structural elements, the grounds for their occurrence, subject and object compositions, characterize the content of these legal relations, that is, the rights and obligations of sub entities, if necessary, indicate

the grounds for their change or termination. This approach allows the most clear and accurate.

Practical task

Analyze tort liability under the Laws of the XII Tables. Prepare the results of the analysis in the form of a report of a maximum of 3 pages

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Analyze theoretical material related to the topic;
3. Make a report;
4. Attach the file to the ELEARN system

Seminar №. 15. Inheritance law

Purpose: Solving situational problems to consolidate practical knowledge on the topic "Inheritance Law"

Methodical recommendations

Solving problems should be preceded by a deep study of recommended sources, special mandatory and additional literature, legislative and by-laws, summaries of judicial, prosecutorial and administrative practice of applying legislation in the field of intellectual property law. The immediate solution of problems should be started with a careful and careful study and assimilation of the factual circumstances of the plot of the presented case, which have legal significance, which are set out in the relevant conditions of the problem. It is important to take into account that a clear understanding of the circumstances of the case makes it possible to determine the scope of social relations in the field under consideration and other related legal relations and to apply the relevant legal norms of a regulatory or security direction. On the basis of theoretical knowledge, analysis of current legislation, it is necessary to carefully determine the peculiarities of legal relations, their nature, types, classes and internal structural elements, the grounds for their occurrence, subject and object compositions, characterize the content of these legal relations, that is, the rights and obligations of sub entities, if necessary, indicate the grounds for their change or termination. This approach allows the most clear and accurate.

Practical task

Solving situational problems

Problem 1. Stych left a will in which he assigned half of the inheritance to his eldest son Octavius, and the other half of the inheritance remained unbequeathed. Who will receive the unbequeathed part of the inheritance, if Stykh has two more sons and a living father?

Problem 2. Marcus Cornelius had three sons: Tullius, Volusius and Gaius. In his will, Mark specified that all sons should have an equal share of the inheritance. Volusius did not have time to accept his share, because on his way back from Athens he caught a bad cold and died on the way. What share belonged to each of Mark's sons? Who will receive a share of Volusius' inheritance if he: a) was unmarried and had no children; b) had two children born in a legal marriage.

PROCESS OF WORK

1. Familiarize yourself with the lecture material
2. Get acquainted with methodical recommendations and an example for solving
3. Outline the conditions of the task;
4. Analyze theoretical and regulatory material related to the conditions of the task;
5. Work out court practice;
6. Issue a solution to the problem according to the requirements;
7. Attach the file to the ELEARN system

INDEPENDENT WORK TASK ON THE DISCIPLINE "ROMAN PRIVATE LAW" FOR FULL-TIME AND PART-TIME STUDENTS

Independent work № 1

PROCESS OF WORK

Prepare an essay on one of the following questions:

1. Systems of Roman private law.
2. The concept of Roman private law.
3. Activities of lawyers as a source of law-making.
4. Practice of praetors as a source of law formation.
5. Concept of sources of law.
6. Legal characteristics of civil legal capacity and legal capacity in Rome.
7. Reasons and forms of limitation of legal capacity of natural persons in the Roman state
8. Legal status of Roman citizens
9. Legal status of Latins and Peregrins
10. Legal status of freedmen (libertines)
11. Legal status of columns
12. Legal status of slaves.
13. The laws of the XII Tables are the main source of ancient Roman law.
14. Emperor Justinian's codification: purpose, content, significance for the formation of the law of European states.
15. Activity of Roman lawyers as a source of development of law in Ancient Rome.
16. Sources of legal formation in Ancient Rome.
17. Sources of knowledge of Roman private law.
18. Gregorian Code as an important source of Roman law.
19. Agnatic and cognatic family: general characteristics
20. Lines and degrees of kinship. Kinship
21. Types of marriage in Roman law.
22. Legal characteristics of a valid (legal) marriage in Roman private law.
23. Conditions for entering into marriage and the procedure for its conclusion.
24. Conditions and procedure for dissolution of marriage.
25. Legal status of dowry and gift.
26. Establishment and termination of parental authority.
27. Adoption and legitimation under Roman private law.
28. Custody and care. Establishment and termination of guardianship and guardianship in Rome.
29. Pre-trial forms of protection of civil rights. Emergence of courts.
30. Types of lawsuits in ancient Rome.
31. General concept of legislative, formulary and extraordinary processes.
32. General characteristics of the legislative process.
33. The system of claims in Roman law.

34. Special means of praetorian protection.
35. Time limits in Roman law. Legal terms and their meaning.
36. Limitation of action. Interruption and suspension of the statute of limitations, consequences of its termination.

Requirements for writing an essay:

According to the structure, the essay should consist of an introduction, main part, conclusion, list of used literature.

The length of the abstract should be at least 9 pages and no more than 11 pages of typewritten text with a line spacing of 1.5 point -14 standard density (Times New Roman font). At the same time, indents must be made: 2 cm from the top and bottom, 3 cm from the left, 1 cm from the right. The pages of the abstract must be numbered. The numbering starts from the second sheet with the Arabic numeral 2 in the middle of the upper edge at a distance of at least 10 mm from the edge. No marks or symbols are written near the numbers.

The title page (the first page of the essay) indicates the name of the ministry, educational institution, faculty, department, subject of the essay, surname and initials, academic group of the performing student, surname and initials, academic degree of the teacher, city and year of writing. When indicating the topic of the abstract, you must write ABSTRACT in the middle of the line, and below this word - topic, at the same time, you should not use a colon and put the name of the topic in quotation marks.

The presented understanding of the essay as a complete author's text determines the criteria for its evaluation: novelty of the content; reasonableness of the choice of sources; degree of disclosure of the essence of the issue; compliance with registration requirements.

New content:

- a) relevance of the research topic;
- b) novelty and independence in setting the problem, formulating a new aspect of a known problem in establishing new connections (intersubject, intrasubject, integration);
- c) ability to work with research, analytical literature, systematize and structure material;
- d) availability of the author's position, independence of assessments and judgments;
- e) stylistic unity of the text.

The degree of disclosure of the essence of the question:

- a) compliance with the outline of the abstract;
- b) correspondence of the content and plan of the essay;
- c) completeness and depth of knowledge on the topic;
- d) reasonableness of methods and methods of working with the material;
- e) the ability to generalize, draw conclusions, compare different points of view on the same issue (problem).

Justification of the choice of sources:

a) assessment of the used literature: whether the most famous works on the topic of the study were considered (including journal publications of recent years, the latest statistical data, references, etc.).

Compliance with registration requirements:

- a) the correctness of the reference to the used literature, the list of references;
- b) assessment of fluency and presentation culture (including orthographic, punctuation, stylistic culture), mastery of terminology;
- c) compliance with the requirements for the scope of the essay.

Results submission form:

Prepare the essay as a file in the Word 2003 text editor (Times New Roman font 14 pt, line spacing 1.5) and send it to the teacher. The file with the created document is sent to the server using the window below.

Independent work for module 1 (topics 4-5)

Task: Solving typical cases on studied topics

1. During the reign of Emperor Andrian, the slaves of Marcianus, who were cruelly punished by their master for the slightest offense, ran to the statue of the emperor, begging for help. Will this have any consequences for the slave owner?

2. During a military campaign, Longinus was captured. Two years later, he was released from captivity and returned to Rome. Does this mean that his two sons will once again become his subjects?

3. A Roman citizen appointed a slave as the captain of his ship, which was supposed to deliver grain to Rome. In one of the flights, a large amount of grain bought in Egypt was lost. Upon arrival in Rome, a dispute arose between the grain buyer and the captain about non-fulfillment of the obligation. Who should be responsible for the destroyed goods?

4. Miletius had 90 slaves. How many slaves could he set free according to his will, if he himself lived in the 1st century. n. there are.?

5. Paul banished his slave Plautus, because the tone was old and sick, and could not do household work. Plautus was cured by a healer who did not claim any rights over him. Can Paul reclaim his slave? What status will Plautus have?

PROCESS OF WORK

- 1. Familiarize yourself with the lecture material
- 2. Familiarize yourself with methodical recommendations and an example for the solution
- 3. Work out the conditions of the incident;
- 4. Analyze the theoretical and normative material related to the conditions of the case;
- 5. Issue a case decision according to the requirements;
- 6. Attach the file to the ELEARN system

Independent work for module 2 (topics 6-7)

Write an Essay on one of the chosen topics

1. What historical phenomena caused the emergence of joint ownership. Why?
2. What is the historical reason for the emergence of the right to other people's things?
3. Public lawsuit in defense of property rights
4. Using the texts of the sources of Roman law (Justinian's codification), determine the historical conditions of the emergence, development and disappearance of methods of acquiring property rights.
5. How the historical development of Rome influenced the change in the methods of protection of property rights.

Methodical recommendations for writing an Essay

The process of writing an essay can be imagined as a chain, a sequence of certain elements, stages, processes. The following processes and elements are important for students. Note-taking, especially when reading, is a strategic intellectual skill, not a mechanical simplified presentation of the author's opinion, position. Taking notes, the student selects relevant material and develops his understanding of theoretical propositions, empirical data, that is, facts of this kind that are either confirmed or refuted. When reading texts, the student makes notes and compares one with the other, notes what will be useful in further work or is more interesting, meaningful from a theoretical or empirical approach. You can take notes by dividing the notebook sheet into two columns. In the left 9th column, the student prepares a synopsis of the material he is reading, and in the right, at the same time or later, he compares the content of this synopsis with other facts that he has read about before, heard at lectures that were discussed in informal settings, and also with his own comments and criticisms. In other words, the student forms his notes to build a cross-reference, based on his own positions, as well as taking into account his own comments on the positions presented by others. The selection of sources for preparing an essay is important.

First, you should familiarize yourself with the theoretical questions on the subject presented in textbooks (not study guides). Next, two or three key modern scientific articles, monographs, in which clear conceptual frameworks or theoretical arguments are presented or comprehensive empirical data are presented, should be selected. Such familiarization with the specified sources will form certain basic orientations regarding the topic (taking into account different judgments, interpretations), will serve as a foundation for purposeful further preparation of the essay. Depending on the topic, it is important to include in the list of literature for reading one or two case studies that have opposite directions.

REQUIREMENTS FOR ESSAY WRITING

The construction of an essay is the disclosure of a topic based on a classical evidence system.

The structure of the essay should be as follows:

1. Title page (filled in according to the recommended sample);

2. Introduction: Relevance, purpose and task, the object and subject of the essay, the expected result of the work in general and the specific results that will be obtained during the disclosure of the topic. At this stage, it is very important for the student (in consultation with the teacher) to correctly formulate the tasks to which the student is going to find the answer in the course of his research.

3. The main part: theoretical foundations of the chosen problem and presentation of the main question. This part assumes the development of argumentation and analysis, as well as their justification, based on available data, other arguments and positions on the issue. This is the main content of the essay and it represents the main difficulties. Therefore, subheadings are important, on the basis of which the argumentation is structured; it is here that you need to substantiate (logically, using data or rigorous reasoning) the proposed thesis. Where necessary, graphs, charts and tables can be used as an analytical tool. Depending on the task, the analysis is carried out on the basis of the following categories: cause — effect, general — special, form — content, part — whole, constancy — variability. In the process of constructing an essay, it is necessary to remember that one paragraph should contain only one statement and the corresponding evidence supported by graphic or illustrative material. Therefore, filling the sections with arguments, it is necessary to limit yourself to the consideration of one main idea within the paragraph. A well-proven way of constructing an essay is to use subheadings to indicate the key points of an argumentative statement in the main body. A set of subheadings helps you see what the student is proposing to do. The appropriate use of subheadings is not only the determination of the main points that the student wants to cover, but also the presence of logic in covering the topic of the essay.

4. Conclusion: generalization and reasoned conclusions on the topic, etc. The structure of the conclusion should correspond to the list of tasks set in the introduction. That is, the conclusion summarizes the essay or once again reinforces the content and meaning of the main part. The conclusion can contain such a very important element that complements the essay, as an indication of the application of research, the development of relationships with other problems.

Independent work for module 2 (topic 9)

Methodical recommendations

The student should consider the historical conditions of the emergence of rights to other people's things in ancient Rome. Define the concepts and features of rights to other people's things. Identify types of rights to other people's things.

Be sure to familiarize yourself with easements: concepts and types. Consider legal, contractual, testamentary and praetorian servitudes. Ways of establishing servitude rights. Termination of easement rights. Protection of easements. Land (predial) servitudes, their features. Urban and rural easements. Private and public easements. Personal (personal) servitudes. Usufruct Uzus The right to use someone else's housing (for living). The right to use other people's labor (slaves) or animals (cattle).

Students should be able to characterize emphyteusis (the right to use someone else's land for agricultural purposes). Reasons for establishing emphyteusis. Rights and obligations of the emphyteut and the owner of the land plot. Emphyteus protection. Termination of emphyteusis.

During the preparation, you need to study the superficies (the right to use someone else's land for development within the settlement). Bases for installing the surface. Rights and obligations of the superficiary and the owner of the land plot. Termination of superficies.

The right of lien (lien) is important. The concept of collateral. Pledge forms. Fiduciary Agreement. Pignus. Mortgage: concepts, types, grounds for origination and termination

PROCESS OF WORK

Make a crossword on the topic "Rights to other people's things"

1. Make a selection of literature related to the topic
2. Study the selected literature.
3. Make up the questions that will be presented in the crossword puzzle

Requirements for making a thematic crossword puzzle

1. the crossword covers the topic as a whole, contains at least 20 terms;
2. the crossword puzzle must be compact and comply with the basic rule of classical crossword puzzles – words can intersect, but cannot have adjacent cells;
3. Ukrainian language;
4. the use of abbreviations and acronyms is not allowed;
5. tasks for the terms included in the crossword must be in the form of their complete definitions; the correct answer is given next to it in brackets;
6. the number of words vertically and horizontally should be approximately the same.

Results submission form

The crossword typed on the computer (font 14, spacing 1.5) is presented to the teacher in a neat form according to the following structure:

1. title page,
2. a filled-in crossword grid with numbered cells;
3. the list of tasks must be printed in a column (with an indication in brackets next to the task of the correct answers);
4. a list of answers printed in a column (with corresponding numbering);
5. list of used literature.

Independent work for module 3 (topics 10-12)

Task: Write an Essay on one of the chosen topics

1. Work out the Laws of the XII Tables and determine the degree of punishment for the person who did not fulfill his obligations.
2. How the interpretation of the concept of fulfilling an obligation changed in the course of historical development.

3. How did the historical development of the institution of liability for failure to fulfill an obligation end?
4. Trace the history of the formation of the treaty system in Rome.

Methodical recommendations for writing an Essay

The process of writing an essay can be imagined as a chain, a sequence of certain elements, stages, processes. The following processes and elements are important for students. Note-taking, especially when reading, is a strategic intellectual skill, not a mechanical simplified presentation of the author's opinion, position. Taking notes, the student selects relevant material and develops his understanding of theoretical propositions, empirical data, that is, facts of this kind that are either confirmed or refuted. When reading texts, the student makes notes and compares one with the other, notes what will be useful in further work or is more interesting, meaningful from a theoretical or empirical approach. You can take notes by dividing the notebook sheet into two columns. In the left 9th column, the student prepares a synopsis of the material he is reading, and in the right, at the same time or later, he compares the content of this synopsis with other facts that he has read about before, heard at lectures that were discussed in informal settings, and also with his own comments and criticisms. In other words, the student forms his notes to build a cross-reference, based on his own positions, as well as taking into account his own comments on the positions presented by others. The selection of sources for preparing an essay is important. First, you should familiarize yourself with the theoretical questions on the subject presented in textbooks (not study guides). Next, two or three key modern scientific articles, monographs, in which clear conceptual frameworks or theoretical arguments are presented or comprehensive empirical data are presented, should be selected. Such familiarization with the specified sources will form certain basic orientations regarding the topic (taking into account different judgments, interpretations), will serve as a foundation for purposeful further preparation of the essay. Depending on the topic, it is important to include in the list of literature for reading one or two case studies that have opposite directions.

REQUIREMENTS FOR ESSAY WRITING

The construction of an essay is the disclosure of a topic based on a classical evidence system.

The structure of the essay should be as follows:

1. Title page (filled in according to the recommended sample);
2. Introduction: Relevance, purpose and task, the object and subject of the essay, the expected result of the work in general and the specific results that will be obtained during the disclosure of the topic. At this stage, it is very important for the student (in consultation with the teacher) to correctly formulate the tasks to which the student is going to find the answer in the course of his research
- . 3. The main part: theoretical foundations of the chosen problem and presentation of the main question. This part assumes the development of argumentation and analysis, as well as their justification, based on available data, other arguments and

positions on the issue. This is the main content of the essay and it represents the main difficulties. Therefore, subheadings are important, on the basis of which the argumentation is structured; it is here that you need to substantiate (logically, using data or rigorous reasoning) the proposed thesis. Where necessary, graphs, charts and tables can be used as an analytical tool. Depending on the task, the analysis is carried out on the basis of the following categories: cause — effect, general — special, form — content, part — whole, constancy — variability. In the process of constructing an essay, it is necessary to remember that one paragraph should contain only one statement and the corresponding evidence supported by graphic or illustrative material. Therefore, filling the sections with arguments, it is necessary to limit yourself to the consideration of one main idea within the paragraph. A well-proven way of constructing an essay is to use subheadings to indicate the key points of an argumentative statement in the main body. A set of subheadings helps you see what the student is proposing to do. the appropriate use of subheadings is not only the determination of the main points that the student wants to cover, but also the presence of logic in covering the topic of the essay.

4. Conclusion: generalization and reasoned conclusions on the topic, etc. The structure of the conclusion should correspond to the list of tasks set in the introduction. That is, the conclusion summarizes the essay or once again reinforces the content and meaning of the main part. The conclusion can contain such a very important element that complements the essay, as an indication of the application of research, the development of relationships with other problems.

Independent work for module 3 (topics 13-14)

Task: write an essay on one of the selected topics

1. Types of obligations in Roman law.
2. Plurality of persons in an obligation in Roman law.
3. Grounds for the emergence of an obligation in Roman law.
4. The content of the obligation in Roman law.
5. Fulfillment of an obligation in Roman law.
6. Enforcement of an obligation in Roman law.
7. Consequences of failure to fulfill an obligation in Roman law.
8. Guilt in Roman law.
9. Termination of obligation in Roman law.
10. Concept and legal nature of contracts in Roman law.
11. Types of contracts in Roman law.
12. Content of the contract in Roman law.
13. Terms of validity of contracts in Roman law.
14. Free will of the parties to the contract as a condition for its validity in Roman law.
15. Conclusion of contracts in Roman law.
16. Verbal contracts: general characteristics
17. Stipulation in Roman law

18. Literal contras: general characteristics.
19. Syngraph and chirograph: general characteristics.
20. Consensual contracts.
21. Peculiarities of sales contracts in Roman law.
22. Peculiarities of hiring in Roman law
23. Peculiarities of power of attorney contracts in Roman law
24. Real contracts: general characteristics
25. Loan agreement and loan agreement in Roman law
26. Anonymous contracts.
27. Covenants in Roman law
28. Quasi-contracts in Roman law
29. Managing other people's affairs without a mandate in Roman law
30. Formation of the concept and general characteristics of obligations from torts in Roman law
31. Types of delict obligations in Roman law.
32. Quasi-delicts in Roman law
33. Types of inheritance in Roman law.
34. Inheritance by testament in Roman law.
35. Inheritance by law in Roman law.
36. Acceptance of inheritance in Roman law.
37. Legatees and trustees: general characteristics.
38. Protection of inheritance rights in Roman law

Requirements for writing an essay:

According to the structure, the essay should consist of an introduction, main part, conclusion, list of used literature.

The length of the abstract should be at least 9 pages and no more than 11 pages of typewritten text with a line spacing of 1.5 point -14 standard density (Times New Roman font). At the same time, indents must be made: 2 cm from the top and bottom, 3 cm from the left, 1 cm from the right. The pages of the abstract must be numbered. The numbering starts from the second sheet with the Arabic numeral 2 in the middle of the upper edge at a distance of at least 10 mm from the edge. No marks or symbols are written near the numbers.

The title page (the first page of the essay) indicates the name of the ministry, educational institution, faculty, department, subject of the essay, surname and initials, academic group of the performing student, surname and initials, academic degree of the teacher, city and year of writing. When indicating the topic of the abstract, you must write ABSTRACT in the middle of the line, and below this word - topic, at the same time, you should not use a colon and put the name of the topic in quotation marks.

The presented understanding of the essay as a complete author's text determines the criteria for its evaluation: novelty of the content; reasonableness of the choice of sources; degree of disclosure of the essence of the issue; compliance with registration requirements.

New content:

- a) relevance of the research topic;
- b) novelty and independence in setting the problem, formulating a new aspect of a known problem in establishing new connections (intersubject, intrasubject, integration);
- c) ability to work with research, analytical literature, systematize and structure material;
- d) availability of the author's position, independence of assessments and judgments;
- e) stylistic unity of the text.

The degree of disclosure of the essence of the question:

- a) compliance with the outline of the abstract;
- b) correspondence of the content and plan of the essay;
- c) completeness and depth of knowledge on the topic;
- d) reasonableness of methods and methods of working with the material;
- e) the ability to generalize, draw conclusions, compare different points of view on the same issue (problem).

Justification of the choice of sources:

- a) assessment of the used literature: whether the most famous works on the topic of the study were considered (including journal publications of recent years, the latest statistical data, references, etc.).

Compliance with registration requirements:

- a) the correctness of the reference to the used literature, the list of references;
- b) assessment of literacy and presentation culture (including spelling, punctuation, stylistic culture), mastery of terminology;
- c) compliance with the requirements for the scope of the essay.

CONTROL QUESTIONS FOR DETERMINING THE LEVEL OF KNOWLEDGE ASSESSMENT BY STUDENTS

1. Origin and development of Roman law.
2. Division of Roman law into private and public law
3. The concept of Roman private law.
4. The system of Roman private law.
5. Concepts and types of reception of Roman private law.
6. The influence of the reception of Roman private law on the development of subsequent legal systems and political doctrines.
7. The importance of studying Roman private law for law students of Ukraine.
8. The concept of the source of law. Types of sources of Roman private law.
9. Sources of legal formation in Ancient Rome.
10. Sources of knowledge of Roman private law.
11. Codification of Justinian.
12. Concepts and types of persons (legal entities) in Ancient Rome.
13. Natural persons. Legal capacity of natural persons.
14. Conditions of full working capacity of a person. The extent of legal capacity of a person.
15. Content of a person's civil legal capacity.
16. The concept of legal capacity of natural persons.
17. Civic honor. Complete deprivation of honor. Forms of termination of honor.
18. Legal status of Roman citizens (Quirites), foreigners (Latins, Peregrins), freedmen, slaves. The concept of *peculi*. Legal make up columns.
19. Concepts and signs of legal entities in Rome.
20. Legal capacity and legal capacity of legal entities.
21. Types of legal entities.
22. Emergence and termination of activity of legal entities.
23. The concept of the Roman family.
24. Agnatic and cognatic family.
25. Lines and degrees of kinship. Kinship
26. Concept of marriage.
27. Types of marriage. Legal Roman marriage. Marriage *cum manu*. Marriage *sine manu*. Concubinage
28. Conditions for entering into marriage and the procedure for its conclusion.
29. Conditions and procedure for dissolution of marriage.
30. Legal status of dowry and gift.
31. Establishment and termination of parental authority.
32. Forms of adoption of children in Rome.
33. Custody and care. Establishment and termination of guardianship and guardianship in Rome.
34. Concepts and features of the legislative process.
35. Division of the civil process into two stages — *jus* and *judicium*.

36. The procedure for consideration of cases and execution of court decisions during the implementation of the legislative process.
37. Form process. Proceedings and implementation of decisions.
38. The concept of the praetorian formula, its constituent parts (appointment of the judge, the essence of the case, the grounds for the lawsuit, the judge's order).
39. Additional parts of the praetorian formula (exception and prescription).
40. Representatives in civil proceedings.
41. Executions: personal and real.
42. General characteristics of an extraordinary process. Procedure for consideration of cases and implementation of decisions. Appeal.
43. Special means of praetorian protection of violated rights.
44. Restitution. Concept, types and conditions of its application.
45. Concepts and types of lawsuits in Rome.
46. Real and personal claims.
47. Actions at strict law and actions based on equity and good faith.
48. Claims by analogy and claims with fiction.
49. Concept of statute of limitations. Limitation periods.
50. Interruption and suspension of the limitation period.
51. Concept and types of inheritance. Universal and singular inheritance.
52. Basic concepts of inheritance law (testator and heirs, inherited property).
53. Concept and conditions of validity of a will. Contents of the will.
54. Heirs under the will.
55. Mandatory share. Circle of persons entitled to a mandatory share.
56. Cases of invalidity of the will.
57. Cases of inheritance by law.
58. Circle of heirs by law.
59. Inheritance by right of representation.
60. Ways and consequences of accepting inheritance.
61. The concept of inheritance registration.
62. Liability of heirs for debts of testators.
63. Claims about inheritance.
64. The concept of hereditary representation, hereditary transmissions and hereditary substitutions.
65. Legatees and trustees.
66. Restrictions on the freedom to appoint legatees and trustees.
67. Concept of thing and property.
68. Classification of things in Roman civil law.
69. Concepts and elements of ownership.
70. Possession and holding.
71. Derivative owners.
72. Types of ownership: legal and illegal (illegal in good faith and illegal in bad faith).
73. Subjects and objects of ownership.
74. Acquisition and termination of ownership.

75. Protection of ownership. Possessor and petitioner methods of protection of ownership.
76. The concept and content of property rights.
77. Limitation of ownership. Reasons for restrictions on property rights.
78. Ways of acquiring and terminating ownership.
79. Protection of property rights.
80. Concepts and types of rights to other people's things.
81. Concept and subject of obligation.
82. Classification of obligations. Four-member classification of obligations. Other types of obligations.
83. Grounds for obligations. Actions, events.
84. Parties to an obligation.
85. Change of parties in an obligation. Cession. Debt transfer.
86. Concept of fulfillment of obligation.
87. Conditions for recognizing an obligation as duly fulfilled.
88. The concept of non-performance or improper performance of an obligation.
89. Consequences of failure to fulfill an obligation.
90. Concepts and types of guilt. Liability for someone else's fault.
91. Concept and types of damage.
92. Means of ensuring the fulfillment of obligations.
93. The concept of obligation from a quasi-contract.
94. Concepts and types of conditions.
95. Concept of tortious obligations. Certain types of torts.
96. The concept of an obligation arising as if from a delict.
97. Concept of contract.
98. Unilateral, bilateral, synalagmatic agreements.
99. Structure of the contract. The elements are essential and additional.
100. Form of the contract.
101. Concepts and forms of securing contracts.
102. General conditions of validity of the contract.
103. Distortion of the will when concluding a contract. Violence, threat, deception, mistake.
104. Classification of contracts in Rome.
105. Verbal contracts.
106. Concepts and types of literal contracts.
107. Concept and types of real contracts.

RECOMMENDED LITERATURE

Basic literature:

1. Agafonov S.A. Roman law: teaching method. manual for self studied disciplines / Kyiv National Economic University - K.: KNEU, 2005. - 144 p.
2. Grove. Institutions / Translated by F. Dydynskyi / Ed. L.L. Kofanova and V.A. Savelyeva. - M.: Yuryst, 1997. - 368 p.
3. Digests of Justinian / Translation from Latin; Opening ed. L.L. Kofanov. In eight volumes. - M.: "Statut", 2002. - 231 p.
4. Kirpychev O.A., Solovyova V.V. Roman private law: teaching. manual for students higher education closing - Donetsk: Yugo-Vostok, 2007. - 320 p.
5. E.M. Orach, B.Y. Tyshchyk. Roman private law. Academic course: tutor. for students higher education closing / Lviv. national University named after Ivan Franko. - K.: In Yure, 2012. - 390 p.
6. Fundamentals of Roman private law: Textbook / V.I. Borisova, L.M. Baranova, M.V. Domashenko and others; In general ed. V.I. Borisova and L.M. Baranova. - Kh.: Pravo, 2008. - 224 p.
7. Pidoprigora O.A., Kharitonov E.O. Roman law: textbook. - 2nd edition. - K.: Yurinkom Inter, 2009. - 528 c.
8. Pidoprigora O.A. Roman private law. Academic course: tutor. for students law special higher education institutions - 3 ed., revision. and additional - K.: "In Yure" Publishing House, 2001. - 440 p.
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10. Makarchuk V.S. Roman private law: teaching. manual for students universities - K.: Atika, 2007. - 256 p.
11. Trofanchuk G.I. Roman private law: teaching. manual for students universities - K.: Atika, 2006. - 248 p.
12. Skrypylev E.A. Fundamentals of Roman law: Lecture notes. - 4th ed. - M.: Osi-89, 2005. - 208 p.
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Additional literature:

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15. Balko O. Formation of the institution of marriage in Roman law and in the countries of the Romano-Germanic type of legal system // Viche. – 2010. – No. 12. – P.5-6.

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18. Berestova I. Unjust enrichment: the institution of acquisition, storage of property without a sufficient legal basis in the system of Roman law // Procurator's Bulletin. – 2003. – No. 10. – P. 60-64.
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Library and bibliographic resources

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