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## LW/SO300 – Roman Law and Common Law: Two Jurisprudential Traditions in Comparison

Prof. Francesca Silvia Scotti

### COURSE DESCRIPTION

The introductory part of the course is meant to illustrate the main features of the civil law and common law systems (the former based on the secular tradition of academic studies on Roman Law - Justinian's *Corpus iuris civilis* - and nowadays on the idea of codification, the latter originated with the introduction of judging courts in the UK and now based on the system of judicial precedents) and their differences along with the description of the Roman jurisprudence and its methods. The second part of the course will deal with the analysis of some British and US rulings in which the judges have argued on the basis of exemplary solutions of similar cases proposed by Roman jurists.

### COURSE CONTENTS

Modern legal systems are divided into civil law and common law systems, the former typical of the countries that over the centuries have been subjected to the influence of the Roman law studies tradition based on Justinian's *Corpus Iuris Civilis* (Continental Europe, Russia, China, Japan, South America and so on), the latter typical of England, which for historical reasons escaped such influence starting from the 11th century, and of the countries depending on it (North America, Australia, etc.). One might therefore think that common law has nothing in common with Roman law, the first foundation of civil law. Yet it is not so: on the contrary, a comparison between the two can in many ways be profitable to provide students with two different examples of 'jurisprudential law', a system in which the function of making law evolves so as to meet the continuously changing needs of society does not depend on a written codification, but on a selected group of '*iuris periti*'. However, the composition of this group of experts is very different: in Rome they were people from the civic élite who often also assumed magistracies, in the United Kingdom they were judges belonging to different courts. Indeed, in both England and the United States, there have been judgments that have led to an evolution of the existing law on the basis of the solution of similar cases issued by Roman jurists: further lessons will be devoted to reading, analyzing and discussing some of these decisions (for England *Foskett v. Mckeown*, [2001] 1 A.C. 102; *Fairchild v. Glenhaven Funeral Services*, [2002] U.K.H.L. 22; *Barker v. Corus UK Ltd*, [2006] U.K.H.L. 20; [2006] 2 A.C. 572; *OBG v. Allan*, [2007] U.K.H.L. 21; for the United States *Pierson v. Post* 3 Cai. R. 175 (N.Y. Sup. Ct. 1805); *Fisher v. Steward*, Smith Rep. 60, 61 (N.H. 1804); *Wallis v. Mease*, 3 Binn. 546, 552-553 (Pa. 1811); *Glasgow's Lessee v. Smith and Blackwell*, 1 Tenn. (1 Overt.) 144, 166 (1805)).

### PREREQUISITES

None.

### METHOD OF TEACHING

General introduction; direct reading of both Roman jurisprudential texts and of British and American decisions; open discussions on the contents of the cases examined, on the concrete problems brought to the attention of



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lawyers or judges, on the proposed solutions and relative foundations, on the reasons supporting each decision and the arguing against.

## COURSE REQUIREMENTS

In order to get their credits, students will be required to:

- 1) attend classes regularly (a maximum of four absences is tolerated);
- 2) keep up with the assigned readings, participate in class discussions both on jurisprudential texts and decisions of the courts.

Mid-term and final exams will be one-on-one discussions and presentations of course content with the Professor. The mid-term exam will consist of a one-on-one discussion and interrogation on the first part of the course contents. The final exam will be a presentation of one of the rulings of the courts examined in class. Each student will be free to choose the one he/she prefers.

## CREDITS

6 ECTS

## GRADING

Attendance and class participation	35 % of final grade
Midterm test	20 % of final grade
Final exam	45 % of final grade

## COURSE READINGS AND MATERIALS

A packet including all required readings will be available at the beginning of the course. The texts to be read and discussed during classes will be given the students one week in advance.

## INSTRUCTOR BIO

Francesca Scotti obtained a first class honours degree in Law (major: Roman Law; title of the dissertation: "An esegetic commentary on Justinian's Digest title *Si quadrupes pauperiem fecisse dicatur*") at Università Cattolica del Sacro Cuore of Milan on the 22nd of April 1995.

In the Academic Year 1997-98 she benefitted from a Postgraduate Scholarship (awarded by Università Cattolica del Sacro Cuore of Milan) at Exeter University (Devonshire, Great Britain), where she studied the British procedure system, the Sale of Goods Act 1893, the Sale of Goods Act 1979 and links with the Theft Act 1968 under the supervision of Dr. David Pugsley, professor of Roman Law and French Law at the Exeter Law Faculty.

She has been a research fellow at the Faculty of Law of Università Cattolica del Sacro Cuore of Milan since 2006.

She is a member of the Scientific Board of the PhD "Storia del Pensiero e delle Istituzioni Giuridiche Romane" of the Law and Economics Department of Università Mediterranea of Reggio Calabria. She is also a member of the Scientific Board of the PhD "Persona e ordinamenti giuridici" of the Law Department of Università Cattolica del Sacro Cuore of Milan.



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Since 2014 she has been an editor of *Jus. Rivista di Scienze Giuridiche a cura della Facoltà di Giurisprudenza dell'Università Cattolica di Milano*; since 2015 she has been an editor of *Jus- Online. Rivista Di Scienze Giuridiche a cura della Facoltà di Giurisprudenza dell'Università Cattolica di Milano*; since 2016 she has been a member of the executive board of *ELR. European Legal Roots*.

From 2007 to 2013 she was adjunct professor of Roman Law History at Università Cattolica del Sacro Cuore of Piacenza.

Since 2001 she has been holding integrative lectures of the course of Institutions of Roman Law both at Milan and Piacenza Università Cattolica del Sacro Cuore and Seminars of Roman law (valid for 1 CFU) at Università Cattolica del Sacro Cuore of Milan.

The main field of her Roman law studies is contract law, agricultural law and inheritance succession law. She has published an Anthology of translated and commented texts chosen from Justinian's Digest and two volumes containing the exegesis of various Roman law sources on deposit and universal succession. She has published essays on water management in neighborhood relations between lands, on plurality of testamentary *tabulae* in Roman law, on legacies concerning wool, linen and coloured yarns in favour of the Roman matrons, on the links between common law and Roman law emerging from the case law of the House of Lords.

#### E-MAIL ADDRESS

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