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Roman Law and Common Law: Two Jurisprudential Traditions in Comparison

PROF. FRANCESCA SILVIA SCOTTI

Area of study:	Sociology, Psychology and Law
Area Code:	LW/SO300
Method of Instruction:	In-person

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. CorusUK 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 instruction



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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 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 the 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

Prof. Francesca Scotti 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 Università Cattolica del Sacro Cuore of Milan since 2006.

From 2009 to 2013 she has been a member of the teaching body of the Roman law research doctorate entitled 'Storia del pensiero e delle Istituzioni giuridiche romane' (Legal History of Roman Institutions') at 'Università Mediterranea di Reggio Calabria' established by the Faculty of Law of 'Università Mediterranea di Reggio Calabria' and associated with 'Istituto di Studi Umanistici di Firenze' and 'Università Cattolica del Sacro Cuore di Milano'.

Since 2014 she has been a member of the teaching body of the School of the research doctorate 'Persona e ordinamenti giuridici' ('Person and legal systems') of the Department of Legal Sciences of 'Università Cattolica del Sacro Cuore di Milano'.



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Since 2014 she has been a member of the editorial committee of 'Jus. Rivista di Scienze Giuridiche a cura della Facoltà di Giurisprudenza dell'Università Cattolica di Milano'.

From 2015 to 2019 she was a member of the editorial committee of the journal '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 the Journal 'ELR. European Legal Roots'.

She is enrolled in REPRISE (register of scientific experts established by MIUR) for basic research.

Since 2019 she has been a member of 'Associazione Ravenna Capitale'.

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 Institutes 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.

Since the Academic Year 2018-19 she has been a temporary lecturer of the course of Roman Law Institutes in the Faculty of Law and Economics at 'Università Cattolica del Sacro Cuore di Piacenza'.

On the 14th of June 2021 she passed the National Scientific Qualification procedure for Associate Professor, SSC 12 / H1, SSD IUS / 18.

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 the plurality of testamentary tabulae in Roman law and on sheep wool, flax and colored fibers legacies in the ancient Roman world. Her last publication is a monograph dating back to 2020, entitled 'Lana, linum, purpura, versicoloria. I legati tessili fra diritto romano e archeologia', Jovene, Napoli 2020 (pp. 406), thanks to which in 2021 she obtained the 'Premio pubblicazioni di alta qualità' ('High quality publications award') of Università Cattolica del Sacro Cuore di Milano.

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