

CLAS 305: Roman Law
Units: 4
Fall 2019—T/Th—9:30-10:50am

Location: Taper Hall (THH) 213

Instructor: Prof. Brandon Bourgeois (Assistant Professor of Classics, Department of Classics)

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Office Hours: TR 2-3pm

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I will typically reply to emails within 24 hours.

USC Dornsife

Dana and David Dornsife
College of Letters, Arts and Sciences



Mosaic of the Emperor Justinian (527-565 AD),
court, and clergy
Basilica of San Vitale, Ravenna, Italy (547 AD)

Course Description

Moving from the Twelve Tables to the *Corpus Iuris Civilis* of the emperor Justinian, this course surveys the history and elements of Roman civil law (a.k.a. *ius civile* or ‘Civil law’)—including the law of persons, property, obligations, and inheritance/succession—all within the context of social structure (family, gender, class, slavery, empire). A persistent theme throughout the course will focus on the overlapping and often contradictory spheres of legal authority as manifested throughout Rome’s history. Students will be required to analyze cases pertinent to these areas of the law. We will cover topics in the order that they would have been presented to law students 2,000 years ago; but unlike ancient students of the law, we will regularly take the opportunity to examine how Roman law served as both a technology and site of social contestation over the course of the *respublica*’s history. Simply put, students will examine how the law served and shaped Roman society, as much as how Roman society shaped the law to meet its developing needs.

This is an upper-division undergraduate course, cross-listed with Law, History, and Culture. All readings are in English.

Learning Objectives

- To gain facility in the basic technical language and concepts of Roman law through case-study analysis and construction, and facility in how to use the detailed and comprehensive study of a legal system for illuminating social and economic history.
- To develop a nuanced, historically contextualized understanding of just what ‘Roman law’ was and how it has been understood by contemporaries and moderns.
- To understand, generally, the ways in which the law is a contested social technology; and, more specifically, the dialectical relationship between Rome’s history and its laws—how Rome’s socio-historical process (its ‘political and social history’) shaped its legal structures, and how those legal structures and laws in turn shaped Rome’s socio-historical process.
- To develop an appreciation of Roman law’s global legacy.

Prerequisite(s): This course assumes no knowledge of Latin or Roman history.

Recommended Preparation: CLAS 151, The Legacy of Rome or HIST 101, State and Society in the Ancient World

Course Notes

The study of any discipline requires working familiarity with its technical terms and language. Thus, while this course assumes no prior knowledge of Latin, students are expected to learn the Latin terminology to which they are introduced. For a list of Latin terms, see the online glossary provided by our primary textbook: <https://global.oup.com/uk/orc/law/roman/borkowski5e/resources/glossary/>

Required Readings and Supplementary Materials

Required readings (available at the campus bookstore and [amazon.com](https://www.amazon.com)).

1. **BORK** = A. Borkowski and P. du Plessis, *Textbook on Roman Law*, 5th ed. (OUP: 2015). ISBN-13: 978-0198736226
2. **JOHN** = D. Johnston, *Roman Law in Context* (Cambridge: 1999). ISBN-13: 978-0521639613

Recommended readings

–**HAND** = eds. Du Plessis, Ando, and Tuori, *The Oxford Handbook of Roman Law and Society* (OUP: 2016).

ISBN-13: 978-0198728689

(don't buy; an e-version is **available online through USC library**)

All other readings and additional media will be freely available online or will be distributed as PDFs through Blackboard.

Further Resources:

–C. Ando, *Law, Language and Empire in the Roman Tradition* (2011) (online via USC libraries)

–A. Berger, *Encyclopedic Dictionary of Roman Law* (1953) (online via Google search; JSTOR)

–*W.W. Buckland, *A Text-Book of Roman Law* (1963)

–J. W. Cairns and Paul J. du Plessis, *Beyond Dogmatics: Law and Society in the Roman World* (2007) (online via USC libraries)

–J.A. Crook, *Law and Life of Rome* (1986) (online via USC libraries)

–J. Evans Grubbs, *Women and Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (2002) (online via USC libraries)

–*B. Nicholas, *An Introduction to Roman Law* (1962)

–*Andrew M. Riggsby, *Roman Law and the Legal World of the Romans* (2010)

–*The Digest of Justinian*, ed. T. Mommsen and W. Krueger, tr. Watson 4 vol. (1985) (all online via USC libraries)

–**The Institutes of Gaius*, tr. F. de Zulueta (1946)

Description and Assessment of Assignments

Although readings are typically short, they are dense. To function optimally in class and perform well on exams, you must read carefully and take good, well-organized notes. Keep in mind that obtaining a working knowledge of the conceptual framework, grammar, and vocabulary of Roman law requires considerable memorization. Approach this particular subject matter as one would a foreign language.

Each week (beginning at the end of week 2), you will obtain case studies designed to help considerably with this memorization process. With these you will exercise your understanding of the law and its principles. The readings will serve as the basis for preparing your case studies for the following week. Feel free to prepare these individually or in groups.

Beginning at the start of week 3, students will be asked to answer specific questions about their case studies during lecture—i.e. students will be expected to know points of law and apply them as a Roman lawyer hypothetically would. **Weekly case preparation and in-class engagement** will comprise the total of your grade for attendance and participation (“**ATTEND/PARTICIPATE**”).

During the course of the term, students will also be expected to **write-up a case** of their own (“**CASE**”). **This is due at the latest by Friday, Oct. 11th (Wk 7)**; that said, it may be turned in at any time prior to that date. Students must write a **brief paper** (“**PAPER**”) of **3 pages (due Wk. 12 on Blackboard—Sat. November, 16th at 11:59pm)** that engages with primary source material (coins or papyri) found through online digital resources/on-site collections. More details will follow as we proceed through the beginning weeks of the semester.

Grading Breakdown

Assignments	Points	% of Grade
ATTEND/PARTICIPATE	10 (X10) = 100	20%
CASE	100	5%
PAPER	100	10%
MIDTERM	100	30%
FINAL	100	35%
TOTAL	500	100%

Grading Scale (Example)

Course final grades will be determined using the following scale

A	95-100
A-	90-94
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76
C-	70-72
D+	67-69
D	63-66
D-	60-62
F	59 and below

Assignment Rubrics

Assessment criteria for the PAPER (3 pgs):

A: Directly addresses the question or problem raised. Provides coherent argument that displays an extensive knowledge of relevant information or content. Demonstrates the ability to critically evaluate concepts and theory. Has an element of novelty and originality. Clear evidence of significant amount of reading beyond that minimally required for the course.

B: Highly competent product. Directly addresses the question or problem raised. Demonstration of *some* ability to critically evaluate concepts and theory and relate them to practice. Discussions are reflective of student's own arguments and are not simply a repetition of standard lecture and reference materials. No major errors or omissions. Provides evidence of some reading beyond required assignments.

C: Acceptable product. Provides clear but limited answers that reflect back information offered in lectures and reference readings.

D: Product shows lack of coherent grasp of the material. Important information omitted. Irrelevant points included. Effectively, student has dialed it in just enough to persuade the instructor that the product is above a fail, but just only.

F: Product fails in showing any knowledge or understanding of the issues raised in the question or problem. Most of the material provided as a response is irrelevant.

Attendance, Assignment Submission, and Additional Policies

Attendance at lecture is required, late assignments will not be accepted, and students can not make up exams—EXCEPT in the event of religious holidays or an extreme occurrence (illness, death in the family, unavoidable emergency, etc.). Indeed, we are all human. However, “I overslept” or “I forgot” or “I couldn’t miss the big game,” will not serve as viable excuses. All told, exemptions from the above policy will be dealt with on a case by case basis, as required. If religious observances require some form of policy accommodation, please inform me of this as soon as possible.

Inquiring minds and regular and engaged participation are expected. I will distribute study/case sheets on Thursdays and students will be expected to answer the questions posed during lecture/discussions held in next week’s meetings. Students are expected to arrive to class on-time, having completed all required assigned reading and ready to **participate** in thoughtful and lively discussion.

Unexcused absences and any accrued absences beyond **four (4)** will adversely affect your participation grade and potentially your final grade. Attendance will be taken daily. After the fourth absence, your participation grade will decline based on the percentage of your absences. Your total attendance grade will be calculated by dividing your attendances/total number of classes. For example, 4 extra absences of 22 ($18 \div 22 \times 100$) classes will result in a regular participation grade of 81%.

Office Hours, etc.

I urge you all to take advantage of my office hours throughout the course. See above for time. *Further details on all assignments will be posted on Blackboard and discussed during class.* If you ever have questions about either the assignments or the reading, please do not hesitate to ask in class. Or, if more appropriate, email me or speak to me during office hours or an alternately scheduled time. I want to be sure that you have all the information and support that you need in order to perform at your very best!

Course Schedule: A Weekly Breakdown

	Topics/Daily Activities	Readings (Before Each Mtg.)	Deliverable/ Due Dates [[& Optional Further Reading]]
<p>Week 1</p> <p>History 1</p>	<p>1) T 8/27:</p> <p>Syllabus Review</p> <p>Introduction: What is Roman Law?</p> <p>2) R 8/29:</p> <p>Historical and Political Survey</p> <p><i>The Roman 'Constitution', 'Republic', and 'Empire'</i></p>	<p>T 8/27:</p> <p>S. Riccobono, "Outlines of the Evolution of Roman Law" (1925). https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=8064&context=penn_law_review</p> <p>R 8/29:</p> <p><u>BORK</u>, pp.1-24</p>	<p>[Optional Further Reading:</p> <p>Hankins, "Republicanism" (Blackboard)]</p>
<p>Week 2</p> <p>History 2</p>	<p>3) T 9/3:</p> <p>The Twelve Tables</p> <p>4) R 9/5:</p> <p>Archaic Justice & The Development of Procedure</p>	<p>T 9/3:</p> <p>The Twelve Tables (Blackboard)</p> <p><u>BORK</u>, pp. 27-31</p> <p>R 9/5:</p> <p><u>BORK</u>, pp. 63-82 (Ch.3) <u>JOHN</u>, pp. 112-32</p>	<p>[Optional Further Reading:</p> <p><u>HAND</u>: Ernest Metzger, "Republican Civil Procedure: Sanctioning Reluctant Defendants"</p> <p><u>HAND</u>: Thomas R�fner, "Imperial Cognition Process"]</p> <p><i>PREP CASE STUDY - for WK 3, #1</i></p>
<p>Week 3</p> <p>Persons 1</p>	<p>5) T 9/10:</p> <p>The Sources</p> <p>6) R 9/12:</p> <p><i>Patriapotestas</i></p>	<p>T 9/10:</p> <p><u>BORK</u>, pp. 32-43; AND 54-62 <u>JOHN</u>, pp. 1-29</p> <p>R 9/12:</p> <p><u>BORK</u>, pp. 110-17; AND 132-35</p> <p>J. Evans Grubbs, <i>Women and Law in the Roman Empire</i>, pp. 24-37 (Online-library)</p>	<p>[Optional Further Reading:</p> <p><u>HAND</u>: Jakub Urbanik, "Husband and Wife"]</p> <p><i>PREP CASE STUDY - for WK 4, #2</i></p>

<p>Week 4 Persons 2</p> <p>Persons 3</p>	<p>7) T 9/17: Marriage and Guardianship</p> <p>8) R 9/19: Slavery</p>	<p>T 9/17: BORK, pp. 117-32; AND 136-47</p> <p>Grubbs, <i>Women and Law</i>, pp. 122-35 (Online-library)</p> <p>R 9/19: BORK, pp. 85-109</p>	<p>[Optional Further Reading: HAND: Eva Cantarella, “Women and Patriarchy in Roman Law”</p> <p>HAND: Verena Halbwachs, “Women as Legal Actors”</p> <p>HAND: Henrik Mouritsen, “Freedman”]</p> <p><i>PREP CASE STUDY - for WK 5, #3</i></p>
<p>Week 5 History 3</p> <p>Property 1</p>	<p>9) T 9/24: Roman Society and the Law of Persons</p> <p>10) R 9/26: Ownership vs. Possession</p>	<p>T 9/24: JOHN, pp. 30-44</p> <p>Frier & McGinn, <i>Casebook of Roman Family Law</i>, pp. 54-62 AND 229-37 (Blackboard)</p> <p>R 9/26: BORK, pp. 151-59; AND 171-190</p>	<p>[Optional Further Reading: HAND: Suzanne Dixon, “Family”</p> <p>HAND: Christian Baldus, “Possession in Roman Law”]</p> <p><i>PREP CASE STUDY - for WK 6, #4</i></p>
<p>Week 6 Property 2</p> <p>Property 3</p>	<p>11) T 10/1: Modes of Acquisition</p> <p>12) R 10/3: Servitudes and other <i>iura in re aliena</i></p>	<p>T 10/1: BORK, pp. 190-204</p> <p>R 10/3: BORK, pp. 159-70 JOHN, pp. 53-76</p>	<p>[T 10/1: Rosh Hashanah]</p> <p>[Optional Further Reading: HAND: Egbert Koops, “Price Setting and Other Attempts to Control the Economy”</p> <p>HAND: Richard A. Epstein, “The Economic Structure of Roman Law”]</p> <p><i>PREP CASE STUDY - for WK 7, #5</i></p>
<p>Week 7 Obligations 1</p> <p>Obligations 2</p>	<p>13) T 10/8: Commerce and Contract</p> <p>14) R 10/10: Hire</p>	<p>T 10/8: BORK, pp. 249-74; AND 289-305</p> <p>R 10/10: BORK, pp. 274-79</p> <p>Crook, <i>Law and Life of Rome</i>, pp. 191-205 (Online-library)</p>	<p>[Optional Further Reading: HAND: Egbert Koops, “Price Setting and Other Attempts to Control the Economy”</p> <p>HAND: Luuk de Ligt, “Roman Law, Markets and Market Prices”]</p> <p>*no case study for week 8; prep. for midterm</p> <p>FRIDAY, 10/11: “CASE” DUE via Blackboard (latest possible submission)</p>

<p>Week 8</p>	<p>15) T 10/15: <u>Midterm</u></p> <p>R 10/17: First Day of Fall Recess - No Class</p>	<p>No Readings</p>	<p>MIDTERM *no readings this week *no case study for week 9</p> <p>[T 10/15: Sukkot]</p> <p><i>PREP CASE STUDY - for WK 10, #6</i></p>
<p>Week 9 Obligations 3</p> <p>History 4</p>	<p>16) T 10/22: Partnership and Mandate</p> <p>17) R 10/24: Commerce and Contract in the Ancient World</p>	<p>T 10/22: BORK, pp. 280-89; AND 305-16</p> <p>R 10/24: JOHN, pp. 77-111</p>	<p>[T 10/22: Shemini Atzeret / Simchat Torah]</p> <p><i>[[PREP CASE STUDY - for WK 10, #6]]</i></p>
<p>Week 10 Obligations 4</p> <p>History 5</p>	<p>18) T 10/29: Delict</p> <p>19) R 10/31: Non-Civil Law (Religious and Criminal Law)</p>	<p>T 10/29: BORK, pp. 317-52</p> <p>Crook, <i>Law and Life of Rome</i>, pp. 250-55 (Online-library)</p> <p>R 10/31: Crook, <i>Law and Life of Rome</i>, pp. 68-73; AND 268-78 (Online-library)</p>	<p>[Optional Further Reading:</p> <p>HAND: Floriana Cursi, “The Scope and Function of Civil Wrongs in Roman Society”]</p> <p><i>PREP CASE STUDY - for WK 11, #7</i></p>
<p>Week 11 History 6</p> <p>(demonstrations of how to use online resources/ on-site meeting)</p>	<p>20) T 11/5: International Law—Ruling an Empire</p> <p>21) R 11/7:</p> <p>EITHER The Materiality of the Law: Roman Money</p> <p>OR The Textuality of the Law: Roman Contracts</p>	<p>T 11/5: Ando, <i>Law, Language, and Empire in the Roman Tradition</i>, chs. 1 and 3 (Online-library)</p> <p>R 11/7: Howgego, <i>Ancient History from Coins</i>, pp. 112-54 (Blackboard)</p> <p>José Luis Alonso Rodríguez, “Juristic Papyrology and Roman Law” (Blackboard)</p>	<p>[Optional Further Reading:</p> <p>HAND: Tristan Taylor, “Legally Marginalised Groups—The Empire”</p> <p>J. Andreau, <i>Banking and Business in the Roman World</i>, pp. 71-99 (Blackboard)]</p> <p><i>PREP CASE STUDY - for WK 12, #8</i></p>

<p>Week 12 Succession 1</p> <p>Succession 2</p>	<p>22) T 11/12: Intestacy</p> <p>23) R 11/14: How to Make a Will</p>	<p>T 11/12: <u>BORK</u>, pp. 203-13</p> <p>R 11/14: <u>BORK</u>, pp. 213-45</p>	<p>[Optional Further Reading: E. J. Champlin, <i>Final Judgments</i> (Reserve/Blackboard)]</p> <p>“PAPER” (Primary Source Engagement Paper, 3 pgs—Due SAT. 11/16 at 11:59pm)</p> <p><i>PREP CASE STUDY - for WK 13, #9</i></p>
<p>Week 13 Succession 3</p> <p>History 7</p>	<p>24) T 11/19: Reading Other People’s Wills</p> <p>25) R 11/21: Devolution of Property and Maintenance of Power</p>	<p>T 11/19: Frier & McGinn, <i>A Casebook of Roman Family Law</i>, pp. 418-21 (Blackboard)</p> <p>R 11/21: <u>JOHN</u>, pp. 44-52</p> <p>Crook, <i>Law and Life of Rome</i>, pp. 118-138 (Online-library)</p>	<p>[Optional Further Reading: <u>HAND</u>: Eva Jakab, “Inheritance”]</p> <p>*no case study for week 14</p> <p><i>PREP CASE STUDY - for WK 15, #10</i></p>
<p>Week 14</p>	<p>26) T 11/26: <u>No Class</u></p> <p>R 11/28: Thanksgiving - No Class</p>	<p>No Readings</p>	<p>*no readings this week</p> <p><i>[[PREP CASE STUDY - for WK 15, #10]]</i></p>
<p>Week 15</p> <p>History 8</p> <p>History 9</p>	<p>27) T 12/3: Post-Roman Law in the Western Successor Kingdoms (‘Barbarian’ West)</p> <p>28) R 12/5: The Impact of Roman Law on Our World</p> <p>Last Day of Class</p>	<p>T 12/3: <u>BORK</u>, pp. 355-60</p> <p>R 12/5: <u>BORK</u>, pp. 360-90</p>	<p>[Optional Further Reading: Peter Stein, <i>Roman Law in European History</i></p> <p>W. W. Buckland & Arnold McNair, <i>Roman Law and Common Law</i>]</p>
<p>FINAL EXAM</p>			<p>DATE: <u>TBD</u> (subject to revision)</p> <p>For the date and time of the final for this class, consult the USC <i>Schedule of Classes</i> at classes.usc.edu.</p>

Statement on Academic Conduct and Support Systems

Academic Conduct:

Plagiarism - presenting someone else's ideas as your own, either verbatim or recast in your own words - is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, "Behavior Violating University Standards" policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 - 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. engemannshc.usc.edu/counseling

National Suicide Prevention Lifeline - 1 (800) 273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. www.suicidepreventionlifeline.org

Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. engemannshc.usc.edu/rsvp

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: sarc.usc.edu

Office of Equity and Diversity (OED)/Title IX Compliance - (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. equity.usc.edu

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. studentaffairs.usc.edu/bias-assessment-response-support

The Office of Disability Services and Programs

Provides certification for students with disabilities and helps arrange relevant accommodations. dsp.usc.edu

Student Support and Advocacy - (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. studentaffairs.usc.edu/ssa

Diversity at USC

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. diversity.usc.edu

USC Emergency Information

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible. emergency.usc.edu

USC Department of Public Safety - UPC: (213) 740-4321 - HSC: (323) 442-1000 - 24-hour emergency or to report a crime.

Provides overall safety to USC community. dps.usc.edu