

Classification of Roman Private Law

Corporeal & incorporeal	Public & private	Movables & immovables	Res fungibiles & res non fungibiles
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Corporeal = touchable	Immovables = land & everything attached	Res fungibiles = replaceable thus generic
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Only corporeal = possessable	Opp = specific item
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Real vs. Personal Rights

Real	Personal
Relationships between legal subjects and objects	Relationships between legal subjects

A right <i>over a thing</i> which is enforceable against the whole world	A right against a <i>person</i> which is enforceable against a particular person
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Object of the right: thing/property	Object of the right: a performance by a specific person
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Real rights are transferred through an overt and public act	Personal rights are transferred through an agreement
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E.g. Ownership	E.g. Obligations
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Roman Law on Ownership (dominium)

Essentials	Limitations in the interest of...	Protection
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Commercium	Neighbours	Real action = rei vindicatio
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Property capable of private ownership	Land
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Roman Law on Ownership (dominium) (cont)

Appropriate method of acquisition	Co-ownership
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Imposed by themselves or predecessors

Concept changed from early Roman law until the period of Justinian. Roman law eventually recognized ownership (dominium) as the strongest right over the thing and weighed the claims of third parties to the thing against that right.

Acquisition of Ownership

Original	Derivative
W/o intervention or dependence	Transferred

1. Occupatio	1. Traditio (delivery)
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2. Accessio

3. Specificatio

Specificatio

Who became the owner of the new object

Sabinian-Proculian debate:

Sabinians: owner of material

Proculians: maker/creator

Middle view:

Justinian: Reducible new thing = owner of material. Otherwise ownership = maker/creator

Remedies: if the maker acquired ownership in good faith and was in possession (if not, then entitled to the rei vindicatio), the owner of the materials had no remedy. However, if the maker acted in bad faith, he could be sued for theft but was entitled to the new thing.

The process of creating or bringing into existence a new object (nova species). Only applied in circumstances where a new thing is created. Alterations not sufficient.

Accessio

Immovables	Movables
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Basic rule: Anything that was attached to the land became part of it, since land was regarded as the principle thing

Identity test: the thing that gave its identity or name to the new or composite things, counted as the principle thing

Applied to buildings

Other seldom used alternative tests: financial considerations or the relative size of the joining things

Harvesting of plants = no effect

Remedies: the owner of the accessory thing claim the value of his property or the owner of the principle thing not in possession could claim it back with rei vindicatio but had to pay the value of the accessory

Once plants take root - belongs to owner of land

However, the mala fide owner lost his proprietary rights.

Def: Joining together (through human conduct or natural forces) of two things that belonged to different owners

Occupatio

Wild animals	Abandoned things	Enemy Property
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Take effective or lasting control	Owner must have intended to be rid of the property	Immovables became the property of the state
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Occupatio (cont)

Escaped animals = res nullius again...	Sabinian- Proculian debate	Movables became property of the person who captured them or the commanding officer
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Unless they had animus revertendi (habit of returning to the owner)

Explanation: taking possession of things res nullius

Traditio

Delivery	Intention & iusta causa
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Traditio longa manu - long-handed delivery	Lawful cause
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Traditio brevi manu - short-handed delivery (transferee already had control)	What if the parties were mistaken as to the iusta causa?
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Constitutum possessorium - (opposite of traditio brevi manu) transferor agreed to pass ownership of the thing to the transferee, but the former retained temporary control	Putative mistakes: transferor may have intended a sale, whereas the transferee though he was receiving a gift
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Traditio symbolica - symbolic transfer	Material mistakes
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The two basic essentials: delivery and the appropriate intent

Nemo plus iurisrule: no one could transfer more rights to another than he himself had

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