



Universidad  
de Alcalá

FACULTAD DE DERECHO

# COURSE GUIDE

# ROMAN LAW

**Degree Programme in Law**  
**University of Alcalá**

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**Academic Year 2023/2024**  
**First Year - First Term**

## COURSE GUIDE

Course Name:	<b>Roman Law</b>
Code:	<b>400001</b>
Course Degree:	<b>Law Degree</b>
Department and Subject area:	<b>Juridical Sciences Area of Roman Law</b>
Type:	<b>Compulsory (Basic Formation)</b>
ECTS credits:	<b>6 Credits</b>
Year – term:	<b>First Year – First Term</b>
Professorate:	
Tutorial classes / Office hours:	<b>Upon particular request of the students to the teacher at class or by e-mail: <a href="mailto:aitor.fernandez@uah.es">aitor.fernandez@uah.es</a></b>
Language in which is taught:	<b>English</b>

### **1. INTRODUCTION**

The subject of Roman Law belongs to the first quarter of the first year of the Degree in Law. Due to its basic formative character, its main aim is to provide to the future jurists during their first forming year a solid basis of juridical-technical knowledge which will be increased as they advance in the study of other fields of Law. By the study of this particular subject, the student will be able to know a complete cycle in the evolution of a Legal System that later provided, as Common European Law, the common substrate from which the terminology derived, as well as legal institutions, creation, interpretation, and application techniques regarding Law. These, nowadays, conform to the basis of nearly all Western European legal systems and of all both derived and inspired on those, constituting, accordingly, a broad referent of the Western legal culture and of the Spanish one in particular. Special attention is paid to the sources of Roman Law and its historical evolution, as well as to the general principles of Law, the genesis and evolution of the principal juridical institutions, particularly Private Law, and its reception in Europe.

When the basic knowledge is acquired, the immediate aim is its practical application through both juridical reasoning and the development of a critical spirit.

Roman Law implies the basis not only of our Legal System but also of several contemporary ones. That is the main reason because it is studied in the first course of the Degree, facilitating thus to the students the acquisition of certain concepts and knowledge that will allow the correct understanding of the rest of the subjects contained in the Law Degree Study Plan, as well as the techniques of creation, analysis, interpretation, and application of the norms.

The study of Roman Law contributes decisively to the intellectual formation of the jurist. Its knowledge constitutes an essential instrument in order to understand the nature of Law and its substantial historicity and, therefore, for the global understanding of our Legal System, placing him, moreover, in the precise moment of the historical evolution where it belongs. It is also basic for the knowledge of both the techniques of creation and interpretation of the norms, as well as for the completion of the existing gaps within. It is, consequently, an indispensable element of knowledge for the modern jurist in the broadest sense of the notion, as well as for anyone inclined towards the comprehension of the European formative process and the evolution of the main predicaments that had shaped its actual historical juncture. No previous knowledge is required further than those mandatory to access the University.

## **2. COMPETENCES**

- Generical competences:
  1. Ability to search for information, selection, and evaluation of legal documentation as well as of general information.
  2. Reflective, critical, and autonomous learning.
  3. Capacity for a critical analysis of the acquired knowledge, as well as for synthesis and practical application of theoretical concepts.
  4. Understanding of Law as the system of regulation of coexistence that incorporates an idea of justice. Commitment to the respect of Human Rights and the Principles of Democracy.
  
- Specific competences:
  1. Formation of the juridical mentality.
  2. Knowledge of the technical-juridical terminology and the common legal institutions of the Western countries as well as of those derived or inspired on them.
  3. Understanding of the substantial historicity of Law through the study of a complete cycle regarding the historical evolution of the Legal System from which most of the modern legal systems belonging to the Western Civilization as well as of those inspired in derive from.

4. Management, understanding, analysis, and interpretation of the Roman jurisprudential sources.
5. Arouse the critical sense and facilitate a comprehensive attitude regarding the existing relationship between reality and the juridical norms throughout the handling and understanding of the casuistic method of Roman jurisprudence.

### **3. CONTENTS**

#### **3.1 Theoretical contents:**

#### **I. MODULE**

- \* **Concept of Roman Law**
- \* **Historical introduction**
- \* **Roman conceptions of the Law**
- \* **Procedural (Roman) Law**
- \* **General Theory of Legal Business**

The content of this first module is constituted, in the first place, by the study of the historical evolution of the Roman Legal System, from its remote origins up to the age of emperor Justinian I and subsequent projections. Hereafter, the definitions, and several divisions on which are specified the Roman conceptions of the Law are observed. In the Procedural (Roman) Law, the means of obtaining the protection of rights through court are studied, as well as other extra-procedural measures. The General Theory of Legal Business deals with the modification, creation, and extinction of rights throughout the acts of the individuals aimed at regulating their own interests within the limits authorized by the Legal System.

#### **II. MODULE**

**Persons and family.**

This module tries to answer, on the one hand, the question of who can have rights, that is, what requirements needed to be observed to be a subject of law, as well as other aspects related to personality within Roman Law. On the other hand, also analyzes the issues related to the Roman family, such as marriage, parental authority, guardianship, and conservatorship.

### **III. MODULE**

- \* **Property.**
- \* **Possession.**
- \* ***Iura in re aliena.***

Patrimonial rights are divided into two large blocks. In this particular module are observed those that fall over things (*res* = thing).

### **IV. MODULE**

- \* **Obligations and contracts.**
- \* **Hereditary rights.**

In this module is observed the other large block into which patrimonial rights are divided: the so-called personal or obligation rights, which allow a certain behavior to be demanded from a certain person. In the hereditary right, the fate of a person's rights after his death is studied.

#### **3.2 Practical contents:**

As a basic technical-juridical knowledge is acquired, practical cases will be carried out in line with the explanation of the theoretical classes, to delve into the most relevant aspects of the corresponding subject, fundamentally those related to property rights.

### 3.3 Schedule and time-sequencing of activities:

Week		Kind of	Total
1	<b>Module I:</b> Concept of Roman Law Historical introduction	Theory/ Practice	3
2	<b>Module I:</b> Roman conceptions of the Law	Theory/ Practice	3
3	<b>Module I:</b> Procedural (Roman) Law	Theory/ Practice	3
4	<b>Module I:</b> General Theory of Legal Business	Theory/ Practice	3
5	<b>Module II:</b> Persons	Theory/ Practice	3
6	<b>Module II:</b> Family	Theory/ Practice	3
7	<b>Module III:</b> Res and Property (I)	Theory/ Practice	3
8	<b>Module III:</b> Property (II)	Theory/ Practice	3
9	<b>Module III:</b> Possession	Theory/ Practice	3
10	<b>Module III:</b> <i>Iura in re aliena</i>	Theory/ Practice	3
11	<b>Module IV:</b> Obligations (I)	Theory/ Practice	3
12	<b>Module IV:</b> Obligations (II)	Theory/ Practice	3
13	<b>Module IV:</b> Contracts (I)	Theory/ Practice	3
14	<b>Module IV:</b> Contracts (II)	Theory/ Practice	3
15	<b>Module IV:</b> Hereditary rights	Theory/ Practice	3

#### **4. TEACHING-LEARNING METHODOLOGIES.**

##### **FORMATIVE ACTIVITIES**

**Distribution of the teaching and own work of the student:**

<b>Number of hours (total): 150</b>	
<b>Total teaching hours: 60</b>	<ul style="list-style-type: none"><li>• Theoretical-practical sessions (hours): 45</li><li>• Guided work (hours) and assistance to tutorials, seminars, and other activities: 15</li></ul>
<b>Total student own work: 90</b>	<ul style="list-style-type: none"><li>• These hours Will be dedicated to the preparation of both theoretical and practical classes, as well as to the study and review of the knowledge acquired in the classroom, and to the preparation of the exams.</li></ul>

##### **Methodology**

During the theoretical classes will be explained the most relevant parts of each of the modules that make up the subject program, particularly those issues that offer greater difficulty for its learning. It is very convenient that the student had read in advance those topics that will be covered in each theoretical class.

Throughout the course, once acquired the minimum theoretical knowledge, practical cases will be carried out that deal with some of the studied content according to the planned sequence, all of them extracted from the rich Roman legal casuistry, in order to establish concepts and project in the student not only an active attitude in learning but also promote the development of their logical reasoning, legal argumentation, as well as other various skills.

With the same latter purpose, if possible, other activities would be also carried out during the same course, such as colloquiums, debates, conferences, text comments, visits outside the classroom, etc...

Seminars will be also held on specific subjects or contents of the program.

In order to achieve a greater rapprochement between the teachers and the students, tutorials will also be arranged, on which teachers can individually control the student's learning process, guide him/her, and direct the development of his/her work and their study in a more personalized way.

#### **5. EVALUATION**

##### **5.1 Evaluation criteria:**

1. The ability to establish relationships and connections between the diverse contents contained in the program will be considered, as well as the capability to apply in the practical sessions the acquired knowledge during the theoretical ones, the capacity for synthesis, legal expression, and, particularly, both the critical and argumentative skills in order to solve juridical problems.

2. The assistance to both theoretical and practical classes will be considered, as well as to the tutorials, seminars, conferences, and other complementary activities that might be scheduled, paying special attention to both the participation and, especially, the interventions of the students and their degree of involvement with the subject, as a sign of interest in delving into the origins of the rights and democratic principles that we enjoy nowadays.
3. It will be also valued the capability to search for information, select, and evaluation of both general information and juridical documentation in particular; as well as the management, understanding, analysis, and interpretation of the Roman jurisprudential sources. A comprehensive attitude towards the existing relationship between reality and the juridical norms through the management and understanding of the casuistic method of the Roman jurisprudence will be also recognized.
4. The making of parallelisms, similarities, and the evolutionary chain of the institutions analyzed from their origin up to the modern legal systems will be also considered, as well as the knowledge of technical-juridical terminology, the understanding of legal conceptions and principles and their transfer to common legal institutions of the Western countries, and of those inspired by them.

## **5.2 Evaluation procedure:**

During each academic year, the students will have the right to attend two examinations sitting, one ordinary and one, if necessary, extraordinary. The ordinary examination sitting will be based on a continuous evaluation, except in the case of those students who have been granted the right to access to a final evaluation, in accordance with the Regulations for Learning Evaluation Processes, approved by the Governing Council of the University of Alcalá on the 24<sup>th</sup> of March 2011.

In order for a student to be eligible for the final evaluation, he/she must request it in writing to the Dean of the Faculty during the first two weeks of teaching the subject, explaining the reasons that prevent he/she from attending the process of continuous evaluation.

### **A. Continuous evaluation**

The students will have to attend regularly both theoretical and practical classes, as well as those scheduled activities.

During the course there will be two forms of evaluation. The first one will consist of an oral presentation, the theme of which the students will choose from the subject's curriculum. The second evaluation will consist of a written test on a topic proposed by the professor.



The sum of the two evaluations constitutes, at the highest, 80% of the final qualification. The assistance to both theoretical and practical classes, as well as interventions and active participation of the students during them, including the eventual scheduled complimentary activities (such as debates, commentaries, conferences, informs, etc.) will entail the remaining 20%.

In both sections will be considered, in addition to the practical application of the acquired juridical knowledge, the capability for solving problems, management of sources, the prosecution of legal reality, the critical analysis, etc.

#### B. Final theoretical-practical test

Those students that don't follow the continuous evaluation system will have to attend a FINAL TEST that will consist of both theoretical and practical content, in which they will have to demonstrate that have acquired both the generic and specific competencies demanded by the teaching guide of the present subject.

In that test, the students will have to answer 15 theoretical questions and 5 more related to a practical case study that will be also contained in the exam. Each correct answer will be valued with 0,5 points over a total of 10. To pass the subject, the students will have to obtain, at least, a qualification of 5.

Those students that follow the continuous evaluation system cannot concur to the FINAL TEST. Accordingly, those students that had already made one of the two tests predicted in the continuous evaluation can neither concur to the FINAL TEST.

#### C. Extraordinary examination sitting

Those students that had not passed the subject during the ordinary examination sitting, neither by the continuous evaluation system nor by the final theoretical-practical test, will have the opportunity to concur to an extraordinary THEORETICAL-PRACTICAL TEST, with similar evaluation features to the test included in the B paragraph.

The qualification system will be the one predicted by the current legislation, regulated by the R.D. 1125/2003, according to the following numerical pattern:

0,0 - 4,9 NOT PASSED -D- (SS)

5,0 - 6,9 PASSED -C- (AP)

7,0 - 8,9 OUTSANDING -B- (NT)

9,0 - 10 EXCELLENT -A- (SB)

9,0 – 10 WITH HONOURS - DISTINCTION (limited or 5%)

During the development of the evaluation tests, the guidelines set out in the Regulation establishing the Rules of Coexistence of the University of Alcalá must be followed, as well as the possible implications of irregularities committed during these tests, including the consequences for committing academic fraud according to the Disciplinary Regulations of the Student Body of the University of Alcalá.

## **6. BIBLIOGRAPHY**

### **I MODULE**

#### **Concept of Roman Law. Historical introduction. Roman conceptions of the Law. Procedural (Roman) Law. General Theory of Legal Business**

#### **RECOMENDED BIBLIOGRAHPY**

##### **o General character**

- DOMINGO, R. (Dir.) *et alii*, Textos de Derecho romano, Pamplona, 2002.
- DOMINGO, R., Roman Law: An Introduction, Nueva York, 2018.
- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, 10ª Ed., Iustel, Madrid 2019.
- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.
- NICHOLAS, B., An introduction to Roman Law, Oxford, 1962.
- SCHULZ, F., Principles of Roman Law, Oxford, 1956.

##### **o History. Conceptions**

- ÁLVAREZ SUÁREZ, U., Instituciones de Derecho romano I (Introducción histórica, conceptos fundamentales, hechos y negocios jurídicos). Madrid, 1973.
- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.
- FERNÁNDEZ DE BUJÁN, Derecho Público Romano, 24ª ed., Civitas, Cizur, 2021
- FERNÁNDEZ DE BUJÁN, A., Historia del Derecho Romano, Civitas, Madrid 2012.
- MIQUEL, J., Historia del Derecho Romano, Barcelona, 1995.

##### **o Procedural Law**

- ÁLVAREZ SUÁREZ, U., Instituciones de Derecho romano, II. Derecho procesal civil, Madrid, 1975.
- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, 10ª Ed. Iustel, Madrid 2019.
- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.

##### **o General Theory of Legal Business**

- ÁLVAREZ SUÁREZ, U., Instituciones de Derecho romano I (Introducción histórica, conceptos fundamentales, hechos y negocios jurídicos), Madrid, 1973.
- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, 10ª Ed., Iustel, Madrid 2019.

- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.

### **COMPLEMENTARY BIBLIOGRAPHY**

- **Conceptions of Roman Law and methods for its study**

- ÁLVAREZ SUÁREZ, U., Horizonte actual del Derecho romano, Madrid, 1944.

- **History. Conceptions.**

- ÁLVAREZ SUÁREZ, U., Curso de Derecho Romano. Tomo I. Introducción. Cuestiones preliminares. Derecho procesal civil romano, Madrid, 1955.
- ARANGIO-RUIZ, V., Storia del diritto romano. Nápoles. Traducción española de la 2ª ed. italiana por F. De Pelsmaeker (1980). (reimpresión 1999). Historia del Derecho romano.
- JOHNSTON, D., Roman Law in context, Cambridge, 1999.
- KUNKEL, W., Römische Rechtsgeschichte. Colonia-Viena. (1964). Traducción española de la 4ª edición alemana por J. Miquel: Historia del Derecho romano, Barcelona (1965), Reimpresión 1994.
- RIGGSBY, A.M., Roman Law and the legal world of the Romans, Cambridge, 2010.
- TALAMANCA, M. *et alii*: Lineamenti di Storia del Diritto Romano, Milán, 1989.
- TORI, K. y BJÖRKLUND, H., Roman Law and the idea of Europe, Londres, 2019.

- **Procedural Law**

- ÁLVAREZ SUÁREZ, U., Curso de Derecho Romano. Tomo I. Introducción. Cuestiones preliminares. Derecho procesal civil romano, Madrid, 1955.
- MURGA, J. L., Derecho romano clásico II. El proceso, Zaragoza, 1983.

- **General Theory of Legal Business**

- ALBANESE, B. Gli atti negoziali nel diritto privato romano, Palermo 1982.
- ÁLVAREZ SUÁREZ, U., El negocio jurídico en Derecho romano, Madrid 1954.
- BETTI, E., Teoría general del negocio jurídico, Madrid, 2000.
- VOCI, P., Istituzioni di diritto romano, Milán 1934, págs. 137 y ss.

## **II**

### **MODULE**

#### **Persons and family**

### **RECOMENDED BIBLIOGRAHPY**

- **General character**

- DOMINGO, R. (Dir.) *et alii*, Textos de Derecho romano, Pamplona, 2002.
- DOMINGO, R., Roman Law: An Introduction, Nueva York, 2018.
- NICHOLAS, B., An introduction to Roman Law, Oxford, 1962.
- SCHULZ, F., Principles of Roman Law, Oxford, 1956.

- **Persons**

- ÁLVAREZ SUÁREZ, U., Instituciones de Derecho romano. III: Personas físicas y colectivas en el Derecho romano, Madrid, 1977.
- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, 10ª Ed., Iustel, Madrid 2019.
- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.

- **Family**

- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, Iustel, Madrid 2019.
- FERNANDEZ DE BUJÁN, A., Derecho Romano, 6ª ed., Dykinson, Madrid 2022.

### **COMPLEMENTARY BIBLIOGRAPHY**

- **Liberty and slavery**

- BUCKLAND, W.W., The roman law of slavery, New Jersey, 2000.
- ROBLEDA, O, Il diritto degli schiavi nell'antica Roma, Roma, 1976.

- **Citizenship**

- SHERWIN-WHITE, The roman citizenship, Oxford 1939, 1973<sup>2</sup> (reimpresión 1980).

- **Family**

- BONFANTE, P., Corso di diritto romano. I: Diritto di famiglia, Roma, 1925. (reimpresión Milán, 1963).
- GAUDEMET, Originalité et destin du mariage romain, Sociétés et mariage, 1980.
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- ORESTANO, La struttura giuridica del matrimonio romano dal diritto classico al diritto giustiniano, 1951.
- ROBLEDA, O, El matrimonio en Derecho romano, Roma, 1970.
- VOLTERRA, E., Matrimonio (diritto romano), Enciclopedia del diritto, XXV, Milán 1975, pgs. 726 y ss. (= Scritti giuridici, III, Nápoles 1991, pgs. 223 y ss.).

### **III**

### **MODULE**

#### **Property. Possession. *Iura in re aliena***

### **RECOMENDED BIBLIOGRAPHY**

- **General character**

- DOMINGO, R. (Dir.) *et alii*, Textos de Derecho romano, Pamplona, 2002.
- DOMINGO, R., Roman Law: An Introduction, Nueva York, 2018.
- FERNÁNDEZ DE BUJÁN, A., Derecho Privado Romano, 10ª Ed., Iustel, Madrid 2019.
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- NICHOLAS, B., An introduction to Roman Law, Oxford, 1962.
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### **COMPLEMENTARY BIBLIOGRAPHY**

- ÁLVAREZ SUÁREZ, U., El problema de la causa en la tradición, Madrid 1945.
- BONFANTE, P. Corso di diritto romano, II: La proprietà (2 vols. 1966, 1968), III: Diritti reali (1972).
- GROSSO, G., I problemi dei diritti reali nell'impostazione romana, Turín, 1944.
- GROSSO, G., Le servitù prediali nel diritto romano, Turín, 1969.
- MIQUEL, J., El problema de la causa de la tradición en los juristas bizantinos. Anuario de Historia del Derecho Español (AHDE) (1961), págs. 515 y ss.
- MIQUEL, J., La Antítesis *usucapio pro emptore / usucapio pro soluto*, en Seminarios Complutenses de Derecho romano (SCDR), XVIII (2005), pág. 190.
- MIQUEL, J., *Iusta causa traditionis y iusta causa usucapiendi*, en Estudios jurídicos en homenaje al Prof. Ursicino Álvarez Suárez, Madrid, 1978, págs. 261 y ss.
- WATSON, The law of property in the later roman Republic, Oxford, 1968.

### **IV MODULE**

#### **Obligations and contracts. Hereditary rights**

### **RECOMENDED BIBLIOGRAPHY**

#### ○ **General character**

- DOMINGO, R. (Dir.) *et alii*, Textos de Derecho romano, Pamplona, 2002.
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- NICHOLAS, B., An introduction to Roman Law, Oxford, 1962.
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### **COMPLEMENTARY BIBLIOGRAPHY**

#### ○ **Obligations and contracts**

- AA. VV., Derecho romano de obligaciones. Homenaje al profesor José Luis Murga Gener, Madrid, 1994.
- BONFANTE, P., Corso di diritto romano, IV: Le obbligazioni, Milán, 1979.
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○ **Hereditary rights**

- BONFANTE, P., Corso di diritto romano, VI: Le successioni. Città di Castello (1930). (reimpresión Milán, 1974).
- GROSSO, G., I legati nel diritto romano, Turín, 1962.
- VOCI. Diritto ereditario romano, I. Introduzione, Parte generale, 2ª ed., Milán, 1967; II. Parte speciale, 2ª ed., Milán, 1963.
- WATSON, The law of succession in the later roman Republic, Oxford, 1971.

**CASE-STUDY PRACTICES**

- FERNÁNDEZ DE BUJÁN, A.- ALBURQUERQUE SACRISTÁN, J.M., Manual de Casos Prácticos de Derecho Romano, Dykinson Madrid 2018.
- FERNÁNDEZ BARREIRO, A. – RODRÍGUEZ MONTERO, R., Cuestiones y casos prácticos de Derecho romano, Valencia, 1995.
- GARCÍA-GARRIDO, M.J., Responsa, Cien casos prácticos de Derecho Romano planteados y resueltos, Madrid, 1988.
- MIQUEL, J., Quaestiones, Docencia del Derecho a través del casuismo, Barcelona, 1985.
- ORTEGA CARRILLO DE ALBORNOZ, A., Práctica Jurídica según el Derecho Romano y el Código Civil, Príntel Ediciones, Granada, 1991.
- VALIÑO, E., 110 casos de Derecho romano y otros ejercicios prácticos, Valencia, 1976.