

## ROMAN LAW IN CONTEXT

*Second Edition*

This book explains how Roman law worked for those who lived by it, by viewing it in the light of the society and economy in which it operated. Written in an accessible style with the minimum of legal technicality, the book is designed for students and teachers of Roman history as well as interested general readers. Topics covered include the family and inheritance, property, commercial transactions, and litigation. In this second edition, all chapters have been extensively revised and updated, and a new chapter on crime and punishment has been included. The book ends with an epilogue covering the fate of Roman law in medieval and modern Europe. David Johnston is a lawyer practising in the courts and draws on his experience of law in practice to shape the work and provide new insights for his readers.

DAVID JOHNSTON is a Queen's Counsel who practises in Scotland, mainly in the field of public law. He was previously Regius Professor of Civil Law at the University of Cambridge and Fellow of Christ's College. He is an honorary professor at Edinburgh Law School and a fellow of the Royal Society of Edinburgh. His other publications include works on both Roman and modern law, in particular *The Roman Law of Trusts* (1988) and *Prescription and Limitation* (2nd ed., 2012).

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DAVID JOHNSTON



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press & Assessment  
978-1-108-47630-0 — Roman Law in Context  
David Johnston  
Frontmatter  
[More Information](#)

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.  
It furthers the University's mission by disseminating knowledge in the pursuit of  
education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781108476300](http://www.cambridge.org/9781108476300)  
DOI: 10.1017/9781108572873

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First published 1999  
Reprinted 2002, 2003  
Second edition 2022

*A catalogue record for this publication is available from the British Library.*

ISBN 978-1-108-47630-0 Hardback  
ISBN 978-1-108-70016-0 Paperback

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*For my mother and in memory of my father*





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## *Preface*

It is more than twenty years since the first edition of this book. In preparing this edition, I have been struck by how far the study of Roman social and economic history has advanced in those twenty years and in particular by the evident level of interest in trying to view Roman law in its social and economic context or (conversely) in seeking to understand the society and economy of Rome by examining the law that governed it. In those twenty years, there have again been discoveries of significant new epigraphic material, and not only (as we had perhaps come to expect) from southern Spain. This edition tries to take account of these developments and discoveries.

At least one reviewer of the first edition of this book thought it was too brief and that it is essentially impossible to cover this subject in a short book. I disagree. First, the good news is that this edition is longer. Second, I remain convinced that there is value in a compact general survey of how Roman law worked within Roman social and economic life. Those who need more detail can follow up references in the bibliography. Third, the scheme of the book therefore remains essentially as it was, simply brought up to date. Chapter 7, covering crime and delict, is new. With its addition, I hope the depiction of Roman law in context is more complete. But it remains a sketch.

I am most grateful to Paul Cartledge and Greg Woolf, the editors of the series in which the book appears, and to Peter Garnsey, for reading the text in draft and making numerous helpful comments which have enabled me to improve it. In completing this edition, I have enjoyed and appreciate the support and encouragement of friends and family too numerous to mention. I single out with particular thanks Calum and Debbie Carmichael, Caroline Johnston, Steve Love, Laretta Maganzani, and Mikołaj Sygnarowicz.

March 2021



## *Preface to First Edition*

This book attempts to look at Roman law in its social and economic context. To do so is to court criticism from both historians and lawyers. The attempt, though arduous, is not quite doomed to failure: just over thirty years ago John Crook's deservedly successful *Law and Life of Rome* (1967) appealed to both camps. What need is there for anything more? Two points arise. First, if *Law and Life of Rome* aimed to illustrate the social and economic life of Rome through its law, the concern of the present book is more to understand the law in the light of the society and its economy.

Second, in the last thirty years there have been extraordinary finds of new evidence, especially inscriptions, and there have been remarkable developments in Roman social and economic history. A book which took proper account of all of this would be a good one. Unfortunately, this is not that book. To reflect all the new material would require a much longer treatment, and many years of painstaking composition.

This book therefore presents only a sketch, which may perhaps conjure up a faint image of what would be possible if the final work itself were ever to be executed. The book is aimed at historians rather than lawyers, and the choice of topics, emphasis in discussion, and bibliographical references all reflect that. The topic of commercial law is discussed more fully than the rest, partly because of its intrinsic interest and partly because it (unlike family law) has apparently not yet been much absorbed into the consciousness of historians.

For many constructive comments and suggestions I am most grateful to Peter Garnsey and Paul Cartledge, the editors of the series in which this book appears. The book would never have been finished had I not been able to enjoy the oasis of tranquillity that is the Robbins Collection at the Law School in Berkeley. For their hospitality and help I am glad to be able here to thank its staff and particularly its director, Laurent Mayali.

October 1998

