

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

CONTRACT IN ROMAN LAW.

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

THE ORIGIN AND HISTORY
OF
CONTRACT IN ROMAN LAW
DOWN TO
THE END OF THE REPUBLICAN PERIOD.

(*BEING THE YORKE PRIZE ESSAY FOR THE YEAR 1893*)

BY

W. H. BUCKLER, B.A., LL.B.

OF TRINITY COLLEGE, CAMBRIDGE.

LONDON :
C. J. CLAY AND SONS,
CAMBRIDGE UNIVERSITY PRESS WAREHOUSE,
AVE MARIA LANE.

1895

[All rights reserved.]

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

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

Information on this title: www.cambridge.org/9781316623152

© Cambridge University Press 1895

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 1895

First paperback edition 2016

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

ISBN 978-1-316-62315-2 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

PREFACE.

IN treating so vast a subject within the narrow limits of an essay it is impossible to give a full description of every contract: I shall therefore assume the reader to be familiar with the ordinary terms and rules of Roman Law. It is equally impossible to discuss every debatable point on which historians have differed. Such works as the two large volumes by Bechmann on the history of Sale are indeed a rebuke to superficial scholarship; but the present essay professes only to be a sketch, and I shall be satisfied if I succeed in making the outlines clear.

W. H. B.

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

The following authorities have been consulted for the purposes of this essay:

Bachofen.	Das Pfandrecht.
Baron, I.	Geschichte des römischen Rechts. 1884. III Abhandl. aus dem röm. Civilpr. 1881.
Bechmann, C. G. A.	Der Kauf. 1876. Das röm. Dotalrecht.
Bekker, E. I.	Aktionen des röm. Privatrechts. 1871.
Bethmann-Hollweg.	Civilprozess.
Bruns, C. G.	Fontes iuris rom. antiqui. (5th Ed.)
Carnazza, G.	Il diritto commerciale dei Romani. 1891.
Christiansen.	Institutionen des röm. Rechts.
Clark, E. C.	Early Roman Law. 1872.
Costa, E.	Il dir. privato nelle commedie di Plauto. Le azioni exercitoria ed institoria.
Danz, H. A. A.	Lehrbuch der Gesch. des röm. Rechts. (2d Ed.) 1871.
	Der sacrale Schutz im röm. Rechtsverkehr. 1857.
Dernburg.	Das Pfandrecht.
Girtanner.	Die Stipulation. 1859. Ueber die Sponsio.
Gneist.	Die formellen Verträge. 1845.
Heimbach, G. E.	Lehre von dem Creditum. 1849.
Hugo.	Röm. Rechtsgeschichte.
Hunter.	Systematic Code of Roman Law. 1876.
Huschke.	Das Nexum. 1846.
Ihering, R. von	Geist des röm. Rechts. 1852.
Karlowa, O.	Civilprozess zur Zeit der L. Aktionen.
Karsten.	Die Stipulation. 1878.
Keller, F. L. von	Der röm. Civilprozess. (5th Ed.) 1876.
Leist.	Greco-Italische Rechtsgeschichte. Altarisches Ius Ciuale.
	Altarisches Ius Gentium.
Lenel, O.	Geschichte der röm. Societas. 1881.
Liebe.	Das Edictum perpetuum. 1883. Die Stipulation. 1840.

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

PREFACE.

vii

Meykow, R. von	Diction der röm. Brautgabe. 1850.
Maine, Sir H. S.	Ancient Law.
Mommsen.	Early History of Institutions.
	History of Rome (Dickson tr.). 1862.
	Gesch. des röm. Münzwesens. 1860.
	Stadtrechte von Salpensa, &c.
Moyle.	Institutes of Justinian.
Muirhead, J.	Private Law of Rome. 1886.
Muther.	Die Sequestration.
Ortolan.	Hist. of Roman Law (Eng. translation). 1871.
Pernice, L. A. F.	M. Antistius Labeo. 1873.
Poste.	Gaius.
Pott, A. F.	Etymologische Forschungen. 1859.
Puchta.	Institutionen.
Rivier.	Untersuchungen ueber die Cautio, &c.
Rudorff, A. A. F.	Röm. Rechtsgeschichte. 1858.
	Das Edictum perpetuum. 1869.
Salpius.	Novation u. Delegation.
Savigny, F. C. von	Vermischte Schriften.
Schilling.	Institutionen.
Schlesinger.	Lehre von den Formalcontracten. 1858.
Ubbelohde.	Gesch. der benannten Realcontracten.
Voigt, M.	Röm. Rechtsgeschichte. Vol. 1. 1892.
	Die XII Tafeln. 1883.
	Lehre vom Ius Naturale. 1856—1876.
Walter.	Röm. Rechtsgeschichte.
Wunderlich, A.	De antiqua litterarum obligatione. 1832.

PERIODICALS.

<i>Krit. Vierteljahrsschrift für gesch. Rechtswissenschaft.</i>
<i>Zeitschrift für Rechtsgeschichte.</i>
<i>Zeitschrift für Civilrecht und Prozess.</i>
<i>Nouvelle Revue historique de Droit.</i>
<i>Phil. Hist. Abhandlungen der kön. sächs. Gesellschaft der Wissenschaft.</i>
<i>Phil. Hist. Berichte</i> (of the same).
<i>Zeitschrift der Savigny Stiftung.</i> (Röm. Abtheilung.)

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

CONTENTS.

	PAGE
INTRODUCTION	1

CHAPTER I.

REGAL PERIOD : EARLY AGREEMENTS	3
(1) Formless	5
(2) Religious	6
(3) Public	7

CHAPTER II.

CONTRACTS OF REGAL PERIOD	9
Art. 1. Iusitrandum	9
" 2. Sponsio	13
" 3. Nexum	22
" 4. Other contracts	31
" 5. Dotis dictio	32
" 6. General summary	37

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

CHAPTER III.

	PAGE
TWELVE TABLES	39
Art. 1. Introductory	39
" 2. Nexum	40
" 3. Other contracts	54
" 4. Lex mancipi and auctoritas	54
" 5. Fiducia	75
" 6. Vadimonium	80
" 7. Other provisions of the Tables	86

CHAPTER IV.

DEVELOPMENT OF CONTRACT	89
-----------------------------------	----

CHAPTER V.

FORMAL CONTRACTS OF LATER REPUBLIC	92
Art. 1. Nexum	92
" 2. Sponsio and Stipulatio	94
(i) in general contract	95
(ii) in procedure	113
(iii) in suretyship	118
" 3. Expensilatio	123
" 4. Chirographum and Syngrapha	132

CHAPTER VI.

CONTRACTS OF IVS GENTIVM. <i>Part I.</i>	135
Art. 1. Emtio uenditio	135
" 2. Locatio conductio	151
" 3. Edict Pacta conuenta	158
" 4. Mandatum	160
" 5. Societas	169

Cambridge University Press

978-1-316-62315-2 — The Origin and History of Contract in Roman Law

W. H. Buckler

Frontmatter

[More Information](#)

CONTENTS.

xi

CHAPTER VII.

	PAGE
CONTRACTS OF IVS GENTIVM. <i>Part II.</i>	179
Art. 1. Mutuum	179
" 2. Commodatum	183
" 3. Depositum	186
" 4. Pignus	190

CHAPTER VIII.

CONTRACTS NOT CLASSIFIED AS SUCH BY THE JURISTS	193
Art. 1. Fiducia	193
" 2. Hypotheca	194
" 3. Praediatura	202
" 4. Actiones adiecticiae	207
" 5. Constitutum and Receptum	211
CONCLUSION	218