

APPENDIX

QUESTIONS

CHAPTER I

1. What place does Roman Law occupy in General Jurisprudence ?
2. Distinguish *jus civile* from *jus gentium*, and explain how the latter came to be identified with the Law of Nature.
3. Explain *leges regiae*, *jus Papirianum*, *jus Flavianum*, and *jus Aelianum*.
4. By what agencies is the adaptation of law to the wants of a progressive community accomplished ? Compare on this point the history of Roman and English Law.
5. Give an account of the *Jurisprudentes*. In what manner did their labours contribute to the growth of Roman Law ? Explain what is meant by the "Law of Citations."
6. Give a brief history of the *Edictum perpetuum*.
7. Upon what principles, and with what leading results, did the Praetor modify and enlarge the *jus civile* ?
8. Explain *lex*, *plebiscitum*, *senatus consultum*, *constitutio*, *decretum*, *epistola*, *rescriptum*.
9. Give a brief statement of the modes of legislation under the Republic.
10. What attempts at codification were made prior to the time of Justinian ?
11. Give an account of the legal achievements in the reign of Justinian. What is Bluhme's discovery ?
12. What is the relation of the Institutes of Justinian to the Institutes of Gaius ?

CHAPTER II

SECTION I

13. What place does slavery occupy among the institutions of ancient society ?

14. What powers could a master legally exercise over his slave ? Is the answer the same for the Republic and the age of the Antonines ?

15. In what sense, and to what extent, could a slave enjoy rights of property ?

16. In what ways did a person become a slave ?

17. Explain *postliminium* and *capitis deminutio*.

18. In what ways could formal manumission be made ? Distinguish between the effects of formal and non-formal manumission.

19. Give an account of *Latini Juniani* and *Dediticii*.

20. What restraints on manumission existed in the time of Justinian ?

21. What rights had a patron over his manumitted slave ?

SECTION II

22. What legal powers could a father exercise over his legitimate children ?

23. To what extent could a son or daughter under *potestas* enjoy rights of property ?

24. Explain the constitution of the Roman family as based on the *patria potestas*.

25. What was *legitimatio per subsequens matrimonium* ? In what cases did it apply ?

26. What is the true place of Adoption in the history of law ? What change did Justinian introduce ?

27. What was the legal relation of a father to an emancipated son, and to a son that had never been in his *potestas* ?

28. Explain the phrases *alieni juris* and *sui juris*.

SECTION III

29. Compare the legal position of a slave, a child under *potestas*, and a wife in *manu*.

30. How were (1) marriage contracted, (2) *manus* created, in the time of Gaius ?

31. What legal relation existed between a husband and a wife not in *manu* ?

32. In what way, and under what restrictions, was Divorce sanctioned in the Roman Law ? What provisions were made for the custody of children of divorced parents ?

33. Give an account of the *dos* and of the *donatio propter nuptias*. Compare the Roman rules with the ordinary provisions of an English marriage settlement.

SECTION IV

34. Compare the office of *tutor* with the functions of an English trustee or guardian.

35. Explain the phrase *interponere auctoritatem*.

36. Explain the rule of the civil law—*in rem suam auctorem tutorem fieri non posse*.

37. To what extent could a person under puberty acquire legal rights or subject himself to legal duties ?

38. By what modes could a tutor be appointed ?

39. In what cases was security required from *tutores* ?

40. Could a person above the age of puberty obtain relief from an improvident bargain ? What was the advantage of giving a curator to a person above the age of puberty ?

41. To what other persons could curators be appointed ?

CHAPTER III

SECTION I

42. Is individual ownership the earliest historical form of property ?

43. What were *res Mancipi* ? Describe *mancipatio*.

44. What was needed for the transfer of ownership by delivery besides the mere transfer of physical control ?

45. When did the property in goods sold pass to the buyer? Compare the English Law on the subject?

46. *Traditionibus et usucapionibus dominia rerum non nudis pactis transferuntur.* Explain this rule. To what causes do you attribute its appearance in Roman Law? Illustrate your answer by reference to the rule of English Law.

47. In what various ways could *traditio* be effected?

48. Explain the origin and fate of the distinction between Quiritarian and Bonitarian ownership. What other forms of ownership were known to Roman Law?

49. Give a short account of the Roman Law of possession.

50. What is the importance of the Interdicts?

51. What conditions were necessary to acquire the ownership of a thing by lapse of time?

52. Distinguish between Positive and Negative Prescription? What was the practical importance of the distinction?

53. What things were *res nullius*, and how could the ownership of them be acquired?

54. What were the several kinds of Accession? What is the logical basis of accession, and by what equitable principles was its application accompanied?

55. Upon what principle was the ownership settled of an island formed in a river (1) by accretion in mid-stream, and (2) by a change in the course of the river?

56. Did the Roman Law recognise the right of a tenant farmer to compensation for unexhausted improvements?

57. What was the Roman rule in regard to tenants' fixtures?

58. Did the doctrine of principal and accessory apply in the case of books and pictures?

59. Give an account of *specificatio*, and distinguish it from *commixtio* and *confusio*.

60. Explain *res extra nostrum patrimonium* and *res divini juris*.

61. Distinguish and compare *res communes*, *res publicae*, and *res universitatis*.

62. What rights did the public enjoy under the Roman

Law in (1) the sea; (2) the seashore; (3) rivers; and (4) the banks of rivers?

SECTION II

63. Is an estate for life properly described as limited ownership or as a personal servitude?

64. What is the difference between personal and praedial servitudes?

65. Compare and criticise the distinction made between corporeal and incorporeal things in the English and in the Roman Law respectively.

66. Distinguish Usufruct from Quasi-Usufruct.

67. Compare the rights of a usufructuary of land with the powers of an English tenant for life.

68. What restrictions were imposed on the usufructuary of a house?

69. How was usufruct created and extinguished?

70. Explain *usus*, *habitatio*, and *operae servorum*.

SECTION III

71. Define "praedial servitude," and explain *praedium dominans* and *praedium serviens*.

72. Explain the maxim—*Nulli res sua servit*.

73. *Servitutum non ea natura est ut aliquid faciat quis, sed ut aliquid patiatur aut non faciat*. Explain and illustrate. Was the rule subject to any exceptions?

74. What is meant by saying that servitudes must be "perpetual," that they are "indivisible," and that there cannot be a servitude of a servitude?

75. Distinguish urban and rural servitudes. Give the principal examples of each.

76. How were servitudes created and extinguished?

SECTION IV

77. What is *Emphyteusis*? What controversy as to its juridical place existed, and how was it removed?

78. Give an account of the rights of an *emphyteuta*, and of his superior landlord.

SECTION V

79. What was the earliest form of Mortgage in the Roman Law, and what were its defects ?

80. Distinguish between *pignus* and *hypotheca*. How were they introduced, and in what way did they improve the Roman law of mortgage ?

81. How was the "power of sale" exercised by the mortgagee ?

82. Did the Roman Law recognise "foreclosure" ?

83. By what rules was the right of priority determined when the same thing was mortgaged to more than one person ?

84. In what cases was a mortgage implied without special agreement ?

CHAPTER IV

SECTION I

85. Explain the distinction between rights *in rem* and rights *in personam*.

86. To which class of rights does "contract" belong ?

87. What causes led the Roman jurists to take the standpoint of "*obligatio*" instead of its equivalent, "right *in personam*" ?

88. Distinguish express contract, implied contract, and quasi-contract.

89. Is it correct to class delicts with contracts as the two leading groups of *obligationes* ?

90. Analyse an "agreement."

91. Explain *obligatio*, *conventio*, *contractus*, *pactum*, *pollicitatio*, *civilis obligatio*, *honoraria obligatio*, *naturalis obligatio*.

92. What is meant by "essential" error, and what are its kinds ?

93. What is error *in materia* or *substantia* ? State in what cases, according to Savigny, such error vitiated contracts ?

94. When can an action be brought for breach of contract,

(1) when no time, and (2) when a time, has been agreed upon for performance ?

95. Distinguish between *dies cedit* and *dies venit*. Apply the distinction to (1) a conditional contract ; (2) an unconditional contract to be performed at a future day ; and (3) an unconditional contract to be performed at once.

96. Could a debtor be sued for breach of contract in a place different from that where he had agreed to perform his promise ?

97. If no place were designated in the contract for performance, where ought an action for breach of contract to be brought ?

98. Define "condition." Could the condition relate to a past or present event ?

99. What different rules as to conditions were applied in the law of contract and in the law of wills ?

100. Define *vis*, *metus*, and *dolus*. What was the effect on a contract if it was made by one of the parties through *vis*, *metus*, or *dolus* ?

101. Give illustrations from the Roman Law of sale of the effects of *suppressio veri* and *suggestio falsi*.

102. If a written security is given against an intended loan, but the money is never lent, can an action be maintained on the security ?

103. Explain the maxim—*Impossibilium nulla obligatio est*.

104. What was the *pactum de quota litis* ?

105. Show to what extent slaves and *filiifamilias* could bind themselves or their *peculium* by contract.

106. Explain the tardy recognition of Agency in the Roman Law.

107. What is necessary to constitute true agency ?

108. How far under the later law could slaves and *filiifamilias* act as agents ?

109. To what extent was a ship captain an agent for the owner ?

110. To what extent was a shopkeeper (*institor*) an agent for his employer ?

SECTION II

111. Arrange the contracts of the Roman Law as set forth in the Institutes of Justinian.

112. What are the principles upon which actionability was conferred on various classes of agreements in Roman Law? Compare with the English law.

113. Explain and exemplify *pacta prae toria* and *pacta legitima*.

114. Explain the maxim—*Nuda pactio obligationem non parit, sed parit exceptionem*.

115. Enumerate the characteristics of *naturalis obligati*.

SECTION III

116. What is *mutuum*? To what things did it apply?

117. Explain *pecunia trajectitia*.

118. State the purport of the *Senatusconsultum Macedonianum*.

119. Define *commodatum*. Under what circumstances was the borrower bound to make good the loss of the thing borrowed?

120. What were the rights of a *commodatarius*?

121. What is *depositum*? When was a deposit said to be *miserabile*? What was the liability of the depositee for misconduct or negligence?

SECTION IV

122. What is *nexum*?

123. What constituted a *stipulatio*, and what were the advantages of recording a stipulation in writing?

124. Explain *cautio*, *expensilatio*, *nomen transscripticium*, *chirographum*, *syngrapha*.

125. What alterations did Justinian make in the law of written contracts?

SECTION V

126. Define Sale. How was a verbal contract of sale affected (1) by an understanding that it should be committed to writing, and (2) by giving earnest?

127. Could a contract of sale be set aside on the ground of inadequacy or excess in the price ?

128. At what moment was there a contract of sale when the determination of the price was left to a third party ?

129. Explain *vacua possessio*. Why did not the Roman Law require vendors to give the *ownership* of the thing sold ?

130. State in the language of jurisprudence the nature of the right acquired by a buyer in the thing sold in virtue of the contract of sale.

131. At what moment did the interest of a buyer in the thing sold commence ?

132. In what cases did goods sold remain at the risk of the vendor ?

133. State the effect, if buyer or seller were *in mora*.

134. Enumerate the duties of vendor and buyer respectively.

135. Explain the maxim "*caveat emptor*," and account for the difference between the Roman and the English Law.

SECTION VI

136. Define *Locatio conductio*. Distinguish it from *commodatum*, mandate, sale, and the similar innominate contract. Give examples.

137. What was the nature of the right that a tenant of land or houses had ?

138. What were the duties of a landlord ?

139. Specify the duties of a tenant.

140. Explain the confusion between *locatio operarum* and *locatio operis faciendi*.

141. What were the duties of a workman ?

142. State the provisions of the *Lex Rhodia de jactu*.

SECTION VII

143. Define partnership. What is *leonina societas* ?

144. State the broad distinction between the Roman law of partnership and modern law.

145. By what rules were the shares of partners determined ?
 146. In what way was partnership ended ?
 147. Enumerate and distinguish the several kinds of partnership.
 148. What were the rights and duties of partners ?

SECTION VIII

149. Define mandate. Could there be a mandate for the benefit of the *mandatarius* solely ? Discuss the question.
 150. Enumerate and exemplify the principal cases of mandate.
 151. When can a *mandatarius* renounce ?
 152. Illustrate the proposition that a *mandatarius* must conform to his instructions.
 153. What degree of care was incumbent on the *mandatarius* ? Is the mandate an exception to any general rule ?
 154. What was the relation between a *mandator* and the third parties with whom the *mandatarius* made contracts on his behalf ?
 155. What rights had a *mandatarius* against a *mandator* ?
 156. If a *mandatarius* executed a mandate after the death of the *mandator*, but in ignorance of the fact, was he entitled to the usual rights of a *mandatarius* ?

SECTION IX

157. Enumerate the ways whereby an obligation could be extinguished.
 158. In what cases was impossibility an excuse for non-performance of an obligation ?
 159. Explain and illustrate the statement—*Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est.*
 160. What was the Aquilian Stipulation ?
 161. Distinguish between the effects of a formal release and of a *pactum de non petendo*.
 162. When were actions extinguished by lapse of time ?
 163. Specify and distinguish the three cases to which the name of *novatio* was applied.

164. Was a right in *personam* transferable, and, if so, subject to what conditions?

165. What is *delegatio*? How was it effected? What was the legal presumption established by Justinian in regard to novation?

SECTION X

166. In what different ways could Suretyship be created? Distinguish them, and arrange them according to their relative antiquity.

167. State the effect of the *Senatusconsultum Velleianum*.

168. Could the surety be sued before the principal debtor?

169. In what cases did the discharge of the principal debtor release the surety, and in what cases did the discharge of the surety release the principal debtor?

170. Had a surety that paid the debt any right of contribution against his co-sureties? State the provisions of the Roman Law on the subject.

SECTION XI

171. In what cases could money paid by mistake be recovered?

172. Examine the maxim, that ignorance of fact is an excuse, but not ignorance of law.

173. Compare *negotiorum gestio* with mandate.

SECTION XII

174. Distinguish *injuria* from *damnum injuria datum*. Apply your distinction to the case of a slave.

175. Give instances of *injuria*.

176. To what extent was the plea of self-defence available?

177. When was an *injuria* said to be *atrox*?

178. Who had the right of action for an *injuria* done to a person under *potestas*, or to a wife?

179. Classify wrongs to property.

180. Define theft. What is meant by stealing the use or the possession of a thing?

181. By what principle was it settled when a non-owner could bring an action for theft? Apply the principle to *locatio conductio*, *commodatum*, and deposit.

182. What penalties (civil or criminal) were provided by the Roman Law for theft?

183. What was the penalty for robbery?

184. What was the penalty imposed when a person forcibly seized a thing under a *bona fide* claim of right?

185. What were the provisions of the *Lex Aquilia*?

186. In what cases was a *directa actio* available under the *Lex Aquilia*, and in what cases an action given by the Praetor?

187. Mention the illustrations of negligence given in the Institutes. What is meant by saying that want of skill is equivalent to negligence?

188. Did the Roman Law take account of consequential damages?

189. What remedies were provided for trespass and ejection?

190. What is meant by quasi-delict?

191. What liability was incurred by a *judex* when he gave a wrong decision?

192. What was the penalty for placing or hanging things so as to be a danger in thoroughfares?

193. State the liability of the occupier of a house for damage done by throwing things out into thoroughfares.

194. What vicarious responsibility was incurred by ship-masters, innkeepers, and livery-stable keepers?

CHAPTER V

SECTION I

195. What contrast does Sir H. S. Maine draw between the Roman and the modern will?

196. How is heirship determined in Hindu law?

197. Explain "universal succession," and "*damnosa hereditas*"?

198. What was the ancient character of intestate succession?

199. Explain the position of adoption as a link between intestate succession and wills.

200. What relation existed between the heir and the legatee ?

201. State the object and provisions of the *Lex Falcidia*.

202. In what way did Justinian enable heirs to escape unlimited liability ?

203. What constituted the essence of a Roman will ?

204. Enumerate the conditions necessary to a valid *testamentum*.

205. Describe the form of will in the time of Justinian, and explain the origin of its characteristic features.

206. What was *disherison* ? How did the rules on the subject originate ?

207. Explain *legitima portio*. Who were entitled to it ?

208. Explain *institutio heredis*, *substitutio vulgaris*, *substitutio pupillaris*, and *substitutio exemplaris*.

209. When was a *testamentum* said to be *injustum*, *nullius momenti*, *inofficiosum*, *irritum*, *ruptum*, or *destitutum* ?

210. Explain how the drawbacks of the testament were got rid of by the use of *codicilli*.

211. How did *codicilli* take effect (1) if there was, and (2) if there was not, a testament ?

212. Show how the power of testators was enlarged by trusts (*fideicommissa*).

213. Explain the necessity for, and the provisions of, the *Senatusconsulta Trebellianum* and *Pegasianum*.

214. What was the nature, and what was the use of the *clausula codicillaris* ?

SECTION II

215. Into what periods may the history of intestate succession in Rome be divided ?

216. Give the rules of succession as fixed by the XII Tables.

217. What were the principal changes introduced by the Praetor in intestate succession ?

218. State the effects of the *Senatusconsulta Tertullianum* and *Orphitianum*

219. Describe the order of succession as fixed in Justinian's novels.

220. Distinguish *heredes necessarii*, *heredes sui et necessarii*, *heredes extranei*; and explain *beneficium abstinendi*, *aditio hereditatis*.

SECTION III

221. What is the basis of the law of legacy ?

222. Explain the forms of bequest *per vindicationem*, *per damnationem*, *sinendi modo*, and *per praeceptionem*.

223. Give an account of Justinian's fusion of legacies and trusts.

224. What is a *donatio mortis causa* ?

225. When property bequeathed was subject to a mortgage, was the heir bound to pay off the mortgage ?

226. Could a debt be the object of a legacy ?

227. What was the nature of the legatee's right when the legacy was (1) specific, (2) general ?

228. Explain and illustrate the maxims *falsa demonstratio non nocet* and *falsa causa non nocet*.

229. Could a legacy be left with a restraint on alienation ?

230. What restraints on marriage were illegal ?

231. If a testator, after making his will, sold or mortgaged a thing left to a legatee, was the legacy thereby revoked ?

CHAPTER VI

232. Discuss the proposition that jurisdiction springs from arbitration.

233. Give a brief sketch of the history of the Roman Summons.

234. Explain the functions of the *judex*, *arbiter*, *centumviri*, and *recuperatores*.

235. Explain the distinction between *jus* and *judicium*.

236. What were the *Legis actiones* ? What were their disadvantages ?

237. Give an account of the *sacramentum*.

238. How was the Formulary system introduced ?

239. Distinguish *formula in factum concepta* and *formula in jus concepta*, and give an example of each.

240. Explain *demonstratio*, *intentio*, *condemnatio*, *adjudicatio*, *exceptio*, *replicatio*.

241. What defects characterised the formulary system ?

242. What were *Interdicta* ?

243. Explain the nature of the change introduced by Diocletian.

244. Give an historical sketch of the law of execution of judgments.

245. When was execution against a debtor's property first applied ?

246. Was appeal allowed in civil cases (1) under the Republic, (2) under the Empire ?

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