

Law and the Economy

D. Johnston Roman Law in Context, Cambridge 1999

J.A.Crook Law and life of Rome, London 1967

1. The Problem

Roman Law - its nature and change over time

main extant sources:

Digest, Gaius' Institutes

documents NB. not always formally needed for contract

economic range of Roman law vast

ie: anything involving the family, property, slaves (part of both)

e.g. inheritance and legacies

main principles developed long before Rome became a Mediterranean power

some old institutions embedded in the law

e.g. patria potestas, the need to be present to make a stipulatio (legally enforceable undertaking), a focus on the rights of individual citizens

How (and how successfully) was Roman law adapted to suit the changing needs of the economic life of the imperial period?

2. Contracts as commonly used

set contracts and stipulatio

limits and advantages of stipulatio:

very formal and time-consuming

detail required

had to be made in person

BUT enabled an agreement to be customised to suit each in

VENDITIO EMPTIO

for contracts of sale

developed by C2nd BC

only actual things could be sold (not generic goods) so particular sheep,

not just any old 20 sheep

prices had to be fixed in advance

LOCATIO CONDUCTIO

hire including tenancy

B.W.Frier Landlords and tenants in imperial Rome, Princeton 1980

rural and urban tenancies

varieties e.g. fixed rent, share cropping

additional clauses (by stipulatio)

power of landlords

tenant rights depend of their economic value

3. Law and the organization of the economy

THE FAMILY (recap)

- patria potestas
- peculium (but cases brought in relationship to it limited by its total amount)
- lex institoria

PARTNERSHIP

societas e.g. publicanorum

advantages - pooling capital to be invested for shared profit

limitations - no shared liability, no legal personality (ie: outsiders needed respect them and can't act against them)

INDEPENDANT AGENTS

procurators come to be used more and more
law of agency less well developed in relation to agents outside the principal's potestas

4. Who used Roman law?

in theory?

citizens (Roman law = ius civile)
note: expansion of citizen body
211 and all that

...and Latini in some circumstances

LEX IRNITANA ch.93 Concerning the law of the municipes.

On whatever matters there is no explicit provision or rule in this statute, concerning the law under which the municipes of the Municipium Flavium Irnitatum should deal with each other they are to deal with each other in all these matters under the civil law under which Roman citizens deal or will deal with each other. Whatever does not take place contrary to this statute and whatever is done in such a way that it does not take place or is not done with wrongful intent, is to be legal and valid.

....and some peregrines could benefit under it, even if they could not use it
e.g. in the case of fideicommissa ("trusts")

in practice

Murecine tablets
Iucundus archive
Transylvanian documents
Babatha documents