



GLOBALISATION, MARKET, AND MONEY: WHAT ROMAN CIVILIZATION CAN TEACH ECONOMIC AND COMMERCIAL HISTORY

Globalização, Mercado e Dinheiro: O que a Civilização Romana pode ensinar de História Econômica e Comercial

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ABSTRACT

This study undertakes an interdisciplinary assessment of the economic and legal foundations of the ancient world, and in particular, classical Roman civilization. These constitute the guiding principles of business life and the global business world of today. The importance of this original research initiative is to try and provide universal, solid, and timeless scientific pillars and values in order to reliably understand Economic History and the industrial corporate bodies of our interconnected world.

Keywords: Freedom of Market, Financial Instruments, Trade, Contracts and Universal Justice, Limited Liability, Industrial Corporations, Capital Markets, Shares and Corporate Debt.

ABSTRACT

Este estudo realiza uma avaliação interdisciplinar dos fundamentos econômicos e jurídicos do mundo antigo e, em particular, da civilização romana clássica. Estes fundamentos constituem os princípios orientadores da vida empresarial e do mundo empresarial global de hoje. A importância desta iniciativa original de pesquisa é tentar fornecer pilares e valores científicos universais, sólidos e atemporais, a fim de compreender com confiabilidade a História Econômica e os órgãos corporativos industriais de nosso mundo interconectado.

Palavras-chave: Liberdade de Mercado, Instrumentos Financeiros, Comércio, Contratos e Justiça Universal, Responsabilidade Limitada, Empresas Industriais, Mercado de Capitais, Ações e Dívida Corporativa.

I. INTRODUCTION.

Roman civilization is a rich experience in the history of science, which studies the production and administration of goods and services¹. For fourteen centuries, it forged ideas, principles, and institutions that gave life to a global connected economy. The pillars that sustained this trajectory, unique to the Ancient World, were built and developed by these

¹ Vid. Rostovzeff M., *The Social and Economic History of the Roman Empire*, 1939. De Martino F. *Historia Económica de la Roma Antigua*, vol. I y II, Editorial Akal - Universitaria, Madrid, 1985, pp. 1 – 716. Di Porto A. *Impresa collettiva e schiavo manager in Roma antica*, Giuffrè Editore, Milán, 1985. Watson A. “Trade Secrets and Roman Law: The Myth exploded”, en *Digital Commons@Georgia Law* (1996), pp. 19 – 29. Hollander D. *Money in the Late Roman Republic*, Leiden/Boston, 2007. Serrao F. *Impresa e Responsabilità a Roma nell'età commerciale*, Pacini Editore, Pisa, 2002. Malmendier U. “Roman Shares”, en *The Origins of Value: The financial innovations that created modern capital markets*, New York, 2005. Von Reden S. *Money in Classical Antiquity*, Cambridge University Press, 2010. Dufour G. “*Societates Publicanorum*: Existait-il une Borse ou un Réseau de Courtiers sous la République Romaine?”, en *RDUS*, 2011, pp. 307 - 378. Aubert J.J. “Business, Ventures and Trade”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 621 – 634. Tan J. *Power and Public Finance at Rome*, 264 – 49 BCE, Oxford, 2017. Lo Sardo G. “La circolazione mortis causa dell’azienda”, en *NOTARIATO, Rasegna sistematica di diritto e tecniche contrattuali. Quaderni*, n. 44, Milán, 2020. Pais de Vasconcelo P. L. “Sociedade peculiar: a origen das sociedades de responsabilidade limitada”, en *revistadedireitocomercial.com*, (Lisboa, 2020 – 05 - 13) pp. 1087 – 1106.



people progressively, especially during the final centuries of the Republic and the period of the Empire (3rd century B C – 4th century A D). Their foundation was so deep that today they are the masters of our free trade systems, and they hold up our global economy.

As it is known, starting in the 3rd century B C, the small City – State of the Quirites bursts forth from the inner agricultural world and disputes the global political and trade hegemony of the peoples of Italy, Greece, and the mighty Carthage. The conquests of the peninsula and new provincial territories gave way to a process of creating personal fortunes (spoils of war, capturing enemies and selling them as slaves, etc.), colonisation of new territories, landowning exploitation of annexed areas (“*possessio vel usumfructum*” of the *ager publicus vectigalisque*²), and the construction of new municipalities. Many of them, with aspirations and pretensions of *imperium*, competed to acquire splendour, in the likeness of Rome. The expansion process reaches a high and transcendental point for Economic History, with the declaration of war against the Barcid family (Mago, Hannibal, Hasdrubal, etc.). The definitive victory in the long process of the three Punic Wars (264 B C – 241 B C; 218 BC – 201 BC; 149 BC - 146 B C) led the Quiritian Republic to the destruction of the Phoenicians, to economic supremacy, and to the governance of Mediterranean markets³. A new power then emerges⁴ and sets in place the new global macroeconomic order.

II. GLOBAL MARKET AND FINANCIAL ACTIVITY: FREEDOM OF COMMERCE, MOVEMENT OF MERCHANDISE, GOODS, AND PEOPLE.

“*Ex hoc iure gentium introducta commercium*”,
(*Hermogenianus, libro primo iuris epitomarum*⁵).

Rome is now a new source of wealth, opportunity, and progress, receiving multiple migrations from different territories. The possibility of improving living conditions and making money are poles that attract the interests of Latin and foreign neighbours or pilgrims. The increase in stable population and housing needs bring about new demands for the city. Progressively, private magistrates⁶ and developers develop unprecedented urban, public, and private planning. Tall buildings and superficiary real estate businesses⁷ allow apartment blocks (*insulae, insulae superficiarias*⁸), business premises (*tabernae, opificio, officina, etc.*⁹), small and medium-sized enterprises¹⁰ (especially family-owned), money, and

² Gayo, *Inst.* 2, 7: 2, 21. Just. *Inst.* 2, 1, 40.

³ Aubert J.J. “Commerce”, en *The Cambridge Companion to Roman Law*, 2015, p. 217.

⁴ Kingsbury, B. Straumann, B. *The Roman foundations of the Law of Nations. Alberico Gentili of the justice of Empire*, Oxford University Press, New York, 2011, p. 29.

⁵ D. 1, 1, 5, *Hermogenianus libro primo iuris epitomarum*.

⁶ D. 18, 1, 32, *Ulpianus libro 44 ad Sabinum*. D. 43, 18, 2, *Gaius libro 25 ad edictum provinciale*: “... *superficiarias aedes*”.

⁷ D. 43, 18, 1, 1, *Ulpianus libro 70 ad edictum*.

⁸ D. 6, 2, 12, *Paulus libro 19 ad edictum*.

⁹ D. 50, 16, 185, *Ulpianus libro 28 ad edictum*: “*Instructam autem tabernam sic accipiemus, quae et rebus et hominibus ad negotiationis paratis constat*”.

¹⁰ D. 14, 3, 8, *Gaius libro nono ad edictum provinciale*.



commerce to flourish. Rome becomes urbanite and citizens are in heaven¹¹. This phenomenon extends to a greater or lesser extent to the fledgling colonies and municipalities, acting as satellites. In this scenario, the magistrates of the republic and, subsequently, the Caesars create an imposing empire (even larger than that of our present European Union). In the 2nd century A D, this empire will be inhabited by several million people, Romans and foreigners, of multiple races and nationalities. Emperors strive to create for the empire a uniform bureaucratic and financial system of governance and administration. At the same time, they skilfully weave and create a new global economic and legal framework: a) political unity, the defensive protection of land and sea, and the stability of the newly conquered territories¹², b) freedom, peace, and legal security, with a common regulatory framework (edicts by the praetors, the dignitaries and governors of the provinces, laws, imperial constitutions, *senatus consulta* and responses of the jurists)¹³, and, c) the commercial connectivity of their local markets¹⁴.

In this new context, industrial activity and the development of financial and commercial businesses created for businessmen the practical feeling of the existence of a “universal imperial market”¹⁵. This was linked to their metropolis, Rome. According to classical case law, trade means the movement of goods. Importing and exporting. Transporting goods from port to port, by land, river, or sea¹⁶. Trading means freely selling the goods, and buying, that is to say, paying the price. In this new cosmopolitan Roman emporium, starting from the first centuries AD, market freedom was an essential economic and legal tendon¹⁷. It was protected by the governments of Rome for State reasons. The leaders of the “*republic*” understood that politics went hand in hand with trade. The preservation of the empire depended on the life and intensity of trade. It was a precious asset of general public interest for the State. Market freedom was constructed by the State, with the creation of various economic frameworks, universal rights, and global jurisdictional protection:

¹¹ D. 43, 18, *de superficibus*; D. 43, 18, 2, *Gaius libro 25 ad edictum provinciale*: “*superficiarias aedes appellamus, quae in conducto solo positae sunt: quarum proprietas et civil et naturale iure eius, cuius et solum*”. Vid. Suárez Blázquez G. *Roma: Edificación en altura. El negocio urbanístico inmobiliario de la superficie en el Derecho Clásico*, Tirant lo Blanch, Valencia, 2015, pp. 1 - 182. Du Plessis P., “Urban Landlords and Tenants”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 635 – 645.

¹² Cassola M. “Roma ed il Mediterraneo: sicurezza e circolazione”, en *RGDR*, 26, (Iustel, Madrid, 2016), pp. 5 - 12.

¹³ Gayo, *Inst.* 1, 2. D. 1, 1, 7, *Papinianus libro secundo definitionum*.

¹⁴ D. 1, 1, 5, *Hermogeniano libro primo iuris epitomarum*. Just. *Inst.* 2, 1, 1; 2, 1, 2; 2, 1, 3; 2, 1, 4; 2, 1, 5; 2, 1, 6. Serrao F. “Impresa, Mercato, Diritto”, en *Seminarios Complutenses de Derecho Romano*, vol. 12, Madrid, 2000, pp. 316 -326.

¹⁵ D. 40, 9, 10. Vid. De Ligt L., “Roman Law, Markets and Market Prices”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 660 – 670.

¹⁶ D. 50, 16, 59, *Ulpianus libro 68 ad edictum*: “*Portus appellatus est conclusus locus, quo importantur merces et inde exportantur*”.

¹⁷ D. 1, 1, 5, *Hermogeniano libro primo iuris epitomarum*. Just. *Inst.* 2, 1, 1; 2, 1, 2; 2, 1, 3; 2, 1, 4; 2, 1, 5; 2, 1, 6.



- a) Freedom to create and manage companies¹⁸.
- b) Freedom of movement of citizens, freedom of individual transport, and mobility between different places¹⁹.
- c) Freedom of movement of goods and free commercial, river, and maritime navigation between the different interconnected markets²⁰.
- d) Freedom of international commercial contracting²¹.
- e) Freedom of financial activity, protection of capital markets, and free circulation of money²².

These desires, under international law (*Ius Gentium*), were adopted by the Government of the Eagles, for its empire of inhabitants and people of multiple nationalities²³. It needed global macroeconomic policies to survive.

Entrepreneurs, merchants, businessmen and finance men, protected by these broad entitlements, and in order to achieve their goals, acted individually, or in unity (in the latter case, generally with companies). Since the end of the Republic, trade missions by Roman merchants on the Italian Peninsula were frequent. In the Empire, embassies and routes reached the new provinces. Frequently, business owners and companies acted through *institores*, and representative leaders, in overseas negotiations and trade (Ulpiano, D. 14, 1, 1, 12, *libro 28 ad edictum*: "... *ut certa regione et certo mari negotietur*"). For land transport and transactions, businessmen also had the support of an extensive imperial network of roads (approx. 94,000 km). For maritime navigation, transport, and transactions, companies and enterprises, spread throughout the empire, managed river ships and fleets of merchant seafaring ships²⁴.

Entrepreneurs carried out their industrial and commercial activity in the new land and sea markets, with the credit support of bankers (*argentarii et mensarii*²⁵) and moneylenders (*nummularii*²⁶). Their bank deposits²⁷ (irregular deposit contract, which

¹⁸ D. 14, 1, *De exercitoria actione*; D. 14, 3, *De institoria actione*; D. 14, 4, *De tributaria actione*; D. 15, 1, *De Peculio*; D. 15, 3, *De in rem verso*, D. 15, 4, *Quod iussu*.

¹⁹ D. 14, 1, 1, 12, *Ulpianus libro 28 ad edictum*. Just., *Inst.* 2, 1, 1; 2, 1, 4.

²⁰ D.1, 1, 5, *Hermogeniano libro primo iuris epitomarum*. Just. *Inst.* 2, 1, 1; 2, 1, 2; 2, 1, 3; 2, 1, 4; 2, 1, 5; 2, 1, 6. MacGrady Glen J. "THE NAVIGABILITY CONCEPT IN THE CIVIL AND THE COMMON LAW: HISTORICAL DEVELOPMENT, CURRENT IMPORTANCE, AND SOME DOCTRINES THAT DON'T HOLD", en *Florida State University Law Review*, vol. 3, n. 4, 1975, pp. 515 – 528. Bannon C. "Fresh Water in Roman Law: Rights and Policy", en *JRS.*, n. 107 (2017), pp. 60 - 89.

²¹ D. 1, 1, 5, *Hermogeniano libro primo iuris epitomarum*.

²² D. 1, 1, 5, *Hermogeniano libro primo iuris epitomarum*.

²³ Gayo, *Inst.* 1, 1.

²⁴ D. 14, 1, 1, 6, *Ulpianus libro 28 ad edictum*. D. 14, 1, 1, 12, *Ulpianus libro 28 ad edictum*: "... *Quaedam enim naves onerariae, quaedam (ut ipsi dicunt) epibatygoi sunt: et plerosque mandare scio, ne vectores recipiant, et sic, ut certa regione et certo mari negotietur, ut ecce sunt naves, quae Brundisium a Cassiopa vel a Dyrrachio vectores traiciunt ad onera inhabiles, item quaedam fluvii capaces ad mare non sufficientes*".

²⁵ Tito Livio, 9, 40, 16. D. 2, 13, 4: "... *argentae mensae exercitores*". Voz, *argentarii*: "dealers in money, included money – changers, usurers or money-lenders, and bankers properly so called, or intermediaries between business men", en Lewis and Short, *A Latin Dictionary*, Oxford, 1879.

²⁶ D. 2, 13, 9, 2.

²⁷ D. 13, 6, 5, 2, *Ulpianus libro 28 ad edictum*. D. 47, 8, 2, 23, *Ulpianus libro 56 ad edictum*.



generates interest²⁸) and financial instruments promoted and collection and circulation of money in the empire (compensations²⁹, transcriptions and transfers of credits³⁰, assumptions of debt³¹, *permutationes*, or money transfers from place to place³², and *syngraphas*, used either as promissory notes, as “nominative cheques”, “cheques made out to the bearer”, and even “vouchers” or “travel cheques”³³), the undertaking of company activities, and exports and imports. For the global advancement of the latter, a special maritime loan, *foenus nauticus*³⁴ or *pecunia traiecitiae* (bottomry loan), is particularly noteworthy. With this loan, bankers lent money to shipowners and *magistri navis* to finance commercial expeditions. These people tended to guarantee the payment of these loans with pledges on the goods and the ship³⁵. This loan also had specific rules of its own, since on the one hand the borrowed capital generated interest only to the extent that the vessel sailed (*pecunia traiecitiae*³⁶) and on the other hand, the shipowner was only obligated to return the capital when the ship reached the agreed-upon destination³⁷. If shipwrecked, the risk of the borrowed capital was borne by the financier, who could not demand its return³⁸. Although doctrinal sectors sustain that this was an insurance activity, neither the parties nor the contract intended this. In reciprocity to the assumption of this significant risk by the lender, a very high amount of interest was usually agreed upon by the contractors in favour of the latter.

This territorial, political, and economic Roman calling for globalisation spurred on a new cosmopolitan entrepreneurial spirit in financiers and merchants. They sought out new business opportunities and extended their land and sea trade activity in the provinces of the Empire³⁹ and in territories beyond the limits of the Empire, that is to say, in foreign markets (“... *quod frequenter accidit his, qui transmarinas negotiationes et aliis regionibus, quam in quibus ipsi morantur, per servos atque liberos exercent*”, *Gaius libro primo rerum cottidianarum sive aureorum*”⁴⁰, middle of 2nd century A D). We know well that regular oceanic trade routes and contacts were frequent not only with various inland provinces, but also with the markets of Asia Minor, Africa, Arabia⁴¹, and even China. Rome, on its

²⁸ D. 16, 3, 25, 1, *Papinianus libro tertio responsorum*: “... *depositam ad usus proprios convertit, post moram in usuras*”. D. 16, 3, 28.

²⁹ Gayo, *Inst.* 4, 64; 4, 68: “... *ut si facta compensatione plus nummo uno intendat argentarius*”. D. 16, 2.

³⁰ Gayo, *Inst.* 3, 128 – 130; 3, 137.

³¹ C. 4, 18, 2. *Just. Inst.* 4, 6, 8.

³² Hollander D., *Money in the Late Roman Republic*, 2007, Leiden/Boston, p. 76. Tan T. *Financial and Empire*, Columbia University, New York, 2007, p. 13.

³³ Cicerón, *Fam.* 7, 17, 1; *id. Att.* 5, 21, 11 sq.; *id. Phil.*, 2, 37, 95; *id. Verr.* 2, 4, 13 & 30; *id. Mur.* 17, 35. Voz: *Syngrapha - ae*: “a written agreement to pay, a promissory note, bond”, en Lewis and Short, *A Latin Dictionary*, Oxford, 1879. Gayo, *Inst.* 3, 119 a. Moshenskyi S. “*History of the Wechsel: Bill of Exchange and Promissory Note*”, 2008, p. 41.

³⁴ D. 22, 2; C. 4, 33.

³⁵ D. 22, 2, 6, *Paulus libro 25 quaestionum*.

³⁶ D. 22, 2, 1, *Modestinus libro decimo pandectarum*.

³⁷ D. 22, 2, 1, *Modestinus libro decimo pandectarum*.

³⁸ D. 22, 2, 3, *Modestinus libro tertio responsorum*.

³⁹ D. 14, 1, 1, 12, *Ulpianus libro 28 ad edictum*.

⁴⁰ D. 40, 9, 10.

⁴¹ “*The Periplus of the Erythraean Sea: Travel and Trade in the Indian Ocean by a Merchant of the First Century*”. Translated from the Greek and annotated by W.H. Schoff; A.M., Secretary of the Commercial Museum, Philadelphia. (New York, London, Bombay and Calcutta: Longmans, Green and Company, 1912), pp. 1 – 323.



part, had been transformed into a financial centre and a mega-emporium for exports, consumption, and imports. City – market, channel and recipient of opportunities, business cosmos, and global commercial focal point. In this context, the creation of a stable international legal security framework was necessary for trade agreements and economic transactions. Since the last centuries of the Republic, Rome had the honour of responding to this demand for economic and legal history.

III. UNIVERSAL EQUAL JUSTICE: CONSENSUAL TRADE CONTRACTS.

Roman expansion in Italy and the progressive annexation of its territories brought forth the need to dispense justice between Roman citizens and the inhabitants of other nationalities. To this end, it responded with the creation of the *Praetor Peregrinus* (242 B C). This magistrate had a reputation for creating rules for the administration of justice⁴², which were anchored in natural law and universal equity (*ratio naturalis*). These were accepted by all nations⁴³. Both constituted the sources of legal rules that resolved conflicts of interest in trade and united the people (*Ius Gentium* - International Law)⁴⁴.

In this new context, Rome adopted in its legal schemes the rules of consensual bilateral⁴⁵ contracts: sale, lease, company and mandate⁴⁶. These were characterised by being accepted by all peoples⁴⁷. The mere consent of the contracting parties allowed them to emerge and perfected them⁴⁸. Along with this element, good faith, faithfulness to one's word, and loyalty to agreed-upon deals were, by natural, principles of acceptance and universal legal demand (“*iudicia bonae fidei*”⁴⁹).

Unlike the actual sale carried out by other ancient peoples and the archaic Roman *mancipatio* (both required the simultaneous presence of the contracting parties for the transmission of the item for the price)⁵⁰, consensual sale (*emptio venditio*) allowed this to be perfected without the physical presence of the parties. They could act through messengers or representatives, grant their consent by letter, etc.⁵¹ The seller could reside in Rome, the buyer in *Gades*, the goods could be shipped in Alexandria, and the price paid in *Londinium*. These possibilities, that is to say, the construction and convention of reciprocal international

⁴² Gayo, *Inst.* 3, 109: “... imperio continebitur iudicium; idemque iuris est ... vel apud unum iudicem interveniente peregrini persona”.

⁴³ Just. *Inst.* 1, 2, 11: “Sed naturalia quidem iura, quae apud omnes gentes peraeque servantur, divina quadam providentia constituta, semper firma atque immutabilia permanent”.

⁴⁴ Just. *Inst.* 1, 1, 1, 3; 1, 1, 1, 4; 1, 1, 9.

⁴⁵ D. 50, 16, 19, *Ulpianus libro 11 ad edictum*.

⁴⁶ D. 1, 1, 5, *Hermogeniano libro primo iuris epitomarum*. Just. *Inst.* 3, 22. En relación al contrato de mandato, Gayo, *Inst.* 3, 155: “Mandatum consistit, sive nostra gratia mandemus sive aliena; itaque sive ut mea negotia geras sive ut alterius, mandaverim, contrahitur mandati obligatio et invicem alter alteri tenebimur in id, quod vel me tibi vel te mihi bona fide praestaret oportet”; 3, 156 – 162.

⁴⁷ Just. *Inst.* 1, 1, 5.

⁴⁸ Gayo, *Inst.* 3, 135; 3, 136.

⁴⁹ Cicerón, *De Officiis*, 3, 70. Gayo, *Inst.* 4, 62: “Sunt autem bonae fidei iudicia haec: ex emptio vendito, locatio conductio, negotiorum gestorum, mandati, depositi, fiduciae, pro socio, tutelae, rei uxoriae”; 4, 63.

⁵⁰ Gayo, *Inst.* 1, 119.

⁵¹ Gayo, *Inst.* 3, 136.



bilateral provisions, was a leading legal and commercial pillar for the development of global macroeconomics by the classical Roman world⁵².

From the legal perspective, what's more, the purchase and sale was intended to deliver a *vacua possessionis* on the goods (*merx*), from the seller to a buyer. The buyer, bilaterally, delivered a price in money to the seller. *Traditio* or delivery and possession were universal institutions of equity, regulated by the optics of natural law⁵³. The natural reason of all the peoples of the world accepts that a man of any nationality or citizenship hands over the peaceful possession of his goods to a purchaser of any nationality or citizenship, who receives it and pays a price⁵⁴. These universal reciprocal bilateral powers would not have been feasible if the purpose of the contract had been the surrender of ownership, as this was an institution of civil law accessible only to Roman citizens⁵⁵.

Since archaic times, foreigners had an eternal guarantee, "*aeterna auctoritas*", to protect the possession of goods acquired from a Roman citizen⁵⁶. In the last centuries of the Republic, through case law, Roman citizens substituted the archaic "*usucaption through use*"⁵⁷ with a "*possessive usucaption*"⁵⁸ to acquire, over time, the ownership of merchandise and goods acquired *non domino*, or through an invalid title. The first required the continued use of the thing. The second, the continued possession of the thing. The difference is important, because the possession of the goods is retained with the mind (*animus*). No physical presence or continued use was necessary. These possibilities also favoured and enabled not only trade between Roman citizens, but also international traffic and large-scale transactions of goods.

The consensual *emptio venditio* established a universal system of guarantees in favour of buyers, for cases of eviction and hidden defects of the goods sold:

- If there are hidden defects in the goods delivered by the seller, the buyer has a purchase option (*actio empti*), to demand in court the termination of the contract and compensation for damages. *Aediles curules* extended this purchase guarantee to cattle and slave defects in all local markets in Italy⁵⁹. To make it effective, they created in their edicts a *redhibitoria* action and an *actio quanti minoris*. In the first case, the buyer could demand the termination of the sale and the refund of the price. In the second case, the buyer could demand a reduction in the price by virtue of the nature of the defect in cattle, or in the slave⁶⁰. Progressively, these legal actions were extended by the edicts of the Caesars' magistrates to the purchases agreed upon in the local markets of the Empire.

⁵² Gayo, *Inst.* 139 – 141.

⁵³ Suárez Blázquez G. *Las Esferas Jurídicas de dos Mundos: Binomio Posesión – Dominio*, Tirant lo Blanch, Valencia, 2019, pp. 93 - 102.

⁵⁴ Just. *Inst.* 2, 1, 40.

⁵⁵ Gayo, *Inst.* 2, 40: "... *aut enim ex iure Quiritium unusquisque dominus erat, aut non intellegabatur dominus*".

⁵⁶ LXII T. 6, 4: "*adversus hostes aeterna auctoritas esto*".

⁵⁷ LXIIT. 6, 3: "*usus auctoritas fundi biennium est*".

⁵⁸ Gayo, *Inst.* 2, 41: "... *donec tu eam possidendo usucapias*"; 2, 44: "... *tempus ad usucapionem possessori tributum est*". D. 41, 3, 3, *Modestinus libro quinto pandectarum*: "*Usucapio est adiectio domini per continuationem possessionis temporis lege definiti*".

⁵⁹ Serrao F, "*Impresa...*" cit. pp. 316 ss. Aubert, "*Commerce...*", cit. pp. 221 - 223.

⁶⁰ D. 21, 1, 1; 21, 1, 1, 1.



- The buyer also had an *actio empti* to terminate the contract by eviction. This occurred when a third party had sued the *emptor* with a *reivindicatoria* action of ownership and had won at trial⁶¹.

Similarly, the lease was perfected by consent and the establishment of rent. The parties agreed to the delivery of natural possession and use of an asset, the provision of work, or the performance of work in exchange for a price⁶².

From the perspective of the economy, *locatio conductio* was another one of the universal underpinnings of industrial productivity and maritime trade⁶³. This contract made it feasible to lease the work of slaves (*locatio conductio operarum*, precursor to the current employment contract). *Locatio conductio* allowed shipowners and shipping companies (*exercitores*) to transport passengers and goods, through the sea routes connecting the ports of the empire. Its international status supported transoceanic commercial expeditions. The Roman commercial West was united with the Far East and vice versa. The leasing of a vessel, armed with its crew (*time charter*) and the leasing of parts of the ship constituted forms of maritime leasing of things (*locatio conductio rei*). The undertaking of the charter contract constituted the contract for the maritime transport of goods (*locatio conductio operis*)⁶⁴.

The Roman praetors also created via an edict a global legal security framework for the protection of goods and cargo on river and overseas shipments. Shipowners and *magistri navis* of any nationality were responsible, under objective liability (the use of malice is not necessary, nor guilt), for any damages and deteriorations that the goods and the rest of the cargo may have suffered as of their consignment, in the loading process, while sailing, in unloading operations, and return or final delivery. This liability also reached the owners of hospitality establishments and stables. They were liable for damages to the luggage and property of travellers and guests. From admission to final return⁶⁵.

In this legal framework of international or people's law, the company contract also played a leading role⁶⁶. This was perfected by the consent of the partners. But it was necessary to count on a permanent will and spirit of loyalty, good faith, and mutual social trust (*affectio societatis*). The reason for this requirement stems from the cooperative nature of the contract. Partners deliver their goods, money, or industry to the shared social pool to achieve a lawful common goal, usually the acquisition of profits. Dissent, betrayal, or lack of *affectio* automatically dissolved the company. The properties of the contract also allowed access to membership for men of any nationality, the acquisition of lawful capital of different territorial origins, and their overall development.

In the final centuries of the Republic, the *Ius Gentium* schemes of all consensual contracts allowed for the settlement of conflicts arising from trade agreements by the courts of pilgrim praetors and the sentences of *recuperatores* judges⁶⁷, (a task that was continued

⁶¹ D. 21, 2; C. 8, 45; 8, 46.

⁶² Gayo, *Inst.* 3, 135; 3, 142 - 147.

⁶³ D. 19, 2. C. 4, 65.

⁶⁴ D. 14, 2, 2, *Paulus libro 34 ad edictum*. D. 14, 2, 10; 14, 2, 10, 1; 14, 2, 10, 2.

⁶⁵ D. 4, 9; 47, 5.

⁶⁶ Gayo, *Inst.* 3, 135; 3, 148 – 154 b. Vid. Arangio – Ruiz V. *La Società in Diritto Romano*, Jovene Editore, ed. 2006, Nápoles, pp. 1 – 200.

⁶⁷ Gayo, *Inst.* 4, 109.



extra ordinem by the magistrates and judges of the empire). To this end, they adopted an arbitral system of universal justice, which was based on good faith and equity⁶⁸. The international nature of these contracts allowed for tendering by businessmen, and their companies, from all nationalities. These made possible the creation of mercantile companies, trade, and the undertaking of exports and imports throughout the Roman world.

The legal reason for natural order is always good, equal, and unchangeable⁶⁹. That is why this (also, consensual contracts) has been adopted by all civil and commercial laws, which allow and foster our globally connected trade.

IV. TRADE SECURITY OF MARITIME TRAFFIC.

“Lege Rodia [Rhodia] cavetur, ut si levandae navis gratia iactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est”, (Paulus, libro secundo sententiarum)⁷⁰.

Maritime navigation united the interests of carriers, merchant vessel entrepreneurs, with the interests of passengers and exporters and importers of goods. Roman civilization adopted a set of maritime uses from ancient Greece (*Lex Rhodia*⁷¹), which were used by the “international community”, to protect the safety of commercial traffic. The dangers of navigation were and are diverse: lack of food, storms, sea currents, pirate attacks, etc. The general rule of protection and rescue that was imposed by maritime uses of *Ius Gentium* for members of a maritime expedition, irrespective of their citizenship, found their legal reason in the *natural order of equity* (“... *aequitas contributionis habebit locum*”, *Hermogenianus libro secundo iuris epitomarum*⁷²). It consisted of making common patrimonial sacrifices to avoid shipwreck and death.

The ancient *Lex Rhodia of Iactu* established, “if the participants of a maritime route throw goods overboard to lighten the ship and avoid shipwreck, they have to contribute and bear the damage together”. The content and spirit of this rule includes some maritime claims that have to be paid proportionately and in community by the shipowner⁷³, passengers and merchants⁷⁴, provided that, as a result of the adoption of collective measures, the ship is saved from the shipwreck: common supply of food and water to deal with hunger and thirst⁷⁵, value of dresses, rings, pearls, and other jewellery⁷⁶, cutting of masts to lighten the ship against

⁶⁸ Gayo, *Inst.* 3, 137. “... *et aequo praestaret oportet*”; Just. *Inst.* 3, 22, 3: “*Item in his contractibus alter alteri obligatur in id, quod alterum alteri ex bono et aequo praestare oportet...*”.

⁶⁹ D. 1, 1, 11, *Paulus libro 14 ad Sabinum*: “... *cum id quod semper aequum ac bonum est ius dicitur, ut est ius naturale*”. D. 50, 17, 206, *Pomponius libro nono ex variis lectionibus*: “*Iure naturae aequum est*”. Just. *Inst.* 1, 2, 11: “... *semper firma atque immutabilia permanent*”.

⁷⁰ D. 14, 2, 1.

⁷¹ D. 14, 2, *De Lege Rhodia de Iactu*. D. 14, 2, 1.

⁷² D. 14, 2, 5, 1.

⁷³ D. 14, 2, 2, 2, *Paulus libro 34 ad edictum*.

⁷⁴ D. 14, 2, 2, *Paulus libro 34 ad edictum*. D. 14, 2, 4, 2, *Callistratus libro secundo quaestionum*.

⁷⁵ D. 14, 2, 2, 2, *Paulus libro 34 ad edictum*.

⁷⁶ D. 14, 2, 2, 2, *Paulus libro 34 ad edictum*.



storms⁷⁷, payment of rescues from pirates⁷⁸, transport of cargo and goods to skiffs for unloading⁷⁹, etc.

Lex Rhodia and the activity of classical Roman case law established the primordial guiding principles of this common institution of coverage and aid:

- Global protection system: “All for all”⁸⁰.
- Maritime claims coverage system⁸¹.
- A common fund for taxation, compensation, and mutual assistance (*communio*)⁸²: freight⁸³, goods⁸⁴, food, jewellery, etc.
- Valuation of the saved debtor assets (freight, goods, crew jewellery, etc.), for the sale value. Capital gains or profits compensate the creditor assets sacrificed for the common good (goods thrown overboard, damage and repairs of antennas, masts cut and thrown into the sea, etc.)⁸⁵.
- System of calculation or estimation, distribution and individual proportional compensation for common damages⁸⁶.
- Universal judicial claim system, with *locati – conducti* actions. The latter arose from the *locatio conductio* contract (ship leasing and leasing of commercial transport of passengers and goods). It was adopted by the international community of the Ancient World, to agree on commercial expeditions and the transport of travellers by river and sea routes⁸⁷. The owners of the lost goods (creditor mass) can use these actions, (according to their position in the contract, either as locators or as drivers) to sue the *magister navis* and claim their proportional compensation amounts. If this happens, the latter, in turn, sues the owners of the saved goods (debtor mass) to demand the compensation that the former claim⁸⁸.

Maritime entrepreneurs, passengers, merchants, and businessmen united in a maritime voyage adopted, by international law⁸⁹, this practice protecting universal life and

⁷⁷ D. 14, 2, 3, *Papinianus libro 19 responsorum*.

⁷⁸ D. 14, 2, 2, 3, *Paulus libro 34 ad edictum*: “*si navis a piratis redempta sit, omnes conferre debere aiunt*”.

⁷⁹ D. 14, 2, 4; 14, 2, 4, 1, *Callistratus libro secundo quaestionum*.

⁸⁰ D. 14, 2, 1, *Paulus libro secundo sententiarum*.

⁸¹ D. 14, 2, 3, *Papinianus libro 19 responsorum*; 14, 2, 2, 3.

⁸² D. 14, 2, 3, *Papinianus libro 19 responsorum*. “... *communis periculis causa deiectum est, contributio debetur*”; 14, 2, 2, 1, *Paulo libro 34 ad edictum*.

⁸³ D. 14, 2, 2, 2, *Paulus libro 34 ad edictum*.

⁸⁴ D. 14, 2, 2, 4; *Paulus libro 34 ad edictum*.

⁸⁵ D. 14, 2, 2, 4, *Paulus libro 34 ad edictum*.

⁸⁶ D. 14, 2, 2, 4, *Paulus libro 34 ad edictum*. D. 14, 2, 4, 2, *Callistratus libro secundo quaestionum*: “... *quoniam detrimenti, non lucri sit prestatio*”.

⁸⁷ D. 14, 2, 2, *Paulus libro 34 ad edictum*. D. 14, 2, 2, 7, *Paulus libro 34 ad edictum*: “*Si res quae iactae sunt apparuerint, exoneratur collatio: quod si iam contributio facta sit, tunc hi qui solverint agent ex locato cum magistro, ut is ex conducto experiatur et quod exegerit reddat*”.

⁸⁸ D. 14, 2, 2, *Paulus libro 34 ad edictum*. D. 14, 2, 2, 7, *Paulus libro 34 ad edictum*: “*Si res quae iactae sunt apparuerint, exoneratur collatio: quod si iam contributio facta sit, tunc hi qui solverint agent ex locato cum magistro, ut is ex conducto experiatur et quod exegerit reddat*”.

⁸⁹ D. 14, 2, 9, *Volusius Maecianus ex lege Rhodia*: “... *Lege id Rhodia, quae de rebus nauticis praescripta est*”.



trade, facing a common danger: shipwreck⁹⁰. In this way, the first universal mutual insurance in economic and legal history (Common Fault) was born, preceding current maritime commercial insurance. This remains in force in the Codes of Commerce and the Rules of Universal Traffic. The latter were established by the International Maritime Committee (IMC), (York and Antwerp Rules, 1994 – 2004 -2016).

V. COMPANIES: UNLIMITED LIABILITY – LIMITED LIABILITY.

“... quod frequenter accidit his, qui transmarinas negotiationes et aliis regionibus, quam in quibus ipsi morantur, per servos atque libertos exercent”, *Gaius libro primo rerum cottidianarum sive aureorum*⁹¹, middle of the second century AD).

The industrial and commercial activity of Roman civilization was developed on a large scale through trade and the creation of business. In the last centuries of the Republic, parents used their own family members to set up industrial and commercial establishments. For these purposes, the parents placed at the head of these establishments their slaves and children (the former, subject to *dominica potestas*, the latter, to parental authority⁹²), who, with the authorisation of the parents (*iussu*) traded the goods with third parties.⁹³ The father, through his managers and workers, slaves and children, owned and managed his office, tavern, or commercial premises (“*nam et plerique pueros puellasque tabernis praeponunt*”, *Gaius libro nono ad edictum provinciale*⁹⁴). These premises were equipped with goods, machinery, and instruments ordered for trading in a commercial sector (*taberna instructa, officina instructa*, etc.⁹⁵). Their workers (*institores*⁹⁶) had to perform the functions (*praepositio*) ordered (*iussu*⁹⁷) by the owner. *Praepositio* constituted the programme and framework of business and commercial competences⁹⁸. These were assigned individually to each manager or to each worker by the owner of the company or merchandise. These *institores* were obligated to execute them and repeat them automatically. They could not assume any role that had not been assigned to them. If the client traded with an *institor* without authority (also with the sailors working for maritime companies⁹⁹), the latter did not hold their owner, nor its company, liable.

⁹⁰ Just. *Inst.* 2, 1, 48.

⁹¹ D. 40, 9, 10.

⁹² D. 14, 1, 1, 21, *Ulpianus libro 28 ad edictum*. D. 50, 16, 125, *Paulus libro singulari ad legem Fufiam Caniniam*.

⁹³ Gayo, *Inst.* 4, 70.

⁹⁴ D. 14, 3, 8.

⁹⁵ D. 50, 16, 185, *Ulpianus libro 28 ad edictum*: “*Instructam autem tabernam sic accipiemus, quae et rebus et hominibus ad negotiationis paratis constat*”. D. 14, 3, 3, *Ulpianus libro 28 ad edictum*.

⁹⁶ D. 14, 3, 3, *Ulpianus libro 28 ad edictum*: “*Institor appellatus est ex eo, quod negotio gerendo instet: nec multum facit, tabernae sit praepositus an cuilibet alii negotiationi*”. D. 14, 3, 5, *Ulpianus libro 28 ad edictum*: “*cuicumque igitur negotio praepositus sit, institor recte appellabitur*”.

⁹⁷ Gayo, *Inst.* 4, 70.

⁹⁸ D. 14, 1, 1, 12, *Ulpianus libro 28 ad edictum*: “*Igitur praepositio certam legem dat contrahentibus*”.

⁹⁹ D. 14, 1, 1, 12, *Ulpianus libro 28 ad edictum*: “*Igitur praepositio certam legem dat contrahentibus. Quare si eum praeposuit navi ad hoc solum, ut vecturas exigat, non ut locet (quod forte ipse locaverat), non tenebitur exercitor, si magister locaverit: vel si ad locandum tantum, non ad exigendum, idem erit*”.



The same structure, with variants according to the very nature of the sector, was reproduced in the maritime company. The father (*exercitor*) put at the head of his ship (*praepositio* of the *nave instructa* and armada¹⁰⁰) his sons or his slaves (*magister navis*), for the undertaking of his business and commercial management¹⁰¹.

On other occasions, the parents handed peculia and money over to their slaves and children which were freely managed by them and were intended for industrial production and mercantile trade with third parties. Unlike the previous case, the managers of the business peculia traded with third parties on behalf of these peculia, without the knowledge of the father. This was a hidden owner of his business peculium. The managers, sons or slaves, were de facto holders of commercial or industrial peculia¹⁰² and exploited them with the exercise of trade. This business structure was adopted by mercantile companies¹⁰³. They created companies with their own managerial slaves (*servus ordinario*¹⁰⁴). They received peculia that were intended for business-related and industrial organisation and mercantile trade¹⁰⁵. This activity allowed some of these business managers to get their freedom (*liberto*). The structure of the company could be expanded by these slave managers. They could create new asset companies with other slave managers (*vicarii*¹⁰⁶), who ran branches of mercantile asset companies that depended on a parent asset company managed by their ordinary slave manager. Even *vicarii* managers could create new branch subsidiaries of assets run by *vicarii* slaves. This activity led to the creation of groups and holding companies run by free managers and slaves who were owned by an owner, or a mercantile company¹⁰⁷.

The design was similar in maritime companies. *Exercitores* or shipowners¹⁰⁸ joined into mercantile navigation companies¹⁰⁹. They acquired ships that were managed by managers, sons, acting as *magistri navis*. They ran their crews and commercial exploitation¹¹⁰.

With the global emergence of trade, the creation of enterprises by women, Roman citizens, and the participation of libertos, sons and daughters of free men and families, who rendered their servitude in good faith, in productive tasks, was not uncommon in the empire¹¹¹. However, the activity and business structure were, above all, slave-owning. Slavery was an institution of international law, of peoples¹¹². That is why this system of

dicendum: aut si ad hoc, ut vectoribus locet, non ut mercibus navem praestet, vel contra, modum egressus non obligabit exercitorem: sed et si ut certis mercibus eam locet, praepositus est, puta legumini, cannabae, ille marmoribus vel alia materia locavit, dicendum erit non teneri”.

¹⁰⁰ D. 14, 1, 1, 8, *Ulpianus libro 28 ad edictum*: “... si ad armandam instruendamve navem...”.

¹⁰¹ Gayo, *Inst.* 4, 71.

¹⁰² D. 15, 1, 7, 3, *Ulpianus libro 29 ad edictum*.

¹⁰³ Gayo, *Inst.* 4, 71.

¹⁰⁴ D. 15, 1, 17, *Ulpiano libro 29 ad edictum*.

¹⁰⁵ Gayo, *Inst.* 4, 72 a.

¹⁰⁶ D. 15, 1, 7, 4; 15, 1, 11, 4; 15, 1, 11, 5, *Ulpiano libro 29 ad edictum*.

¹⁰⁷ D. 15, 1, 17, *Ulpianus libro 29 ad edictum*.

¹⁰⁸ D. 14, 1, 1, 15, *Ulpianus libro 28 ad edictum*.

¹⁰⁹ D. 14, 1, 1, 13 *Ulpianus libro 28 ad edictum*: “... si plures sint magistri”; 14, 1, 1, 17: “... exercitorem an magistrum”.

¹¹⁰ Gayo, *Inst.* 4, 71. D. 14, 1, 1, 22, *Ulpianus libro 28 ad edictum*.

¹¹¹ D. 14, 1, 1, 20; 14, 1, 1, 21, *Ulpianus libro 28 ad edictum*.

¹¹² Just. *Inst.* 1, 1, 4; 1, 1, 5.



productive and commercial management was adopted, at least assimilated, by all the peoples and nations of the Roman world (“*global human management and robotics*”¹¹³).

The activities and relationships of these sole proprietorships and corporate enterprises with third parties were regulated by the edicts of the praetors. Probably starting from the 2nd century A D, they created procedural actions in their courts to protect the commercial interests of clients and business owners¹¹⁴. With them, the magistrates gave legal security to merchants, entrepreneurs, suppliers, and consumers and their commercial procurement activity. According to the jurist Gayo, “if the business was carried out with the authorisation of the father or the owner, the praetor grants an suit for the total (*in solidum*) against them”¹¹⁵. The owners of the companies, created with managers subject to *praepositio*, did not have privileges either with respect to their creditor clients. They could sue with an *institoria* action¹¹⁶ (land company) or an *exercitoria* action (maritime company) and demand unlimited property liability from their owners¹¹⁷. In the second type of undertakings, however, the praetors created an original contribution, as they established limited liability for corporate peculia. The creditor clients of these companies could occupy their estate with a *peculio* action, but they could not seize the private assets of their owners¹¹⁸.

If the manager, servant, or son had earmarked some of the peculium merchandise for trading with third parties, creditors could apply for mercantile insolvency over the bankrupt assets. This meant a limitation of the liability by the owner or the company and their asset’s merchandise. The reason for this privilege arose from the commercial peculium, since the latter was the parent entity of *merx peculiaris*. This was nourished by the legal nature of the former. In order to avoid and prosecute deceptions with the liquidation and distribution of credits on the goods, the creditors injured in the insolvency also had a *tributoria* action¹¹⁹ (criminal and reipersecutory) to recover the defrauded amounts, against the corrupt creditor and his heirs.

The peculium company's limited liability was a veil for creditor clients. When they traded with the managers of these companies they did so in the name of the peculium, not the owning businessman. The limitation of liability could not account for the entanglements and embezzlement of companies. If the owners had unlawfully emptied the assets of their peculium company, or the slave manager had invested amounts of money in the private estate of their owner, or their own company, the creditor clients could sue the owner or the company or the partners (and even their heirs) with an *in rem verso* action¹²⁰ (of a reipersecutory nature), and in this way, pursue and obtain the repayment of these amounts.

¹¹³ Suárez Blázquez, G. *Derecho de Empresas en la Roma Clásica*, Tirant Lo Blanch, Valencia, 2014, pp. 153 - 233.

¹¹⁴ D. 15, 1, 1, 1, *Ulpianus libro 29 ad edictum*.

¹¹⁵ Gayo, *Inst.* 4, 70.

¹¹⁶ D. 14, 3, 1, *Ulpianus libro 28 ad edictum*.

¹¹⁷ Gayo, *Inst.* 4, 71.

¹¹⁸ Gayo *Inst.* 4, 72 a.; 4, 73.

¹¹⁹ Gayo, *Inst.* 4, 72. D. 15, 3, 1; 15, 3, 1, 1 *Ulpianus libro 28 ad edictum*. C. 4, 26.

¹²⁰ Gayo, *Inst.* 4, 72 a.



VI. CORPORATIONS: CORPORATE MOULD AND REGIME OF PRIVATE COMPANIES WITH PUBLIC COMPETENCES. FINANCIAL STOCK MARKETS: SHARES AND CORPORATE DEBT.

The creation of a corporate legal regime was the result of a long legislative and case law evolution of Roman civilization. At the end of the Republic and at the beginning of the Principality, it is likely that the corporate mould was conceived in the image of the design and structure of the State¹²¹. Due to the public importance of the public legal regime of the corporate regime, such authorisations and transfers were made to municipalities, schools, mercantile companies, etc. by law, *senatus consultum* or imperial constitution¹²².

In the last centuries of the Republic, an institution relevant to Economic History was constituted by the companies of publicans¹²³ (Cicero, *De Domo*, 28: "... *omnium publicanorum societates*"). These were the primary legal precedent of today's multinational corporations. These private corporate entities had the privilege of having limited liability (the credits and debts of the corporate¹²⁴ entity were not the credits and private debts of their partners)¹²⁵, and the privilege of security, since they managed and operated public competences of the Roman State and its municipal entities (tax collection¹²⁶, construction of public works¹²⁷, exploitation of woods and lakes¹²⁸, ports, mines, salt flats¹²⁹, provision and operation of public services, games and public ceremonies¹³⁰, coin minting and Treasury financing¹³¹, supply of wheat to the State¹³² and grains, logistics of the Roman army¹³³... etc.). The public interest of the Roman State was the public interest of this corporate association and vice versa. The private social purpose was to make a profit. Although companies were formed for the operation of municipal services, (gyms, hot springs and baths, etc.), with the expansion of the Republic and the governance of the Caesars, the size and number of corporate associations increased and their activities expanded throughout the territory of the empire. Cicero informs us of the existence of interests and financial investments of Roman knights (*equites*, equestrian order¹³⁴) in the corporate enterprises of Asia Minor¹³⁵. There are also numerous New Testament Bible passages that allude to them.

¹²¹ D. 3, 4, 1, 1, *Gaius ad edictum provinciale*: "*Quibus autem permissum est corpus habere*". *Lex Iulia de Collegiis* (7 d.C.), *CIL*. VI, n. 2193; *CIL*. XIX, n. 212.

¹²² D. 3, 4, 1.

¹²³ Vid. Arias Bonet, J.A. "*Societas publicanorum*", en *AHDE*, 19, pp. 218 – 303.

¹²⁴ D. 3, 4, 1, 1, *Gaius ad edictum provinciale*.

¹²⁵ Plutarco, Catón, cp. 21.

¹²⁶ Tácito, *Ann.*: "... *pleraque vectigalium societates*". D. 50, 16, 16, *Gaius libro tertio ad edictum provinciale*: "*Eum qui vectigal populi Romani conductum habet, publicanum appellamus*".

¹²⁷ Valerio Máximo, 6, 5, 8.

¹²⁸ D. 43, 14, 1, 1, 7.

¹²⁹ D. 3, 4, 1, 1, *Gaius ad edictum provinciale*. D. 50, 16, 17, 1, *Ulpianus libro decimo ad edictum*: "*Publica vectigalia intelligere debemus, ex quibus vectigal fiscus capit: quale est vectigal portus vel venalium rerum, ítem salinarum et metallorum et picariarum*".

¹³⁰ Valerio Máximo, 5, 68.

¹³¹ Tito Livio, *Ab urbe condita*, 23, 48.

¹³² Cicerón, *Domus*, 10, 25.

¹³³ Tito Livio, *Ab urbe condita*, 23, 48.

¹³⁴ Cicerón, *De Domo*, 28.

¹³⁵ Cicerón, *Pro lege Manilia*, 2, 4.



Even Christ had a publican disciple, Matthew (perhaps a manager of a corporate enterprise in Judea¹³⁶). *Volusius Maecianus* (2nd century A D) places them in the Greek archipelago of the Cycladic Islands, on the periphery of the Aegean Sea¹³⁷.

This type of business and commercial organisation could only acquire a corporate legal mould through public concession. Although its purpose was purely commercial and was intended to obtain private profits, its functions and competences were public in nature and within public interest. Corporate enterprises frequently competed for them. Partners and their *adfines* often tried to influence magistrates to fulfil their corporate economic interests¹³⁸. Concessions were awarded by them, usually accountants, through regular public tenders and auctions. With both, the State or its entities also tendered, in tender documents, the taxes subject to collection, whether a public sector of industrial exploitation, the construction of works, or the provision of a public service, the place and time (usually every five years) and the operating conditions. The winning corporate entity had to provide bonds and guarantees (real and personal¹³⁹) that would be liable for non-compliance, damages, etc., to the public tendering entity. Sometimes, due to the nature of the awarded competence (supply of legions, maritime navigation, etc.), the State offered insurance to the corporate association for possible damages arising from the exercise of its management.

The structure of these corporate associations was similar to that of the State and its municipal entities. They had a magister - president (*manceps*¹⁴⁰) and management teams (treasury, accounting, etc.), partners or assemblies (*socii*)¹⁴¹, operators (*familia publicanorum*¹⁴²) and *lex collegi* bylaws. This structure was repeated in their subsidiaries in Italy and provinces. The latter were probably led by a *promagistri* – president¹⁴³. Their law of nations¹⁴⁴ corporate nature in turn allowed access, as full member partners, to Roman citizens and persons of any nationality. These factors made it suitable to increase their credit potential, investor, and their operation in any region of the empire.

The need to raise capital and partners to address their complex public competences (such as mine operation) encouraged these publican companies to make capital expansions and create stocks or equity markets. The partners made contributions to the share capital (shares, “*partes*”¹⁴⁵) and, along with their corporation, allowed access by third-party investors, or *adfines*¹⁴⁶ (bankers, private investors, and businessmen). They participated in commercial interests with financial contributions (Plautus, *Trinummus*, Act 2, Scene 2: “...

¹³⁶ Mateo, NT. 9, 9, 13: “En aquel tiempo, vio Jesús al pasar a un hombre llamado Mateo, sentado al mostrador de los impuestos, y le dijo: “Sígueme”. Él se levantó y lo siguió. Y estando en la mesa en casa de Mateo, muchos publicanos y pecadores que habían acudido, se sentaron con Jesús y sus discípulos”.

¹³⁷ D. 14, 2, 9, *Volusius Maecianus ex lege Rhodia*: “... naufragium in Italia facientes direpti sumus a Publicanis Cyclades Insulas habitantibus”.

¹³⁸ Tito Livio, *Ab urbe condita*, 43, 16, 2.

¹³⁹ Polibio, 6, 17, 4.

¹⁴⁰ Cicerón, *Ad. Att. c. 6*; id. *Pro Plauto*, 24; id. *Pro Quinctio*, 76. Polibio, 6, 17, 4. *Fest. s.v. manceps. Pseudo Asconio, ad Cic. Div. In Q. Caec 33* (pg. 33 Or.).

¹⁴¹ Tácito, *Ann.* 13, 50: “... pleraque vectigalium societates”.

¹⁴² Cicerón, *Verr.* 97. Id. *De Procons.* 5. Id. *Ad Fam.*, 13, 9. Valerio Máximo, 6, 9, 8. Mateo, NT. 9, 9, 13.

¹⁴³ Cicerón, *ad Att.*, 2, 10.

¹⁴⁴ Just., *Inst.* 1, 1, 5.

¹⁴⁵ Cicerón, *Rab. Post.*, 2.

¹⁴⁶ Tito Livio, 43, 16, 1.



publicisne adfinis fui tan maritumis negotiis?”) and, on numerous occasions, acted as lobbyists, together with their sponsoring partners, to defend their corporate interests¹⁴⁷. The partners divided their quotas which could be traded with third parties (Cicero, *Vat.* 12, 29: “... *partes illo tempore carissimas, partim a Caesare, partim a publicanis*”). This text demonstrates the existence of a share price, depending on the economic results and benefits of the corporate entity. Buyers also acquired small shares (*particula*¹⁴⁸) from a partner's share. On other occasions, the corporate association expanded the quota of shares with the admission of new partners to the share capital. These pathways of acquisition of financial resources allowed these companies and their partners to create the historical background of the first capital markets and corporate equity holding businesses (the precursors of current shares), in different places in the empire (Valerio Máximo, 6, 9, 8: “*T. Anfidius exiguam admodum particulam publici Asiatici habuisse*”).

Also, to acquire capital, these industrial corporations, following the example of the Roman State¹⁴⁹, agreed to credits and issued promissory notes and other fixed income debt securities. Literal legal titles, accepted by the international law of the ancient world, whether nominative or made out to the bearer (*syngrapha*¹⁵⁰, *chyrographa*¹⁵¹), could also be traded by subscribers. Legal and literary sources attest to the existence of holdings. This was used both to issue fixed income and equities. Citizens and groups of *adfines* are likely to opt more frequently for mutual investments and fixed income bonds (Polybius, 6, 17; Cicero, *Pro Lege Manilia*, 6.2) as the latter guaranteed an annual fixed interest and were independent of the economic result obtained by the corporate association in each period or financial year.

The corporate legal regime made it easier for such associations to live and operate after the death of their partners. Unlike classical consensual mercantile society, the partners of this type of industrial corporation could transmit their holdings *inter vivos*¹⁵² and *mortis causa*¹⁵³. The buyer, heir, and legatee automatically acquired the standing of mercantile partner. The corporate association was a legal entity separate from its partners. This allowed it to continue to exist beyond the life of its members. Timelessness allowed this type of corporate association to make loans and carry out credit operations, investments, and long-term indebtedness, undertake business production processes, and industrial operations of large size or complexity. Impossible activities, if the life of these corporate institutions had been linked to the lives of their member partners.

¹⁴⁷ Tito Livio, *Ab urbe condita*, 43, 16.2. Valerio Máximo, 6, 9, 7.

¹⁴⁸ Valerio Máximo, 6, 9, 8.

¹⁴⁹ Polibio, 6, 17.

¹⁵⁰ Cicerón, *Fam.* 7, 17, 1; *id. Att.* 5, 21, 11 sq.; *id. Phil.*, 2, 37, 95; *id. Verr.* 2, 4, 13 & 30; *id. Mur.* 17, 35. Voz: *Syngrapha - ae*: “a written agreement to pay, a promissory note, bond”, en Lewis and Short, *A Latin Dictionary*, Oxford, 1879.

¹⁵¹ Gayo, *Inst.* 3, 114. D. 20, 1, 26; 49, 14, 3. Suet. *Cae.* 17; *id. Calg.* 12; *id. Dom.* 1; Gell. 14, 2, 7. Voz: *Chyrographus - i*: “In the land of business, t.t., a bond, surety, or obligation under one's own hand”, en Lewis and Short, *A Latin Dictionary*, Oxford, 1879.

¹⁵² D. 39, 4, 9, 4: “*socii vectigalium si separatim partes administran, alter ab altero minus idoneo in se portionem transferri iure desiderat*”.

¹⁵³ D. 17, 2, 59, *Pomp. Libro XII ad Sabinum*.



VII. CONCLUSION.

Rome masterfully designed a global political and economic empire. That unique experience of the Ancient World is a master of Economic History: it created the main pillars of the capitalism of today¹⁵⁴.

FOOTNOTE REFERENCES

Arias Bonet, J.A. “*Societas publicanorum*”, en *AHDE*, 19, pp. 218 – 303.

Aubert J.J. “Business, Ventures and Trade”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 621 – 634.

Aubert J.J. “Commerce”, en *The Cambridge Companion to Roman Law*, 2015.

Bannon C. “Fresh Water in Roman Law: Rights and Policy”, en *JRS.*, n. 107 (2017), pp. 60 - 89.

Cassola M. “Roma ed il Mediterraneo: sicurezza e circolazione”, en *RGDR*, 26, (Iustel, Madrid, 2016), pp. 5 - 12.

De Ligt L., “Roman Law, Markets and Market Prices”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 660 – 670.

De Martino F. *Historia Económica de la Roma Antigua*, vol. I y II, Editorial Akal - Universitaria, Madrid, 1985.

Di Porto A. *Impresa collettiva e schiavo manager in Roma antica*, Giuffrè Editore, Milán, 1985.

Du Plessis P. “Urban Landlords and Tenants”, en *The Oxford Handbook of Roman law and Society*, Oxford, 2016, pp. 635 – 645.

Dufour G. “*Societates Publicanorum*: Existait-il une Bourse ou un Réseau de Courtiers sous la République Romaine?”, en *RDUS*, 2011, pp. 307 – 378.

Hollander D. *Money in the Late Roman Republic*, 2007, Leiden/Boston

Kingsbury, B. Straumann, B. *The Roman foundations of the Law of Nations. Alberico Gentili of the justice of Empire*, Oxford University Press, New York, 2011.

¹⁵⁴ Vid. Suárez Blázquez G. *Los Pilares Económicos y Jurídicos Romanos del Capitalismo Global*, Tirant lo Blanch, Valencia, 2018, pp. 1 – 253.



Lo Sardo G. “La circolazione mortis causa dell’azienda”, en *NOTARIATO, Rasegna sistematica di diritto e tecniche contrattuali. Quaderni*, n. 44, Milán, 2020.

MacGrady Glen J. “The navigability concept in the civil and the common law: historical development, current importance, and some doctrines that don’t hold”, en *Florida State University Law Review*, vol. 3, n. 4, 1975, pp. 515 – 528.

Malmendier U. “Roman Shares”, en *The Origins of Value: The financial innovations that created modern capital markets*, New York, 2005.

Moshenskyi S. “*History of the Weksel: Bill of Exchange and Promissory Note*”, 2008

Rostovzeff M. *The Social and Economic History of the Roman Empire*, 1939. Pais de Vasconcelo P. L. “Sociedade peculiar: a origen das sociedades de responsabilidade limitada”, en *revistadedireitocomercial.com*, (Lisboa, 2020 – 05 - 13) pp. 1087 – 1106.

“*The Periplus of the Erythraean Sea: Travel and Trade in the Indian Ocean by a Merchant of the First Century*”. Translated from the Greek and annotated by W.H. Schoff; A.M., Secretary of the Commercial Museum, Philadelphia. (New York, London, Bombay and Calcutta: Longmans, Green and Company, 1912), pp. 1 – 323.

Serrao F. “Impresa, Mercato, Diritto”, en *Seminarios Complutenses de Derecho Romano*, vol.12, Madrid, 2000, pp. 316 -326.

Serrao F. *Impresa e Responsabilità a Roma nell ’età commerciale*, Pacini Editore, Pisa, 2002.

Suárez Blázquez G. *Derecho de Empresas en la Roma Clásica*, Tirant Lo Blanch, Valencia, 2014.

Suárez Blázquez G. *Roma: Edificación en altura. El negocio urbanístico inmobiliario de la superficie en el Derecho Clásico*, Tirant lo Blanch, Valencia, 2015.

Suárez Blázquez G. *Enfituesis, Negocio Jurídico de Fomento*, Tirant lo Blanch, Valencia, 2016.

Suárez Blázquez G. *Los Pilares Económicos y Jurídicos Romanos del Capitalismo Global*, Tirant lo Blanch, Valencia, 2018, pp. 1 – 253.

Suárez Blázquez G. *Las Esferas Jurídicas de dos Mundos: Binomio Posesión – Dominio*, Tirant lo Blanch, Valencia, 2019.

Tan T. *Financial and Empire*, Columbia University, New York, 2007.

Tan J. *Power and Public Finance at Rome, 264-49 BCE*, Oxford University Press, 2017.

Von Reden S. *Money in Classical Antiquity*, Cambridge University Press, 2010.



Watson A. “Trade Secrets and Roman Law: The Myth exploded”, en *Digital Commons@Georgia Law* (1996), pp. 19 - 29.

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