

To what extent was a slave a thing or person in classical roman law?

[History](#)



Modern Western legal systems date back to ancient Greek law, which was developed and refined by the Romans. In its earliest form, Roman law was an extreme notion of formalism, developing as the law of the privileged classes, expanding as the empire grew to become the basis of all civil legal systems.

Perhaps one of the most important contributions of Roman law was the acknowledgment of ownership and private property rights, which moulded the modern property law system in many parts of the modern Western world.

The early Greek merchants developed a sophisticated system of commercial law, recognising the need to protect ownership. Legal historian John Maxcy Zane commented that: "The law as to possession and ownership of property was sufficient to protect it". In the earliest form of litigation, damages were given for damage caused to slaves, which were a vital commodity for owners. The legal principles of slave ownership and status contributed to the development of the concept of property rights, which evolved to develop into the property system in the modern world.

The focus of this analysis is to consider in detail the legal status of slaves under Roman law, particularly focusing on the development of civil status under Roman law and how the development of Roman law affected the rights of slaves.

Roman property law began with the concept of ownership, and it mainly

applied to slaves and land and the principle requirement was that the property or slave was acquired by virtue of a legitimate transaction and unchallenged ownership for a year in the case of slaves. The concept of ownership and alienability of slaves as a commodity lends itself to the view that slaves were regarded as “ things” as opposed to persons under Roman law.

The Roman Digest (described further below) and the Twelve Tables assert the legal status of slaves as property of their owners and owners exercised dominium over slaves. Dominium was the absolute right to dispose of and control the use of a piece of property. Again the reference to slaves as property by implication would again support the view of slaves as things. Roman law further provided that all law pertained to persons, things or to actions. A man and person were not one in the same and a slave was not a person, but a thing, contrasted with a person, that was regarded as a human being with civil status.

Civil status under Roman law was derived from liberty, citizenship, and family. If one had no civil status they were regarded as a mere thing. It was from the notion of “ things” that modern property law developed. This is discussed in further detail below.

Men were either free or slaves, if they were free they were freemen or freed men. Slaves were born as slaves or became slaves under the law of nations or civil law.

The above highlights the status of slaves as things and effectively a commodity, indicating status, which in turn demonstrates how the Twelve Tables acknowledged possession and ownership and therefore recognised private property rights.

Initially Roman law only applied to its citizens and was eventually extended to grant rights to every citizen under the Roman law of property. Historian Colin Wells observes that: “ the main benefit of Roman citizenship in Gaul will have been to bring the new citizen under the Roman law of property, which meant that they could now be held to own wholly and perpetuity land”. From the right of citizenship grew the notion of property rights and succession, with property being passed heirs and at last the acknowledgment of private property in land freely alienable by individuals.

Further, Roman lawyer Cicero asserted that the principles underlying a rule of law was that everyone was governed by natural law and that the “ those who are citizens of the same state ought to be equal”. However, this was not applicable to slaves, again highlighting the lack of recognition of slaves as people entitled to the basic human rights derived from natural law and associated with civil status.

Under the law of nations, slaves were either by captivity and civil status as slaves was by virtue of inheritance and parental lineage or in occasional cases where they permitted themselves to be sold in order to participate in the price. This notion of consent, coupled with the fact that Roman law provided for some form of civil status as slaves would contrary to Cicero’s

assertion suggest that they were more than things, however in reality their treatment and main use as a commercial commodity contradicts this view.

Civil status under Roman law was either *sui juris* (own master) or *alieni juris* (subject to another). Again, this notion of consent coupled with the category of civil status would still suggest some sort of rights that go further than the legal concept of a thing. However, these slaves were still subject to the dominical power and the notion of “*alieni juris*”, contradicts any notion of free will or basic rights that persons take for granted. Slaves were ultimately used as things in commerce and might be sold, donated, or bequeathed by legacy.

The Roman slave trade was complex and some works of Roman scholars indicate that there were varying degrees of status within the slave community itself. A slave's identity was effectively dependant on many factors such as the period in which they lived, their place of birth and their role within the household they belonged to. For example, Cicero's slave was his close friend and personal confidant and advisor, yet the legal status of his slave acted as a barrier to complete friendship or the slave having any civil status under Roman law. This further emphasises the status of slaves as less than citizens with the rights accorded to citizens under Roman natural law