



UDC 347.2

DOI: 10.31548/law/2.2023.22

Contractual obligations in Roman law: The genesis of the main forms

Yuliia Kanaryk*

PhD in Law, Associate Professor

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

<https://orcid.org/0000-0003-3222-7827>

Article's History:

Abstract

Received: 4.01.23

Revised: 24.03.23

Accepted: 26.04.23

Roman law is the basis for many modern Western European legal systems, and it is used by the vast majority of modern researchers and lawyers. Obligations are one of the main legal means by which trade turnover was regulated at various stages of human development. The relevance of the subject of the study lies in the fact that the examination of the grounds for the emergence of obligations in Roman law allows for determining ways to improve the legal regulation of relevant legal relations in modern realities. The purpose of this study is to investigate the emergence of the institution of contractual obligations and its individual types in Roman private law. Using the method of analysis and synthesis, the differences in the system of grounds for the emergence of obligations at different stages of the development of this institution are highlighted. The study analyses the concept of a contract as one of the grounds for the emergence of obligations in Roman private law. The system of obligations of Ancient Rome is briefly described. The main stages of the evolution of binding legal relations of the historical period under consideration are highlighted. The views of various researchers on the grounds for the emergence of obligations in Roman private law are examined. It is concluded that the first types of obligations in Ancient Rome were those

Suggested Citation:

Kanaryk, Yu. (2023). Contractual obligations in Roman law: The genesis of the main forms. *Law. Human. Environment*, 14(2), 22-32. doi: 10.31548/law/2.2023.22.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

that arose from offences (torts), and contractual obligations appeared later as a result of improving the legal system. The study examines how views on the grounds for the emergence of an obligation have changed, in which the leading role is no longer assigned to torts, as it was in early Roman law, but to contracts (deals). The practical value of the study lies in the fact that after the analysis conducted, it became possible to compare and improve the modern system of obligations under Roman private law

Keywords: contracts; pacts, claims; torts; stipulation; innovation

Introduction

The special role of Roman law in the modern legal system is that it became common law throughout the ancient world, and certain branches of Roman law are still used today. One of these branches is the Roman law of obligations under contracts. Through contracts, commodity and economic operations were fixed in Ancient Rome.

Today, interest in Roman law in Ukraine is growing due to the European integration processes. Therefore, Roman law should be examined in detail precisely in the aspect of the basis for the development of civil law. Obligations are one of the main legal means regulating trade turnover, so examining it allows identifying the dynamics of civil circulation and ways to improve the legal regulation of Civil Relations in Ukraine.

Contractual obligations were created to regulate legal relations in relation to foreign and internal trade. The treaty system, which was created in Ancient Rome, gave an impetus to the development of the economy and the improvement of national law.

Roman law characterised contractual obligations as regulatory rather than protective measures. However, during their development, these relations acquired a law enforcement function. Such a system had a perfect character, so in the future most European states began to be guided by it.

Therefore, this approach also allows using national traditions, enriching them with the

pan-European idea of Roman law and the nature of its interpretation in modern conditions. Therefore, there is a need for a detailed study of the main institutions of Roman law, in particular, the obligations and grounds under which they arose.

V. Novosad (2022) refers to the following types of legal methods of securing obligations: real security of the creditor at the expense of the debtor (pledge, deposit); personal security of the creditor at the expense of the debtor (stipulation, oath); security of creditors at the expense of third parties (surety).

After analysing the dissertation by N. Dykhta (2018), it can be concluded that Roman private law gave rise to the right to reimbursement of expenses, which was later implemented in Ukrainian legislation.

V. Selska (2018) focuses on subsidiary liability from Roman law to modern civil law. After analysing the data of the paper, it is noted that the concept of "subsidiary liability" was partially borrowed from Roman contract law, but the current legislation of Ukraine still does not contain a clear definition of this concept, which requires further research.

V. Dzhugan (2018) investigated the formation of the Institute of legal liability in Roman law, including for violation of contractual obligations. The author determined that due to the reception of Roman law, it can be considered fundamental for the

development of many legal systems in Europe and the world, and is currently important for research.

In the dissertation by V. Sloma (2020), the formation of this type of obligation in Ukrainian civil legislation based on Roman law was analysed. The author defines that genealogical obligations with multiple subjects originate from Roman law, namely from the stipulation "sponsion", according to which other persons (sponsors) could be involved in the performance of the obligation, provided that the principal debtor fails to fulfil the obligation.

Despite the existence of these fundamental studies, the question of the grounds for the emergence of obligations in Roman law has not been covered, which determines the relevance of this study.

Thus, the purpose of the study is to analyse the concept and grounds for the emergence of contractual obligations in Roman law.

Materials and Methods

When investigating the norms of Roman law, the methods of specific humanities play an important role, since the object of study is quite multifaceted. An integrated approach to determining the essence of Roman legal phenomena makes it necessary to use many sciences: philosophy, philosophy of law, sociology, cultural studies, anthropology, semiotics, civil studies, history, etc.

Researchers who were engaged in the study of Roman law and civil law, in general, tried to develop a universal methodology for investigating Roman law, but due to the versatility of the subject, it cannot be exhausted by a well-established system of methods and techniques.

It is necessary to use a systematic approach to the examination of the public aspect of Roman law to thoroughly study contractual obligations in its system, which combines philosophical, general scientific, and special scientific research methods.

Through a systematic approach, it is possible to examine the dual nature of Roman law based on the unity of concrete historical facts corresponding to the period of Roman rule and the logical connection between private and public law.

The historical method allowed determining the features, patterns, and trends in the development of contractual obligations in Ancient Rome.

Through the formal-logical method, the legislation on contractual obligations and termination of their performance was examined; the method of comparative analysis was used to clarify the features and differences of the system of grounds for the occurrence of obligations at different stages of the development of this institution.

The analysis primarily allows tracing the formation of a general picture of legal relations that were associated with the conclusion, modification, and termination of obligations under Roman law.

The legal basis of the study was the primary sources of Roman law, which include the Law of Twelve Tables (450 B.C.), the Institutes of Gaius (170), the Institutes of Justinian (535), and the norms of Ukrainian legislation, namely the Civil Code of Ukraine (2003).

The scientific basis of the study includes the papers of Ukrainian and foreign researchers on Roman treaty law.

Results and Discussion

The most well-known source of Roman law, which mentioned contractual obligations, is the Laws of the Twelve Tables (451-450 BC). It is worth agreeing with the opinion of Ye. Orach and B. Tyshchuk (2012) that this source did not provide comprehensive information about obligations and showed that during this period the existence of contractual obligations was not widespread enough.

In Gaius institutes, Book 3 was devoted to obligations, which described the specific features

of concluding binding and classifying contracts (Kozub & Bodnaruk, 2020).

The Institutes of Justinian (535) compared the opinions of various scholars on the grounds for the emergence of obligations, determined the specific features of payment under a contract of employment, so they are considered the main source of reception of Roman law. However, it is necessary to agree with Ye. Kharytonov (2019) on the fact that Justinian's Digests were created not only based on Roman law but also through Byzantine adaptation to the norms of another state.

Ukrainian civilists conducted research on Roman law of obligations. The study of V. Goncharenko (2005) on the reception of Roman law rules governing a loan agreement and of R. Gongalo (2000) on the reception of Roman law on superficies are notable.

It is worth agreeing with the opinion of S. Grynko (2012) discusses the essence of methods for ensuring the fulfilment of obligations in two moments: firstly, alongside the debtor, any third party assumes personal responsibility for their debt, which constitutes personal credit; secondly, the allocation of a separate object from the property of a known person, the value of which can be used to satisfy the creditor in case the debtor fails to fulfil their obligation, constitutes real credit.

The study by V.F. von Zeller showed the limits of the right of the co-owner of a thing to transfer detentio over it to another person, and N.D. Fustel-de Culange – an opportunity to establish the relationship between the contract of employment and the legal relationship of the colonnate (Mynyo, 2015).

The creation of the contract law of obligations in Ancient Rome allowed to improve commodity circulation, while not violating the existing conservatism that was characteristic of Roman quiritic law. Sources of Roman law first defined the term "obligatio" in the 3rd century BC. This term

literally meant legal handcuffs, which determine the obligation to perform a certain action in accordance with the law. According to the opinion of the Roman jurist Paul (III century AD): "The essence of the obligation is not to make any object ours, but to bind another before us in such a way that he gives, does, or provides us something" (Maydanyk, 2021). This means that any person is free in their actions until the moment when they have an obligation. After the appearance, the person conditionally put on handcuffs, which to a certain extent restricted their will and made them feel someone else's power over themselves.

Therefore, it can be concluded that the term "obligation" in Roman private law was understood as a legal relationship according to which one party (the creditor) has the right to demand that the other party (the debtor) perform a certain action or abstain from it, and the debtor undertakes to perform certain actions in favour of the creditor to satisfy their interest.

Unlike responsibilities, obligations are not accidental, they arise as a consequence of a certain circumstance or legal fact that establishes a connection between two persons. This circumstance in Roman law was called *causa obligationis*.

Roman private law gives obligations the following features: a personal legal relationship; the subject of legal relations is a specific action; the content of the obligation is the obligation of the debtor to "give", "do", "provide", and the right of the creditor is the requirement to fulfil the obligation imposed on the debtor; the presence of a property interest for the creditor.

The Roman scholar T. Marezol argued that an obligation arises from the expression of the will of an obliging person when they promise another person to provide a certain service or perform a certain action, and the other person, in turn, accepts the offer and makes the promised an

integral element of his property. The researcher convinces of the need to define a system of obligations in Roman law, which consists of four parts, in accordance with the grounds for their occurrence (Gryshko & Vynnychuk, 2019).

It is worth agreeing with the opinion that personal forms of claims prevailed in Roman law (*actiones in personam*), and not claims on the right of ownership (*actiones in rem*) (Maydanyk, 2021). This means that Roman private law had a division of rights into property and binding. However, Roman private law did not always distinguish real and binding rights into different categories. According to the author, the main inherent feature of the obligation is the consolidation, movement of property, property benefits. It is on this basis that proper and binding relations differ substantially since property legal relations fix the appropriation of material goods, and not their movement.

Roman jurists pointed out that an obligation arises from two main legal facts: a contract and a tort. However, according to practice, the most important and widespread basis of obligations in Ancient Rome was a contract. The contract (*contractus*) refers to an agreement (expression of will) of two or more parties that aims to achieve certain legal results, such as the emergence, modification, or termination of rights and obligations. Obligations also arose as a result of the illegal behaviour of the person. An offence that results in property damage generates a tort obligation.

According to Yu. Baron, the following bases for the emergence of obligations were identified: unilateral will of the debtor; contract; positive prescriptions; by the will of the judge; intervention of one party into the field of rights of another party (Kutateladze, 2006).

B. Windsteid proposed a different view of the system of obligations that existed in Roman law. It includes: rights of a person arising from a

contract; obligations arising from misdemeanours; obligations under quasi-agreements; liability for obligations of others (Davydova, 2018).

Notably, the theory of separation of obligations, which was proposed by Y. Pokrovsky (1998), cannot be considered as a basis since the division of obligations into contractual and non-contractual ones does not provide precise justifications for exactly how non-contractual obligations should arise. G. Shershenevich (1994) calls the category of non-contractual obligations groundless (Ryabokon, 2021).

The author highlights as the main feature of the obligation its personal nature: the obligation concerns only those persons between whom it arose, but the subject of the obligation is defined as an action consisting in the right of claim of the creditor and the obligation of the debtor to give something (*dare*), do something (*facere*), or provide something (*praestare*)

In Roman law, all obligations were divided into the following categories: based on their occurrence – obligations under contracts and torts (quasi-agreements and quasi-disputes); on the law regulating obligations – civil and Praetorian; on the subject of obligations – divisible and indivisible, alternative and optional, one-time and permanent.

Before the concept of “contract” appeared in Roman law, there was a concept of “*nexum*”, which meant that the debtor personally subjected themselves to the creditor until the repayment of their debt. “*Nexum*” is the only known agreement that was spelt out in the Laws of the Twelve Tables, based on which the obligation arose.

The next well-known legal form was *sponsio*, or *stipulatio*. This form became a unifying factor between old and new civil law in Ancient Rome, as it existed in a formal form, such as *nexum* however, it was based only on a conditional promise from the debtor. Stipulation could be concluded

orally in any language that both parties could understand. This type of contract predetermined the fact that the debtor could only be required to promise, without additions, without penalties for late or non-fulfilment of the terms of the contract.

Later, the system of contracts in Roman private law began to operate. Contracts are formal deals that are recognised in civil law and secured through claim protection. Over time, pacts also gained appellative protection (Bezklubyi, 2021). However, this system also had some drawbacks. There were types of contracts that, although grouped into a general system, had different forms of conclusion and distinctions in the moments of contract formation.

In addition to contracts, the system of treaties of Ancient Rome included pacts (*pactum*). Gaius called this division *summa division* (Pidopryhora & Kharytonov, 2022). However, in another book called "Seven Books of Common Matters", also known for its popularity as "*Aureorum*", Gaius adds another category "*aut proprio quodam jure ex variis causarum figuris*", which translates to "from other kinds of legal grounds" (Pidopryhora & Kharytonov, 2022). The third edition of this study shows the classification of "other types of legal grounds" into quasi-contracts and quasi-credits.

However, this division is also considered imperfect, because the exact basis for the occurrence of the obligation is not determined. The concept of "debtor" in both types is endowed with legal liability.

During the improvement of the system of treaties in private Roman law, the formal process was important, according to which the Praetor could, at their own discretion, give relations legal meaning. Due to these actions, agreements that were previously not protected by a lawsuit obtained the possibility of full protection. The debtor

and creditor themselves also played an important role in establishing contractual obligations.

The main features of the development of contractual obligations in Roman private law were the deprivation of formalism, giving treaties a real or consensual form. However, it is also worth highlighting as a distinctive feature the focus on the internal will of the parties when concluding a contract. This means that the transaction could be considered contested or invalid only if it was concluded in an inappropriate way, using coercion, etc.

During the formula process, the principle of *condemnatio recipiagia* was formed, according to which contractual obligations have the right to exist only if there is a property value. In Roman private law, contractual obligations developed gradually and various types of contracts were gradually created. They were divided into contracts (i.e., a standard contract) and pacts (contracts without legal force) to determine which type of claim can be applied to a particular type of contract.

It is considered that the subject of the obligation is a person. It is worth challenging the reasonableness of this theory, because the subject should be defined as the activity that the debtor performs in favour of the creditor, and liability arises both as a result of non-performance and incomplete performance of this action.

When concluding contracts, they can involve not only two persons, but also several debtors or creditors. Such cases usually occurred as a result of obtaining the right to common property by inheritance (Metzger, 2020). According to which of the parties to the contract is plural, there are the following varieties: active multiplicity of subjects – when there are several creditors; passive multiplicity of subjects – when there are several debtors; mixed multiplicity of subjects – there are several representatives from both parties.

Such multiplicity of any party to the contract, as a result, gives rise to the division of obligations between all parties. According to this distribution, partial and joint (solidary) obligations are distinguished.

A solidary obligation is a type of contractual obligation where all creditors can demand the debtor's performance in full, and each debtor must fully fulfil their obligation. Solidary obligations also include two types: in the narrow sense and coreality. The difference between them lies in the grounds on which they arise. The reason for establishing a solidary obligation in a narrow sense was a special resolution of the law (Spasi-bo-Fateeva, 2022). The reason for establishing a coreal obligation is the transaction and the actual will of the parties to the agreement.

A partial obligation is a type of contractual obligation where creditors can demand compensation from the debtor only for their share, and debtors can only fulfil a certain share of the obligation.

It is advisable to consider the types of contracts on the subject of the obligation. An alternative is an obligation, according to which the debtor can choose one of several actions to repay the obligation. The contract may or may not provide for the right to choose a certain party to the contract. If such a choice is not provided, this choice is automatically passed to the debtor (Goncharova, 2018). Obligations are termed facultative when the debtor has the option to fulfill their obligation with a different object instead of the one specified in the contract. As a result of such a replacement, the debtor can use the benefit to change the subject matter of the obligation.

In addition, in accordance with the subject matter, contractual obligations were divided into permanent and one-time, respectively, during a permanent obligation, the debtor had to perform certain actions on a permanent basis, in the case

of one-time obligations-only once to perform an action or once to transfer a thing.

Contractual obligations provided for the possibility of replacing a person by succession. This was mostly about inheritance. The Law of the Twelve Tables describes that the rights of claim and debts of the testator must be distributed among his heirs according to their shares in the inheritance (Pylypchuk, 2018). The next factor according to which it was possible to replace a party to the contract was the institution of innovation. According to it, when determining a new obligation between the debtor and the new party to the contractual obligation, it was necessary to terminate all existing obligations of the debtor to the creditor. Such an institution was applied only with the consent of the debtor. If the original obligation was made based on a surety or pledge, it was necessary to conclude a new agreement with the new creditor participant.

The innovation existed in several types: one that was concluded by the same persons who previously concluded the agreement, and the change is made in the terms or terms of the contract; an innovation that replaces the creditor or debtor. Notably, during the innovation, termination took place through an oral contract in the form of stipulation. There was another form of innovation – literal contracts. The conditions under which the innovation terminated the obligation were: it was concluded to repay previous obligations, the contract under discussion is valid, the definition of a new element of the obligation, and the identity of the debtor's obligation (Samusieva, 2020).

Summarising, it is worth highlighting the following conditions for the existence of an innovation: the actual existence of the initial obligation (*prius debitum*); the actual existence and validity of the new obligation (*nova obligatione*); distinguishing features between the original and new

obligations (*aliquid novi*); the parties' desire to make an innovation.

If the debtor did not fulfil their obligation within a certain time frame, this was called late fulfilment. This happens when there are such conditions as the term of performance of duties, the absence of good reasons for non-performance of duties, and the fault of the debtor due to the lack of valid reasons for non-performance of obligations. However, the debtor is obliged to fulfil its obligation even after the expiration of the terms of its performance, even if the value of the subject of the obligation decreases, the debtor must pay monetary compensation for it, which is defined in the contract, moreover, the creditor can charge interest for late performance of obligations.

The Ukrainian legal system is aimed at European integration, so the norms of Roman law regarding market relations are beginning to be actively used. Therefore, there was a need for a precise formulation of Roman law, in particular, in the field of regulating relations of obligations. Now Roman law manifests itself as the most developed and complete law, containing regulators necessary for society in general and for its main groups in particular. Therefore, Ukrainian civil legislation borrows verbal and literal forms of contracts.

Classical Roman law does not provide that the conclusion and execution of a contract takes place simultaneously. However, according to Article 668 of the Civil Code of Ukraine (2003), the buyer is responsible for accidental destruction or damage to the object of the contract from the date when the contract was concluded. Contracts were classified into paid ones, which included a purchase and sale agreement, and gratuitous ones (a loan agreement). This classification is also partly borrowed from Roman treaty law. The loan agreement (*commodatum*) according to Roman law,

there is a real contract according to which one person (the commodore) must transfer a certain item to another person (the commodore) for temporary and gratuitous use for the period provided for in the agreement (Sloma, 2019). According to the Civil Code of Ukraine, the parties to a loan agreement are the lender and the user. A loan agreement is an ancient type of real contracts that has been preserved in domestic civil legislation.

In Roman contract law, an obligation was a personal concept that gave the creditor the right to demand its fulfilment from the debtor. In the civil legislation of Ukraine, obligations consist of legal relations between the parties to the contract, which in turn divide the relations into two groups, in each of which the obligations are assigned to both the creditor and the debtor.

In general, the specific features of the implementation of the contractual norms of Roman law in the civil legislation of Ukraine require a detailed study, which should be devoted to a separate scientific study.

Conclusions

In the course of the study, it was concluded that during the formation of Roman law, a transition was made from the leading role of torts to giving preference to contracts (contractual obligations).

Obligations are classified according to a four-member structure: contracts, torts, quasi-contracts, and quasi-contracts. Contracts appeared later, but for a long time in terms of liability for non-compliance with the conditions defined in contracts, they were no different from torts and became more perfect only during the time of classical Roman private law.

Contractual obligations in Roman private law were formed based on the terms *contractus*, which means an agreement that aims to create obligations, and *pacta conventa*, which meant an

informal agreement that was not endowed with call sign protection. However, in ancient Roman law, these terms did not have full legal force and provided only for those duties that differed from offences and had an objective meaning.

With the development of economic relations in Ancient Rome, the contract in its previous forms ceased to be relevant. Consequently, new forms of contractual obligations began to emerge that lacked solemn components and formalities in their content. Currently, these new forms cannot keep up with the rapid increase in their quantity and can impede the reform of economic life. Due to the economic crisis, changes were made in the legislation to support debtors, and a ban on charging too much interest was established.

Notably, these changes had a negative impact on contractual obligations in general. This led to the emergence of new types of contracts, devoid of burdensome formalism and solemnity of their implementation. Accordingly, it was possible to observe the consolidation of all existing obligations into a certain system.

In the course of a comparative analysis of Roman contract law and the civil law of Ukraine,

their common and distinctive features were determined. It is concluded that such legal categories as ownership, emphyteusis, superficies, and easement were borrowed from the norms of Roman law. Certain differences can be observed in the loan agreement, which was also borrowed from Roman contract law. The difference in the loan agreement under civil legislation lies in the fact that this type of agreement can be defined as both a consensual and a real contract, whereas under Roman law, this type of contract was defined as consensual. According to previous practice, the implementation of the norms of Roman law in Ukrainian legislation takes place both in full and with the application of certain changes.

In the future, it is planned to examine in detail the implementation of the norms of treaty Roman law to improve the current civil legislation of Ukraine in the context of European integration.

Acknowledgements

None.

Conflict of Interest

None.

References

- [1] Bezklubyi, I.A. (2021). General characteristics of Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 9-22). Kyiv: Alerta.
- [2] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/go/435-15>.
- [3] Davydova, I. (2018). [Faults of will in a deal as a condition of its invalidity: From the Roman law to present](#). *Lex Portus*, 1, 144-152.
- [4] Dykhta, N.M. (2018). [Contract of agency in Roman private law and its reception in modern civil legislation of Ukraine](#) (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).
- [5] Dzhugan, V. (2018). [Genesis of legal responsibility in Roman law](#). *Entrepreneurship, Economy and Law*, 2, 165-170.
- [6] Goncharenko, V.O. (2005). [Reception of the roman contract of loan for use in modern Ukrainian civil legislation](#) (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).
- [7] Goncharova, A.V. (2018). [Inheritance by law: Historical background is modern life](#). *Legal Horizons*, 8, 28-32.

- [8] Gongalo, R.F. (2000). *Superficies in Roman law and its reception in modern civil law of Ukraine* (PhD thesis, Odesa State Law Academy, Odesa, Ukraine).
- [9] Grynko, S.D. (2012). *Tort obligations of Roman private law: Concept, system, reception*. Khmelnytskyi: Khmelnytskyi University of Management and Law.
- [10] Gryshko, V.I., & Vinnychuk, I.V. (2019). [The system of contracts in Roman law and their reception](#). *Young Scientist*, 12.1, 38-41.
- [11] Institutes of Gaius (170). Retrieved from <http://thelatinlibrary.com/law/gaius.html>.
- [12] Institutes of Justinian. (535). Retrieved from <http://thelatinlibrary.com/law/institutes.html>.
- [13] Kharytonov, Ye.O. (Ed.). (2019). [Roman law and modernity. Codification and recodification of civil legislation in Ukraine: Experience and prospects: Materials of the international science and practice conference](#). Odesa: Phoenix.
- [14] Kozub, I.H., & Bodnaruk, M.I. (2020). [Basics of Roman civil law](#). Chernivtsi: Yuriy Fedkovych Chernivtsi National University.
- [15] Kutateladze, O.D. (2006). [The legal grounds of a rise of obligations in roman private law and modern Ukrainian civil legislation](#) (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).
- [16] Law of Twelve Tables. (c. 450 B.C.). Retrieved from https://avalon.law.yale.edu/ancient/twelve_tables.asp.
- [17] Maydanyk, R.A. (2021). Possession in Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 102-112). Kyiv: Alerta.
- [18] Metzger, E. (2020). Roman law. In Y. Kasai, & V. Cazzato (Eds.), *Koten no Chosen*. Tokyo: Chisen Shokan. doi: 10.2139/ssrn.3680599.
- [19] Mynyo, M.M. (2015). [The contract of employment under Roman law and its reception in the law of Ukraine](#) (PhD thesis, Ivan Franko National University of Lviv, Lviv, Ukraine).
- [20] Novosad, I.V. (2022). Contract under roman private law and its implementation in modern legislation. *Scientific Journal of the M.P. Dragomanov National Pedagogical University. Series 18. Law*, 37, 21-26. doi: 10.31392/NPU-nc.series18.2022.37.04.
- [21] Orach, Ye.M., & Tyshchuk, B.Y. (2012). *Roman private law*. Kyiv: In-Jure.
- [22] Pidopryhora, O.A., & Kharytonov, Ye.O. (2022). *Roman law* (5th ed.). Kyiv: Yurinkom Inter.
- [23] Pylypchuk, O.O. (2018). The origin and development of law in Ancient Rome (middle of the VIII–VI centuries B.C.). *History of Science and Technology*, 8(1), 179-190. doi: 10.32703/2415-7422-2018-8-1(12)-179-19026.
- [24] Ryabokon, Ye.O. (2021). Persons in Roman private law. In R.A. Maydanyk, & Ye.O. Ryabokon (Eds.), *Roman private law. Practicum* (pp. 53-65). Kyiv: Alerta.
- [25] Samusieva, K.V. (2020). Novation as a way of termination of obligations. *Juridical Scientific and Electronic Journal*, 8. doi: 10.32782/2524-0374/2020-8/36.
- [26] Selska, V. (2018). [History of the formation and development of subsidiary legal liability](#). *Lex Portus*, 2, 202-212.
- [27] Sloma, V.M. (2019). Liability in obligations with multiple persons: Separate civil law aspects. In R.A. Maydanyk, E.M. Hramatskyi, and V.V. Tsiura (Eds.), [Modernization of civil liability \(Matveev's civic readings\): Materials of the international science and practice conference](#) (pp. 272-274). Kyiv: Taras Shevchenko National University of Kyiv.

- [28] Sloma, V.M. (2020). *Obligations with the plurality of entities in the civil law of Ukraine* (Doctoral thesis, West Ukrainian National University, Ternopil, Ukraine).
- [29] Spasibo-Fateeva, I.V. (Ed.). (2022). *Roman law through the prism of tradition and judicial practice*. Kyiv: ECUS.

Договірні зобов'язання в римському праві: гене́за основних форм

Юлія Сергіївна Канарик

Кандидат юридичних наук, доцент

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

<https://orcid.org/0000-0003-3222-7827>

Анотація

Римське право – це основа для багатьох сучасних західноєвропейських правових систем, ним керується переважна більшість науковців та юристів сьогодення. Зобов'язання – один з головних правових засобів, за допомогою яких регулювався торговий обіг на різних етапах розвитку людства. Актуальність теми наукового дослідження полягає в тому, що вивчення підстав для виникнення зобов'язань в римському праві дають змогу визначити шляхи вдосконалення правового регулювання відповідних правовідносин у сучасних реаліях. Мета цієї статті – дослідити виникнення інституту договірних зобов'язань та його окремих видів у римському приватному праві. За допомогою методу аналізу та синтезу виокремлено відмінності системи підстав виникнення зобов'язань на різних етапах розвитку цього інституту. У статті проаналізовано поняття договору як однієї з підстав для виникнення зобов'язань у римському приватному праві. Коротко схарактеризовано систему зобов'язань Стародавнього Риму. Виділено основні етапи еволюції зобов'язальних правовідносин розглянутого історичного періоду. Досліджено погляди різних науковців на підстави виникнення зобов'язань у римському приватному праві. Зроблено висновки, що першими видами зобов'язань у Стародавньому Римі були ті, що виникали з правопорушень (делікти), а договірні зобов'язання з'явилися пізніше в результаті удосконалення системи права. Досліджено, як змінювалися погляди на підстави виникнення зобов'язання, у якому провідна роль відводиться вже не деліктам, як це було в ранньому римському праві, а контрактам (договорам). Практична цінність роботи полягає в тому, що після аналізу, проведеного в дослідженні, з'явилася можливість порівняти та вдосконалити сучасну систему зобов'язань відповідно до римського приватного права

Ключові слова: контракти; пакти, позовний захист; делікти; стипуляція; новація
