

# ROMAN LAW?

*Introduction to Swiss Law HS21*



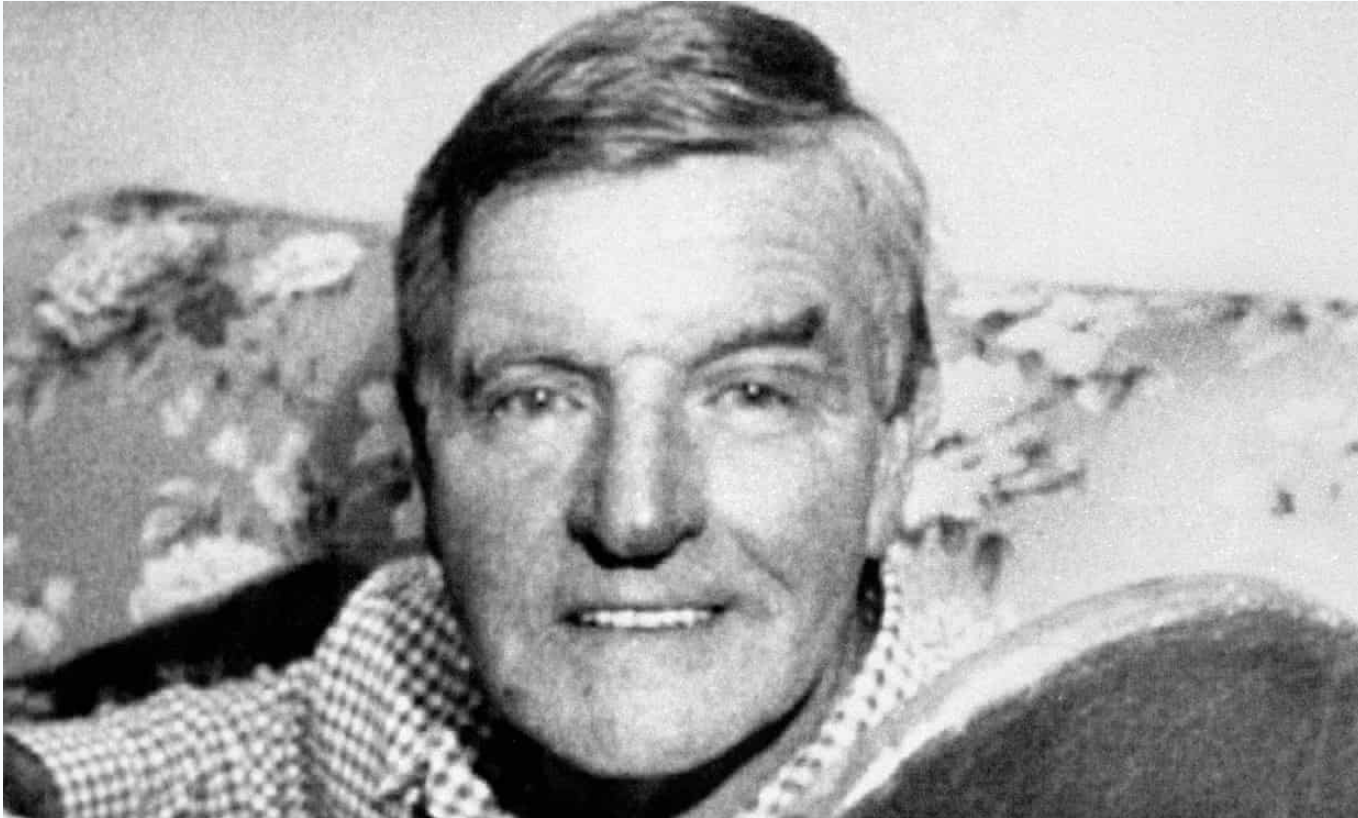
# Roman Law? Overview

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- I. Peter Whatling's Hammer
- II. Treasure Trove
- III. Roman Disputes
- IV. An Emperor's Solution
- V. The Second Life of Roman Law

# An example

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<https://www.theguardian.com/uk-news/2015/jul/23/eric-lawes>

Eric Lawes (Hoxne, Suffolk, 1923-2015)

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# An Example

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The Hoxne Treasure, British Museum, London

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# An example

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Peter Whatling's Hammer, British Museum, London

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# Treasure Trove



Edward the Confessor (1004-1066), Bayeux Tapestry, 11. Jh. n. Chr.

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# Treasure Trove

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Leges Edwardi Confessoris 14.1: "Thesauri de terra regis sunt, nisi in ecclesia vel in cimeterio inveniuntur" („Treasures from the land belong to the king, unless they are found in a church or a cemetery“)

Why?

- ☞ Treasures are not truly ownerless things
- ☞ But no one can claim them any more

*In 2013, geneticists Peter Ralph and Graham Coop showed that all Europeans descend from exactly the same people: basically, everyone who lived in the ninth century and left descendants, including Charlemagne, is the ancestor of every European alive today.*

*Vgl.: <https://www.nationalgeographic.com/science/article/charlemagnes-dna-and-our-universal-royalty>*

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# Lawes & Whatling: The Reward

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# Treasure Trove: Switzerland

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## Art. 723 ZGB

<sup>1</sup> Wird ein Wertgegenstand aufgefunden, von dem nach den Umständen mit Sicherheit anzunehmen ist, dass er seit langer Zeit vergraben oder verborgen war und keinen Eigentümer mehr hat, so wird er als Schatz angesehen.

<sup>2</sup> Der Schatz fällt unter Vorbehalt der Bestimmung über Gegenstände von wissenschaftlichem Wert an den Eigentümer des Grundstückes oder der beweglichen Sache, in der er aufgefunden worden ist.

<sup>3</sup> Der Finder hat Anspruch auf eine angemessene Vergütung, die jedoch die Hälfte des Wertes des Schatzes nicht übersteigen darf.

<sup>1</sup> If an object of value is found in circumstances indicating with certainty that it has long lain buried or hidden and it no longer has an owner, it is to be considered a treasure trove.

<sup>2</sup> Subject to the provisions governing objects of scientific value, treasure trove belongs to the owner of the land or chattel where it was found.

<sup>3</sup> The finder is entitled to an appropriate finder's reward not exceeding one-half of the treasure's value.

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# Treasure Trove: Spain

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Art. 351 cc

El tesoro oculto pertenece al dueño del terreno en que se hallare. Sin embargo, cuando fuere hecho el descubrimiento en propiedad ajena o del Estado y por casualidad, la mitad se aplicará al descubridor

Hidden treasure shall belong to the owner of the land in which it is found. Notwithstanding the foregoing, when the discovery should be made by chance in another's property, or in State property, half shall correspond to the discoverer.

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# Treasure Trove: France

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## Art. 716 cc

La propriété d'un trésor appartient à celui qui le trouve dans son propre fonds; si le trésor est trouvé dans le fonds d'autrui, il appartient pour moitié à celui qui l'a découvert, et pour l'autre moitié au propriétaire du fonds.

Le trésor est toute chose cachée ou enfouie sur laquelle personne ne peut justifier sa propriété, et qui est découverte par le pur effet du hasard.

Ownership of a treasure discovered in a man's own field belongs to himself; if discovered in another person's field, one half thereof belongs to him who discovered it, and as regards the other half to the owner of the field.

Treasure is every thing concealed or hidden in the earth over which no one can prove property, and which is discovered purely by the effect of chance.

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# Treasure Trove: Italy

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## Art. 932 cc

Tesoro è qualunque cosa mobile di pregio, nascosta o sotterrata, di cui nessuno può provare d'essere proprietario.

Il tesoro appartiene al proprietario del fondo in cui si trova. Se il tesoro è trovato nel fondo altrui, purchè sia stato scoperto per solo effetto del caso, spetta per metà al proprietario del fondo e per metà al ritrovatore. La stessa disposizione si applica se il tesoro è scoperto in una cosa mobile altrui.

Treasure is any valuable movable thing, hidden or buried, of which no one can prove ownership.

The treasure belongs to the owner of the land where it is found. If the treasure is found in someone else's property, provided that it has been discovered by chance alone, half of it belongs to the owner of the property and half to the finder. The same provision applies if the treasure is discovered in another person's movable property.

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# Treasure Trove: Germany

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## §984 BGB

Wird eine Sache, die so lange verborgen gelegen hat, dass der Eigentümer nicht mehr zu ermitteln ist (Schatz), entdeckt und infolge der Entdeckung in Besitz genommen, so wird das Eigentum zur Hälfte von dem Entdecker, zur Hälfte von dem Eigentümer der Sache erworben, in welcher der Schatz verborgen war.

If a thing that has lain hidden for so long that the owner can no longer be established (treasure) is discovered and as a result of the discovery it is taken into possession, one half of the ownership is acquired by the discoverer, and the other half by the owner of the thing in which the treasure was hidden.

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# The Roman Solutions

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## The old Republican rule

„*Cuius est solum, eius est usque ad coelum et ad inferos*“ = „whoever owns the land, it is his up to Heaven and down to Hell“



The treasure belongs to the owner of the land

## The new Imperial solution

As a rule, we acquire ownership through possession

Nobody becomes possessor unknowingly (*animus possidendi*)



The treasure belongs to the owner of the land only through its discovery

If discovered by a third party, it belongs to the latter (like any ownerless asset to its occupant)

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# Justinian's Compilation

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‘Corpus Iuris Civilis’ (529-534 n. Chr.):

- ✦ Code of Justinian: 12 Books. Imperial Constitutions from Hadrian (2nd cent. CE) to Justinian
- ✦ Digest (Pandects): 50 Books. Extracts from the writings of the Roman Jurists (1st cent. BCE – 3rd cent. CE)
- ✦ Institutions: 4 Books. Handbook for the first year of Legal Studies in Berytus and Constantinople

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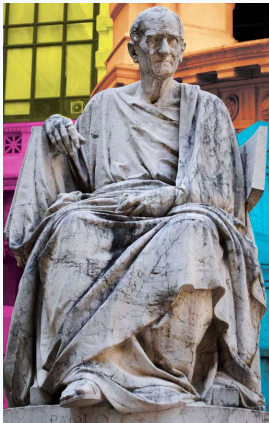
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# The Roman Solutions

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*Iulius Paulus, Roman  
Jurist, early 3rd cent. CE*

*Statue by Michele  
Tripisciano (1860 – 1913),  
Corte di Cassazione, Rom*

D. 41.2.3.3 Paulus, On the Edict, Book 70: Neratius and Proculus hold that we cannot acquire possession by intention alone, if natural possession does not preexist.

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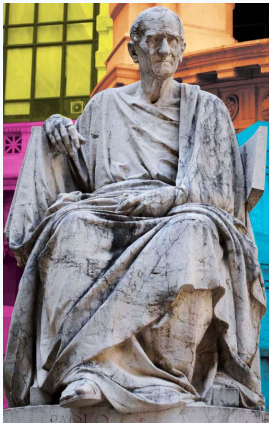
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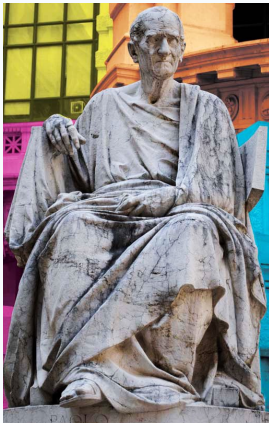
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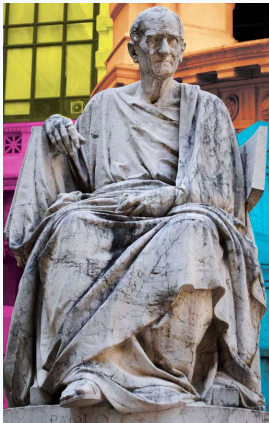
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# An Emperor's Solution

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*Emperor Hadrian. 2nd cent. CE. Musei Capitolini, Rom*

I. 2.1.39: If a man found treasure in his own land, the Emperor Hadrian, following natural equity, adjudged to him the ownership of it (...) If he found it in another man's land by accident, and without specially searching for it, he gave half to the finder, half to the owner of the soil; and upon this principle, if a treasure were found in land belonging to the Emperor, he decided that half should belong to the latter, and half to the finder (...)

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# The Reception of Roman Law

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*Irnerius of Bologna*  
(ca. 1050-1130)

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*Students of the University of Bologna. Tomb of Giovanni da Legnago, 1383. Museo Medievale, Bologna*

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