Societas

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The Roman *societas*, or "partnership," showcases both the sophistication of classical Roman law and its limitations. On the one hand, this legal concept was so advanced that it had a lasting impact on the modern partnership in legal systems around the world. On the other hand, it never evolved into a general framework suitable for business entities that require more permanence and stability. Rather, Roman law permitted only two constructs for the purpose of commercial activity: the *societas* and the *collegium*. The latter constituted a form of "corporation" but was restricted to certain social or public functions (*see COLLEGIA*).

The *societas* developed from the ancient *consortium ercto non cito* (partnership by undivided inheritance) among heirs who decided to administer their inheritance jointly rather than distributing it amongst them (Gaius *Inst*. 3.154). In its later classical form as captured in the *Corpus iuris civilis* (*see CORPUS IURIS CIVILIS*), a *societas* could be formed for any specific goal – commercial or otherwise –, as long as the activity was neither illegal nor impossible (*Dig*. 17.2.3.3; 17,2,57). According to *Dig*. 17.2.1 pr., the *societas* could be formed either for some limited duration (*vel ad tempus vel ex tempore*) or in perpetuity (*in perpetuum*). However, even in its classical form, the *societas* had no legal personality. Partners were responsible for the company's liabilities and had the rights to the company's claims.

A *societas* was formed by simple consent, *consensus* or *affectio societatis* (Ulp. *Dig*. 17.2.31). A *socius* (partner) had to make a contribution in the form of financial (money), human (skill and labor) or other (in-kind) capital such as goods, rights or claims (cf. Gaius, *Inst*. 3.149; *Dig*. 17.2.29 pr.) Differences in the form and amount of capital were permissible and resulted in a corresponding adjustment of profit shares unless otherwise agreed upon (cf. *Dig*. 17.2.6/80). The contract could even exempt a partner from all losses (*Dig*. 17.2.29.1), though not from all profits—the so-called *societas leonina* (derived from a fable by Phaedrus (1.5), in which a lion, a cow, a goat, and a sheep join together for the purpose of killing prey, but the lion claims all of the spoils for himself) was not permitted (*Dig*. 17.2.29.2).

The four main forms of *societas* were (1) the *societas omnium bonorum*, under which all partners' current and future property became common property of all *socii* (partners); (2) the *societas omnium bonorum quae ex quaestu veniunt*, the default commercial format, under which the partnership's property was limited to what partners acquired acting for the purpose of the *societas*; (3) the *societas alicuius negotiationis*, the most common form, under which the partnership was limited to profit and losses for a specific business; and (4) the *societas unius rei*, which had a single transaction as its goals (see the overview in Gaius, *Inst*. 3.154 a/b.)

The *societas* could be dissolved *ex voluntate*, i.e., in the event that all of the partners so agreed, by the unilateral withdrawal of a single partner; *ex personis*, i.e., due to the death or *capitis deminutio* of a partner; *ex rebus*, i.e., if the goal had been accomplished

or the term had expired; or *ex actione*, i.e., due to a suit against one of the partners (*actio pro socio*), though the latter restriction was later softened (D. 17.2.65.6 ; D.17,2,1,4).

Several features of the *societas* posed obstacles to the development of larger-scale businesses, especially the lack of legal personality and of intermediate profit distribution (only at dissolution), which made it hard to attract investors. Neither the classical jurists nor Justinian, under whom the *Corpus Iuris Civilis* was compiled, established a more suitable contract design. One remarkable exception is the *societas publicanorum*, the partnership of state franchisees. (The *Corpus Iuris Civilis* discusses the particular form of *societas vectigalium*, the partnership of tax collectors.) Roman law granted several exceptions that gave the *publicani* more permanence and stability, independent of the fate of individual partners (*see PUBLICANI*), most likely resulting from their importance for state finances.

SEE ALSO: Artisans, trades and guilds, Late Antiquity; Law, Roman; *Negotiatores*, Taxation, Roman.

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