

Societas

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Word count: 692 words

The Roman *societas* or ‘partnership’ showcases both the sophistication of classical Roman law and its limitations. On the one hand, its legal development was so advanced that it has a lasting impact on the modern concept of partnerships in legal systems around the world. On the other hand, Roman law never progressed beyond the *societas* to develop a general framework for business entities that require more permanence and stability. Rather, it permitted only two legal constructs under which entrepreneurs could join together 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*).

A *societas* could be formed for any specific common goal – commercial or otherwise – determined by the *socii*, partners, as long as the activity was neither illegal nor impossible (D. 17.2.3.3; D. 17.2.57). Furthermore, according to D. 17.2.1 pr., a *societas* could be formed for some limited duration (*vel ad tempus vel ex tempore*) or in perpetuity (*in perpetuum*). The *societas* developed from the ancient *consortium hereditatis* (partnership by undivided inheritance) among heirs who decided to administer their inheritance jointly rather than distributing it amongst them (Gai. Inst. 3.154). However, even in its later classical form as captured in the *Corpus Iuris Civilis* (see *CORPUS IURIS CIVILIS*), 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* (Ulpian D. 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. Gai. Inst. 3.149; D. 17.2.29 pr.) Unless otherwise agreed upon, differences in the form and amount of capital were permissible and resulted in corresponding profit shares unless otherwise agreed upon (cf. D. 17.2.6/80). Contractual variation in the profit and loss participation could exempt a partner completely from any losses (D. 17.2.29.1), though a total exclusion from profits—the so-called *societas leonina* (derived from a Phaedrus fable (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 (D. 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*, (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 Gai. Inst. 3.154 a/b.) The *societas* was dissolved *ex voluntate*, i.e., in the event that all of the partners so agreed or 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 aspects of the contractual design of the *societas* posed obstacles to the development of larger-scale business, 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, moved beyond this organizational format by establishing the legal foundations for a more complex 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 established several important exceptions that gave the *publicani* more permanence and stability, independent of the individual partner (*see PUBLICANI*), most likely resulting from their importance for state finances.

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